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To: Board Members
From: Gary Fish, Manager of Pesticide Programs
Subject: Planning Session Topic: Variances and Setbacks

Variance requests for relief from Chapters 22 and 29 are a regular feature on the Board’s meeting agenda. The table below shows the number of Board or Staff approvals for this type of request. Over that period, variance requests appeared on 13 of 21 meeting agendas (62%).

Year	Rule Chapter	Board Approvals	Staff Approvals
2011	Chapter 22	0	3
2011	Chapter 29	3	7
2012	Chapter 22	2	2
2012	Chapter 29	5	2
2013	Chapter 22	0	4
2013	Chapter 29	3	7
Total		13	25

Applicants and staff have been concerned about the timeliness of variance approvals since the Board only meets about every five weeks. In 2013, there was a nine week gap between the May and July meetings. Sometimes, waiting that long compromises the applicators ability to implement an IPM program.

Addressing Chapter 22 first, the Board routinely approves variances to Chapter 22 when the applicant promises to follow the Department of Transportation buffer scheme and provides notice in a local newspaper. If this is a standard Board position, the Board may want to consider amending Chapter 22 or – for the short term – adopting a policy to exempt right-of-way applications which follow MDOT guidelines and provide public notification.

The issues with Chapter 29 are not as straight forward; variances cover a wider variety of situations and there may be many unlicensed land managers who do not know the rules and would never request a variance. At the planning session there appeared to be some consensus regarding development of BMPs for control of invasive plants which would minimize impacts to water bodies. Those BMPs would most likely include a long-term re-vegetation plan as well. Including plants that cause dermal toxicity in those BMPs may also be advisable.

Other types of applications for which the Board commonly issues variances include: treatment of golf course greens and tees and treatment of dams or dikes.

At the planning session, many suggestions to improve the Chapter 29 variance process were voiced. The list included:

- Amend the current rules or adopt a new policy which exempts some of these situations, which have been routinely approved for many years.
- Develop BMPs and provide training. Include in BMPs strategies for those who don't want to use pesticides.
- Give staff more authority to issue variances for other than large projects or very sensitive sites which would still go to the Board. Develop standards by which applications are graded.
- Add a long term plan requirement to the variance application.
- Approve multi-year variances with a long term plan. Multi-year variances could require a report at the end of each year, including a picture and documentation of efficacy.
- Create criteria by which staff can approve variances: list of conditions, criteria, guidelines.
- Create a different variance process for organisms that are listed or confirmed as true invasive organisms.

This list contains a broad spectrum of approaches, some of which require rulemaking or policy development and others that could be done less formally at Board meetings.

The Board may wish to consider how expensive and time consuming the current processes are for both the Board and the applicants and may elect to seek solutions which reduce the burdens, ensure consistent policy administration, and promote the use of the best available science (BMPs).