

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE A: GENERAL PROVISIONS
CHAPTER II: ENVIRONMENTAL PROTECTION AGENCY

PART 180
PROCEDURES AND CRITERIA FOR REVIEWING
APPLICATIONS FOR PROVISIONAL VARIANCES

SUBPART A: INTRODUCTION

| | |
|---------|-------------|
| Section | |
| 180.101 | Purpose |
| 180.102 | Definitions |

SUBPART B: APPLICATIONS FOR PROVISIONAL VARIANCES

| | |
|---------|--|
| Section | |
| 180.201 | Applicants |
| 180.202 | Requirements of the Written Application |
| 180.203 | Preliminary Review of the Application (Repealed) |
| 180.204 | Emergency Applications (Repealed) |

SUBPART C: AGENCY DECISION MAKING

| | |
|---------|--|
| Section | |
| 180.301 | Criteria for Reviewing Applications |
| 180.302 | Final Agency Action |
| 180.303 | Recommendation to the Board (Repealed) |

SUBPART D: EXTENSIONS OF PROVISIONAL VARIANCES

| | |
|---------|---|
| Section | |
| 180.401 | Applications for Extensions of Provisional Variances |
| 180.402 | Criteria for Reviewing Applications for Extensions of Provisional Variances |

AUTHORITY: Implementing and authorized by Sections 35(b), 36(c), and 37(b) of the Environmental Protection Act [415 ILCS 5/35(b), 36(c), and 37(b)].

SOURCE: Adopted at 5 Ill. Reg. 6341, effective June 2, 1981; amended at 35 Ill. Reg. 6161, effective March 22, 2011.

SUBPART A: INTRODUCTION

Section 180.101 Purpose

This Part establishes the procedures and the criteria the Agency will use to review applications and to make final decisions regarding requests for provisional variances. Pursuant to Section 35(b) of the Act, provisional variances shall be granted by the Agency *upon presentation of adequate proof that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement, would impose an arbitrary or unreasonable hardship.*

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.102 Definitions

Terms used in these rules are defined as in the Act and in the regulations of the Board.

SUBPART B: APPLICATIONS FOR PROVISIONAL VARIANCES

Section 180.201 Applicants

- a) Any person subject to the Environmental Protection Act and to the rules or regulations, orders, or permit requirements of the Board, and who has not been granted provisional variances in excess of 90 days during the calendar year, may apply for a provisional variance.
- b) Applications shall be submitted pursuant to Section 180.202 of this Part.

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.202 Requirements of the Written Application

- a) Two copies of the application shall be sent to:

Illinois Environmental Protection Agency
Division of (Air Pollution Control, Water Pollution Control,
Land Pollution Control, Public Water Supplies,
as appropriate)
1021 North Grand Ave. East
P.O. Box 19276
Springfield, Illinois 62794-9276
- b) The application shall include:

- 1) A statement identifying the regulations, Board Order, or permit requirements from which the variance is requested;
- 2) A description of the business or activity for which the variance is requested, including pertinent data on location, size, and the population and geographic area affected by the person's operations;
- 3) The quantity and types of materials used in the process or activity for which the variance is requested, as appropriate;
- 4) The quantity, types and nature of materials or emissions to be discharged, deposited or emitted under the variance, and the identification of the receiving waterway or land, or the closest receiving Class A and Class B land use, as appropriate;
- 5) The quantity and types of materials in drinking water exceeding the allowable content, or other pertinent facts concerning variances from the Board's public water supply regulations;
- 6) An assessment of any adverse environmental impacts that the variance may produce;
- 7) A statement explaining why compliance with the Act, regulations or Board Order imposes arbitrary or unreasonable hardship;
- 8) A description of the proposed methods to achieve compliance with the Act, regulations or Board Order, and a timetable for achieving that compliance;
- 9) A discussion of alternate methods of compliance and of the factors influencing the choice of applying for a provisional variance;
- 10) A statement of the period, not to exceed 45 days, for which the variance is requested;
- 11) A statement of whether the person has been granted any provisional variances within the calendar year, and the terms and duration of those variances;
- 12) A statement regarding the person's current permit status as related to the subject matter of the variance request;
- 13) Any Board orders in effect regarding the person's activities and any matters currently before the Board in which the person is a party.

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.203 Preliminary Review of the Application (Repealed)

(Source: Repealed at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.204 Emergency Applications (Repealed)

(Source: Repealed at 35 Ill. Reg. 6161, effective March 22, 2011)

SUBPART C: AGENCY DECISION MAKING

Section 180.301 Criteria for Reviewing Applications

- a) In determining whether to grant the provisional variance, the Agency will evaluate the information provided in the application to meet the requirements of Section 180.202(b) of this Part. Particular consideration will be given to the following information:
 - 1) Inclusion of a definite compliance program;
 - 2) Evaluation of all reasonable alternatives for compliance; and
 - 3) Demonstration that any adverse impacts will be minimal.
- b) The Agency may deny the provisional variance if the application for the variance is incomplete or if the application is outside the scope of relief provided by provisional variances.

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.302 Final Agency Action

- a) Within 30 days after receipt of an application for a provisional variance or for an extension of a provisional variance, the Agency shall either grant or deny the provisional variance. *If the Agency fails to take final action within 30 days, or if the Agency denies the request, the person may initiate a proceeding with the Board under Section 35(a) of the Act.* [415 ILCS 5/37(b)] If the Agency denies the provisional variance for incompleteness, the person may submit a complete application, which will initiate the review process again.
- b) If the Agency denies the provisional variance, notice of that denial shall be given to the person by certified mail, return receipt requested. The notice of denial shall include an explanation of the Agency's decision.

- c) *If the Agency grants the provisional variance, the Agency shall promptly provide a copy of its written decision to the Board, and shall give prompt notice of its action to the public by issuing a press release for distribution to newspapers of general circulation in the county. The Board shall maintain for public inspection copies of all provisional variances provided by the Agency. [415 ILCS 5/37(b)]*

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.303 Recommendation to the Board (Repealed)

(Source: Repealed at 35 Ill. Reg. 6161, effective March 22, 2011)

SUBPART D: EXTENSIONS OF PROVISIONAL VARIANCES

Section 180.401 Applications for Extensions of Provisional Variances

An application for extension of an order granting a provisional variance shall include:

- a) Information stated in Section 180.202(b)(7) through (10) of this Part;
- b) Any new information that modifies prior information given to satisfy Section 180.202(b) of this Part.

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)

Section 180.402 Criteria for Reviewing Applications for Extensions of Provisional Variances

The Agency shall review requests for extensions of provisional variances and take final action in conformity with Subpart C of this Part.

(Source: Amended at 35 Ill. Reg. 6161, effective March 22, 2011)