

ILLINOIS POLLUTION CONTROL BOARD
September 20, 1979

IN THE MATTER OF:)
)
AMENDMENTS TO THE) R79-9
PROCEDURAL RULES)

OPINION AND ORDER OF THE BOARD (by Mr. Dumelle):

On June 22, 1979 the Board proposed amendments to Procedural Rule 405. The Proposed Order was published in Environmental Register #196 on June 28, 1978. On August 21, 1979 the Agency requested that Procedural Rules 401 and 405 be amended instead. This Opinion supports the Board's decision to follow the Agency's suggestion.

Section 35 of the Act states that the Board's authority to grant variances is limited by the Clean Water Act (33 U.S.C. §1251 et seq.), the Clean Air Act (42 U.S.C. §7401 et seq.), the Safe Drinking Water Act (42 U.S.C. §300 f et seq.), and the Federal regulations adopted under these laws. These amendments are intended to assure that the records in variances from Chapters 2, 3, and 6 of the Board's regulations include an analysis of pertinent Federal laws and regulations. The amendments should not be construed as an attempt by the Board to clarify the meaning or scope of Federal law. The Board is simply trying to make certain that it is advised of Federal issues when it renders its decisions.

The Board has chosen to amend Procedural Rule 401 to place the burden on variance petitioners to show compliance with Federal laws and regulations. While this may constitute some hardship on some petitioners, it is consistent with Section 37 of the Act which places the burden of proof with them.

AIR VARIANCES

The new Rule 401(d) will require each petitioner to indicate whether a request for relief constitutes a request for a delayed compliance order or for a revision to the State Implementation Plan. This distinction is important because most air variances will fall into one category or the other with the attendant limitations of each. The decision as to which form of federal relief is required will initially be up to the Board. A further analysis of delayed compliance orders can be found at 43 Federal Register 44522, September 18, 1978.

WATER VARIANCES

The new Rule 401(e) is stated quite broadly because of the significant volume of federal regulation under the Clean Water Act and the wide scope of areawide waste treatment management plans. The Board will not always be bound to follow all these regulations and plans, but it should know whether its decisions conflict with them. Informed decision making here should help in the operation of the NPDES program.

PUBLIC WATER SUPPLY VARIANCES

The new Rule 401(f) makes specific mention of the USEPA Drinking Water Regulations because of the unique way in which these standards are implemented. USEPA often makes its standards directly applicable to all water supplies, even if a less stringent state standard is in effect. Consequently the Board must know what the Federal standards are so that petitioners are not granted measures of false relief.

The amendments to Rule 405 will insure that the Board is advised of the Agency's conclusions on the applicability and interpretation of all relevant Federal laws and regulations.

The Board has elected to retain jurisdiction in this proceeding in the event that publication in the Illinois Register and the attendant rulemaking procedures under the Illinois Administrative Procedure Act (Ill. Rev. Stat., ch. 127, §1001 et seq.) require any changes.

ORDER

1. Procedural Rule 401 is hereby amended to read as follows:

(a)-(c) No change.

(d) All petitions for variances from Title II of the Act or from the Chapter 2, Air Pollution of the Board's Regulations shall include an analysis showing that the Board may grant the requested relief consistent with the Clean Air Act (42 U.S.C. §7401 et seq.) and the Federal regulations adopted pursuant thereto. If granting a variance would constitute issuance of a delayed compliance order as that term is defined in 40 C.F.R. §65.01(e), the petition shall show that the requested relief is consistent with Section 113(d) of the Clean Air Act [42 U.S.C. §7413(d)] and 40 C.F.R. §§65.01-65-10 and 65.181. If granting a variance would require revision of the State Implementation Plan, the petition shall show how the requirements of Section 110(a) of the Clean Air Act [42 U.S.C. §7410(a)] and 40 C.F.R. Part 51 will be satisfied.

(e) All petitions for variances from Title III of the Act; from Chapter 3, Water Pollution of the Board's Regulations; or from water pollution related requirements of any other title of the Act or chapter of the Board's regulations shall include an analysis showing that the Board may grant the relief consistent with the Clean Water Act (33 U.S.C. §1251 et seq.), U.S.E.P.A. effluent guidelines and standards, any other Federal regulations, or any areawide waste treatment management plan approved by the Administrator of U.S.E.P.A. pursuant to Section 208 of the Clean Water Act (33 U.S.C. §1288).

(f) All petitions for variances from Title IV of the Act or from Chapter 6, Public Water Supplies of the Board's Regulations shall include an analysis showing that the Board may grant the relief consistent with the Safe Drinking Water Act (42 U.S.C. §300 f et seq.) and the U.S.E.P.A. Drinking Water Regulations (40 C.F.R. Part 141).

(g) The failure to satisfy the requirements of this Rule, to the extent that the Board is not reasonably informed of petitioner's circumstances, will render the Petition for Variance subject to dismissal for inadequacy, unless the Board shall rule otherwise.

2. Procedural Rule 405 is hereby amended to read as follows:

(a)(1)-(a)(4) No change.

(a)(5) The Agency's views with respect to the Petitioner's assertions concerning the applicability and interpretation of Federal law and/or regulations as required by Rule 401(d), (e), or (f).

(a)(6) The Agency's conclusion of what disposition should be made of the petition.


(b) No change.

3. The Board retains jurisdiction in this proceeding.

IT IS SO ORDERED.

Mr. Werner dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 20th day of September, 1979 by a vote of 4-1.


Christan L. Moffett, Clerk
Illinois Pollution Control Board