

ILLINOIS POLLUTION CONTROL BOARD  
February 5, 1981

IN THE MATTER OF PROPOSED )  
AMENDMENTS TO PROCEDURAL ) R80-12  
RULES 401 and 405. )

ADOPTED RULE. FINAL ORDER  
ORDER OF THE BOARD (by D. Satchell):

Pursuant to the Board's Opinion and Order of December 4, 1980, the second notice period in this rulemaking began on December 16, 1980. It terminated on January 22, 1980 with no objection from the Joint Committee on Administrative Rules. In response to comments from the Joint Committee staff the Board will modify the proposal by addition of the language which is underlined in the text which appears below. This will provide a cross reference from Procedural Rule 401(g) to Rule 406 concerning the distinction between an amended petition and a response. The Clerk is directed to file the rules as modified with the Secretary of State.

401(d) All petitions for variance from Title II of the Act or from the Chapter 2, Air Pollution of the Board's Regulations shall indicate whether 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 indicate whether 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 indicate whether 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.

401(e) All petitions for variance 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 indicate whether 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).

- 401(f) All petitions for variances from Title IV of the Act or from Chapter 6, Public Water Supplies of the Board's Regulations shall indicate whether 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).
- 401(g) The petition may include an analysis of applicable federal law and legal arguments and facts which may be necessary to show compliance with federal law. If it does not and petitioner subsequently files a pleading containing such, it will be deemed an amended petition, thereby re-starting the decision period. However, petitioner may, pursuant to Procedural Rule 406, file a response to the Agency's analysis of federal laws without amending the petition.
- 401(h) 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.
- 405 Agency Investigation and Recommendation
- 405(a) After investigating the variance petition and considering the views of the persons who might be adversely affected by the grant of the variance, the Agency shall within 30 days of the filing of the petition or any amendment there- to make a recommendation to the Board on the disposition of the petition. The recommendation shall include:
1. A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected and a summary of the views so ascertained;
  2. A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the Petition for Variance;
  3. Allegations of any other facts the Agency believes relevant to the disposition of the petition;
  4. The Agency's estimate of the costs that compliance would impose on the petitioner and on others and of the injury that the grant of the variance would impose

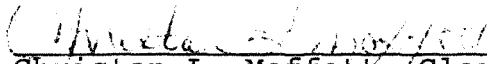
on the public including the effect that continued discharge of contaminants will have upon the environment; and

5. The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with such federal laws and regulations.
6. The Agency's conclusion of what disposition should be made of the petition.

405(b) The Agency shall serve a copy of its recommendation on the petitioner in accordance with Rule 305(b). Failure of the Agency to timely file its recommendation shall be grounds for the Hearing Officer to adjourn the hearing to a date which will allow reasonable time to prepare.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 5<sup>th</sup> day of February, 1981 by a vote of \_\_\_\_\_.

  
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Christan L. Moffett, Clerk  
Illinois Pollution Control Board