

PART IV: VARIANCES

401 Requirement for Petition for Variance.

- (a) A variance proceeding shall be commenced by any person by filing a Petition for Variance with the Agency and simultaneously filing 10 copies with the Clerk of the Board. All additional information or amendments to the Petition for Variance shall be filed with the Agency and Board in the same manner as that required for commencing the action. To enable the Board to rule on the Petition for Variance, the following information, where applicable, shall be included in the petition:
1. A clear and complete statement of the precise extent of the relief sought, including specific identification of the particular provisions of the regulations or Board Order from which the variance is sought;
 2. A description of the business or activity of the petitioner including the size of the business and number of employees and a description of the location and area affected by petitioner's operations;
 3. The quantity and types of materials used in the process or activity for which the variance is required and a full description of the particular process or activity in which the materials are used;
 4. The quantity and types of materials discharged from the process or activity requiring the variance; the location of the points of discharge, and, as applicable, the identification of the receiving waterway or land, or the location of the nearest air monitoring station maintained by the Illinois Environmental Protection Agency;
 5. Data describing the nature and extent of the present failure to meet the numerical standards or particular provisions from which the variance is sought and a factual statement why compliance with the Act and regulations was not or cannot be achieved by the required compliance data;

6. A detailed description of the existing and proposed equipment or proposed method of control to be undertaken to achieve full compliance with the Act and regulations, including a time schedule for the implementation of all phases of the control program from initiation of design to program completion and the estimated costs involved for each phase and the total cost to achieve compliance;
 7. An assessment, with supporting factual information, of the environmental impact that the variance will impose on human, plant, and animal life in the affected area, including, where applicable, data describing the existing air and water quality which the discharge may affect;
 8. Past efforts to achieve compliance including costs incurred, results achieved, permit status, and, for publicly-owned treatment works or connections thereto, construction grant status;
 9. A discussion of the availability of alternate methods of compliance, the extent that such methods were studied, and the comparative factors leading to the selection of the control program proposed to achieve compliance;
 10. A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations which can be achieved during the period of the variance.
- (b) The petition shall contain a request for a hearing on the petition if desired by petitioner; or, in the alternative, a statement waiving a hearing, accompanied by such affidavits or other proof in support of the material facts alleged in the petition as the petitioner may submit, sufficient to enable the Board, if it so decides, to rule upon the petition without a hearing. In the event that a hearing on the variance petition has been waived by the petitioner and no hearing is held, the Petition for Variance, the Agency recommendation, and any amendments or responses thereto shall constitute the entire record in the proceeding and the decision of the Board shall be rendered after consideration of the record except that the Board may take official notice of prior regulatory proceedings and opinions of the Board in adopting the regulations or orders of the Board from which the variance is sought.

- (c) The petition shall include a concise factual statement of the reasons the petitioner believes that compliance with the particular provisions of the regulations or Board Order would impose an arbitrary or unreasonable hardship.
- (d) 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.

402 Extension of Prior or Existing Variance.

- (a) A petition to extend a prior or existing variance granted by the Board shall be commenced by filing a Petition for Variance with the Agency and the Board in accordance with the requirements of Rule 401. To the extent that the information required by Rule 401 has been included in the prior Petition for Variance for which extension is sought, a resubmission of that information shall not be required provided that the petition shall request the incorporation of the record, opinion and order in the prior proceeding into the new petition.
- (b) A petition to extend a prior or existing variance shall be a new Petition for Variance before the Board and shall be subject to all of the requirements of this Part except as provided in Rule 402(a).

403 Notice of Petition.

- (a) The Board shall give notice of all variance petitions to all persons on its mailing list through publication of notice of the petition in the Board's Environmental Register in the first publication of the Environmental Register after the Board has considered the Petition in accordance with Rule 407(b).
- (b) The Agency shall give written notice of all variance petitions to any person in the country in which the installation or property is located for which the variance is sought who have in writing to the Agency requested notice of variance petitions, and to each member of the General Assembly from the legislative district in which the installation or property is located and to other persons as required by law. Within 10 days after the petition is filed, the Agency shall publish notice of such petition in a newspaper of general circulation in the county in which the installation or property is located for which the variance is sought.

404 Objections to Petition.

Any person may file with the Clerk, within 21 days after the filing of the petition, a written objection to the grant of the variance. Such objection may or may not be accompanied by a petition to intervene in accordance with Rule 310. A copy of such objection shall be mailed to the petitioner and the Agency by the Clerk.

405 Agency Investigation and Recommendation.

- (a) After investigating the variance petition and considering the views of 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 thereto 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 conclusion of what disposition should be made of the petition.
- (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.

406 Objection to Recommendation.

Within 7 days after receipt of the Agency Recommendation, the petitioner may:

- (a) File with the Board a response to any Agency recommendation and a copy shall be served upon the Agency; or,
- (b) File an amended Petition for Variance in accordance with Rule 401, requesting that the matter be set for hearing. The Board shall authorize the matter for hearing and render a final decision within 90 days after the filing of the amended petition.

407 Board Action on Petitions for Variance and Authorization of Hearing.

- (a) The Clerk shall assign a docket number to each petition filed, deposit the petition in the Board's files, and distribute copies to each Board Member. Copies of objections to the petition, amendments, the Agency's recommendations and responses to the recommendation shall be filed and distributed as received.
- (b) All Petitions for Variance shall be placed on the Board agenda and the Board will authorize one or more of the following actions, as they shall determine:
 - 1. The petition may be dismissed if the Board determines that it is not adequate under the Act and Rule 401 hereof; or,
 - 2. The Board may enter an order for additional information in support of the petition; or,
 - 3. The Board may accept the petition and defer decision until an Agency recommendation has been served upon the petitioner and filed with the Board; or,
 - 4. The Board may authorize a hearing on the petition.
- (c) The Board shall authorize a hearing on any Petition for Variance, determined to be an adequate petition by the Board, in any of the following circumstances:
 - 1. When a hearing is requested by the petitioner on filing the petition in accordance with Rule 401(b); or,

2. When an objection to the variance has been filed within 21 days after the filing of the petition in accordance with Rule 404; or
 3. When a hearing is requested by an amended petition within 7 days after receipt of the Agency recommendation by the petitioner in accordance with Rule 406(b).
- (d) When a hearing has been authorized by the Board pursuant to Rule 407(b)(4) (or 407(c), the Chairman shall designate a Hearing Officer in accordance with Rule 306(b).
 - (e) If no hearing has been authorized pursuant to Rule 407(b)(4) or 407(c), the Board shall act within 90 days of the filing of the petition and shall prepare an opinion stating reasons supporting the grant or denial of the petition, except that the Board shall not act to grant or deny any petition until after 21 days have elapsed from the date of filing.
 - (f) No variance shall be granted, with or without hearing, without a showing by affidavits or other adequate proof by the petitioner that compliance with the regulations or Board order would impose an arbitrary or unreasonable hardship upon the petitioner.

408 Notice of Hearing.

- (a) The Hearing Officer after appropriate consultation with the parties, shall set a time and place for hearing to be held within 60 days of the filing of the petition.
- (b) The Hearing Officer shall give notice of the hearing in accordance with Rule 305(b), at least 21 days before the hearing to the petitioner, the Agency, and anyone who has filed an objection to the petition.
- (c) The Clerk shall publish the time and place of the hearing in the Board's Environmental Register in the first publication of the Environmental Register after the Hearing Officer shall have set the date for hearing.

409 Proceedings.

- (a) Proceedings upon a Petition for Variance shall be in accordance with Part III of these Rules, except as otherwise provided in this Part.

- (b) In a hearing on a Petition for Variance the burden of proof shall be on the petitioner and it shall be the duty of the petitioner, at hearing, to prove each material fact alleged in the Petition for Variance.

410 Decision.

The Board shall render a final decision upon the petition within 90 days after the filing of the petition, except that any party may agree to waive his right to a decision within 90 days. Time included in a continuance granted at the request of the petitioner shall not be counted towards the running of the 90 days. When exigencies of time require, the Board may delay the filing of an opinion for 30 days after the filing of its final order under this Part. Where the Petition for Variance is amended, the 90 days period shall commence from the date of filing of the amendment. Any order for the filing of a bond shall be in accordance with the Act.

411 Variance from New Regulation.

If any person files a Petition for Variance from a regulation within 20 days after the effective date of such regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition. The Board may hold a hearing upon the petition five days from the notice of such hearing, and in all other respects the Rules in this Part shall apply to the extent they are consistent with the hearing date set by the Board.

412 Transcripts.

- (a) In any proceeding brought pursuant to this Part IV, where a hearing has been authorized by the Board, the petitioner as its own cost shall furnish to the Board within 15 days following the completion of the hearing seven legible copies of a complete stenographic transcript of the proceedings of the hearing and any delay in the filing of the transcript shall constitute waiver of the right to a decision within 90 days under Section 38 of the Act.
- (b) Upon petition and good cause shown, the Board may assume the cost of the stenographic transcript of the hearing provided, however, that such petition shall have been filed with and granted by the Board prior to the hearing.

Rule 502(a)(2)

The 35 day time period has been changed to 45 days.

Part VI. (This Part is reserved for rules to be adopted in the future concerning Rule 203(i)(5) of the Water Pollution Control Regulations).

Part VII: Sanctions

This Part was previously identified as Part VI. Rule 601 has likewise been renumbered Rule 701.

Part VIII: Canons of Ethics

That Part was previously identified as Part VII. Rules 701, 702 and 703 have likewise been renumbered Rules 801, 802, and 803.

Part IX: Judicial Review

This Part was previously identified as Part VIII. Rule 801 has likewise been renumbered Rule 901.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 16th day of December, 1976 by a vote of 5-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board