

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
180.204 Emergency Applications

SUBPART C: AGENCY DECISION MAKING

Section
180.301 Criteria for Reviewing Applications
180.302 Final Agency Action
180.303 Recommendation to the Board

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 Section 35(b) of the
Environmental Protection Act (Ill. Rev. Stat. 1979, ch. 111 1/2, par.
1035(b)).

SOURCE: Adopted at 5 Ill. Reg. 6341, effective June 2, 1981.

SUBPART A: INTRODUCTION

Section 180.101 Purpose

These rules establish the procedures and the criteria which the Agency will use to review applications and to make recommendations to the Pollution Control Board (Board) for granting provisional variances. Section 35(b) of the Act states that such provisional variances shall be granted by the Board "upon notification from the Agency 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."

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 may be submitted pursuant to either Section 180.202 or Section 180.204 of these rules.

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/Noise Pollution Control, Public Water Supplies,
as appropriate)
2200 Churchill Road
Springfield, Illinois 62706
- 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 applicant'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 which the variance may produce;
 - 7) A statement explaining why compliance with the Act, regulations or Board Order imposes arbitrary and unreasonable hardship;
 - 8) A description of the proposed methods to achieve compliance with the Act, regulations or Board Order, and a timetable for achieving such 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 applicant has been granted any provisional variances within the calendar year, and the terms and duration of such variances;
 - 12) A statement regarding the applicant's current permit status as related to the subject matter of the variance request;
 - 13) Any Board orders in effect regarding the applicant's activities and any matters currently before the Board in which the applicant is a party.

Section 180.203 Preliminary Review of the Application

- a) Within five working days of receipt of the application, the Agency shall make a determination to accept the application for review; to reject the application as incomplete, based on the requirements of Section 180.202; or to reject the application as outside the scope of relief provided by provisional variances, applying the criteria in Section 180.301
- b) If the application is rejected, notice of such rejection shall be given to the applicant by certified mail, return receipt requested. This notice of rejection shall include an explanation of the Agency's decision.
 - 1) Upon receipt of a notice of rejection for incompleteness, the applicant may submit a complete application, which will initiate the review process again.
 - 2) Upon receipt of a notice of rejection as not within the scope of relief of provisional variances, the applicant may apply to the Board for a variance pursuant to Section 35(a) of the Act.
- c) If the applicant is accepted as complete and within the scope of relief provided by provisional variances, review shall proceed pursuant to Subpart C. The Agency shall give notice to the Board of written applications which are accepted.

Section 180.204 Emergency Applications

Under emergency circumstances due to causes such as equipment malfunctions, extreme weather conditions or other unforeseeable events, the Agency will consider requests for provisional variances according to the following procedures.

- a) The applicant may notify the Agency of circumstances which it believes justify granting a provisional variance on an emergency basis.
- b) The Agency shall investigate the circumstances of the request.
- c) Based on the information obtained from the applicant and the investigation, the Agency may recommend that the Board grant a provisional variance.
- d) The Agency may notify the applicant that certain information described in subsection 180.202(b) must be submitted in writing in support of the request for a provisional variance.
- e) The applicant shall provide the information required under (d) within ten working days of notification from the Agency.

Section 180.301 Criteria for Reviewing Applications

- a) Applications for provisional variances will be accepted for review when all of the following circumstances exist:
 - 1) The requested relief is short-term, i.e., not exceeding 45 days;
 - 2) The applicant would experience arbitrary and unreasonable hardship if required to wait for a variance pursuant to Section 35(a) of the Act; and
 - 3) The applicant has not been granted provisional variances exceeding 90 days within the calendar year. For purposes of calculating the 90 days during any calendar year, the number of days of provisional variances granted by the Board shall be totalled, regardless of when compliance was actually achieved by the applicant.
- b) In determining whether to recommend that the variance be granted, the Agency will evaluate the information provided in the application to meet the requirements of Section 180.202(b) or 180.204. 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.

Section 180.302 Final Agency Action

Within 30 days of receipt of an application for a provisional variance or for an extension of a provisional variance, the Agency shall either recommend that the Board grant the variance or notify the applicant and the Board that the variance is denied using the procedures of Section 180.203(b).

Section 180.303 Recommendation to the Board

- a) The Agency shall submit a recommended order to the Board by personal service or by certified mail, return receipt requested. If a written application was submitted, the Agency shall provide a copy to the Board. The Agency may submit a statement explaining or justifying its recommendation.
- b) The recommended order shall state the number of days for which the variance should be granted, any conditions to be imposed, and a draft certification of acceptance.

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 as stated in Section 180.202(b)(7) through (10);
- b) Any new information which modifies prior information given to satisfy Section 180.202(b).

Section 180.402 Criteria for Reviewing Applications for Extensions of

Provisional Variances

The Agency shall review requests for extensions of provisional variances and make recommendations to the Board in conformity with Subpart C of these rules.