

1 AN ACT concerning State government.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Environmental Protection Act is amended by  
5 changing Sections 35, 36, and 38 and by adding Sections 3.547  
6 and 38.5 as follows:

7 (415 ILCS 5/3.547 new)

8 Sec. 3.547. Water quality standards variance. "Water  
9 quality standards variance" has the meaning ascribed to that  
10 term in 40 CFR 131.3(o).

11 (415 ILCS 5/35) (from Ch. 111 1/2, par. 1035)

12 Sec. 35. Variances; general provisions. To the extent  
13 consistent with applicable provisions of the Federal Water  
14 Pollution Control Act, as now or hereafter amended, the Federal  
15 Safe Drinking Water Act (P.L. 93-523), as now or hereafter  
16 amended, the Clean Air Act as amended in 1977 (P.L. 95-95), and  
17 regulations pursuant thereto, and to the extent consistent with  
18 applicable provisions of the Federal Resource Conservation and  
19 Recovery Act of 1976 (P.L. 94-580), and regulations pursuant  
20 thereto:

21 (a) The Board may grant individual variances beyond the  
22 limitations prescribed in this Act, whenever it is found, upon

1 presentation of adequate proof, that compliance with any rule  
2 or regulation, requirement or order of the Board would impose  
3 an arbitrary or unreasonable hardship. However, the Board is  
4 not required to find that an arbitrary or unreasonable hardship  
5 exists exclusively because the regulatory standard is under  
6 review and the costs of compliance are substantial and certain.  
7 In granting or denying a variance the Board shall file and  
8 publish a written opinion stating the facts and reasons leading  
9 to its decision.

10 (b) The Agency shall grant provisional variances whenever  
11 it is found, upon presentation of adequate proof, that  
12 compliance on a short term basis with any rule or regulation,  
13 requirement or order of the Board, or with any permit  
14 requirement, would impose an arbitrary or unreasonable  
15 hardship.

16 (c) Except as provided in subsection (b) of Section 38,  
17 water quality standards variances shall be governed solely by  
18 Section 38.5 of this Act.

19 (Source: P.A. 93-152, eff. 7-10-03.)

20 (415 ILCS 5/36) (from Ch. 111 1/2, par. 1036)

21 Sec. 36. Variances and provisional variances.

22 (a) In granting a variance pursuant to Section 35 of this  
23 Act the Board may impose such conditions as the policies of  
24 this Act may require. If the hardship complained of consists  
25 solely of the need for a reasonable delay in which to correct a

1 violation of this Act or of the Board regulations, the Board  
2 shall condition the grant of such variance upon the posting of  
3 sufficient performance bond or other security to assure the  
4 completion of the work covered by the variance. The Board shall  
5 have no authority to delegate to the Agency its powers to  
6 require such performance bond. The original amount of such  
7 performance bond shall not exceed the reasonable cost of the  
8 work to be completed pursuant to the variance. The obligation  
9 under such bond shall at no time exceed the reasonable cost of  
10 work remaining pursuant to the variance.

11 (b) Except as provided by Section 38 of this Act, any  
12 variance granted by the Board pursuant to subsection (a) of  
13 Section 35 ~~the provisions of this Section~~ shall be granted for  
14 such period of time, not exceeding five years, as shall be  
15 specified by the Board at the time of the grant of such  
16 variance, and upon the condition that the person who receives  
17 such variance shall make such periodic progress reports as the  
18 Board shall specify. Such variance may be extended from year to  
19 year by affirmative action of the Board, but only if  
20 satisfactory progress has been shown.

21 (c) Any provisional variance granted by the Agency pursuant  
22 to subsection (b) of Section 35 shall be for a period of time  
23 not to exceed 45 days. A provisional variance may be extended  
24 up to an additional 45 days by written decision of the Agency.  
25 The provisional variances granted to any one person shall not  
26 exceed a total of 90 days during any calendar year.

1 (Source: P.A. 93-152, eff. 7-10-03.)

2 (415 ILCS 5/38) (from Ch. 111 1/2, par. 1038)

3 Sec. 38. (a) Except as otherwise provided in subsections  
4 ~~subsection~~ (c) and (d), if the Board fails to take final action  
5 upon a variance request within 120 days after the filing of the  
6 petition or the receipt of a request for hearing pursuant to  
7 subsection (a) of Section 37, whichever is later, the  
8 petitioner may deem the request granted under this Act, for a  
9 period not to exceed one year. However, the period of 120 days  
10 shall not run for any such period of time, not to exceed 30  
11 days, during which the Board is without sufficient membership  
12 to constitute the quorum required by subsection (a) of Section  
13 5 of this Act, provided that such 120 day period shall not be  
14 stayed for lack of quorum beyond 30 days regardless of whether  
15 the lack of quorum exists at the beginning of such 120 day  
16 period or occurs during the running of such 120 day period.

17 (b) If any person files a petition for a variance from a  
18 rule or regulation pursuant to Section 37 or Section 38.5  
19 within 20 days after the effective date of such rule or  
20 regulation, the operation of such rule or regulation shall be  
21 stayed as to such person pending the disposition of the  
22 petition; provided, however, that the operation of any rule or  
23 regulation adopted by the Board which implements, in whole or  
24 in part, a State RCRA, UIC, or NPDES program shall not be  
25 stayed.

1           The Board may hold a hearing upon said petition 5 days from  
2 the date of notice of such hearing or thereafter. All the  
3 provisions of this Title shall apply to petitions for extension  
4 of existing variances and to proposed Contaminant Reduction  
5 programs designed to secure delayed compliance with the Act or  
6 with Board regulations.

7           (c) Subsection (a) of this Section shall not apply to a  
8 request for a variance from any provision of this Act or any  
9 rule or regulation adopted by the Board which implements, in  
10 whole or in part, a State RCRA, UIC, or NPDES program. If the  
11 Board fails to take final action on any request for a variance  
12 from any such rule or regulation within 120 days of the filing  
13 of the petition, the Petitioner shall be entitled to an  
14 Appellate Court order pursuant to Section 41(d) of this Act.

15           (d) Except as provided in subsection (b) of this Section,  
16 water quality standards variances shall be governed solely by  
17 Section 38.5 of this Act.

18           (Source: P.A. 87-914.)

19           (415 ILCS 5/38.5 new)

20           Sec. 38.5. Water quality standards variances.

21           (a) The Board may adopt water quality standards variances  
22 not only beyond any limitation otherwise prescribed in this Act  
23 or rules adopted under this Act, but also to the full extent  
24 allowed under federal law, including the Federal Water  
25 Pollution Control Act, as amended, and rules adopted by the

1 United States Environmental Protection Agency under that Act. A  
2 water quality standards variance may be adopted under this  
3 Section for a watershed or for one or more bodies of water,  
4 body of water segments, or dischargers. This Section shall  
5 apply to all petitions for water quality standards variances,  
6 even if filed prior to the effective date of this amendatory  
7 Act of the 99th General Assembly. Any stay granted under  
8 Section 38 of this Act shall continue pending disposition of  
9 that petition under this Section.

10 (b) Not later than 6 months after the effective date of  
11 this amendatory Act of the 99th General Assembly, the Agency  
12 shall propose, and not later than 6 months thereafter the Board  
13 shall adopt, rules that prescribe the specific procedures and  
14 standards to be used by the Board when adopting water quality  
15 standards variances. Nothing shall prohibit the Board from  
16 adopting water quality standards variances to the full extent  
17 allowed under federal law in the absence of these rules.

18 (c) Each Board-approved water quality standards variance  
19 other than an individual water quality standards variance shall  
20 set forth criteria that shall be used by the Agency to approve  
21 or deny petitions for coverage under that water quality  
22 standards variance. Any discharger may petition the Agency to  
23 obtain coverage under any Board-approved water quality  
24 standards variance other than an individual water quality  
25 standards variance; the Agency shall use the Board-established  
26 criteria to approve or deny coverage under that variance.

1       (d) For petitions for water quality standards variances  
2 filed on or after the effective date of the rules adopted  
3 pursuant subsection (b) of this Section, the rules adopted  
4 pursuant to subsection (b) shall provide the exclusive  
5 procedural and substantive requirements for obtaining a water  
6 quality standards variance under this Act.

7       (e) Any person filing a petition for a water quality  
8 standards variance under this Section shall pay a filing fee to  
9 the Board in the amount required for a petition for variance  
10 under Section 7.5 of this Act.

11       Section 99. Effective date. This Act takes effect upon  
12 becoming law.