**Section 611.131 Relief Equivalent to SDWA Section 1415(e) Small System Variance**

This Section is the State equivalent of SDWA section 1415(e) (42 U.S.C. 300g-4(e)).

a) A PWS serving fewer than 10,000 persons may obtain a variance from an MCL or treatment technique under this Section. The PWS supplier must file a variance petition under Subpart B of 35 Ill. Adm. Code 104, except as this Section provides otherwise.

b) The Board may grant a small system variance to a PWS supplier serving fewer than 3,300 or fewer persons. The Board may grant a small system variance to a PWS serving more than 3,300 persons but fewer than 10,000 persons subject to USEPA's approval. In determining the number of persons the PWS serves, the Board will include persons consecutive systems serve. A small system variance for a PWS also applies to any consecutive system it serves.

c) Availability of a Variance

1) A small system variance is not available under this Section from an NPDWR for a microbial contaminant (including a bacterium, virus, or other organism) or an indicator or treatment technique for a microbial contaminant.

2) A small system variance under this Section is available from certain MCLs or treatment techniques:

A) NPDWRs that USEPA adopted on or after January 1, 1986; and

B) NPDWRs for which USEPA publishes a small system variance technology under section 1412(b)(15) of SDWA (42 U.S.C. 300g-1(b)(15)).

BOARD NOTE: Small system variances are not available above a pre-1986 MCL even if USEPA subsequently revised the MCL. If the USEPA revises a pre-1986 MCL and makes it more stringent, a variance is available for that contaminant, but only up to the pre-1986 maximum contaminant level. See subpart B of 40 CFR 141 (1985) for the pre-1986 MCLs and treatment techniques. See "Variance Technology Findings for Contaminants Regulated Before 1996", USEPA, Office of Water, doc. no. EPA 815-R-98-003 (available online at nepis.epa.gov search "815R98003").

d) No small system variance is effective until after the last applicable event:

1) 90 days after the Board grants the small system variance;

2) If USEPA objects to a small system variance for a PWS serving fewer than 3,300 persons, after the Board modifies the variance as USEPA recommended or responds in writing to each USEPA objection; or

3) If the Board grants a small system variance to a PWS serving a population of more than 3,300 but fewer than 10,000 persons, after USEPA approves the small system variance.

e) As part of its showing of arbitrary or unreasonable hardship, the PWS must prove and document certain information to the Board:

1) That the PWS is eligible for a small system variance under subsection (c);

2) That the PWS cannot afford pursue specific alternatives to comply with the NPDWR for which it seeks a small system variance:

A) Treatment;

B) Alternative sources of water supply;

C) Restructuring or consolidation changes, including ownership change or physical consolidation with another PWS; or

D) Obtaining financial assistance under section 1452 of the federal SDWA or any other federal or State program;

3) That the PWS meets the source water quality requirements for installing the small system variance technology developed under guidance that USEPA published under section 1412(b)(15) of SDWA (42 U.S.C. 300g-1(b)(15));

BOARD NOTE: See 71 Fed. Reg. 10671 (Mar. 2, 2006) ("Small Drinking Water Systems Variances − Revision of Existing National-Level Affordability Methodology and Methodology to Identify Variance Technologies That Are Protective of Public Health").

4) That the PWS is financially and technically able to install, operated, and maintain the applicable small system variance technology; and

5) That the terms and conditions of the small system variance ensure adequate protection of human health, considering two factors:

A) The quality of the source water for the PWS; and

B) Removal efficiencies and expected useful life of the small system variance technology.

f) Terms and Conditions

1) The Board will set the terms and conditions for a small system variance under this Section and include specific minimum requirements:

A) The supplier must properly and effectively install, operate, and maintain the applicable small system variance technology that USEPA indicated in published guidance, taking into consideration any relevant source water characteristics and any other site-specific conditions that may affect proper and effective operation and maintenance of the technology;

B) The supplier must monitor for the contaminant from which the Board grants the small system variance; and

C) Any other terms or conditions the Board determines are necessary to adequately protect human health, which may include certain requirements:

i) Public education requirements; and

ii) Source water protection requirements.

2) The Board will establish a schedule for the PWS to comply with the terms and conditions of the small system variance including certain minimum requirements:

A) Increments of progress, such as milestone dates for the PWS to apply for financial assistance and begin capital improvements;

B) Quarterly reporting to the Agency how the PWS complies with the terms and conditions of the small system variance;

C) A schedule for the Agency to review the small system variance; and

BOARD NOTE: Corresponding 40 CFR 142.307(d) provides that the states must review small system variances no less frequently than every five years.

D) Compliance with the terms and conditions of the small system variance as soon as practicable, but not later than three years after the date the Board granted the small system variance. The Board may allow up to two additional years upon determining that additional time is necessary for the PWS to accomplish a specific objective:

i) To complete necessary capital improvements to comply with the small system variance technology, secure an alternative source of water, or restructure or consolidate; or

ii) To obtain financial assistance under section 1452 of SDWA (42 U.S.C. 300j-12) or any other federal or State program.

g) The Board will provide notice and opportunity for a public hearing, as Subpart B of 35 Ill. Adm. Code 104 provides, except as this Section provides otherwise.

1) At least 30 days before the public hearing on the proposed small system variance, the PWS must provide notice to all persons the PWS serves. For billed customers, this notice must include the information listed in subsection (g)(2). For other persons the PWS regularly serves, the notice must provide sufficient information to alert readers to the proposed variance and direct them to where to obtain additional information. The PWS must provide the notice by specific means:

A) Direct mail or other home delivery to billed customers or other service connections; and

B) Any other method reasonably calculated to notify other persons regularly served by the PWS in a brief and concise manner. The other method may include publication in a local newspaper, posting in public places, or delivery to community organizations.

2) The notice in subsection (g)(1)(A) must include certain minimum information:

A) Identification of the contaminants for which the PWS seeks a small system variance;

B) A brief statement of the health effects associated with the contaminants for which the PWS seeks a small system variance, using language in Appendix H;

C) The address and telephone number interested persons may use to obtain further information concerning the contaminant and the small system variance;

D) A brief summary of the terms and conditions of the small system variance in easily understandable terms;

E) A description of the consumer petition process under subsection (h) and information on contacting the Agency and USEPA Region 5;

F) A brief statement announcing the public meeting subsection (g)(3) requires, including a statement of the purpose of the meeting, information regarding the time and location for the meeting, and the address and telephone number interested persons may use to obtain further information concerning the meeting; and

G) In communities with a large proportion of non-English-speaking residents, as determined by the Agency, information in the appropriate language regarding the content and importance of the notice.

3) The Board will provide for at least one public hearing on the small system variance. The PWS must provide notice in the manner required under subsection (g)(1) at least 30 days prior to the public hearing.

4) When granting a small system variance, the Board will issue a written opinion and order responding to all significant public comments received on the variance and stating the Board's reasons for granting the variance. The Board will make the variance petition, hearings transcripts, public comments received, and all other documents of record concerning the variance available to the public throughout the variance proceeding and after adopting the variance.

h) Any person the PWS serves may petition USEPA to object to a small system variance within 30 days after the Board grants the variance.

i) The Agency must promptly send to USEPA the Board's opinion and order granting the proposed small system variance. The Board will make recommended modifications, respond in writing to each objection, or reconsider the small system variance if USEPA notifies the Board of a finding under section 1415(e)(8), (e)(9), or (e)(10) of SDWA (42 U.S.C. 300g-4(e)(8), (e)(9), or (e)(10)).

j) Section 611.111, 611.112, or 611.130 may apply to relief granted under this Section.

BOARD NOTE: This Section derives from 40 CFR 142, Subpart K.

(Source: Amended at 47 Ill. Reg. 16486, effective November 2, 2023)