**Section 611.112 Relief Equivalent to SDWA Section 1416 Exemptions**

This Section describes how the Board grants relief equivalent to that available from USEPA under section 1416 of the SDWA (42 U.S.C. 300g-5). Every variance under Sections 35 through 37 of the Act must require the supplier to comply within five years. A SDWA section 1416 exemption needs not do so. A supplier may seek State regulatory relief equivalent to a SDWA section 1416 exemption through one of three procedural mechanisms: a variance under Sections 35 through 37 of the Act and Subpart B of 35 Ill. Adm. Code 104; a site-specific rule under Sections 27 and 28 of the Act and 35 Ill. Adm. Code 102; or an adjusted standard under Section 28.1 of the Act and Subpart D of 35 Ill. Adm. Code 104.

a) The Board will grant a variance, a site-specific rule, or an adjusted standard from an MCL or treatment technique requirement, or from both, under this Section.

1) The supplier must file a petition under the applicable of 35 Ill. Adm. Code 102 or 104.

2) If a State requirement does not have a federal counterpart, the Board needs not follow this Section when granting relief from the State requirements.

b) As part of the justification for relief under this Section, the supplier must demonstrate specific facts:

1) Due to compelling factors (which may include economic factors), the supplier is unable to comply with the MCL or treatment technique requirement and cannot develop an alternative source of water supply;

2) Either of two situations are true of the supplier:

A) The supplier operated on the effective date of the MCL or treatment technique requirement from which the supplier seeks relief; or

B) The supplier did not operate on the effective date of the MCL or treatment technique requirement from which the supplier seeks relief, and no reasonable alternative source of drinking water is available to the supplier;

3) The relief will not result in an unreasonable risk to human health; and

4) The supplier cannot reasonably make management or restructuring changes that will result in the supplier complying with the NPDWR or improved water quality if the supplier cannot comply.

BOARD NOTE: In determining that the supplier cannot reasonably make management or restructuring changes that will result in the supplier complying with the NPDWR, the Board will consider the factors USEPA requires under 40 CFR 142.20(b)(1), incorporated by reference in Section 611.102(c).

c) In any order granting relief under this Section, the Board will prescribe schedules:

1) A schedule for complying with each MCL from which the Board granted relief, including increments of progress; and

2) A schedule for the supplier implementing each additional control measure for each MCL or treatment technique requirement from which the Board granted relief.

d) Schedule of Compliance. A schedule of compliance must require the supplier to comply as expeditiously as practicable with each MCL or treatment technique requirement from which the Board granted relief but not later than three years after the otherwise applicable compliance date USEPA established under section 1412(b)(10) of SDWA (42 U.S.C. 300g-1(b)(10)), except under limited circumstances:

1) The Board may not grant relief unless the PWS establishes that the supplier is taking all practicable steps to meet the NPDWR; and

A) The supplier cannot meet the NPDWR without capital improvements that the supplier cannot complete within 12 months;

B) In the case of a supplier that needs financial assistance for the necessary improvements, the supplier enters into an agreement to obtain the financial assistance; or

C) The supplier enters into an enforceable agreement to become a part of a regional PWS.

2) In the case of a supplier serving 3,300 or fewer persons that needs financial assistance for the necessary improvements, the Board may renew the relief for one or more additional two-year periods up to a total of six years if the supplier is taking all practicable steps to meet the final date for compliance.

3) A supplier may not receive relief under this Section if the Board granted the supplier relief under Section 611.111 or 611.131.

e) The Board will hold at least one public hearing. In addition the Board will accept comments under the appropriate of 35 Ill. Adm. Code 102 or 104.

f) The Agency must promptly send USEPA the Board's opinion and order granting relief under this Section. The Board may reconsider and modify its order granting relief and any conditions if USEPA notifies the Board of a finding under section 1416 of the SDWA (42 U.S.C. 300g-5).

BOARD NOTE: This subsection (f) derives from section 1416 of the SDWA (42 U.S.C. 300g-5).

g) The Board will not grant relief from certain standards:

1) From the MCLs for total coliforms and E. coli. The Board can no longer grant relief from the total coliform MCL.

BOARD NOTE: As Section 611.131(c)(1) and 40 CFR 142.304(a) provide, a small system variance is not available for rules that address microbial contaminants, which include Subparts B, R, S, X, Z, and AA.

2) From any treatment technique in Subpart B.

3) From the RDC Sections 611.241(c) and 611.242(b) require.

h) In addition to this Section, Section 611.130 or 611.131 may apply to relief granted under this Section.

BOARD NOTE: This Section derives from 40 CFR 141.4. USEPA has a procedure at 40 CFR 142.23 to review and potentially modify or nullify state determinations granting relief from NPDWRs if USEPA finds that the state abuses its discretion or fails to prescribe required schedules for compliance in a substantial number of instances.

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