



Sen. Don Harmon

**Filed: 4/11/2008**

09500SB2640sam002

LRB095 12681 RCE 49386 a

1 AMENDMENT TO SENATE BILL 2640

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2640, AS AMENDED,  
3 by replacing everything after the enacting clause with the  
4 following:

5 "Section 5. The Environmental Protection Act is amended by  
6 changing Section 40.2 as follows:

7 (415 ILCS 5/40.2) (from Ch. 111 1/2, par. 1040.2)

8 Sec. 40.2. Application of review process.

9 (a) Subsection (a) of Section 40 does not apply to any  
10 permit which is subject to Section 39.5. If the Agency refuses  
11 to grant or grants with conditions a CAAPP permit, makes a  
12 determination of incompleteness regarding a submitted CAAPP  
13 application, or fails to act on an application for a CAAPP  
14 permit, permit renewal, or permit revision within the time  
15 specified in paragraph 5(j) of Section 39.5 of this Act, the  
16 applicant, any person who participated in the public comment

1 process pursuant to subsection 8 of Section 39.5 of this Act,  
2 or any other person who could obtain judicial review pursuant  
3 to Section 41(a) of this Act, may, within 35 days after final  
4 permit action, petition for a hearing before the Board to  
5 contest the decision of the Agency. However, the 35-day period  
6 for petitioning for a hearing may be extended by the applicant  
7 for an additional period of time not to exceed 90 days by  
8 written notice provided to the Board from the applicant and the  
9 Agency within the initial appeal period. If another person with  
10 standing to appeal wishes to obtain an extension, there must be  
11 a written notice provided to the Board by that person, the  
12 Agency, and the applicant, within the initial appeal period.  
13 Notwithstanding the preceding requirements, petitions for a  
14 hearing before the Board under this subsection may be filed  
15 after the 35-day period, only if such petitions are based  
16 solely on grounds arising after the 35-day period expires. Such  
17 petitions shall be filed within 35 days after the new grounds  
18 for review arise. If the final permit action being challenged  
19 is the Agency's failure to take final action, a petition for a  
20 hearing before the Board shall be filed before the Agency  
21 denies or issues the final permit.

22 The Agency shall appear as respondent in such hearing. At  
23 such hearing the rules prescribed in Sections 32 and 33(a) of  
24 this Act shall apply, and the burden of proof shall be on the  
25 petitioner.

26 (b) The Agency's failure to take final action within 90

1 days of receipt of an application requesting minor permit  
2 modification procedures (or 180 days for modifications subject  
3 to group processing requirements), pursuant to subsection 14 of  
4 Section 39.5, will be subject to this Section and Section 41 of  
5 this Act.

6 (c) If there is no final action by the Board within 120  
7 days after the date on which it received the petition, the  
8 permit shall not be deemed issued; rather, the petitioner shall  
9 be entitled to an Appellate Court order pursuant to Section  
10 41(d) of this Act. The period of 120 days shall not run for any  
11 period of time, not to exceed 30 days, during which the Board  
12 is without sufficient membership to constitute the quorum  
13 required by subsection (a) of Section 5 of this Act; the 120  
14 day period shall not be stayed for lack of quorum beyond 30  
15 days, regardless of whether the lack of quorum exists at the  
16 beginning of the 120 day period or occurs during the running of  
17 the 120 day period.

18 (d) Any person who files a petition to contest the final  
19 permit action by the Agency under this Section shall pay a  
20 filing fee.

21 (e) The Agency shall notify USEPA, in writing, of any  
22 petition for hearing brought under this Section involving a  
23 provision or denial of a Phase II acid rain permit within 30  
24 days of the filing of the petition. USEPA may intervene as a  
25 matter of right in any such hearing. The Agency shall notify  
26 USEPA, in writing, of any determination or order in a hearing

1 brought under this Section that interprets, voids, or otherwise  
2 relates to any portion of a Phase II acid rain permit.

3 (f) The Board may stay the effectiveness of any final  
4 Agency action identified in subsection (a) of this Section  
5 during the pendency of the review process. The Board may stay  
6 the effectiveness of any or all of the contested conditions of  
7 a CAAPP permit if requested. If the Board stays any contested  
8 conditions, then any related conditions from any prior existing  
9 permit continue in full force and effect until the final Board  
10 decision on the appeal of the granted CAAPP permit has been  
11 made. The Board may grant a request to stay all the conditions  
12 in a CAAPP permit upon a demonstration that the issues raised  
13 on appeal can be reasonably expected to affect the CAAPP permit  
14 in its entirety. If the entire CAAPP permit is stayed by the  
15 Board, then any prior existing permit continues in full force  
16 and effect until the final Board decision on the appeal of the  
17 granted CAAPP permit has been made.

18 (Source: P.A. 91-357, eff. 7-29-99; 92-574, eff. 6-26-02.)

19 Section 99. Effective date. This Act takes effect upon  
20 becoming law."