

ILLINOIS POLLUTION CONTROL BOARD  
October 2, 2017

IN THE MATTER OF: )  
)  
REGULATORY RELIEF MECHANISMS: ) R18-18  
PROPOSED NEW 35 ILL. ADM. CODE ) (Rulemaking - Procedural)  
PART 104, SUBPART E )

**HEARING OFFICER ORDER**

On August 9, 2017, the Illinois Environmental Protection Agency (IEPA) filed amendments to the Board's procedural rules, proposing to add Subpart E to 35 Ill. Adm. Code 104. On August 17, 2017, the Board accepted the proposed rules for first notice without commenting on the merits. On August 24, 2017, the Hearing Officer order set October 2, 2017 as the deadline for the prefiled questions.

The Board and Staff have reviewed the proposed rules and submit with this Order their questions to the IEPA, included as Attachment A. Anyone may file a comment and anyone may respond to the questions attached, as well as any other prefiled questions in the record.

IT IS SO ORDERED.



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**ATTACHMENT A**  
**R18-18**  
**REGULATORY RELIEF MECHANISMS: PROPOSED NEW 35 ILL. ADM. CODE 104,**  
**SUBPART E**

**104.500 Purpose**

- 1. Addressing 40 CFR §132:** Please comment on addressing 40 CFR §132 in the proposed rule and whether time-limited water quality standard (TLWQS) for the Lake Michigan Basin should be included or excluded.

Under proposed Section 104.500, the rule would apply to standards set forth in 35 Ill. Adm. Code 302 and 303, which include the Lake Michigan Basin Water Quality Standards at Subpart E of Part 302.

40 CFR §131.21(b) states that the USEPA's approval of a State WQS shall be based on the requirements of 40 CFR §131.5, 131.6, and 132. 40 CFR §132 is the "Water Quality Guidance for the Great Lakes System". The proposed rule addresses the water quality variance provisions under 40 CFR §131, however, it does not address 40 CFR §132.

For WQS variances, USEPA explains,

For waters in the Great Lakes basin, states and authorized tribes must meet the requirements of both 40 CFR parts 131 and 132. The practical effect of this requirement is that, where regulations in 40 CFR §parts 131 and 132 overlap, the more stringent regulation applies. In some cases, the flexibilities and requirements in the national rule [at 40 CFR §131.14] will not be applicable to waters in the Great Lakes basin. For example, the GLWQG limits any WQS variance to a maximum term of five years (with the ability to obtain a subsequent WQS variance). Therefore, any WQS variance on waters that are subject to the GLWQG cannot exceed five years even though the final rule in 40 CFR §part 131 does not specify a maximum term. On the other hand, because GLWQG WQS variances cannot exceed five years, the requirements in the final rule that pertain to conducting reevaluations (for WQS variances greater than five years) are not applicable. 80 Fed. Reg. 51040 (August 21, 2015)

Appendix F of 40 CFR §132 for the Great Lakes System contains "Procedure 2: Variances from Water Quality Standards for Point Sources". Besides the maximum five-year term mentioned above, Part 132 variance procedures also include requirements to address endangered and threatened species and the State's antidegradation procedures. These requirements are not specifically mentioned in IEPA's proposal or 40 CFR §Part 131.14 from which IEPA's proposal was derived.

**104.505 Applicability and Use**

**2 Applicability to a Watershed:** Please comment which provisions of the Clean Water Act or USEPA rules authorize issuing a watershed based time-limited water quality standards.

- (a) Rather than using proposed Subpart E to adopt TLWQS for a “watershed” itself, is IEPA’s intent that the proposed rule would apply to a group of dischargers within a watershed or to certain waterbody/waterbody segment(s) within a watershed? If so, please comment on revising the proposal to clarify this issue.
- (b) If IEPA’s intent is to adopt a TLWQS that would apply to all waters within a watershed, please cite to the basis in the federal rules for applying a blanket WQS variance to all waters within a watershed rather than specifically identifying each waterbody/waterbody segment and/or discharger.

Proposed Section 104.505(b) would allow a TLWQS for a watershed. [See also 415 ILCS 5/38.5(a).] “Watersheds” are not identified in the applicability section of the federal rules for Water Quality Standards Variances at 40 CFR §131.14. The applicability section of 40 CFR §131.14(a)(1) includes only: “A WQS variance may be adopted for a permittee(s) or waterbody/waterbody segment(s)...”

35 Ill. Adm. Code 302.201 limits the scope and applicability of water quality standards to “waters of the State”, “waters of Lake Michigan Basin”, and site-specific waters designated in 35 Ill. Adm. Code 303. Nowhere in 35 Ill. Adm. Code 301, 302, 303 are WQS established for a watershed.

The term “watershed” is not defined in 35 Ill. Adm. Code, but “watershed” has been defined by USEPA, Illinois State Water Survey, and U.S. Department of Agriculture as follows.

USEPA defines “watershed” as,

An area of land that drains water, sediment and dissolved materials to a common receiving body or outlet. The term is not restricted to surface water runoff and includes interactions with subsurface water. . .

<https://cfpub.epa.gov/watertrain/pdf/modules/watershedecology.pdf>

USEPA also defines a “watershed” as,

the land that water flows across or under on its way to a stream, river, or lake.

<https://www.epa.gov/sites/production/files/documents/whatisawatershed.pdf>

Illinois State Water Survey defines “watershed” as,

A watershed, or drainage basin, in this context is the land area that drains directly to a common stream, river, or lake. Map of “Major Watersheds of Illinois” (Revised 01-2011)

<http://www.sws.uiuc.edu/iswsdocs/maps/ISWSMS2000-01.pdf>

U.S. Department of Agriculture defines “watershed” in the Natural Resources Conservation Service’s National Watershed Program Manual as:

**“Watershed**—A watershed area comprises all land and water within the confines of a drainage divide and must follow hydrologic boundaries... A watershed area may comprise the land and water of two or more minor drainageways that are separate tributaries to a stream, artificial waterway, lake, or tidal area . . .” NRCS’s National Watershed Program Manual, Third Edition, December 2009 at 174.

[https://www.nrcs.usda.gov/Internet/FSE\\_DOCUMENTS/nrcs143\\_010704.pdf](https://www.nrcs.usda.gov/Internet/FSE_DOCUMENTS/nrcs143_010704.pdf)

All of the definitions above identify a watershed as “an area of land” not a water itself. 40 CFR §131.2 Purpose states, “A water quality standard defines the water quality goals of a water body, or a portion thereof, . . .” This is consistent with the federal rule at 40 CFR §131.14(a)(1) which includes only, “A WQS variance may be adopted for a permittee(s) or waterbody/waterbody segment(s). . .”

### **101.510 Severability**

3. To clarify Section 104.510, would the following change be acceptable to IEPA?

If any provision of this Subpart or its application to any person is adjudged invalid, the adjudication ~~does will~~ not affect the validity of any other provision of this Subpart or the validity of this Subpart as a whole or of any portion not adjudged invalid.

### **104.515 Definitions**

4. To clarify Section 104.510, would the following change be acceptable to IEPA?

Unless defined in subsection (b), words ~~shall~~ have the ~~meaning as ascribed~~ definitions provided in the Act and 35 Ill. Adm. Code 101. Subpart B.

5. **Highest Attainable Use:** Please comment on providing a definition of “highest attainable use” in the proposed rule like the one in the federal rule.

The proposed rule references to the terms “highest attainable condition,” “highest attainable interim criterion”, and “highest attainable interim use”. See proposed Sections 104.565(d)(4), 104.565(d)(4)(A)(i) and (B)(i). The federal rule also includes these terms but only defines “highest attainable use” in 40 CFR §131.3(m):

*Highest attainable use* is the modified aquatic life, wildlife, or recreation use that is both closest to the uses specified in section 101(a)(2) of the [Clean Water] Act and attainable, based on the evaluation of the factor(s) in § 131.10(g) that preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the State demonstrates the relevant use specified in section 101(a)(2) of the Act and sub-categories of such a use are not attainable.

Since the definition of “highest attainable use” provides the context for “highest attainable condition”, “highest attainable interim criterion, and “highest attainable interim use”, please comment on providing a definition of “highest attainable use” in the proposed rule like the one in the federal rule.

6. **Non-101(a)(2) Use:** Please see question 35 regarding non-101(a)(2) uses. Please comment on including a definition similar to 40 CFR §131.3(q) in the proposed rule.

The federal rule defines “Non-101(a)(2) use” under 40 CFR §131.3(q):

*Non-101(a)(2) use* is any use unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in or on the water.

7. **Best Management Practices:** Please comment on including a definition for “best management practices” in the proposed rule.

The term “best management practices” is used several times in the proposed rule, however, it is not defined anywhere in 35 Ill. Adm. Code. The term is also currently used in 35 Ill. Adm. Code 309.141(i) under “Terms and Conditions of NPDES Permits”. The federal rule defines “best management practices” under 40 CFR §122.2 as follows:

*Best management practices* (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

### **104.520 General Procedures**

8. **Applicability to “Persons”:**

- (a) Please comment on whether the proposal should be revised to limit the applicability to NPDES permittees, not simply “persons”, for consistency with the federal rule.

- (b) Please comment on whether someone seeking a new NPDES permit, but who is not yet a permit holder, could apply for a TLWQS.

Under the federal rule at 40 CFR §131.14(a)(1) “A WQS variance may be adopted for a permittee(s) or water body/waterbody segment(s). . .”

Under the proposed rule, “persons” may file a petition for a TLWQS. [See proposed Section 104.520(a), 104.520 BOARD NOTE, 104.525, 104.565(d)(2), 415 ILCS 5/38.5(b).] Proposed section 105.505(d) states that the TLWQS is “for the purposes of the Clean Water Act in developing National Pollutant Discharge Elimination System [NPDES] permit limits . . .” However, in referring to “persons”, the proposed rule does not limit a TLWQS to a discharger with an NPDES permit like 40 CFR §141.14(a)(1) does. Under the federal rule, a WQS variance would not be applicable to just any “person”, only an NPDES permittee.

- 9. List of Facilities Covered by TLWQS:** Please comment on providing a presence on IEPA’s website for a list of facilities covered by current TLWQSs.

According to USEPA,

As an alternative to identifying the specific dischargers at the time of adoption of a WQS variance for multiple dischargers, states and authorized tribes may adopt specific eligibility requirements in the WQS variance for multiple dischargers. It is [US]EPA’s expectation that states and authorized tribes that choose to identify the dischargers in this manner will subsequently make a list of the facilities covered by the WQS variance publicly available (e.g., posted on the state or authorized tribal website). USEPA, “Checklist for Evaluating State Submission of Discharger-Specific Water Quality Standards Variances”.  
<https://www.epa.gov/sites/production/files/2016-03/documents/checklist-evaluating-discharger-specific.pdf>

The proposed rule requires the Board include a list of all dischargers or classes of dischargers affected by the TLWQS in the notice list. However, IEPA has not proposed any provisions for making a list of names of the specific dischargers, not just classes of dischargers, covered by the TLWQS publicly available on a State agency website, other than perhaps through the Board’s notice list for TLWQS.

- 10. Information on Individual Dischargers:** Please comment on including provisions in the petition contents under proposed Section 104.530 that would clarify that individual permittees to be included under a multi-discharger variance need to submit their own information (e.g., public or private discharger, industrial classification, size, effluent quality, existing or needed treatment train, pollutant treatability, and available revenue). (See EPA-820-F-13-012.)

Proposed Section 104.520(b)(1)(B) would allow multiple dischargers to “act collectively as a single petitioner after the Board has established classes under Section 104.540.” The proposed Board Note “encourages persons addressing the same pollutants in the same waterbody, waterbody segment or watershed to join in filing a joint petition...”

In developing an analysis for multiple dischargers, USEPA notes that the demonstration should account for:

as much individual permittee information as possible. A permittee that could not qualify for an individual WQS variance should not qualify for a multiple discharger variance. The demonstration should: ...Collect sufficient information for each individual permittee, including engineering analyses and financial information, to adequately support the specification of permittee groups for each individual permittee to be covered by the variance. . .” EPA-820-F-13-012 (March 2013) at 5-6.

### **104.525 Stay**

11. To clarify language in Section 104.525(a)(3), would the following change be acceptable to IEPA?

any person who is a member of a class of dischargers ~~that is identified in a Board order under Section 104.540 that concerns a petition for a time-limited water quality standard that was filed within 35 days after the effective date of the water quality standard from which relief is sought and who files a petition for a time-limited water quality standard before the deadline established for that class under Section 104.540 in that order.~~

12. Please comment on whether Sections 104.525(b) and (c) should be replaced with:

- b) A stay of a water quality standard under this Section will remain in effect until the requested time-limited water quality standard:
- 1) is granted and enters into effect; or
  - 2) is denied and all administrative and judicial appeals’ rights are exhausted.

### **104.530 Petition Contents**

13. Please comment on whether the term “predecessors” in Section 104.530(a)(8) needs to be defined.
14. Please clarify whether the word “name” in Section 104.530(a)(9) means the name of the permit holder.
15. To clarify Section 104.530(a)(11), would the following change be acceptable to IEPA?

a description and copy of all pollution minimization plans currently being implemented or ~~have been~~ implemented in the past

16. To clarify Section 104.530(a)(14), would the following change be acceptable to IEPA?

the proposed term of the time-limited water quality standard and justification that it ~~that~~ is only as long as necessary to achieve the highest attainable condition, which includes a description of the relationship between the proposed pollution control activities and the proposed term

17. To clarify Section 104.530(b)(1), would the following change be acceptable to IEPA?

identification and documentation of any cost-effective and reasonable best management practices for nonpoint source controls related to the pollutant or water quality parameter and watershed, water body, or waterbody segment specified in the time-limited water quality standard petition that could be implemented to make progress towards attaining the underlying designated use and criterion; and

18. To clarify Section 104.530(b)(2), would the following change be acceptable to IEPA?

if the petition is for an extension of an existing water quality standard, an explanation of the extent to which the best management practices for nonpoint source controls were implemented to address the pollutant or water quality parameter subject to the time-limited water quality standard and the water quality progress achieved

19. Please clarify whether Sections 104.530(c) and (d) cover different potential situations – i.e. if a multi-discharger time-limited water quality standard can potentially be something other than a watershed, water body or waterbody segment time-limited water quality standard?

20. **Identification of Water Body:** Please comment on revising the petition content requirements to include the name and some written identifying description of the water body/waterbody segment in addition to the map.

As proposed, Section 104.530 does not explicitly require the identification of the water body/waterbody segment to which the TLWQS would apply in the way that 40 CFR §131.14(b)(1)(i) does. Section 104.530 (a)(1)(4) requires a map but no written identification of the name, location, or some identifying description of the water body/waterbody segment.

Proposed Section 104.565(d)(1)(2)(A)(i) requires the Board to include “identification of the ... water body, or waterbody segment to which the time-limited water quality standard applies”. While a map is very helpful in locating and visualizing the waterbody or

waterbody segment, it would not necessarily include a written description with names, locations, river miles, starting and ending points, etc. A map is also not used to specify receiving streams that would be subject to the TLWQS in an NPDES Permit. USEPA's NPDES Permit Writers Manual does not mention the use of a map in identifying the receiving waters. USEPA, "NPDES Permit Writers' Manual" (September 2010), EPA-833-K-10-001.

- 21. Identification of Currently Applicable WQS:** Please comment on revising the petition content requirements to identify the currently applicable WQS under proposed Section 104.530.

The petition contents include "identification of the pollutant" (proposed section 104.530(a)(2)), but not the currently applicable water quality standard for that pollutant. Proposed section 104.530(a)(6) refers to "failure to meet the water quality standard" but the petition content requirements as proposed do not require the specific water quality standard to be identified. USEPA's WQS Variance Building Tool lists the "currently applicable water quality standard" among the information to be assembled to apply for a WQS variance. EPA 820-F-17-016 (July 2017) at 1.

- 22. "All" Pollution Minimization Plans:**

- (a) Is the requirement at proposed Section 104.530(a)(11) overly broad in requiring a petitioner to submit *all* pollution minimization plans that might have nothing to do with reduction in pollutant loadings to water?
- (b) To narrow the submission of plans to only those relating to water, should the definition in proposed Section 104.515 parallel the federal definition and include "in the context of this Part", such as the following language?

"Pollutant minimization program", in the context of this Part, means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

Proposed Section 104.530(a)(11) requires a "description and copy of all pollution minimization plans . . ." (Emphasis added.) The federal rule at 40 CFR §131.3(p) narrows the pollution minimization plans to just those "in the context of [40 CFR] 131.14" for water quality variances.

- 23.** Please comment on whether Section 104.530(a)(1)(6) is missing a word or phrase with respect to "compliance":

- (6) data describing the nature and extent of the present or anticipated failure to meet the water quality standard or standards and facts that support compliance with the water quality standards regulation or regulations cannot be achieved by any required compliance date;

- 24. Consideration of Downstream Impacts:** Please comment on including a requirement in the petition contents under Section 104.530 for the petition to demonstrate assurance that the TLWQS variance will not conflict with downstream WQS.

Proposed Section 104.530(a)(12) regarding the highest attainable condition does not appear to require the discharger to consider downstream impacts. USEPA explains that states “must consider relevant provisions in [40 CFR] 131.10, including downstream protection (40 CFR] 131.10(b))”. 80 Fed. Reg. 51026 (August 21, 2015). USEPA states that “water quality associated with the highest attainable condition and associated criteria may still cause or contribute to an impact downstream during the time period of the WQS variance.” EPA 820-F-17-016 (July 2017) at 2.

- 25. WQS Triennial Review:** Please comment on how IEPA will include TLWQS in its triennial review.

Proposed Section 104.530(a)(15) requires the petitioner to include a “proposed reevaluation schedule to reevaluate the highest attainable condition during the term of the time-limited water quality standard if the proposed term of the time-limited water quality standard is longer than five years...” USEPA notes, “[E]ven though the duration of a variance may be longer than 3 years, a variance is a water quality standard that must be reviewed every 3 years, consistent with 40 CFR §131.20(a).” USEPA, “Discharger-specific variances on a Broader Scale: Developing Creditable Rationales for Variances that Apply to Multiple Dischargers.” EPA-820-F-13-012 (March 2013) at 6.

#### **104.540 Board Established Classes and Deadlines**

- 26.** Please explain what IEPA means by “delineates the geographic scope of the time limited water quality standard” in Section 104.540 and whether such delineation follow from the IEPA response under Section 104.535 or recommendation under Section 104.550. Please also clarify which provision of the Act do you refer to in the Board’s authority to make such delineation.
- 27.** Section 104.540 provides in part: “[t]he Board must enter a final order that . . . establishes prompt deadlines”. Please comment on whether the word “prompt” is necessary, or can the word be deleted.

#### **104.545 Substantial Compliance Assessment**

- 28.** In Section 104.545 (a), the phrase “[a]s soon as practicable” begins the Section. Please comment on whether the phrase is necessary.
- 29.** In that same Section, please also comment on whether it is appropriate to add after “40 CFR §131.14 and Section 38.5 of the Act” after “its substantial compliance with Section 104.530”, to be consistent with the requirements of the Act.

### **104.550 Recommendation and Response**

30. Please comment on whether it is appropriate, to clarify proposed language in Section 104.550(b)(3), to make the following change?

Agency's recommendation whether the Board should adopt, adopt with conditions, or deny the ~~petitioner's~~ requested time-limited water quality standard; and

### **104.555 Hearing**

31. Please explain what IEPA means by “documentation” in Sections 104.555(b)(4).
32. To clarify Section 104.555(f), would the following change be acceptable to IEPA?

During the hearing, the Hearing Officer ~~must~~will inform the audience of the issues involved in the decision to be made, ~~the considerations the Board will take into account,~~ and the information that is particularly solicited from the public.

33. To clarify proposed language in Section 104.555(g), would the following change be acceptable to IEPA?

Public comments must be filed within 21 days after the hearing transcript is available, unless the Hearing Officer specifies a different date. Any person may file written comments in a time-limited water quality standard proceeding.

### **104.560 Burden of Proof**

34. Please explain what IEPA means by the “list of persons” in Section 104.565(d)(2)(A)(iii) and whether this the IEPA will provide such a list of persons in its response under Section 104.535 or its recommendation under Section 104.550.
35. **CWA Section 101(a)(2) and Non-101(a)(2) Uses:** Please comment on proposing language that would differentiate the burden of proof for a TLWQS for 101(a)(2) and non-101(a)(2) uses under proposed section 104.560.

Under proposed Section 104.560(b), the burden of proof only addresses justification “that attainment of the designated use and criterion is not feasible”. This section is derived from the federal language at 40 CFR §131.14(b)(2)(i)(A) for “a use specified in section 101(a)(2) of the [Clean Water] Act”. Section 101(a)(2) specifies the following uses: “water quality which provides for the protection and propagation of fish, shellfish, and wildlife and provides for recreation in and on the water”. 33 USC 1251(a)(2).

The federal rules on WQS variances also define “non-101(a)(2)” uses, which are defined as “any use unrelated to the protection and propagation of fish, shellfish, wildlife or recreation in or on the water. [See 40 CFR §131.3(q).] Non-101(a)(2) uses include

“public water supplies, ...agricultural, industrial, and other purposes including navigation.” *See* 40 CFR §131.10(a).

Under the federal rule, there is a different burden of proof for variances from section 101(a)(2) uses and non-101(a)(2) uses. While variances from 101(a)(2) uses require the State to demonstrate “that attaining the designated use and criterion is not feasible” [40 CFR §131.14(b)(2)(i)(A)], variances from non-101(a)(2) uses require the State to justify “how its consideration of the use and value of the water for those uses listed in 131.10(a) appropriately supports the WQS variance and term.” 40 CFR §131.14(b)(2)(i)(B)

While the same demonstration under 40 CFR §131.14(b)(2)(i)(A) can be used for both [*See* 40 CFR §131.14(b)(2)(i)(B).], the burden of proof is different as explained above.

### **104.565 Opinion and Order**

- 36. Permit Compliance Schedule:** Please comment on including provisions in the proposed Petition Contents [Section 104.530] and Board Opinion and Order [Section 104.565] that clarify when the petitioner should propose a compliance schedule and the Board should include a permit compliance schedule in the TLWQS.

Under proposed Section 104.565(d)(3), the Board’s order would include requirements and conditions that apply throughout the term of the time-limited water quality standard. Although the length of the proposed term of a TLWQS must be “only as long as necessary” [proposed Section 104.530(a)(14)], the proposed rule does not mention including a permit compliance schedule in the NPDES permit. USEPA suggests addressing the use of a permit compliance schedule in developing a WQS variance. USEPA, “Water Quality Standards Variance Building Tool – Frequently Asked Questions”, EPA 820-F-17-016 (July 2017).

### **104.570 USEPA Review**

- 37.** To clarify Section 104.570(c)(4), would the following change be acceptable to IEPA?

~~If the Board may hold a hearing if it concludes, in its discretion, concludes that a hearing would be advisable, a hearing must be held.~~

### **104.580 Reevaluation**

- 38. Demonstration that Permittees Still Qualify**

- (a) Please comment on including provisions in the reevaluation under Section 104.580 that would clarify that individual permittees to be included under a multi-discharger variance need to submit their own information (e.g., public or private discharger, industrial classification, size, effluent quality, existing or needed

treatment train, pollutant treatability, available revenue, and feasible progress that has been made). (See EPA-820-F-13-012 at 5-6.)

- (b) Please comment on whether IEPA should be required to file a comment or recommendation regarding a proposed reevaluation.

Proposed Section 104.580 Reevaluation requires that the petitioner and any person granted a TLQWS file for a proposed reevaluation for TLWQS with terms greater than five years. Proposed Section 104.530(b)(2) requires renewals to address progress that has been made, and Sections 104.530(c) and (b) provide for the establishment of eligibility criteria to be used at the time of renewal.

USEPA states,

Any multiple discharger variance should . . . Provide that any renewal of a multiple discharger variance includes . . . documentation of the feasible progress that has been made by each permittee covered by the renewal. In addition, individual permittees will be reevaluated to determine if they continue to qualify under their group designation. Permittees that no longer qualify will cease to be covered by the multiple discharger variance. EPA-820-F-13-012 (March 2013) at 5-6.

### **Simplifying and Clarifying Language**

1. Section 38.5 of the Act uses the phrases “substantially compliant” and “substantial compliance”. The IEPA’s proposal includes both those phrases without further clarification on what constitutes “substantially compliant” and “substantial compliance”. Please clarify whether a definition of the terms “substantially” and “substantial” should be included in the rule to clarify the statutory language or if the terms should be removed.
2. Please comment whether the following changes would be acceptable to clarify the proposed language?
  - (a) Replace “must” with “will” in the sections that refer to the Agency and Board actions, rather than obligations of regulated persons: including Section 104.505(c); 520(b)(2) and (4); 540; 545(a), (b), (c), (d)(2); 550 (a), (d); 555(a), (b)(2), (3) and (4), (c), (e), (f) and (h); 570(a), (c)(2)-(6); and 580 (b)-(e).
  - (b) Remove “must” in the sections where it is unnecessary:
    - i. Replace “must apply” with “applies” in Section 104.525(c);
    - ii. Replace “must be” with “is” in Section 104.525(a);
    - iii. and replace “must continue” with “continues” in Sections 104.525(b), (c)(1), (2) and (3),
    - iv. Replace “must not be” with “is not” in Sections 104.525(d);
    - v. Replace “must comply with” with “is subject to” in Section 104.570(c)(5).

- (b) Replace the word “Part” with “Subpart” in Section 104.520(c).
- (c) Replace “and/or” with “or” in Board Note in Section 104.520.
- (d) Replace the word “under” with “as provided in” in Section 104.530(a)(15).
- (e) Replace the word “required” with “necessary” in Section 104.530(a)(16).
- (f) Insert the word “designated” before the word “use” in Sections 104.560 B (1)-(4).
- (g) Replace “obtaining” with “requesting” in Section 104.575(b) and (c);
- (h) Replace “clerk” with “Clerk of the Board” in Section 104.580(b).