



## OFFICE OF THE SECRETARY OF STATE

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May 2, 2018

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CLERK'S OFFICE

MAY - 4 2018

STATE OF ILLINOIS  
Pollution Control Board

POLLUTION CONTROL BOARD  
DON BROWN  
100 W RANDOLPH ST  
STE 11-500  
CHICAGO, IL 60601

Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 42, Issue 19 of the Illinois Register, dated 5/11/2018.

**ADOPTED RULES**

Regulatory Relief Mechanisms  
35 Ill. Adm. Code 104

7922

Point of Contact: Nancy Hoepfner

If you have any questions, you may contact the Administrative Code Division at (217) 782 - 7017.

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NOTICE OF ADOPTED AMENDMENTS

- 1) Heading of the Part: Regulatory Relief Mechanisms
- 2) Code Citation: 35 Ill. Adm. Code 104
- 3) 

<u>Section Numbers:</u>	<u>Adopted Actions:</u>
104.500	New Section
104.505	New Section
104.510	New Section
104.515	New Section
104.520	New Section
104.525	New Section
104.530	New Section
104.535	New Section
104.540	New Section
104.545	New Section
104.550	New Section
104.555	New Section
104.560	New Section
104.565	New Section
104.570	New Section
104.575	New Section
104.580	New Section
104.585	New Section
104.590	New Section
- 4) Statutory Authority: Implementing and authorized by Section 26 of the Illinois Environmental Protection Act [415 ILCS 5/26].
- 5) Effective Date of Rule: APR 27 2018
- 6) Does this rulemaking contain an automatic repeal date? No.
- 7) Does this rulemaking contain incorporations by reference? Yes.
- 8) The adopted amendments are on file in the Board's Chicago office at the James R. Thompson Center, 100 W. Randolph, Suite 11-500, and are available there for public inspection.
- 9) Notice of Proposal Published in Illinois Register: 41 Ill. Reg. 11236; September 8, 2017.

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- 10) Has JCAR issued a Statement of Objections to these amendments? No.
- 11) Differences between proposal and final version: The Board made several non-substantive changes to the rule including those requested by JCAR.
- 12) Have all the changes agreed upon by the agency and JCAR been made as indicated in the agreements letter issued by JCAR? Yes
- 13) Will this rulemaking replace emergency amendments currently in effect? No.
- 14) Are there any other rulemakings pending on this Part? No.
- 15) Summary and Purpose of Rulemaking: The rule sets forth the procedures necessary to adopt time limited water quality standards (TLWQS) pursuant to Public Act 99-0937. Public Act 99-937, effective February 24, 2017, amends the Environmental Protection Act (Act) to allow the Board to issue TLWQS. TLWQS are a new relief mechanism for adoption of federally approvable water quality standard variances consistent with federal rules. Under Public Act 99-937, not only a single discharger but multiple dischargers may seek a TLWQS. TLWQS may also address standards in a waterbody or waterbody segment, or a watershed. The rule explains what a TLWQS is and how it will be obtained; it explains how a TLWQS can be used, specifies the different parties to a TLWQS proceeding (*i.e.* petitioners and participants), and the types of notice and service required for TLWQS proceedings. The rules also set forth provisions of the statutorily created stay.
- 16) Information and questions regarding this adopted rulemaking shall be directed to:

Marie Tipsord  
Illinois Pollution Control Board  
100 W. Randolph 11-500  
Chicago, IL 60601

312-814-4925  
[Marie.Tipsord@illinois.gov](mailto:Marie.Tipsord@illinois.gov)

Copies of the Board's opinions and orders may be requested from the Clerk of the Board at the address listed in #8 above or by calling 312/814-3620. Please refer to the docket number R18-18 in your request. The Board order is also available from the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)).

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The full text of the adopted amendments begins on the next page:

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TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE A: GENERAL PROVISIONS  
CHAPTER I: POLLUTION CONTROL BOARD

PART 104  
REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions
104.106	Petitions and Hearings

SUBPART B: VARIANCES

Section	
104.200	General
104.202	Filing Requirements
104.204	Petition Content Requirements
104.206	RCRA Variance Petition Contents
104.208	Consistency with Federal Law
104.210	Petition for Extension of Variance
104.212	Motion for Modification of Internal Variance Compliance Dates
104.214	Notice of Petition
104.216	Agency Investigation and Recommendation
104.218	Agency Recommendation to RCRA Variance
104.220	Response to Agency Recommendation
104.222	Stipulations
104.224	Objections to Petition, Written Comments, and Request for Hearing
104.226	Amended Petition and Amended Recommendation
104.228	Insufficient Petition
104.230	Dismissal of Petition
104.232	Calculation of Decision Deadline
104.234	Hearing
104.236	Hearing Procedures
104.238	Standard of Review
104.240	Certificate of Acceptance
104.242	Term of Variance

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104.244	Variance Conditions
104.246	Performance Bonds
104.248	Objection to Conditions

SUBPART C: PROVISIONAL VARIANCES

Section	
104.300	Applicability
104.302	Agency Action
104.304	Initiating a Request
104.306	Filing and Notice
104.308	Term
104.310	Simultaneous Variance Prohibition (Repealed)

SUBPART D: ADJUSTED STANDARDS

Section	
104.400	General
104.402	Initiation of Proceeding
104.404	Request to Agency to Join as Co-Petitioner
104.406	Petition Content Requirements
104.408	Petition Notice Requirements
104.410	Proof of Petition Notice Requirements
104.412	Effect of Filing a Petition: Stay
104.414	Dismissal of Petition
104.416	Agency Recommendation and Petitioner Response
104.418	Amended Petition, Amended Recommendation, and Amended Response
104.419	Insufficient Petition
104.420	Request for Public Hearing
104.422	Public Hearing
104.424	Hearing Notice
104.426	Burden of Proof
104.428	Board Action

SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS (TLWQS)

<u>Section</u>	
<u>104.500</u>	<u>Purpose</u>
<u>104.505</u>	<u>Applicability and Use</u>
<u>104.510</u>	<u>Severability</u>
<u>104.515</u>	<u>Definitions</u>

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<u>104.520</u>	<u>General Procedures</u>
<u>104.525</u>	<u>Stay</u>
<u>104.530</u>	<u>Petition Contents</u>
<u>104.535</u>	<u>Agency Response</u>
<u>104.540</u>	<u>Board Established Classes and Deadlines</u>
<u>104.545</u>	<u>Substantial Compliance Assessment</u>
<u>104.550</u>	<u>Recommendation and Response</u>
<u>104.555</u>	<u>Hearing</u>
<u>104.560</u>	<u>Demonstration</u>
<u>104.565</u>	<u>Opinion and Order</u>
<u>104.570</u>	<u>USEPA Review</u>
<u>104.575</u>	<u>Coverage Under Board-Approved Time-Limited Water Quality Standards</u>
<u>104.580</u>	<u>Re-evaluation</u>
<u>104.585</u>	<u>Appeal Rights</u>
<u>104.590</u>	<u>Extension</u>

104.APPENDIX A Comparison of Former and Current Rules (Repealed)

AUTHORITY: Subparts B and C: Implementing Sections 5, 35, 36, 37 and 38 of the Environmental Protection Act (Act) [415 ILCS 5/5, 35, 36, 37, and 38] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart D: Implementing Sections 5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5 of the Act [415 ILCS 5/5, 14.2(c), 22.4, 27, 28, 28.1, 28.5 and 39.5] and authorized by Sections 26 and 27 of the Act [415 ILCS 5/26 and 27]. Subpart E: Implementing and authorized by Sections 4, 5, and 38.5 of the Act [415 ILCS 5/5 and 38.5].

SOURCE: Subpart B: Originally adopted as Chapter I: Procedural Rules, Part IV: Variances, in R70-4, at 1 PCB 43, October 8, 1970; amended in R77-16, 29 PCB 503, at 2 Ill. Reg. 16, p. 3, effective May 1974; amended in R79-9, 35 PCB 433, at 3 Ill. Reg. 51, p. 128, effective December 7, 1979; amended in R80-12, 40 PCB 451, at 5 Ill. Reg. 2763, effective March 2, 1981; codified at 6 Ill. Reg. 8357; amended in R84-10, 62 PCB 87, at 9 Ill. Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill. Reg. 613, effective January 1, 2001; amended in R04-24 at 29 Ill. Reg. 8803, effective June 8, 2005; amended in R14-21 at 39 Ill. Reg. 2357, effective January 27, 2015; amended in R15-20 at 39 Ill. Reg. 12905, effective September 8, 2015; amended in R16-17 at 40 Ill. Reg. 7973, effective May 20, 2016; amended in R17-18 at 41 Ill. Reg. 10049, effective July 5, 2017; amended in R18-18 at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS (TLWQS)

Section 104.500 Purpose

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- a) This Subpart sets forth procedures for obtaining a time-limited water quality standard (TLWQS). A TLWQS provides relief from water quality standards as set forth in 35 Ill. Adm. Code 302 and 303.
- b) For waters in the Great Lakes basin, petitioners must meet the requirements of both this Subpart and 40 CFR 132. When regulations in this Subpart and 40 CFR 132 overlap, the more stringent regulation applies.
- c) This Subpart must be read in conjunction with 35 Ill. Adm. Code 101. If the requirements of 35 Ill. Adm. Code 101 and those of this Subpart conflict, the provisions of this Subpart apply.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.505 Applicability and Use**

- a) A TLWQS proceeding is a non-adjudicatory proceeding.
- b) A TLWQS may be adopted for a single discharger, multiple dischargers, a watershed, a water body, or a waterbody segment.
- c) The extent and coverage of a TLWQS will be set forth in the Board's order (see Section 104.565).
- d) A TLWQS, once adopted by the Board and approved by USEPA, will be the applicable standard for the purposes of the Clean Water Act in developing NPDES permit limits and requirements under 35 Ill. Adm. Code 309 for the term of the TLWQS. Any limitations and requirements necessary to implement the TLWQS will be included as enforceable conditions of the NPDES permit for any permittee granted coverage under the TLWQS by the Board or Agency.
- e) The Agency may use an approved TLWQS when issuing certifications under section 401 of the Clean Water Act.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.510 Severability**

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

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.515 Definitions**

- a) Unless otherwise defined in subsection (b), words have the definitions provided in the Environmental Protection Act (Act) [415 ILCS 5] and 35 Ill. Adm. Code 101.Subpart B.
- b) The following definitions apply to this Subpart:

"Act" means the Environmental Protection Act [415 ILCS 5].

"Best Management Practices" or "BMPs" means methods, measures or practices selected to meet nonpoint source control needs. BMPs include structural and nonstructural controls and operation and maintenance procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

"Highest Attainable Use" is the modified aquatic life, wildlife, or recreational 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 factors in 40 CFR 131.10(g) that precludes attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use when the State demonstrates the relevant use specified in section 101(a)(2) of the Clean Water Act and all the subcategories of such a use are not attainable.

"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.

"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.

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"Substantial Compliance" means compliance with substantial or essential content requirements of 40 CFR 131.14, Section 38.5 of the Act, and Section 104.530 of this Part.

"Time-Limited Water Quality Standard" or "TLWQS" means a time-limited designated use and criterion for a specific pollutant or water quality parameter that reflects the highest attainable condition during the term of that relief.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.520 General Procedures**

- a) A TLWQS may be sought for multiple uses and multiple parameters by:
  - 1) persons who file with the Board a petition for a TLWQS under Section 38.5 of the Act; and
  - 2) persons who had a pending petition on February 24, 2017 for a variance from a water quality standard under Section 35 of the Act converted into a petition for a TLWQS under Section 38.5 of the Act.
  
- b) Participants
  - 1) Petitioner
    - A) For a single discharger TLWQS, the person seeking the TLWQS will be designated as the petitioner.
    - B) For a multiple discharger, watershed, water body or waterbody segment TLWQS, a discharger or a group of dischargers seeking the TLWQS may act individually or collectively as a single petitioner when filing a TLWQS petition before the Board if they can meet the demonstration requirements under Section 104.560.
    - C) For a multiple discharger, watershed, water body or waterbody segment TLWQS, a petitioner may decide at any time to withdraw from a collectively filed petition, and may then file its own individual TLWQS petition, join or rejoin a previously filed collective TLWQS petition. A petitioner's decision to withdraw from, join or rejoin a previously filed TLWQS petition does not

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invalidate an otherwise valid stay granted under Section 104.525. A stay will not continue if a petitioner withdraws its petition and does not file an individual petition or join or rejoin a previously filed collective petition by the deadline set by the Board.

- 2) The Agency will be a participant.
  - 3) Any person may become a participant in the TLWQS proceeding.
  - 4) The Board will develop and maintain a notice list of persons and organizations that have expressed an interest in, or may, by the nature of their purposes, activities or members, be affected by, any covered activity. The Board will include in the notice list all dischargers or classes of dischargers identified by the Agency under Section 104.535(b)(1).
- c) Filing and Service. Unless otherwise provided by this Subpart, all documents must be served and filed in compliance with 35 Ill. Adm. Code 101.Subpart C.

BOARD NOTE 1: The Board encourages persons addressing the same pollutants in the same water body, waterbody segment or watershed to join in filing a joint petition whenever possible, collectively making the demonstration outlined in Section 104.555. When multiple petitions addressing the same pollutants in the same water body, waterbody segment or watershed are filed separately, the Board may consolidate the petitions under 35 Ill. Adm. Code 101.406. The Board may also incorporate materials and evidence filed in support of one petition as evidence in support of a petition addressing similar issues. (See 35 Ill. Adm. Code 101.306.)

BOARD NOTE 2: Lack of action by one or more dischargers will not affect the ability of the Board to consider or act on a TLWQS petition filed before the Board.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.525 Stay**

- a) The effectiveness of a water quality standard from which relief is sought is stayed as to the following persons from the effective date of the water quality standard until the stay is terminated as provided in this Section:

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- 1) Any person who had a petition for a variance seeking relief from a water quality standard under Section 35 of the Act converted into a petition for a TLWQS under Section 38.5 of the Act;
  - 2) Any person who files a petition for a TLWQS within 35 days after the effective date of the water quality standard from which relief is sought; and
  - 3) Any person who files a petition for a TLWQS before the deadline established in a Board order under Section 104.540. This person must be a member of a class of dischargers that has filed a TLWQS petition under Section 104.525(a)(1) or (a)(2) and that has been identified in the Board's final order under Section 104.540.
- b) For any person for whom the effectiveness of the water quality standard is stayed under subsection (a), the following applies:
- 1) If the person files a petition or amended petition by the deadline established by the Board in Section 104.540 and the petition or amended petition is in substantial compliance as described by Section 104.545, the stay continues until the Board:
    - A) denies the petition or amended petition and all rights to judicial review of the Board's order denying the petition or amended petition are exhausted; or
    - B) adopts the TLWQS and USEPA either:
      - i) approves the TLWQS; or
      - ii) disapproves the TLWQS for failure to comply with 40 CFR 131.14.
  - 2) If the person files an amended petition by the deadline established by the Board in Section 104.540, but the amended petition is not in substantial compliance as described by Section 104.545, the Board will deny the amended petition and the stay will continue until all rights to judicial review are exhausted.

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- 3) If the person fails to file an amended petition to address the Board's determination of non-substantial compliance under Section 104.545 by the deadline established by the Board under Section 104.540, the Board will dismiss the original petition and the stay will continue until all rights to judicial review are exhausted.
- c) If a person other than a person described in subsection (a) files a petition for a TLWQS, the effectiveness of the water quality standard from which relief is sought is not stayed as to that person. However, the person may proceed with his or her petition for a TLWQS by complying with 40 CFR 131.14, Section 38.5 of the Act, and this Part.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.530 Petition Contents**

- a) All TLWQS petitions or amended petitions must include:
- 1) A statement indicating the type of TLWQS sought:
    - A) single discharger;
    - B) multiple discharger; or
    - C) watershed, water body, or waterbody segment;
  - 2) identification of the currently applicable water quality standard for the pollutant or parameter for which a TLWQS is sought;
  - 3) the location of the petitioner's activity and the location of the points of its discharge;
  - 4) a map of the proposed watershed, water body or waterbody segment to which the TLWQS will apply, as well as a written description of the watershed, water body, or waterbody segment, including the associated segment code;
  - 5) designated uses of the water body or waterbody segment identified in subsection (a)(4);

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- 6) data describing the nature and extent of the present or anticipated failure to meet the water quality standard or standards, as well as facts that support the petitioner's argument that compliance with the water quality standard or standards cannot be achieved by the required compliance date;
- 7) a demonstration that attainment of the designated use or uses and criterion or criteria is not feasible throughout the term of the TLWQS because of one or more of the factors listed in Section 104.560(a);
- 8) an identification, including the Board's docket number, of any prior TLWQS or water quality standards variances issued to the petitioner, watershed, water body, waterbody segment, and, if known, the petitioner's predecessors, concerning similar relief;
- 9) an identification, by name of the permit holder and permit number, of the permits held by dischargers that may be affected by the adoption of the TLWQS;
- 10) an identification and description of any process, activity, or source that contributes to a violation of a water quality standard, including the material used in that process or activity;
- 11) a description and copy of all Pollutant Minimization Plans that are relevant to the relief requested and are currently being implemented or were implemented in the past;
- 12) the proposed highest attainable condition of the watershed, water body, or waterbody segment identified in subsection (a)(4) expressed as set forth in Section 104.565(d)(4), including projected changes in the highest attainable condition throughout the proposed term of the TLWQS;
- 13) a demonstration of the pollutant control activities proposed to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program;
- 14) the proposed term of the TLWQS, along with a justification that it is only as long as necessary to achieve the highest attainable condition and a description of the relationship between the proposed pollution control activities and the proposed term;

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- 15) a proposed re-evaluation schedule to re-evaluate the highest attainable condition during the term of the TLWQS if that proposed term is longer than five years (see Section 104.580);
  - 16) any other documentation necessary to support the petitioner's demonstration under Section 104.560; and
  - 17) a demonstration to assure that the proposed highest attainable condition does not conflict with the attainment of any downstream water quality standard for the pollutant or parameter for which the TLWQS is sought.
- b) For a watershed, water body or waterbody segment TLWQS, the petition or amended petition must also include:
- 1) 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 TLWQS that could be implemented to make progress towards attaining the underlying designated use and criterion; and
  - 2) if the petition is for an extension of an existing TLWQS, 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 TLWQS and the water quality progress achieved.
- c) For a watershed, water body, waterbody segment, or multiple discharger TLWQS, the petition or amended petition may also include proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved TLWQS.
- d) For a multiple discharger, watershed, water body, or waterbody segment TLWQS, discharger specific information must be provided individually.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.535 Agency Response**

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- a) The Agency must file a response with the Board within 21 days after the filing of the initial petition.
- b) The Agency response must:
  - 1) identify the discharger or classes of dischargers, including applicable permit numbers, affected by the water quality standard or standards from which relief is sought in the petition;
  - 2) identify the watershed, water bodies, or waterbody segments, including the receiving stream, affected by the water quality standard or standards from which relief is sought in the petition;
  - 3) identify the appropriate type of TLWQS, based on factors such as the nature of the pollutant, the condition of the affected water body, and the number and type of dischargers; and
  - 4) recommend prompt deadlines by which each class of dischargers identified in subsection (b)(1) must file a petition in substantial compliance with Section 104.530 to stay the effectiveness of a water quality standard or standards under Section 104.525.
- c) The petitioner or any person may file a question or response to the Agency's response within 14 days after the Agency files its response.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.540 Board Established Classes and Deadlines**

Within 30 days after receipt of a response from the Agency under Section 104.535, the Board will enter a final order that identifies the discharger, multiple discharger, watershed, water body, or waterbody segment to which the TLWQS applies, establishes the discharger or classes of dischargers that may be covered by the TLWQS, and establishes prompt deadlines by which the discharger and dischargers in the identified classes must, for the purposes of the stay, file with the Board either:

- a) a petition for a TLWQS if the petition has not been previously filed; or
- b) an amended petition for a TLWQS if the petition has been previously filed and it is necessary to file an amended petition to maintain a stay under Section 104.525.

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BOARD NOTE: The Board retains the authority to extend deadlines adopted under Section 104.540 upon a showing of good cause by the petitioner.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.545 Substantial Compliance Assessment**

- a) As soon as practicable after entering an order under Section 104.540, the Board will conduct an evaluation of the petition to assess its substantial compliance with Section 104.530.
- b) If the Board determines in a final order that the petition is in substantial compliance, the Agency must file a recommendation under Section 104.550.
- c) If the Board determines in an interim order that the petition or amended petition is not in substantial compliance, the Board will identify the deficiencies in the petition or amended petition that must be corrected for the petition to be in substantial compliance with Section 104.530.
- d) If effectiveness of the water quality standard from which relief is sought is stayed under Section 104.525 and the Board determines in an interim order that the petition or amended petition is not in substantial compliance with Section 104.530:
  - 1) the petitioner must file an amended petition by the deadlines adopted by the Board under Section 104.540; and
  - 2) the Board will enter, after the deadlines established under Section 104.540, a final order that states whether the amended petition is in substantial compliance with Section 104.530.
- e) Any participant may file a motion for reconsideration under 35 Ill. Adm. Code 101.520 of a final Board order determining whether the amended petition is in substantial compliance with Section 104.530.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.550 Recommendation and Response**

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- a) Unless otherwise ordered by the hearing officer or the Board, the Agency must file a recommendation with the Board within 45 days after the Board determines that a petition is in substantial compliance under Section 104.545.
- b) At a minimum, the Agency's recommendation must include:
  - 1) An analysis of:
    - A) whether the petitioner made its demonstration under Section 104.560, including the petitioner's proposed highest attainable condition;
    - B) whether the proposed TLWQS is consistent with applicable federal laws and regulations and satisfies the requirements of Section 38.5 of the Act and this Part; and
    - C) eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved TLWQS, when applicable;
  - 2) any information relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
  - 3) whether the Board should adopt, adopt with conditions, or deny the petitioner's requested TLWQS;
  - 4) the recommended term of the TLWQS; and
  - 5) a list of persons that are seeking coverage under the TLWQS at the time of the adoption of the TLWQS.
- c) The petitioner or any person may file a question or response to the Agency's recommendation within 14 days after the Agency files its recommendation.
- d) Concurrent with the filing of the recommendation with the Board, the Agency must transmit a copy of its recommendation, along with a copy of the TLWQS petition, to USEPA.

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(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.555 Hearing**

- a) The Board will hold a public hearing on the petition.
- b) Hearing Notice
  - 1) The hearing officer will schedule the hearing and give the petitioner, participants, and persons on the notice list (see Section 104.520(b)(4)) at least 45 days' written notice of a hearing.
  - 2) The Clerk will publicize notice, both on the Board's website and in a newspaper of general circulation in the county where the facility or pollution source is located, at least 45 days prior to the hearing.
  - 3) The notice will identify the matters to be discussed at the hearing and will include information on the availability of relevant materials and procedures for obtaining further information.
  - 4) For a watershed, water body, or waterbody segment TLWQS, the notice will include the Board hearing officer's contact information and a link to a website where supporting documentation can be found concerning any cost-effective and reasonable BMPs for nonpoint source controls that the petition or amended petition identifies and that could be implemented to make progress towards attaining the underlying designated use and criterion.
- c) The Board will make the following available to the public at least 30 days before the hearing:
  - 1) reports, documents, and data relevant to the discussion at the public hearing;
  - 2) the Agency recommendation; and
  - 3) for watershed, water body, and waterbody segment TLWQS petitions, any proposed BMPs for nonpoint source controls.

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- d) Except as otherwise provided in this Section, the hearings will be conducted under 35 Ill. Adm. Code 101.Subpart F.
- e) The hearing officer will schedule witnesses in advance to ensure maximum participation and allotment of adequate time. The hearing officer will reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.
- f) During the hearing, the hearing officer 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.
- g) 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 TLWQS proceeding.
- h) The Agency must file any comments it receives from USEPA.
- i) The Agency must notify USEPA of the hearing transcript's availability and of the comment deadline.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.560 Demonstration**

- a) For a TLWQS to a use specified in section 101(a)(2) of the Clean Water Act or a subcategory of such a use, the petitioner must provide justification that attainment of the designated use and criterion is not feasible for the proposed term of the TLWQS because of one of the following factors:
  - 1) Naturally occurring pollutant concentrations prevent the attainment of the designated use;
  - 2) Natural, ephemeral, intermittent, or low flow conditions or water levels prevent the attainment of the designated use, unless these conditions can be compensated for to enable uses to be met by discharging a sufficient volume of effluent without violating State water conservation requirements;

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- 3) Human-caused conditions or sources of pollution prevent the attainment of the designated use and either cannot be remedied or would cause more environmental damage to correct than to leave in place;
  - 4) Dams, diversions or other types of hydrologic modifications preclude the attainment of the designated use, and it is not feasible to restore the water body to its original condition or to operate that modification in a way that would result in the attainment of the designated use;
  - 5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
  - 6) Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in a substantial and widespread negative economic and social impact on the public; or
  - 7) Actions necessary to facilitate lake, wetland, or stream restoration through dam removal or other significant reconfiguration activities preclude attainment of the designated use and criterion while the actions are being implemented.
- b) For a TLWQS to a non-101(a)(2) use, the petitioner must provide justification of how its consideration of the designated use and value of the water for those listed in 40 CFR 131.10(a) appropriately supports the TLWQS and term. Justification consistent with subsections (a)(1) through (7) may be used to satisfy this requirement.
- c) The petitioner must demonstrate that the term of the TLWQS is the minimum necessary to achieve the highest attainable condition. This demonstration must justify the term of the TLWQS by describing the pollutant control activities required to achieve the highest attainable condition, including those activities through a Pollutant Minimization Program.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.565 Opinion and Order**

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- a) When the Board adopts a TLWQS, the Board will maintain, in its water quality standards, the underlying designated use and criterion addressed by the TLWQS, unless the Board adopts and USEPA approves a revision to the underlying designated use and criterion consistent with 40 CFR 131.10 and 131.11.
  
- b) A TLWQS will not be adopted if the designated use and criterion addressed by the TLWQS can be achieved by implementing technology based effluent limits required under sections 301(b) and 306 of the Clean Water Act and 35 Ill. Adm. Code 304.
  
- c) The Board will not adopt a TLWQS if the petitioner fails to make its demonstration as set forth in Section 104.560.
  
- d) All orders adopting a TLWQS will include:
  - 1) Identification of the pollutant or water quality parameter;
  
  - 2) Applicability
    - A) Watershed, Water Body, Waterbody Segment and Multiple Discharger
      - i) Identification of the watershed, water body, or waterbody segment to which the TLWQS applies;
  
      - ii) Eligibility criteria that may be used by new or existing dischargers or classes of dischargers to obtain coverage under the TLWQS during its duration; and
  
      - iii) The list of persons covered under the TLWQS at the time of the Board's adoption.
  
    - B) Single Discharger
      - i) Identification of the water body or waterbody segment to which the TLWQS applies; and
  
      - ii) The person covered under the TLWQS.

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- 3) The TLWQS requirements and conditions that apply throughout the term of the TLWQS:
- A) Will represent the highest attainable condition of the watershed, water body, or waterbody segment applicable throughout the term of the TLWQS based on petitioner's demonstration required by Section 104.560; and
  - B) Will not result in any lowering of the currently attained ambient water quality, unless the petitioner demonstrates that a TLWQS is necessary for restoration activities under Section 104.560(a)(7).
- 4) The highest attainable condition of the water body or waterbody segment as a quantifiable expression of one of the following:
- A) For a single discharger and a multiple discharger TLWQS:
    - i) The highest attainable interim criterion;
    - ii) The interim effluent condition that reflects the greatest pollutant reduction achievable; or
    - iii) If no additional feasible pollutant control technology can be identified, the interim criterion or interim effluent condition that reflects the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the Board adopts the TLWQS and with the adoption and implementation of a Pollutant Minimization Program.
  - B) For a TLWQS applicable to a watershed, water body, or waterbody segment:
    - i) The highest attainable interim use and interim criterion; or
    - ii) If no additional feasible pollutant control technology can be identified, the interim use and interim criterion that reflect the greatest pollutant reduction achievable with the pollutant control technologies installed at the time the Board adopts the TLWQS and with the adoption and implementation of a Pollutant Minimization Program.

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- 5) A statement providing that the requirements of the TLWQS are either the highest attainable condition identified at the time of the adoption of the TLWQS, or the highest attainable condition later identified during any re-evaluation consistent with Section 104.580, whichever is more stringent.
  - 6) The term of the TLWQS, expressed as an interval of time from the date of USEPA approval or a specific date.
  - 7) For a TLWQS with a term greater than five years, a specified frequency to re-evaluate the highest attainable condition under Section 104.580. The re-evaluation must occur no less frequently than every five years after both the Board and USEPA approve the TLWQS.
  - 8) A provision that the TLWQS will no longer be the applicable water quality standard for purposes of the Clean Water Act if the petitioner does not conduct a re-evaluation consistent with the frequency specified in the TLWQS or the results are not submitted to USEPA as required by Section 104.580.
- e) The Board order adopting or declining to adopt a TLWQS is a final order. Any participant may file a motion for reconsideration, under 35 Ill. Adm. Code 101.520, of a final Board order entered under this Section.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.570 USEPA Review**

- a) Before a TLWQS becomes effective for Clean Water Act purposes, the Agency must submit the TLWQS to USEPA and obtain USEPA's approval in compliance with section 303(c) of the Clean Water Act and 40 CFR 131.20 and 131.21.
- b) The Agency must file USEPA's decision with the Board as soon as practicable.
- c) If USEPA disapproves of a Board-adopted TLWQS, the petitioner may file a petition to modify a TLWQS.
  - 1) The petition to modify must address all deficiencies raised by USEPA and must be served on all parties to the Board's proceeding adopting the TLWQS.

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- 2) The Board will automatically incorporate the record from the Board's proceeding adopting the TLWQS.
- 3) The Board will accept public comments for at least 21 days after a petition to modify is filed.
- 4) The Board may hold a hearing if it concludes, in its discretion, that a hearing would be advisable.
- 5) Unless otherwise ordered by the hearing officer or Board, the Agency must file a recommendation with the Board within 45 days after the petition to modify is filed with the Board.
- 6) Any order issued by the Board modifying a previously granted TLWQS is subject to Section 104.565.
- 7) The Agency must submit any order issued by the Board modifying a previously granted TLWQS to USEPA for review and approval as soon as practicable. As required in subsection (b), the Agency must file USEPA's decision with the Board. The petitioner may file a petition to modify under this subsection (c) in response to any further USEPA disapproval.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.575 Coverage Under Board-Approved Time-Limited Water Quality Standards**

- a) Any discharger that has not obtained a TLWQS may obtain coverage under a Board-approved TLWQS by satisfying, at the time of renewal or modification of that person's NPDES permit, or at the time the person files an application for certification under section 401 of the federal Clean Water Act, the Board-approved criteria for coverage under the TLWQS.
- b) Any applicant obtaining coverage under a Board-approved TLWQS must comply with the requirements and conditions that apply throughout the term of the TLWQS established under Section 104.565(d).
- c) Any applicant obtaining coverage under a Board-approved TLWQS must participate in any re-evaluations conducted under Section 104.580.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

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**Section 104.580 Re-evaluation**

- a) Proposed Re-evaluation. When a TLWQS has a term greater than five years and the Board accordingly sets a schedule for re-evaluation:
  - 1) The petitioner and any person granted coverage under Section 104.575 must file its proposed re-evaluation with the Board according to the re-evaluation frequency set forth in the Board's order adopting the TLWQS under Section 104.565(d)(7).
  - 2) For a multiple discharger, watershed, water body, or waterbody segment TLWQS, discharger specific information must be provided individually.
  - 3) Petitioner must serve one copy of the proposed re-evaluation on the Agency, each participant, and each member of the notice list maintained by the Board under Section 104.520(b)(4).
  - 4) The proposed re-evaluation must assess the highest attainable condition using all existing and readily available information.
- b) The Clerk will publicize notice of the proposed re-evaluation on the Board's website and in a newspaper of general circulation in the county where the facility or pollution source is located.
- c) The Board will accept public comments for a period no less than 30 days.
- d) The Agency must file a recommendation with the Board within 45 days after the petitioner files its proposed re-evaluation with the Board. At a minimum, the Agency must provide an analysis of the petitioner's proposed highest attainable condition.
- e) The Board will re-evaluate the highest attainable conditions using all existing and readily available information.
  - 1) If any re-evaluation yields a more stringent attainable condition, that condition becomes the applicable interim TLWQS without additional action.
  - 2) When the re-evaluation identifies a condition less stringent than the highest attainable condition, the Board must:

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- A) revise the TLWQS consistent with applicable federal laws and regulations satisfying the requirements of Section 38.5 of the Act and this Part; and
- B) obtain USEPA approval before the TLWQS becomes effective for Clean Water Act purposes.
  
- f) The Board will adopt a final order on the proposed re-evaluation consistent with the re-evaluation frequency set forth in the Board's order adopting the TLWQS under Section 104.565(d)(7).
- g) The Agency must submit the Board's re-evaluation opinion and order to USEPA within 30 days after issuance of the Board's order.
- h) A TLWQS will no longer be the applicable water quality standard for purposes of the Clean Water Act if the petitioner does not conduct a re-evaluation consistent with the frequency specified in the Board's order under Section 104.565 or the results are not submitted to USEPA as required by this Section.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.585 Appeal Rights**

*Any person who is adversely affected or threatened by a final Board order entered under this Subpart may obtain judicial review of the Board order by filing a petition for review within 35 days after the date the Board order was served on the person affected by the order, under the provisions of the Administrative Review Law [735 ILCS 5/Art. III], and the rules adopted pursuant thereto, except that review shall be afforded directly in the appellate court for the district in which the cause of action arose and not in the circuit court. For purposes of judicial review under this Section, a person is deemed to have been served with the Board's final order on the date on which the order is first published by the Board on its website. [415 ILCS 5/38.5(j)]*

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.590 Extension**

- a) If, at the end of the term of the TLWQS, the underlying designated use remains unattainable, the petitioner may seek an extension of an existing TLWQS, consistent with the requirements of this Subpart.

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- b) A petition to extend a TLWQS previously granted by the Board is a new petition for a TLWQS before the Board, and must be filed in compliance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee under Section 104.520(c) and 35 Ill. Adm. Code 101.302(e).
- c) In addition to the requirements of Section 104.530, the petition for extension of the TLWQS must contain:
- 1) A detailed explanation showing that satisfactory progress toward attaining the designated use has been made during the term of the prior TLWQS and that additional time is needed to make further progress;
  - 2) A demonstration of whether conditions have changed such that the designated use and criterion are not attainable;
  - 3) A demonstration of whether new or additional information has become available to indicate that the designated use and criterion are not attainable in the future;
  - 4) Documentation showing that the requirements and conditions established by the Board that applied throughout the term of the prior TLWQS have been fully met, or, if any requirement or condition has not been fully met, a detailed explanation of the reason or reasons that the requirement has not been fully met; and
  - 5) A motion to incorporate any material from the record of the prior TLWQS proceeding, in compliance with 35 Ill. Adm. Code 101.306.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)