

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

PART 104
REGULATORY RELIEF MECHANISMS

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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 Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill.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. 7922, effective April 27, 2018.

SUBPART A: GENERAL PROVISIONS

Section 104.100 Applicability

- a) This Part applies to mechanisms for obtaining relief from environmental regulations under Titles VII and IX of the Act, such as variances, provisional variances, and adjusted standards.
- b) This Part must be read in conjunction with 35 Ill. Adm. Code 101, which contains procedures generally applicable to all of the Board's adjudicatory proceedings. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Part, the provisions of this Part apply.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.102 Severability

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

Section 104.104 Definitions

For the purpose of this Part, words and terms will have the meanings as defined in 35 Ill. Adm. Code 101.Subpart B unless otherwise provided, or unless the context clearly indicates otherwise.

Section 104.106 Petitions and Hearings

- a) Each petition must contain an index that lists the documents comprising the petition, including any exhibits, attachments, and supporting documents. All pages of the petition must be sequentially numbered with the letter "P" placed before the number of each page. The index must show the page numbers upon which each document comprising the petition starts and ends. The petition also must meet the requirements of 35 Ill. Adm. Code 101.Subpart J.
- b) Hearings will be conducted under 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

SUBPART B: VARIANCES

Section 104.200 **General**

- a) Description:
- 1) General Variance. A variance is a temporary exemption from any specified rule, regulation, requirement or order of the Board, which may be granted by the Board with or without conditions for a period of time not to exceed five years, *upon presentation of adequate proof*, by the petitioner *that compliance with any rule, regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship*. [415 ILCS 5/35(a)]
 - 2) Resource Conservation and Recovery Act (RCRA) Variance. A RCRA variance is an exemption from 35 Ill. Adm. Code 703, 720, 721, 722, 723, 724 or 725 or which allows the Illinois Environmental Protection Agency (Agency) to issue or modify any provision of a RCRA permit required under Section 21(f) of the Act [415 ILCS 5/21(f)].
- b) Effect of Filing:
- 1) The filing of a petition for a variance does not stay enforcement of a regulation except as provided in subsection (b)(2).
 - 2) *If any person files a petition for variance from a rule or regulation within 20 days after the effective date of such rule or regulation, the operation of such rule or regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any rule or regulation adopted by the Board which implements, in whole or in part, a State RCRA, Underground Injection Control (UIC), or National Pollutant Discharge Elimination System (NPDES) program shall not be stayed. The Board may hold a hearing upon said petition 5 days from the date of notice of such hearing or thereafter.* [415 ILCS 5/38(b)]

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.202 **Filing Requirements**

- a) Who May File. Any person seeking a variance from any rule or regulation, requirement or order of the Board that would otherwise be applicable to that person may file a variance petition.
- b) General Filing and Service Requirements. All general filing and service

requirements for Board filings, including the form of filing and the fee requirements for filing, apply to the filing of a petition for variance. These general requirements are found at 35 Ill. Adm. Code 101.Subparts C and J.

- c) Special Filing and Service Requirements. In addition to the general requirements found at 35 Ill. Adm. Code 101.Subpart C, a person filing a petition for variance must meet the following requirements:
- 1) One copy of the petition and all related documents must be served on the Agency. The service on the Agency must be initiated on or before the date the petition is filed with the Board. Additionally, all RCRA variance petitions must be served on the USEPA Region V Director of Waste Management. An affidavit of service of the petition and related documents must accompany the filing with the Board; and
 - 2) The petition must contain all information or documents necessary to satisfy the petition content requirements found in Sections 104.204, 104.206, and 104.208.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.204 Petition Content Requirements

The petition must include the information required by subsections (a) through (n). Additionally, there are specific content requirements set forth at Section 104.206 for RCRA variance petitions. If the petitioner believes that any of these requirements are not applicable to the specific variance requested, the petitioner must so state and explain the reasoning.

- a) A statement describing the regulation, requirement, or order of the Board from which a variance is sought. If variance from a regulation is sought, the statement must include the Illinois Administrative Code citation to the regulation as well as the effective date of that regulation. If variance from a requirement or order of the Board is sought, the statement must include the citation to that requirement or order of the Board promulgating that requirement, including docket number;
- b) A complete and concise description of the nature of petitioner's activity that is the subject of the proposed variance, including:
 - 1) The location of, and area affected by, the petitioner's activity;
 - 2) The location of points of discharge, and, as applicable, the identification of the receiving waterway or land, or, if known, the location of the nearest air monitoring station maintained by the Agency;
 - 3) An identification, including docket number, of any prior variance issued to

the petitioner and, if known, the petitioner's predecessors, concerning similar relief;

- 4) An identification, including number, of the environmental permits held by petitioner for the activity which may be affected by grant of variance;
 - 5) The number of persons employed by the petitioner's facility at issue and the age of that facility;
 - 6) The nature and amount of the materials used in the process or activity for which the variance is sought and a full description of the particular process or activity in which the materials are used;
 - 7) A description of the relevant pollution control equipment already in use; and
 - 8) The nature and amount of emissions, discharges or releases of the constituent in question currently generated by the petitioner's activity;
- c) Data describing the nature and extent of the present or anticipated failure to meet the regulation, requirement, or order of the Board from which variance is sought and facts that support petitioner's argument that compliance with the regulation, requirement, or order of the Board was not or cannot be achieved by any required compliance date;
- d) A description of the efforts that would be necessary for the petitioner to achieve immediate compliance with the regulation, requirement, or Board order at issue. All possible compliance alternatives, with the corresponding costs for each alternative, must be set forth and discussed. The discussion of compliance alternatives must include the availability of alternate methods of compliance, the extent that the methods were studied, and the comparative factors leading to the selection of the control program proposed for compliance. The discussion of the costs of immediate compliance may include the overall capital costs and the annualized capital and operating costs;
- e) Facts that set forth the reasons the petitioner believes that immediate compliance with the regulation, requirement, or order of the Board would impose an arbitrary or unreasonable hardship;
- f) A detailed description of the compliance plan, including:
- 1) A discussion of the proposed equipment or proposed method of control to be undertaken to achieve full compliance with the regulation, requirement, or order of the Board;

- 2) A time schedule for the implementation of all phases of the control program from initiation of design to program completion; and
 - 3) The estimated costs involved for each phase and the total cost to achieve compliance;
- g) A description of the environmental impact of the petitioner's activity including:
- 1) The nature and amount of emissions, discharges, or releases of the constituent in question if the requested variance is granted, compared to that which would result if immediate compliance is required;
 - 2) The qualitative and quantitative description of the impact of petitioner's activity on human health and the environment if the requested variance is granted, compared to the impact of petitioner's activity if immediate compliance is required. Cross-media impacts, if any, must be discussed; and
 - 3) A statement of the measures to be undertaken during the period of the variance to minimize the impact of the discharge of contaminants on human, plant, and animal life in the affected area, including the numerical interim discharge limitations that can be achieved during the period of the variance;
- h) Citation to supporting documents or legal authorities whenever they are used as a basis for the petition. Relevant portions of the documents and legal authorities other than Board decisions, reported state and federal court decisions, or state and federal regulations and statutes must be appended to the petition;
- i) If the requested variance involves an existing permit or a pending permit application, a copy of the material portion of the permit or permit application must be appended to the petition;
- j) Any conditions petitioner suggests for the requested variance;
- k) A proposed beginning and ending date for the variance. If the petitioner requests that the term of the variance begin on any date other than the date on which the Board takes final action on the petition, a detailed explanation and justification for the alternative beginning date;
- l) A discussion of consistency with federal law, including an analysis of applicable federal law and facts that may be necessary to show compliance with federal law as set forth in Section 104.208;
- m) An affidavit verifying any facts submitted in the petition; and

- n) A statement requesting or denying that a hearing should be held in this matter.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.206 Resource Conservation and Recovery Act (RCRA) Variance Petition Contents

In addition to the requirements of Sections 104.204 and 104.208, a petition for a RCRA variance must meet the following requirements:

- a) All petitions for RCRA variances must include a showing that the Board can grant the requested relief consistent with, and establish RCRA permit conditions no less stringent than, those that would be required by RCRA and the regulations promulgated by USEPA (40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268 and 270). Petitions must indicate whether any federal provisions authorize the relief requested, and must include any facts necessary to show that the petitioner would be entitled to the requested relief under federal law;
- b) Persons who have, or are required to have, a RCRA permit and who seek a RCRA variance that could result in modification or issuance of the RCRA permit must have on file with the Agency a RCRA permit application reflecting the requested variance prior to filing the variance petition;
- c) Petitioner must attach to the variance petition a copy of the RCRA permit application, or such portion as may be relevant to the variance request; and
- d) Petitioner must attach to the variance petition documentation of service on USEPA as required by Section 104.202.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.208 Consistency with Federal Law

- a) All petitions for variances from Title II of the Act or from 35 Ill. Adm. Code.Subtitle B, Ch. I "Air Pollution", must indicate whether the Board may grant the requested relief consistent with the Clean Air Act (CAA) (42 USC 7401 et seq.) and the federal regulations adopted under the CAA (40 CFR 50 through 99). If granting a variance would require revising the State Implementation Plan, the petition must indicate whether the requirements of Section 110(a) of the CAA (42 USC 7410(a)) and 40 CFR 51 will be satisfied.
- b) All petitions for variances from Title III of the Act, from 35 Ill. Adm. Code.Subtitle C, Ch. I "Water Pollution", or from water pollution related requirements of any other Title of the Act or Chapter of the Board's regulations,

must indicate whether the Board may grant the relief consistent with the Clean Water Act (CWA) (33 USC 1251 et seq.), USEPA effluent guidelines and standards and any other federal regulations adopted under the CWA (40 CFR 110, 112, 117, 122, 125, 129, 136, 401 through 471, and 503), and any area-wide waste treatment management plan approved by the Administrator of USEPA under Section 208 of the CWA (33 USC 1288).

- c) All petitions for variances from Title IV of the Act or from 35 Ill. Adm. Code.Subtitle F, Ch. I "Public Water Supplies", and to the extent applicable, from Title V of the Act or from 35 Ill. Adm. Code.Subtitle D, Ch. I "Mine Related Water Pollution", must indicate whether the Board may grant the relief consistent with the Safe Drinking Water Act (42 USC 300(f) et seq.), the federal National Primary Drinking Water Regulations (40 CFR 141), the UIC Program (42 USC 300h et seq.) and the federal regulations adopted under the UIC Program (40 CFR 144 through 148).
- d) All petitions for variances from Title V of the Act or from 35 Ill. Adm. Code.Subtitle G, Ch. I "Waste Disposal" must indicate whether the Board may grant the requested relief consistent with RCRA (42 USC 6902 et seq.) and the federal regulations adopted under RCRA (40 CFR 256 through 258, 260 through 268, 273, 279, and 280).
- e) For all petitions for RCRA variances, petitioner must consult the federal RCRA rules that contain procedures referred to as "Variances" (40 CFR 260). The petitioner must consult the comparable Board regulations to decide whether the variance procedures of this Part need to be followed.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.210 Petition for Extension of Variance

- a) *A variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress has been shown by the petitioner. [415 ILCS 5/36(b)]*
- b) A petition to extend a variance is considered a new petition for variance before the Board, and must be filed in accordance with this Subpart and 35 Ill. Adm. Code 101.Subpart C, including payment of the filing fee under Section 104.202(b) and 35 Ill. Adm. Code 101.302(e)(2).
- c) If the petitioner desires to have the term of the variance extension be sequential with the term of the prior variance, the petition to extend the variance must be filed with the Board no later than 120 days prior to the termination of the variance, unless the petitioner can demonstrate that the petition for variance extension was filed as soon as practicable after the petitioner learned that it could

not meet the compliance time frame under the existing variance.

- d) In addition to the requirements of this Subpart, the petition for extension of variance must contain:
- 1) A detailed statement showing that *satisfactory progress* toward compliance has been or will have been achieved during the term of the prior variance [415 ILCS 5/36(b)];
 - 2) A statement that the conditions of the prior variance have been fully met, or, if any condition or conditions have not been fully met, a detailed explanation of the reason or reasons that the condition or conditions have not been fully met; and
 - 3) A motion to incorporate any material from the record of the prior variance proceeding in accordance with 35 Ill. Adm. Code 101.306.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.212 Motion for Modification of Internal Variance Compliance Dates

- a) The petitioner may request, by written motion modification of internal dates within a compliance schedule of an existing variance, so long as the modification does not extend the length of the existing variance period. The written motion will not be considered to be an extension of the prior variance. The motion must be filed under the docket number of the existing variance, and must be filed with the Clerk and served upon the Agency, and any joined parties under 35 Ill. Adm. Code 101.Subpart D. The Agency must, and any joined parties may, file a response to that motion. Any response must be filed within 14 days after receipt of the motion.
- b) A motion for modification that would extend the length of the existing variance period constitutes a Petition for Extension of Variance and must be filed in accordance with Section 104.210.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.214 Notice of Petition

- a) Within 14 days after the petition is filed, the petitioner must *publish a single notice of such petition in a newspaper of general circulation in the county where the facility or pollution source is located.* [415 ILCS 5/37(a)]
- b) Upon filing a petition for variance, the petitioner *shall promptly give written notice of such petition to:*

- 1) *Any person in the county in which the installation or property for which variance is sought is located who has filed with the Board a written request for notice of variance petitions;*
 - 2) *The State's attorney of such county;*
 - 3) *The Chairman of the County Board of such county; and*
 - 4) *Each member of the General Assembly from the legislative district in which that installation or property is located. [415 ILCS 5/37(a)]*
- c) Upon receipt of a petition for RCRA variance, the Agency must promptly give notice of the petition to:
- 1) Federal agencies as designated by USEPA;
 - 2) Illinois Department of Transportation;
 - 3) DNR;
 - 4) Illinois Department of Public Health;
 - 5) The Governor of any other state adjacent to the county in which the facility or pollution source is located; and
 - 6) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the closest population center to the facility or pollution source.
 - 7) The general public by broadcast over at least one local radio station in the area of the facility or pollution source containing the information required by subsections (d) and (e).
- d) *All notices required by this Section must include the following:*
- 1) *The street address of the facility or pollution source, and if there is no street address, then the legal description or the location with reference to any well-known landmark, highway, road, thoroughfare or intersection [415 ILCS 5/37(a)];*
 - 2) A description of the requested relief;
 - 3) An indication that any person may request a hearing by filing with the

Board a written objection to the grant of the variance within 21 days after the publication of the petitioner's notice, together with a written request for hearing;

- 4) The Clerk's address and phone number, the Board's website address, and a statement that a copy of the variance petition may be obtained through the Clerk's Office or COOL, located on the Board's website;
 - 5) A statement that the Agency is preparing a recommendation and seeking the views of persons who may be adversely affected by the variance. All comments and inquiries should be addressed to the Agency employee responsible for the recommendation within 21 days after publication of the petitioner's notice. The notice must include the date on which the recommendation is to be filed, and the name, address, email address, and telephone number of the Agency employee responsible for the recommendation;
 - 6) A statement that a hearing may be held after the filing of the recommendation and that the record will remain open for written comments for 45 days after filing of the recommendation. The notice will include the address of the Board to which the comments must be mailed;
 - 7) A statement that the record in the variance proceeding is available at the Board office for inspection, except those portions that are protected from disclosure under 35 Ill. Adm. Code 130, and that procedures are available whereby disclosure may be sought by the public;
 - 8) A statement that variances may be granted under Section 35 of the Act [415 ILCS 5/35] and 35 Ill. Adm. Code 104, and a reference to the Board regulations or order from which a variance is sought; and
 - 9) Any additional information considered necessary or proper.
- e) Within 21 days after the publication of notice, the petitioner must file with the Board a certification of publication that states the date on which the notice was published and must attach a copy of the published notice.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.216 Agency Investigation and Recommendation

- a) Upon receipt of a petition for variance, *the Agency shall promptly investigate such petition and consider the views of persons who might be adversely affected by the grant of a variance.* [415 ILCS 5/37(a)]
- b) *The Agency shall make a recommendation to the Board as to the disposition of the petition.* [415 ILCS 5/37(a)] Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where there has been a hearing scheduled, at least 30 days before hearing, whichever is earlier. The Agency must serve a copy of its recommendation, in accordance with 35 Ill. Adm. Code 101.304(c), on the petitioner, joined parties, and assigned hearing officer, if applicable. At a minimum, the recommendation must include:
 - 1) A description of the efforts made by the Agency to investigate the facts as alleged and to ascertain the views of persons who might be affected, and a summary of the views so ascertained;
 - 2) The location of the nearest air monitoring station maintained by the Agency where applicable;
 - 3) A statement of the degree to which, if at all, the Agency disagrees with the facts as alleged in the petition, including facts refuting any allegations in the petition for variance;
 - 4) Allegations of any other facts the Agency believes relevant to the disposition of the petition, including any past or pending enforcement actions against petitioner;
 - 5) The Agency's estimate of the costs that compliance would impose on the petitioner and on others;
 - 6) The Agency's estimate of the injury that the grant of the variance would impose on the public, including the effect that continued discharge of contaminants will have upon the environment;
 - 7) The Agency's analysis of applicable federal laws and regulations and an opinion concerning the consistency of the petition with those federal laws and regulations;
 - 8) The status of any permits or pending permit applications that are associated with or affected by the requested variance;
 - 9) Allegation of any facts that the Agency believes are relevant to whether

the Board should condition a grant of variance on the posting of a performance bond under Section 104.246;

- 10) Citation to supporting documents or legal authorities whenever they are used as a basis for the Agency's recommendation. Relevant portions of the documents and legal authorities, other than Board decisions, reported state and federal court decisions, state and federal regulations and statutes, must be appended to the recommendation if not already in the record of the proceeding;
- 11) The Agency's recommendation of what disposition should be made of the petition, deny or grant, and suggested conditions. If the Agency recommends that variance be granted, a recommended beginning and end date of the requested variance, and any recommended conditions on the variance; and
- 12) An affidavit verifying any facts outside the record referenced in the recommendation.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.218 Agency Recommendation to RCRA Variance

In addition to the recommendation requirements stated in Section 104.216, the Agency recommendation on petitions for RCRA variances must also include the following and, in addition to the service requirements of Section 104.216, the Agency must serve its recommendation on USEPA and all persons who have notified the Agency that they intend to comment or have otherwise asked to be served a copy of the recommendation.

- a) The recommendation must include a fact sheet or statement of basis as provided in 35 Ill. Adm. Code 705.141 through 705.143, when relevant.
- b) If the Agency recommends that the variance be granted, a partial draft permit reflecting the variance and recommended conditions must be included with the recommendation.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.220 Response to Agency Recommendation

- a) Within 14 days after service of the Agency recommendation the petitioner may file a response to the Agency recommendation or an amended petition. The petitioner must serve a copy of the response or amended petition upon the hearing officer, the Agency, and any other parties to the proceeding.

- b) The response or amended petition may include a request for hearing. New information in a response or amended petition must be verified by oath or affidavit.
- c) Any amended petition or request for hearing under this Section recommences the decision period under Section 104.232.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.222 Stipulations

Filing of a stipulation in a variance proceeding is permissible to the extent that the stipulation conveys to the Board those facts upon which the parties agree. However, the Board is not bound to accept as fact any stipulation to findings of ultimate fact or conclusion of law, such as stipulating that it would impose an arbitrary or unreasonable hardship if petitioner were to immediately comply with the applicable rule or regulation.

Section 104.224 Objections to Petition, Written Comments and Request for Hearing

- a) A person who files an objection, request for hearing, or comment is a "participant" as defined in 35 Ill. Adm. Code 101.Subpart B.
- b) Except as provided in subsection (e) of this Section for RCRA variances, any person may file with the Clerk, within 21 days after the publication of the petitioner's notice under Section 104.214, a written objection to the grant of variance. The Clerk will serve a copy of the objection on the petitioner, the Agency, the hearing officer, and any joined parties in accordance with 35 Ill. Adm. Code 101.304(c).
- c) Any person may also file a written request for hearing. The written request must be filed within 21 days after the publication of the petitioner's notice under Section 104.214 in order for a hearing to be held in accordance with Section 104.236 and 35 Ill. Adm. Code 101.Subpart F, including any hearing held by videoconference (see 35 Ill. Adm. Code 101.600(b)).
- d) Any person may file written comments in a variance proceeding. If a hearing is held, public comments must be filed within 14 days after the close of the hearing unless the hearing officer specifies a different date. If there is no hearing, comments must be filed no later than 30 days before the decision date, unless the hearing officer orders otherwise to prevent material prejudice. (See 35 Ill. Adm. Code 101.628(c)(1).)
- e) In RCRA variances, subsections (b) and (c) do not apply. However, persons may file written comments within 45 days after the Agency files its recommendation.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.226 Amended Petition and Amended Recommendation

- a) The petitioner may amend the petition prior to the close of the hearing, if a hearing is held, or prior to the Board's decision, if a hearing is not held, by filing a motion under 35 Ill. Adm. Code 101.Subpart E. Amended petitions subsequent to hearing will be accepted only with permission of the Board. Amended petitions must be in writing and filed with the Board and served in accordance with 35 Ill. Adm. Code 101.Subpart C. If the petitioner substantively amends the petition, the filing of the amended petition recommences the decision period under Section 104.232.
- b) If the petitioner amends the petition, the Agency must file or give an amended recommendation in writing or orally at hearing, but in any event not later than 45 days after the filing of an amended petition. The Agency may amend its recommendation even if the petitioner has not amended its petition. In such an instance, a recommendation may be amended prior to close of the hearing, if a hearing is held, or 40 days prior to the Board's decision date if a hearing is not held. The petitioner may file a response to an Agency recommendation under Section 104.220.
- c) Written amendments to the petition or recommendation need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.228 Insufficient Petition

If the Board finds the petition fails to contain information as required by Sections 104.204, 104.206, and 104.208, the Board may order the petitioner to supplement the information contained in the petition. Filings made in response to the order constitute an amended petition for the purposes of calculating the decision deadline under Section 104.232. Alternatively, under Section 104.230, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of variance, or constitute a Board decision on the merits of the petition.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.230 Dismissal of Petition

A petition is subject to dismissal if the Board determines that:

- a) The petition requests relief that the Board is not empowered to grant;
- b) The petition fails to comply with the requirements of 35 Ill. Adm. Code 101.Subpart C and Sections 104.202, 104.204, 104.206 and 104.208;
- c) The petitioner fails to timely comply with any order issued by the Board or the hearing officer, including an order requiring additional information under Section 104.228; or
- d) The petitioner is not subject to the rule or regulation, requirement, or order of the Board at issue.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.232 Calculation of Decision Deadline

- a) Under Section 38(a) of the Act, the Board will render its final decision on the petition within 120 days after the date of filing of the petition or the receipt of a request for hearing under Section 37(a) of the Act, whichever is later, except:
 - 1) When the petitioner waives its right to a decision within the prescribed decision period in accordance with 35 Ill. Adm. Code 101.Subpart C;
 - 2) When the petitioner files an amended petition for variance under this Subpart, the decision period recommences from the date of filing of the amended petition; or
 - 3) When a hearing is canceled under 35 Ill. Adm. Code 101.510.
- b) Time will be computed in accordance with 35 Ill. Adm. Code 101.Subpart C.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.234 Hearing

The Board will order a hearing on a variance petition if:

- a) A hearing is requested by the petitioner at the time of initial filing on the associated form or in writing, which is filed and served in accordance with 35 Ill. Adm. Code 101.Subpart C;

- b) A hearing is requested in a response or amended petition;
- c) *The Board, in its discretion, concludes that a hearing would be advisable* [415 ILCS 5/37(a)];
- d) *The Agency or any other person files a written objection to the grant of such variance within 21 days after the publication of the petitioner's notice under Section 104.214, together with a written request for hearing* [415 ILCS 5/37(a)];
or
- e) The request concerns a RCRA variance.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.236 Hearing Procedures

Hearings will be conducted under 35 Ill. Adm. Code 101.Subpart F, except that:

- a) Hearings may be canceled by a motion filed in accordance with 35 Ill. Adm. Code 101.510 at the discretion of the hearing officer.
- b) If all parties and participants who have requested a hearing under this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.
- c) The hearing on a RCRA variance petition will be held, whenever possible, at a location convenient to the population center that is closest to the facility.
- d) The hearing officer will give notice of RCRA hearings to the following persons:
 - 1) Any person in the county in which the installation or property for which variance is sought is located who has in writing requested notice of variance petitions and the State's attorney of the county;
 - 2) The Chairman of the county board of the county;
 - 3) Each member of the General Assembly from the legislative district in which that installation or property is located;
 - 4) Federal agencies as designated by USEPA;
 - 5) Illinois Department of Transportation;
 - 6) DNR;

- 7) Illinois Department of Public Health;
- 8) The Governor of any other state adjacent to the county in which the facility or pollution source is located;
- 9) Elected officials of any counties, in other states, adjacent to the county in which the facility or pollution source is located, and elected officials in any municipality, in another state, if it is the population center that is closest to the facility or pollution source; and
- 10) USEPA's Region V Director of Waste, Pesticides and Toxics Division.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.238 Standard of Review

- a) *The Board may grant individual variances beyond the limitations prescribed by the Act, whenever it is found, upon presentation of adequate proof, that compliance with any rule or regulation, requirement or order of the Board would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(a)]* The burden of proof in a variance proceeding is on the petitioner.
- b) In addition to subsection (a) the Board may grant a RCRA variance only to the extent consistent with, and with conditions no less stringent than, those that would be required by RCRA and 40 CFR 260, 261, 262, 263, 264, 265, 266, 267, 268, and 270. Variances must require compliance with the regulations in the shortest practicable time.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.240 Certificate of Acceptance

The Board's order granting a variance will include a certificate of acceptance. The certificate constitutes acceptance of the variance and its conditions by the petitioner. A variance and its conditions are not binding upon the petitioner until the executed certificate is filed with the Board and served on the Agency. Failure to timely file the executed certificate with the Board and serve a copy on the Agency renders the variance void. However, execution of the certificate is not necessary prior to seeking reconsideration under 35 Ill. Adm. Code 101.Subpart I, or appeal under Section 104.244.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.242 Term of Variance

Except as provided by Section 38(a) of the Act, any variance granted pursuant to the provisions of this Part shall be for such period of time, not exceeding five years, as shall be specified by the Board at the time of the grant of such variance, and upon the condition that the person who receives such variance shall make such periodic progress reports as the Board shall specify. Such variance may be extended from year to year by affirmative action of the Board, but only if satisfactory progress is shown. [415 ILCS 5/36(b)]

Section 104.244 Variance Conditions

In granting a variance the Board may impose such conditions as the policies of the Act may require [415 ILCS 5/36(a)]. In a RCRA variance the Board may direct the Agency to issue or modify a RCRA permit with conditions that may be set forth specifically in the order, or that may consist of general guidelines to be followed by the Agency, together with applicable regulations, in issuing a permit.

Section 104.246 Performance Bonds

If the hardship complained of consists solely of the need for a reasonable delay in which to correct a violation of the Act or of the Board regulations, the Board shall condition the grant of such variance upon the posting of sufficient performance bond or other security to assure the completion of the work covered by the variance. The original amount of such performance bond shall not exceed the reasonable cost of the work to be completed pursuant to the variance. The obligation under such bond shall at no time exceed the reasonable cost of work remaining pursuant to the variance. [415 ILCS 5/36(a)]

Section 104.248 Objection to Conditions

The Board may include such conditions in granting a variance and may adopt such rules and regulations as the policies of the Act may require. If an objection is made to a variance condition, the Board shall reconsider the condition within not more than 75 days from the date of the objection. [415 ILCS 5/41(b)] An objection to a specific variance condition may be made by filing a motion under 35 Ill. Adm. Code 101.Subpart E within 35 days after the receipt of the Board's opinion and order containing the objectionable condition.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

SUBPART C: PROVISIONAL VARIANCES

Section 104.300 Applicability

This Subpart applies to any person seeking a provisional variance from the Agency under Title IX of the Act. This Subpart must be read in conjunction with 35 Ill. Adm. Code 101 and this Part. In the event of conflict between this Subpart and the requirements of 35 Ill. Adm. Code 101, the requirements of this Subpart apply.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.302 Agency Action

The Agency shall grant provisional variances whenever it is found, upon presentation of adequate proof, that compliance on a short term basis with any rule or regulation, requirement or order of the Board, or with any permit requirement, would impose an arbitrary or unreasonable hardship. [415 ILCS 5/35(b)]

(Source: Amended at 29 Ill. Reg. 8803, effective June 8, 2005)

Section 104.304 Initiating a Request

Any person seeking a provisional variance pursuant to Section 35(b) of the Act and 35 Ill. Adm. Code 180 shall make a request to the Agency. The Agency shall promptly investigate and consider the merits of the request. If the Agency fails to take final action within 30 days after receipt of the request for a provisional variance, or if the Agency denies the request, the person may initiate a variance proceeding with the Board under Subpart B. [415 ILCS 5/37(b)]

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.306 Filing and Notice

If the Agency grants a provisional variance, the Agency must promptly file a copy of its written decision with the Board, and shall give prompt notice of its action to the public by issuing a press release for distribution to newspapers of general circulation in the county. The Clerk will maintain for public inspection copies of all provisional variances filed with the Board by the Agency. [415 ILCS 5/37(b)]

(Source: Amended at 29 Ill. Reg. 8803, effective June 8, 2005)

Section 104.308 Term

Any provisional variance granted by the Agency pursuant to subsection (b) of Section 35 of the Act shall be for a period of time not to exceed 45 days. A provisional variance may be extended up to an additional 45 days by written decision of the Agency. The provisional variances

granted to any one person shall not exceed a total of 90 days during any calendar year. [415 ILCS 5/36(c)]

(Source: Amended at 29 Ill. Reg. 8803, effective June 8, 2005)

Section 104.310 Simultaneous Variance Prohibition (Repealed)

(Source: Repealed at 29 Ill. Reg. 8803, effective June 8, 2005)

SUBPART D: ADJUSTED STANDARDS

Section 104.400 General

- a) Description. An adjusted standard has the effect of an environmental regulation that would apply to petitioner, if granted, in lieu of the general regulation that would otherwise be applicable to a petitioner and the regulated community.
- b) Applicability. This Subpart will apply to any person seeking an adjusted standard under Section 28.1 of the Act. This includes an adjusted standard sought under 35 Ill. Adm. Code 212.126 and 35 Ill. Adm. Code 720. This Subpart must be read in conjunction with 35 Ill. Adm. Code Part 101 which contains procedures generally applicable to all adjudicatory proceedings before the Board. In the event of a conflict between the requirements of 35 Ill. Adm. Code 101 and those of this Subpart, the provisions of this Subpart apply.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.402 Initiation of Proceeding

A person may initiate an adjusted standard proceeding by filing a petition that meets the requirements of Section 104.406 of this Part. A petition for an adjusted standard (petition) may be filed either jointly with the Agency or singly under the filing requirements of 35 Ill. Adm. Code 101. If filed singly, the petitioner must also serve the petition upon the Agency in accordance with 35 Ill. Adm. Code 101. Additionally, a person may file a petition and request the Agency to join as a co-petitioner as set forth in Section 104.404.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.404 Request to Agency to Join as Co-Petitioner

- a) The Agency may, in its discretion, act as a co-petitioner in any adjusted standard proceeding.

- b) Any person may request Agency assistance in initiating a petition for adjusted standard. The Agency may require the person to submit to the Agency any background information in the person's possession relevant to the adjusted standard that is sought.
- c) Discretionary decisions made by the Agency under this Section are not appealable to the Board.
- d) Subsequent to the filing of the petition and prior to hearing, the Board will grant the Agency co-petitioner status upon joint motion of the Agency and the petitioner who originally filed the petition.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.406 Petition Content Requirements

If the Agency is a co-petitioner, the petition must so state. The petition must contain headings corresponding to the informational requirements of each subsection of this Section. If the petitioner believes that any of the informational requirements are not applicable to the specific adjusted standard requested, the petitioner must so state and explain his reasoning. The following information must be contained in the petition:

- a) A statement describing the standard from which an adjusted standard is sought. This must include the Illinois Administrative Code citation to the regulation of general applicability imposing the standard as well as the effective date of that regulation;
- b) A statement that indicates whether the regulation of general applicability was promulgated to implement, in whole or in part, the requirements of the CWA (33 USC 1251 et seq.), Safe Drinking Water Act (42 USC 300(f) et seq.), Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601 et seq.), CAA (42 USC 7401 et seq.), or the State programs concerning RCRA, UIC, or NPDES (see 415 ILCS 5/28.1);
- c) The level of justification as well as other information or requirements necessary for an adjusted standard as specified by the regulation of general applicability or a statement that the regulation of general applicability does not specify a level of justification or other requirements (see 415 ILCS 5/28.1 and Section 104.426 of this Part);
- d) A description of the nature of the petitioner's activity that is the subject of the proposed adjusted standard. The description must include the location of, and area affected by, the petitioner's activity. This description must also include the number of persons employed by the petitioner's facility at issue, age of that facility, relevant pollution control equipment already in use, and the qualitative

and quantitative description of the nature of emissions, discharges or releases currently generated by the petitioner's activity;

- e) A description of the efforts that would be necessary if the petitioner was to comply with the regulation of general applicability. All compliance alternatives, with the corresponding costs for each alternative, must be discussed. The discussion of costs must include the overall capital costs as well as the annualized capital and operating costs;
- f) A narrative description of the proposed adjusted standard as well as proposed language for a Board order that would impose the standard. Efforts necessary to achieve this proposed standard and the corresponding costs must also be presented;
- g) The quantitative and qualitative description of the impact of the petitioner's activity on the environment if the petitioner were to comply with the regulation of general applicability as compared to the quantitative and qualitative impact on the environment if the petitioner were to comply only with the proposed adjusted standard. To the extent applicable, cross-media impacts must be discussed. Also, the petitioner must compare the qualitative and quantitative nature of emissions, discharges or releases that would be expected from compliance with the regulation of general applicability as opposed to that which would be expected from compliance with the proposed adjusted standard;
- h) A statement that explains how the petitioner seeks to justify, under the applicable level of justification, the proposed adjusted standard;
- i) A statement with supporting reasons that the Board may grant the proposed adjusted standard consistent with federal law. The petitioner must also inform the Board of all procedural requirements applicable to the Board's decision on the petition that are imposed by federal law and not required by this Subpart. Relevant regulatory and statutory authorities must be cited;
- j) A statement requesting or waiving a hearing on the petition (under Section 104.422(a)(4) a hearing will be held on all petitions for adjusted standards filed under 35 Ill. Adm. Code 212.126);
- k) The petition must cite to supporting documents or legal authorities whenever they are used as a basis for the petitioner's proof. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes, and reported cases must be appended to the petition;
- l) Any additional information that may be required in the regulation of general applicability.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.408 Petition Notice Requirements

- a) *The petitioner shall submit to the Board proof that, within 14 days after the filing of the petition, it has published notice of the filing of the petition by advertisement in a newspaper of general circulation in the area likely to be affected by the petitioner's activity that is the subject of the adjusted standard proceeding. [415 ILCS 5/28.1]*

- b) The title of the notice must be in the form as follows: "Notice of Petition by (petitioner's name) for an Adjusted Standard before the Illinois Pollution Control Board." The information in the notice must be presented so as to be understood in accordance with the context of this Section's requirements. The notice must contain:
 - 1) The name and address of the petitioner and the statement that the petitioner has filed with the Board a petition for an adjusted standard;
 - 2) The date upon which the petition was filed;
 - 3) The Board docket number;
 - 4) The regulatory standard (with appropriate Administrative Code citation) from which an adjusted standard is sought;
 - 5) The proposed adjusted standard;
 - 6) A general description of the petitioner's activity that is the subject of the adjusted standard proceeding, and the location of that activity; and
 - 7) In the concluding portion of the notice:

"Any person may cause a public hearing to be held in the above-described adjusted standard proceeding by filing a hearing request with the Illinois Pollution Control Board within 21 days after the date of the publication of this notice. The hearing request should indicate the docket number for the adjusted standard proceeding, as found in this notice. The hearing request must be mailed to the Clerk, Illinois Pollution Control Board, 100 W. Randolph Street, Suite 11-500, Chicago, Illinois 60601, or filed electronically through COOL, located on the Board's website (www.ipcb.state.il.us)."

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.410 Proof of Petition Notice Requirements

Within 30 days after the filing of the petition, the petitioner must file a certificate of publication, issued by the publisher of the petition notice certifying the publication of that notice. The certificate must be issued in accordance with Section 1 of the Notice by Publication Act [715 ILCS 5/1].

Section 104.412 Effect of Filing a Petition: Stay

- a) *If any person files a petition for an individual adjusted standard in lieu of complying with the applicable regulation within 20 days after the effective date of the regulation, the operation of the regulation shall be stayed as to such person pending the disposition of the petition; provided, however, that the operation of any regulation shall not be stayed if that regulation was adopted by the Board to implement, in whole or in part, the requirements of the federal Clean Air Act, Safe Drinking Water Act or Comprehensive Environmental Response, Compensation, and Liability Act, or the State RCRA, UIC or NPDES programs. [415 ILCS 5/28.1(e)]*
- b) *Within 20 days after the effective date of any regulation that implements in whole or in part the requirements of the Clean Air Act, if any person files a petition for an individual adjusted standard in lieu of complying with the regulation, such source will be exempt from the regulation until the Board makes a final determination on the petition. If the regulation adopted by the Board from which the individual adjusted standard is sought replaces a previously adopted Board regulation, the source shall be subject to the previously adopted Board regulation until final action is taken by the Board on the petition. [415 ILCS 5/28.1(f)]*

Section 104.414 Dismissal of Petition

The Board may at any time dismiss a petition for any of the following reasons:

- a) The Board determines that the petition is frivolous, duplicative, or deficient with respect to the requirements of Sections 104.406, 104.408, and 104.410; or
- b) The Board determines that the petitioner is not pursuing disposition of the petition in a timely manner.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.416 Agency Recommendation and Petitioner Response

- a) Unless otherwise ordered by the hearing officer or the Board, the recommendation must be filed with the Board within 45 days after the filing of the petition or amended petition, or where a hearing has been scheduled, at least 30 days before

hearing, whichever is earlier. The recommendation must set forth the rationale for the Agency's position and may present any information which the Agency believes is relevant to the Board's consideration of the proposed adjusted standard. If the Agency recommends a denial of the petition due to informational deficiencies within the petition, the recommendation must identify the types of information needed to correct the deficiencies.

- b) At a minimum, the Agency must address and respond to the petition with respect to each issue raised by the requirements of Section 104.406(a) through (j).
- c) The recommendation must cite to supporting documents or legal authorities whenever they are used as a basis for the Agency's conclusion. Relevant portions of the documents and legal authorities other than Board decisions, State regulations, statutes and reported cases must be appended to the recommendation if not already in the record of the proceeding.
- d) The petitioner may file a response to the recommendation within 14 days after the date of service of the recommendation.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.418 Amended Petition, Amended Recommendation, and Amended Response

- a) Amended Petition. The petitioner may amend its petition at any time. The amendment must be in writing and filed with the Board unless made orally at hearing. If the petitioner amends the petition so that the amendment is a substantive change to the requested relief in that it requests additional or alternative relief, petitioner must re-notice the amended petition under Section 104.408.
- b) Amended Recommendation. The Agency may amend its recommendation at any time, even if the petitioner has not amended its petition, if the amendment does not cause material prejudice. The amendment must be in writing and filed with the Board unless made orally at hearing.
- c) Amended Response. The petitioner may file a reply to a written amended recommendation within 14 days after the date of receipt of the amended recommendation or within 14 days after the hearing when the Agency orally amended its recommendation.
- d) Written amendments to the petition or recommendations need not repeat the entire unchanged portion of the original filing provided that a sufficient portion of the original filing is repeated so that the context of the amendment is made clear.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.419 Insufficient Petition

If the Board finds the petition fails to contain information required by Section 104.406, the Board may order the petitioner to supplement the information contained in the petition through its own order or through a hearing officer order. Filings made in response to the order constitute an amended petition and will be subject to requirements of Section 104.418. Alternatively, under Section 104.414, the Board may dismiss the petition for lack of sufficient information. Failure of the Board to require supplemental information does not preclude a later finding that the information provided is insufficient to support grant of an adjusted standard, or constitute a Board decision on the merits of the petition.

(Source: Added at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.420 Request for Public Hearing

- a) Any person can request that a public hearing be held in an adjusted standard proceeding. The requests must be filed not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408. Requests for hearing must make reference to the Board docket number assigned to the proceeding. A copy of each timely hearing request will be served upon the petitioner and Agency by the Clerk in accordance with 35 Ill. Adm. Code 101.304(c). Public participation at the hearing must be in accordance with 35 Ill. Adm. Code 101.110 and 101.628.
- b) Where all parties and participants who have requested a hearing under this Subpart have withdrawn their requests for a hearing, the hearing will not be held unless the Board in its discretion deems it advisable.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.422 Public Hearing

- a) A public hearing will be held and the Board will assign a hearing officer to an adjusted standard proceeding when:
 - 1) The petitioner requests a hearing be held; or
 - 2) The Board receives a hearing request by any person under Section 104.420, not later than 21 days after the date of the publication of the petition notice in accordance with Section 104.408; or
 - 3) The Board *in its discretion determines that a hearing would be advisable* [415 ILCS 5/28.1]; or

- 4) The adjusted standard is sought under 35 Ill. Adm. Code 212.126.
- b) The hearing officer will attempt to consult with the petitioner and the Agency before setting a time and place for a hearing.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.424 Hearing Notice

After receiving notification from the hearing officer of the scheduled hearing date, the Clerk will cause the publication of a hearing in accordance with Section 28.1 of the Act [415 ILCS 5/28.1] and 35 Ill. Adm. Code 101.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.426 Burden of Proof

The burden of proof in an adjusted standard proceeding is on the petitioner.

- a) *If the regulation of general applicability does not specify a level of justification required of a petitioner to qualify for an adjusted standard, the Board may grant individual adjusted standards whenever the Board determines, upon adequate proof by petitioner, that:*
 - 1) *factors relating to that petitioner are substantially and significantly different from the factors relied upon by the Board in adopting the general regulation applicable to that petitioner;*
 - 2) *the existence of those factors justifies an adjusted standard;*
 - 3) *the requested standard will not result in environmental or health effects substantially and significantly more adverse than the effects considered by the Board in adopting the rule of general applicability; and*
 - 4) *the adjusted standard is consistent with any applicable federal law. [415 ILCS 5/28.1(c)]*
- b) If the regulation of general applicability specifies a level of justification for an adjusted standard, the Board may adopt the proposed adjusted standard, if the petitioner proves the level of justification specified by the regulation of general applicability.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

Section 104.428 Board Action

- a) The Board may grant an adjusted standard *for persons who can justify such an adjustment consistent with Section 27(a) of the Act.* [415 ILCS 5/28.1(a)] In adopting adjusted standards, the Board may impose such conditions as may be necessary to accomplish the purposes of the Act.
- b) Subsequent to the Board's adoption of an adjusted standard, the Board will publish, in the Environmental Register, the name of the petitioner, date of the Order that adopted the adjusted standard, and a brief narrative description of the adopted adjusted standard.
- c) *Board orders and opinions shall be maintained for public inspection by the Clerk of the Board and a listing of all determinations made pursuant to Section 28.1 of the Act shall be published in the Illinois Register and the Environmental Register at the end of each fiscal year.* [415 ILCS 5/28.1(d)] Board opinions and orders will also be available from the Board's website.

(Source: Amended at 41 Ill. Reg. 10049, effective July 5, 2017)

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

(Source: Repealed at 29 Ill. Reg. 8803, effective June 8, 2005)

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

Section 104.500 Purpose

- 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. 7922, effective April 27, 2018)

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. 7922, effective April 27, 2018)

Section 104.510 Severability

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. 7922, effective April 27, 2018)

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.

"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. 7922, effective April 27, 2018)

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 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. Reg7922, effective April 27, 2018)

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:
 - 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.
 - 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. 7922, effective April 27, 2018)

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);
- 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;

- 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. Reg7922, effective April 27, 2018)

Section 104.535 Agency Response

- 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. 7922, effective April 27, 2018)

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.

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. 7922, effective April 27, 2018)

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. 7922, effective April 27, 2018)

Section 104.550 Recommendation and Response

- 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.

(Source: Added at 42 Ill. Reg. 7922, effective April 27, 2018)

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.
 - 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. 7922, effective April 27, 2018)

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;
 - 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. 7922, effective April 27, 2018)

Section 104.565 Opinion and Order

- 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.

- 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.

- 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. 7922, effective April 27, 2018)

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.
 - 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. 7922, effective April 27, 2018)

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. 7922, effective April 27, 2018)

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:
 - 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. 7922, effective April 27, 2018)

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. 7922, effective April 27, 2018)

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.
- 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. 7922, effective April 27, 2018)