

ILLINOIS POLLUTION CONTROL BOARD

August 17, 2017

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

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by C.K. Zalewski):

On August 9, 2017, the Illinois Environmental Protection Agency (IEPA) filed amendments to the Board's procedural rules. IEPA proposes to add subpart E to 35 Ill. Adm. Code 104 (Regulatory Relief Mechanism). The proposal addresses time limited water quality standards (TLWQS), a new mechanism for regulatory relief recently enacted in Public Act 99-937. Accompanying the proposal were documents including IEPA's Statement of Reasons (SR). *See* 35 Ill. Adm. Code 102.202(b).

Public Act 99-937, effective February 24, 2017, amends the Environmental Protection Act (Act) to allow the Board to issue TLWQS. TLWQS are a federally approvable water quality standard variances consistent with federal rules. Before enactment of Public Act 99-937, the Act allowed only individual dischargers to obtain a variance. Under Public Act 99-937, not only a single discharger but multiple dischargers may seek a TLWQS. SR at 6. TLWQS may also address standards in a waterbody or waterbody segment, or a watershed. *Id.* IEPA's proposal sets forth the procedures necessary for the Board to consider and to adopt TLWQS pursuant to Public Act 99-0937. *Id.*

Below, the Board provides a brief overview of IEPA's proposal and then accepts the proposal. The Board also explains the deadlines imposed by Public Act 99-937 on the Board and IEPA. Because of these deadlines, the Board will proceed to first notice under the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-5 *et seq.* (2016)) without commenting on the merits of the proposal.

**PROPOSAL**

Under Public Act 99-937, IEPA had six months after the effective date of the Act to propose procedural rules to the Board and the Board must adopt those rules nine months after the rules are proposed. 415 ILCS 5/38.5(k), added by P.A. 99-937, eff. Feb. 24, 2017. Therefore, the Board must adopt the proposed rules by May 9, 2018, and the regularly scheduled Board meeting before that date would be May 3, 2018.

IEPA's proposal explains what a TLWQS is and how it will be obtained. SR at 7. Additionally, the proposal explains how a TLWQS can be used. IEPA's proposal specifies the different parties to a TLWQS proceeding (*i.e.* petitioners and participants) and the types of notice

and service required for TLWQS proceedings. *Id.* The proposed rules also set forth provisions of the statutorily created stay. Under Section 38.5(h)(3) of the Act (415 ILCS 5/38.5(h)(3) added by P.A. 99-937, eff. Feb. 24, 2017), if a time-limited water quality standard petition is filed within 35 days after the effective date of the water quality standard from which relief is sought, the effectiveness of the water quality standard shall be stayed. *Id.* In addition, a stay of a water quality standard may also occur if any member of a class of dischargers identified by the Board files a TLWQS petition before the established deadline. *Id.*

IEPA's proposal is modeled after the federal rules governing this type of regulatory relief mechanism at 40 C.F.R. § 131.14. SR at 8. IEPA states that the proposed rule clearly lays out what is required of a petitioner, IEPA, and the Board. *Id.* IEPA's proposal intends to clarify the role participants may have in a time-limited water quality standard proceeding. *Id.*

### **ACCEPTANCE OF PROPOSAL**

The Board finds that IEPA's proposal satisfies the content requirements (35 Ill. Adm. Code 102.202) and accepts the proposal. Because the Board must adopt this rule by May 9, 2018, the Board will begin the IAPA first notice procedures immediately; however, the Board makes no comment on the merits of the proposal. The Board made nonsubstantive changes to the rule to reflect the appropriate style for publication. Also, the Board notes that under the Act, a hearing on procedural rules is not required. *See* 415 ILCS 5/26 and 27 (2016). However, given the nature of this procedural rule and the proposed new relief mechanism, the Board will schedule a hearing. Therefore, the Board directs its assigned hearing officer to schedule and proceed to hearing under the rulemaking provisions of the Act and the Board's procedural rules (415 ICLS 5/27, 28 (2016); 35 Ill. Adm. Code 102).

### **ORDER**

The Board accepts the proposal for hearing and directs the hearing officer to schedule a hearing in this proceeding. The Board also directs the Clerk to cause publication of the rule amendments in the addendum to this order in the *Illinois Register* pursuant to the Illinois Administrative Procedure Act (5 ILCS 5-5 *et seq.* (2016)).

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 17, 2017, by a vote of 5-0.



Don A. Brown, Clerk  
Illinois Pollution Control Board