



OFFICE OF THE SECRETARY OF STATE

JESSE WHITE • Secretary of State

September 1, 2017

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

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CLERK'S OFFICE
SEP -7 2017
STATE OF ILLINOIS
Pollution Control Board

Dear DON BROWN

Your rules Listed below met our codification standards and have been published in Volume 41, Issue 36 of the Illinois Register, dated 9/8/2017.

PROPOSED RULES

Regulatory Relief Mechanisms
35 Ill. Adm. Code 104

11236

Point of Contact: Nancy Hoepfner

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

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NOTICE OF PROPOSED AMENDMENTS

1) Heading of the Part: Regulatory Relief Mechanisms

2) Code Citation: 35 Ill. Adm. Code 104

<u>Section Numbers:</u>	<u>Proposed Actions:</u>
104.500	New Section
104.505	New Section
104.510	New Section
104.515	New Section
104.520	New Section
104.525	New Section
104.530	New Section
104.535	New Section
104.540	New Section
104.545	New Section
104.550	New Section
104.555	New Section
104.560	New Section
104.565	New Section
104.570	New Section
104.575	New Section
104.580	New Section
104.585	New Section
104.590	New Section

4) Statutory Authority: Implementing and authorized by Sections 4, 5 and 38.5 of the Illinois Environmental Protection Act [415 ILCS 5/5 and 38.5, as amended by P.A. 99-937, eff. 2-24-17].

5) A Complete Description of the Subjects and Issues Involved: Public Act 99-937, effective February 24, 2017, amends the Environmental Protection Act (Act) to allow the Board to issue time limited water quality standards (TLWQS). TLWQS are a new relief mechanism for adoption of federally approvable water quality standard variances consistent with federal rules. Under Public Act 99-937, not only a single discharger but multiple dischargers may seek a TLWQS. TLWQS may also address standards in a waterbody or waterbody segment, or a watershed. IEPA's proposal sets forth the procedures necessary to adopt TLWQS pursuant to Public Act 99-0937. The proposal explains what a TLWQS is and how it will be obtained. Additionally, the proposal explains how a TLWQS can be used, specifies the different parties to a TLWQS proceeding (*i.e.* petitioners and participants), and the types of notice and service required

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for TLWQS proceedings. The proposed rules also set forth provisions of the statutorily created stay.

- 6) Published studies or reports, and sources of underlying data, used to compose this rulemaking: None
- 7) Will this proposed rulemaking replace an emergency rule currently in effect? No
- 8) Does this rulemaking contain an automatic repeal date? No
- 9) Does this proposed rulemaking contain incorporations by reference? No
- 10) Are there any other proposed Amendments pending on this Part? No
- 11) Statement of Statewide Policy Objectives: This proposed rulemaking does not create or enlarge a State mandate, as defined in Section 3(b) of the State Mandates Act. [30 ILCS 805/3(b)].
- 12) Time, Place, and Manner in which interested persons may comment on this proposed rulemaking: The Board will accept written public comments on this proposal for a period of at least forty-five (45) days after the date of publication in the Illinois Register. Public comments must be filed with the Clerk of the Board. Public comments should reference Docket R18-18 and be addressed to:

Clerk's Office
Illinois Pollution Control Board
JRTC
100 W. Randolph St., Suite 11-500
Chicago, IL 60601

Public comments may also be filed electronically through the Clerk's Office On-Line (COOL) on the Board's website at www.ipcb.state.il.us.

Interested persons may request copies of the Board's opinion and order in R18-18 by calling the Clerk's office at 312-814-3620, or may download copies from the Board's Web site at www.ipcb.state.il.us.

- 13) Initial Regulatory Flexibility Analysis:
 - A) Types of small businesses, small municipalities and not for profit corporations

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affected: Any small business, municipality or not for profit that would seek relief from a water quality standard as a discharger to a waterbody or watershed.

B) Reporting, bookkeeping or other procedures required for compliance: None

C) Types of Professional skills necessary for compliance: None

14) Regulatory Agenda on which this rulemaking was summarized: July 2017

The full text of the Proposed Amendments begins on the next page:

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

PART 104

REGULATORY RELIEF MECHANISMS

SUBPART A: GENERAL PROVISIONS

Section	
104.100	Applicability
104.102	Severability
104.104	Definitions
104.106	Petitions and Hearings

SUBPART B: VARIANCES

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

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104.244 Variance Conditions
104.246 Performance Bonds
104.248 Objection to Conditions

SUBPART C: PROVISIONAL VARIANCES

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

SUBPART D: ADJUSTED STANDARDS

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

SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS

Section

104.500 Purpose
104.505 Applicability and Use
104.510 Severability
104.515 Definitions

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

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

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

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

SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS

Section 104.500 Purpose

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- a) This Subpart sets forth procedures for obtaining a time-limited water quality standard. A time-limited water quality standard provides relief from water quality standards as set forth in 35 Ill Adm. Code 302 and 303.
- b) This Subpart must be read in conjunction with 35 Ill. Adm. Code 101. 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: Added at 41 Ill. Reg. _____, effective _____)

Section 104.505 Applicability and Use

- a) A time-limited water quality standard proceeding is a non-adjudicatory proceeding.
- b) A time-limited water quality standard may be adopted for a single discharger, multiple dischargers, a watershed, water body, or a waterbody segment.
- c) The extent and coverage of a time-limited water quality standard must be set forth in the Board's order as specified in Section 104.565.
- d) A time-limited water quality standard, once adopted by the Board and approved by United States Environmental Protection Agency, must be the applicable standard for the purposes of the Clean Water Act in developing National Pollutant Discharge Elimination System permit limits and requirements under 35 Ill. Adm. Code Part 309 for the term of the time-limited water quality standard. Any limitations and requirements necessary to implement the time-limited water quality standard must be included as enforceable conditions of the National Pollutant Discharge Elimination System permit for any permittee granted coverage under the time-limited water quality standard by the Board or Agency.
- e) The Agency may use an approved time-limited water quality standard when issuing certifications under Section 401 of the Clean Water Act.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.510 Severability

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

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(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.515 Definitions

a) Unless defined in subsection (b), words must have the meaning as defined in the Act and 35 Ill. Adm. Code 101. Subpart B.

b) The following definitions must apply to this subpart:

A "time-limited water quality standard" 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 the time-limited water quality standard.

"Pollutant minimization program" means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.520 General Procedures

a) A time-limited water quality standard may be sought for multiple uses and multiple parameters by:

1) persons who file with the Board a petition for a time-limited water quality standard under Section 38.5 of the Act; and

2) persons who have 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 time-limited water quality standard under Section 38.5 of the Act.

b) Parties

1) Petitioner.

A) For a single discharger time-limited water quality standard, the person seeking the time-limited water quality standard must be named the Petitioner.

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- B) For multiple discharger, watershed, waterbody, and waterbody segment time-limited water quality standard, all dischargers seeking the time-limited water quality standard may act collectively as a single petitioner after the Board has established classes under Section 104.540.
- 2) The Agency must be a participant.
- 3) Any person may become a participant in the time-limited water quality standard proceeding.
- 4) The Board must 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 must include in the notice list all dischargers or classes of dischargers affected by the water quality standard requested in the petition or amended petition as identified by the Agency under Section 104.535(b)(1).
- c) Filing and Service. Unless otherwise provided by this Part, all documents must be served and filed in accordance with 35 Ill. Adm. Code 101.Subpart C.

BOARD NOTE: The Board encourages persons addressing the same pollutants in the same waterbody, waterbody segment or watershed to join in filing a joint petition whenever possible, collectively satisfying the burden of proof as outlined in Section 104.555. When multiple petitions addressing the same pollutants in the same waterbody, waterbody segment or watershed are filed separately, the Board may join additional parties under 35 Ill. Adm. Code 101.403 and/or to consolidate the petitions under 35 Ill. Adm. code 101.406. The Board also may incorporate materials and evidence filed in support of one petition as evidence in support of a petition addressing similar issues. 35 Ill. Adm. Code 101.306.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.525 Stay

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

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- 1) any person who has a petition for a variance seeking relief from a water quality standard under Section 35 of the Act converted into a petition for a time-limited water quality standard under Section 38.5 of the Act;
 - 2) any person who files a petition for a time-limited water quality standard within 35 days after the effective date of the water quality standard from which relief is sought; and
 - 3) any person who is a member of a class of dischargers that is identified in a Board order under Section 104.540 that concerns a petition for a time-limited water quality standard that was filed within 35 days after the effective date of the water quality standard from which relief is sought and who files a petition for a time-limited water quality standard before the deadline established for that class under Section 104.540.
- b) For any person for which the effectiveness of the water quality standard is stayed under subsection (a), and the Board has determined that his or her petition is in substantial compliance as provided in Section 104.545, the stay must continue until the Board:
- 1) denies the petition and all rights to judicial review of the Board's order denying the petition are exhausted; or
 - 2) adopts the time-limited water quality standard and the United States Environmental Protection Agency either:
 - A) approves the time-limited water quality standard; or
 - B) disapproves the time-limited water quality standard for failure to comply with 40 C.F.R. 131.14.
- c) For any person for which the effectiveness of the water quality standard is stayed under subsection (a), and the Board has determined that his or her petition is not in substantial compliance as provided in Section 104.545, the following must apply:
- 1) if the person files an amended petition by the deadline established by the Board in Section 104.540, and the amended petition is in substantial compliance as provided in Section 104.545 then the stay must continue until the Board:

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- A) denies the petition and all rights to judicial review of the Board's order denying the petition are exhausted; or
- B) adopts the time-limited water quality standard and the United States Environmental Protection Agency either:
 - i) approves the time-limited water quality standard; or
 - ii) disapproves the time-limited water quality standard for failure to comply with 40 C.F.R. 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 provided in Section 104.545, then the Board must deny the amended petition, and the stay must continue until all rights to judicial review are exhausted.
- 3) if the person fails to file an amended petition by the deadline established by the Board in Section 104.540, the Board must dismiss the original petition and the stay must continue until all rights to judicial review are exhausted.
- d) If a person other than a person described in subsection (a) files a petition for a time-limited water quality standard, then the effectiveness of the water quality standard from which relief is sought must not be stayed as to that person, but the person may proceed with his or her petition for a time-limited water quality standard by complying with 40 C.F.R. 131.14, Section 38.5 of the Act, and the rules under this Part.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.530 Petition Contents

- a) All time-limited water quality standard petitions or amended petitions must include:
 - 1) A statement indicating the type of time-limited water quality standard sought:
 - A) single discharger,

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- B) multiple dischargers, or
- C) watershed, water body, or waterbody segment;
- 2) identification of the pollutant or water quality parameter for which a time-limited water quality standard 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 time-limited water quality standard will apply;
- 5) designated uses of the waterbody 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 and facts that support compliance with the water quality standards regulation or regulations cannot be achieved by any required compliance date;
- 7) a demonstration that attainment of the designated use(s) and criterion(ia) is not feasible throughout the term of the time-limited water quality standard because of one or more of the factors listed in Section 104.560(b).
- 8) an identification, including the Board's docket number, of any prior water quality standards variances/time-limited water quality standards issued to the petitioner, watershed, water body, waterbody segment, and if known, the petitioner's predecessors, concerning similar relief;
- 9) an identification, by name and permit number, of the permits held by dischargers which may be affected by the adoption of the time-limited water quality standard;
- 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 pollution minimization plans currently being implemented or have been implemented;

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- 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 time-limited water quality standard;
 - 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 time-limited water quality standard that is only as long as necessary to achieve the highest attainable condition, which includes a description of the relationship between the proposed pollution control activities and the proposed term;
 - 15) a proposed reevaluation schedule to reevaluate the highest attainable condition during the term of the time-limited water quality standard if the proposed term of the time-limited water quality standard is longer than five years under Section 104.580; and
 - 16) any other documentation required to support the petitioner's burden of proof in Section 104.560.
- b) For a watershed, water body or waterbody segment time-limited water quality standard, the petition or amended petition must also include:
- 1) identification and documentation of any cost-effective and reasonable best management practices for non-point source controls related to the pollutant or water quality parameter and watershed, water body, or waterbody segment specified in the time-limited water quality standard 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 water quality standard, an explanation of the extent best management practices for non-point source controls were implemented to address the pollutant or water quality parameter subject to the time-limited water quality standard and the water quality progress achieved.

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- c) For a watershed, water body or waterbody segment time-limited water quality standard, 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 National Pollutant Discharge Elimination System 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 time-limited water quality standard.
- d) For a multiple discharger time-limited water quality standard, the petition may 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 National Pollutant Discharge Elimination System 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 time-limited water quality standard.

(Source: Added at 41 Ill. Reg. _____, effective _____)

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 time-limited water quality standard, 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 substantially compliant petition to stay the effectiveness of a water quality standard or standards under Section 104.525.

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- 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 41 Ill. Reg._____, effective _____)

Section 104.540 Board Established Classes and Deadlines

Within 30 days after receipt of a response from the Agency under Section 104.535, the Board must enter a final order which delineates the geographic scope of the time-limited water quality standard, and establishes the discharger or classes of dischargers that may be covered by the time-limited water quality standard and 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 time-limited water quality standard, if the petition has not been previously filed; or
- b) an amended petition for a time-limited water quality standard, if the petition has been previously filed and it is necessary to file an amended petition to maintain a stay under Section 104.525.

(Source: Added at 41 Ill. Reg._____, effective _____)

Section 104.545 Substantial Compliance Assessment

- a) As soon as practicable after entering an order under Section 104.540, the Board must 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 is not in substantial compliance, then the Board must identify the deficiencies in the 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 is not in substantial compliance then:

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- 1) the petitioner must file an amended petition by the deadlines adopted by the Board under Section 104.540; and
- 2) the Board must enter, after the deadlines established under Section 104.540, a final order that determines whether the amended petition is in substantial compliance with Section 104.530
- e) Any party- 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 41 Ill. Reg. _____, effective _____)

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 recommendation must include:
 - 1) The Agency's analysis of
 - A) whether the petitioner met its burden of proof as specified in Section 104.560, including petitioner's proposed highest attainable condition of the watershed, water body, or waterbody segment;
 - B) whether the proposed time-limited water quality standard is consistent with applicable federal laws and regulations, and satisfies the requirements of Section 38.5 of the Act and the rules under this Part; and
 - C) the petitioner's proposed eligibility criteria to be adopted by the Board to be used at the time of renewal or modification of an individual's federal National Pollutant Discharge Elimination System 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 time-limited water quality standard, when applicable;

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- 2) any information the Agency believes 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 time-limited water quality standard; and
 - 4) the Agency's recommended term of the time-limited water quality standard.
- 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, including a copy of the time-limited water quality standard petition, to USEPA.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.555 Hearing

- a) The Board must hold a public hearing on the petition.
- b) Hearing Notice
 - 1) The Hearing Officer will schedule the hearing, and give the petitioner, participants and those individuals on the notice list maintained by the Board under Section 104.520(b)(4) at least 45 days' written notice of a hearing.
 - 2) The Clerk must 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 within 45 days of the hearing.
 - 3) The notice must identify the matters to be discussed at the hearing and must include information on the availability of relevant materials and procedures for obtaining further information.
 - 4) For a watershed, water body, or waterbody segment time-limited water quality standard, the notice must include identification and documentation

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

- c) The Board must make the following available to the public at least 30 days before the hearing:
- 1) reports, documents, data relevant to the discussion at the public hearing;
 - 2) the Agency recommendation; and
 - 3) for watershed, waterbody, and water body segment time-limited water quality standard petitions, the proposed best management practices for non-point 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 must schedule witnesses in advance to ensure maximum participation and allotment of adequate time. The Hearing Officer must 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 must inform the audience of the issues involved in the decision to be made, the considerations the Board will take into account, and the information which 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 time-limited water quality standard.
- h) The Illinois EPA must notify USEPA of the availability of the hearing transcript and inform USEPA of the comment deadline.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.560 Burden of Proof

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- a) The burden of proof is on the petitioner.
- b) The petitioner must provide justification that attainment of the designated use and criterion is not feasible throughout the term of the time-limited water quality standard because of one of the following factors:
 - 1) Naturally occurring pollutant concentrations prevent the attainment of the use;
 - 2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the use, unless these conditions may be compensated for by the discharge of sufficient volume of effluent discharges without violating State water conservation requirements to enable uses to be met;
 - 3) Human caused conditions or sources of pollution prevent the attainment of the use and 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 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 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 substantial and widespread economic and social impact; 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.
- c) The petitioner must demonstrate that the term of the time-limited water quality standard is only as long as necessary to achieve the highest attainable condition.

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This demonstration must justify the term of the time-limited water quality standard by describing the pollutant control activities to achieve the highest attainable condition, including those activities through a Pollutant Minimization Program.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.565 Opinion and Order

- a) Where the Board adopts a time-limited water quality standard, the Board must maintain, in its standards, the underlying designated use and criterion addressed by the time-limited water quality standard, unless the Board adopts and United States Environmental Protection Agency approves a revision to the underlying designated use and criterion consistent with 40 C.F.R. §131.10 and §131.11.
- b) A time-limited water quality standard may not be adopted if the designated use and criterion addressed by the time-limited water quality standard 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 Part 304.
- c) The Board may not adopt a time-limited water quality standard if petitioner fails to meet its burden of proof as set forth in Section 104.560.
- d) All orders adopting a time-limited water quality standard must 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 time-limited water quality standard applies;
 - ii) eligibility criteria that may be used by new or existing dischargers or classes of dischargers to obtain coverage under the time-limited water quality standard during its duration; and

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- iii) the list of persons covered under the time-limited water quality standard at the time of the Board's adoption.
 - B) Single Discharger
 - i) identification of the water body, or waterbody segment to which the time-limited water quality standard applies; and
 - ii) the person covered under the time-limited water quality standard.
- 3) The time-limited water quality standard requirements and conditions that apply throughout the term of the time-limited water quality standard
 - A) must represent the highest attainable condition of the watershed, water body, or waterbody segment applicable throughout the term of the time-limited water quality standard based on petitioner's demonstration required by Section 104.560; and
 - B) must not result in any lowering of the currently attained ambient water quality, unless the petitioner demonstrates that a time-limited water quality standard is necessary for restoration activities under Section 104.560(b)(7).
- 4) The highest attainable condition of the waterbody or water segment as a quantifiable expression of one of the following:
 - A) For a single discharger and a multiple discharger time-limited water quality standard:
 - 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 time-limited water quality standard, and

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the adoption and implementation of a Pollutant Minimization Program.

- B) For a time-limited water quality standard applicable to a watershed, water body, or a 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 time-limited water quality standard, and the adoption and implementation of a Pollutant Minimization Program.
- 5) A statement providing that the requirements of time-limited water quality standard are either the highest attainable condition identified at the time of the adoption of the time-limited water quality standard, or the highest attainable condition later identified during any reevaluation consistent with Section 104.580, whichever is more stringent.
- 6) The term of the time-limited water quality standard, expressed as an interval of time from the date of United States Environmental Protection Agency approval or a specific date.
- 7) For a time-limited water quality standard with a term greater than five years, a specified frequency to reevaluate the highest attainable condition pursuant Section 104.580, that must occur no less frequently than every five years after both Board and United States Environmental Protection Agency approval of the time-limited water quality standard.
- 8) A provision that the time-limited water quality standard will no longer be the applicable water quality standard for purposes of the Clean Water Act if the petitioner does not conduct a reevaluation consistent with the frequency specified in the time-limited water quality standard or the results are not submitted to the United States Environmental Protection Agency as required by Section 104.580.

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- e) Any party may file a motion for reconsideration under the rules in Section 101.520 of a final Board order entered under this Section.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.570 USEPA Review

- a) Before a time-limited water quality standard becomes effective for Clean Water Act purposes, the Agency must submit the time-limited water quality standard to the United States Environmental Protection Agency and obtain the United States Environmental Protection Agency's approval in accordance with Section 303(c) of the Clean Water Act and 40 C.F.R. §§131.20 and 131.21.
- b) The Agency must file the United States Environmental Protection Agency's decision with the Board.
- c) If USEPA disapproves of a Board adopted time-limited water quality standard the petitioner may file a Petition to Modify a Time-Limited Water Quality Standard.
- 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 time-limited water quality standard.
 - 2) The Board must automatically incorporate the record from the Board's proceeding adopting the time-limited water quality standard.
 - 3) The Board must accept public comments for at least 30 days after a petition to modify is filed.
 - 4) If the Board, in its discretion, concludes a hearing would be advisable, then a hearing must be held.
 - 5) Any order issued by the Board modifying a previously granted time-limited water quality standard must comply with Section 104.565.
 - 6) The Agency must submit any order issued by the Board modifying a previously granted time-limited water quality standard to USEPA for review and approval.

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(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.575 Coverage Under Board-Approved Time-Limited Water Quality Standard

- a) Any discharger that has not obtained a time-limited water quality standard may obtain coverage under a Board-approved time-limited water quality standard by satisfying, at the time of renewal or modification of that person's federal National Pollutant Discharge Elimination System (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 time-limited water quality standard.
- b) Any applicant obtaining coverage under a Board-approved time-limited water quality standard must comply with the requirements and conditions that apply throughout the term of the time-limited water quality standard established under Section 104.565(d)(3).
- c) Any applicant obtaining coverage under a Board-approved time-limited water quality standard must participate in any reevaluations conducted under Section 104.580.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.580 Reevaluation

- a) Proposed reevaluation. When a time-limited water quality standard has a term greater than five years and the Board accordingly sets a schedule for reevaluation:
 - 1) The petitioner and any person granted coverage under Section 104.575 must file its proposed reevaluation with the Board according to the reevaluation frequency set forth in the Board's order adopting the time-limited water quality standard under Section 104.565(d)(7).
 - 2) Petitioner must serve one copy of the proposed reevaluation on the Agency, each participant, and each member of the notice list maintained by the Board under Section 104.520(b)(4).
 - 3) The proposed reevaluation must assess the highest attainable condition using all existing and readily available information.
- b) The clerk must publicize notice of the proposed reevaluation on the Board's

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website and in a newspaper of general circulation in the county where the facility or pollution source is located.

- c) The Board must accept public comments for a period not shorter than 30 days.
- d) The Board must reevaluate the highest attainable conditions using all existing and readily available information.
- e) The Agency must submit the Board's reevaluation opinion and order to the United States Environmental Protection Agency for approval within 30 days of issuance of the Board's order.

(Source: Added at 41 Ill. Reg. _____, effective _____)

Section 104.585 Appeal Rights

Any person who is adversely affected or threatened by a final Board order entered under this Subpart may obtain judicial review of the Board order by filing a petition for review within 35 days after the date the Board order was served on the person affected by the order, under the provisions of the Administrative Review Law, and the rules adopted pursuant thereto, except that review must 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 41 Ill. Reg. _____, effective _____)

Section 104.590 Extension

- a) If, at the end of the time-limited water quality standard, the underlying designated use remains unattainable, the petitioner may seek an extension of an existing time-limited water quality standard, consistent with the requirements of this Subpart.
- b) A petition to extend a time-limited water quality standard previously granted by the Board is a new petition for a time-limited water quality standard 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 104.520(c) and 35 Ill. Adm. Code 101.302(e)(6).

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- c) In addition to the requirements of Section 104.530, the petition for extension of the time-limited water quality standard must contain:
- 1) A detailed explanation showing that satisfactory progress toward attaining the designated use has been made during the term of the prior time-limited water quality standard 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 time-limited water quality standard 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 time-limited water quality standard proceeding in accordance with 35 Ill. Adm. Code 101.306.

(Source: Added at 41 Ill. Reg. _____, effective _____)