

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

TO: Don Brown Marie Tipsord  
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(VIA ELECTRONIC MAIL) (VIA ELECTRONIC MAIL)

**(SEE PERSONS ON ATTACHED SERVICE LIST)**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Board PRE-FILED QUESTIONS FOR THE ILLINOIS EPA SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP, a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: October 2, 2017

By: /s/ Antonette R. Palumbo  
Antonette R. Palumbo

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**CERTIFICATE OF SERVICE**

I, Antonette R. Palumbo, the undersigned, on oath state the following:

That I have served the attached PRE-FILED QUESTIONS FOR THE ILLINOIS EPA SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP via electronic mail upon:

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That my email address is [apalumbo@ierg.org](mailto:apalumbo@ierg.org).

That the number of pages in the email transmission is seven.

That the email transmission took place before 5:00 p.m. on the date of October 2, 2017.

By:  /s/ Antonette R. Palumbo  
Antonette R. Palumbo

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

**PRE-FILED QUESTIONS FOR THE ILLINOIS EPA SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorney, Antonette R. Palumbo, and submits the following Pre-Filed Questions for the Illinois Environmental Protection Agency (“Agency”) for presentation at the hearing scheduled in the above-referenced matter:

1. The Board Note to Section 104.520 “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.” If a watershed workgroup or other entity filing collectively files a petition for a TLWQS, does the Agency intend that the stay apply to the individual facilities that are a part of watershed group?

2. Section 38.5(g) of the statute provides a petitioner with the opportunity to cure any deficiencies in the petition that have been identified by the Board. The statute also converts existing petitions for a variance into a petition for a time-limited water quality standard in Section 38.5(c). For these converted petitions, the Board, on April 12, 2017, established a deadline of 90 days after the Board adopts these rules for a compliant petition to be filed. On June 8, 2017, the Board found the pending petitions to not be compliant with 40 CFR 131.14. The substantial compliance assessment in proposed Section 104.545 requires the Board to determine a petition’s compliance with Section 104.530 (petition contents).

IERG is concerned that the Board has not satisfied the substantial compliance assessment as

contemplated by the statute and these proposed rules because the rules were not finalized at the time of the April 12 Order. Would the Agency support allowing the petitioners with pending TLWQS petitions to amend their petitions after the Board adopts these rules, then have the Board undertake a substantial compliance assessment based on the adopted rules, and then, if there are any new substantial compliance deficiencies issue a revised deadline for filing a substantially compliant petition?

3. Section 38.5(a) of the statute states “the Board may adopt, and may conduct non-adjudicatory proceedings to adopt, a time-limited water quality standard. . . .” Section 38.5(b) notes who can seek a TLWQS, stating “A time-limited water quality standard may be sought by: (1) persons who filed with the Board a petition for a time-limited water quality standard under this Section.” Section 38.5(d) specifies public notice and participation requirements, citing to 40 CFR 131.14, 40 CFR 25, and 40 CFR 131.20(b). Section 104.520(b) of the proposed rules sets forth who the parties to the non-adjudicatory proceeding are, including the petitioner (Section 104.520(b)(1)(A)); the Agency as a participant (Section 104.520(b)(2)); and any person who desires to be a participant (Section 104.520(b)(3)). IERG would like the Agency to explain the origin of Section 104.520(b)(3). The federal rules cited in the statute on appear to require public notice and an opportunity to comment, but do not provide any clarification on participants. How does any person become a participant?

4. Can a TLWQS be issued for a narrative water quality standard?

5. Some elements of the regulations regarding Pollutant Minimization Programs and pollutant minimization plans are unclear. “Pollutant Minimization Program” is defined in Section 104.515(b), but “pollutant minimization plan” is undefined. Section 104.530(a)(11)

requires petitioners to provide “a description and copy of all pollution minimization plans currently being implemented or have been implemented.” Section 104.530(a)(13) requires petitions to include “a demonstration of the pollutant control activities proposed to achieve the highest attainable condition, including those activities identified through a Pollutant Minimization Program.” Is a pollutant minimization plan part of the Pollutant Minimization Program?

6. Section 104.530(a)(12) requires the petition to include “the proposed highest attainable condition. . .including projected changes in the highest attainable condition throughout the proposed term of the time-limited water quality standard.” Could the Agency explain how the highest attainable condition is to be formulated?

7. Section 104.580 sets forth the process for reevaluations of TLWQS with terms that are greater than five years. Does the Agency envision this process to be initiated with the Board at a set point, i.e., so many months in advance of the expiration of the TLWQS?

8. Does the Agency believe that the variance process that is set forth in Section 35 of the Illinois Environmental Protection Act is still available for relief from a technology standard?

9. For a watershed TLWQS, is the protection afforded from a TLWQS for all dischargers within the watershed, or only those active in the proceeding? If it only covers those who participated in the proceeding, how will permitting for other dischargers within the affected watershed work?

10. Section 104.560 sets for the burden of proof that must be met in order to for the Board to grant a TLWQS. How is the burden of proof evaluated differently for the TLWQS factors in Section 104.560(b) than they were for the preceding water quality standard?

11. From a timing perspective, assuming a petition for a TLWQS is filed related to a newly adopted standard, should TLWQS proceedings progress to completion prior to U.S. EPA approval of the underlying water quality standard?

Thank you for your consideration. IERG reserves the right to supplement these Pre-Filed Questions.

Respectfully submitted,  
ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP

By: /s/ Antonette R. Palumbo  
Antonette R. Palumbo

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