

ILLINOIS POLLUTION CONTROL BOARD

February 8, 2018

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

Proposed Rule. Second Notice.

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

On August 9, 2017, the Illinois Environmental Protection Agency (IEPA or Agency) filed a proposal to amend the Board’s procedural rules. IEPA proposes adding Subpart E to 35 Ill. Adm. Code 104 (Regulatory Relief Mechanisms). The proposal addresses time-limited water quality standards (TLWQS), a new mechanism for regulatory relief created by Public Act 99-937, effective February 24, 2017. IEPA’s proposal includes its Statement of Reasons (SR).

Public Act 99-937 amended the Environmental Protection Act (Act) by adding a new Section 38.5, which authorizes the Board to issue, for the first time, TLWQS. 415 ILCS 5/38.5 (2016). TLWQS are “water quality standard variances.” TLWQS are consistent with the federal Clean Water Act and the rules of the United States Environmental Protection Agency (USEPA) and therefore are federally-approvable. Public Act 99-937 requires the Board to adopt TLWQS procedural rules within nine months after IEPA files its proposal.

During the first-notice period, the Board received numerous public comments, which the Board addresses in this opinion. Specifically, the Board addresses the four issues that generated the most discussion among rulemaking participants: the duration of a stay of an underlying water quality standard; the definition of “substantial compliance” of a TLWQS petition; the distinction between interim and final orders adopted through the TLWQS proceeding; and USEPA participation in Board proceedings on TLWQS petitions.

First, the Board finds that unambiguous statutory text of Section 38.5 of the Act requires the stay to end upon USEPA disapproval of an adopted TLWQS. Second, the Board finds that its “substantial compliance” assessment entails determining only whether a petition is complete, consistent with the Board’s long history of similar content review in variance and adjusted standard proceedings. Third, the Board finds that the procedural rules cannot designate as “interim” a substantial compliance order when Section 38.5 plainly designates it as “final.” And, because only legally binding orders are federally approvable, the procedural rules cannot designate as “interim” a Board order adopting a TLWQS. Fourth, on concerns over USEPA surprise disapprovals of adopted TLWQS—because the Board cannot force USEPA to participate in the TLWQS proceeding, the Board adds a requirement that IEPA file with the Board any comments it receives from USEPA. This will allow participants to address USEPA concerns during the Board proceeding.

This opinion also highlights other matters raised by participants and clarifications provided by IEPA that the Board considers helpful in understanding the proposed rules. These include the timelines and applicability of the TLWQS, petition content requirements, and the role of participants in supplying information. The Board generally accepts IEPA's proposed rule language, with the Board's modifications discussed below.

In this opinion, the Board first provides a brief legislative background, which is followed by this rulemaking's procedural history. The Board then addresses issues raised at hearing and in public comments during the first-notice period. The proposed second-notice rule amendments appear in the addendum following this opinion and order. The Board proposes these amendments for second-notice review by the Joint Committee on Administrative Rules (JCAR) under the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40(c) (2016)).

LEGISLATIVE BACKGROUND

To conform Illinois law to USEPA's rules on water quality standard variances, Public Act 99-937 was enacted in 2017 after a collaborative process involving many participants of this rulemaking. *See* SR at 3, 5. USEPA's rules, adopted on August 21, 2015, allow water quality standard variances for a single discharger, multiple dischargers, or a water body or waterbody segment when the applicable designated uses are not attainable in the near-term but may be attainable in the future. *See* Water Quality Standards Regulatory Revisions, Final Rule, 80 Fed. Reg. 51020 (Aug. 21, 2015); *see also* SR at 3. USEPA's rules define a "water quality standard variance" as a time-limited designated use and water quality criterion for a specific pollutant or water quality parameter that reflect the highest attainable condition during the term of the variance. *See* 40 C.F.R. § 131.3(o); *see also* SR at 3.

Before the General Assembly enacted Public Act 99-937, the Board's authority was limited to granting an individual "variance" to a discharger and only when the discharger successfully demonstrated that immediate compliance with the water quality standard would impose an "arbitrary and unreasonable hardship" on the discharger. 415 ILCS 5/35(a) (2016); *see also* SR at 5. Now, under Public Act 99-937, the Board is authorized to issue TLWQS, which are water quality standard variances that can apply to individual or multiple dischargers, as well as watersheds, water bodies, or waterbody segments. 415 ILCS 5/38.5(a) (2016); *see also* SR at 6.

PROCEDURAL HISTORY

On August 17, 2017, the Board issued an opinion and order accepting IEPA's proposal for first notice under the IAPA (5 ILCS 100/5-40(b) (2016)), without commenting on the merits of the proposal. The first-notice amendments were published in the *Illinois Register* on September 8, 2017 (41 Ill. Reg. 11236-62), which started a period of at least 45 days during which the Board must accept public comments on the proposal.

In its first-notice opinion and order, the Board provided a detailed overview of this rulemaking proposal and does not repeat it here. *See* Regulatory Relief Mechanisms: Proposed New 35 Ill. Adm. Code Part 104, Subpart E, R18-18, slip op. at 1-2 (Aug. 17, 2017). The Board explained that IEPA proposes procedures necessary for the Board to consider and adopt TLWQS under Public Act 99-937. *Id.* IEPA's proposal is modeled after USEPA's rules governing this

type of regulatory relief mechanism at 40 C.F.R. § 131.14. SR at 8. IEPA maintains that the proposed rules clearly state what is required of a petitioner, IEPA, and the Board and specify each participant's role in a TLWQS proceeding. *Id.*

IEPA had six months from the effective date of Public Act 99-937 to propose procedural rules to the Board and, as noted, the Board must adopt final rules no later than nine months after receiving IEPA's proposal. 415 ILCS 5/38.5(k) (2016). The Board, therefore, must adopt TLWQS procedural rules by May 9, 2018. The regularly-scheduled Board meeting before that date is April 26, 2018.

To meet the Board's statutory deadline, the hearing officer scheduled a hearing for October 10, 2017, to be continued, if necessary, on October 11, 2017. The hearing officer also directed participants to pre-file testimony for the hearing by September 11, 2017, and to pre-file questions based on that testimony by October 2, 2017. The Board received no pre-filed testimony. The Board received pre-filed questions from the Illinois Attorney General's Office (AG) (PQ 1), the Illinois Environmental Regulatory Group (IERG) (PQ 2), and Midwest Generation, LLC (MWGen) (PQ 3). The Board provided its pre-filed questions in an October 2, 2017 hearing officer order (Bd. PQ).

During the October 10, 2017 hearing, IEPA answered some of the pre-filed questions and stated that it would answer other pre-filed questions in writing after the hearing. IEPA also answered follow-up questions to those that were pre-filed. The transcript of the hearing became available on October 19, 2017 (Tr.).

On November 14, 2017, in addition to the answers provided at the hearing, IEPA filed its additional responses to pre-filed questions and questions asked at the hearing (PC 19; amended rules annexed to PC 19 cited as PC 19 Annex). The Board also received public comments from JCAR (PC 1), Jeff Shelden (PC 1a), Patty Weyhrich (PC 2), Andrew Daglas (PC 3), Alex Hlavacek (PC 4), Kelly J. Robbins (PC 5), James Mueller (PC 6), Shane and Amy Moon (PC 7), Chris Parson (PC 8), Zach Samaras (PC 9), Lara Smetana (PC 10), IERG (PC 11), the Environmental Groups (PC 12)¹, MWGen (PC 13), Rebecca Rowe (PC 14), and Metropolitan Water Reclamation District of Greater Chicago (PC 15). In addition, IERG (PC 16), the Environmental Groups (PC 17), and IEPA (PC 18) filed replies to public comments.

DISCUSSION

Below, the Board analyzes and resolves the issues raised during the first-notice period and related points. Four issues generated most comments from participants: stay; substantial compliance; interim and final orders; and USEPA participation in TLWQS proceedings. The Board discusses each of those issues below. The Board then discusses other concerns raised and amendments proposed by participants or the Board, such as clarifying TLWQS timelines; the scope of TLWQS applicability; definitions; and content requirements for TLWQS petitions. The Board generally accepts IEPA's rule modifications suggested in its November 14, 2017 filing

¹ The Illinois Chapter of the Sierra Club, Natural Resources Defense Council, Prairie Rivers Network, Openlands, Friends of Chicago River, Recovery On Water, and Little Village Environmental Justice Organization joined in submitting this comment and are referred to collectively as Environmental Groups.

(PC 19 Annex). The Board's edits to those suggested rule modifications are underlined or stricken through in this opinion.

Matters of Major Interest

Stay of Water Quality Standards for the Duration of TLWQS Proceedings

Under Section 38.5 of the Act, a new or amended water quality standard is stayed as to a discharger if that discharger files a TLWQS petition within 35 days after the effective date of the new or amended standard. *See* 415 ILCS 5/38.5(h)(1)(B) (2016); *see also* 415 ILCS 5/38.5(h)(1)(A), (C) (stay under other circumstances). The stay continues until the Board adopts the TLWQS and USEPA either approves or disapproves the TLWQS. *See* 415 ILCS 5/38.5(h)(2)(B), (4)(B). In addition, if the Board denies or dismisses a TLWQS petition, the stay continues until all appeals of the Board's decision are exhausted. *See* 415 ILCS 5/38.5(h)(2)(A), (4)(A), (5), (6).

MWGen asks that the Board continue the stay of the water quality standard after USEPA's disapproval of an adopted TLWQS. Specifically, MWGen wants the stay to last while the petitioner seeks modification of the TLWQS with the Board or until all appeals of USEPA's disapproval are exhausted. PC 13 at 8. MWGen argues that Section 38.5(h)(4)(B)(II) is ambiguous as applied to USEPA disapprovals. *Id.* And, even if the statutory text is not ambiguous, MWGen argues that the Board is not "compelled" to adopt rules that produce an arbitrary result not intended by the legislature. *Id.* at 9. MWGen claims that the proposed rules "produce a perverse" result: the stay for a petition rejected by the Board lasts until all state court appeals are exhausted, but the stay for a petition approved by the Board lasts only until USEPA disapproval. *Id.*

The Board finds that the language of Section 38.5(h)(4)(B) is not ambiguous. It clearly states that the stay continues until the Board "adopts" the TLWQS "*and* the United States Environmental Protection Agency either" approves or disapproves the TLWQS. 415 ILCS 5/38.5(h)(4)(B) (emphasis added). The primary rule of statutory construction is to ascertain and give effect to the legislature's intent. *See, e.g., Wisnasky-Bettorf v. Pierce*, 2012 IL 111253, ¶ 16. The "most reliable indicator" of the legislature's intent is the language of the statute. *In re J.L.*, 236 Ill. 2d 329, 339 (2010). That language must be given its "plain and ordinary meaning." *Pierce*, 2012 IL 111253, ¶ 16; *accord, e.g., In re M.I. v. J.B.*, 2016 IL 120232, ¶ 23.

Section 38.5(h)(4)(B)(II) specifically provides, without exception, that the stay ends upon USEPA's disapproval. The Board must not "depart from a statute's plain language by reading into it exceptions, limitations, or conditions that the legislature did not express." *In re J.L.*, 236 Ill. 2d at 339. The General Assembly knew how to draft language that would continue a stay following a rejection, but chose to do so only for any period of judicial review following a Board rejection. *See* 415 ILCS 5/38.5(h) (2)(A), (4)(A), (5), (6) (2016). The Board does not find it absurd that the legislature would choose to not continue the stay following a federal rejection. Giving the statute its plain and ordinary meaning, the Board finds that if USEPA disapproves a TLWQS, the stay ends upon that disapproval.

Finally, the Board asked several questions of IEPA at hearing to clarify the language of Section 104.525(a), which specifies the persons for whom the effectiveness of a water quality

standard is stayed. IEPA suggested replacing language in proposed Section 104.525(a)(3) with the following language:

any person who files a petition for a time-limited water quality standard before the deadline established in a Board order pursuant to Section 104.540. This person must be a member of a class of dischargers who have filed a time-limited water quality standard petition pursuant to Section 104.525(a)(1) or (a)(2) and have been identified in the Board's final order under Section 104.540. Proposed Section 104.525(a)(3).

The Board finds this rule text clarifying and consistent with Section 38.5(h)(1)(C) of the Act. The Board proposes the text for second notice.

In addition, IEPA suggests combining the requirements of Section 104.525(b) with subsection (c). PC 19 at 6. The Board accepts this modification. In addition, IEPA suggests a modification to the new Section 104.525 (b)(3) that the Board also accepts. PC 18 at 12.

Retaining Stay upon Withdrawal from or Rejoinder of a TLWQS Petition.

IEPA proposes new language in Section 104.520(b)(1)(C) to address participants' concerns over TLWQS petitioners losing their stay. PC 19 at 21. This language seeks to give petitioners flexibility to pursue their petitions separately or collectively without losing their stay. *Id.* at 20. With this understanding, the Board reads IEPA's proposed second sentence—that withdrawal from or rejoinder with a previously filed petition does not terminate a valid stay. A petitioner that withdraws from a collective petition and does not pursue a TLWQS in any other way will lose its stay. The Board adds the underlined text to clarify IEPA's language:

For multiple discharger, watershed, water body or waterbody segment time-limited water quality standards, a petitioner may decide at any time to withdraw from a collectively filed petition, and may then file its own individual time-limited water quality standard petition, join or rejoin a previously filed collective time limited water quality standard petition. A petitioner's decision to withdraw from, join or rejoin a previously filed time-limited water quality standard 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. Proposed Section 104.520(b)(1)(C).

Definitions of "Substantial Compliance" of TLWQS Petition

The Board, next, defines "substantial compliance," a term used in Section 38.5 of the Act. Section 38.5(g) requires the Board to assess a TLWQS petition's "substantial compliance" with specified requirements:

As soon as practicable after entering an order under subsection (f), the Board shall conduct an evaluation of the petition to assess its substantial compliance with 40 CFR 131.14, this Section, and rules adopted pursuant to this Section. After the Board determines that a petition is in substantial compliance with those

requirements, the Agency shall file a recommendation concerning the petition. 415 ILCS 5/38.5(g) (2016).

Neither the Act nor IEPA's proposal defines "substantial compliance." Questions were raised at hearing and in post-hearing comments about what the term means. Specifically, participants debated whether the Board's substantial compliance assessment should entail reviewing the merits of a TLWQS petition or, instead, determining only whether the petition contains the required components of a TLWQS petition. *See, e.g.*, PC 13 at 2. The Board finds that it is the latter.

It would make no sense for the Board to decide the merits of a petition *before* receiving IEPA's recommendation on the petition. The Board finds that the General Assembly must have intended the substantial compliance assessment to serve as a screening mechanism, ensuring that IEPA and Board resources are not wasted on incomplete petitions. Accordingly, the Board will assess a petition's substantial compliance on a case-by-case basis by determining whether the petition is responsive to the content requirements of Section 104.530. The Board has a long history of this type of content review for variance petitions (*see* 35 Ill. Adm. Code 104.204) and adjusted standard petitions (*see* 35 Ill. Adm. Code 104.406). Like those situations, the substantial compliance review of a TLWQS petition will ensure that a complete petition is submitted before any further IEPA or Board resources are expended on an incomplete petition.

To clarify the nature of this assessment, the Board accepts IEPA's proposed definition of "substantial compliance" with the following modification:

"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. Proposed Section 104.515(b).

Fairness to the Converted Petitions.

MWGen is concerned that before the stay expires, dischargers whose variance petitions were converted by law into TLWQS petitions do not have the same opportunity to obtain a "substantial compliance" finding as dischargers who newly file TLWQS petitions. PC 13 at 7-8. To address this concern, MWGen proposes adding language to the IEPA-proposed Board Note for Section 104.540 (Board Established Classes and Deadlines). As IEPA proposes, the Board Note reads that the Board "retains the authority to extend deadlines adopted under Section 104.540 of this Part upon a showing of good cause by the petitioner." MWGen would have the Board Note include, as an example of a good cause, allowing a discharger with a converted petition to file a "second amended petition after the Board has found its amended petition substantially noncompliant." *Id.* at 8. MWGen maintains that new filers have two opportunities to prepare petitions aimed at meeting the substantial compliance requirement, while those with converted petitions only have one. *Id.* at 7-8.

The Board declines to expand the Board Note. The Board reviews both converted and newly-filed petitions on case-by-case basis and can grant extensions to both as justified by the petitioner. Even though converted petitions were not originally filed under the Act's new Section 38.5 content requirements, those dischargers have been afforded a substantial time to prepare their amended petitions—since Section 38.5 became effective and while the Board is

conducting this rulemaking. Moreover, these former variance petitioners have a unique opportunity to participate in this rulemaking, raise their concerns, and pose questions, which opportunity most have exercised.

Interim and Final Orders

The Board next addresses MWGen's request to make Board orders under proposed Section 104.545 (Substantial Compliance Assessment) and Section 104.565 (Opinion and Order) "interim" orders rather than "final" orders. The Board takes each section in turn.

Section 104.545.

MWGen argues that a Board order finding that a petition or amended petition is in substantial compliance should be an "interim order" rather than a "final order," as proposed at first notice. PC 13 at 5. The distinction is critical, according to MWGen, because only a final order can be appealed to State court. MWGen argues that allowing a non-petitioner to appeal a Board order merely finding that a petition contains the required elements is "unnecessary and inefficient." *Id.* at 5. MWGen also claims that allowing a non-petitioner to move for reconsideration of an order finding a petition substantially compliant will cause "unnecessary delay and redundancy to the TLWQS proceeding." *Id.* at 7. MWGen maintains that the non-petitioner's concerns can be addressed later in the proceeding on the petition's merits. *Id.*

Regardless of MWGen's policy arguments, the Board disagrees with its claim that nothing in Section 38.5 requires the Board to designate as final any order finding substantial compliance. PC 13 at 5. Under Section 38.5(h)(3), if the Board determines in an *interim order* that a petition is not substantially compliant, then, upon submission of an amended petition, the Board "shall enter . . . a *final order* that determines whether the amended petition is in substantial compliance." 415 ILCS 5/ 38.5(h)(3) (2016) (emphasis added). Labeling that Board order "interim" would directly contradict the statutory text.

Moreover, the Board finds that precluding the public from appealing or moving to reconsider at the substantial compliance stage would jeopardize compliance with USEPA rules for meaningful public engagement. 40 C.F.R. § 131.20(b); 80 Fed. Reg. 51042. These avenues for early reconsideration or review allow potential shortcomings in a petition to be addressed before hearing, when it may be too late to gather additional evidence. Further, the Board finds this a logical point at which to vet any substantial compliance issues, before expending more resources on the proceeding. For these reasons, the Board declines to change this language in Section 104.545.

Section 104.565.

Next, MWGen asks the Board to specify that a Section 104.565 order granting a TLWQS is an "interim order" and amend Section 104.570 to provide that once USEPA approves or disapproves the TLWQS, the interim order automatically reissues as a "final order." PC 13 at 5. According to MWGen, the finality of a Board order adopting a TLWQS depends upon USEPA's later decision under 40 C.F.R. § 131.14. *Id.* at 5. IEPA, on the other hand, requests that language be added indicating that the Section 104.565 order is a "final" order. PC 18 at 9.

The Board agrees with IEPA. Before a time-limited water quality standard becomes effective for Clean Water Act purposes, IEPA must (1) submit the time-limited water quality standard to USEPA and (2) obtain USEPA’s approval under Section 303(c) of the Clean Water Act. For its Section 303(c) analysis, USEPA must determine whether the proposed change is *legally binding* under state or tribal law. *See* What is a New or Revised Water Quality Standard Under CWA 303(c)(3)? Frequently Asked Questions. USEPA (EPA-820-F-12-017, October 2012), *available at* <http://water.epa.gov/scitccch/swguidance/standards/cwa303faq.cfm>; *see also* SR Attachment A at 20. Only a final Board order “terminates the proceeding leaving nothing further to litigate or decide and that is subject to judicial review”. 35 Ill. Adm. Code 101.202. Therefore, the Board finds that its Section 104.565 order must be final. The Board adds language to proposed Section 104.565(e) making this clear:

The Board order adopting or declining to adopt a time-limited water quality standard is a final order. Any participant may file a motion for reconsideration pursuant to the rules in Section 101.520 of a final Board order entered pursuant to this Section. Proposed Section 104.565(e).

This change to subsection (e) moots MWGen’s requested change to Section 104.570 (USEPA Review).

USEPA Participation in a TLWQS Proceeding

For federal law, a TLWQS becomes final upon USEPA approval. This degree of federal involvement concerns some participants in this rulemaking. They stated that past proceedings requiring close interaction with USEPA have endured extended delays. *See* IERG PC 11 at 6 (delay “has previously occurred in other non-TLWQS proceedings”), *citing* Tr. at 184-89; MWG PC 13 at 10 (USEPA’s active participation “not proven by past experiences in Board rulemakings”). IEPA stated, however, that it would work closely with USEPA to ensure that a TLWQS adopted by the Board would be sufficient for federal approval. Tr. at 189:1-8 (“USEPA is going to work with us . . . we have been working with them from day one”).

The language that the Board adds to the rule at second notice, requires IEPA to file with the Board any USEPA comments received during a TLWQS proceeding. The Board intends this provision to alleviate concerns over extended delays at the federal level and last-minute, previously unexplained, variance disapprovals. Making these USEPA comments available should help participants address—during the Board proceeding—issues that might risk federal disapproval.

The Board adds a new subsection (h) to proposed Section 104.555:

IEPA must file any comments it receives from USEPA. Proposed Section 104.555(h).

The previous subsection (h) becomes subsection (i).

Additional Amendments and Clarifications

TLWQS Timelines and Duration

Effective Date of the TLWQS.

During the hearing, participants asked IEPA to explain when a TLWQS takes effect for enforcement purposes. Tr. at 99-106. IEPA clarified that for Clean Water Act purposes, a TLWQS becomes effective once USEPA approves it. Tr. at 99, 103. For State law purposes, a TLWQS becomes effective once the Board adopts it. Tr. at 103.

For a TLWQS reevaluation, IEPA clarified that if the reevaluation yields an attainable condition more stringent than what had been the highest attainable condition, that more stringent condition becomes an applicable interim water quality standard “without any additional action.” PC 19 at 17. The change is “self-implementing” because the TLWQS must provide that the interim standard is either the highest attainable condition originally adopted or a *higher* attainable condition identified during a reevaluation. *Id.* If, however, a reevaluation reveals that only a less stringent condition is attainable, making that less stringent condition the interim standard would require Board revision of the TLWQS and approval of USEPA. *Id.* at 17-18.

The Board finds IEPA’s clarifications sufficient and that additional changes to the rule are unnecessary.

Promptness of the TLWQS Proceedings.

The Environmental Groups raise concerns about TLWQS proceedings being used to delay compliance with a properly-adopted water quality standard (PC 12 at 1). They are concerned that if the proposed rules are not “improved and carefully policed by the Board,” petitions for a TLWQS could become “an instrument for unjustifiable delay for water improvements.” PC 12 at 4.

The Board finds these concerns misplaced. Section 38.5 provides deadlines for many steps in the TLWQS petition-review process, and requires the Board to set deadlines in other instances. For example, within 51 days after petition filing, the Board must enter an order establishing the discharger or classes of dischargers. *See* 415 ILCS 5/38.5(e), (f) (2016) (IEPA must respond in 21 days after petition filing and the Board must enter a final order within 30 days after IEPA responds). That order must include deadlines for filing petitions or amended petitions. *See* 415 ILCS 5/38.5(f) (2016).

Where the statute is silent, the proposed rules provide some deadlines, including one for public comments after a petition to modify is filed following USEPA disapproval. *See* PC 19 Annex, proposed Section 104.570(c). Where the Act or rules do not provide deadlines, motions to the Board could be filed under Part 101 of the Board’s procedural rules. This is especially true if the Board issues an order setting deadlines for actions, such as the filing of an amended petition. Participants in a TLWQS proceeding may suggest timeframes to the Board or hearing officer through motions and responses to filings.

Duration of a TLWQS.

The Environmental Groups assert that under the proposed rules, a TLWQS’ duration and “time schedule for water quality improvements” are unclear. They propose three amendments to Section 104.565. PC 12 at 3-4. First, the Environmental Groups propose requiring that a

TLWQS last no longer than the “period that it has been shown that criteria designed to protect the underlying designated use are attainable.” *Id.* at 4. Second, they propose requiring that the highest attainable condition be “achieved as soon as it is attainable.” *Id.* And third, the Environmental Groups propose adding language stating that water quality improvements are “expected to be achieved as soon as they are attainable.” *Id.*

The Board understands the Environmental Groups’ concern that water quality improvements will not occur during the TLWQS’ term even if they are attainable earlier in the term. The Board considers it unnecessary, however, to add the Environmental Groups’ suggested rule language. It is clear from Section 38.5 of the Act and the referenced federal rules that a TLWQS should last only as long as necessary to attain the highest attainable condition. *See* 415 ILCS 5/38.5(g) (2016); 40 C.F.R. § 131.14(b)(1)(iv). The proposed rules address those requirements in three ways:

1. The petitioner’s demonstration obligations;
2. IEPA’s obligation to comment on the petition and provide its own recommendation; and
3. The Board’s obligation to adopt a TLWQS that lasts no longer than necessary. *See, e.g.,* PC 19 Annex, proposed Sections 104.530(a)(12), (14), 104.550(b)(1)(A) and (B), 104.550(b)(4), 104.560(c), and 104.565(c) and (d)(3).

Moreover, because the TLWQS proceeding is subject to the public comment process, members of the public can raise these concerns and suggest ways to address them.

The Board will evaluate each TLWQS petition on case-by-case basis and can include—as appropriate in each TLWQS—requirements addressing the Environmental Groups’ concerns. IEPA would then incorporate the TLWQS’ requirements into a compliance schedule as part of each discharger’s National Pollutant Discharge Elimination System (NPDES) permit, considering discharger-specific information when determining implementation deadlines for specific technologies and BMPs. *See* Tr. at 101-102, 105-115. Finally, the TLWQS reevaluation process is another avenue designed to assure that improvements are achieved as soon as possible. *See* PC 19 Annex, proposed Section 104.580; *see also* PC 19 at 12-13 (question 36). IEPA also noted at the hearing that it will notify the Board if a TLWQS’ underlying basis, technology, or economics change, to determine whether it is necessary to amend the TLWQS. Tr. at 55.

For these reasons, the Board declines to adopt the Environmental Groups’ proposed rule amendments.

TLWQS Reevaluation Deadlines.

If the Board adopts a TLWQS for a term greater than five years, USEPA rules require that the TLWQS specify a frequency to “reevaluate the highest attainable condition using all existing and readily available information.” 40 C.F.R. § 131.14(b)(1)(v). The reevaluation “must occur no less frequently than every five years after [US]EPA approval of the [TLWQS].” *Id.* The reevaluation results must be submitted to USEPA within 30 days after the State

completes the reevaluation. *Id.* Further, under USEPA rules, the TLWQS must provide that it will “no longer be the applicable water quality standard . . . if the State does not conduct a reevaluation consistent with the frequency specified in the [TLWQS]” or the results are not submitted to USEPA within 30 days after reevaluation completion. *See* 40 C.F.R. § 131.14(b)(1)(vi).

The Board agrees with IERG and IEPA that the Board must issue a final order on reevaluation consistent with the frequency specified in the TLWQS. PC 11 at 8; PC 18 at 6. Failure of the Board to do so would result in the TLWQS no longer being the applicable water quality standard for Clean Water Act purposes. *See* 40 C.F.R. §131.14(b)(1)(vi).

The proposed rule requires the Board to set a reevaluation schedule consistent with the USEPA’s requirements. PC 19 Annex, proposed Section 104.565(d)(7). They also require that the petitioner or person granted a TLWQS must file its proposed reevaluation consistent with the reevaluation schedule set in the adopted TLWQS. *Id.*, proposed Section 104.580(a)(1). To ensure that the reevaluation is conducted within the USEPA’s timeframe, the Board adds the following subsection (f) to proposed Section 104.580:

- f) The Board will adopt a final order on the proposed reevaluation filed under subsection (a) consistent with the reevaluation frequency set forth in the Board’s order adopting the time-limited water quality standard pursuant to Section 104.565(d)(7). Proposed Section 104.580(f).

With this, the reevaluation schedule set under proposed Section 104.565(d)(7) should specify the deadline to submit the petitioner’s proposed reevaluation, and specify the date for the Board’s final action.

The USEPA rules do not, however, require the Board to reevaluate if neither the petitioner nor any other person covered by the TLWQS proposes a reevaluation. To avoid having the TLWQS become inapplicable, the petitioner (and any other discharger covered by the TLWQS) must timely file its proposed reevaluation. *See* PC 19 Annex, proposed Section 104.580(a)(1). This is consistent with the interests involved with a TLWQS—the petitioner sought the TLWQS, and it should be up to the petitioner to maintain it. If the petitioner fails to file a proposed reevaluation, the Board will conduct no reevaluation. The proposed rules and a TLWQS adopted by the Board will therefore provide that if the petitioner does not conduct a reevaluation consistent with the frequency specified in the TLWQS, the TLWQS will no longer be the applicable water quality standard for purposes of the Clean Water Act. *See* PC 19 Annex, proposed Sections 104.580(g) and 104.565(d)(7).

Reevaluation Prompted by a Triennial Review of Water Quality Standards.

The Board asked whether IEPA, as a part of its triennial review of water quality standards, would address any reevaluation of the highest attainable condition. Bd. PQ at 10; Tr. at 54. Mr. Twait explained that the reevaluation need not be done in the triennial review. He added that if a TLWQS’ underlying basis, technology, or economics change, IEPA would notify the Board of the need to “open up” the TLWQS. Tr. at 55. Also, as to which water quality standards are addressed at triennial review, Mr. Sofat stated that the federal regulations allow

IEPA to set its priorities. *Id.* Based upon these explanations, the Board finds no need to require reevaluations to be performed as a part of IEPA's triennial review.

Applicability and Definitions

Application to Lake Michigan Basin.

Because USEPA's approval of a state water quality standards is based on satisfying the federal rules at 40 C.F.R. § 131.5, § 131.6, and Part 132 ("Water Quality Guidance for the Great Lakes System"), IEPA explained that under proposed Section 104.500, the rules would apply to water quality standards in Parts 302 and 303, which include Lake Michigan Basin water quality standards. Tr. at 7-8; PC 19 at 4. As a result, IEPA proposes a new provision at Section 104.500(b) to clarify that the proposed rules apply to the Great Lake Basin. This provision requires petitioners seeking TLWQS for waters in the Great Lakes Basin to comply with both the proposed rules and 40 C.F.R. Part 132, and applies the more stringent requirement where the two sets of rules overlap. PC 19 at 27. The Board agrees to adding proposed new Section 104.500(b).

Application to Watersheds.

Proposed Section 104.505(b) allows for a TLWQS to be adopted for a "watershed," which is consistent with Section 38.5(a) of the Act. The applicability provisions of USEPA's rules state that a water quality standards variance may be adopted for "a permittee(s) or waterbody/waterbody segment(s) . . ." 40 C.F.R. §131.14(a)(1). Because watersheds are not mentioned, the Board asked IEPA to clarify whether watershed TLWQS are consistent with those federal rules. Bd. PQ at 3.

Mr. Twait testified that "the Clean Water Act and the federal regulations don't prohibit using watersheds in variances. We've developed this approach from talks with the USEPA and from 75 [Fed. Reg.] 75762 [December 6, 2010]." Tr. at 10. Mr. Twait stated:

[US]EPA allows grouping waters together in a watershed in a single variance application provided that there is a site-specific information to show how each individual water fits into the group in the context of any single variance and how each individual water meets applicable requirements at 40 CFR 131.10(g). Tr. at 11.

Mr. Twait continued that a watershed TLWQS would apply to all the point source dischargers and non-point sources in a watershed and the watershed as a whole. Tr. at 9-10. Watershed TLWQS would be used for scenarios where point and non-point sources contribute to widespread pollution. The watershed approach addresses downstream impacts where a multiple discharger TLWQS might not suffice. Tr. at 12-13, 17. In these situations, examining both point and non-point sources is necessary to quantify the "highest attainable condition" that can be achieved during the term of the TLWQS under proposed Sections 104.560(c) and 104.565(d)(4). Tr. at 31. Similarly, the watershed approach enables consideration of both point and non-point source controls in demonstrating "the water quality progress achieved" for requests to extend a TLWQS under proposed Section 104.530(b)(2). Tr. at 13-14. The Board finds that this is consistent with the federal approach under 40 CFR § 131.14(b)(2)(ii) and (iii).

IEPA explained that a watershed TLWQS is not intended to regulate non-point sources but would provide a mechanism for them to voluntarily assist in showing water quality progress achieved, such as through water quality trading or other means. Tr. at 29-31. The Board finds that the proposed rules would not impose obligations on non-point sources not otherwise authorized by the Act.

Some participants commented on potential problems in petitioning for a watershed TLWQS. PC 11 at 5; Tr. at 149-154. For example, IERG noted that industry participation in watershed groups is not yet commonplace in Illinois. IERG is also concerned that a watershed petition might not provide an adequate mechanism for collective action because of differing opinions among watershed group members. PC 11 at 5-6; Tr. at 149-54.

The proposed rules do not require anyone to petition for a watershed TLWQS, but the Board finds merit in having the option available. Nor must every discharger in the watershed participate in the Board's proceeding to be covered by the adopted TLWQS—they may obtain coverage by both satisfying the eligibility criteria and requesting coverage when they renew or modify their NPDES permits or apply for certification under Section 401 of the Clean Water Act. See PC 19 Annex, proposed Section 104.565(d)(2)(A)(ii); see also SR at 6; Tr. at 20-22. Currently, several watershed workgroups are addressing water quality issues, and watershed TLWQS may be an option for them. Tr. at 150; see also SR at 22, citing the Lower Des Plaines Watershed Workgroup and the Chicago Area Waterway System Watershed Workgroup. As IEPA explained, a watershed TLWQS may be a more efficient way to address widespread pollution coming from both point and non-point sources, like nutrients or chlorides. SR at 23; Tr. at 12-13, 17, 21, 150, 152-53.

The Board finds that a watershed TLWQS provides means to address the issue of widespread pollution from a more holistic perspective. In situations where both point and non-point source controls can collaborate on a strategy to attain water quality standards as envisioned in USEPA guidance, this approach can be most beneficial. See PC 19 at 3 citing Chapter 3 Issue Category: Variances Pages 3-290-3408 Response to Public Comments, Water Quality Standard Regulatory Revisions at 3-319 (Aug. 2015).

Definition of “Highest Attainable Use” and “Non-101(a)(2) Use”.

To provide context for the proposed rules' use of terms like “highest attainable condition”, “highest attainable interim criterion”, and “highest attainable interim use”, the Board asked IEPA to define the related term “highest attainable use” based on USEPA's definition in 40 C.F.R. § 131.2(m). Bd. PQ at 4-5. Also, because “non-101(a)(2) use” is used in proposed Section 104.560, which includes the demonstration requirements, the Board asked IEPA to propose a definition for the term based on USEPA's definition in 40 C.F.R. § 131.3(q).

In response, IEPA proposed including USEPA's definitions for both terms. PC 19 at 4. The Board agrees to adding the following definitions to proposed Section 104.515(b):

Highest attainable use is the modified aquatic life, wildlife, or recreation 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 factor(s) in § 131.10(g) that

preclude(s) attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the State demonstrates the relevant use specified in section 101(a)(2) of the Clean Water Act and sub-categories 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. Proposed Section 104.515(b).

Definition of “Pollution Minimization Program”.

Because proposed Section 104.530(a)(11) would require a petitioner to file *all* pollution minimization plans, including those unrelated to the requested relief, the Board asked IEPA whether the requirement is overly broad. Bd. PQ at 9. In response, IEPA proposes an amendment to require only pollution minimization programs relevant to the requested relief. Additionally, IEPA proposes to modify the definition of “Pollution Minimization Program.” PC 19 at 9. The Board accepts these revisions.

Definition of “Best Management Practices”.

Because the term “best management practices” (BMPs) is used in the proposed rules, the Board asked IEPA to propose a definition for the term. Bd. PQ at 5, *citing* USEPA’s definition of “best management practices” at 40 C.F.R. § 122.2. In response, IEPA proposed adding USEPA’s definition to proposed Section 104.515(b):

Best management practices (“BMPs”) means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of “waters of the United States.” BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage. Proposed Section 104.515(b).

IERG voiced concern, however, about using USEPA’s definition. PC 11 at 8-9. This definition, IERG contends, relates to the NPDES permit program regulations, which address permits for discharging pollutants from any “point source.”² *Id.* at 8. IERG asserts that USEPA’s definition of BMPs at 40 C.F.R. § 130.2(m) better reflects how the proposed rules use the term:

Best Management Practices – methods, measures or practices selected by an agency to meet its nonpoint source control needs. BMPs include but are not limited to structural and nonstructural controls and operation and maintenance

² “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged. This term does not include agricultural stormwater discharges and return flows from irrigated agriculture. Section 502(14) of the Clean Water Act, 33 U.S.C § 1362 et seq.

procedures. BMPs can be applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters. Id. at 9.

IERG adds that this definition should not limit the use of BMPs to either point source or nonpoint source discharges. PC 16 at 5-6. IERG notes that BMPs may be used, for example, to reduce contaminants in surface water runoff for both point source and nonpoint source discharges. *Id.* IEPA agrees with IERG's proposed BMPs definition. PC 18 at 6, citing PC 11 at 9.

The Board agrees that the definition of BMPs at in 40 C.F.R. § 130.2(m) broadly covers BMPs for both point source and nonpoint source³ discharges. The definition of BMPs at 40 C.F.R. § 122.2 focuses more on nonpoint source controls at NPDES facilities. Therefore, the Board replaces IEPA's proposed definition in Section 104.515(b) with the USEPA's definition of BMPs at 40 C.F.R. § 130.2(m), with minor changes highlighted:

Best Management Practices (BMPs) mean methods, measures or practices selected ~~by an agency~~ to meet its nonpoint source control needs. BMPs include ~~but are not limited to~~ 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. Proposed Section 104.515(b).

TLWQS Petitions' Content

Identification of Water Body.

In addition to the requirement that a petition include a map of the proposed watershed, water body, or waterbody segment, the Board asked IEPA about requiring the petition to include the name of, and some written description identifying, the proposed watershed, water body, or waterbody segment. The Board noted that the written description would provide information that might not be included on a map, like names, locations, river miles, and starting and ending points. Bd. PQ at 8. In response, IEPA proposed an amendment to Section 104.530(a)(4). PC 19 at 8. The Board accepts the amendment with minor changes highlighted:

a map of the proposed watershed, water body, or waterbody segment to which the time-limited water quality standard will apply, as well as including a written description of the watershed, water body, or ~~and/or~~ waterbody segment, including the associated segment code. Proposed Section 104.530(a)(4).

Identification of Applicable Water Quality Standard.

³ "Nonpoint Source" mean any source of water pollution that does not meet the legal definition of "point source" in section 502(14) of the Clean Water Act. Nonpoint source pollution generally results from land runoff, precipitation, atmospheric deposition, drainage, seepage or hydrologic modification. <https://www.epa.gov/nps/what-nonpoint-source>.

The Board asked IEPA to consider adding a provision to proposed Section 104.530 (Petition Contents) that would require the petition to identify the applicable water quality standard (WQS). Bd. PQ at 9. The Board noted that USEPA's WQS Variance Building Tool lists the "currently applicable water quality standard" among the information to be assembled in applying for a WQS variance. EPA 820-F-17-016 (July 2017) at 1. IEPA responded by proposing an amendment to Section 104.530(a)(2) that would require identifying the currently applicable WQS. PC 19 at 8-9. The Board accepts the amendment.

Consideration of Downstream Impacts.

The Board asked IEPA to consider whether a petition should include a demonstration to assure that the TLWQS will not conflict with downstream water quality standards. Bd. PQ at 10. At hearing, IEPA's witnesses, Mr. Sofat and Mr. Twait, clarified that the petitioner must demonstrate that the TLWQS will not cause or contribute to violating downstream water quality standards. Tr. 46-52. Mr. Sofat added that Section 104.530 (Petition Contents) should require a petition to include a demonstration addressing downstream impacts. Tr. 51-52. However, IEPA did not propose any corresponding revisions.

The Board agrees with IEPA that Section 104.530 must require a demonstration that the requested relief will not conflict with the downstream water quality standards. The demonstration would help inform whether a petitioner needs to further address downstream water quality issues. Further, this additional requirement would be consistent with USEPA's position that, when adopting revised or new designated uses, states must consider relevant provisions in [40 C.F.R. §] 131.10, including downstream protection" 80 Fed. Reg. 50755, 51026 (Aug. 21, 2015). The Board therefore adds the following petition content requirement:

- 17) a demonstration to assure that the proposed highest attainable condition does not conflict with the attainment of downstream water quality standard for the pollutant or parameter for which the time-limited water quality standard is sought. Proposed Section 104.530(a)(17).

Adoption of Compliance Schedule.

The Board asked IEPA whether a permit compliance schedule must be included in the petition or the TLWQS. IEPA stated that in the TLWQS, the Board may designate a time-period to achieve the highest attainable condition, as well as an interim highest attainable condition. PC 19 at 12, *citing* 80 Fed. Reg. 51020, 51036-37 (Aug. 21, 2015). Under 35 Ill. Adm. Code 309.148, IEPA may then incorporate a compliance schedule into the permit with appropriate milestones. PC 19 at 12. This approach, Mr. Sofat explained, is consistent with the Board's function to adopt TLWQS and IEPA's function to implement those standards through permits that may include compliance schedules. Tr. 94-97. The Board agrees and therefore does not add rules requiring compliance schedules in petitions or TLWQS.

IEPA's Role in Supplying Information.

IERG proposes allowing IEPA to be a petitioner in a TLWQS proceeding. PC 11 at 2-5. According to IERG, the informational requirements to support a successful TLWQS petition may sometimes be too heavy a burden on petitioners. For instance, small or less sophisticated

dischargers may have difficulty organizing themselves to support a TLWQS. *Id.* Additionally, a complicated, State-wide TLWQS would also present a heavy burden even on sophisticated dischargers. *Id.* In these circumstances, IERG claims, only IEPA would have access to the information necessary to support a TLWQS. In addition to allowing IEPA to be a petitioner, IERG’s proposed rule language would give the Board authority to “direct the Agency to provide or supplement information provided in a petition.” *Id.*

The Board recognizes that these potentially difficult and burdensome situations could arise. The Board expects, however, that they can be resolved without designating IEPA as a petitioner or adding rules on the Board directing IEPA to supplement petition information. The Board may always direct IEPA to provide information through a Board order during a proceeding. Further, the Board encourages IEPA to be supportive and helpful in releasing necessary information to TLWQS petitioners. IEPA, in its comments, stated that it intends to supply any readily available information and respond to any FOIA requests. PC 18 at 4-5. While petitioners may procure necessary information from IEPA through FOIA requests, the Board encourages IEPA to be responsive without such a requirement. For these reasons, the Board declines to adopt IERG’s proposed rule language.

Information on Individual Dischargers.

Because proposed Section 104.520(b)(1)(B) allows multiple dischargers to “act collectively as a single petitioner after the Board has established classes under Section 104.540,” the Board asked IEPA to consider proposing an amendment to Section 104.530 (Petition Contents) that would require individual permittees—under a multi-discharger TLWQS—to file their own information. Bd. PQ at 6-7. The Board also asked IEPA to consider proposing a similar amendment for TLWQS reevaluations under Section 104.580. *Id.* at 12-13. In response, IEPA proposes adding Sections 104.530(d) and 104.580(a)(2), which would require individual discharger-specific information in both joint petitions and proposed reevaluations for multiple dischargers, watershed, water body, or waterbody segment TLWQS. PC 19 at 5, 14. The Board accepts these additions.

Other Matters

Other Clarifications.

IEPA agreed with numerous minor edits suggested by the Board to clarify rule language. *See* PC 19 (responding to Board questions 3, 4, 15, 16, 17, 18, 29, 33, 37). IEPA proposed additional clarifying edits in response to questions from other participants and the Board. *See* PC 19 at 1-14 (responding to Board questions 10, 11, 14, 19, 23, 26, 30, 31, 34, 35, 37, 38); *id.* at 15-16 (responding to Board questions 1-2); *id.* at 17 (responding to AG question 1(i)); *id.* at 18-20 (responding to MWGen questions 8, 22 and 33); *id.* at 20-21 (“Other”).

In response to other questions, IEPA’s answers were helpful without necessitating rule changes. For example, IEPA clarified that in proposed Section 104.530(a)(8), the term “predecessors” means “previous permit holders.” PC 19 at 6. In proposed Section 104.555(f), the “considerations” that the Board will take into account include “the entire record, as well as applicable State laws and federal regulations.” *Id.* at 10-11. When considering a petition to

modify under Section 104.570(c), the Board weighs the evidence to determine whether the petitioner made the required demonstration. *Id.* at 19-20.

Moving Proposed Rules to a New Part.

The Board “may conduct non-adjudicatory proceedings to adopt” TLWQS. 415 ILCS 5/38.5(a) (2016). Because TLWQS proceedings are non-adjudicatory, IERG asks that the Board place the TLWQS rules in a new Part 109 to distinguish these proceedings from the adjudicatory proceedings contained in Part 104. The Board finds that the rules should not be moved.

IERG’s suggestion to move the proposed rules arose from a concern that having them in Part 104 risks causing confusion about the non-adjudicatory nature of TLWQS proceedings. PC 11 at 10. But the clarity of the procedures is what alleviate any potential confusion, not their placement in the Administrative Code.

The Board is confident that the proposed procedures are clear, as is the non-adjudicatory nature of the proceedings. The proposed rules identify who must or may participate. *See* PC 19 Annex proposed Section 104.520(b) (listing the petitioner, IEPA, and any person). And, the proposed rules detail how participants may participate throughout the TLWQS process. *See, e.g., Id.* proposed Section 104.535 (after IEPA files its response to a TLWQS petition, “[t]he petitioner or any person may file a question or response”); *Id.* proposed Section 104.545(e) (providing that “[a]ny participant may file a motion for reconsideration” following the Board’s substantial compliance assessment); *Id.* proposed Section 104.555 (scheduling the hearing “to ensure maximum participation and allotment of adequate time, and providing for post-hearing comments”); *Id.* proposed Section 104.560 (petitioner’s demonstration requirements). Moreover, these detailed procedures are defined at the beginning of new Subpart E as non-adjudicatory. *See Id.* proposed Section 104.505(a).

Importantly, the subject matter of the TLWQS proposed rule is consistent with the rest of Part 104. Like variances and adjusted standards, a TLWQS is a mechanism for obtaining relief from a regulation. Part 104 is separated into distinct subparts for each “regulatory relief mechanism,” and each subpart details the relief mechanism’s specific procedures. In that way, the TLWQS proposed rules are consistent with the other subparts in Part 104. Adding the TLWQS to Part 104 therefore makes locating it predictable, which is a substantial benefit considering Section 38.5’s requirements for public participation.

For these reasons, the Board declines to move the proposed rules to a new Administrative Code part.

Filing Fee for TLWQS Petitions.

Public Act 99-937 amended Section 7.5 of the Act to require that the Board collect a \$75 filing fee for TLWQS petitions, per petitioner. 415 ILCS 5/7.5(a) (2016). IEPA’s proposed Section 104.590(b) states that a petition to extend a TLWQS is subject to filing fee requirements of Section 101.302(e)(6) of the Board rules. PC 19 Annex at 23. However, because Section 101.302(e) does not yet contain subsection (6), the Board modifies proposed Section 104.590(b) to read as follows:

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 pursuant to Section 104.520(c) of this Part and 35 Ill. Adm. Code 101.302(e)(6). Proposed Section 104.590(b).

The Board will open a proceeding to amend Part 101 of the Board rules to implement Public Act 99-937's amendments at a later stage.

List of Facilities Covered by TLWQS.

To allow public access consistent with USEPA directives, the Board asked IEPA whether it would place a list of facilities covered by current TLWQS on its website. Bd. PQ at 6; *see also* USEPA, "Checklist for Evaluating State Submission of Discharger-Specific Water Quality Standards Variances." <https://www.epa.gov/sites/production/files/2016-03/documents/checklist-evaluating-discharger-specific.pdf>. IEPA agreed to do so. Tr. at 33.

CONCLUSION

The Board adopts the proposed rules for second-notice review. For the reasons provided in this opinion, the Board accepts IEPA's proposed rules with modifications agreed to by IEPA during the first-notice period and the Board's modifications discussed above.

ORDER

The Board directs the Clerk to submit these proposed amendments to JCAR for second-notice review. First-notice additions retained at second notice appear single-underlined. For changes made at second notice, additions appear with double-underlines, and deletions appear with double-strikethroughs.

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 February 8, 2018, by a vote of 5-0.



Don A. Brown, Clerk
Illinois Pollution Control Board