

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

PART 104  
REGULATORY RELIEF MECHANISMS

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104.APPENDIX A Comparison of Former and Current Rules (Repealed)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 Reg. 1409, effective January 16, 1985; old Part repealed, new Part adopted in R00-20 at 25 Ill.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 R17-18 at 41 Ill. Reg. 10049, effective July 5, 2017; amended in R18-18 at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_.

SUBPART E: TIME-LIMITED WATER QUALITY STANDARDS

**Section 104.500 Purpose**

- 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) For waters in the Great Lakes basin, petitioners must meet the requirements of both this Subpart and 40 CFR 132. Where regulations in this Subpart and 40 CFR 132 overlap, the more stringent regulation applies.
- c) This Subpart must be read in conjunction with 35 Ill. Adm. Code 101. 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 42 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, a water body, or a waterbody segment.
- c) The extent and coverage of a time-limited water quality standard ~~will~~ **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 USEPA, ~~will United States Environmental Protection Agency,~~ **must** be the applicable standard for the purposes of the Clean Water Act in developing NPDES permit limits and requirements under 35 Ill. Adm. Code 309 for the term of the time-limited water quality standard. Any limitations and requirements necessary to implement the time-limited water quality standard ~~will~~ **must** be included as enforceable conditions of the NPDES 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 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.510 Severability**

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

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.515 Definitions**

- a) Unless defined in subsection (b), words ~~shall~~ have the ~~meaning ascribed~~ definitions provided in the Act and 35 Ill. Adm. Code 101. Subpart B.
- b) The following definitions ~~must~~ apply to this Subpart:

“Best Management Practices” (BMPs) mean methods, measures or practices selected to meet nonpoint source control needs. BMPs include structural and nonstructural controls, operation and maintenance procedures. BMPs can be

applied before, during and after pollution-producing activities to reduce or eliminate the introduction of pollutants into receiving waters.

"Highest Attainable Use" is the modified aquatic life, wildlife, or recreational use that is both closest to the uses specified in section 101(a)(2) of the Clean Water Act and attainable based on the evaluation of the factors in 40 CFR 131.10(g) that precludes attainment of the use and any other information or analyses that were used to evaluate attainability. There is no required highest attainable use where the State demonstrates the relevant use specified in section 101(a)(2) of the Clean Water Act and the 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.

"Pollutant Minimization Program" in the context of this Part means a structured set of activities to improve processes and pollutant controls that will prevent and reduce pollutant loading.

"Substantial Compliance" means compliance with substantial or essential content requirements of 40 CFR 131.14, Section 38.5 of the Act, and Section 104.530.

"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.

(Source: Added at 42 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~~ Participants
  - 1) Petitioner

- A) For a single discharger time-limited water quality standard, the person seeking the time-limited water quality standard will ~~must~~ be named the ~~P~~petitioner.
- B) For multiple discharger, watershed, waterbody, and waterbody segment time-limited water quality standards, ~~all~~ dischargers or a group of dischargers seeking the time-limited water quality standard may act individually or collectively as a single petitioner when filing a time-limited water quality petition before the Board, provided they can meet the demonstration requirements as specified in Section 104.560 ~~after the Board has established classes under Section 104.540.~~
- C) 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.
- 2) The Agency will ~~must~~ be a participant.
- 3) Any person may become a participant in the time-limited water quality standard proceeding.
- 4) The Board will ~~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 will ~~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 Subpart~~Part~~, all documents must be served and filed in accordance with 35 Ill. Adm. Code 101.Subpart C.

BOARD NOTE 1: 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 making satisfying the demonstration burden of proof 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~~ consolidate the petitions under 35 Ill. Adm. Code 101.406. The Board ~~also~~ may also incorporate materials and evidence filed in support of one petition as evidence in support of a petition addressing similar issues. (See 35 Ill. Adm. Code 101.306.)

BOARD NOTE 2: Lack of action by one or more dischargers will not affect the ability of the Board to consider or act on a time-limited water quality standard petition filed before the Board.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.525 Stay**

- a) The effectiveness of a water quality standard from which relief is sought ~~is~~ 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:
- 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 files a petition for a time-limited water quality standard before the deadline established in a Board order under Section 104.540. This person must be a member of a class of dischargers who have filed a time-limited water quality standard petition under Section 104.525(a)(1) or (a)(2) and have been identified in the Board's final order under Section 104.540. ~~any person who is a member of a class of dischargers that is identified in a Board order under Section 104.540 of this Part 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 of this Part.~~
- 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 CFR 131.14.~~~~
- be) 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~~ must applies:
- 1) if the person files a petition or an amended petition by the deadline established by the Board in Section 104.540 and the petition or amended petition is in substantial compliance as provided in Section 104.545, the stay ~~must~~ continues until the Board:
    - A) denies the petition or amended petition and all rights to judicial review of the Board's order denying the petition or amended petition are exhausted; or
    - B) adopts the time-limited water quality standard and the USEPA either:
      - i) approves the time-limited water quality standard; or
      - ii) disapproves the time-limited water quality standard for failure to comply with 40 CFR 131.14.
  - 2) if the person files an amended petition by the deadline established by the Board in Section 104.540, but the amended petition is not in substantial compliance as provided in Section 104.545, the Board will ~~must~~ deny the amended petition, and the stay ~~must~~ continues 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 will ~~must~~ dismiss the original petition and the stay ~~must~~ continues until all rights to judicial review are exhausted.

- ce) If a person other than a person described in subsection (a) files a petition for a time-limited water quality standard, the effectiveness of the water quality standard from which relief is sought is ~~not~~ ~~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 CFR 131.14, Section 38.5 of the Act, and this Part.

(Source: Added at 42 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;
    - B) multiple dischargers; or
    - C) watershed, water body, or waterbody segment;
  - 2) identification of the currently applicable water quality standard for 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, as well as a written description of the watershed, water body, or waterbody segment, including the associated segment code;
  - 5) designated uses of the water body or waterbody segment identified in subsection (a)(4);
  - 6) data describing the nature and extent of the present or anticipated failure to meet the water quality standard or standards and facts that support petitioner's argument that 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) ~~or uses~~ and criterion or criteria 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(ba).

- 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 of the permit holder and permit number, of the permits held by dischargers that 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 Pollutant Minimization Plans that are relevant to the relief requested and are ~~pollution minimization plans~~ currently being implemented or were ~~have been~~ implemented in the past;
- 12) the proposed highest attainable condition of the watershed, water body, or waterbody segment identified in subsection (a)(4) expressed as set forth in Section 104.565(d)(4), including projected changes in the highest attainable condition throughout the proposed term of the 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 and justification that it 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 necessary ~~required~~ to support the petitioner's demonstration specified ~~burden of proof~~ in Section 104.560; and
- 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.

- 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 nonpoint 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 petition 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 time-limited water quality standard, an explanation of the extent to which the best management practices for nonpoint source controls were implemented to address the pollutant or water quality parameter subject to the time-limited water quality standard and the water quality progress achieved.
- c) For a watershed, water body, ~~or~~ waterbody segment, or a multiple discharger 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 NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard.
- d) For multiple discharger, watershed, water body, or waterbody segment time-limited water quality standards, discharger specific information must be provided individually. ~~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 NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time limited water quality standard.~~

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.535 Agency Response**

- a) The Agency will ~~must~~ file a response with the Board within 21 days after the filing of the initial petition.
- b) The Agency response will ~~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 in substantial compliance to stay the effectiveness of a water quality standard or standards under Section 104.525.
- c) The petitioner or any person may file a question or response to the Agency's response within 14 days after the Agency files its response.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, 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 will ~~must~~ enter a final order that ~~delineates the geographic scope of~~ identifies the discharger, multiple discharger, watershed, waterbody, or waterbody segment to which the time-limited water quality standard applies, establishes the discharger or classes of dischargers that may be covered by the time-limited water quality standard, and establishes prompt deadlines by which the discharger and dischargers in the identified classes must, for the purposes of the stay, file with the Board either:

- a) a petition for a 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.

BOARD NOTE: 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.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

#### **Section 104.545 Substantial Compliance Assessment**

- a) As soon as practicable after entering an order under Section 104.540, the Board will ~~must~~ conduct an evaluation of the petition to assess its substantial compliance with Section 104.530, 40 CFR 131.14, and Section 38.5 of the Act.
- b) If the Board determines in a final order that the petition is in substantial compliance, the Agency will ~~must~~ file a recommendation under Section 104.550.
- c) If the Board determines in an interim order that the petition or amended petition is not in substantial compliance, the Board will ~~must~~ identify the deficiencies in the petition or amended petition that must be corrected for the petition to be in substantial compliance with Section 104.530.
- d) If effectiveness of the water quality standard from which relief is sought is stayed under Section 104.525 and the Board determines in an interim order that the petition or amended petition is not in substantial compliance:
  - 1) the petitioner must file an amended petition by the deadlines adopted by the Board under Section 104.540; and
  - 2) the Board will ~~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 participant ~~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 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.550 Recommendation and Response**

- a) Unless otherwise ordered by the hearing officer or the Board, the Agency will ~~must~~ file a recommendation with the Board within 45 days after the Board determines that a petition is in substantial compliance under Section 104.545.
- b) At a minimum, the Agency's recommendation will ~~must~~ include:
  - 1) The ~~Agency's~~ analysis of:
    - A) whether the petitioner made ~~met~~ its ~~burden of proof~~ demonstration 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 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 NPDES permit or at the time an individual files an application for certification under section 401 of the federal Clean Water Act to obtain coverage under a Board-approved time-limited water quality standard, when applicable;
- 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; and
- 5) a list of persons that are seeking coverage under the time-limited water quality standard at the time of the adoption 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 will ~~must~~ transmit a copy of its recommendation, including a copy of the time-limited water quality standard petition, to USEPA.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.555 Hearing**

- a) The Board will ~~must~~ hold a public hearing on the petition.
- b) Hearing Notice
- 1) The ~~H~~earing ~~O~~fficer 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 will ~~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 at least 45 days prior to the hearing, ~~within 45 days of the hearing.~~

- 3) The notice ~~will~~~~must~~ identify the matters to be discussed at the hearing and ~~will~~~~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 ~~will~~~~must~~ include at a minimum, the Board's hearing officer's contacts and a link to a website where the identification and supporting documentation 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 can be found.
- c) The Board ~~will~~~~must~~ make the following available to the public at least 30 days before the hearing:
- 1) reports, documents, and data relevant to the discussion at the public hearing;
  - 2) the Agency recommendation; and
  - 3) for watershed, water body, and waterbody segment time-limited water quality standard petitions, the proposed best management practices for nonpoint source controls.
- d) Except as otherwise provided in this Section, the hearings will be conducted under 35 Ill. Adm. Code 101.Subpart F.
- e) The ~~H~~hearing ~~O~~fficer ~~will~~~~must~~ schedule witnesses in advance to ensure maximum participation and allotment of adequate time. The ~~H~~hearing ~~O~~fficer ~~will~~~~must~~ reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.
- f) During the hearing, the ~~H~~hearing ~~O~~fficer ~~will~~~~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 that is particularly solicited from the public.
- g) Public comments must be filed within 21 days after the hearing transcript is available unless the ~~H~~hearing ~~O~~fficer specifies a different date. Any person may file written comments in a time-limited water quality standard proceeding.

- h) Agency must file any comments it receives from USEPA.
- i) The Agency will ~~must~~ notify USEPA of the availability of the hearing transcript and inform USEPA of the comment deadline.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.560 Burden of Proof Demonstration**

- ~~a) The burden of proof is on the petitioner.~~
- ba) For a time-limited water quality standard to a use specified in section 101(a)(2) of the Clean Water Act or a subcategory of such a use, ~~t~~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 designated use;
  - 2) Natural, ephemeral, intermittent or low flow conditions or water levels prevent the attainment of the designated 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 designated 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 designated use, and it is not feasible to restore the water body to its original condition or to operate that modification in a way that would result in the attainment of the designated use;
  - 5) Physical conditions related to the natural features of the water body, such as the lack of a proper substrate, cover, flow, depth, pools, riffles, and the like, unrelated to water quality, preclude attainment of aquatic life protection uses;
  - 6) Controls more stringent than those required by sections 301(b) and 306 of the Clean Water Act would result in 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.

- b) For a time-limited water quality standard to a non-101(a)(2) use, the petitioner must provide justification how its consideration of the designated use and value of the water for those listed in 40 CFR 131.10(a) appropriately supports the time-limited water quality standard and term. Justification consistent with (b)(1-7) of this subsection may be used to satisfy this requirement.
- 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. 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 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

### **Section 104.565 Opinion and Order**

- a) When the Board adopts a time-limited water quality standard, the Board will ~~must~~ maintain, in its water quality standards, the underlying designated use and criterion addressed by the time-limited water quality standard, unless the Board adopts and USEPA approves a revision to the underlying designated use and criterion consistent with 40 CFR 131.10 and 131.11.
- b) A 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 304.
- c) The Board may not adopt a time-limited water quality standard if petitioner fails to ~~meet its burden of proof~~ make its demonstration 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;



Board adopts the time-limited water quality standard, and 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 the 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 USEPA 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. The reevaluation must occur no less frequently than every five years after both Board and USEPA 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 USEPA as required by Section 104.580.
- e) The Board order adopting or declining to adopt a time-limited water quality standard is a final order. Any participant ~~party~~ may file a motion for reconsideration, under 35 Ill. Adm. Code 101.520, of a final Board order entered under this Section.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.570 USEPA Review**

- a) Before a time-limited water quality standard becomes effective for Clean Water Act purposes, the Agency will ~~must~~ submit the time-limited water quality standard to the USEPA and obtain the USEPA's approval in accordance with section 303(c) of the Clean Water Act and 40 CFR 131.20 and 131.21.
- b) The Agency will ~~must~~ file the USEPA's decision with the Board as soon as practicable.
- 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 will ~~must~~ automatically incorporate the record from the Board's proceeding adopting the time-limited water quality standard.
  - 3) The Board will ~~must~~ accept public comments for at least ~~21~~<sup>30</sup> days after a petition to modify is filed.
  - 4) ~~If the~~ The Board may hold a hearing if it concludes, in its discretion, concludes that a hearing would be advisable, a hearing must be held.
  - 5) Unless otherwise ordered by the hearing officer or the Board, the Agency will file a recommendation with the Board within 45 days after the petition to modify is filed with the Board.
  - 56) Any order issued by the Board modifying a previously granted time-limited water quality standard is subject to ~~must comply with~~ Section 104.565.
  - 67) The Agency will ~~must~~ submit any order issued by the Board modifying a previously granted time-limited water quality standard to USEPA for review and approval as soon as practicable. As required in subsection b) of this Section, the Agency will file the USEPA's decision with the Board. Any further USEPA disapprovals may be modified pursuant to this subsection.

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)

**Section 104.575 Coverage Under Board-Approved Time-Limited Water Quality Standards**

- 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 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 42 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) For multiple discharger, watershed, water body, or waterbody segment time-limited water quality standards, discharger specific information must be provided individually.
  - ~~2~~3) 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~~4) The proposed reevaluation must assess the highest attainable condition using all existing and readily available information.
- b) The ~~e~~Clerk will ~~must~~ publicize notice of the proposed reevaluation on the Board's website and in a newspaper of general circulation in the county where the facility or pollution source is located.
- c) The Board will ~~must~~ accept public comments for a period ~~not shorter than~~ no less than 30 days.

- d) The Agency will file a recommendation with the Board within 45 days after the petitioner files its proposed reevaluation with the Board. At a minimum, the Agency will provide an analysis of the petitioner's proposed highest attainable condition.
- e) The Board will ~~must~~ reevaluate the highest attainable conditions using all existing and readily available information.
- 1) If any reevaluation yields a more stringent attainable condition, that condition becomes the applicable interim time-limited water quality standard without additional action.
- 2) Where the revelation identifies a condition less stringent than the highest attainable condition, the Board must:
- A) revise the time-limited water quality standard consistent with applicable federal laws and regulations, satisfy the requirements of Section 38.5 of the Act and rules under this Part; and
- B) obtain USPEA approval before the time-limited water quality standard becomes effective for Clean Water Act purposes.
- 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 under Section 104.565(d)(7).
- eg) The Agency will ~~must~~ submit the Board's reevaluation opinion and order to the USEPA ~~for approval~~ within 30 days after issuance of the Board's order.
- h) A 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 Board's order under Section 104.565 or the results are not submitted to the USEPA as required by this Section.

(Source: Added at 42 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 [735 ILCS 5/Art. III], and the rules adopted

pursuant thereto, except that review shall be afforded directly in the appellate court for the district in which the cause of action arose and not in the circuit court. For purposes of judicial review under this Section, a person is deemed to have been served with the Board's final order on the date on which the order is first published by the Board on its website. [415 ILCS 5/38.5(j)]

(Source: Added at 42 Ill. Reg. \_\_\_\_\_, 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).
  
- 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 42 Ill. Reg. \_\_\_\_\_, effective \_\_\_\_\_)