**Section 104.560 Demonstration**

a) For a TLWQS to a use specified in section 101(a)(2) of the Clean Water Act or a subcategory of such a use, the petitioner must provide justification that attainment of the designated use and criterion is not feasible for the proposed term of the TLWQS 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 can be compensated for to enable uses to be met by discharging a sufficient volume of effluent without violating State water conservation requirements;

3) Human-caused conditions or sources of pollution prevent the attainment of the designated use and either 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 a substantial and widespread negative economic and social impact on the public; 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 TLWQS to a non-101(a)(2) use, the petitioner must provide justification of how its consideration of the designated use and value of the water for those listed in 40 CFR 131.10(a) appropriately supports the TLWQS and term. Justification consistent with subsections (a)(1) through (7) may be used to satisfy this requirement.

c) The petitioner must demonstrate that the term of the TLWQS is the minimum necessary to achieve the highest attainable condition. This demonstration must justify the term of the TLWQS by describing the pollutant control activities required to achieve the highest attainable condition, including those activities through a Pollutant Minimization Program.

(Source: Added at 42 Ill. Reg. 7922, effective April 27, 2018)