

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO	)	
GROUNDWATER QUALITY (35 ILL. ADM.	)	PBC NO.: R 2022-018
CODE 620)	)	(Rulemaking-Public Water Supply)
	)	
	)	
	)	

**NOTICE OF FILING**

To: Attached Service List

PLEASE TAKE NOTICE THAT today I caused to be electronically filed with the Clerk of the Illinois Pollution Control Board, via the “COOL” System the Illinois Attorney General’s Office Comment, a copy of which are hereby attached and served upon you.

PEOPLE OF THE STATE OF ILLINOIS,  
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of the State of Illinois

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Dated: March 3, 2023

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**CERTIFICATE OF SERVICE**

I, Jason E. James, an Assistant Attorney General, certify that on the 3rd day of March, 2023, I caused to be served the foregoing Illinois Attorney General's office Comments and Notice of Filing thereof on the parties named on the attached Service List, by email or electronic filing, as indicated on the attached Service List.

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

IN THE MATTER OF: )  
 ) R 22-18  
PROPOSED AMENDMENTS TO ) (Rulemaking –  
GROUNDWATER QUALITY ) Public Water Supplies)  
35 ILL. ADM. CODE 620 )

**THE ILLINOIS ATTORNEY GENERAL OFFICE’S COMMENT**

The Illinois Attorney General’s Office, on behalf of the People of the State of Illinois’ (“People”), submit this comment to the Illinois Pollution Control Board (“Board”) regarding this rulemaking proceeding. The Attorney General is the chief legal officer of the State of Illinois and the Attorney General has an obligation to represent the interests of the People so as to ensure a healthful environment for all the citizens of the State. Ill. Const. 1970, art. V, § 15; *People v. NL Industries*, 152 Ill.2d 82, 103 (1992); *see also Pioneer Processing, Inc. v. E.P.A.*, 102 Ill.2d 119, 137 (1984). The Attorney General’s obligations include ensuring that waters of the State of Illinois—including groundwater—are not threatened by water pollution. 415 ILCS 5/12(a) and (d).

In this comment, the People express support for the proposal from the Illinois Environmental Protection Agency (“IEPA” or the “Agency”) to establish groundwater quality standards for ten chemicals, including six types of per- and poly-fluoroalkyl substances (“PFAS”). The proposal furthers Illinois’ policy to restore, protect, and enhance the quality of the environment, including groundwater resources. This comment also specifically supports IEPA’s approach to weighing the economic reasonableness of its proposal, which follows prior Board practice and is consistent with Illinois law.

**I. The Agency's Proposal Furthers the Purposes of the Illinois Groundwater Protection Act**

The Agency's proposal to establish groundwater quality standards for ten chemicals, including six types of PFAS, is consistent with the General Assembly's legislative directives and the State's long-standing policy based on the prevention of groundwater contamination and preservation of the State's groundwater resources for current and future beneficial uses.

The Illinois Constitution mandates that the General Assembly enact laws to provide and maintain a healthful environment, which includes the protection of state groundwater. Article XI, Section 1, of the Illinois Constitution (IL. CONST. ART. XI, Sec. 1) provides that:

The public policy of the State and the duty of each person is to provide and maintain a healthful environment for the benefit of this and future generations. The General Assembly shall provide by law for the implementation and enforcement of this public policy.

To implement and enforce this Constitutional provision, the General Assembly enacted Sections 2, 11, 12, 20 and 22.51 of the Illinois Environmental Protection Act ("Act") (415 ILCS 5/2, 11, 12, 20 and 22.51) and the Illinois Groundwater Protection Act (415 ILCS 55/1 *et seq.*).

Furthermore, the General Assembly has consistently required protection of the State's groundwater. Its findings and public policy directives regarding pollution of the State's waters, including groundwater, are in Section 11 of the Act:

(a) The General Assembly finds:

- a. that pollution of the waters of this State constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish, and aquatic life, impairs domestic, agricultural, industrial, recreational, and other legitimate beneficial uses of water, depresses property values, and offends the senses;

\* \* \*

- (b) It is the purpose of this Title to restore, maintain and enhance the purity of the waters of this State in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the State, as defined herein,

including, but not limited to, waters to any sewage works, or into any well, or from any source within the State of Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with State and federal law; . . .

415 ILCS 5/11.

In addition, the General Assembly set forth its findings and public policy regarding the State's groundwater in Section 2 of the Illinois Groundwater Protection Act:

(a) The General Assembly finds that:

- (i) a large portion of Illinois' citizens rely on groundwater for personal consumption, and industries use a significant amount of groundwater;
- (ii) *contamination of Illinois groundwater will adversely impact the health and welfare of its citizens and adversely impact the economic viability of the State;*
- (iii) contamination of Illinois' groundwater is occurring;
- (iv) *protection of groundwater is a necessity for future economic development in this State.*

(b) Therefore, it is the *policy of the State of Illinois to restore, protect, and enhance the groundwaters of the State, as a natural and public resource.* The State recognizes the essential and pervasive role of groundwater in the social and economic well-being of the people of Illinois, and its vital importance to the general health, safety, and welfare. It is further recognized as consistent with this policy that the groundwater resources of the State be utilized for beneficial and legitimate purposes; *that waste and degradation of the resources be prevented; and that the underground water resource be managed to allow for maximum benefit of the people of the State of Illinois.*

415 ILCS 55/2 (*emphasis added*).

Furthermore, Section 12 of the Act sets forth the General Assembly's mandate to preserve waters of the State, including groundwater:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

\* \* \*

- (d) Deposit any contaminants upon the land in such place and manner so as to create a water pollution hazard.

415 ILCS 5/12.

Section 12(a) prohibits persons from even threatening to cause or tend to cause water pollution to waters of the State, including groundwater (*i.e.*, potentially contaminating State waters). The standard is even lower for Section 12(d) of the Act. The Appellate Court has found that a Section 12(d) “water pollution hazard can be found although the actor does not yet threaten to cause pollution.” *Tri-County Landfill Co. v. Illinois Pollution Control Bd.*, 41 Ill.App.3d 249, 258 (2nd Dist. 1976).

By proposing to adopt groundwater quality standards for ten chemicals, including six types of PFAS, the Agency is following these state policy directives. Groundwater standards for PFAS are particularly important because the chemicals can easily migrate between air and soil into water, including groundwater.<sup>1</sup> PFAS are widely used, can lead to adverse health effects through exposure to very small amounts, are resistant to typical environmental degradation—therefore known as “forever” chemicals—and are bio-accumulative, meaning they tend to concentrate in tissues of living organisms, including humans.<sup>2</sup> Furthermore, PFAS are thus far

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<sup>1</sup> U.S. Environmental Protection Agency, *Our Current Understanding of the Human Health and Environmental Risks of PFAS*, available at <https://www.epa.gov/pfas/our-current-understanding-human-health-and-environmental-risks-pfas#:~:text=Exposure%20to%20PFAS%20May%20be,a%20variety%20of%20health%20effects>. See also Agency for Toxic Substances and Disease Registry, *Toxicological Profiles for Perfluoroalkyls* (May 2021), available at <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

<sup>2</sup> See, e.g., Per- and Polyfluorinated Substances (PFAS) Factsheet, CENTERS FOR DISEASE CONTROL AND PREVENTION (May 2, 2022), [https://www.cdc.gov/biomonitoring/PFAS\\_FactSheet.html#:~:text=Many%20PFAS%2C%20including%20perfluorooctane%20sulfonic,bioaccumulate\)%20in%20fish%20and%20wildlife](https://www.cdc.gov/biomonitoring/PFAS_FactSheet.html#:~:text=Many%20PFAS%2C%20including%20perfluorooctane%20sulfonic,bioaccumulate)%20in%20fish%20and%20wildlife); See Toxicological Profile for Perfluoroalkyls, U.S. DEP’T OF HEALTH AND HUMAN SERVICES, AGENCY FOR TOXIC SUBSTANCES AND DISEASE REGISTRY (May 2021), <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

subject to limited regulation by state or federal authorities. For these reasons, the People support the Agency's proposed groundwater quality standards and urge the Board to adopt it into Illinois' environmental regulations.

## **II. The Agency Has Appropriately Weighed Economic Reasonableness of Its Proposal**

At hearings and in written comments, the Agency has responded to questions regarding the economic impact of this rulemaking's proposed groundwater quality standards for several forms of PFAS. The People support the Agency's methods of weighing economic reasonableness, as it is consistent with Illinois law and previous Board practice.

Under the Act, before the Board promulgates a substantive environmental regulation, it must consider the "economic reasonableness" of the proposed regulation and determine whether the proposal would, if promulgated, have an "adverse economic impact on the people of the State of Illinois". 415 ILCS 5/27(a), (b).

As discussed below, for over 30 years and across multiple regulations, the Board has consistently decided that the economic impact of proposed groundwater quality standards does not include the financial cost of remediation necessary to comply with these standards. The cost of remediation is properly considered in separate proceedings, not when the Board is initially adopting groundwater quality standards. The Board should continue to apply this approach to the proposed rulemaking currently under consideration.

### **A. The Board Has Historically Found that Adopting Numeric Groundwater Quality Standards Does Not Have Adverse Economic Impacts**

In four separate rulemakings, the Board has considered the economic impact presented by adopting sets of groundwater quality standards. Each time, the Board declined to consider the cost of remediating groundwater to meet the proposed standards. Rather, as described below, the Board found that these costs were properly considered in the context of other proceedings and should not

be considered when the Board decides whether to adopt proposed groundwater quality standards. Indeed, in each instance, the Board found that adopting new groundwater quality standards does not have a adverse economic impact.

***1. R89-14(B)***

In 1991, the Board finalized numerical water quality standards for 60 groundwater contaminants, including very common gasoline constituents such as benzene and toluene, under the then-recently adopted Illinois Groundwater Protection Act (“IGPA”). R89-14(B), *In the Matter of Groundwater Quality Standards* (35 Ill. Adm. Code. 620), Board’s Final Order (Nov. 7, 1991). The IGPA outlined the process by which the Board, the IEPA, and other state agencies would follow when creating groundwater quality standards. *See Id.* at 5, discussing Ill. Rev. Stat. 1989, ch. 111 ½, ¶7458 (currently at 415 ILCS 55/8). Among other things, the statute required creation of a study on the economic impacts of the proposed groundwater quality standards, and that the Board conduct hearings on that economic impact study. *Id.*

In this first groundwater quality standards rulemaking, the Board discusses the economic impact study in detail, noting that the study determined that remediating groundwater to meet standards was the most significant cost and that improved health outcomes was the most significant benefit. *Id.* at 22-24. However, while recognizing the potentially substantial cost of remediating groundwater to meet the standards set by the rulemaking, the Board repeatedly emphasized that groundwater quality standards “do not create or require any new corrective action program; all such programs are part of other regulations already in place or proposed[.]” *Id.* at 24-25 (emphasis in original). Furthermore, the Board ruled, the economic report was seriously flawed in attributing “all the costs of any potential future remedial action” to the groundwater quality standards adopted by the Board. *Id.* That is to say, when the Board adopted these groundwater quality standards, it

ruled that the cost of future remedial action is properly considered as part of *future remedial action programs* and not at the time the Board adopts groundwater quality standards.

**2. *Subsequent Groundwater Quality Standards Adopted by the Board***

For over 30 years after adopting the first set of groundwater quality standards under the IGPA, the Board continued to separate the economic analysis of remediating groundwater from the economic analysis of the groundwater quality standards in and of themselves. In three separate instances after its first groundwater quality standards rulemaking, the Board consistently decided that it would be more appropriate to consider the cost of remediation separately from the process of deciding on a specific groundwater quality standard.

The Board summarized this recent history in its first notice opinion in R08-18, another rulemaking to update groundwater quality standards. This First Notice in R08-18 contained detailed analysis concerning whether the economic impact of remediating groundwater should be considered at the time the Board adopts numeric groundwater quality standards. R08-18, *In the Matter of Proposed Amendments to Groundwater Quality Standards*, 35 Ill. Adm. Code 620, First Notice (Oct. 20, 2011).

The Board's R08-18 First Notice analyzed earlier rulemakings R93-27 and R01-14, both of which established groundwater quality standards. As in R89-14(B), the Board in each of these two rulemakings ruled that there was no adverse economic impact in adopting the new proposed standards. *See Id.* at 24-25.

The Board made these determinations even though 16 new groundwater standards were introduced in R93-27, and a standard was established for Methyl tert-butyl ether (MTBE), a difficult chemical to remove from groundwater, in R01-14. *Id.* Again, the Board focused on the distinction between the economic impact of the numeric standard and the economic impact of

actual remediation: the Board reiterated that there was no significant economic impact by adding new numeric groundwater quality standards because the proposal “would not create new corrective action or monitoring programs.” *Id.*, reestablished in the Board’s final order on Oct. 4, 2012.

**B. The Record Does Not Support a Basis to Deviate from the Board’s Consistent Approach in Prior Rulemakings Regarding the Economic Impact of Proposed Groundwater Quality Standards**

The IEPA discussed this regulatory history at the outset of this rulemaking. In its Statement of Reasons, the Agency described the manner in which it previously determined the economic reasonableness of groundwater quality standards. R22-18, *IEPA’s Statement of Reasons* at 22-26 (Dec. 8, 2021). In each case, as described above, the Board found that new standards will not have an adverse economic impact and that setting standards should be evaluated separately from remedial programs. *Id.*

The IEPA then discussed the economic impact of the current proposal. Applying the same approach used repeatedly by the Board in the past, the Agency stated that “the proposed amendments simply establish the groundwater quality standards. They do not establish clean-up standards or requirements.” *Id.* at 25. Therefore, the current proposal does not have an adverse economic impact. *Id.* at 26.

Despite this regulatory history, industry commenters have continued to suggest that the Board consider the economic impact of remediating contaminated sites to comply with the proposed numeric groundwater quality standards for certain specific PFAS. In this rulemaking’s July hearing, the issue of whether the Agency should consider cost of compliance within the context of this specific rulemaking was raised three times. *See, e.g.*, R22-18, June 21, 2022 hearing transcript at 12:6-11, 46:17-24, and 65:15-66:5 (June 27, 2022).

However, there is no statutory or regulatory basis to treat this groundwater standards rulemaking differently from the earlier groundwater standards rulemakings, where the Board repeatedly held that the economic impact of establishing numeric standards must be analyzed separately from the economic impact of implementing these standards in programs that require remediation of groundwater to meet those numeric standards.

Commenters have raised the observation that PFAS might be different from previously regulated substances in that, commenters argue, PFAS are “ubiquitous in the environment” and other states have addressed the cost of remediation at a different phase in their standards-setting process. *E.g., id.* at 28:22, 33:1-14. However, these concerns do not provide a basis for the Board to deviate from its long-established process when adopting groundwater quality standards. As such, the Board should not consider the cost of remediation in this rulemaking.

### **III. Conclusion**

The IEPA has a duty under both the Illinois Constitution and the legislative and policy directives of the General Assembly to address groundwater quality. By proposing these standards for PFAS and other chemicals, the Agency is carrying out its duty to restore, protect, and enhance the groundwaters of the state. For these reasons, the People support the proposed regulations and urge the Board to adopt them.

Furthermore, IEPA has appropriately separated consideration of the numeric groundwater quality standards themselves—which are based on impacts to human health and the environment—from the financial costs of remediating groundwater to become compliant with these standards. The Board should continue to apply its decades-old approach of considering the cost of compliance in a separate process.

Respectfully submitted,

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