

ILLINOIS POLLUTION CONTROL BOARD
October 17, 2024

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R22-18
GROUNDWATER QUALITY) (Rulemaking – Public Water Supplies)
35 ILL. ADM. CODE 620)

ADDENDUM A

**ATTACHMENT TO THE BOARD’S OPINION AND ORDER OF OCTOBER 17, 2024,
ON THE PROPOSED SECOND-NOTICE AMENDMENTS, DOCKET R22-18**

**Board Questions Based on First-Notice Public Comments Concerning
Groundwater Management Zones (GMZs)**

The following questions are in addition those posed by the Board in its opinion on the proposed second-notice amendments.

1. In its proposed amendments to Section 620.250, the Illinois Environmental Protection (IEPA) refers to GMZs “for contamination being remediated under the Leaking Underground Storage Tank Program (Title XVI of the Act) [leaking UST program], . . . the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).” PC 63 at 13.
 - a. For the leaking UST program referred to in IEPA’s proposed amendments, does IEPA mean to include any statutes other than Title XVI of the Environmental Protection Act (415 ILCS 5/57 *et seq.* (2022)) or any rules other than 35 Ill. Adm. Code 734? If so, please provide citations to those statutes or rules, whether State or federal.
 - b. Please explain what IEPA means by “RCRA” in its proposed amendments. For example, does IEPA mean remediation only under Subtitle C of the federal RCRA statute and corresponding rules, or also remediation of municipal solid waste landfills under Subtitle D of the federal RCRA statute and corresponding rules? *See* Exh. 21, Att. 13. Does IEPA mean to include what 35 Ill. Adm. Code 620.Appendix D refers to as “State RCRA”? Please provide citations to all State and federal statutes and rules, as applicable, that IEPA considers to be “RCRA” as used here by IEPA.
 - c. Please explain what IEPA means by “CERCLA” in its proposed amendments. For example, does IEPA mean remediation only under the federal statute (42 U.S.C. §§ 9601 *et seq.*) and National Contingency Plan (40 C.F.R. 300)? Does IEPA mean to include what 35 Ill. Adm. Code 620.Appendix D refers to as “State Superfund”? Please provide citations to all State and federal statutes and rules, as applicable, that IEPA considers to be “CERCLA” as used here by IEPA.

- d. For the leaking UST program, RCRA, and CERCLA referred to in IEPA’s proposed amendments, would IEPA include any guidance document eligible for incorporation by reference (5 ILCS 100/5-75 (2022)) into Part 620? If so, please identify the guidance documents.
2. When IEPA establishes GMZs at leaking UST sites, RCRA sites, and CERCLA sites, does IEPA do so using its authority under Section 620.250?¹
 - a. If not, please explain why not and include citations to the authority that IEPA uses to establish the GMZs.
 - b. If so, to establish the GMZ, must the release be subject to a “corrective action process” (35 Ill. Ill. Adm. Code 620.110 (definition)) approved by IEPA?
 3. How are GMZs established at leaking UST sites, RCRA sites, and CERCLA sites? For example, does IEPA issue a document in which it establishes the GMZ? If so, what type of document?
 4. Precisely when do GMZs take effect at leaking UST sites, RCRA sites, and CERCLA sites? If it is the case, please explain the circumstances under which a GMZ would take effect at a point in time *other than* upon IEPA’s issuance of a document in which IEPA approves the GMZ.
 5. While GMZs are in effect—and before completion of “corrective action”—at leaking UST sites, RCRA sites, and CERCLA sites, are the groundwater quality standards specified in 35 Ill. Adm. Code 620.410, 620.420, 620.430, and 620.440 inapplicable to the released contaminants within and being addressed by the GMZs?
 - a. If so, are those groundwater quality standards inapplicable based on, and subject to compliance with, 35 Ill. Adm. Code 620.450(a)(3)? If not, please explain why not.
 - b. If those groundwater quality standards are inapplicable due to a provision other than Section 620.450(a)(3), please identify the provision and explain why it applies.
 6. A GMZ under Sections 620.250(a)-(c) and 620.450(a) may be used to address exceedances of the Subpart D standards for the appropriate class of groundwater, *i.e.*, the numerical groundwater quality standards specified in Section 620.410, 620.420, 620.430, or 620.440.
 - a. For a GMZ established at a leaking UST site, RCRA site, or CERCLA site under the authority of Section 620.250, would the GMZ necessarily be limited to addressing exceedances of the applicable Subpart D standards?

¹ For questions concerning GMZs at leaking UST sites, RCRA sites, and CERCLA sites, please respond separately for each, *i.e.*, leaking UST program, RCRA, and CERCLA.

- b. Do leaking UST sites, RCRA sites, or CERCLA sites have groundwater “cleanup” objectives that may differ from the Subpart D standards (*e.g.*, different contaminants, different concentrations)?
 - i. If so, please provide citations to the provisions for determining those groundwater cleanup objectives.
 - ii. If so, and the groundwater cleanup objectives are either less inclusive (fewer contaminants) or less stringent (higher concentrations) than the Subpart D standards, can a GMZ’s “corrective action” be considered complete when IEPA confirms that all the groundwater cleanup objectives have been attained, even though contaminant concentrations remain that exceed the Subpart D standards?
 - iii. If the groundwater cleanup objectives are either more inclusive (more contaminants) or more stringent (lower concentrations) than the Subpart D standards, should the definition of “corrective action process” (35 Ill. Adm. Code 620.110) be amended so that it is not limited to addressing “a potential or existing violation of the standards set forth in Subpart D standard”?
7. In the ordinary course of a remediation under the leaking UST program, RCRA, or CERCLA:
 - a. How is a GMZ terminated? For example, does IEPA issue a document in which it terminates the GMZ? If so, what type of document?
 - b. Precisely when does the GMZ end? If it is the case, please explain the circumstances under which a GMZ would end at a point in time other than upon IEPA’s issuance of a document in which it approves the completed “corrective action.”
 - c. What are the prerequisites to termination of the GMZ?
 - d. Might a GMZ continue to be in effect after completion of corrective action? If so, please describe the types of circumstances in which that would occur.
 - e. Might “controls” and “management” (35 Ill. Adm. Code 620.250(c)) continue to apply after completion of corrective action? If so, would that be the case only if the GMZ continues to be in effect?
8. How have GMZs at leaking UST sites, RCRA sites, and CERCLA sites complied with current Section 620.250(c), both its first sentence and its final two sentences?
9. For released contaminants addressed by GMZs at leaking UST sites, RCRA sites, and CERCLA sites, after completion of “corrective action”:
 - a. Are the numerical groundwater quality standards that apply those specified in 35 Ill. Adm. Code 620.450(a)(4)(A) or (a)(4)(B)? If not, please identify the provisions that

specify the applicable numerical groundwater quality standards. In addition, please comment on whether current Section 620.450(a)(4)(B) could ever apply at a leaking UST site, a RCRA site, or a CERCLA site.

- b. Should the numerical groundwater quality standards become the groundwater “cleanup” objectives achieved, as with Section 620.450(c) (Site Remediation Program), rather than standards specified in Section 620.450(a)(4)(A) or (a)(4)(B)? *See* 35 Ill. Adm. Code 620.450(c); *see also* 35 Ill. Adm. Code 734.530(f) (“While the No Further Remediation Letter is in effect, the otherwise applicable groundwater quality standards from 35 Ill. Adm. Code 620.Subpart D are superseded. The applicable groundwater quality standards for the specified contaminants of concern within the area formerly encompassed by the GMZ are the groundwater objectives achieved as documented in the approved Remedial Action Completion Report.”).

10. Has IEPA established a GMZ as follows²:

- a. Unilaterally, *i.e.*, not in response to a written proposal (*e.g.*, from the party performing the remediation) or written directive (*e.g.*, order from a court or the United States Environmental Protection Agency (USEPA))?
 - i. If so, please describe the types of circumstances in which that occurred.
 - ii. If not, please describe the types of circumstances in which IEPA might have occasion to do so? If it is implausible, please explain why.
- b. In response to a written directive (*e.g.*, order from a court or USEPA)?
 - i. If so, please describe the types of circumstances in which that occurred.
 - ii. If not, please describe the types of circumstances in which IEPA might have occasion to do so? If it is implausible, please explain why.
- c. Based on the written proposal of someone other than the current owner or operator of the site at which there has been a release?
 - i. If so, please describe the types of circumstances in which that occurred, such as a request from a person who is a “prospective purchaser” under 415 ILCS 5/22.2b (2022) or who fits within CERCLA’s or the Environmental Protection Act’s “Superfund” liability categories of, generally, a former owner or operator of the site at the time of disposal, an arranger for disposal at the site, or a transporter for disposal at the site (42 U.S.C. § 9607(a)(2), (a)(3), (a)(4); 415 ILCS 5/22.2(f)(2), (f)(3), (f)(4) (2022))?

² Questions 10 through 21 are not limited to leaking UST sites, RCRA sites, or CERCLA sites.

- ii. If not, please describe the types of circumstances in which IEPA might have occasion to do so? If it is implausible, please explain why.
 - d. For a cleanup being undertaken by USEPA or IEPA?
 - i. If so, please describe the types of circumstances in which that occurred.
 - ii. If not, please describe the types of circumstances in which IEPA might have occasion to do so? If it is implausible, please explain why.
- 11. Has IEPA amended a GMZ, such as by changing its size, the contaminants that are subject to it, or its corrective action process?
 - a. If so, please describe both the types of circumstances that prompted IEPA to amend the GMZs and the types of amendments.
 - b. If not, please describe the types of circumstances that might prompt IEPA to amend a GMZ. If it is implausible, please explain why.
- 12. Has IEPA unilaterally amended a GMZ, *i.e.*, not in response to a written proposal (*e.g.*, from the party performing the remediation) or written directive (*e.g.*, order from a court or USEPA)?
 - a. If so, please describe the types of circumstances that prompted IEPA to unilaterally amend the GMZs.
 - b. If not, please describe the types of circumstances that might prompt IEPA to unilaterally amend a GMZ? If it is implausible, please explain why.
- 13. Has IEPA amended a GMZ over the objection of the party performing the remediation?
 - a. If so, please describe the types of circumstances that prompted IEPA to amend the GMZs over objection.
 - b. If not, please describe the types of circumstances that might prompt IEPA to amend a GMZ over the objection of the party performing the remediation. If it is implausible, please explain why.
 - c. If IEPA determined that amending a GMZ was necessary but the party performing the remediation objected to the amendment, what options would be available to IEPA? Please describe how those options may vary, if at all, depending on the requirements (*e.g.*, leaking UST program; Compliance Commitment Agreement) under which the remediation is being performed.
- 14. Has IEPA established a GMZ (or part of a GMZ) on property owned by someone who refused to provide written permission to the establishment of the GMZ?

- a. If so, please describe the types of circumstances in which that occurred.
 - b. If not, please describe the types of circumstances that might prompt IEPA to do so? If it is implausible, please explain why.
15. In IEPA's view, if an off-site property owner provides written permission to having a GMZ extend to that off-site property, does that permission necessarily include permission to access the off-site property to carry out parts of the corrective action process (e.g., installing groundwater monitoring wells, collecting samples from them)?
 16. Assume that an off-site property owner provides written permission to having a GMZ extend to that off-site property but declines to provide written permission for any access to that off-site property. Also assume that the contamination on the off-site property can be remediated exclusively through on-site measures, and compliance with the applicable Subpart D standards on the off-site property can be demonstrated without access to the off-site property. Would IEPA accept this "limited" permission from the off-site property owner and extend the GMZ to that off-site property? Please explain why IEPA would or would not.
 17. If a site owner or operator obtains access to an off-site property through an injunction under 415 ILCS 5/22.2c (2022), might IEPA approve extending a GMZ to the off-site property (i.e., even though the off-site property owner refused to provide written permission for either the GMZ or access)? If not, why not?
 18. Please identify authorities, if any, that IEPA or USEPA may use or otherwise bring to bear to obtain access to—or the establishment of a GMZ on—a property owned by someone who refused to provide written permission for either.
 19. Please provide examples of "*controls and continued management at the site* if concentrations of chemical constituents, as specified in Section 620.450(a)(4)(B), remain in groundwater at the site following completion of such action." 35 Ill. Adm. Code 620.250(c) (emphasis added). In responding, please include examples of "controls" and, separately, examples of "management" if IEPA views the terms as having different meanings.
 20. If current Section 620.450(a)(4)(B) applies and thus corrective action has been completed and the exceedance concentrations have become the applicable numerical groundwater quality standards, please explain whether the purpose of "controls and continued management at the site . . . following completion of such action" would necessarily be "to mitigate impairment caused by the release of contaminants." 35 Ill. Adm. Code 620.250(a), (c). If their purpose is not "to mitigate impairment caused by the release of contaminants," then on what basis would IEPA assess "the on-going adequacy" of those controls and continued management under current Section 620.250(c)? *Id.*
 21. If current Section 620.450(a)(4)(B) applies, that means these two requirements have been met: (a) "To the extent practicable, the exceedance has been minimized and beneficial use, as appropriate for the class of groundwater, has been returned;" and (b) "Any threat to public

health or the environment has been minimized.” 35 Ill. Adm. Code 620.450(a)(4)(B) (i) and (ii). And if those two requirements have been met, should proposed subsections (d)(2) and (e) of Section 620.250 provide that, on a site-by-site basis, IEPA’s written determination may:

- a. Specify why continuing controls and management are unnecessary (and thus “on-going adequacy” submittals and reviews are unnecessary), make those controls and management inapplicable, and terminate the GMZ (in which case, the exceedance concentrations of Section 620.450(a)(4)(B) would apply within the three-dimensional region *formerly encompassed by* the GMZ)? Please explain why or why not.
- b. Specify why “on-going adequacy” submittals and reviews are unnecessary (even though continuing controls and management are necessary) and make those submittals and reviews inapplicable? Please explain why or why not.
- c. Specify why “on-going adequacy” submittals and reviews should take place less frequently than at least every five years (even though continuing controls and management are necessary), specify the greater time interval for those submittals and reviews, and make that greater time interval applicable? Please explain why or why not. If so, should there be a maximum time interval for the “on-going adequacy” submittals and reviews (*e.g.*, at least every ten years)?