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Sent via Email and U.S. mail

RE: Groundwater Quality (35 Ill. Adm. Code 620; 48 Ill. Reg. 4608)

Dear Mr. McGill:

We write in regards to the pending rulemaking titled "Groundwater Quality" (35 Ill. Adm. Code 620; 48 Ill. Reg. 4608), and the corresponding Pollution Control Board (Board) docket number R22-18. The Joint Committee on Administrative Rules (JCAR) has received comment from a variety of interested parties arguing that the Board has not yet met its obligations under Section 27 of the Environmental Protection Act with respect to this rulemaking. (415 ILCS 5/27). We respectfully request additional clarification on the Board's response to these comments so that JCAR may "evaluate and report on all rules in terms of their ...statutory authorization." (5 ILCS 100/5-100(c)).

Commenters argue that Section 27 of the Environmental Protection Act requires the Board consider "the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution" at issue in a rulemaking. (415 ILCS 5/27(a)). Based on the materials in docket number R22-18, it appears the Illinois Environmental Protection Agency (IEPA) and the Board assert that "the economic impact of proposed groundwater quality standards does not include the financial cost of remediation necessary to comply with these standards," and that substantive economic impact analysis should occur only when corrective action programs are created or amended to ensure compliance with the updated numeric standards.¹ It follows that if adopting a numeric standard would immediately impact the responsibilities of a regulated entity, then the Board must consider "the feasibility and economic reasonableness" of the proposed numeric standard insofar as it impacts a regulated entity prior to any subsequent rulemaking. If

¹ 10/17/24, pp. 50-52, <https://pcb.illinois.gov/documents/dsweb/Get/Document-111037>

we have misunderstood how Section 27 applies to this case, please correct us. Specifically, the National Waste and Recycling Association (NWRA) asserts to JCAR and to the Board that the numeric standards in this rulemaking would immediately impact certain regulated entities through "programs that are required to monitor and meet Part 620 Groundwater Quality Standards, such as the Board's landfill regulations," by affecting requirements to obtain or renew an operating permit, and by affecting some municipalities' water treatment obligations. In its 2nd notice opinion,² the Board acknowledges NWRA's comments but only reiterates that IEPA "will address impacts of proposed PFAS GWQS to landfills and other programs in separate, future rulemakings." This does not address NWRA's comments that the numeric standards in this rulemaking will have an economically significant regulatory impact immediately, *prior to any future rulemaking*. Indeed, neither the Board nor IEPA appear to have addressed the argument that the numeric standards in this rulemaking will immediately impact regulated entities.

So that JCAR may accurately evaluate the rulemaking's "relation to statutory authorization," we respectfully ask the Board to clarify its position on the above-described comment. Specifically, we ask that the Board consider the "technical feasibility and economic reasonableness" of these numeric standards insofar as they may have a regulatory impact prior to any subsequent rulemaking, whether through the permitting process, landfill regulations, or any other regulatory activity. If the Board maintains that these numeric standards would not have a regulatory impact prior to any subsequent rulemaking, we ask that the Board demonstrate that point explicitly, engaging with specific points raised through public comment, rather than by emphasizing past practice.

We are happy to answer any questions regarding the items within this letter or the rulemaking process in general and look forward to a substantive response.

Sincerely,

Kim Schultz
Executive Director

cc: Toby Rivas, JCAR

² *Id.*