BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF ELECTRONIC FILING

PLEASE TAKE NOTICE that on June 17, 2024, we electronically filed with the Clerk of the Pollution Control Board of the State of Illinois, the COMMENTS OF ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES ON THE BOARD'S PROPOSED AMENDMENTS TO GROUNDWATER QUALITY STANDARDS, copies of which is attached hereto and served upon you.

Dated: June 17, 2024

Respectfully submitted,

/s/ Fredric Andes

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CERTIFICATE OF SERVICE

I, Fredric Andes, hereby certify that I have filed the attached NOTICE OF ELECTRONIC FILING and COMMENTS OF ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES ON THE BOARD'S PROPOSED AMENDMENTS TO GROUNDWATER QUALITY STANDARDS on the attached service list by electronic mail on June 17, 2024.

Dated: June 17, 2024

Respectfully submitted,

/s/ Fredric Andes

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PROPOSED AMENDMENTS TO	)	**R22-18**
GROUNDWATER QUALITY	)	**(Rulemaking – Public Water Supply)**
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COMMENTS OF ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES ON THE BOARD'S PROPOSED AMENDMENTS TO GROUNDWATER QUALITY STANDARDS

The Illinois Association of Wastewater Agencies, by and through its attorneys, Barnes & Thornburg, LLP, and pursuant to the Hearing Officer Order of May 21, 2024, submits the following Comments with regard to the First Notice Opinion and Order of the Illinois Pollution Control Board (the "Board") in the proceeding referenced above.

The Board should not proceed further with the proposed amendments to the State groundwater quality standards. The proposed groundwater standards developed by the Illinois Environmental Protection Agency ("IEPA" or "the Agency") for per- and polyfluoralkylated substances ("PFAS") and the record supporting those proposed standards suffer from serious legal, procedural, policy and scientific flaws. IEPA should be directed by this Board to address those flaws before it returns to the Board with a revised proposal.

The flaws in the Agency's proposal and supporting record, which must be addressed before a valid proposal can be submitted for rulemaking, include the following:

1. **The Board has not properly accounted for existing physical conditions – high PFAS background levels in groundwater - as required by 415 ILCS 5/27(a).**

It is a fundamental principle of the Board's regulatory function that "[w]hen promulgating substantive environmental regulations under the Act, the Board must consider the 'technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.'" 415 ILCS 5/27(a)(2022). In exercising this function, the Board must consider existing physical conditions to

ensure that meeting the proposed standards will be technically feasible and economically reasonable. Obviously, if the standards require regulated parties to meet contaminant levels that are below the background levels that already exist there is a substantial question as to whether the standards are either technically feasible or economically reasonable. That is exactly the situation presented here. Testimony to the Board has provided published research showing that groundwater in America often has PFAS levels that are already in excess of the proposed standards. (Document-107102 (illinois.gov) and Document-107047 (illinois.gov) .) Yet, neither IEPA nor the Board have taken this important fact into account in setting standards for PFAS in groundwater.

The Board has previously considered background levels when reviewing other regulations. For example, the regulations for the Site Remediation Program provide that no remediation is required to levels less than area background levels. *See* 35 IAC § 742.400. Such a provision was necessary because it is often either prohibitively expensive or simply impossible to remediate sites to levels below such background levels. In refusing to consider the currently existing physical conditions, including PFAS background levels above the proposed standards, the Board and IEPA have acted inconsistently with both the requirements of the Illinois Environmental Protection Act and the Board's own precedents.

2. The Board has not properly accounted for the technical feasibility or economic viability of implementing the requirements of the proposed amendments as required by 415 ILCS 5/27(a).

As noted above, the Board's governing authority, the Environmental Protection Act, states that "[w]hen promulgating substantive environmental regulations under the Act, the Board must consider the 'technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution.'" 415 ILCS 5/27(a)(2022). In this rulemaking, IEPA has consistently and systematically refused to look at the real economic costs of compliance with the proposed standards, despite the fact that evidence has been presented that those costs will be substantial. And the Board has allowed the

rules to move forward without that assessment of "economic reasonableness." This course of action violates the clear directive of the statute, and the rules should not proceed until the compliance costs have been fully taken into account.

IEPA and the Board have provided several reasons why they believe that it is appropriate to move forward with these rules without considering compliance costs. But none of those rationales hold water. The first claim offered is that it is acceptable to ignore costs at this point, because the groundwater standards will not have a real effect until they are implemented in various other regulatory programs. To make that happen, allegedly, changes will need to be made in those regulations, and the costs can be considered at those times. This argument is simply not true – the proposed standards will have a real impact as soon as they are adopted, without any other regulatory changes being made. That is made clear by IEPA's most recent statement on the topic. In response to the Board's questions to the Agency in its March 7, 2024 Order, IEPA filed answers on April 26, 2024. https://pcb.illinois.gov/documents/dsweb/Get/Document-107102 (last accessed June 5, 2024). In response to a direct question from the Board about the extent to which further regulatory changes would need to be made in other programs, IEPA stated that only one program, the Site Remediation Program, would need regulatory changes "with certainty." As to other programs, including the regulations that govern landfills, IEPA only said that it will be assessing whether regulatory changes would be required.

In fact, it seems clear that in the landfill regulations, and in other groundwater-related rules, there are currently references to Board-adopted groundwater standards, which – if and when the PFAS standards are adopted by this Board – will require compliance with those standards. For example, the standards for solid waste landfills provide (in 35 IAC 811.320(a)(1)(B)) that groundwater quality must be maintained to meet either background levels or Board-established standards. Thus, PFAS groundwater standards would be enforceable under that regulation as soon as they are adopted by the

Board. The same is true of existing landfills – 35 IAC 814.302 provides that the requirements specified in 35 IAC 811 apply to those facilities as well. Similarly, in the Site Response Program: the rules (in 35 IAC 740.530(d)) require that, when a groundwater management zone is in effect, the *otherwise applicable* standards of section 620 shall not apply. This implies that, in all instances where a groundwater management zone is not in effect, the standards of section 620 are applicable. Therefore, parties covered under these programs face potential compliance costs as soon as the final standards are adopted. These costs cannot be ignored.

It is important to recognize the nature of the compliance costs that will result from the proposed standards. IEPA and the Board seem to be under the misimpression that if they just set the PFAS standards at the same levels as provided by USEPA in its Maximum Contaminant Levels ("MCLs") that are set under the Safe Drinking Water Act, then the State's groundwater standards will not have an incremental impact beyond the costs of meeting the MCLs. But that is simply not true. Even with the USEPA MCLs in place (which have already been challenged in Federal court – (| Statement from AWWA and AMWA on petition for judicial review of PFAS regulation), the State groundwater standards will have their own impacts, in at least three different ways for three different sets of regulated parties.

As IEPA and the Board note, the proposed standards apply both to groundwater used by public water systems – and usually treated before being distributed to customers – and groundwater that is withdrawn from aquifers through private wells, which is often not treated before use. In the situation where groundwater is being routed through public water systems, the Federal MCLs would allow those water systems to treat the groundwater in their treatment plants before distribution, so that the MCLs are met "at the tap." The proposed State groundwater standards would not allow that option. Because the proposed State standards apply to the groundwater itself, before being withdrawn, treatment to meet the standards would need to occur well before the water enters the treatment system. Thus, costs

will have to be incurred that go beyond what is required under Federal law. But those costs have not been assessed, and those costs are substantial.[1]

The same lack of cost analysis is true for private wells. In these situations, the groundwater standards will clearly result in treatment costs that would not be incurred otherwise. In fact, this is true as well for groundwater that is not withdrawn at all, and never used in any water system. Regulated parties would need to incur costs to comply with the standards in those cases too.

And those costs could be enormous. Testimony has been presented as to the major cost increases that parties are seeing elsewhere in the country as stringent PFAS control requirements are imposed. (Document-107102 (illinois.gov) and Document-107744 (illinois.gov) .) Studies have been conducted that document the costs to treat various effluents, waters and waste streams to meet low PFAS levels. These costs have been assessed for public water systems (cost-analysis-of-pfas-on-biosolids---final+(1).pdf (squarespace.com) and Report Master - Energy - Single Spacing (awwa.org)) and for private parties (PFOS and PFOA Private Cleanup Costs at Non-Federal Superfund Sites | U.S. Chamber of Commerce (uschamber.com)). The costs estimated there run into hundreds of millions of dollars. Supplementing those studies, there is now a report done for the Minnesota Pollution Control Agency that documents similarly large PFAS treatment costs. (Evaluation of Current Alternatives and Estimated Cost Curves for PFAS Removal and Destruction from Municipal Wastewater, Biosolids, Landfill Leachate, and Compost Contact Water (state.mn.us) .) IEPA's and the Board's refusal to consider the likely economic impacts of the proposed standards is of particular concern for IAWA members, since the proposed standards are likely to disrupt carefully balanced biosolids and water

[1] Water agencies who have already begun addressing PFAS in groundwater wells have seen costs in the hundreds of millions of dollars. *See e.g.* *https://www.asce.org/publications-and-news/civil-engineering-source/civil-engineering-magazine/article/2021/10/california-water-district-moves-ahead-with-pfas-treatment-systems#:~:text=Of%20the%2019%20retail%20water,of%20engineering%20for%20the%20OCWD* (last accessed June 5, 2024).

resource recovery programs, which would in turn have adverse impacts on agriculture and water use on a statewide basis.

In defending the refusal to consider those impacts, IEPA and the Board have pointed to previous Board rulemakings on Part 620. However, those Board actions are distinguishable from the current situation, and do not provide support for ignoring economic impacts here. In those other rulemakings, IEPA had considered economic concerns, and even adjusted the proposed rule based on said concerns. For example, in R08-18, IEPA specifically considered the economic impacts of proposed molybdenum and water solubility standards, and ultimately removed those aspects of the proposal from the final rule. [R08-18 Final Order at 27]. In R71-14, the Board requested a study on the costs of the technology required to meet the proposed numerical limits. R71-14 Opinion and Order at 402. It reviewed the evidence presented by the study "in great detail" and subsequently revised the proposal, resulting in a draft that the Board "believed represented a degree of treatment readily attainable by standard available methods at reasonable cost." *Id.* Moreover, the Board stated that it "significantly altered many of the figures in our initial proposal to make sure that we are not imposing an unreasonable cost on anyone." *Id.* at 11. This is a far cry from refusing to consider impacts at all. The Board also cites to R93-27, but there too the Board considered which implementation measures would be technologically feasible and economically viable. *See* R93-27 Final Order at 4 ("The standards for Class II groundwaters are in most cases based on the capabilities of treatment technologies. Here, as in the original set of Class II groundwater standards, the most cost effective best available treatment (BAT) technologies are generally capable of removal of 90% of the contaminant."). In the current situation, the economic concerns raised by regulated parties have not been addressed at all. This problem is further compounded by the fact that the regulation of PFAS substances in groundwater represents a unique challenge not previously faced by IEPA and the Board. There are numerous costs that may arise as a result of the current proposal, which IEPA and the Board have yet to consider.

IEPA and the Board should not be able to point to past rulemakings as evidence that they do not need to consider economic impacts when the economic impacts of the current proposal are entirely different in scale and kind.

IAWA is concerned that if these economic considerations are not analyzed now, their impact on the regulated community will be overlooked or forgotten. IEPA and the Board's current approach to economic impacts is not unlike that of the State of Michigan. In 2019, the Michigan Department of Environment, Great Lakes and Energy ("EGLE") adopted PFAS-related drinking water standards that simultaneously changed groundwater standards. In that instance, EGLE considered the economic impacts of the drinking water standards, but completely ignored the impact on industry members from the resulting changes in groundwater standards. *See 3M Co. v. Dep't of Env't Great Lakes & Energy*, Mich. App. LEXIS 5967 (Aug. 2023). EGLE chose to ignore those economic impacts on the basis that individual obligations under the proposal would vary greatly and due to this variability, it was "not practical to determine the impact of this change." *Id. at* 4. However, since economic impacts were not fully considered, the Court of Claims determined that the proposed rule ran afoul of the State's administrative procedure statute. This decision was later upheld by the Court of Appeals, and the issue is currently before the Michigan Supreme Court. To avoid having the Illinois rule meet a similar fate, IEPA and the Board must fully consider the economic impacts of the proposed PFAS groundwater standards.

The Board has defended its refusal to consider the costs of implementation for the new standards by noting that regulated parties will be able to seek relief through asking for adjusted standards. That is no justification for evading the clear statutory requirement to consider economic impacts when adopting the initial, generally applicable standards. To receive an adjusted standard, a party would have to engage legal counsel, acquire technical data, and participate in a negotiation process, incurring additional costs and responsibilities. Moreover, parties would not be able to ensure that they would

receive an adjusted standard, meaning that they would have to assume that they will have to comply with the adopted standards, and would not know otherwise until – possibly years later - they find out if their adjusted standards petition is granted. Simply put, adjusted standards are intended to be a relief method for unique circumstances, not a central basis for adoption of standards that cannot be feasibly and reasonably complied with.

It is clear that the proposed standards will bring about new costs on regulated parties, including IAWA members, that IEPA and the Board have not considered. The Board cannot allow the proposed regulations to go forward without a complete understanding of the adverse economic impacts on the people of the State of Illinois and the public agencies that serve them.

3. The proposed standards are considerably more stringent and restrictive than regulations proposed or adopted by other States.

After testimony was presented in this rulemaking showing that the proposed standards are more stringent than the rules issued by other States (Document-106610 (illinois.gov)), IEPA stated that as of January 2023, 30 states had established 52 actions related to PFAS in "groundwater and/or drinking water," and that the IEPA proposed standards "are not the most stringent to date. Eleven promulgated rules include concentrations lower than Illinois EPA's proposed six PFAS standards." (Document-107744 (illinois.gov) at 23.) This statement is misleading. The vast majority of states either do not regulate PFAS in groundwater at all yet[2], or they regulate only PFOA and PFOS, at the level of the 2016 USEPA public health advisory (70 ppt for PFOA and PFOS combined). While there do exist some PFAS-specific state standards that are more stringent than IEPA's proposal, for example Minnesota's PFHxS groundwater standard of 47 ppt, even those states have less stringent standards than IEPA's for other PFAS compounds. (Minnesota's standard for PFOA is 35 ppt, and for PFOS it

[2] As of May 2024, approximately 29 states have not set PFAS groundwater standards.

is 15 ppt.)[3] IEPA has simply refused to explain why its proposed PFAS groundwater standards are so much more restrictive than PFAS standards proposed or adopted by most other states.

As pointed out by testimony before the Board, the IEPA regulatory approach layers conservative assumptions upon conservative assumptions in reaching these very low proposed standards. (Document-106610 (illinois.gov).) The majority of states that have considered PFAS groundwater regulations have drawn significantly different scientific conclusions than IEPA from the same studies that IEPA has relied on to set their standards. And, given that many of those states have also performed technological and economic impact analyses during their process of setting standards, it is clear that IEPA's refusal to gather and consider this information has had a major impact in determining the infeasible and unreasonable levels set in the proposed standards. Therefore, we strongly urge the Board to closely evaluate what groundwater standards will actually reduce risk, while at the same time carefully considering the costs, benefits, and feasibility associated with the proposed standards.

[3] *See* *https://pcb.illinois.gov/documents/dsweb/Get/Document-106610* and *https://pcb.illinois.gov/documents/dsweb/Get/Document-107102* (last accessed June 5, 2024) for additional examples of specific state and international standards compared to IEPA's proposal.

4. Conclusion

For all of the reasons set forth above, IAWA requests that the Board direct IEPA to withdraw its proposed PFAS groundwater standards, and to revise those standards to address the legal, procedural, policy and scientific concerns raised in these comments, before submitting the standards to the Board again for its consideration.

Dated: June 17, 2024

Respectfully submitted,

ON BEHALF OF THE ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES

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