**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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

**NOTICE OF FILING**

PLEASE TAKE NOTICE that on December 6, 2024, we electronically filed with the Clerk of the Illinois Pollution Control Board, Comments of Illinois Association of Wastewater Agencies on the Board's Second Notice as to Proposed Amendments to Groundwater Quality Standards, copies of which are attached hereto and served upon you.

Dated: December 6, 2024

Respectfully submitted,

**ON BEHALF OF THE ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES**

By: *<u>/s/ Fredric P. Andes</u>*
Fredric P. Andes

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**CERTIFICATE OF SERVICE**

I, Fredric Andes, hereby certify that I have filed the attached Notice of Filing and Comments of Illinois Association of Wastewater Agencies on the Board's Second Notice as to Proposed Amendments to Groundwater Quality Standards upon the below service list by electronic mail on December 6, 2024.

Dated: December 6, 2024 _/s/ Fredric Andes_

**SERVICE LIST**

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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| **IN THE MATTER OF:** | ) | |
| | ) | |
| **PROPOSED AMENDMENTS TO** | ) | **R22-18** |
| **GROUNDWATER QUALITY** | ) | **(Rulemaking – Public Water Supply)** |
| **35 ILL. ADM. CODE 620** | ) | |
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**COMMENTS OF ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES ON THE BOARD'S SECOND NOTICE AS TO PROPOSED AMENDMENTS TO GROUNDWATER QUALITY STANDARDS**

The Illinois Association of Wastewater Agencies (IAWA), by and through its attorneys, Barnes & Thornburg, LLP, and pursuant to the Hearing Officer Order of November 15, 2024, submits the following Comments with regard to the Second Notice Opinion and Order of the Illinois Pollution Control Board (the "Board") in the proceeding referenced above.

In its comments on the First Notice in this rulemaking, IAWA showed that neither the Illinois EPA (IEPA) nor the Board have complied with the statutory mandate to consider the economic reasonableness of the proposed amendments to the State groundwater quality standards. IAWA Comments on First Notice (PC#68) at 2-8. In the Second Notice, the Board denies that claim, but it does so without providing any new information as to the economic costs of the rule, and it does so without directly addressing the points made by IAWA in its previous comments. The Board should reconsider its decision, and require IEPA to provide information as to the economic costs of compliance with its proposed standards before this rulemaking proceeds forward.

As an initial matter, it is critical to note that to date, neither IEPA nor the Board has provided or considered <u>any</u> information as to the costs of the pending proposal. In the Second Notice, the Board points out that it is not required to find that compliance with the rule is technically feasible and economically reasonable. Second Notice at 53. We do not disagree; but that is not IAWA's argument.

We simply contend that the Board is required to consider the "economic reasonableness" of the rule – and it has clearly not done so. The same is true of IEPA; in fact, when the Board, in the First Notice, asked IEPA to provide information on the economic reasonableness of the proposal, IEPA simply refused.

Instead of providing cost information in response to that direct request from the Board, IEPA just "reiterates" its prior argument that those costs "will be addressed in the appropriate rulemakings as they occur over time." PC#71 at 9. That vague statement seems to indicate that all of the economic costs of this rule will be considered in other rulemakings. But in fact, IEPA has made other statements on this same issue, within this rulemaking, that do not make such an unconditional commitment. 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. IEPA's Responses to Questions (April 26, 2024) at 6-7 - https://pcb.illinois.gov/documents/dsweb/Get/Document-110174 . Therefore, other than as to the Site Remediation Program, IEPA is giving no assurances that there will be any further rulemakings in which these costs will be considered.

But the problem with IEPA's statements on the cost issue go even deeper. IEPA implies that until it undertakes those other rulemakings, there will be no costs accruing to any regulated party from the adoption of the groundwater standards. That is simply not true. 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.

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, unlike the other situations cited by IEPA and the Board, 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.

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.

For all of the reasons set forth above, IAWA requests that the Board direct IEPA to gather information concerning the economic costs that will result from its proposed PFAS groundwater standards, consider those costs, and provide that information to stakeholders and to the Board, before submitting the standards to the Board again for its consideration.

Dated: December 6, 2024

Respectfully submitted,

**ON BEHALF OF THE ILLINOIS ASSOCIATION OF WASTEWATER AGENCIES**

By: */s/ Fredric P. Andes*
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