

ILLINOIS POLLUTION CONTROL BOARD

June 26, 2025

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

OPINION AND ORDER OF THE BOARD (by B.F. Currie and M. Gibson)

On June 11, 2025, the National Waste and Recycling Association (NWRA) filed a motion for extension of time and continuance of hearing (Mot.). Though NWRA’s motion was directed at the hearing officers, the May 21, 2025, Board order set the date for the upcoming hearing in this sub-docket. Therefore, a Board order deciding this motion is appropriate in this case than a hearing officer order. For the reasons below, the Board grants the motion for extension of time but denies the motion for continuance of hearing.

BACKGROUND OF THE SUB-DOCKET

On December 8, 2021, the Illinois Environmental Protection Agency (IEPA) filed a rulemaking proposal to amend the Board’s groundwater quality standards. The proposed amendments included the addition of six per- and polyfluoroalkyl substances (PFAS). The Board held three sets of hearings to receive testimony from the proponents and from any other interested parties. NWRA put forth two witnesses, Eric Ballenger and Thomas Hilbert. Both witnesses pre-filed testimony, answered pre-filed written questions, and testified under oath at hearing.

Following adoption of the Board’s first notice proposal on March 7, 2024 and its proposed second notice on October 17, 2024, the Joint Committee on Administrative Rules (JCAR) on December 6, 2024, sent a letter to the Board informing the Board that NWRA told JCAR the following:

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, 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. PC 79 at 2.

JCAR asked the Board to consider the technical feasibility and economic reasonableness of the proposed PFAS 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.” PC 79 at 2.

On January 23, 2025, the Board issued its second notice opinion and order (Sec. Not.) which analyzed the economic reasonableness at length. Sec. Not. at 2-19. The Board specifically analyzed arguments made by NWRA at pages 17-19. The Board described the issue and the information it would need to more fully evaluate the issue as follows:

Participants’ economic concerns with adoption of the proposed PFAS standards have centered on the Board’s current landfill rules at Parts 811 and 814. This record, however, lacks information on any additional compliance costs (e.g., for modeling, monitoring, remediation) expected to be incurred under those landfill rules due solely to adding the PFAS standards to Part 620, i.e., without any subsequent amendment to Part 811 or Part 814. *See* 415 ILCS 55/8(b) (2022) (Board must consider “the factors set forth in Title VII of the Environmental Protection Act”); 415 ILCS 5/27(a) (2022) (Board must consider “the economic reasonableness of measuring or reducing the particular type of pollution”); *see also Granite City*, 155 Ill. 2d at 183- 84 (Board considered evidence concerning economic reasonableness of compliance with proposed rules); *GWQS*, R89-14(B), slip op. at 25 (“serious flaw” in economic study because it attributed to the new GWQS “all the costs of any potential future remedial action” even though “[t]he remediation programs already require cleanup of most of the parameters listed in the instant regulations” (emphasis added)). Therefore, while the Board proceeds to second notice with the PFAS standards, the Board adds to Part 620 an exception to their applicability for landfills that are subject to Part 811 or Part 814. *See* proposed Sections 620.410(f) and 620.420(e). Sec. Not. at 18.

The Board directed its Clerk to open this sub-docket to “explore this issue further. A main purpose of the sub-docket is to receive testimony and evidence on any economic impact that adding the PFAS standards to Part 620 would have on compliance costs under the current versions of Part 811 and Part 814. To that end, the Board further directs that the hearing officer schedule a public hearing in the sub-docket.” *Id.* at 19.

In the Board’s discussion and findings related to NWRA’s arguments, the Board advised that it “will consider any amendments to Part 811 or Part 814 proposed in response to adoption of the Part 620 PFAS standards. In the sub-docket, the Board also expects to receive cost information from proponents and participants and will use that information to consider removing the Part 620 exception—added today—from the PFAS standards for Part 811 and Part 814 landfills.” Sec. Not. at 19.

Board staff attended the March 4, 2025 JCAR meeting and answered questions from JCAR members on the record. JCAR subsequently issued a “No Objection” certification along with the following recommendation:

At its meeting on March 4, 2025, the Joint Committee on Administrative Rules considered the above-referenced rulemaking and recommended that the Board assess the makeup of potentially impacted parties under each pending rulemaking and approach its obligation to consider the "economic reasonableness" of its rulemakings by engaging substantively and specifically with concerns raised by commenters, rather than by relying exclusively on its past practice. Section 27 of the Environmental Protection Act requires the Board to consider the "technical feasibility and economic reasonableness" of each rulemaking before it. During this rulemaking's lengthy docket process prior to first notice, commenters repeatedly asserted that the proposed groundwater quality standards would have an adverse economic impact, particularly on landfills, since 35 Ill. Adm. Code 620 groundwater quality standards are cross-referenced in 35 Ill. Adm. Code 811 and 814, which regulate landfills. The Board did not respond to this point substantively, instead just asserting that compliance costs in general cannot be considered as following from numeric standards, since rules governing specific remediation programs must be amended before compliance costs are incurred. Only after JCAR sent the Board a letter outlining the inadequacy of its economic analysis did the Board acknowledge that the proposed standards could have an economic impact on landfills prior to any subsequent rulemaking. JCAR Certification, March 11, 2025.

The Board responded to JCAR's recommendation in the final order issued in the R22-18 rulemaking on March 20, 2025. On May 13, 2025, JCAR issued a letter to the Board notifying that it considered the Board's response, found it appropriate, and requires no further action.

On May 15, 2025, the Board issued an order directing participants to provide information regarding landfills regulated under Parts 811 and 814 and how they would be affected by the addition of Part 620 PFAS groundwater quality standards. The Board requested information on eight specific issues relating to impact of Part 620 standards on landfills.

NWRA'S MOTION

NWRA reports that it has begun gathering information and preparing responses to the information requested in the Board's May 15, 2025 opinion and order, but that "completing the task will require substantial additional time and effort." Mot. at 2. Additionally, NWRA has agreed to meet with the IEPA staff on July 8, 2025, to discuss this rulemaking. *Id.* NWRA says that the meeting with IEPA "likely will impact the information and responses NWRA tenders in response to the Board's information requests." *Id.* Thus, NWRA asks for a 30-day extension of the deadline for submitting proposals and pre-filed testimony and a 30-day continuance of the hearing date. *Id.*

NWRA reports that it reached out to IEPA regarding the motion and that counsel for IEPA said they would not object to the motion.

DISCUSSION AND FINDING

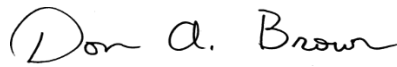
This sub-docket was opened on January 23, 2025. On May 15, 2025, the Board issued eight questions/information requests to all participants, set a due date for any pre-filed testimony,

and also set the date for a hearing on August 12, 2025. The hearing officers issued a notice of hearing on May 21, 2025, and that notice was subsequently published in the *Chicago Sun Times* on May 22, 2025, and in the *State Journal-Register* of Springfield on May 25, 2025.

NWRA has been an active participant in the underlying rulemaking. Not only have they been aware of the landfill-specific economic cost issue that is the heart of this sub-docket, NWRA brought the issue to the attention of JCAR. NWRA framed the issues that constitute the purpose of this sub-docket to JCAR in December, 2024. The Board subsequently exempted Part 811 and 814 landfills from the Part 620 groundwater quality standards based on the economic concerns NWRA presented to JCAR. The Board finds no reason now, three-and-a-half years after the rulemaking proposal was filed, two-and-a-half years after NWRA raised cost-related issues in their witness testimony to the Board, and seven months after NWRA raised specific 811- and 814-related issues to JCAR, to delay the scheduled, noticed, and published hearing date. Therefore, the Board denies NWRA's motion for a 30-day continuance of the scheduled hearing. However, the Board extends the deadline for pre-filing testimony by 14 days to allow NWRA to consider IEPA's position in its proposal and testimony. The new deadline for pre-filed testimony is July 25, 2025.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on June 26, 2025, by a vote of 5-0.



Don A. Brown, Clerk

Illinois Pollution Control Board