BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	R 2022-018
PROPOSED AMENDMENTS TO	)	
GROUNDWATER QUALITY	)	(Rulemaking – Public Water Supply)
(35 ILL. ADM. CODE 620)	)	

NOTICE OF FILING

To: ALL PARTIES ON THE SERVICE LIST

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, **THE NATIONAL WASTE AND RECYCLING ASSOCIATION'S PRE-FILED QUESTIONS TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY**, copies of which are hereby served upon you.

Dated: February 18, 2022

By /s/ Claire A. Manning

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THE NATIONAL WASTE AND RECYCLING ASSOCIATION'S PRE-FILED QUESTIONS TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

The National Waste and Recycling Association ("NWRA"), by and through its attorneys, Claire A. Manning and Anthony D. Schuering of BROWN, HAY + STEPHENS, LLP, and James M. Morphew, SORLING NORTHRUP, and pursuant to the Notice of Hearing of the Illinois Pollution Control Board (the "Board") dated January 13, 2022, submits the following Pre-Filed Questions to the Illinois Environmental Protection Agency (the "IEPA"). The NWRA has not earmarked each of its questions to a specific individual at the IEPA, but requests that the most appropriate person at IEPA answer the question.

I. General Questions.

1. In its Statement of Reasons ("SOR"), at pp. 17–19, the IEPA generally explains a series of stakeholder meetings and public comment periods that it conducted, stating that it "accepted and considered all public comments regarding the proposed groundwater quality standards for six weeks, until June 25, 2021." For the Board to fully understand and address the significant issues in this proceeding, and to make an informed decision as to whether the proposed rules are ready for the Board to adopt as its "First Notice" proposal requiring further hearings and a specific statutory time frame for promulgation, would the IEPA please include in this record:

   (a) its various versions of the proposed rules and all stakeholder comments it received in response to those draft proposed rules;

   (b) a summary of the changes it made (or did not make) in response to those proposals and the reasons therefor; and

   (c) any recordings or minutes or transcripts of public meetings and/or hearings that were held?

2. On September 17, 2021, the Illinois Groundwater Advisory Council ("GAC") declined to recommend that the IEPA move forward with its proposed rules – and posed several concerns, in the nature of questions, to the IEPA. Statement of Reasons ("SOR"), at pp. 4976–4977. The GAC's recommendation was followed by a September 29, 2021 letter from the Intergovernmental Coordinating Committee on Groundwater ("ICCG") pursuant to its obligation under the Illinois Groundwater Protection Act, 415 ILCS 55/4, to provide a written response to the GAC's recommendation. The ICCG letter, SOR at pp. 4979–4980, states, in relevant part:

> The ICCG as a whole entity does not have the expertise to answer or comment on the GAC questions/comments on the proposed changes to the 35 Ill. Adm. Code 620 Groundwater Quality standards. These changes to the Groundwater Quality standards are being proposed by the Illinois EPA, who has the expertise and knowledge to address this (GAC) Recommendation. Therefore, it is the Committee's stated opinion that the GAC Recommendation should be addressed by the Illinois EPA in the Statement of Reasons or before the Illinois Pollution Control Board. Further, this Response by ICCG does not specifically endorse or disapprove of the proposed rule changes and individual ICCG member reserves the right to provide additional comment, questions, or concerns during the rule making process.

Additionally, Ms. Sara Terranova, Assistant Counsel, IEPA Division of Legal Counsel, provided IEPA's response to the GAC recommendation in a November 18, 2021, email to Mr. Bob Elvert, GAC Chairperson. SOR at 4982. The email reads:

> The Illinois Environmental Protection Agency (Agency) has received and reviewed the Groundwater Advisory Council's (GAC) Recommendations to Proposed 35 Ill. Adm. Code 620. The Agency believes each applicable point of concern raised by the GAC has been sufficiently addressed in the SOR and the accompanied Testimony that is to be filed before the Illinois Pollution Control Board (Board). However, if any outstanding issues remain, each concern may be raised and further addressed during the 35 Ill. Adm. Code 620 rulemaking proceeding before the Board.

To sufficiently address the concerns raised by GAC, and of ultimate and immediate interest to the participants in this rulemaking, NWRA requests that the IEPA address the following:

(a) Please point to where in its SOR or Testimony the IEPA has addressed, or please otherwise address in response to this question, the GAC's criticism concerning "the basis for the Illinois EPA's reluctance to work with all (emphasis in original) impacted parties during the drafting of these rules, which could have resulted in discussions answering many of the questions raised during the comment period that ended May 25, 2021."

(b) Please point to where in its SOR or Testimony the IEPA has addressed, or please otherwise address in response to this question, the GAC's criticism that the IEPA has not yet provided sufficient information regarding "the basis for the IEPA's urgency to file these proposed rules with the IPCB without prior response to all comments submitted during the comment period that ended May 25, 2021."

(c) Please point to where in its SOR or Testimony the IEPA has provided, or otherwise please provide in response to this question, the GAC's requested

information explaining how this rule proposal compares to the federal or surrounding state approaches, methodologies, and standards.

(d) Please point to where in its SOR or Testimony the IEPA has addressed, or otherwise please address in response to this question:

i. the IEPA's rationale in proposing these rules prior to the USEPA developing its proposed approach to addressing PFAS; and

ii. the IEPA's rationale for proposing a stricter approach or rationale than that being considered by the USEPA and/or in place or under consideration in surrounding states.

(e) Please point to where in its SOR or Testimony the IEPA has addressed, or otherwise please address in response to this question, "how testing will be performed in state laboratories at the levels recommended in the proposal, including calculation assumptions and technical research references."

(f) Please point to where in its SOR or Testimony the IEPA has addressed, or otherwise provide in response to this question, sufficient justification and explanation for the methods regulated entities should use to analyze for per/polyfluoroalkyl (PFA's) substances and other materials in wastewater, biosolids, and other products.

3. In Carol Hawbaker's pre-filed testimony (the "Hawbaker Testimony"), Ms. Hawbaker asserts that the "Agency for Toxic Substances and Disease Registry ("ATSDR") Minimal Risk Levels" are "peer reviewed and are available at http://www.atsdr.cdc.gov/mrls.html on the ATSDR website." Hawbaker Testimony, p. 7. This link was not accessible (using common internet browsers including Microsoft Edge and Chrome). Would IEPA please provide either the correct internet addresses for this information, or otherwise include the information in the record?

4. In the Hawbaker Testimony, Ms. Hawbaker asserts that certain "carcinogen designations are available at: https://www.monographs.iarc.who.int/agents-classified-by-the-iarc." Hawbaker Testimony, p. 27. This link was not accessible (using common internet browsers including Microsoft Edge and Chrome). Would IEPA please provide either the correct internet addresses for this information, or otherwise include the information in the record?

5. How has the IEPA considered the timing of federal efforts as presented in the USEPA PFAS Roadmap[1] including detailed studies that are expected to be available in the Fall of 2022 and how will those efforts impact the proposed rulemaking?

6. If the Board adopts the IEPA's proposed standard, does the IEPA intend to amend the standard as new research becomes available?

(a) If so, what is the IEPA's plan for doing so?

[1] Available at https://www.epa.gov/pfas/pfas-strategic-roadmap-epas-commitments-action-2021-2024.

II. Questions Related to the Impact of the IEPA's Proposed Part 620 Changes on Other Important and Existing Board Regulations.

7. Since Part 620 has an integral impact on other longstanding Board regulations—especially those regulating the monitoring of groundwater and the treatment of waste, such as Parts 724, 725, 734, 740, 742, 807, and 811—what consideration was given as to what changes will be required to these Board regulations in order to achieve consistency with the significant changes being proposed in this rulemaking?

8. Does the IEPA have a timeline for proposing amendments to each of these key regulatory programs? Please explain that timeline.

9. Meanwhile, how does the State intend to enforce these new standards across these key regulatory programs that have not yet been amended for consistency with the proposed rule?

10. Will the PFAS constituents be added to the List of Leachate Monitoring Parameters contained in Appendix C to 35 Ill. Adm. Code 811?

11. If so, given significant matrix interference in leachate, what appropriate testing methods have been identified and vetted by the IEPA?

12. What is the IEPA's expectation of the acceptance and treatment of leachate in light of its proposed new PFAS standards?

(a) For example, does the IEPA intend to add PFAS limits to 35 Ill. Adm. Code Part 309 or otherwise require treatment of PFAS containing leachate?

(b) Has the IEPA conducted a cost-benefit analysis concerning the treatment of leachate that might contain PFAS at the levels proposed?

13. How will non-detects with method detections limits or practical quantitation limits ("PQL") above the Class I standard be addressed in the background statistical analysis relevant to landfills and other waste disposal units?

14. If well construction accomplished pursuant to IEPA guidelines was determined to nonetheless contribute to a detection of PFAS at the limits proposed, will the IEPA require reconstruction of these wells?

(a) Has the IEPA conducted a cost-benefit analysis to address this issue?

15. What is the IEPA's expectation of changes it will require to the existing Groundwater Impact Assessment ("GIA") program to address PFAS constituents at the levels proposed?

(a) Has the IEPA conducted a cost-benefit analysis to address this issue?

16. Will the IEPA provide a mechanism to address PFAS model failures without automatically reverting to a contingent remediation program?

(a) Has the IEPA conducted a cost-benefit analysis to address this issue?

17. What potential contaminant transport models has the IEPA identified to address PFAS constituents?

18. Will existing waste disposal sites with permitted contingent remediation plans need to be re-evaluated for the inclusion of PFAS?

(a) If so, when?

(b) Has the IEPA conducted a cost-benefit analysis on this issue?

19. Will existing waste disposal sites already engaged in permitted corrective action be re-evaluated for the inclusion of PFAS?

(a) If so, when?

20. Will the proposed new parameters be evaluated prior to the IEPA's release of landfill sites from post-closure care?

(a) Has the IEPA conducted a cost-benefit analysis on this issue?

21. Does the IEPA expect to revise the guidance document LPC-PA2, or create a new document, related to sample retrieval and testing methods for the PFAS constituents?

(a) If so, when?

22. What consideration has IEPA given to the impact of its proposal on other regulated media (e.g., biosolids, finished compost, and clean up residuals from contaminated sites)?

III. Questions Directly Related to IEPA's Proposed Part 620 Changes.

A. 35 Ill. Admin. Code § 620.110: Definitions

23. What is the IEPA's justification for substitution of LCMRL or other terms that are defined and calculated based on reagent water, versus current standards that are derived from real-world samples?

24. What is the IEPA's technical justification for the substitution of the practical quantification limit ("PQL"), derived from a rigorous, interlaboratory process that generates a valid estimate of minimum analytical capability appropriate for setting numeric standards, with terms/limits not derived from such rigorous procedures?

25. What is the technical basis for the IEPA removing reference to the PQL from the proposed rules?

(a) What consideration did the IEPA give to the entirety of the state's regulatory framework by proposing such changes in these new groundwater rules?

26. What is the technical feasibility of replacing the PQL with the new proposed methodology?

27. What consideration has the IEPA given to a laboratory's ability to analytically quantify at a health-based level versus the PQL (or MRL)?

28. In Section III of the Hawbaker Testimony, Ms. Hawbaker states that, "Due to updates in analytical methods that can quantify contaminants at lower levels," many carcinogens "whose Class I standards are based on the MCL are no longer set at the practical quantitation limit ("PQL"), now proposed to be referred to as the LLOQ or LCMRL." This language indicates that the PQL is equivalent to the LLOQ and LCMRL and that these terms are interchangeable. Can the IEPA explain the inconsistency of the testimony with the proposed definitions?

B. 35 Ill. Admin. Code § 620.210: Class I: Potable Resource Groundwater

29. In proposed Section 620.210(a)(3), the word "or" was removed from prior draft proposals that had been circulated. Does IEPA now intend that all the conditions of 620.210(a)(1-5) must be met in order for groundwater to be considered a Potable Resource Groundwater? If so, what is the IEPA's justification?

C. 35 Ill. Admin. Code § 620.410 and § 620.420.

30. In its SOR, at p. 9, the IEPA "proposes to add Class I groundwater quality standards for ten new chemicals as they have been identified in the groundwater in Illinois and may cause a hazard to human health." These new chemicals are: (1) Aluminum, (2) Lithium, (3) HFPO-DA (hexafluoropropylene oxide dimer acid, GenX), (4) 1-Methylnaphthalene, (5) Molybdenum, (6) PFBS (perfluorobutanesulfonic acid), (7) PFHxS (perfluorohexanesulfonic acid), (8) PFNA (perfluorononanoic acid), (9) PFOA (perfluorooctanoic acid), and (10) PFOS (perfluorooctanesulfonic acid). Will the IEPA please provide all groundwater sampling and analytical data obtained and utilized for each chemical in support of their addition to the Class I (and Class II) ground water quality standards ("GQS") at the levels proposed?

31. The Hawbaker Testimony states that the IEPA "documented detections of proposed per- and polyfluoroalkyls perfluorobutanesulfonic acid ("PFBS"), PFHxS, PFOS, and PFOA in finished water of public water supplies across Illinois…." Ms. Hawbaker also stated that, "thousands more utilize groundwater from private potable wells, usually without access to treatment technologies", and that "The above-referenced PFAS were also found in community water supply wells…."

(a) As the information provided from Ms. Hawbaker is from treated water which may have been altered by the treatment process, have there been any studies to show that the treatment process itself is not the source of these constituents, or that treatment has increased the concentrations of these constituents?

(b) What have any such studies demonstrated?

32. The Hawbaker Testimony states that "The only way to confirm the presence of PFAS is through proper sampling and analysis."

(a) For the samples where these constituents were found, what sampling and analytical methods were utilized to ensure that the samples were free of outside influences?

(b) Will the IEPA provide any and all sampling data that supports its answer to (a)?

33. The Hawbaker Testimony states that, "HFPO-DA is detected in groundwater during sampling for purposes other than the statewide PFAS sampling initiative."

(a) What other purposes is Ms. Hawbaker referring to here?

(b) What sampling protocols and analytical protocols were employed to ensure that potential outside contamination did not occur?

34. The Hawbaker Testimony states that, "[f]or the thirty-nine constituents with current Class I standards based on procedures in Part 620 Subpart F and Appendix A, all have been recalculated using the proposed methods specified in Subpart F and Appendix A. . . . After the recalculation of the health-based standards for the constituent, Illinois EPA compared the updated standards with LLOQs/LCMRLs for groundwater and drinking water analytical methods." As noted in Section I of the Hawbaker Testimony, drinking water methods are appropriate for analyzing Class I potable resource groundwater. Table A includes both drinking water and SW-846 methods. Why were SW-846 analytical methods used for comparison to the LLOQs/LCMRLs as opposed to the drinking water analytical methods as it has been stated that the drinking water methods are the appropriate standards for analyzing Class I potable resource groundwater?

35. Did the IEPA consult with certified Illinois commercial laboratories to ascertain whether such laboratories have the capability to quantify and report to the low-level GQS's proposed by the IEPA?

(a) If so, what labs were consulted and would the IEPA provide documentation of that consultation?

36. How does the IEPA justify use of LLOQ in the proposed rule (a single laboratory concept) when comparing to a numeric standard as used in the proposed rulemaking?

37. What process did the IEPA employ and were commercial laboratories available to the regulated community consulted to choose the lowest quantitation limit to establish a numeric standard?

(a) Did the IEPA review all analytical methods and each individual commercial laboratory's capabilities and then just choose the lowest quantitation limit to establish a numeric standard?

(b) If the answer to a, above, is in the affirmative, how does the IEPA consider that approach technically defensible or acceptable?

38. The Hawbaker Testimony states that, "Part 620, Subpart F and Appendix A, provide the basis for developing Illinois Pollution Control Board ("Board") rulemaking proposals for new or revised numerical standards (35 Ill. Adm. Code 620.601(c))." It further indicates that, "[a]s the standards calculated using the methods at Part 620, Subpart F and Appendix A are based on the protection of human health from ingesting groundwater, and MCLs are promulgated for drinking water, drinking water methods are appropriate for analyzing Class I potable resource groundwater."

(a) Has the Board ever endorsed the use of MCL's as an appropriate technical basis for developing and adopting groundwater quality standards? If so, please explain when.

(b) Has the USEPA drinking water methodology ever been required for comparison to the Illinois GQS's and compliance with 35 Ill. Admin. Code 620?

(c) If so, when?

(d) What significance does Ms. Hawbaker attribute to her reference to SW846 (Hazardous Waste Test Methods) in the regulatory references?

39. Would the IEPA please identify the data and science it relied upon to determine that the appropriate regulatory approach for Illinois is to adopt strict drinking water standards for PFAS compounds and apply them as GQS's?

40. Would the IEPA please explain how the LLOQ and LCMRL were used to establish health-based limits?

41. Considering there are numerous laboratory terms and acronyms for reporting, detection, and quantitation limits, how did the IEPA apply such terms in setting its proposed numeric standards?

42. How has the IEPA determined, addressed, and considered the very serious issues with sample and laboratory contamination by PFAS of concern in setting its proposed numeric standards?

43. Will the IEPA evaluate and eliminate data from its evaluation that are from laboratories where known contamination (e.g., method blanks and field blanks) have created excessive positive bias?

(a) What is the bias criterion for removal of data?

44. Will the IEPA commit to promulgating a process (and study procedure) whereby a regulated party may demonstrate that:

(a) site-specific matrix interferences affect the testing results to such an extent that data cannot be produced at the numeric standard?

(b) site-specific matrix interferences affect the testing results to such an extent that data produced at the numeric standard lacks significant digits?

(c) site-specific matrix interferences affect the testing results to such an extent that does not have as many significant digits as the numeric standard?

45. What is the basis for setting numeric standards below the analytical technologies' quantitation limit and forgoing development of a PQL when a numeric standard should be based on a laboratory's ability to quantitate at that level?

(a) What is IEPA's proposed alternative approach to account for minimum analytical capability if not developing a PQL?

(b) Does IEPA's proposed alternative approach involve application of rigorous terms, definitions, concepts, and incorporations of interlaboratory quantitation limits?

(c) Will the MDL be used as a replacement for the PQL even though quantitation is defined at the PQL?

(d) If the answer to c, above, is in the negative, will the IEPA be using a single- or interlaboratory denotation for the MDL?

(e) Does the IEPA plan to address that these are single-laboratory concepts not appropriate replacements for a PQL?

46. The IEPA cites removal efficiency rates of 75–95% for inorganic constituents in 620.420(a)(1) and 30-90% for organic constituents in 620.420(b)(1) in support of several proposed Class II groundwater quality standards, apparently on the basis of the effectiveness in treating the constituent in groundwater. What is the source and basis of such stated removal efficiencies? More specifically, how were these removal efficiency rates derived and by whom?

D. 35 Ill. Admin. Code § 620.510: Monitoring and Analytical Requirements

47. What sampling protocols has the IEPA developed for PFAS constituents?

48. Will entities performing sampling be required to be accredited?

49. Did the IEPA consider if analytical data should be reported below a PQL (or MRL) to avoid falsely reporting a standards exceedance when it does not exist?

50. If a commercial laboratory certified in Illinois cannot achieve a PQL (or MRL), what actions will be taken by the IEPA?

(a) Will this be considered non-compliance?

(b) What would be the responsibility of the regulated party in these instances?

E. Section 620.APPENDIX A Procedures for Determining Human Toxicant Advisory Concentrations for Class I: Potable Resource Groundwater

51. IEPA's proposed rule uses a pre-established ranking for Tier 3 sources which is inconsistent with USEPA's 2003 directive for the selection of toxicity values (specifying that

priority should be given to "sources of information that are the most current, the basis for which is transparent and publicly available, and which has been peer reviewed.")

(a) What is the IEPA's technical rationale for proposing a pre-established ranking for Tier 3 sources in the establishment of GQS's?

(b) Given IEPA's proposed approach, how will the IEPA ensure the most technically defensible science is being used to establish GQS's?

52. The proposed rules present procedures for determining an acceptable daily exposure to be used in establishing GQS's for substances for which a reference dose is not available from the hierarchy of sources for toxicity values.

(a) What criteria for determining the quality and reliability of a study for deriving toxicity values will be used?

(b) How will the IEPA ensure that such derived toxicity values are technically defensible?

53. What is the IEPA's technical basis for the use of a combined uncertainty factor of 10,000 when the USEPA recommends that a maximum uncertainty factor of 3,000 be used when developing noncancer toxicity criteria?

(a) How does the IEPA plan to counter the compounding conservatism that will be introduced into toxicity values by such a method?

(b) Is the highly uncertain reference dose that will result appropriate for establishing GQS's?

54. At what frequency will the rules be updated to consider new and evolving toxicology?

(a) When toxicity criteria from a preferred reference source becomes available will the GQS's be updated in a timely manner?

(b) Have the toxicity criteria anticipated from USEPA's Integrated Risk Information System in 2022 (including criteria for PFHxS and PFNA) been considered in the proposed rulemaking? If so, please explain how.

55. The IEPA specifies that the toxicity values would be from USEPA's Provisional Peer-Reviewed Toxicity Value ("PPRTV") for the compound; this source was specifically mentioned in the testimony for all PFAS compounds except PFBS.

(a) Please identify what toxicity value is being proposed to establish the GQS for PFBS.

(b) If the PPRTV remains the source for this value for deriving the GQS, please explain how the selection of a benchmark dose response of one-half the control standard deviation by USEPA in the PPRTV for PFBS is justified?

56. The IEPA's rule proposal is based upon MRLs from ATSDR for PFHxS and PFNA; however, ATSDR states the following regarding the databases for these specific MRLs: "these were based on marginal databases and additional dose-response studies are needed to support the basis of the MRL." How does the IEPA justify the use of MRLs from ATSDRs in its rule proposal?

57. ATSDR recognizes the uncertain nature of the human half-lives used to derive human equivalent doses for PFOA and PFOS. Does the IEPA agree that the uncertain nature of these half-lives introduces a substantial degree of uncertainty in the MRLs for these compounds?

(a) If not, why not?

(b) How does the IEPA support the use of highly uncertain MRLs for setting GQS's?

58. Explain what criteria and methodologies are considered for setting relative source contributions ("RSC")?

(a) What specific data and conditions must be met for an RSC of other than 20% to be used?

(b) Why is the RSC default of 20% being applied for all PFAS?

(c) Does the IEPA agree that the use of the default RSC of 20% overestimates the contribution of diet and other non-drinking water sources in situations where exposure to elevated PFAS in drinking water occurs?

(d) If the answer to c, above, is in the negative, please explain why the IEPA disagrees that the use of the default RSC of 20% overestimates the contribution of diet and other non-drinking water sources in situations where exposure to elevated PFAS in drinking water occurs.

F. Section 620.APPENDIX C Guidelines for Determining When Dose Addition of Similar-Acting Substances in Class I: Potable Resource Groundwaters is Appropriate

59. Please describe the intended application of the proposed rules on toxic additivity.

(a) Under what conditions does toxic additivity need to be considered?

(b) Should toxic additivity be evaluated for all potable groundwater?

(c) If the answer to b, above, is in the affirmative, does such a procedure require the collection of a full suite of analytical data?

(d) Please explain IEPA's view of the technical feasibility of the regulated community's application of this Appendix.

CERTIFICATE OF SERVICE

I, the undersigned, certify that on this 18th day of February 2022, I electronically served **THE NATIONAL WASTE AND RECYCLING ASSOCIATION'S PRE-FILED QUESTIONS TO THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY** upon the individuals on the attached service list. I further certify that my email address is cmanning@bhslaw.com and that the email transmission took place before 5:00 p.m.

Dated: February 18, 2022

By /s/ Claire A. Manning

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