

**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 **NATIONAL WASTE & RECYCLING ASSOCIATION’S PUBLIC COMMENT**, copies of which are hereby served upon you.

Dated: June 14, 2024

By: s/Scott B. Sievers

**BROWN, HAY & STEPHENS, LLP**

Lauren C. Lurkins, Reg. No. 6290854  
 Scott B. Sievers, Reg. No. 6275924  
 Claire D. Meyer, Reg. No. 6346059  
 205 S. Fifth Street, Suite 1000  
 P.O. Box 2459  
 Springfield, IL 62705-2459  
 (217) 544-8491  
 llurkins@bhslaw.com  
 ssievers@bhslaw.com  
 cmeyer@bhslaw.com

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**NATIONAL WASTE & RECYCLING ASSOCIATION’S PUBLIC COMMENT**

NOW COMES the NATIONAL WASTE AND RECYCLING ASSOCIATION (“NWRA”), by and through its attorneys, Scott B. Sievers, Lauren Lurkins, and Claire Meyer of Brown, Hay + Stephens, LLP, and submit this public comment to the Illinois Pollution Control Board (“Board”) regarding the Board’s First Notice Opinion and Order in the above-referenced proceeding. NWRA also is herein providing comments concerning the Illinois Environmental Protection Agency’s (“Illinois EPA” or “Agency”) Responses to Questions filed with the Board on April 29, 2024. NWRA continues to emphasize the comments and testimony NWRA has provided throughout the course of the above-referenced proceeding and incorporates the same herein. NWRA submits the following comments:

**I. Enormous and Immediate Regulatory Uncertainty for the Waste Industry**

NWRA and its member companies remain incredibly concerned that the Agency’s regulatory approach—and now the Board’s First Notice Opinion and Order—fail to address the impact to other Board regulatory programs, especially programs that are required to monitor and meet Part 620 Groundwater Quality Standards, such as the Board’s landfill regulations. Over the past several decades, the Agency has woven the Part 620 Groundwater Quality Standards into various other regulatory programs administered by the Agency. Specifically, the regulations of 35 Illinois Administrative Code 620 can be implemented to landfill facilities operating or in post-closure care pursuant to 35 Illinois Administrative Code 814, Subparts C or D, or for those sites

under post-closure care pursuant to 35 Illinois Administrative Code 807 without additional rulemakings to update those provisions and largely through incorporations by reference.

As such, the Agency considers Groundwater Quality Standards enforceable standards in those programs requiring compliance with those Groundwater Quality Standards, whatever the risk. Throughout the course of this proceeding, the Agency has indicated its intention to make its proposed Groundwater Quality Standards immediately enforceable in landfill permits as they are renewed. This position causes great anxiety on an industry that has not caused the PFAS problem but must continue to accept PFAS-containing materials. Yet, the Agency nonetheless intends to make these standards immediately enforceable in the context of a myriad of other programs that require adherence to the Board's Part 620 standards without any consideration given to the reasonableness of costs or the feasibility of technology required to achieve these standards.

Further, the Agency refuses to provide the parties or the Board with any indication as to when, or even whether, it intends to present regulatory proposals to modify those rules. Most recently, Illinois EPA filed its Responses to Questions with the Board on April 29, 2024. In doing so, it addressed Board Question 9 with the following, and the Agency still refuses to provide a timeline of other regulatory proposals:

*Board Question 9. It is the Board's understanding that IEPA will address impacts of the proposed PFAS GWQS to landfills and other programs in separate, future rulemakings. Can the Agency provide any details regarding its timeline on this issue?*

*Agency Response 9. Once amendments to Part 620 are adopted, the Agency will identify and develop amendments needed in other rules address the impacts of the proposed PFAS GWQS to landfills and other Agency programs. It is an iterative process that requires multiple steps. The Agency has formulated internal working groups related to Bureau of Land program rules that will analyze these rules to evaluate the extent of amendments required. At this time, the Agency cannot provide a firm timeline as to specific proposed rulemakings but anticipates amending Parts 740 and 742 with certainty. Should any of the hazardous waste management facilities (Parts 702 through 750 generally) or solid waste disposal facilities (Parts 807, 811 through 817 generally) regulations require amendment in response to the revised Part 620 standards, then those rulemakings proposals will be*

prepared accordingly. Regarding hazardous waste regulations that are identical-in-substance, the Agency will review those as part of determining potential implementation impacts from the adoption of the Part 620 amendments, but the Agency does not foresee proposing any changes to those rules given the Board's identical-in-substance mandate under the Act. The specific timing of any of these proposed rule packages will depend upon Agency staffing resource availability, stakeholder outreach discussions, and the priority order established by Agency management.

(See Illinois EPA Responses to Questions, April 26, 2024.)

It is important to highlight that, as referenced in the Illinois EPA answer above, the “internal working group” does not include representatives of NWRA or its member companies. Therefore, Illinois EPA, from the point of filing its Proposal until its most recent filing in this rulemaking—and the Board's First Notice Opinion and Order—continues to leave the waste industry with many unanswered questions as to how compliance can reasonably be achieved in the context of the many obligations contained in the Board's landfill rules that require adherence, in one fashion or another, to the Board's Part 620 rules.

## **II. The Administrative Record is Not Supported as to the Cost or Feasibility of Achieving the Proposed Rules**

Prior to the Agency initiating this rulemaking, and throughout the course of this rulemaking, NWRA and its member companies continually have expressed frustration about moving forward without addressing regulatory programs that mandate compliance with the State's Groundwater Quality Standards, including the Board's other landfill rules. Central to that concern is the cost of implementing the proposed standards. The rulemaking record is filled with multiple representatives of the Agency admitting they have no knowledge of the costs of its proposal. This approach is antithetical to the Illinois Environmental Protection Act (“Act”) itself, and does not justify the Board moving forward with Illinois EPA's Proposal.

As one of the Act's authors and the Board's first chairman, David P. Currie, explained: The drafters intentionally included what he considered "essential limiting constraints on Board pursuit of the statutory objective of a clean environment" by the explicit language of Section 27 of the Act (requiring that in promulgating regulations, the Board "shall take into account ... the technical feasibility and economic reasonableness of measuring or reducing the particular type of pollution"). *See Rulemaking under the Illinois Pollution Law*, 42 *University of Chicago Law Review* 457 (1975) at 458; *see also Cnty. Of Will v. Pollution Control Bd.*, 2019 IL 122798, ¶ 60, 135 N.E.3d 49, 64. Left without any record evidence of costs or feasibility from Illinois EPA, the Board must credit the vast information presented by the participants. *See* Testimony of Thomas A. Hilbert on Behalf of National Waste & Recycling Association, September 15, 2022 (discussing costs of Vermont study wherein capital cost estimates ranged from \$2.15 million to \$16.45 million and did not include the annual operating expenses.)

Furthermore, Illinois EPA's peers—environmental agencies in other states—have undertaken the very work NWRA and its member companies have asked for and which the record of this rulemaking continues to lack. Specifically, the Minnesota Pollution Control Agency ("MPCA") released a thorough analysis titled "Evaluation of Current Alternatives and Estimated Cost Curves for PFAS Removal and Destruction from Municipal Wastewater, Biosolids, Landfill Leachate, and Compost Contact Water," May 2023; *see* <https://www.pca.state.mn.us/sites/default/files/c-pfc1-26.pdf>. Specifically related to landfill leachate, Section 8 of the analysis includes a thorough discussion and information on economic feasibility. *Id.* at p. 97–118. This section includes multiple pages of figures, tables, and text detailing the estimated capital and annual operations and maintenance ("O&M") costs for a range of influent flow rates. *Id.* Furthermore, MPCA dedicated the entirety of Appendix E to the detailed

capital and O&M cost estimates. *Id.* The existence of this report showcases that this information is, in fact, available and could be considered by Illinois EPA. Nevertheless, the Agency continues to ignore its existence and continues to charge forward to impose significant regulation on the regulated community without the required consideration of the economic impact of such action. The Board should take notice of the analysis done in neighboring states and seek to evaluate the economic impact in this rulemaking before proceeding.

Section 5-30 of the Illinois Administrative Procedures Act requires an agency to file an economic impact analysis when a new rule or amendment may have an impact on small businesses, not-for-profit corporations, or small municipalities. 5 ILCS 100/5-30. The Board recently stated in its March 29, 2024, Illinois Register publication of its First Notice Opinion and Order that it does not expect the proposed rules to have such an impact. NWRA and its member companies continue to point to the ample evidence in the record of this proceeding that the impact is, in fact, significant. Although guided by different state law, the State of Michigan finalized PFAS drinking water standards in 2020 and then saw litigation challenging the rules. See *3M Co. v. Dep't of Env't Great Lakes & Energy*, No. 364067, 2023 WL 5418164 (Mich. App.); *see also 3M Co. v. Mich. Dep't of Env't, Great Lakes, & Energy*, Case No. 21-000078-MZ, 2022 WL 18277443 (Mich. Cl. Ct.). The rules ultimately were invalidated by both the Court of Claims and Court of Appeals based on the failure to conduct a cost/benefit analysis. *Id.* It is imperative that the Board consider costs in this rulemaking.

**III. Conclusion**

The Board's First Notice Opinion and Order presents enormous and immediate regulatory uncertainty on NWRA and its member companies associated with several aspects of landfill operation and maintenance. Furthermore, this record is not supported as to cost or feasibility of achieving the Groundwater Quality Standards proposed herein. The Agency's proposal, and the Board's First Notice Opinion and Order addressing the same, ignore the obligations set forth by the General Assembly that, in adopting regulations, Illinois must consider the cost and feasibility of achieving the proposed regulations. Therefore, NWRA respectfully requests that the Board not move forward with this proposed rulemaking.

By: s/Scott B. Sievers

**BROWN, HAY & STEPHENS, LLP**

Lauren C. Lurkins, Reg. No. 6290854

Scott B. Sievers, Reg. No. 6275924

Claire D. Meyer, Reg. No. 6346059

205 S. Fifth Street, Suite 1000

P.O. Box 2459

Springfield, IL 62705-2459

(217) 544-8491

llurkins@bhslaw.com

ssievers@bhslaw.com

cmeyer@bhslaw.com

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that on this 14<sup>th</sup> day of June 2024, I electronically served **NATIONAL WASTE & RECYCLING ASSOCIATION'S PUBLIC COMMENT** upon the individuals on the attached service list. I further certify that my email address is [ssievers@bhslaw.com](mailto:ssievers@bhslaw.com)

Dated: June 14<sup>th</sup>, 2024

By: s/Scott B. Sievers

**BROWN, HAY & STEPHENS, LLP**

Scott B. Sievers

205 S. Fifth Street, Suite 1000

P.O. Box 2459

Springfield, IL 62705-2459

(217) 544-8491

[ssievers@bhslaw.com](mailto:ssievers@bhslaw.com)



<b><u>SERVICE LIST</u></b>	
<p>Don Brown, Clerk of the Board  <a href="mailto:Don.brown@illinois.gov">Don.brown@illinois.gov</a>                      Vanessa Horton, Hearing Officer  <a href="mailto:Vanessa.Horton@Illinois.gov">Vanessa.Horton@Illinois.gov</a>                      Chloe Salk, Hearing Officer  <a href="mailto:Chloe.Salk@Illinois.gov">Chloe.Salk@Illinois.gov</a>  <b>Illinois Pollution Control Board</b>                      James R. Thompson Center                      Suite 11-500                      100 West Randolph                      Chicago, Illinois 60601</p>	<p>Sara Terranova, Assistant Counsel  <a href="mailto:sara.terranova@illinois.gov">sara.terranova@illinois.gov</a>                      Kaitlyn Hutchison, Assistant Counsel  <a href="mailto:kaitlyn.hutchison@illinois.gov">kaitlyn.hutchison@illinois.gov</a>  <b>Illinois Environmental Protection Agency</b>                      1021 North Grand Avenue East                      PO Box 19276                      Springfield, Illinois 62794</p>
<p>Jorge T. Mihalopoulos, Head Assistant Attorney  <a href="mailto:jorge.mihalopoulos@mwrld.org">jorge.mihalopoulos@mwrld.org</a>                      Susan T. Morakalis, General Counsel  <a href="mailto:morakaliss@mwrld.org">morakaliss@mwrld.org</a>                      J. Mark Powell, Senior Attorney  <a href="mailto:PowellJ@mwrld.org">PowellJ@mwrld.org</a>  <b>Metropolitan Water Reclamation District of Greater Chicago</b>                      100 E. Erie Street                      Chicago, Illinois 60611</p>	<p>Renee Snow, General Counsel  <a href="mailto:renee.snow@illinois.gov">renee.snow@illinois.gov</a>  <b>Illinois Department of Natural Resources</b>                      One Natural Resources Way                      Springfield, Illinois 62702</p>
<p>Ellen F. O’Laughlin, Assistant Attorney General  <a href="mailto:Ellen.Olaughlin@ilag.gov">Ellen.Olaughlin@ilag.gov</a>                      Jason James, Assistant Attorney General  <a href="mailto:Jason.James@ilag.gov">Jason.James@ilag.gov</a>  <b>Office of the Illinois Attorney General</b>                      69 West Washington Street                      Suite 1800                      Chicago, IL 60602</p>	<p>Melissa S. Brown  <a href="mailto:Melissa.Brown@heplerbroom.com">Melissa.Brown@heplerbroom.com</a>  <b>Illinois Environmental Regulatory Group</b>                      4340 Acer Grove Drive                      Springfield, IL 62711</p>
<p>Stephen P. Risotto - Senior Director, CPT  <a href="mailto:srisotto@americanchemistry.com">srisotto@americanchemistry.com</a>                      Aleacia Chinkhota  <a href="mailto:aleacia_chinkhota@americanchemistry.com">aleacia_chinkhota@americanchemistry.com</a>                      Rob Simon  <a href="mailto:Rob_Simon@americanchemistry.com">Rob_Simon@americanchemistry.com</a>  <b>American Chemistry Council</b>                      700 2nd Street, NE                      Washington, DC 20002</p>	<p>Fredric P. Andes  <a href="mailto:fandes@btlaw.com">fandes@btlaw.com</a>  <b>Barnes &amp; Thornburg LLP</b>                      1 North Wacker Drive                      Suite 4400                      Chicago, IL 60606</p>

<p>Nessa Coppinger <a href="mailto:ncoppinger@bdlaw.com">ncoppinger@bdlaw.com</a> Daniel Schulson <a href="mailto:dschulson@bdlaw.com">dschulson@bdlaw.com</a> Matthew Schneider <a href="mailto:mschneider@bdlaw.com">mschneider@bdlaw.com</a> <b>Beveridge &amp; Diamond, PC</b> 1900 N. St. NW Washington, DC 20036</p>	<p>Sandra Carey - HSE Executive <a href="mailto:sandracarey@imoa.info">sandracarey@imoa.info</a> <b>International Molybdenum Association</b> 454-458 Chiswick High Road London, W4 5TT, United Kingdom</p>
<p>Joshua R. More <a href="mailto:Joshua.More@afslaw.com">Joshua.More@afslaw.com</a> Bina Joshi <a href="mailto:Bina.Joshi@afslaw.com">Bina.Joshi@afslaw.com</a> Sarah L. Lode <a href="mailto:sarah.lode@afslaw.com">sarah.lode@afslaw.com</a> Daniel J. Deeb <a href="mailto:Dan.Deeb@afslaw.com">Dan.Deeb@afslaw.com</a> Alex Garel-Frantzen <a href="mailto:Alex.Garel-Frantzen@afslaw.com">Alex.Garel-Frantzen@afslaw.com</a> <b>ArentFox Schiff LLP</b> 233 South Wacker Drive, Suite 7100 Chicago, IL 60606</p>	<p>James Morphew <a href="mailto:jmmorphew@sorlinglaw.com">jmmorphew@sorlinglaw.com</a> <b>Sorling Northrup</b> 1 North Old State Capitol Plaza, Suite 200 P.O. Box 5131 Springfield, IL 62705</p>