

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R 2022-018
PROPOSED AMENDMENTS TO)
GROUNDWATER QUALITY)
(35 ILL. ADM. CODE 620))

NOTICE OF FILING

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, the **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSES TO THE ILLINOIS POLLUTION CONTROL BOARD’S QUESTIONS AND FIRST NOTICE COMMENTS**, a copy of which is served upon you.

Respectfully submitted,

Dated: June 17, 2024

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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THIS FILING IS SUBMITTED ELECTRONICALLY

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY’S RESPONSES AND FIRST NOTICE COMMENTS

NOW COMES the Illinois Environmental Protection Agency (Illinois EPA or Agency), by and through one of its attorneys, and submits Responses to the Illinois Pollution Control Board’s (Board) questions and the following First Notice Comments:

Illinois EPA Responses to Questions

Board Question 1.

1. *IEPA proposed retaining the term “Health Advisory Concentration” in the fourth sentence of subsection (c) but replacing it with the term “guidance level” in the subsection’s fifth sentence. Please explain whether this text reflects IEPA’s intent. If it does, please provide IEPA’s reasons for using both terms. If the text does not reflect IEPA’s intent, please propose corresponding changes to the rule text.*

Illinois EPA Response 1.

Illinois EPA recommends replacing the term “Health Advisory Concentration” in the fourth sentence of subsection (c) with “Human Nonthreshold Toxicant Advisory Concentration” to correlate with the term “Human Threshold Toxicant Advisory Concentration” in sentence 3. The proposed fourth sentence edits are:

If the complex mixture is a carcinogen, the ~~Health~~ Human Nonthreshold Toxicant Advisory Concentration is the one-in-one-million cancer risk concentration, calculated from methods located at Appendix A. The guidance level is either the Human Threshold Toxicant Advisory Concentration or Human Nonthreshold Toxicant Advisory Concentration, whichever is less, unless the lower concentration for such substance is less than the lowest appropriate LLOQ specified in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 620.125, or the LCMRL specified in the drinking water methods incorporated by reference at Section 620.125 for the substance.,

The appropriate term in the formerly fifth sentence, now sentence six, is “guidance level,” to correspond with terminology at Section 620.605(b)(2) stating:

“If there is no MCLG for the substance, the guidance level is either the Human Threshold Toxicant Advisory Concentration or the Human Nonthreshold Toxicant Advisory Concentration for ~~the such~~ substance as determined according to in accordance with Appendix A, whichever is less, unless the lower concentration for ~~the such~~ substance is less than the lowest appropriate LLOQ PQL specified in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods", EPA Publication No. SW-846 (SW-846), incorporated by reference at Section 620.125, or the LCMRL specified in the drinking water methods incorporated by reference at Section 620.125 for the substance.”

The proposed sixth sentence edits are:

If the ~~concentration~~ guidance level for the substance is less than the lowest appropriate LLOQ or LCMRL for the substance incorporated by reference at Section 620.125, the guidance level is the lowest appropriate LLOQ or LCMRL.

Board Question 2.

IEPA proposed adding the word “lower” to the fourth sentence of subsection (c), i.e., “unless the lower concentration for such substance”. Please clarify whether this was inadvertent. If it was not, please:

- a. *Explain which concentrations must be compared to determine the “lower” concentration;*
- b. *Provide IEPA’s reasons for requiring that comparison; and*
- c. *Propose corresponding rule-text changes to clarify what must be compared.*

Illinois EPA Response 2.

The Agency deliberately added the “lower to subsection (c) to correspond with the proposed amendments to Section 620.605(b), to allow for the lower concentration of the noncarcinogen and carcinogen calculations to be selected instead of arbitrarily selecting the carcinogen concentration, Illinois EPA proposes the following language be added to subsection (c) to further clarify the lower concentration refers to the lower concentration of the Human Threshold Toxicant Advisory Concentration and the Human Nonthreshold Toxicant Advisory Concentration as the fifth sentence:

The guidance level is either the Human Threshold Toxicant Advisory Concentration or the Human Nonthreshold Toxicant Advisory Concentration, whichever is less, unless the lower concentration for ~~such~~ the substance is less than the lowest appropriate LLOQ specified in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods," EPA Publication No. SW-846, incorporated by reference at Section 620.125, or the

LCMRL specified in the drinking water methods incorporated by reference at Section 620.125 for the substance.

The changes are proposed to correspond with terminology at Section 620.605(b)(2).

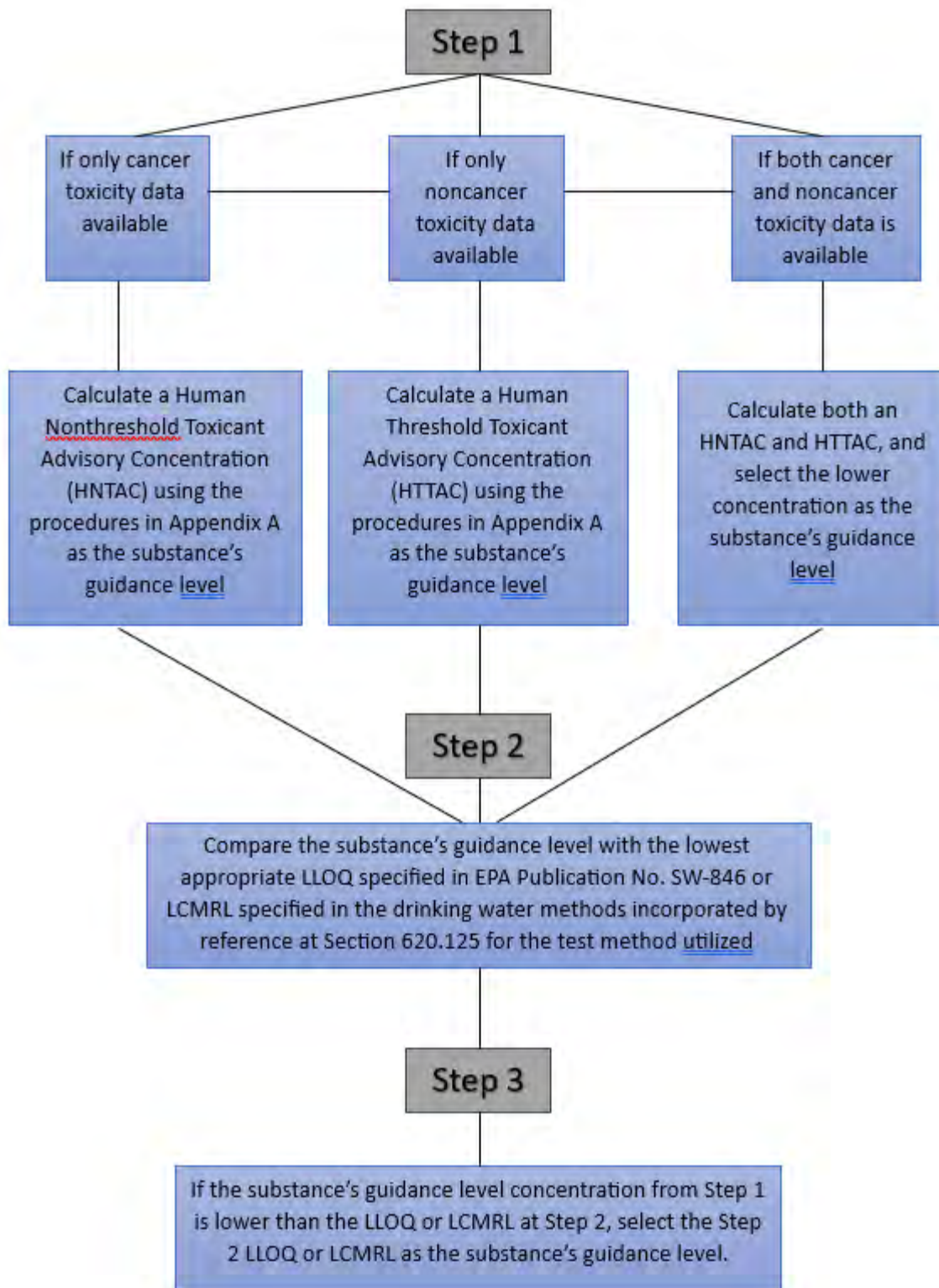
Board Question 3.

The new fifth sentence of subsection (c) begins with, “If the concentration for the substance”. Which concentration does IEPA intend “the concentration” to refer to here?

Illinois EPA Response 3.

“The concentration” refers to the lower concentration of the Human Threshold Toxicant Advisory Concentration and the Human Nonthreshold Toxicant Advisory Concentration as discussed in the proposed language update for the fourth sentence.

To further illustrate the process at both Section 620.605(b)(2) and Appendix C(c), please refer to the decision tree below (on the next page); which begins at Step 1 calculating the Human Threshold Toxicant Advisory Concentration (HTTAC) and/or the Human Nonthreshold Toxicant Advisory Concentration (HNTAC) based on available toxicity data, then selecting the lower concentration of the HTTAC and HNTAC, if data is available to calculate both carcinogen and noncarcinogen concentrations, as the health-based guidance level. Step 2 describes comparing the health-based guidance level to the appropriate LLOQ or LCMRL for the test method used to analyze the sample, and Step 3 directs the selection of the appropriate LLOQ or LCMRL as the substance’s guidance level, if the health-based guidance level selected at Step 1 is less than the appropriate LLOQ or LCMRL selected at Step 2.



Illinois EPA First Notice Comments

Section 620.110 Definitions

The Agency suggests that the Board include a definition for the term “GMZ application” in Section 620.110. The Agency believes this would clarify what is acceptable as an application. Please see also suggested amendments to Section 620.Appendix D – Notes 1 and 3.

Suggested amendments:

The definitions of the Environmental Protection Act [415 ILCS 5] and the Groundwater Protection Act [415 ILCS 55] apply to this Part. The following definitions also apply to this Part:

“GMZ application” shall mean the form specified in Section 620.Appendix D, Parts I, II, and III.

For the definition of LOAEL, the “or” after “LOAEL” should be deleted.

A space should be added between the “Resource groundwater” and “Saturated zone” definitions.

The Agency also suggests the following changes to the definition of “corrective action process”:

"Corrective action process" means the procedures and practices ~~that may be imposed by a regulatory agency when a determination has been made that contamination of groundwater has taken place, and are necessary to address a potential or existing violation of any Subpart D standard~~ due to a release of one or more contaminants.

Broadening the definition as proposed by the Agency achieves the same objective that the Board is seeking. Although incorporating the language of Section 620.310(d) emphasizes the authority of the State or United States, there’s no need to repeat it. Also, adding the reference potentially creates confusion by conflating the provisions of Section 620.310 with a corrective action process undertaken as part of a GMZ under Section 620.250. Section 620.310 (Preventive Response Activities) relates to contaminants below the applicable numerical standards in Class I and Class III groundwater whereas a corrective action process is related to contamination above the numerical standards. Therefore, it is important to note in subsection 620.310(d) that some corrective action processes would still be applicable, even though a corrective action process for Class I and Class III groundwater under Part 620 was not applicable at the concentrations of contaminants being detected. This distinction is made in subsection 620.302(c).

Section 620.125 Incorporations By Reference

620.125(a)

The Agency suggests the following changes:

U.S. EPA, Office of Resource Conservation and Recovery. "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, (March 2009 Unified Guidance)", EPA 530/R-09-007.

The Agency recommends the addition of U.S. EPA Office of Water Method 1633 be added to subsection 620.125(a), as it is now final:

U.S. EPA, Office of Water, Engineering and Analysis Division.
"Method 1633: Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS," January 2024, EPA 821-R-24-001."

Section 620.201 Groundwater Designations

For consistency with the Board's proposed changes in Section 620.250, the Agency suggests the following amendments:

- a) One of the following four classes of groundwater ~~in~~ according to ~~accordance with~~ Sections 620.210 through 620.240:
- b) A groundwater management zone in compliance ~~accordance~~ with Section 620.250 subsections (a) –(d); or
- c) A groundwater management zone as defined in 35 Ill. Adm. Code 740.120 and established under 35 Ill. Adm. Code 740.530, in compliance with Section 620.250, subsections (g)-(i).

Section 620.210 Class I: Potable Resource Groundwater

620.210(a)(5)

The Agency has reviewed the testimony provided to the Board at the March 19, 2022, public hearing regarding the definition of Class I groundwater under subsection 620.210(a)(5) and the interplay of maximum setback zones and wellhead protection areas (WHPAs) as defined in Section 620.110.

Based on the requirements under Section 14.3(f) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/14.3(f)) for adoption of a 2,500-foot maximum setback zone and the definitions of Class I groundwater under subsections 620.210(a)(2) and 620.210(a)(4), it is reasonable to include

an adopted 2,500-foot maximum setback zone as Class I groundwater. The Agency's public comment for proposed Section 620.210(a)(6) would include all maximum setback zones adopted under Section 14.3 of the Act. Because the definition of a WHPA specifically describes them as outside of applicable setback zones, the Agency recommends the following changes to subsection 620.210(a) to clarify the Class I groundwater designation in maximum setback zones and wellhead protection areas.

a) Groundwater located 10 feet or more below the land surface and within:

- 1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of the well;
- 2) Unconsolidated sand, gravel, or sand and gravel which is 5 feet or more in thickness and that contains 12% ~~percent~~ or less of fines (i.e., fines which pass through a No. 200 sieve tested according to ASTM Standard Practice D2487-06, incorporated by reference at Section 620.125);
- 3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; ~~or~~
- 4) Any geologic material which is capable of a:
 - A) Sustained groundwater yield, from up to a 12-inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or
 - B) Hydraulic conductivity of 1×10^{-4} cm/sec or greater using one of the following test methods or its equivalent:
 - i) Slug test; or ~~Permeameter;~~
 - ii) Pump test ~~Slug test;~~ or
 - iii) ~~Pump test.~~

5) The Phase I and Phase II wellhead protection areas of a community water supply well or well field, as defined in Section 620.110 and delineated according to the methods incorporated by reference in Section 620.125; or For the purposes of this Subpart, when a maximum setback zone has been adopted under Section 14.3 of the Act, the WHPA includes the delineated area within the maximum setback zone.

6) The maximum setback zone of a community water supply well adopted under Section 14.3 of the Act.

620.210(c)

The Agency suggests the following correction:

- c) Any portion of the thickness associated with the geological materials as described

in subsections 620.210(a)(2), (a)(3), or (a)(4) is designated ~~designed~~ as Class I: Potable Resource Groundwater if located 10 feet or more below the land surface.

Section 620.240 Class IV: Other Groundwater

620.240(h)

The Agency proposes several revisions to clarify the interplay between the groundwater protection standards (GWPS) developed in accordance with 35 Ill. Adm. Code 845 and groundwater quality standards (GWQS) set forth in 35 Ill. Adm. Code 620. Part 845 provides a comprehensive set of regulations for CCR surface impoundments at electric utilities and independent power producers. This includes site specific GWPS for specific constituents, a prescriptive corrective action process and closure requirements. As discussed in further detail below, GWPS established in accordance with Part 845 afford a heightened level of groundwater protection specifically designed to address the unique groundwater concerns related to CCR impoundments.

Indeed, groundwater regulated under Part 845 falls within a specific area at electric utilities and independent power producers, is associated with one or more CCR surface impoundments, is being monitored up gradient, cross-gradient and down gradient of the CCR surface impoundments by an Agency approved groundwater monitoring system and includes all of the of groundwater impacted by releases from a CCR surface impoundment. This may include groundwater both onsite and off-site at an electric utility or independent power producer. Further, the GWPS do not recognize the characteristics of the geologic materials or location of the groundwater under Sections 620.210, 620.220 or 620.230, when establishing the GWPS. The Part 845 GWPS also do not recognize the less stringent standards applied to Class II groundwater under Section 620.420. Given this narrowly tailored design, Part 845 should be the governing regulation for all contamination being remediated under Part 845. Therefore, the groundwater being remediated under Part 845 at these sites should be recognized differently than groundwater not subject to those regulations. This concept is similar to the Class IV designation of groundwater within the zone of attenuation under 35 Ill. Adm. Code 811 and 814, cited under subsection 620.240(a).

To address this regulatory distinction, the Agency suggests the following addition:

Except as provided in Section 620.250, Other Groundwater is:

- h) Groundwater regulated under 35 Ill. Adm. Code 845 at both active and inactive electric utilities and independent power producers.

Section 620.250 Groundwater Management Zone

Section 620.250 and Section 620.APPENDIX D

The Board's proposed amendments to Section 620.250 and Section 620.APPENDIX D create a GMZ application whereby the Agency would formally receive, evaluate, and approve requests to

establish groundwater management zones should not be applied broadly across all programs in relation to the establishment and termination of GMZs in accordance with Part 620. The existing process for approving GMZs includes minor, but significant, nuances between various Agency-administered programs. Many programs have their own unique procedures for receiving, reviewing, and approving applications, plans, reports, and other submittals from regulated parties. Procedures for receiving, reviewing, and approving GMZs for sites within these programs should likewise be set forth with the program's own rules to avoid confusion and inconsistency with individual program rules. The example of the Site Remediation Program's (SRP's) GMZ provisions is already established at 35 Ill Adm. Code Sections 620.250(d), (e), and (f) and 740.530. The same should be done for other programs where appropriate, such as the Agency's Leaking Underground Storage Tank (LUST) Program and the Agency's administration of the Resource Conservation and Recovery Act (RCRA) and Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) programs.

The Board's proposal to homogenize this process is a profound change from existing practice and impair existing remediation program. For example, the Board's proposed amendments would likely materially alter the oversight of CERCLA remedial activities in Illinois. CERCLA requires the selection of a remedial action that is protective of human health and the environment and complies with "applicable or relevant and appropriate requirements" (ARARs). Currently, Part 620 serves as a substantive, rather than procedural, ARAR because Section 620.250 specifies that a GMS is established upon concurrence by the Agency that such a zone contains groundwater being managed to mitigate impairment caused by the release of contaminants from a site subject to a corrective action process. The Board's proposed amendment, which conditions establishing a GMZ on Agency approval of an application could result in Part 620 being recharacterized as a procedural requirement because of the emphasis on the word "application". This would represent a marked shift in how CERCLA and other remediation sites are managed in Illinois. Such a change during the 45-day First Notice public comment period rather than during the Board's multiyear R2022-018 rulemaking proceeding does not provide adequate time for the Agency or impacted regulated entities to thoughtfully consider and evaluate how other regulatory programs may be impacted by these significant changes in substantive and procedure elements for the establishment and termination of GMZs.

As such, the Agency suggests the following amendments to the Board's proposed changes to Section 620.250(a) to restore the substantive requirements for establishment of a GMZ:

- a) Within any class of groundwater, a groundwater management zone (GMZ) may be established as a three-dimensional ~~three-dimensional~~ region containing groundwater being managed to mitigate impairment caused by the release of one or more contaminants from a site that is subject to a corrective action process.:
 - ~~1) That is subject to a corrective action process approved by the Agency; or~~
 - ~~2) For which the owner or operator undertakes an adequate corrective action in a timely and appropriate manner and provides a written confirmation to the Agency. Such confirmation must be provided in a form as prescribed by the Agency.~~

To emphasize appropriately scope the GMZ requirements to accommodate the nuances of the remediation programs, the Agency recommends creating a new subsection under Section 620.250 to exempt the enumerated remediation programs from the GMZ procedural requirements. This subsection could be a new “(b)” or tacked on at the end of the Section:

- b) The procedural requirements for establishing, monitoring, and terminating a GMZ in accordance with this Section do not apply to GMZ’s for contamination being remediated under the Leaking Underground Storage Tank Program (Title XVI of the Act), the Site Remediation Program (35 Ill. Adm. Code 740), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Alternatively, the Agency suggests the following amendments to the Board’s proposed changes to Section 620.250 (b) through (f) to reserve procedural requirements to the rules of identified individual programs. Please note that the Agency is also recommending changes to the Board’s proposed amendments to subsection (b)(1) with respect to GMZ’s extending “off-site.” For ease of readability, those recommended changes are included with in the body of this comment, but the Agency’s comments specific to subsection (b)(1) are provided in a separate enumerated comment:

- b) Before a GMZ may be established, the owner or operator of a site at which there has been a release of one or more contaminants to groundwater must submit to the Agency a GMZ application. The application must contain the information specified in Section 620.Appendix D, Parts I, II, and III, as well as any other information requested in writing by the Agency that is relevant to its review under subsection (c).
- 1) If the GMZ would extend off-site, the GMZ application must include each affected property owner’s written permission to the establishment of the GMZ on that off-site property. If off-site property owner permissions are not obtained, then the GMZ will not include those off-site properties. The owner and operator are not relieved of responsibility to clean up a release that has migrated beyond the facility boundary where GMZ permission has not been obtained.
 - 2) If the release is subject to a corrective action process that requires the submittal of more information to the Agency to establish a GMZ than that specified in this subsection (b), the owner or operator must submit the additional information compliance with the schedule in Appendix II (6), Appendix D in its GMZ application.
 - 3) Except as to the statutory and regulatory programs provided in this subsection (b)(3), a GMZ application must be submitted to the Agency in the form specified in Section 620.Appendix D, Parts I, II, and III. If the release is subject to a corrective action process that requires the information

specified in subsection (b) to be submitted to the Agency in a different form (e.g., plan, agreement, report, permit application), the owner or operator must submit the information in that form. A GMZ application (Parts I, II and III of Appendix D) is not for use in establishing a GMZ under the Leaking Underground Storage Tank Program (Title XVI of the Act), the Site Remediation Program (35 Ill. Adm. Code 740), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). See 35 Ill. Adm. Code 620.250(g). However, the information required in Parts I, II, and III of Appendix D may be cited to and utilized with respect to establishing GMZs pursuant to corrective action remedies required by these other regulatory programs.

c) The Agency must review each GMZ application submitted under subsection (b) and issue a written determination approving or rejecting the proposed GMZ.

1) The Agency must consider the substantive information provided to establish the GMZ, the technical sufficiency of the proposed GMZ, the likelihood that the proposed GMZ will protect public health and the environment, and the likelihood that the GMZ's required corrective action will, in a timely manner, result in compliance with the applicable standards in Section 620.410, 620.420, 620.430, or 620.440 or otherwise minimize exceedances to restore beneficial use as appropriate for the class or classes of groundwater. If the Agency rejects a proposed GMZ, the Agency must, in its written determination, specify the reasons for the rejection.

2) A GMZ groundwater management zone is established when the Agency issues a written determination establishing the GMZ, including its corrective action process upon concurrence by the Agency that the conditions as specified in subsection (a) are met and groundwater management continues for a period of time consistent with the action described in that subsection. Once a GMZ is established, the Agency may, as new information warrants, issue written determinations amending any part of the GMZ, including its size, the contaminants that are subject to it, and its corrective action remedies.

These suggested amendments preserve the Board's objective to require an "application", but also set the stage for allowing procedural requirements for GMZs to be set forth in individual program rules where appropriate, such as in the LUST, SRP, RCRA, and CERCLA programs.

620.250(b)(1)

In its March 7, 2024 Order, the Board proposes a new subsection (b)(1) to clarify that if a GMZ would extend off-site, the GMZ application must include each affected property owner's written permission to establish the GMZ on their property. However, the Board's proposed language does not address what happens if an off-site property owner's permission is not obtained. The Agency

suggests adding the following sentence to address that scenario: “If off-site property owner permissions are not obtained, then the GMZ will not include those off-site properties.”

This, however, also implicates the Agency’s implementation of its regulatory programs, including RCRA. The Board’s identical-in-substance RCRA corrective action regulations for solid waste management units at 35 Ill. Adm. Code 724.201(c) states (emphasis added):

- c) The owner or operator must implement corrective action measures beyond the facility property boundary, where necessary to adequately protect human health and the environment, unless the owner or operator demonstrates to the Agency that, despite the owner or operator's best efforts, the owner or operator was unable to obtain the necessary permission to undertake such actions. The owner and operator are not relieved of all responsibility to clean up a release that has migrated beyond the facility boundary where off-site access is denied. On-site measures to address such releases will be determined on a case-by-case basis. Assurances of financial responsibility for such corrective action must be provided.

The existing program regulations and the Board’s proposed amendments to Part 620 do not directly align. To address these concerns, the Agency proposes the following for subsection (b)(1):

- 1) If the GMZ would extend off-site, the GMZ application must include each affected property owner’s written permission to the establishment of the GMZ on that off-site property. If off-site property owner permissions are not obtained, then the GMZ will not include those off-site properties. The owner and operator are not relieved of responsibility to clean up a release that has migrated beyond the facility boundary where GMZ permission has not been obtained.

620.250(b)(3)

As drafted, the Board’s proposed language in subsection (b)(3) appears to require that all permits and reports be completed before a GMZ is established. If this is not the Board’s intent, the Agency respectfully requests the Board provide clarification.

Currently, only an approved corrective action plan with a schedule to obtain permits and complete investigations, reports, and other required activities is required. Requiring obtaining permits prior to issuing a GMZ may, in some instances, create a problem. In some instances, GMZs are utilized a mechanism to avoid regulatory non-compliance during corrective action. For example, GMZs are currently among the tools available to facilities with a permit that requires groundwater monitoring in instances where monitoring results evidence an exceedance of applicable groundwater standards. In such instances, an investigation is necessary to determine the most appropriate corrective action. If the facility’s permit is due to expire during the investigation, a GMZ is the only means available to avoid a violation of Section 12 of the Act. Such a violation would prevent the Agency from renewing the permit.

620.250(d)

The Agency proposes amending subsection (d) so that completion of “corrective action” for the Agency’s CERCLA, RCRA, the Site Remediation Program, and the Leaking Underground Storage Tank Program be governed by their respective statutory authorities and not subject to the subsection (d) requirements. This proposal is consistent with regulatory needs of those programs, reflects workable existing practices, and is congruent with the text of Part 620. Indeed, Section 620.110 does not include a definition for “corrective action”. This omission allows each impacted regulatory program the space needed to accommodate the unique activities set forth in their respective authorities. For example, at a CERCLA site a groundwater pump and treat system is going to be installed and operated for more than thirty years. The “corrective action process” under CERCLA (or the more accurate term being “remedial or removal action”) is not complete until the groundwater standards (and other remediation objectives) are met, which inconsistent with the revision to the definition of “corrective action process” that the Board is proposing. If concentrations are above the standards, the corrective action process is not complete, so there is no demonstration to be made and the owner/operator needs to go onto subsection (e). But subsection (e) requires an approved demonstration from (d)(2), which will never happen.

To avoid this outcome, the Agency suggests the following changes to proposed subsection (d):

- de) Except as to the statutory and regulatory programs provided in this subsection (d), when the owner or operator completes the corrective action process under subsection (c)(2), the owner or operator must submit to the Agency a demonstration that complies with subsection (d)(1) or (d)(2) and includes the corrective action completion certification specified in Section 620.Appendix D, Part IV. The Agency must review this demonstration and issue a written determination approving or rejecting the demonstration. Part IV of Appendix D for corrective action completion certification is also inapplicable for the Site Remediation Program. If the facility is conducting activities pursuant to the requirements of the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or the Leaking Underground Storage Tank Program (Title XVI of the Act), the corrective action completion certification process is also not applicable. However, the information required in Part IV of Appendix D may be cited to and utilized with respect to terminating GMZs pursuant to requirements by these other regulatory programs. A groundwater management zone expires upon the Agency's receipt of appropriate documentation which confirms the completion of the action taken pursuant to subsection (a) and which confirms the attainment of applicable standards as set forth in Subpart D.
- 1) The owner or operator must demonstrate that it has completed the corrective action required under subsection (c)(2) and that the applicable standards in Subpart D, as specified in Section 620.450(a)(4)(A), have been attained in the groundwater within the GMZ. The owner or operator must also demonstrate that the groundwater within the GMZ no longer requires controls or management to mitigate impairment caused by the release. If the

Agency approves this demonstration, the Agency must issue a written determination to that effect in which the Agency terminates the GMZ. The termination takes effect when the Agency issues this determination. If the Agency rejects this demonstration, the Agency must, in its written determination, specify the reasons for the rejection, which may include the Agency's basis for amending the GMZ to require additional corrective action measures under subsection (c)(2); or

- 2) The owner or operator must demonstrate that it has completed the corrective action process under subsection (c)(2) and concentrations of released chemical constituents, as specified in Section 620.450(a)(4)(B), remain in groundwater within the GMZ. The owner or operator must also demonstrate compliance with Section 620.450(a)(4)(B)(i) and (ii), as well as the on-going adequacy of controls and management to mitigate impairment caused by the release to groundwater within the GMZ. If the Agency approves this demonstration, the Agency must issue a written determination to that effect in which the Agency states that the GMZ remains in effect. If the Agency rejects this demonstration, the Agency must, in its written determination, specify the reasons for the rejection, which may include the Agency's basis for amending the GMZ to require additional corrective action under subsection (c)(2).

620.250(e)

For consistency with other existing text and clarity regarding what constitutes “rejecting the demonstration”, the Agency proposes adding language that is at the end of subsections (c)(1) and (c)(2), as follows:

- e) Within five years after the Agency issues a written determination approving a demonstration under subsection (d)(2), the owner or operator must submit a report to the Agency demonstrating the on-going adequacy of controls and management to mitigate impairment caused by the release to groundwater within the GMZ. The Agency must review the report and written a determination approving or rejecting the demonstration. The submittal of these reports by the owner or operator and the corresponding issuance of these written determinations by the Agency must occur at least every five years while the GMZ remains in effect. If the Agency rejects a demonstration, the Agency must, in its written determination, specify the reasons for the rejection, which may include the Agency's basis for amending the GMZ to require additional corrective action.

620.250(f)

The Agency requests that the Board clarify what “schedule” means in this subsection. This is the first occurrence of the term and there is no definition in 620.110. In absence of a definition for this term, the Agency suggests the following changes to proposed subsection (f)(1) to broaden by referring to the owner or operator’s failure to perform or comply with the any of the requirements

set forth as part of the Agency's approval to establish the GMZ:

- f) Without limiting any other legal authority of the Agency to terminate a GMZ, the Agency may issue a written determination terminating a GMZ based on any of the grounds specified in this subsection (f). The written determination must state the grounds for termination of the GMZ. The termination takes effect when the Agency issues this determination. The Agency may terminate a GMZ if:
- 1) The owner or operator fails to perform or comply with the any of the requirements set forth as part of the Agency's approval to establish the GMZ.
 - 2) The Agency rejects a demonstration under subsection (d) or (e); or
 - 3) The owner or operator commits fraud or misrepresentation in any submittal under subsection (b), (c)(2), (d), or (e).

~~The Agency shall review the on-going adequacy of controls and continued management at the site if concentrations of chemical constituents, as specified in Section 620.450(a)(4)(B), remain in groundwater at the site following completion of such action. The review must take place no less often than every 5 years and the results shall be presented to the Agency in a written report.~~

620.250(g), (h), and (i)

The Agency proposes revising the Board's language in subsection (g) to ensure terms of art, such as "condition" are appropriately aligned. Section 740.530(c) currently provides that a GMZ is in effect until one of two events occur – either the NFR becomes effective, or the SRP agreement is terminated. The term "condition", as used in the Board's proposal, is typically used in a permit context. Here, the trigger for GMZ termination is driven by the occurrence of an event rather than an operating condition as set forth in a permit. In addition, and consistent with the Agency's proposed changes to subsections (a) through (f) above, the Agency suggests the following modification to 35 Ill. Adm. Code 620.250(d), now subsection(g), to reflect that GMZs for the Agency's remediation programs are to be established and terminated according to those respective programs. The elimination of the specific references to Sections 740.120 and 740.530 also provide broader flexibility to the Board when adopting amendments to Part 740, where subsequent amendments to Part 620 would be required if Section numbering in Part 740 changes:

~~gd) Regardless of Notwithstanding subsections (a) through (f), and (b) above, a "groundwater management zone" as defined in 35 Ill. Adm. Code 740.120, may be established under in accordance with the requirements of 35 Ill. Adm. Code 740.530 for sites undergoing remediation pursuant to the Site Remediation Program (35 Ill. Adm. Code 740), the Leaking Underground Storage Tank Program (Title XVI of the Act), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Such a groundwater management zone shall~~

remain in effect until terminated in accordance with their respective program requirements the requirements set forth at 35 Ill. Adm. Code 740.530(e) are met.

Following through with this line of thinking, the Agency suggests the following changes to new subsection (h) and the deletion of the Board's proposed subsection (i), formerly subsection (f):

- he) ~~While a GMZ the groundwater management zone established under in accordance with 35 Ill. Adm. Code 740.530 the Site Remediation Program (35 Ill. Adm. Code 740), the Leaking Underground Storage Tank Program (Title XVI of the Act), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is in effect, the otherwise applicable standards as specified in Subpart D of this Part do shall not apply with respect to the contaminants addressed by the GMZ. be applicable to the "contaminants of concern," as defined at 35 Ill. Adm. Code 740.120, for which groundwater remediation objectives have been approved in accordance with the procedures of 35 Ill. Adm. Code 740.~~

New 620.250(i), (j), and (k)

The Agency proposes new provisions to clarify how regulation under Part 845 and Part 620 should co-exist. Part 845 GWPS include fewer constituents than the Part 620 groundwater standards, corrective action of constituents without a GWPS may still be required under Part 620, even in areas with CCR surface impoundments. For constituents that do not have a Part 845 GWPS but do have a Part 620 GWQS, a GMZ under Section 620.250 may be established. Therefore, the Agency also proposes additional language for active and inactive electric utilities and independent power producers to address corrective actions for the constituents without a Part 845 GWPS and in Section 620.440 to address the applicable standard for the constituents without a Part 845 GWPS.

The Agency intentionally did not make an exception where a GMZ was approved for corrective action conducted under Section 845.170 which requires that the CCR surface impoundment was closed before October 19, 2015. The USEPA has recently adopted amendments to Part 257 (89 Fed Reg May 8, 2024, 38950) which specifically regulate what are known as CCR management units (CCRMUs), which includes CCR surface impoundments that were closed under State rules, where the state does not have primacy, as well as Legacy Ponds, which are CCR surface impoundments at inactive facilities (i.e., ceased power generation before October 19, 2015). Illinois already regulates all CCR surface impoundments under Part 845. All CCR surface impoundments closed under State rules, whether or not there is a GMZ, will be required by the federal Part 257 to demonstrate closure was consistent with Part 257, which is equivalent to Part 845, conduct groundwater monitoring for all of the Part 257 constituents, which are the same constituents under Part 845.600, conduct corrective action, which again is the same as Part 845 and complete post-closure care, which entails meeting the Part 257 GWPS, which are the same, or in some instances less protective than the Part 845 GWPS. The Agency has not issued any operating permits for CCR surface impoundments closed under State rules, therefore, terminating GMZs at CCR surface impoundments for constituents with Part 845.600 GWPS will not be an added burden for owners and operators of CCR surface impoundments under Part 845, because

each of them will be required to monitor the same constituents as Part 845, to be compliant with federal Part 257. This distinction is most important for CCR surface impoundments regulated under Section 845.170. Because all of those units are now also federally regulated along with other CCR surface impoundments, there is no longer a purpose to have them operate under a Part 620 GMZ, using Part 620 GWQS.

Consistent with the Board's proposed subsection 620.250(c)(2), the Agency is proposing to allow owners and operators with approved GMZs at CCR surface impoundments to submit written documentation that the corrective action under Parts 845.650, 845.660, 845.670, and 845.680 will also provide an adequate corrective action process under Part 620.250 for constituents with no Part 845 GWPS.

The proposed new subsections address three distinct subsets of sites and constituents regulated by Part 845 or Part 620. These subsets are: CCR surface impoundments for which no GMZ under Part 620.250 is necessary; CCR surface impoundments with GMZs that were approved prior to the effective date of Part 845; and CCR surface impoundments with GMZs that include GWQS that are not addressed in Part 845. Each is discussed below.

New 620.250(i)

As noted earlier, Part 845 contains GWPS and prescriptive corrective action requirements. Accordingly, no new GMZ under Part 620.250 should be issued for the same constituents required under Part 845. Further, for any constituent with a Part 845.600 GWPS existing GMZs should be terminated. In addition to creating duplicative work to remediate the same constituent, attempting to address the same constituent simultaneously under both Part 845 and Part 620 would create a conflict between the GWPS and the GWQS. Under some circumstances constituents such as Arsenic, Boron, Chloride, Sulfate, and Total Dissolved Solids would have different standards under Part 845 and Part 620. In those cases, it would not be appropriate to say that the most stringent standard universally applies. Because Part 845 and Part 620 are separate rules, they will almost certainly never be updated simultaneously. Therefore, at some points in time, Part 620 may be more stringent while at other times Part 845 may be more stringent. Owners and operators of CCR surface impoundments as well as the concerned public should know with certainty which regulation applies and to which constituents.

Recognizing these issues, the Agency proposes the following language:

- i) Regardless of subsections (a) through (f), any corrective action conducted under 35 Ill. Adm. Code 845 must follow the corrective action process of Sections 845.650, 845.660, 845.670, and 845.680. A GMZ will not be approved for any constituent with a Part 845 Groundwater Protection Standard (GWPS). A site owner or operator may apply for a GMZ for any constituent with no Part 845 GWPS subject to the requirements of subparts (a) through (f).

New 620.250(j)

Proposed subsection (j) addresses corrective action conducted under Part 845 where GMZs were approved before the effective date of Part 845. The same conflicts between Part 620 GWQS and Part 845 GWPS exist at these locations as described relative to proposed new subsection (i). In those cases, corrective action and a schedule by which compliance with Part 620 is expected, has already been approved under Part 620.250. However, no existing GMZ under Section 620.250 meets the statutory requirements applicable to Part 845. Section 22.59(g) of the Act (415 ILCS 5/22.59(g)) requires Part 845 to be at least as comprehensive and protective as 40 CFR 257. Therefore, a GMZ under Part 620.250 for constituents with a Part 845 GWPS cannot exist without causing regulatory conflict. A GMZ under Part 620.250 may not have required the same closure criteria as Part 845, may not have the same corrective action process as Part 845, does not necessarily require permitting, and does not require public participation under Part 620. As a result, Part 620 is not as comprehensive as Part 845 and therefore not as comprehensive as Part 257. Importantly, proposed subsection 620.250(j) does allow any owner or operator of a CCR surface impoundment to demonstrate to the Agency that closure and corrective action under Part 845 will also address constituents with only Part 620 groundwater quality standards GWQS. Such a demonstration would allow an owner or operator of a CCR surface impoundment to amend their GMZ under 620.250 to use the corrective action process under Part 845 as the approved corrective action process for the constituents regulated only under Part 620.

Accordingly, the Agency proposes the following language:

- j) The owner or operator of an active or inactive electric utility or independent power producer with a GMZ approved under Parts 620.250 before April 21, 2021 to mitigate releases from a CCR surface impoundment, must follow the corrective action process of Part 845.650, 845.660, 845.670, and 845.680 for all constituents with a Part 845 GWPS, but may submit to the Agency in writing, a request to have a corrective action under Part 845 considered as an adequate corrective action process for constituents with no Part 845 GWPS.

New 620.250(k)

As explained above, in instances where Part 620 Class II GWQS apply, Part 620 is not as protective as Part 845 and fails to meet the statutory mandate of Section 22.59 of the Act. Even where Part 620 Class I GWQS apply, GMZs don't require the same corrective action process, permitting or public participation and therefore fail to meet the statutory mandate of Section 22.59 of the Act. Consequently, the Agency recommends the Board terminate the portion of any GMZ subject to a Part 845 GWPS, as follows:

- k) Any GMZ that has been approved under Part 620.250 to mitigate releases from a CCR surface impoundment at an active or inactive electric utility or independent power producer is terminated for any constituent with a Part 845 GWPS. The GMZ remains in effect for any constituent named in the GMZ application which does not have a Part 845 GWPS.

620.250(j) (new 620.250(l))

The Agency recommends maintaining a list of established GMZ's on the Agency's website rather than annually publishing a roster of GMZs, as the Board proposed. This will be less administratively burdensome for both the Agency and the Board, will allow easy access to the information by anyone, and allow for quicker updating of the information for the public. As proposed, this list will provide a description of the site within which a GMZ has been established and the date the GMZ was established. The Agency maintains other lists on its website that would be akin to a GMZ registry. See the Agency's UECA Registry as an example: <https://epa.illinois.gov/topics/cleanup-programs/ueca/registry.html>.

Proposed amendments:

- ~~j) The Agency must publish on its website a list of all GMZs that have been established but not terminated, along with information identifying the site for which each GMZ was established. At least annually, the Agency must publish in the Environmental Register a list of all GMZs that have not been terminated, along with a brief statement of each GMZ's status.~~

Section 620.301 General Prohibition Against Use Impairment of Resource Groundwater**620.301(c)**

The Agency proposes revising Section 620.301(c) to clarify the means by which Underground Injection Control (UIC) wells are regulated in Illinois. Not all wells under the UIC program receive permits. As an example, Class V UIC wells are authorized by rule. However, Class V UIC wells should be included in the exception to the prohibition set forth in subsection (a) even though such UIC wells do not have a "permit" to regulate those activities. The Agency proposes the following suggested edits to subsection (c) to accurately reflect the scope of the Agency's UIC program, to update the correct state agency reference for administration of the Oil and Gas Act, and to acknowledge that U.S. EPA administered UIC wells are also exempted:

- c) Nothing in this Section ~~limits~~ ~~limit~~ underground injection in accordance with pursuant to a permit issued ~~an underground injection control program administered~~ by the Agency under the Act, ~~issued~~ by the Department of Natural Resources, Office of Mines and Minerals under the Illinois Oil and Gas Act [225 ILCS 725], or by the U.S. EPA under the federal UIC regulations [40 CFR 144].

Section 620.302 Applicability of Preventative Notification and Preventative Resource Activities

620.302(a)(1)

The following proposed edit corresponds to recommended language in response to Board Question 8. *See* Illinois EPA Responses to Board Questions, Response 8.

- 1) Class I groundwater under Section 620.210(a)(1), (a)(2), ~~or (a)(3), (a)(5)~~ or (a)(6) that is monitored by the persons listed in subsection (b); or

620.302(b)(1)

To avoid internal inconsistencies and accommodate the possibility of future regulatory changes, the Agency proposes revising Section 620.302(b)(1). The Agency's proposed revisions will address several concerns implicated by the Board's proposed text. First, reporting under program requirements does not assure that the appropriate regulatory agency is made aware of those results. Second, Preventive Response Activities under Section 620.310 may be tied to the entities identified in subsection 620.302(b)(1), which the Board has proposed for deletion. Third, inclusion of Part 815 in the Board's list is programmatically problematic because Part 815 does not require the review by the Agency of documents submitted under Part 815. Accordingly, the Agency would recommend not including example lists and therefore proposes the following:

- b) For purposes of subsection (a), the persons that conduct groundwater monitoring are:
 - 1) An owner or operator of a regulated entity for which groundwater quality monitoring must be performed ~~under pursuant to~~ State or Federal law or regulation; ~~section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601, et seq.); sections 3004 and 3008 of the Resource Conservation and Recovery Act (42 USC 6901, et seq.); sections 4(q), 4(v), 12(g), 21(d), 21(f), 22.2(f), 22.2(m) and 22.18 of the Act; 35 Ill. Adm. Code 724, 725, 730, 731, 750, 811 and 814;~~

Section 620.440 Groundwater Quality Standards for Class IV: Other Groundwater

In Section 620.440(b), the Agency seeks to address the application of Class IV groundwater quality standards for landfill facilities subject to Part 815 (which are not required to obtain a permit but are required to meet the regulatory standards of Part 811 landfill facilities).

Adding the proposed new subsection 620.440(d) clarifies where and when the GWPS of Part 845 apply versus the GWQS of Part 620. As proposed, the GWPS apply wherever contamination regulated under Part 845 exists, even if the contamination has spread beyond the property owned or operated by an electric utility or independent power producer, because Part 845 does not limit the area of investigation under the corrective action process. Conversely, groundwater on property

that may be owned by an electric utility or independent power producer but is not subject to regulation under Part 845 because it is not subject to corrective action or groundwater monitoring requirements of Part 845 is regulated under Part 620, as is any other location in the State. At any location where there is no Part 845 GWPS for a constituent one of the Classes of groundwater under Part 620 applies. Groundwater impacted by CCR surface impoundments is regulated for the entire active life of the CCR surface impoundment as defined in Section 845.120. At the end of the active life of a CCR surface impoundment, Part 845 regulations have been satisfied and the groundwater is no longer subject to the GWPS of Part 845, therefore Part 620 GWQS do apply to all constituents at that time.

In proposing a new subsection (e), the Agency also seeks to address an interpretation issue regarding the applicability of Class IV groundwater standards in relation to the UIC programs administered by the Agency, Department of Natural Resources, and the U.S. EPA. As noted by U.S. EPA's 2024 Interim Guidance on the Destruction and Disposal of PFAS Fact Sheet, the interim guidance summarizes scientific information on current understanding of PFAS and focuses on three currently used D&D technologies, the first of which is via UIC well injection. Similar to the clarifications made in Section 620.301(c) to exempt UIC programs from the anti-degradation prohibition, the Agency recommends amending Section 620.440 to exempt UIC programs, including those administered by U.S. EPA, from the Class IV groundwater standards.

Accordingly, the Agency suggests the following amendments to Section 620.440 for the Board's consideration:

- a) Except as provided in subsection (b), ~~(c), (d), or (e)~~, Class IV: Other Groundwater standards are equal to the existing concentrations of constituents in groundwater.
- b) For groundwater within a zone of attenuation as defined in 35 Ill. Adm. Code Part 810 and 35 Ill. Adm. Code 811.320(c), ~~as provided in 35 Ill. Adm. Code 811 and 814~~ the standards specified in Section 620.420 must not be exceeded, except for concentrations of contaminants within leachate released from a permitted unit.
- c) For groundwater within a previously mined area, the standards specified set forth in Section 620.420 must not be exceeded, except the standards are the existing concentrations for concentrations of TDS, chloride, iron, manganese, sulfates, pH, 1,3-dinitrobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, HMX (octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine high melting explosive, octogen), nitrobenzene, RDX (hexahydro-1,3,5-trinitro-1,3,5-triazine royal demolition explosive, cyclonite), 1,3,5-trinitrobenzene, or TNT (2,4,6-trinitrotoluene (TNT)). ~~For concentrations of TDS, chloride, iron, manganese, sulfates, pH, 1,3-dinitrobenzene, 2,4 dinitrotoluene, 2,6 dinitrotoluene, HMX, nitrobenzene, RDX, 1,3,5 trinitrobenzene, or 2,4,6 trinitrotoluene (TNT), the standards are the existing concentrations.~~
- d) For groundwater at both active and inactive electric utilities and independent power producers regulated under Part 845, the groundwater protection standard (GWPS)

under Section 845.600 must not be exceeded for any constituent with a GWPS under Section 845.600. For any constituent that does not have a GWPS under Section 845.600, the groundwater quality standards (GWQS) of Sections 620.410, 620.420, 620.430 or 620.440(b) and (c) apply.

- e) Regardless of the limitations in subsection (a), nothing in this Section shall limit underground injection in accordance with an underground injection control program administered by the Agency under the Act, by the Department of Natural Resources, Office of Mines and Minerals under the Illinois Oil and Gas Act [225 ILCS 725], or by the U.S. EPA under the federal UIC regulations [40 CFR 144].

Section 620.APPENDIX A Procedures for Determining Human toxicant advisory Concentrations for Class I: Potable Resource Groundwater

In subsection a), the Agency suggests retaining “threshold” in the name of the noncarcinogen concentration (Human Threshold Toxicant Advisory Concentration (HTTAC)) to be consistent with Appendix A(d) terminology for the Human Nonthreshold Toxicant Advisory Concentration.

Section 620.APPENDIX D Groundwater Management Zone Application under 35 Ill. Adm. Code 620.250(b) and Corrective Action Completion Certification under 35 Ill. Adm. Code 620.250(d)

The Agency believes the following proposed edit makes Note 3 consistent with the Agency’s suggested edits to the Board’s proposed changes to Section 620.250. In addition, there is a non-substantive misspelling of information.

- Note 1. Parts I, ~~and II~~ and III of this Appendix D specify the information required for the GMZ application ~~are to be submitted to the Agency IEPA at the time that the facility claims the alternative groundwater standards. If the release is subject to a corrective action process that requires the submittal of more information to the Agency to establish a GMZ than that specified in Parts I, II, and III of this Appendix D, the owner or operator must include the additional information with its GMZ application. Sec 35 Ill. Adm. Code 620.250(b)(2). Part IV of this Appendix D specifies the information required for the corrective action completion certification that the owner or operator submits to the Agency of the site investigation. At the completion of the corrective process, a final report is to be filed which includes the confirmation statement included in Part IV.~~

- Note 3. A GMZ application (Parts I, II and III of this Appendix D) is not for use in establishing a GMZ under the Site Remediation Program (35 Ill. Adm. Code 740). See 35 Ill. Adm. Code 620.250(g). Part IV of this Appendix D for corrective action completion certification is also inapplicable for the Site Remediation Program. If the facility is conducting a cleanup which is activities

subject to the requirements of the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or the Leaking Underground Storage Tank Program (Title XVI of the Act), ~~this the application and corrective action completion certification confirmation~~—processes are not applicable. However, the information required in Parts I, II, III, and IV of this Appendix D may be cited to and utilized with respect to establishing and terminating GMZs pursuant to activities required by these other regulatory programs and cannot be used.

Part I, (9)(a)

The Agency recommends the following:

If the answer to this question is "yes",
Identify the notice's ~~the~~ caption and date of issuance.

WHEREFORE, the Illinois EPA asks the Board to accept the Agency's Responses to Board Questions and First Notice Comments.

Respectfully submitted,

Dated: June 17, 2024

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

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Division of Legal Counsel
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BY: /s/ Sara Terranova

CERTIFICATE OF SERVICE

I, the undersigned, on affirmation state the following:

That I have served the attached **NOTICE OF FILING** and **ILLINOIS ENVIRONMENTAL PROTECTION AGENCY'S RESPONSES TO QUESTIONS AND FIRST NOTICE COMMENTS** by e-mail upon the attached service list.

That my e-mail address is: Sara.Terranova@illinois.gov.

That the e-mail transmission took place before 4:30 p.m. on the date of June 17, 2024.

/s/ Sara Terranova

June 17, 2024

APPENDIX A to the Agency's Public Comment

Section 620.110 Definitions

The definitions of the Environmental Protection Act [415 ILCS 5] and the Groundwater Protection Act [415 ILCS 55] apply to this Part. The following definitions also apply to this Part:

"Corrective action process" means those the procedures and practices ~~that may be imposed by a regulatory agency when a determination has been made that contamination of groundwater has taken place, and are~~ necessary to address a potential or existing violation of any Subpart D standard due to a release of one or more contaminants.

"GMZ application" shall mean the form specified in Section 620.Appendix D, Parts I, II, and III.

"LOAEL"

[the "or" after "LOAEL" should be deleted]

"Resource groundwater"

"Saturated zone"

[A space should be added between the "Resource groundwater" and "Saturated zone" definitions]

Section 620.125 Incorporations By Reference

620.125(a)

U.S. EPA, Office of Resource Conservation and Recovery. "Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities, (March 2009 Unified Guidance)", EPA 530/R-09-007.

U.S. EPA, Office of Water, Engineering and Analysis Division.

"Method 1633: Analysis of Per- and Polyfluoroalkyl Substances (PFAS) in Aqueous, Solid, Biosolids, and Tissue Samples by LC-MS/MS," January 2024, EPA 821-R-24-001."

Section 620.201 Groundwater Designations

- a) One of the following four classes of groundwater ~~in~~ according to ~~accordance with~~ Sections 620.210 through 620.240:
- b) A groundwater management zone in compliance ~~accordance~~ with Section 620.250 subsections (a) –(d); or

- c) A groundwater management zone as defined in 35 Ill. Adm. Code 740.120 and established under 35 Ill. Adm. Code 740.530, in compliance with Section 620.250, subsections (g)-(i).

Section 620.210 Class I: Potable Resource Groundwater

620.210(a)(5)

- a) Groundwater located 10 feet or more below the land surface and within:

- 1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of the well;
- 2) Unconsolidated sand, gravel, or sand and gravel which is 5 feet or more in thickness and that contains 12% ~~percent~~ or less of fines (i.e., fines which pass through a No. 200 sieve tested according to ASTM Standard Practice D2487-06, incorporated by reference at Section 620.125);
- 3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; ~~or~~
- 4) Any geologic material which is capable of a:
 - A) Sustained groundwater yield, from up to a 12-inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or
 - B) Hydraulic conductivity of 1×10^{-4} cm/sec or greater using one of the following test methods or its equivalent:
 - i) Slug test; or ~~Permeameter;~~
 - ii) Pump test ~~Slug test;~~ or
 - iii) ~~Pump test.~~

5) The Phase I and Phase II wellhead protection areas of a community water supply well or well field, as defined in Section 620.110 and delineated according to the methods incorporated by reference in Section 620.125. For the purposes of this Subpart, when a maximum setback zone has been adopted under Section 14.3 of the Act, the WHPA includes the delineated area within the maximum setback zone.

6) The maximum setback zone of a community water supply well adopted under Section 14.3 of the Act.

620.210(c)

- c) Any portion of the thickness associated with the geological materials as described in subsections 620.210(a)(2), (a)(3), or (a)(4) is ~~designated~~ designed as Class I: Potable Resource Groundwater if located 10 feet or more below the land surface.

Section 620.240 Class IV: Other Groundwater

620.240(h)

Except as provided in Section 620.250, Other Groundwater is:

- h) Groundwater regulated under 35 Ill. Adm. Code 845 at both active and inactive electric utilities and independent power producers.

Section 620.250 Groundwater Management Zone

Section 620.250 and Section 620.APPENDIX D

Given the importance of harmonizing all Agency programs with respect to the establishment and termination of GMZs toward the end goals of facilitating timely corrective action and ensuring environmental protection, the Agency proposes that the Board establish a subdocket to further flesh out the programmatic procedural requirements for GMZs under the various Agency remediation programs (state, federal) administered by the Bureau of Land (BOL).

To emphasize the separation of GMZ requirements for the Agency's Bureau of Water (BOW) versus BOL programs, the Agency recommends creating a new subsection under Section 620.250 to exempt the BOL programs from the GMZ procedural requirements therein (e.g., the application process). This subsection could be a new "(b)" or tacked on at the end of the Section:

- b) The procedural requirements for establishing, monitoring, and terminating a GMZ in accordance with this Section do not apply to GMZ's for contamination being remediated under the Leaking Underground Storage Tank Program (Title XVI of the Act), the Site Remediation Program (35 Ill. Adm. Code 740), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

Alternatively, the Agency suggests the following amendments to the Board's proposed changes to Section 620.250 to restore the substantive requirements for establishment of a GMZ and to reserve procedural requirements to the rules of identified individual programs:

- b) Within any class of groundwater, a groundwater management zone (GMZ) may be established as a three-dimensional ~~three-dimensional~~ region containing

groundwater being managed to mitigate impairment caused by the release of one or more contaminants from a site that is subject to a corrective action process.

~~2) That is subject to a corrective action process approved by the Agency; or~~

~~2) For which the owner or operator undertakes an adequate corrective action in a timely and appropriate manner and provides a written confirmation to the Agency. Such confirmation must be provided in a form as prescribed by the Agency.~~

b) Before a GMZ may be established, the owner or operator of a site at which there has been a release of one or more contaminants to groundwater must submit to the Agency a GMZ application. The application must contain the information specified in Section 620.Appendix D, Parts I, II, and III, as well as any other information requested in writing by the Agency that is relevant to its review under subsection (c).

2) [Alternative language for subsection (b)(1)] If the GMZ would extend off-site, the GMZ application must include each affected property owner's written permission to the establishment of the GMZ on that off-site property. If off-site property owner permissions are not obtained, then the GMZ will not include those off-site properties. The owner and operator are not relieved of responsibility to clean up a release that has migrated beyond the facility boundary where GMZ permission has not been obtained.

1) [Alternative language for subsection (b)(1)] If the GMZ would extend off-site, the GMZ application must include each affected property owner's written permission to the establishment of the GMZ on that off-site property. If off-site property owner permissions are not obtained, then the GMZ will not include those off-site properties. The owner and operator are still subject to the requirements of the statutory and regulatory programs referenced in subsection (b)(3) with or without GMZ written permission.

2) If the release is subject to a corrective action process that requires the submittal of more information to the Agency to establish a GMZ than that specified in this subsection (b), the owner or operator must submit the additional information compliance with the schedule in Appendix II (6), Appendix D in its GMZ application.

3) Except as to the statutory and regulatory programs provided in this subsection (b)(3), a GMZ application must be submitted to the Agency in the form specified in Section 620.Appendix D, Parts I, II, and III. If the release is subject to a corrective action process that requires the information specified in subsection (b) to be submitted to the Agency in a different form (e.g., plan, agreement, report, permit application), the owner or operator must submit the information in that form. A GMZ application (Parts I, II

and III of Appendix D) is not for use in establishing a GMZ under the Leaking Underground Storage Tank Program (Title XVI of the Act), the Site Remediation Program (35 Ill. Adm. Code 740), the Resource Conservation and Recovery Act (RCRA), and the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). See 35 Ill. Adm. Code 620.250(g). However, the information required in Parts I, II, and III of Appendix D may be cited to and utilized with respect to establishing GMZs pursuant to corrective action remedies required by these other regulatory programs.

- c) The Agency must review each GMZ application submitted under subsection (b) and issue a written determination approving or rejecting the proposed GMZ.
- 1) The Agency must consider the substantive information provided to establish the GMZ, the technical sufficiency of the proposed GMZ, the likelihood that the proposed GMZ will protect public health and the environment, and the likelihood that the GMZ's required corrective action will, in a timely manner, result in compliance with the applicable standards in Section 620.410, 620.420, 620.430, or 620.440 or otherwise minimize exceedances to restore beneficial use as appropriate for the class or classes of groundwater. If the Agency rejects a proposed GMZ, the Agency must, in its written determination, specify the reasons for the rejection.
 - 2) A GMZ ~~groundwater management zone~~ is established when the Agency issues a written determination establishing the GMZ, including its corrective action process ~~upon concurrence by the Agency that the conditions as specified in subsection (a) are met and groundwater management continues for a period of time consistent with the action described in that subsection.~~ Once a GMZ is established, the Agency may, as new information warrants, issue written determinations amending any part of the GMZ, including its size, the contaminants that are subject to it, and its corrective action.
- de) Except as to the statutory and regulatory programs provided in this subsection (d), when the owner or operator completes the corrective action process under subsection (c)(2), the owner or operator must submit to the Agency a demonstration that complies with subsection (d)(1) or (d)(2) and includes the corrective action completion certification specified in Section 620.Appendix D, Part IV. The Agency must review this demonstration and issue a written determination approving or rejecting the demonstration. Part IV of Appendix D for corrective action completion certification is also inapplicable for the Site Remediation Program. If the facility is conducting activities pursuant to the requirements of the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or the Leaking Underground Storage Tank Program (Title XVI of the Act), the corrective action completion certification process is not applicable. However, the information

required in Part IV of Appendix D may be cited to and utilized with respect to terminating GMZs pursuant to requirements by these other regulatory programs. A groundwater management zone expires upon the Agency's receipt of appropriate documentation which confirms the completion of the action taken pursuant to subsection (a) and which confirms the attainment of applicable standards as set forth in Subpart D.

- 1) The owner or operator must demonstrate that it has completed the corrective action required under subsection (c)(2) and that the applicable standards in Subpart D, as specified in Section 620.450(a)(4)(A), have been attained in the groundwater within the GMZ. The owner or operator must also demonstrate that the groundwater within the GMZ no longer requires controls or management to mitigate impairment caused by the release. If the Agency approves this demonstration, the Agency must issue a written determination to that effect in which the Agency terminates the GMZ. The termination takes effect when the Agency issues this determination. If the Agency rejects this demonstration, the Agency must, in its written determination, specify the reasons for the rejection, which may include the Agency's basis for amending the GMZ to require additional corrective action measures under subsection (c)(2), or
- 2) The owner or operator must demonstrate that it has completed the corrective action process under subsection (c)(2) and concentrations of released chemical constituents, as specified in Section 620.450(a)(4)(B), remain in groundwater within the GMZ. The owner or operator must also demonstrate compliance with Section 620.450(a)(4)(B)(i) and (ii), as well as the on-going adequacy of controls and management to mitigate impairment caused by the release to groundwater within the GMZ. If the Agency approves this demonstration, the Agency must issue a written determination to that effect in which the Agency states that the GMZ remains in effect. If the Agency rejects this demonstration, the Agency must, in its written determination, specify the reasons for the rejection, which may include the Agency's basis for amending the GMZ to require additional corrective action under subsection (c)(2).
- e) Within five years after the Agency issues a written determination approving a demonstration under subsection (d)(2), the owner or operator must submit a report to the Agency demonstrating the on-going adequacy of controls and management to mitigate impairment caused by the release to groundwater within the GMZ. The Agency must review the report and written a determination approving or rejecting the demonstration. The submittal of these reports by the owner or operator and the corresponding issuance of these written determinations by the Agency must occur at least every five years while the GMZ remains in effect. If the Agency rejects a demonstration, the Agency must, in its written determination, specify the reasons for the rejection, which may include the Agency's basis for amending the GMZ to require additional corrective action.

~~f) Without limiting any other legal authority of the Agency to terminate a GMZ, the Agency may issue a written determination terminating a GMZ based on any of the grounds specified in this subsection (f). The written determination must state the grounds for termination of the GMZ. The termination takes effect when the Agency issues this determination. The Agency may terminate a GMZ if:~~

~~1) The owner or operator fails to perform or comply with the any of the requirements set forth as part of the Agency's approval to establish the GMZ.~~

~~2) The Agency rejects a demonstration under subsection (d) or (e); or~~

~~3) The owner or operator commits fraud or misrepresentation in any submittal under subsection (b), (c)(2), (d), or (e).~~

~~The Agency shall review the on-going adequacy of controls and continued management at the site if concentrations of chemical constituents, as specified in Section 620.450(a)(4)(B), remain in groundwater at the site following completion of such action. The review must take place no less often than every 5 years and the results shall be presented to the Agency in a written report.~~

~~gd) Regardless of Notwithstanding subsections (a) through (f), and (b) above, a "groundwater management zone" as defined in 35 Ill. Adm. Code 740.120, may be established under in accordance with the requirements of 35 Ill. Adm. Code 740.530 for sites undergoing remediation pursuant to the Site Remediation Program (35 Ill. Adm. Code 740), the Leaking Underground Storage Tank Program (Title XVI of the Act), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). GMZ's established under these programs Such a groundwater management zone shall remain in effect until terminated in accordance with such program requirements the requirements set forth at 35 Ill. Adm. Code 740.530(e) are met.~~

~~he) While a GMZ the groundwater management zone established under in accordance with 35 Ill. Adm. Code 740.530 the Site Remediation Program (35 Ill. Adm. Code 740), the Leaking Underground Storage Tank Program (Title XVI of the Act), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) is in effect, the otherwise applicable standards as specified in Subpart D of this Part do shall not apply. be applicable to the "contaminants of concern," as defined at 35 Ill. Adm. Code 740.120, for which groundwater remediation objectives have been approved in accordance with the procedures of 35 Ill. Adm. Code 740.~~

~~if) Regardless of Notwithstanding subsection (e) (e) above, that subsection's submittal and the review requirements concerning the on-going adequacy of controls and~~

~~continued management do at the site shall~~ not apply to groundwater within a three-dimensional region formerly encompassed by a GMZ groundwater management zone established under the Site Remediation Program (35 Ill. Adm. Code 740), the Leaking Underground Storage Tank Program (Title XVI of the Act), the Resource Conservation and Recovery Act (RCRA), or the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) ~~in accordance with 35 Ill. Adm. Code 740.530~~ while a No Further Remediation Letter issued institutional controls or other protective measure required under those respective programs remain in accordance with the procedures of 35 Ill. Adm. Code 740 is in effect.

- j) Regardless of subsections (a) through (f), any corrective action conducted under 35 Ill. Adm. Code 845 must follow the corrective action process of Sections 845.650, 845.660, 845.670, and 845.680. A GMZ will not be approved for any constituent with a Part 845 Groundwater Protection Standard (GWPS). A site owner or operator may apply for a GMZ for any constituent with no Part 845 GWPS subject to the requirements of subparts (a) through (f).
- k) The owner or operator of an active or inactive electric utility or independent power producer with a GMZ approved under Parts 620.250 before April 21, 2021 to mitigate releases from a CCR surface impoundment, must follow the corrective action process of Part 845.650, 845.660, 845.670, and 845.680 for all constituents with a Part 845 GWPS, but may submit to the Agency in writing, a request to have a corrective action under Part 845 considered as an adequate corrective action process for constituents with no Part 845 GWPS.
- l) Any GMZ that has been approved under Part 620.250 to mitigate releases from a CCR surface impoundment at an active or inactive electric utility or independent power producer is terminated for any constituent with a Part 845 GWPS. The GMZ remains in effect for any constituent named in the GMZ application which does not have a Part 845 GWPS.
- j-m) The Agency must publish on its website a list of all GMZs that have been established but not terminated, along with information identifying the site for which each GMZ was established. ~~At least annually, the Agency must publish in the Environmental Register a list of all GMZs that have not been terminated, along with a brief statement of each GMZ's status.~~

Section 620.301 General Prohibition Against Use Impairment of Resource Groundwater

620.301(c)

- c) Nothing in this Section ~~limits limit~~ underground injection in accordance with ~~pursuant to a permit issued~~ an underground injection control program administered by the Agency under the Act, ~~issued~~ by the Department of Natural Resources, Office of Mines and Minerals under the Illinois Oil and Gas Act [225 ILCS 725], or by the U.S. EPA under the federal UIC regulations [40 CFR 144].

Section 620.302 Applicability of Preventative Notification and Preventative Resource Activities

620.302(a)(1)

- 1) Class I groundwater under Section 620.210(a)(1), (a)(2), ~~or (a)(3)~~, (a)(5) or (a)(6) that is monitored by the persons listed in subsection (b); or

620.302(b)(1)

- b) For purposes of subsection (a), the persons that conduct groundwater monitoring are:
 - 1) An owner or operator of a regulated entity for which groundwater quality monitoring must be performed under ~~pursuant to~~ State or Federal law or regulation; ~~section 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (42 USC 9601, et seq.); sections 3004 and 3008 of the Resource Conservation and Recovery Act (42 USC 6901, et seq.); sections 4(q), 4(v), 12(g), 21(d), 21(f), 22.2(f), 22.2(m) and 22.18 of the Act; 35 Ill. Adm. Code 724, 725, 730, 731, 750, 811 and 814;~~

Section 620.310 Preventative Response Activities

620.310(a)(1)(C)(i)

- i) Conduct a well site survey according ~~pursuant~~ to 415 ILCS 5/17.1(d), if such a survey has not been previously conducted within the last 5 years; and

620.310(a)(3)(A)(ii)

5-46-4 PFHxS (perfluorohexanesulfonic acid)

620.310(c)(1)

The suggests changing “exceedence” to “exceedance” to be consistent with the Board’s “exceedence” edit at 620.450(a)(4)(B)(i).

Section 620.410 Groundwater Quality Standards for Class I: Potable Resource Groundwater

620.410(b)

The Agency suggests editing footnote “a” as shown below:

^a The standard is the Human Threshold Toxicant Advisory Concentration ("HTTACT"), calculated using procedures at Appendix A.

620.410(c)(2)

The table should remain in the text. See also the Agency’s response to Board Question 10.

620.420(c)(1)

The “of” before “must” should be struck. The sentence should read:

Concentrations of the following organic chemical constituents ~~of~~ must not be exceeded in Class II groundwater:

Section 620.440 Groundwater Quality Standards for Class IV: Other Groundwater

- b) For groundwater within a zone of attenuation as defined in 35 Ill. Adm. Code Part 810 and 35 Ill. Adm. Code 811.320(c), ~~as provided in 35 Ill. Adm. Code 811 and 814~~ the standards specified in Section 620.420 must not be exceeded, except for concentrations of contaminants within leachate released from a permitted unit.
- c) For groundwater within a previously mined area, the standards specified set forth in Section 620.420 must not be exceeded, ~~except the standards are the existing concentrations for concentrations of~~ TDS, chloride, iron, manganese, sulfates, pH, 1,3-dinitrobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, HMX (octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazocine ~~high melting explosive, octogen~~), nitrobenzene, RDX (hexahydro-1,3,5-trinitro-1,3,5-triazine ~~royal demolition explosive, cyclonite~~), 1,3,5-trinitrobenzene, or TNT (2,4,6-trinitrotoluene (TNT)). ~~For concentrations of TDS, chloride, iron, manganese, sulfates, pH, 1,3-dinitrobenzene, 2,4 dinitrotoluene, 2,6 dinitrotoluene, HMX, nitrobenzene, RDX, 1,3,5 trinitrobenzene, or 2,4,6 trinitrotoluene (TNT), the standards are the existing concentrations.~~
- d) For groundwater at both active and inactive electric utilities and independent power producers regulated under Part 845, the groundwater protection standard (GWPS) under Section 845.600 must not be exceeded for any constituent with a GWPS under Section 845.600. For any constituent that does not have a GWPS under Section 845.600, the groundwater quality standards (GWQS) of Sections 620.410, 620.420, 620.430 or 620.440(b) and (c) apply.

Section 620.450 Alternative Groundwater Quality Standards

620.450(a)(3)

The “to” following “apply” should remain in the text. The sentence should read:

- 3) Before the Agency issues a written determination approving the demonstration of the owner or pounder Section 620.250.(d)(1) or (d)(2), none of the standards in Section 620.410, 620.420, 620.430, or 620.440 apply to any released chemical constituent if the owner or operator performs and complies with the schedule for all parts of the GMZ.

620.450(b)(1)

- 1) Any inorganic chemical constituent or pH in groundwater, within an underground coal mine, or within the cumulative impact area of groundwater for which the hydrologic balance has been disturbed from a permitted coal mine area under Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720] and 62 Ill. Adm. Code 1700 through 1850, is subject to this ~~subsection (b)~~Section.

620.450(b)(3)(D)

The Agency suggests the following edit:

- D) The concentration of 1,3-dinitrobenzene, 2,4-dinitrotoluene, 2,6-dinitrotoluene, HMX (octahydro-1,3,5,7-tetranitro-1,3,5,7- ~~tetrazocine~~), nitrobenzene, RDX (hexahydro-1,3,5-trinitro-1,3,5-triazine), 1,3,5-trinitrobenzene, and TNT (2,4,6-trinitrotoluene (~~TNT~~)) must not exceed, the post-reclamation concentration within the permitted area.

Section 620.505 Compliance Determination

620.505(a)

The Board’s proposed edits are problematic. Subpart D applies only to the numerical standards. However, the non-degradation provisions of Subpart C also need to have a specified point of compliance. The Agency notes also that certain Class II standards in 620.420(a)(3) have modified points of compliance as do certain coal mine activities under 620.450(b). Therefore, the Agency recommends the Board not make the proposed edits to subsection 620.505(a).

620.505(a)(5)(A)

“In” before “according to” should be removed.

Section 620.510 Monitoring and Analytical Requirements

620.510(b)(3)

The Agency recommends that the edits in this subsection should be consistent with the proposed change in Section 620.125.

Section 620.APPENDIX A Procedures for Determining Human toxicant advisory Concentrations for Class I: Potable Resource Groundwater

In subsection a), the Agency suggests retaining “threshold” in the name of the noncarcinogen concentration (Human Threshold Toxicant Advisory Concentration (HTTAC)) to be consistent with Appendix A(d) terminology for the Human Nonthreshold Toxicant Advisory Concentration.

Section 620.APPENDIX D Groundwater Management Zone Application under 35 Ill. Adm. Code 620.250(b) and Corrective Action Completion Certification under 35 Ill. Adm. Code 620.250(d)

- Note 1. Parts I, ~~and II~~ and III of this Appendix D specify the information required for the GMZ application that the owner or operator submits are to be submitted to the Agency IEPA at the time that the facility claims the alternative groundwater standards. If the release is subject to a corrective action process that requires the submittal of more information to the Agency to establish a GMZ than that specified in Parts I, II, and III of this Appendix D, the owner or operator must include the additional information with its GMZ application. See 35 Ill. Adm. Code 620.250(b)(2). Part IV of this Appendix D specifies the information required for when Part IV of this Appendix D is submitted as the corrective action completion certification that the owner or operator submits to the Agency of the site investigation. At the completion of the corrective process, a final report is to be filed which includes the confirmation statement included in Part IV.
- Note 3. A GMZ application (Parts I, II and III of this Appendix D) is not for use in establishing a GMZ under the Site Remediation Program (35 Ill. Adm. Code 740). See 35 Ill. Adm. Code 620.250(g). Part IV of this Appendix D for corrective action completion certification is also inapplicable for the Site Remediation Program. If the facility is conducting a ~~cleanup~~ which is activities subject to the requirements of the Resource Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or the Leaking Underground Storage Tank Program (Title XVI of the Act), ~~this the application and corrective action completion certification confirmation~~ processes are not applicable. However, the information required in Parts I, II, III, and IV of this Appendix D may be cited to and utilized with respect to establishing and terminating GMZs pursuant to activities required by these other regulatory programs ~~and cannot be used.~~