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A large industrial pipeline, likely for natural gas, runs diagonally across a lush green field. The pipeline is made of large, dark, corrugated metal sections. In the background, several wind turbines are visible on the horizon under a dramatic sky with orange and blue clouds, suggesting a sunset or sunrise. The overall scene conveys a message of sustainable energy and infrastructure.

THE IMPORTANCE
OF NATURAL GAS

ILLINOIS POLLUTION CONTROL BOARD

RULEMAKING UPDATES IN 2024

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The Illinois Pollution Control Board (“Board”) has two main functions: (1) deciding environmental enforcement cases through adjudication, and (2) adopting environmental regulations through rulemaking. This year has been an active year for Board rulemaking. This article provides updates on a few of the larger rulemakings currently in front of the Board.

Groundwater (PFAS)

In March, the Board moved to First Notice in *In the Matter of: Proposed Amendments to Groundwater Quality* 35 Ill. Adm. Code 620 (PCB R 22-18). The rulemaking proposal was first filed by the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) in December 2021. The Agency proposed amendments to the groundwater quality standards (“GWQS”) in Part 620 of the Board’s regulations for several new chemicals, including six per- and polyfluoroalkyl substances (“PFAS”). Hearings were held in March, June, and December 2022.

In the Board’s First Notice Opinion and Order, the Board proposed to move forward with the proposal with some revisions. As to the PFAS standards, the Board proposed the following Class I Potable Resource Groundwater Standards: PFBS: 0.0012 mg/L, PFHxS: 0.000077 mg/L, PFNA: 0.000012 mg/L, PFOA: 0.000004 mg/L, PFOS: 0.0000077 mg/L, and HFPO-DA: 0.000012 mg/L. The Board also proposed adopting Class II - General Resource Groundwater standards for these six PFAS. At First Notice, the Board also proposed numerous amendments to its rules addressing groundwater management zones (“GMZs”) with the intent of providing clarity on certain aspects of the GMZ process.

Rulemaking participants filed written comments with the Board concerning the proposed amendments at First Notice, many of which addressed the implementation of the proposed PFAS GWQS and the proposed amendments concerning GMZs. It is anticipated that the Board will move to Second Notice in the next few months and that the Board will adopt the regulations in late 2024 or early 2025.

Startup, Malfunction, and Breakdown

In August, the Board finalized alterna-

tive emission limits (“AELs”) for several facilities establishing alternative requirements that apply during periods of startup, malfunction, and breakdown (“SMB”). In *In the Matter of: Amendments to 35 Ill. Adm. Code Parts 201, 202, and 212, PCB R 23-18(A)* (August 22, 2024). As background, in July 2023, the Board finalized amendments that removed the SMB provisions from Parts 201, 202, and 212 of the Board’s regulations. PCB R 23-18 (July 20, 2023). Predicated on a State Implementation Plan (“SIP”) Call from the United States Environmental Protection Agency (“USEPA”), the adopted amendments removed the ability for sources to apply for and obtain SMB relief pursuant to these provisions in their air permit applications. The adopted amendments were submitted to USEPA for approval as a revision to Illinois’ SIP and, to date, USEPA has not yet approved or disapproved the amendments. While the Illinois SMB language remains in many permits throughout the state, Illinois EPA stated in the rulemaking that it would remove the SMB language from permits during the next permit renewal.

During PCB R 23-18, the Board opened a sub-docket rulemaking to address any proposed AELs to provide alternative standards and requirements that would apply during periods of SMB. In August 2023, five proposed AELs were filed with the Board and hearings were held in September and November 2023 and in April 2024. On August 22nd, the Board adopted four of the five AEL proposals filed, which include AELs for specific facilities from standards in Parts 212, 215, 216, and 217 of the Board’s rules. The adopted AELs will need to be submitted to USEPA for approval as revisions of Illinois’ SIP.

NOx RACT

In July, Illinois EPA filed a rulemaking proposal with the Board that proposes to amend the nitrogen oxides (“NOx”) Reasonably Available Control Technology (“RACT”) regulations in Part 217 of the Board’s regulations. In *In the Matter of: Amendments to 35 Ill. Adm. Code 217, Nitrogen Oxides Emissions, PCB R 25-17* (July 8, 2024). The proposed NOx RACT amendments apply to NOx emissions from

certain emission units in various source categories in the Chicago and Metro East nonattainment areas for the 2015 8-hour ozone National Ambient Air Quality Standard (“NAAQS”). The affected emission units include industrial boilers, process heaters, glass melting furnaces, cement kilns, lime kilns, furnaces used in steel making and aluminum melting, fossil fuel-fired stationary boilers, turbines, and stationary reciprocating internal combustion engines.

Illinois EPA’s proposed amendments are intended to satisfy Illinois’ obligation to submit a SIP revision to address RACT requirements for major stationary sources of NOx in areas designated as Moderate nonattainment. The proposed amendments include provisions intended to address deficiencies identified by USEPA in the existing NOx RACT regulations. These proposed amendments are federally required and must be adopted, submitted to USEPA for approval as a revision to Illinois’ SIP, and determined that they constitute the required complete SIP submittal by May 17, 2025. Additionally, Illinois EPA’s proposed amendments include amendments intended to proactively address RACT requirements for major stationary sources of NOx in areas designated as Severe nonattainment. Both the Chicago and Metro East nonattainment areas for the 2015 8-hour ozone NAAQS are anticipated to be reclassified from Moderate to Severe nonattainment by USEPA in 2025. These proactive proposed amendments are not yet federally required and include lowering the applicability threshold from 100 tons per year to 50 tons per year of NOx potential emissions.

Illinois EPA requested to expedite the rulemaking in order to meet the May 17, 2025, SIP submittal deadline. The first hearing was held on September 26th and the second hearing is scheduled for November 21st.

Clean Car and Truck Standards

In June, several non-governmental organizations (“NGOs”) filed a rulemaking proposal addressing air standards for cars and trucks. In *In the Matter of: Proposed Clean Car and Truck Standards: Proposed 35 Ill. Adm. Code 242, PCB R 24-17* (June 27, 2024). The proponents propose the

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adoption of three California motor vehicle emissions regulations that address light, medium, and heavy-duty vehicles. The California regulations include the Advanced Clean Cars II ("ACC II"), Advanced Clean Trucks ("ACT"), and Heavy-Duty Low NOx Omnibus regulations. The proposed rules apply to the sale of new light-duty vehicles and place requirements on vehicle manufacturers via setting pollution standards for conventional vehicles and sales requirements for zero-emission vehicles. The proposed amendments also set annual sales requirements for zero-emission and near zero-emission medium and heavy-duty vehicles. Additionally, the proposed amendments set emission standards for medium and heavy-duty combustion engines.

On July 11th, the Board accepted the proposal for hearing. Motions to dismiss the rulemaking proposal have been filed. It is expected that the Board will rule on the motions to dismiss prior to the first hearing, which is scheduled for December 2nd and 3rd.

Coal Combustion Residuals (and Environmental Justice)

In August, the Board moved to First Notice in a sub-docket rulemaking that includes proposed amendments relating to four coal ash or coal combustion residual ("CCR") related issues. In the Matter of: Standards for the Disposal of Coal Combustion Residuals in Surface Impoundments: Proposed New 35 Ill. Adm.

Code 845, PCB R 20-19(A) (Aug. 22, 2024). As background, in April 2021, the Board adopted new Part 845 governing CCR surface impoundments. PCB R 20-19 (Apr. 15, 2021). In PCB R 20-19, the Board opened a sub-docket rulemaking to consider four additional issues, including: (i) historic, unconsolidated coal ash fill; (ii) use of temporary storage piles of coal ash; (iii) fugitive dust monitoring plans for areas surrounding CCR surface impoundments; and (iv) use of environmental justice screening tools.

In moving to First Notice on August 22nd, the Board decided to move forward with some of the proposed amendments, while not moving forward with others. As for unconsolidated coal ash fill, the Board found that USEPA's final rules on coal combustion residual management units (effective November 4, 2024) address this issue and, therefore, the Board will await a new proposal that incorporates the federal rule amendments into Part 845. Should a new rulemaking proposal not be filed by six months after the effective date of the federal rule, the Board plans to propose such amendments on its own motion. As for temporary storage piles/temporary accumulation of coal ash, the Board is moving to First Notice proposed amendments to Part 845 addressing a duration limit and additional measures for temporary CCR piles. Specifically, the Board proposes a one-year limit to CCR storage piles, as well as amendments addressing the size of storage pads, inspection of storage pads or geomembranes of piles, minimization of drop distance, and setback from water-

ways. As for fugitive dust control requirements, the Board decided not to move forward with the amendments. As for fugitive dust monitoring, the Board decided to move forward with proposed amendments allowing Illinois EPA to require monitoring or mitigation based on the Agency's evaluation of the quarterly dust complaint reports.

Lastly, as to environmental justice screening tools, the Board decided not to adopt the proposed amendments. However, the Board noted that it supported the Agency's position that any changes to its environmental justice screening methodology should be applied across all Illinois EPA platforms. As such, the Board is opening a new rulemaking docket to explore the creation of a procedural rule to provide guidance to the Board when considering environmental justice issues, including selection of screening tools for identifying environmental justice areas. See In the Matter of: Board Consideration of Environmental Justice in Board Proceedings, PCB R 25-18. The Board will hold the new docket open until February 24, 2025, during which any participant may file a rulemaking proposal.

Conclusion

Regulated entities and interested parties should keep a close eye on the Board's rulemaking dockets this year and going into 2025. Given the pending rulemakings discussed above, as well as future rulemakings on the horizon, it is anticipated that 2025 will be another active year for Board rulemakings. ♦