

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

**RECEIVED**  
CLERK'S OFFICE

JAN 20 2006

R06-23 STATE OF ILLINOIS  
Pollution Control Board  
(Rulemaking - Land, Water)

IN THE MATTER OF: )  
)  
STANDARDS AND REQUIREMENTS )  
FOR POTABLE WATER WELL )  
SURVEYS AND FOR COMMUNITY )  
RELATIONS ACTIVITIES PERFORMED )  
IN CONJUNCTION WITH AGENCY )  
NOTICES OF THREATS FROM )  
CONTAMINATION )  
)  
)  
35 Ill. Adm. Code 1505 )

**NOTICE**

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601

Bill Richardson  
General Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271

Matt Dunn  
Environmental Bureau Chief  
Office of the Attorney General  
James R. Thompson Center  
100 W. Randolph, 12<sup>th</sup> Floor  
Chicago, Illinois 60601

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 ("Illinois EPA") Motion for Acceptance, Appearances of Attorneys, Statement of Reasons and the Proposed Rules, a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

By: Mark Wight  
Mark Wight  
Assistant Counsel  
Division of Legal Counsel

DATE: January 20, 2006

1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217)782-5544

**THIS FILING SUBMITTED ON RECYCLED PAPER**

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R06- 23  
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MOTION FOR ACCEPTANCE

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), pursuant to 35 Ill. Adm. Code 102.200 and 102.202, moves that the Board accept for hearing the Illinois EPA's proposed rules, "Standards and Requirements for Potable Water Well Surveys and for Community Relations Activities Performed in Conjunction with Agency Notices of Threats of Contamination," 35 Ill. Adm. Code 1505. This regulatory proposal includes: 1) The proposed rules, 2) the Statement of Reasons including a brief synopsis of the testimony to be offered by Illinois EPA witnesses, and 3) other supporting documentation as required pursuant to 35 Ill. Adm. Code 102.202.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Douglas P. Scott  
Douglas P. Scott, Director

DATED: January 18, 2006

1021 North Grand Avenue East  
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(217) 782-3397

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35 Ill. Adm. Code 1505 )

R06- 23  
(Rulemaking – Land, Water)

APPEARANCE

I, the undersigned, hereby file my appearance in the above-titled proceeding on behalf of the Illinois Environmental Protection Agency.

By: Mark Wight  
Mark Wight  
Assistant Counsel

DATE: January 20, 2006

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
(217) 782-5544

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

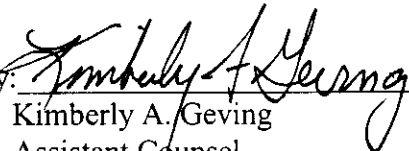
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R06- 23  
(Rulemaking – Land, Water)

APPEARANCE

I, the undersigned, hereby file my appearance in the above-titled proceeding on behalf of the Illinois Environmental Protection Agency.

By:   
\_\_\_\_\_  
Kimberly A. Geving  
Assistant Counsel

DATE: January 20, 2006

Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
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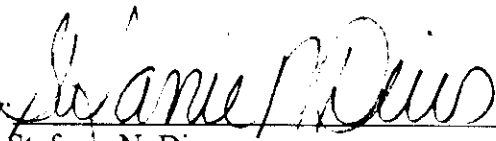
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R06- 23  
(Rulemaking – Land, Water)

APPEARANCE

I, the undersigned, hereby file my appearance in the above-titled proceeding on behalf of the Illinois Environmental Protection Agency.

By:   
Stefanie N. Diers  
Assistant Counsel

DATE: January 20, 2006

Illinois Environmental Protection Agency  
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Springfield, Illinois 62794-9276  
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R06- 27  
(Rulemaking – Land, Water)

**STATEMENT OF REASONS**

Pursuant to 35 Ill Adm. Code 102.202(b), the Illinois Environmental Protection Agency ("Agency") submits its STATEMENT OF REASONS for the above-captioned proceeding to the Illinois Pollution Control Board ("Board").

**I. FACTS IN SUPPORT, PURPOSE AND EFFECT**

**A. Legislation**

Section 25d-7(a) of the Environmental Protection Act ("Act") (415 ILCS 5/25d-7, *as added by P.A. 94-314 (eff. July 25, 2005)*) directs the Agency to "evaluate the Board's rules and propose amendments to the rules as necessary to require potable water supply well surveys and community relations activities where such surveys and activities are appropriate in response to releases of contaminants that have impacted or may impact offsite potable water supply wells." The Agency is further required to submit its proposal to the Board within 180 days of the effective date of P.A. 94-314.

Section 25d-7(a) is not an isolated provision but rather operates in the broader context of the public's right to know about certain offsite effects or potential effects of soil and groundwater contamination as set forth in the new Title VI-D of the Act ("Right-To-Know"), also added by P.A. 94-314.<sup>1</sup> The centerpiece of Title VI-D is Section 25d-3, which requires the Agency to provide notice of threats from contamination to certain members of the public in specified circumstances. Section 25d-3(a)(1) provides that the Agency must give notice to the owners of offsite contaminated properties if offsite soil contamination "poses a threat of exposure to the public above the appropriate Tier 1 remediation objectives based on the current use of the offsite property."<sup>2</sup> Section 25d-3(a)(2) requires the Agency to provide notice to the owners of properties served by private, semi-private and non-community water system wells and the owners and operators of community water system wells if "groundwater contamination poses a threat of exposure to the public above the Class I groundwater quality standards adopted by the Board" under the Environmental Protection Act and the Groundwater Protection Act (415 ILCS 55).<sup>3</sup> Section 25d-3(b) also provides for mandatory notice to owners of all properties within 2500 feet<sup>4</sup> of the subject contamination if: 1) The Agency refers a matter for enforcement under Section 43(a) of the Act; 2) the Agency issues a seal order under Section 34(a) of the Act; or 3) the Agency, the U.S. Environmental Protection Agency, or a third party under state or federal EPA oversight performs an immediate removal action under the federal Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA").

Although Section 25d-7(a) is relatively compact, it has left the Agency with a complex

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<sup>1</sup> 415 ILCS 5/25d-1 – 25d-10.

<sup>2</sup> See 35 Ill. Adm. Code 742.Subpart E for information about Tier 1 remediation objectives.

<sup>3</sup> See 35 Ill. Adm. Code 620 for information about Class I groundwater quality standards.

<sup>4</sup> The Agency may select a greater or lesser distance as appropriate to the circumstances.

undertaking. The requirement to adopt well survey procedures is reasonably clear. Well surveys generally are required with the site investigation portions of response actions. The purpose of adopting procedures is to establish minimum standards for the performance and documentation of such surveys during site investigations to ensure complete and accurate identification of the existence and location of potable water supply wells. The difficulty with the statutory requirement is that as many as eighteen to twenty Parts of the Board's administrative rules have response action requirements where minimum well survey procedures might be appropriate as part of site investigations. The workgroup quickly realized that the time allotted for submission of a proposal to the Board was insufficient to prepare separate sets of amendments tailored to each Part. Therefore, it was concluded that a single, overarching Part spanning multiple media and regulatory boundaries would have to be proposed.

The community relations requirement of Section 25d-7(a) presents a similar logistical problem as to the number of Parts potentially affected. More importantly, it presents statutory interpretation issues. Beyond the general directive to the Agency cited above and a statement of the types of community relations activities that should be included in the proposal, Section 25d-7(a) provides little guidance as to the scope of such activities, whether they should be mandatory or voluntary, and to what extent they should be integrated with the remainder of the Title VI-D notification requirements. Moreover, the recordings of the legislative floor debates of Senate Bill 241 (precursor to P.A. 94-314) do not provide any indication of the legislative intent regarding these matters. Much discretion is left to the Agency, and ultimately to the Board, to determine when such community relations activities might be "appropriate."

The Agency workgroup first explored an approach to community relations activities



based on the interpretation that Section 25d-7(a) sets forth a requirement that is independent of the notice requirements of Section 25d-3. Thus, the Agency's initial proposal would have established a mandatory community relations requirement any time off-site potable water supply wells are or may be contaminated. Under that formulation, it was roughly estimated by the Bureaus of Land and Water ("BOL," "BOW") that 200 to 500 sites per year would be required to perform some form of mandatory community relations activities. The workgroup anticipated this also would constitute a substantial majority of the sites that would require Agency notice under Section 25d-3. The result is that the Agency's notice requirement pursuant to Section 25d-3 largely would be subsumed in the mandatory community relations activities of the first proposal pursuant to Section 25d-3(c), which provides that the Agency may allow the responsible party at sites where community relations plans have been implemented to provide Agency-approved notices in lieu of the notices required to be given by the Agency.

An alternative interpretation of Title VI-D is that Sections 25d-3 and 25d-7 are closely linked by Section 25d-3(c). Under this interpretation, the scope of Section 25d-7 is limited by Section 25d-3. The community relations activities contemplated by Section 25d-7(a) are those referenced in Section 25d-3(c). Rather than mandatory community relations activities for which there is no express requirement in Title VI-D, such activities would be voluntary, and the primary emphasis would remain on the Section 25d-3 requirement that the Agency provide the necessary notices except in the relatively limited circumstances where community relations plans are developed and implemented. Consequently, the Agency's task under Section 25d-7(a) is to propose standards and requirements for community relations activities so that such activities will result in satisfactory notice to the public and follow-up to such notices in lieu of the Agency's

performance of similar obligations under Section 25d-3. The proposal submitted to the Board today is based on this latter interpretation of Title VI-D.

B. Regulatory Development

As noted above, the Agency workgroup has worked through two different approaches to the community relations requirements. This second approach has been developed just recently in large part due to the response to its outreach efforts. Because of the 180-day deadline for submission of a proposal to the Board, the time consumed by the Agency's project workgroup in developing the first proposal, and the confluence of these factors with the end-of-the-year holidays, little time remained for Agency outreach efforts with the regulated community and other interested members of the public. The first draft of the proposal was circulated to potentially interested parties on or about December 15, 2005, along with an invitation to a meeting at the Agency on January 4, 2006. Persons or organizations invited to attend included the Site Remediation Advisory Committee<sup>5</sup> ("SRAC") and other commercial and industrial representatives,<sup>6</sup> the Groundwater Advisory Council,<sup>7</sup> representatives of various environmental

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<sup>5</sup> The Site Remediation Advisory Committee was created under Section 58.11 of the Act (415 ILCS 5/58.11). The Committee consists of ten members appointed by the Governor including one member each as recommended by the Illinois State Chamber of Commerce, the Illinois Manufacturers Association, the Chemical Industry Council of Illinois, the Consulting Engineers Council of Illinois, the Illinois Bankers Association, the Community Bankers Association of Illinois, and the National Solid Waste Management Association. In addition, the Governor appoints three members at large. The Illinois Association of Realtors holds one of these appointments and two remain unfilled.

<sup>6</sup> Examples include private water companies, environmental consulting companies, the Illinois Association of Groundwater Professionals, and the Homebuilders Association of Illinois.

<sup>7</sup> The Groundwater Advisory Council ("GAC") was created under Section 5 of the Groundwater Protection Act (415 ILCS 55/5). The Council consists of nine members appointed by the Governor including two persons representing environmental interests, two persons representing industrial and commercial interests, one person representing agricultural interests, one person representing local government interests, one person representing a regional planning agency, one person representing public water supplies, and one person representing the water well driller industry. Also invited were members of the GAC Right-To-Know Subcommittee including citizen, industry, and government representatives.

organizations,<sup>8</sup> and representatives of various state, regional and local government entities.<sup>9</sup> The purpose of the meeting was to provide a brief Agency explanation of the proposal and to take questions and comments from the attendees.

Twenty-five attendees registered at the meeting on January 4, 2006, mostly from industry, trade associations, and environmental consulting firms.<sup>10</sup> Questions and comments directed to the workgroup came primarily from representatives of these groups and generally reflected significant concerns with the proposal. The primary concern expressed was that the Agency's proposal for mandatory community relations exceeded the statutory intent and authority. Those expressing this view generally agreed with the interpretation that Section 25d-7 must be interpreted in light of the requirements of Section 25d-3. In addition, there were more detailed concerns regarding specifics of the well survey procedures and community relations activities ranging from applicability and the scope of work potentially required for Community Relations Plans, fact sheets, and document repositories, to the appeals procedures for certain Agency final determinations.

On January 10, 2006, the Agency held a meeting for the Agency's cost recovery proposal pursuant to Section 25d-7(b) of the Act. Approximately fifteen representatives from the regulated community attended this meeting.<sup>11</sup> At the request of the attendees, the discussion quickly turned away from the cost recovery proposal and to the Agency's community relations/well survey proposal. Again, the key point made was that the Agency had exceeded the statutory intent and authority by

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<sup>8</sup> Examples include the Sierra Club, Environmental Law & Policy Center, Illinois Environmental Council, Citizens for a Better Environment, McHenry County Defenders, and American Bottomlands Conservancy.

<sup>9</sup> Examples include the Illinois Department of Natural Resources, Illinois Department of Public Health, Illinois State Water Survey, Illinois State Geological Survey, Illinois Lieutenant Governor's Office, Lake County Health Department, Illinois Municipal League, and several regional and metropolitan planning commissions and councils from throughout the state.

<sup>10</sup> Attendees at the January 4<sup>th</sup> meeting were asked at registration to indicate their willingness to participate in further outreach efforts. Nine persons indicated their willingness, all from industry and trade groups.

<sup>11</sup> Included were representatives of the Illinois Energy Association, Ameren, the Chemical Industry Council of Illinois, the Illinois State Chamber, the Illinois Environmental Regulatory Group, the Illinois Petroleum Council,

proposing to create a mandatory requirement for community relations activities.

At this point, the Agency made the determination to change the proposal to a voluntary approach to community relations activities and to keep the emphasis on the Agency's notice obligations under Title VI-D and Section 25d-3. Because the Agency has made this substantial and late change of direction to its proposal, there has not been sufficient time to meet further with interested or potentially interested parties. Therefore, the Agency cannot at this time represent that there is any level of concurrence by interested parties on the overall concepts guiding the proposal. Moreover, the Agency is aware that differences remain as to several details of the well survey procedures and community relations requirements. The Agency workgroup has committed to continuing efforts to refine the proposal after submission to the Board. Such efforts are likely to include additional outreach meetings. The Agency will submit to the Board any proposed amendments to its proposal during the course of hearings.

Finally, the Agency notes that Section 25d-7(a) directs the Board to adopt well survey and community relations rules within 240 days after receiving the Agency's proposal. The Agency is prepared to go directly to First Notice prior to hearings if the Board deems it necessary to meet the statutory deadline for adoption.

## **II. THE PROPOSED REGULATIONS**

As previously stated, the Agency's proposal with regard to the community relations activities leaves the Agency's statutory notice obligations as the primary method of distribution of information to the public about the offsite effects of contamination. The community relations activities are somewhat incidental to the Agency's obligations although no less important once undertaken. For this reason, the Agency's proposal sets forth standards and requirements for

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Dynegy, Exelon, the Illinois Manufacturers Association, and Caterpillar.

developing and implementing community relations activities if those activities are to be undertaken in lieu of the Agency's notification obligations. As proposed, this can be approved only under the controlled circumstances set forth in the rules, and, once approved, becomes an enforceable commitment. The well survey requirements operate under an entirely different set of considerations. Their place in the scheme of things is quite clear even though differences remain as to some of the details.

Also as noted above, Section 25d-7(a) directs the Agency to propose and the Board to adopt amendments to Board rules for the well survey procedures and the community relations activities. The provision further states:

Community relations activities required by the Board shall include, but shall not be limited to, submitting a community relations plan for Agency approval, maintaining a public information repository that contains timely information about the actions being taken in response to a release, and maintaining dialogue with the community through means such as public meetings, fact sheets, and community advisory groups.

415 ILCS 5/25d-7(a). In addition to providing minimum requirements for potable water well surveys, the Agency's proposal satisfies these statutory requirements for community relations activities.

The proposed new Part 1505 is divided into three subparts.<sup>12</sup> Subpart A contains general information pertinent to the entire Part. Subpart B contains the procedures for performing potable water well surveys as part of response actions taken to address releases of contaminants pursuant to applicable Board rules. Subpart C contains

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<sup>12</sup> As proposed by the Agency, these rules would be part of a new Subtitle N of Title 35 entitled "Right to Know." Because of the relatively unrelated subjects addressed in the proposal and the overarching applicability of the proposal, the workgroup was unable to find what it considered a satisfactory location in the existing structure of Title 35. Using the new Subtitle N also does not entirely resolve the location dilemma. The Board may wish to consider

standards and requirements for community relations activities to be developed and implemented when the responsible party agrees to take on the Agency's notice obligations as part of Agency-approved community relations activities. Again, the Agency considered opening individual Parts and inserting the well survey and community relations requirements as contemplated by Section 25d-7(a). However, given the large number of Parts with response action requirements where well survey procedures are appropriate and where information is likely to be developed under Agency oversight that would trigger the notice requirements, the "stand-alone" approach was chosen. Therefore, this proposal should be interpreted as an overlay for existing rules much as the Tiered Approach to Corrective Action Objectives ("TACO") (35 Ill. Adm. Code 742) provides methods for determining risk-based remediation objectives for several independent sets of rules. What follows is a review of the content of the proposal with a more detailed discussion of several issues considered by the Agency in developing the proposal and the rationale for certain key sections.

A. SUBPART A

Subpart A sets forth the general provisions of the Part including a statement of the purpose and scope of the Part, definitions, and a severability provision. Section 1505.105 merely directs the reader to the individual Subparts for applicability information. Section 1505.110 provides a short list of definitions. Most important among these is the definition of "response action," a phrase that is a key for interpreting the well survey applicability provision.

The definition of "response action" is intended to encompass the steps taken to address

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if this is an appropriate location.

soil contamination, groundwater contamination, or both resulting from a release of contaminants. These steps generally would include: 1) A site investigation to characterize the nature and extent of the contamination, identify potentially affected wells and other exposure pathways and receptors, and collect information sufficient to perform any necessary modeling of future contaminant migration, and 2) the development and implementation of a remedial or corrective action plan that will eliminate or control contamination from the release. The phrase “response action” is decidedly reactive rather than proactive. It is meant to be distinguished from actions taken to prevent threatened releases and the like. This distinction must be made because well surveys generally would not be required if contamination has not already entered the environment. Thus, the release must have occurred before a “response action” as defined in this Part can be initiated.

#### B. SUBPART B

Subpart B consists of a short “purpose and scope” section, an applicability section, and a more extensive section containing the minimum procedures for performing and documenting well surveys as part of “response actions.” Section 1505.205 is the applicability provision. Subsection (a) provides that initial applicability is based on whether or not a person is performing a response action pursuant to Board rules requiring that a release of contaminants be addressed. Board rules requiring response actions (or site-specific Agency interpretations of such Board rules) generally will require a well survey as part of a site investigation for characterizing the nature and extent of contamination from a release. If the applicable rules require the performance of well surveys, then Subpart B requires compliance with the Subpart B minimum standards and requirements for those surveys. It is important to note that Subpart B does not

contain independent requirements to perform well surveys. In addition, the submission and review of well survey documentation and appeals of Agency final determinations concerning well survey procedures and the reporting of results are subject to the Board rules requiring the response action.

Subsection 1505.205(b) addresses a problem that frequently arises when proposing new rules or amendments to existing rules -- how to treat persons already engaged in the activities to be regulated by the proposal. How are the new rules to be phased into operation with ongoing regulatory activities? The answer might be different for each regulatory structure affected by the proposal. Because this Part spans several regulatory boundaries, the Agency proposes to phase in the well survey rules on a case-by-case basis. Brief criteria have been provided for making this judgment. Under subsection 1505.205(b), the Agency will determine whether a well survey has been performed as part of an ongoing response action and approved by the Agency as of the effective date of the Part. If the final determination has been made, then no additional actions will be required under the new rules. If the well survey has not been performed as of the effective date, then a survey that conforms to the proposed standards will be required. If the well survey has been performed but no Agency final determination has been made as to its adequacy, then the Agency may approve the well survey if it satisfies the new standards or require additional survey actions if it does not. In practice, the Agency anticipates that most sites that have performed a well survey as of the effective date of this Part will have satisfied the proposed new standards and requirements.

Section 1505.210 sets forth the minimum requirements that must be satisfied when performing and documenting the results of the well survey. Section 1505.210(a) requires



identification of wells, setback zones and regulated recharge areas in each of the four categories of potable water supply wells in Illinois: private, semi-private, non-community, and community water system wells. The subsection also specifies the distances from the property where the release occurred at which the wells must be identified. The property where the release occurred is the starting place for the well survey because it is likely that some level of contamination is present there, and contamination that has not migrated from the site of the release still may pose a threat to an offsite well. The survey distances are based on the setback zones, regulated recharge areas, or both that may be assigned to such wells. The setback zones and regulated recharge areas act as surrogates for the zones of influence of the wells such that groundwater contaminants in these areas may be deemed to have threatened a well because they are more likely to be drawn to the well through the pumping action. Thus, as a first step of the well survey, it is important to know if contamination at the property where the release occurred is already within the setback zone or regulated recharge area of an offsite potable water supply well. The concept of using setback zones and regulated recharge areas as buffer zones around wells is borrowed from the TACO rules, among others, where it is well established. *See* 35 Ill. Adm. Code 742.320(c), (e); 742.805(a)(4), (a)(6).

Section 1505.210(b) specifies the sources of well information that must be consulted when performing a well survey. These are standard sources readily available in Illinois. They generally can be consulted using the Internet, telephone or letters although documentation requirements must be kept in mind.

Section 1505.210(c) requires that a well survey must be expanded in area if the site investigation shows that measured soil contamination or measured or modeled groundwater

contamination extends or will extend beyond the boundary of the site where the release occurred in concentrations exceeding the soil or groundwater components of the groundwater ingestion pathway as provided in the TACO rules. In that case, wells must be identified at setback zone or regulated recharge area distances from the measured or modeled plume. For example, a private well has a setback zone of 200 feet. Thus, all private wells within 200 feet of the offsite contamination plume must be identified to determine whether contamination has encroached or may encroach on a well or its setback zone. This information also may be used to confirm compliance with TACO requirements for exclusions of exposure routes and addressing the groundwater ingestion exposure route. *See* 35 Ill. Adm. Code 742.320(c), (e); 742.805(a)(4), (a)(6).

Subsection 1505.210(d) provides the Agency with discretionary authority to require additional investigation beyond the initial contacts specified in subsection 1505.210(b). This additional authority could be used to require a physical well survey involving some form of first-hand inspection or direct contact with the public in the area of the release. The authority generally would be used to resolve any uncertainties or discrepancies arising from the initial contacts and sources. For example, if a contact with a local public water supply under Section 1505.210(b)(3) does not show water service at certain properties and the sources of well information show no wells at those properties, the person performing the survey might be required to visit those properties to determine the source of their water supplies.

Subsection 1505.210(e) sets standards for documenting the information obtained by the well survey. The purpose is to receive complete, well-organized information about the conduct and results of the well survey in a form that shows compliance with remediation requirements or

a reason for concern about possible well contamination. Generally, preparing maps showing the locations of all identified potable water wells, setback zones, and regulated recharge areas in relation to measured and modeled areas of contamination and their concentrations will satisfy this provision. It may be necessary to prepare more than one map to differing scales to show these relationships clearly and in context.

C. SUBPART C

Subpart C consists of a short “purpose and scope” section, an applicability section, two sections setting forth alternative levels of community relations activities depending on the severity of the offsite impacts, a section establishing requirements for document repositories if applicable, sections covering submission and Agency review of fact sheets and community relations plans, and sections for implementation of community relations activities, compliance and compliance monitoring.

Section 1505.305 is the applicability provision. Under the approach described above, community relations activities are voluntary and are performed as authorized by the Agency in place of the Agency’s notice obligations under Section 25d-3 of the Act. Therefore, the first act triggering the possibility of community relations activities is the Agency’s determination that it must provide a notice pursuant to Section 25d-3. Once this has occurred, subsection 1505.305(b) provides that the Agency may notify the responsible party that the notice must be issued and may offer the responsible party the opportunity to provide the notice instead of the Agency. The responsible party has a minimum of seven days to decide if it wishes to provide the notice as part of community relations activities developed, approved and implemented pursuant to Subpart C. Once the responsible party notifies the Agency in writing that it wishes to proceed, compliance

with the requirements of Subpart C becomes mandatory. At that point, the responsible party has assumed the Agency's obligation to provide accurate, complete and timely notice to the public and any necessary follow-up, but it must be done with Agency oversight of the community relations process.

Nothing in Title VI-D or Subpart C requires the Agency to offer the responsible party the opportunity to assume the Agency's notice obligations. As a practical matter, the Agency will make site-specific decisions based on available information as to whether such an offer is appropriate under the circumstances. For example, if the Agency has information that wells already are contaminated, it will move to issue the notice as quickly as possible and will not offer the community relations opportunity (although the responsible party may wish to initiate community relations activities on its own and certainly may do so). On the other hand, if the available information indicates that wells are not yet contaminated but that contamination is migrating toward wells and is predicted to reach them at some point in the future, the Agency may find it appropriate to offer the opportunity to the responsible party to provide the notice as part of community relations activities.

Also, Section 1505.305(a) limits the community relations opportunities to notices to be provided by the Agency pursuant to Section 25d-3(a) of the Act. Notices also may be required of the Agency pursuant to Section 25d-3(b). However, these notices must be provided within 60 days after the action triggering the notice. The structure proposed in Subpart C for the offer, acceptance, development, Agency review and approval, and implementation of community relations activities simply cannot be completed within the 60 days allowed for the notice. Therefore, notices required under Section 25d-3(b) are not included within this Subpart. Again,

as a practical matter, not much is lost by this exclusion. Most sites triggering Agency notice obligations under this provision are not good candidates for this proposal because the triggering actions usually are adversarial and the sites often are without economically viable responsible parties.

Two levels of community relations activities are proposed reflecting the Agency's view that not every offsite impact justifies a full community relations plan when providing notice. Subsection 1505.310 provides a limited community relations requirement for releases with soil or groundwater contamination that have impacted or may impact five or fewer off-site private, semi-private, or non-community water system wells. The more limited requirements also apply where offsite soil contamination exceeds Tier 1 contaminant concentrations suitable for the current uses at five or fewer properties. In these cases, the person performing the community relations activities must develop a contact list and fact sheet for distribution to a specified group of affected, potentially affected or interested persons. The minimum content of the fact sheet also is specified.

Section 1505.315 provides a more comprehensive level of community relations activities. A full community relations plan ("CRP") and fact sheet must be developed and implemented for releases that have impacted or may impact more than five off-site private, semi-private, or non-community water system wells or one or more community water supply wells. The same is true if offsite soil contamination exceeds Tier 1 contaminant concentrations suitable for the current uses at more than five properties. General requirements for CRPs and fact sheets are prescribed in subsection 1505.315(b). The CRP requires a more intensive effort on the part of the responsible party to identify affected, potentially affected and interested members of the public

response action moves forward, the purpose of providing complete and timely information to the public largely will be defeated. Information about the nature, extent, and actual or potential effects of the release and the steps proposed to address the contamination will lose much of its value if presented after the fact. The only other alternative to prevent delays during direct appeals would be to halt the response action while the community relations appeal proceeds to a conclusion. This alternative would not serve the public interest because it would delay the elimination or control of the contamination. In addition, it would be inefficient and result in costlier response actions. Under the circumstances, the Agency believes its proposed solution for appeals is a very reasonable compromise. It is similar to the issuance of “4(q) notices” pursuant to Section 4(q) of the Act (415 ILCS 5/4(q)) where the Agency may provide notice of an opportunity to perform a response action. The basis for the notice may not be appealed. If the person receiving the “4(q) notice” fails to perform and the Agency undertakes the response action, the Agency may seek to recover its costs from the non-compliant party, and the party may raise statutory defenses at that time.

Section 1505.330(f) provides for default approvals of documents in the event the Agency fails to meet its 30-day review deadline. Again, the short time periods for Agency reviews and the re-submission of disapproved documents, the indirect appeals procedure, and default approvals if the Agency fails to meet its review deadlines are because of the time-sensitive nature of community relations activities.

Section 1505.335(a) requires persons accepting notice obligations to begin implementation of the CRP and distribution of fact sheets within five days of receiving an Agency approval of the documents. Subsection (b) provides for compliance monitoring by the

Agency as the implementation of the CRP and the distribution of the fact sheets proceeds. Copies of documents distributed to the public must be provided to the Agency, and the Agency must be notified in advance of public meetings and press conferences. In addition, the Agency is authorized to conduct its own compliance checks. A record retention requirement for documenting compliance also is included.

Section 1505.340 requires compliance with the requirements of Subpart C and any approved community relations activities. Acceptance of the Agency's notice obligation and the related community relations activities initially is voluntary, but once the obligation is accepted, the responsible party is acting to fulfill the Agency's statutory duty and must fully comply with the requirements of Subpart C.

### **III. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS**

#### **A. TECHNICAL FEASIBILITY**

Proposed Part 1505 establishes minimum standards for gathering information and documenting the existence and location of potable water supply wells. Well surveys already are performed in response to most releases addressed pursuant to Board rules and Agency oversight. No new or additional technical requirements are created. Proposed Part 1505 also provides for the development and implementation of community relations activities under certain specified circumstances. Whether or not those circumstances arise will depend on Agency determinations concerning its notice obligations pursuant to Section 25d-3 of the Act and whether or not the responsible party accepts an offer to provide the notice in lieu of the Agency as part of community relations activities. The only new technical requirement introduced is the establishment of a website document repository. Although not every responsible party accepting

notice and community relations obligations will have the technical expertise to develop such websites, the technical requirements are well understood and the expertise is widely available. Therefore, the Agency concludes that no issues of technical feasibility are raised in this proposal.

**B. ECONOMIC REASONABLENESS**

Because well surveys already are performed and reported in response to most releases addressed pursuant to Board rules and Agency oversight, the Agency does not anticipate any significant increase in costs for itself or persons performing response actions based on Subpart B of this proposal. Rather, Subpart B merely attempts to standardize minimum requirements for what generally is done already.

Subpart C undoubtedly will increase costs for responsible parties voluntarily accepting notice and community relations obligations. Costs for community relations activities will vary widely from site to site depending on the nature and extent of the contamination, the number of offsite potable water wells impacted or threatened, the number of offsite properties with contamination exceeding appropriate Tier 1 soil contamination concentrations, the length of time necessary to develop and implement a remedy, and the number of interested and affected persons in the vicinity of the property where the release occurred and the contamination plumes. By proposing a structure with two levels of activities so that those with releases with limited impacts are required only to prepare contact lists and fact sheets for distribution, costs should be limited to some extent. Most sites with contamination impacting or threatening offsite properties or wells should fall into this reduced requirement group. Costs will increase substantially for those with releases with greater impacts who must prepare CRPs and document repositories.

The Agency has no information about costs to private entities for performing community



relations activities. However, from time to time the Agency must perform such activities. The Office of Community Relations (“OCR”) has prepared some rough estimates of their costs. The OCR estimates it would cost in the range of \$9500 to \$12,000 to develop a fact sheet and contact list, prepare a news release, and distribute the information (including all details associated with these activities). The cost estimates are based on approximately 160 to 200 hours of staff time and direct and indirect costs of approximately \$60 per hour. If a CRP also were required, the cost could increase by as much as \$4500 to \$6000. The cost of the electronic document repository is not included in the estimate because the OCR has no experience with this. Using a private contractor for these activities likely would increase costs significantly, perhaps forty percent or more.

The Agency expects that an increase in resources or a shift of existing resources will be necessary to review and respond to fact sheets and CRPs and monitor compliance with the community relations requirements. Again, the OCR estimates that the costs for reviewing documents and the related follow-up activities will range from \$3200 to \$4800 if the CRP is included and from \$2200 to \$3200 if only the fact sheets are required. The Agency has no estimates of the number of responsible parties who might accept an Agency offer to provide notice as part of community relations activities. In addition, the Board’s work could be increased by the addition of enforcement under Section 1505.330(d) and for general non-compliance.

Nonetheless, the legislature has determined that the public does have a right to know when contamination has impacted or may impact offsite properties or offsite potable water supply wells and that the right could be better served by adding community relations requirements. The Agency recognizes its obligation to provide notice pursuant to Section 25d-3

of the Act and submits this proposal for alternatives in compliance with Sections 25d-7(a) and 25d-3(c) of the Act.

#### **IV. AGENCY WITNESSES, SYNOPSIS OF TESTIMONY, OTHER FILING MATTERS**

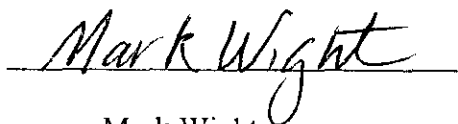
It is currently planned that the Agency will provide as many as seven witnesses in support of the proposal: Doug Clay, Rick Cobb, Carol Fuller, Gary King, Joyce Munie, Kurt Neibergall, and Scott Phillips. Rick Cobb, Deputy Manager of the Bureau of Water's Division of Public Water Supplies, will testify regarding well surveys, groundwater contamination issues, the integration of community relations activities with BOW sites, and other matters related to the Agency's recent experiences with groundwater contamination and public notification. Gary King, Manager of the Bureau of Land's Division of Remediation Management, will testify regarding the well survey procedures in the Leaking Underground Storage Tank Program and the Site Remediation Program and the integration of community relations activities with these programs. Joyce Munie or another representative of the Bureau of Land's Permit Section, will testify regarding the well survey procedures for permitted facilities such as treatment, storage and disposal facilities, and the integration of community relations activities with these programs. Kurt Neibergall, Manager, Office of Community Relations, will testify regarding community relations activities, including development of fact sheets, CRPs, and document repositories, submission and review of community relations documents, implementation of community relations activities, compliance monitoring, and other matters related to the Agency's recent experiences with groundwater contamination and public notification. Doug Clay, Carol Fuller, and Scott Phillips will not present formal testimony, but may answer questions as part of the panel requested below.

The Agency will submit written testimony in advance of the hearings and respectfully requests that the Board consider allowing the oral testimony and questioning of the Agency witnesses in panel form. This suggestion should be more efficient than calling and questioning each witness individually and will allow more complete responses by Agency witnesses to certain questions.

With regard to other documentation required pursuant to 35 Ill. Adm. Code 102.202, this proposal includes no incorporations by reference, and no published studies or research reports were used in developing the rules. The rules are not federally required and do not amend existing Board rules. An electronic version of the proposed rules is included with this filing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY

A handwritten signature in black ink that reads "Mark Wight". The signature is written in a cursive style and is positioned above a horizontal line.

Mark Wight  
Assistant Counsel

DATED: January 20, 2006

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**[THIS FILING IS SUBMITTED ON RECYCLED PAPER]**

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POLLUTION CONTROL BOARD

NOTICE OF PROPOSED RULES

TITLE 35: ENVIRONMENTAL PROTECTION  
SUBTITLE N: RIGHT TO KNOW  
CHAPTER I: POLLUTION CONTROL BOARD

PART 1505

STANDARDS AND REQUIREMENTS FOR POTABLE WATER SUPPLY WELL SURVEYS  
AND FOR COMMUNITY RELATIONS ACTIVITIES PERFORMED IN CONJUNCTION  
WITH AGENCY NOTICES OF THREATS FROM CONTAMINATION

SUBPART A: GENERAL

Section

1505.100	Purpose and Scope
1505.105	Applicability
1505.110	Definitions
1505.115	Severability

SUBPART B: STANDARDS AND REQUIREMENTS FOR POTABLE WATER SUPPLY  
WELL SURVEYS

Section

1505.200	Purpose and Scope
1505.205	Applicability
1505.210	Procedures for Potable Water Supply Well Surveys

SUBPART C: STANDARDS AND REQUIREMENTS FOR COMMUNITY RELATIONS  
ACTIVITIES

Section

1505.300	Purpose and Scope
1505.305	Applicability
1505.310	Contact Lists and Fact Sheets
1505.315	Community Relations Plans
1505.320	Establishment of Document Repository
1505.325	Submission of Fact Sheets and Community Relations Plans for Review
1505.330	Agency Reviews of Fact Sheets and Community Relations Plans
1505.335	Implementation of Community Relations Plans and Distribution of Fact Sheets; Compliance Monitoring and Records Retention
1505.340	Compliance

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AUTHORITY: Implementing Sections 25d-3(c) and 25d-7(a) and authorized by Section 25d-7(a) of the Environmental Protection Act [415 ILCS 5/25d-3(c), 5/25d-7(a)].

SOURCE: Adopted in \_\_\_\_\_ at \_\_\_ Ill. Reg. \_\_\_\_\_, effective, \_\_\_\_\_, 200\_\_.

NOTE: Italics denote statutory language.

SUBPART A: GENERAL

Section 1505.100 Purpose and Scope

The purpose of this Part is to set forth in accordance with Section 25d-7 of the Act [415 ILCS 5/25d-7] the minimum procedures for conducting potable water supply well surveys pursuant to applicable Board rules and for the documentation and reporting of the results of those surveys to the Agency. In addition, the purpose of this Part is to set forth in accordance with Section 25d-7 of the Act standards and requirements for the performance of community relations activities when the Agency has authorized the responsible party to provide the notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act [415 ILCS 5/25d-3(a), 5/25d-3(c)] as part of the Agency-approved community relations activities. Subsection (a) of Section 25d-3 of the Act requires that the Agency provide notice under certain specified circumstances while subsection (c) of Section 25d-3 provides that the Agency may authorize a responsible party who has implemented community relations activities to provide the notice in place of the Agency. The standards and requirements in Subpart C of this Part are for community relations activities performed by those authorized to provide notice in place of the Agency. This Part establishes the minimum standards and requirements for the performance of the potable water supply well surveys and the development, review, implementation and distribution of fact sheets and community relations plans and the establishment and maintenance of document repositories.

Section 1505.105 Applicability

Subparts B and C of this Part contain separate and independent applicability provisions.

Section 1505.110 Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part shall be the same as that applied to the same words or terms in Title I or Title VI-D of the Environmental Protection Act.

"Act" means the Environmental Protection Act. [415 ILCS 5]

"Agency" is the Illinois Environmental Protection Agency. [415 ILCS 5/3.105]

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*"Board" is the Pollution Control Board. [415 ILCS 5/3.130]*

*"Community Relations Plan" or "CRP" means a plan containing goals, milestones, and specific tasks that will accomplish two-way communications between a party performing a response action and community members who may be interested in or affected by site contamination or activities at the remediation site.*

*"Contaminant" is any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source. [415 ILCS 5/3.165]*

*"Contamination" or "contaminate" when used in connection with groundwater, means water pollution of such groundwater. [415 ILCS 5/3.170]*

*"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, including the United States Government and each department, agency and instrumentality of the United States. [415 ILCS 5/58.2]*

*"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, but excludes any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer or such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and the normal application of fertilizer. [415 ILCS 5/3.395]*

*"Response action" means any action or series of actions taken to address a release of contaminants or its effects as may be necessary or appropriate to protect human health or the environment. A response action may include, but is not limited to, release investigation and characterization, soil remediation, and groundwater remediation.*

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Section 1505.115 Severability

If any provision of this Part is adjudged invalid, or if the application to any person or in any circumstance is adjudged invalid, such invalidity shall not affect the validity of this Part as a whole or any Subpart, Section, subsection, sentence or clause thereof not adjudged invalid.

SUBPART B: STANDARDS AND REQUIREMENTS FOR POTABLE WATER SUPPLY  
WELL SURVEYS

Section 1505.200 Purpose and Scope

The purpose of this Subpart B is to establish minimum standards and requirements for performing potable water supply well surveys to ensure that these wells are accurately identified and located so that impacts and potential impacts to such wells from soil or groundwater contamination, or both, can be identified. This Subpart B sets forth the procedures persons subject to this Subpart B shall use to perform potable water supply well surveys and for the documentation of the results of well surveys in reports to the Agency.

Section 1505.205 Applicability

- a) Except as provided in subsection (b) of this Section, this Subpart B applies to persons performing response actions pursuant to applicable Board rules. Whenever a response action for soil or groundwater contamination, or both, is required pursuant to applicable Board rules, the person subject to those rules shall comply with the standards and requirements of this Subpart B when determining the existence and location of potable water supply wells. When determining the existence and location of these wells, the person also shall identify and locate setback zones and regulated recharge areas associated with the wells.
- 1) This Subpart B does not contain an independent requirement to perform a potable water supply well survey. If the Board rules on which the response action is based or Agency interpretations of those rules require the performance of a well survey as part of the response action, this Subpart B sets forth the minimum standards and requirements that must be satisfied when performing that well survey and preparing the documentation for submission to the Agency. In addition, the submission and review of well survey documentation and appeals of Agency final determinations concerning well survey procedures and reporting are subject to the rules requiring the response action.

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- 2) Applicable Board rules requiring potable water supply well surveys as part of response actions may supersede the requirements of this Subpart B only to the extent their express provisions are equivalent to or more stringent than the standards and requirements of this Subpart B.
- b) Persons performing response actions pursuant to applicable Board rules who already have initiated the response action for a release as of the effective date of this Part may be required by the Agency to perform an otherwise required potable water supply well survey in accordance with this Subpart B if:
  - 1) The Agency requires the performance of a well survey in accordance with the applicable Board rules; and
  - 2) The well survey has not been performed as of the effective date of this Part; or
  - 3) The well survey has been performed but has not been approved by the Agency as of the effective date of this Part and the well survey performed does not satisfy the requirements of this Subpart B.
- c) Nothing in this Subpart B is intended to prohibit the use of all or some of the standards and requirements set forth in this Subpart B in other rules or contexts as authorized by those rules, Board or court orders, or other applicable law.

Section 1505.210 Procedures for Potable Water Supply Well Surveys

- a) When determining the existence and location of potable water supply wells, persons subject to this Subpart B shall identify all private, semi-private, and non-community water system wells located at the property where the release occurred or within 200 feet of the property where the release occurred, all community water system ("CWS") wells located at the property where the release occurred or within 2,500 feet of the property where the release occurred, and all setback zones and regulated recharge areas in which all or any portion of the property where the release occurred is located.
- b) Actions taken to identify the wells and associated protected areas shall include, but not be limited to, the following:
  - 1) Contacting the Agency's Division of Public Water Supplies to identify community water system wells and associated setback zones and regulated recharge areas;



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- 2) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells, other than community water system wells, and their setback zones; and
  - 3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.
- c) In addition to identifying potable water supply wells and associated protected areas pursuant to subsections (a) and (b) of this Section, persons subject to this Subpart B shall expand the area of the potable water supply well survey if measured soil contamination or measured or modeled groundwater contamination extend beyond a boundary of the property where the release occurred in concentrations exceeding the remediation objectives of 35 Ill. Adm. Code 742.Appendix B: Tables A, B or E for the groundwater ingestion route or Class I groundwater quality standards at 35 Ill. Adm. Code 620.410. The extent of modeled groundwater contamination shall be determined using Equation R26 as set forth in 35 Ill. Adm. Code 742.Appendix C: Table C where appropriate or another model or methodology approved by the Agency. If there is no Table E objective or Class I standard, the objective shall be determined or approved by the Agency in accordance with 35 Ill. Adm. Code 620.Subpart F. If there is no Table A or B objective, the objective shall be determined or approved by the Agency using Equation S17, as set forth in 35 Ill. Admin. Code 742.Appendix C: Table A, and using the procedures of 35 Ill. Admin. Code 620.Subpart F to determine the Groundwater Remediation Objective (GW<sub>obj</sub>) concentration required in 35 Ill. Admin. Code 742.Appendix C: Table A, Equation S18. At a minimum, the expanded well survey shall identify the following:
- 1) All private, semi-private, and non-community water system wells located within 200 feet, and all community water system wells located within 2,500 feet, of the measured extent of soil contamination and the measured and modeled extent of groundwater contamination exceeding the Part 742 or Part 620 remediation objectives for the groundwater ingestion route; and
  - 2) All setback zones and regulated recharge areas in which any portion of the measured extent of soil contamination or the measured and modeled extent

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of groundwater contamination exceeding the Part 742 or Part 620 remediation objectives for the groundwater ingestion route is located.

- d) The Agency may, based on site-specific circumstances or information collection deficiencies (e.g., incomplete, conflicting or imprecise information, information assembled from unverified sources), require additional investigation to determine the existence or location of potable water supply wells, setback zones or regulated recharge areas. The additional investigation may include, but shall not be limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other materials requesting information about the existence of potable wells).
- e) Documentation of a potable water supply well survey conducted in accordance with this Section shall include, but not be limited to, the following:
  - 1) One or more maps to a scale clearly showing the following:
    - A) The locations of the community water system wells and other potable water supply wells identified pursuant to this Section; and
    - B) The location and extent of setback zones and regulated recharge areas identified pursuant to this Section.
  - 2) The maps showing the well locations, setback zones and regulated recharge areas pursuant to subsection (e)(1) of this Section shall show those areas in relation to:
    - A) The measured extent of soil contamination exceeding the remediation objectives of 35 Ill. Adm. Code 742.Appendix B: Tables A or B for the soil component of the groundwater ingestion route, or, if there is no Table A or B objective, the objective determined or approved by the Agency using Equation S17, as set forth in 35 Ill. Admin. Code 742.Appendix C: Table A, and using the procedures of 35 Ill. Admin. Code 620.Subpart F to determine the Groundwater Remediation Objective ( $GW_{obj}$ ) concentration required in 35 Ill. Admin. Code 742.Appendix C: Table A, Equation S18; and
    - B) The measured and modeled extent of groundwater contamination exceeding the remediation objectives of Part 742 or Part 620 for the groundwater ingestion route.

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- 3) One or more tables listing the applicable setback zones and regulated recharge areas for each community water system well and other potable water supply wells identified pursuant to this Section; and
- 4) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells and protected areas pursuant to this Section, the name and title of each person contacted at each entity, and field observations, if any, associated with the identification and location of potable water supply wells.

SUBPART C: STANDARDS AND REQUIREMENTS FOR COMMUNITY RELATIONS  
ACTIVITIES

Section 1505.300 Purpose and Scope

- a) The purpose of this Subpart C is to establish the minimum standards and requirements for the development and implementation of community relations activities in accordance with Section 25d-7 of the Act when the Agency has authorized the responsible party to provide the notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of the Agency-approved community relations activities. In addition, it is the purpose of this Part to ensure that these community relations activities fully inform communities and individuals in a timely manner about offsite impacts or potential impacts from soil or groundwater contamination or both and the responses to such impacts. This Subpart C contains requirements for the content, submission for review, distribution and implementation of fact sheets and Community Relations Plans, and the establishment and maintenance of document repositories.
- b) Subpart C not a limitation:
  - 1) This Subpart C establishes minimum requirements for community relations activities when such activities are to be performed in place of a notice by the Agency in accordance with subsection (a) of Section 25d-3 of the Act. Nothing in this Subpart C is intended to prohibit or prevent a person from implementing other community relations activities sooner than required by this Subpart or under circumstances in addition to those described in this Subpart. The Agency may recommend that community relations activities be performed at other times and under other circumstances and may offer assistance with development and implementation of such activities where resources permit.

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- 2) Nothing in this Subpart C is intended to limit in any way the Agency's authority to provide independent notice of threats of exposure to the public from soil or groundwater contamination, or both, in accordance with Title VI-D of the Act [415 ILCS 5/25d-1 – 25d-10] and implementing rules or under any other authority.

Section 1505.305      Applicability

- a) Whenever the Agency determines that it must provide notice pursuant to subsection (a) of Section 25d-3 of the Act, the Agency may authorize the responsible party to provide the notice as part of the Agency-approved community relations activities developed and implemented in accordance with this Subpart C.
- b) Nothing in this Subpart C requires the development and implementation of community relations activities in accordance with this Subpart unless:
  - 1) The Agency notifies the responsible party in writing that a notice must be issued under subsection (a) of Section 25d-3 of the Act;
  - 2) As a part of the written notice to the responsible party, the Agency offers the responsible party the opportunity to provide the notice in lieu of the Agency issuing the notice; and
  - 3) The responsible party accepts the Agency's offer and notifies the Agency in writing within seven days of receipt of the Agency's offer (unless a longer period of time is provided in the Agency's notice letter) that it intends to provide the notice as part of the community relations activities developed and implemented in accordance with Subpart C of this Part in lieu of the Agency providing the notice.
- c) Nothing in this Subpart C is intended to prohibit the use of all or some of the standards and requirements set forth in this Subpart C in other rules or contexts as authorized by those rules, Board or court orders, or other applicable law.

Section 1505.310      Contact Lists and Fact Sheets

- a) Persons authorized by the Agency to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities shall comply with community relations requirements in subsection (b) of this Section if:

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- 1) Soil or groundwater contamination or both from the site where the release occurred pose a threat above the Class I groundwater quality standards at 35 Ill. Adm. Code 620 at five or fewer offsite private, semi-private or non-community water system wells; or
  - 2) Offsite soil contamination from the site where the release occurred poses a threat of exposure to the public above the appropriate Tier 1 remediation objectives for the current use(s) at five or fewer offsite properties.
- b) The person authorized to provide notice as part of community relations activities and satisfying the requirements of subsection (a) of this Section shall develop a contact list and develop and distribute a fact sheet in accordance with this subsection (b).
- 1) The person shall prepare a contact list including, but not limited to, the following affected, potentially affected or interested persons, as applicable:
    - A) Owners and occupants of properties served by private, semi-private or non-community water system wells that have been or may be impacted by groundwater contamination from the release;
    - B) Owners and occupants of offsite properties with soil contamination posing a threat of exposure above the appropriate Tier 1 remediation objectives for the current use(s);
    - C) Owners of properties without potable water supply wells but with groundwater that has been or may be impacted by groundwater contamination from the release; and
    - D) Officials of each unit of government serving the affected properties, including state and federal legislators, county board chairs and county clerks, township supervisors, and mayor or village presidents and city or village clerks. Officials of specialized districts (e.g., school, drainage, park districts) may be excluded from the contact list unless required pursuant to subsections (b)(1)(A), (b)(1)(B) or (b)(1)(C) of this Section.
  - 2) The person shall develop a fact sheet for the release and response action. The fact sheet shall be distributed to the contact list as derived from subsection (b)(1) of this Section. The fact sheet shall be written clearly and concisely in non-technical, non-legal terminology. The fact sheet and

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any required updates, shall contain, at a minimum, the following information to the extent available:

- A) The nature and extent of the contaminants identified on and off the site where the release occurred;
- B) A brief description of the pathways of potential exposure and the potential adverse public health effects posed by the contaminants;
- C) A description of any precautionary measures affected or potentially affected parties should take to avoid or reduce potential public health impacts, including potable well sampling and analysis recommendations, as appropriate;
- D) A non-technical description of the steps that are proposed to address the contamination including, but not limited to, soil excavation and treatment, disposal or redistribution, pump-and-treat, bio-remediation, reliance on engineered barriers or institutional controls, groundwater monitoring, and so forth;
- E) The anticipated remediation schedule through completion of the project, including any operation, maintenance or monitoring following construction of the remedy;
- F) The nature of the closure documentation expected from the Agency (e.g., focused or comprehensive No Further Remediation ("NFR") Letter, permit modification, reliance on engineered barriers or institutional controls);
- G) The date of preparation of the fact sheet, the name of the representative(s) of the business, site or facility from whom information and site-related documents may be obtained, and e-mail address, postal address and telephone number where the representative(s) can be reached; and
- H) The name, e-mail address, postal address and telephone number of the Agency's designated staff person and a statement that additional information and site-related documents may be available by contacting the Agency's designated staff person or by filing a request for site-specific information with the appropriate Agency

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bureau in accordance with the Freedom of Information Act (5 ILCS 140).

- c) For information that is not available when a fact sheet is prepared pursuant to subsection (b)(2) of this Section, the submission of the fact sheet to the Agency for review shall be accompanied by an explanation of why the information is unavailable at the time of the submission of the fact sheet and an estimate of when the missing information will be supplied in a revised fact sheet.
- d) Fact sheets and contact lists developed in accordance with this Section shall be updated and redistributed whenever new information is obtained or developed or circumstances change so that there is a material change to the information required or provided in the fact sheet (e.g., new data, completion of site investigation and characterization of the nature and extent of contaminants, approval of plans or reports, completion of response action activities).

Section 1505.315 Community Relations Plan

- a) Persons authorized by the Agency to provide notice pursuant to subsections (a) and (c) of the Act as part of community relations activities shall comply with the community relations requirements in subsection (b) of this Section if:
  - 1) Soil or groundwater contamination or both from the site where the release occurred pose a threat above the Class I groundwater quality standards at 35 Ill. Adm. Code 620 at more than five offsite private, semi-private or non-community water system wells or one or more community water system wells; or
  - 2) Offsite soil contamination from the site where the release occurred poses a threat of exposure to the public above the appropriate Tier 1 remediation objectives for the current use(s) at more than five offsite properties.
- b) The person authorized to provide notice as part of community relations activities and satisfying the requirements of subsection (a) of this Section shall develop and implement a Community Relations Plan and fact sheet in accordance with this subsection (b).
  - 1) The CRP shall include, but not be limited to, the following elements to the extent related to the contaminants being addressed in the response action:

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- A) Site/Facility Description: The CRP shall provide for the development a brief overview of the site where the release occurred including, but not limited to, a description of the business, site or facility, its current operations, previous land uses and previous remedial activities; the nature and extent of known contamination; and the known or potential threat to public health and the environment. The overview shall include a map to an appropriate scale detailing the site location and surrounding area and showing roads and streets, homes and businesses, and geographic and other significant features.
- B) Community Issues and Concerns: The CRP shall provide for the development of a brief summary of the demographics of the area surrounding the site where the release occurred including, but not limited to, the approximate percentage of non-English speaking persons among the affected, potentially affected, and interested parties and their preferred language, key community concerns, and any preferred methods of communication as learned through research work, interviews and surveys of a representative sample of affected, potentially affected and interested parties identified through the process outlined in subsection (b)(1)(D) of this Section.
- C) Community Relations Program: The CRP shall describe the community relations program objectives, action plan and schedule to keep affected, potentially affected and interested parties apprised of conditions at the site, response actions, and actual or potential public health impacts. This section also shall explain how the public will be notified of mailings or meetings. The contact person(s) and contact information for public inquiries shall be clearly defined. Additionally, details about the location of, and access to, the document repository shall be outlined in this section of the CRP.
- D) Contact List: The CRP shall outline the process for identifying and updating a contact list and developing a contact database of affected, potentially affected, and interested parties including, but not limited to:
- i) Owners and occupants of properties served by private, semi-private or non-community water systems that have



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- been or may be impacted by groundwater contamination from the release;
- ii) Owners and operators of community water system wells that have been or may be impacted by groundwater contamination from the release;
  - iii) Owners of properties without potable water supply wells but with groundwater that has been or may be impacted by groundwater contamination from the release;
  - iv) Owners and occupants of offsite properties with soil contamination posing a threat of exposure above the appropriate Tier 1 remediation objectives for the current use(s);
  - v) Local, state and federal officials whose jurisdiction covers the affected and potentially affected properties including: mayor or village president, city or village clerk, township supervisors, county board chair and county clerk, city and county health department administrator; state and federal legislators; and
  - vi) Citizens, identified groups, organizations or businesses within a minimum of 1000 feet from the site where the release occurred that may have an interest in learning about affected and potentially affected properties (e.g., public and private school administrator(s), Parent-Teacher Association (PTA) leader(s); day care center, senior center and nursing home management; neighborhood or homeowner association or other community leader(s) as identified; hospital and clinic management; and recognized environmental or citizen advisory groups). If approved by the Agency, the initial minimum distance of 1000 feet may be expanded or contracted as the CRP and contact list are updated based on new information developed during the response action.
- 2) Along with the development of a CRP in accordance with subsection (b)(1) of this Section, persons subject to this subsection (b) shall develop and distribute a fact sheet for the release and response action. The fact

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sheet shall be distributed to the contact list as derived in subsection (b)(1)(D) of this Section. The fact sheet shall be written clearly and concisely in non-technical, non-legal terminology. If a significant portion of the population surrounding the site where the release occurred is non-English speaking, the fact sheet shall be produced and distributed in both English and the other predominant language. The fact sheet and any required updates shall contain, at a minimum, the following information to the extent available:

- A) The nature and extent of the contaminants identified on-site and offsite of the site where the release occurred;
- B) A brief description of the pathways of potential exposure and the potential adverse public health effects posed by the contaminants;
- C) A description of any precautionary measures affected or potentially affected parties should take to avoid or reduce potential public health impacts, including potable well sampling recommendations, as appropriate;
- D) A non-technical description of the steps that are proposed to address the contamination including, but not limited to, soil excavation and treatment, disposal or redistribution, pump-and-treat, bio-remediation, reliance on engineered barriers or institutional controls, groundwater monitoring, and so forth;
- E) The anticipated remediation schedule through completion of the project, including any operation, maintenance or monitoring following construction of the remedy;
- F) The nature of the closure documentation expected from the Agency (e.g., focused or comprehensive NFR Letter, permit modification, reliance on engineered barriers or institutional controls);
- G) Responses to key community concerns as expressed by affected, potentially affected and interested parties;
- H) The World Wide Web address of the Document Repository established pursuant to Section 1505.315 of this Part and the address and hours of the document repository established at a

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physical location, if also required pursuant to Section 1505.315 of this Part;

- I) The date of preparation of the fact sheet, the name of the representative(s) of the business, site or facility from whom information and copies of repository and other site-related documents may be obtained, and e-mail address, postal address and telephone number where the representative(s) can be reached; and
  - J) The name, e-mail address, postal address and telephone number of the Agency's designated staff person and a statement that additional information and site-related documents may be available by contacting the Agency's designated staff person or by filing a request for site-specific information with the appropriate Agency bureau in accordance with the Freedom of Information Act (5 ILCS 140).
- c) For information that is not available when a fact sheet is prepared pursuant to subsection (b)(2) of this Section, the submission of the fact sheet to the Agency for review shall be accompanied by an explanation of why the information is unavailable at the time of the submission of the fact sheet and an estimate of when the missing information will be supplied in a revised fact sheet.
- d) Updates:
- 1) Fact sheets developed in accordance with subsection (b)(2) of this Section shall be updated and redistributed whenever new information is obtained or developed or circumstances change so that there is a material change to the information required or provided in the fact sheet (e.g., new data, completion of site investigation and characterization of the nature and extent of contaminants, approval of plans or reports, completion of response action activities).
  - 2) The CRP including, but not limited to, the contact list shall be reviewed on a regular basis and updated, as necessary, to ensure that timely and accurate information is provided to affected, potentially affected and interested parties and communities about releases of contaminants with actual or potential impacts to offsite wells. A current version of the publicly available CRP shall be kept in the document repository described in Section 1505.320.

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Section 1505.320 Establishment of Document Repository

Persons developing a CRP pursuant to Section 1505.315 of this Part also shall establish a document repository for the purpose of displaying documents and providing copies of those documents. The document repository shall be established at a World Wide Web site unless the person performing the response action or the Agency receives a request for a document repository at a physical location from an affected, potentially affected, or interested party or organization (e.g., citizen, neighborhood group or civic organization) or from a local government official or administrator. If such a request is received, the document repository shall be established at both a World Wide Web site and a physical location.

- a) The document repository shall include the Community Relations Plan, all public notices (e.g., proof of publication for newspaper or other published notices, letters, door hangers, or other forms of public notification), all fact sheets, all applications, plans and reports submitted to the Agency for review and approval and subsequent Agency comment packages, and all final determinations by the Agency, such as a No Further Remediation Letter, permit modification, or other project completion documentation.
  - 1) The person shall update the repository promptly and continuously as fact sheets, plans, reports, comment packages and Agency decisions are generated throughout the process.
  - 2) The documents shall be created, organized and indexed so that affected, potentially affected, or interested persons can identify, locate and download documents of interest.
  - 3) The repository shall include the business, site or facility representative's e-mail, postal address and telephone number where inquiries can be directed and persons can request copies of repository documents and other site-related documents by mail.
- b) Repositories at World Wide Web sites:
  - 1) The documents must be in a readily available format for downloading and printing (e.g. portable document format (.pdf), graphic interchange format (.gif), tagged image file format (.tiff); joint photographic group format (.jpgf)) with links to web sites where software to view and print the documents may be downloaded.

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- 2) Documents that cannot be converted to a readily available format for downloading and printing must be described in the document index, identified as available upon request, and made available in accordance with subsection (a)(3) of this Section.
- c) Repositories at physical locations:
  - 1) Repositories established at physical locations shall be established no later than ten business days after receipt of a request for a repository at a physical location or receipt of the Agency's notification that a request has been made to the Agency, whichever is earlier.
  - 2) Repositories established at a physical location shall be at a public location (e.g., public library, city hall) and open to the public at times convenient to affected, potentially affected, or interested persons.
- d) Information deemed trade secrets or non-disclosable in accordance with Board procedures at 35 Ill. Adm. Code 130 or Agency procedures at 2 Ill. Adm. Code 1828 may be redacted or excluded from the repository consistent with the requirement for providing the public all documents that have not been deemed confidential. Information to be added to the document repository also shall be screened to ensure that personal information identifying affected, potentially affected, or interested persons or their exact property locations are not disclosed.
- e) The document repository may be discontinued no less than 180 days after the recording of the NFR Letter or the issuance of other project completion documentation by the Agency (e.g., permit modification, closure letter, "4(y) letter" [415 ILCS 5/4(y)]).

Section 1505.325 Submission of Fact Sheets and Community Relations Plans for Review

- a) Except as provided in subsections (b) or (d) of this Section, persons accepting the Agency's offer to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities shall, within 30 days of the date of their acceptance:
  - 1) Submit to the Agency a fact sheet and contact list satisfying subsection (b) of Section 1505.310 of this Part or a CRP, fact sheet and contact list satisfying the requirements of subsection (b) of Section 1505.315 of this Part; and

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- 2) Establish a web site document repository if required in accordance with Section 1505.320 of this Part.
- b) Updates of CRPs, fact sheets or both and updates of contact lists prepared pursuant to subsection (d) of Section 1505.310 or subsection (d) of Section 1505.315 of this Part also shall be submitted for Agency review in accordance with subsection (a) of this Section except that the updates shall be submitted to the Agency within ten days of preparing the revised CRP or developing or obtaining new information that would materially change the information required or provided in the fact sheet.
- c) If authorized by the Agency, CRPs or fact sheets may be filed in specified electronic formats.

Section 1505.330 Agency Reviews of Fact Sheets and Community Relations Plans

- a) The Agency shall have 30 days from receipt of a fact sheet, CRP, or updates of such documents to conduct a review and approve or disapprove of the CRP or fact sheet or approve of the CRP or fact sheet with conditions or modifications. All reviews shall be based on the standards for review set forth in subsection (b) of this Section.
  - 1) The Agency's record of the date of receipt of a fact sheet or CRP shall be deemed conclusive unless a contrary date is proved by a signed, dated receipt from the Agency or certified mail or registered mail.
  - 2) Persons subject to this Subpart C may waive the time period for review upon a request from the Agency or at the person's discretion.
- b) When reviewing a fact sheet or CRP, the Agency shall consider:
  - 1) Whether the CRP contains the elements required by subsection (b) of Section 1505.315 of this Part;
  - 2) Whether the fact sheet contains the elements required by subsection (b) of Section 1505.310 of this Part or subsection (b) of Section 1505.315 of this Part including, but not limited to, any explanation of why specified information is unavailable at the time of the submission of the fact sheet and an estimate of when the missing information will be supplied in a revised fact sheet;

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- 3) Whether the information in the fact sheet and CRP is consistent with the information contained in the Agency's records and any field observations; and
- 4) Whether the persons subject to this Subpart C have clearly defined:
  - A) Persons required to be included in the contact list for fact sheets in accordance with subsection (b) of Section 1505.310 of this Part or subsection (b) of Section 1505.315 of this Part; or
  - B) The demographics of nearby populations that may be affected by or concerned about site activities for purposes of notification under the CRP including, but not limited to, residences, businesses, day care centers, schools, nursing homes, hospitals and clinics.
- c) Upon completion of the review, the Agency shall notify the submitter in writing whether the fact sheet or CRP and accompanying fact sheet are approved, approved with conditions or modifications, or disapproved. The notification shall be made by certified or registered mail postmarked with a date stamp and with return receipt requested. If the Agency disapproves a fact sheet or CRP, or approves a fact sheet or CRP with conditions or modifications, the notification shall contain the following information, as applicable:
  - 1) An explanation of the specific information or documentation, if any, that the Agency determines the submitter did not provide or is inconsistent with the information contained in the Agency's records and any field observations;
  - 2) A list of the provisions of this Part that may be violated if the fact sheet or CRP is approved as submitted;
  - 3) A statement of the reasons why the provisions cited in subsection (c)(2) of this Section may be violated if the fact sheet or CRP is approved as submitted; and
  - 4) An explanation of the reasons for conditions or modifications if conditions or modifications are required.
- d) If the Agency disapproves of a fact sheet or CRP or approves of a fact sheet or CRP with conditions or modifications, the submitter shall submit a revised fact sheet, CRP, or both to the Agency within ten days of receiving the Agency's

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denial. If the revised fact sheet, CRP, or both are not received by the Agency within ten days, or if a revised fact sheet or CRP are not approved on the second Agency review, the Agency, in addition to any other remedies that may be available, may provide notice to the public and seek cost recovery from the submitter pursuant to Title VI-D of the Act, pursue an enforcement action against the submitter for failure to develop and implement an Agency-approved fact sheet, CRP, or both. In addition to any other defenses that may be available to the submitter, it shall be a defense to an Agency action to obtain cost recovery for notification or for an alleged violation of the requirement to develop and implement an Agency-approved fact sheet or CRP that the fact sheet or CRP submitted to the Agency and rejected satisfies the requirements for such documents as set forth in Sections 1505.310 and 1505.315 of this Part. This provision does not limit the use of this defense in other circumstances where appropriate.

- e) The Agency may, to the extent consistent with review deadlines, provide the submitter with a reasonable opportunity to correct deficiencies prior to sending a disapproval of a fact sheet or CRP or an approval with conditions or modifications. However, the correction of such deficiencies by the submission of additional information may, in the sole discretion of the Agency, restart the time for review.
- f) If the Agency does not issue its final determination on the fact sheet, CRP, or updates of such documents within 30 days of the receipt of the document, the document shall be deemed approved as submitted.

Section 1505.335 Implementation of Community Relations Plans and Distribution of Fact Sheets; Compliance Monitoring and Records Retention

- a) Implementation of the CRP or distribution of a fact sheet shall begin within five days of receipt of the Agency's approval of the CRP or the fact sheet or within ten days of the date the document(s) is deemed approved pursuant to subsection (f) of Section 1505.330 of this Part.
- b) Compliance monitoring:
  - 1) Persons authorized by the Agency to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities shall:



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- A) Provide to the Agency copies of all public notices (including, but not limited to, proof of publication for newspaper or other published notices), news releases, letters, door hangers, or other forms of public notification; and
  - B) Inform the Agency in writing two weeks in advance of plans to hold public meetings or press conferences about site activities or developments.
- 2) The Agency may monitor the implementation of approved CRPs, the distribution of approved fact sheets, and the establishment and maintenance of document repositories. Steps taken by the Agency to monitor these activities may include, but shall not be limited to:
- A) Independently contacting affected, potentially affected and interested persons concerning the type, completeness and timeliness of information provided under the fact sheet or CRP and at the document repository;
  - B) Cross-checking documentation received and generated by the Agency with documentation placed in the document repository;
  - C) Attending scheduled public meetings to monitor presentations and to lend Agency perspective; and
  - D) Making site visits to verify descriptions of site conditions and activities as stated in community relations activities.
- c) The person authorized by the Agency to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities shall retain records and documents demonstrating compliance with the requirements of this Subpart C for at least one year after the recording of the NFR Letter or the issuance of other project completion documentation by the Agency (e.g., permit modification, closure letter, "4(y) letter" [415 ILCS 5/4(y)]). The retention period for the records and documents is extended automatically during the course of any disputes or unresolved enforcement actions regarding the community relations activities or as requested in writing by the Agency. Records may be preserved and presented in an electronic format.

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Section 1505.340      Compliance

No person authorized by the Agency to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities shall fail to comply with the requirements of this Subpart C or the provisions of community relations activities approved by the Agency.

STATE OF ILLINOIS                    )  
  )  
COUNTY OF SANGAMON            )

**PROOF OF SERVICE**

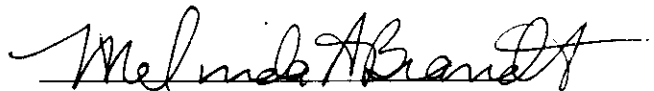
I, the undersigned, on oath state that I have served the attached Motion for Acceptance, Appearances of Attorneys, Statement of Reasons, and the Proposed Rules upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
**(UPS-Next Day)**

Bill Richardson  
General Counsel  
Illinois Dept. of Natural Resources  
One Natural Resources Way  
Springfield, Illinois 62702-1271  
**(First Class Mail)**

Matt Dunn  
Environmental Bureau Chief  
Office of the Attorney General  
James R. Thompson Center  
100 W. Randolph, 12<sup>th</sup> Floor  
Chicago, Illinois 60601  
**(First Class Mail)**

and mailing them from Springfield, Illinois on January 19, 2006, with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME

This 20<sup>th</sup> day of January, 2006.

Brenda Boehner  
Notary Public



**THIS FILING SUBMITTED ON RECYCLED PAPER**