

ILLINOIS POLLUTION CONTROL BOARD  
February 2, 2006

IN THE MATTER OF: )  
)  
STANDARDS AND REQUIREMENTS FOR )  
POTABLE WATER WELL SURVEYS AND ) R06-23  
FOR COMMUNITY RELATIONS ACTIVITIES ) Rulemaking - Land  
PERFORMED IN CONJUNCTION WITH )  
AGENCY NOTICES OF THREATS FROM )  
CONTAMINATION (35 ILL. ADM. CODE )  
1505) )

ORDER OF THE BOARD (by N.J. Melas):

On January 20, 2006, the Illinois Environmental Protection Agency (Agency) filed a proposal to add a new Part 1505 to the Board's regulations setting standards and requirements for potable water well surveys and for community relations activities, where appropriate, in response to impacts or threats from contamination. Public Act 94-314 added a new Title VI-D ("Right-To-Know") to the Environmental Protection Act (Act). Public Act 94-314 requires the Board to adopt well survey and community relations rules within 240 days of the effective date of P.A. 94-314, or no later than September 17, 2006. The Board discusses the proposal in more detail below.

The Agency's proposal omitted pages 17 and 18 of the statement of reasons. On January 30, 2006, the Agency moved to refile the entire statement of reasons. Today the Board grants the Agency's motion and accepts the proposal, as amended, for hearing.

**PROPOSED NEW PART 1505**

**Procedures for Performing and Documenting Well Surveys**

Public Act 94-314 mandates the Board to "amend its 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 that may impact offsite potable water supply wells." 415 ILCS 5/25d-7 (*as added by P.A. 94-314, eff. July 25, 2005*). Therefore, proposed Subpart B sets forth well survey procedures, as well as minimum standards for the performance and documentation of surveys during site investigations. The well survey rules apply to response actions taken pursuant to Board rules requiring that a release of contaminants be addressed. The Agency emphasizes that Subpart B does not contain independent requirements to perform well surveys. Rather, when well surveys are required the applicable Board rules, Subpart B requires compliance with the Subpart B minimum standards and requirements for those wells surveys.

**Community Relations Activities**

Under Public Act 94-314, the Agency must also provide notice of “effects or potential effects of soil and groundwater contamination” to certain members of the public in specified circumstances. Stat. at 2. Contamination may include, for example, a hazardous substance, pesticide, or petroleum. Subpart C of the rules sets forth two alternative levels of community relations activities depending on the severity of the offsite impacts. Subpart C also establishes requirements for document repositories if applicable, fact sheets and community relations plans, and implementing community relations activities, compliance, and compliance monitoring.

In this rulemaking, the Agency has proposed minimum standards and requirements for community relations activities. The proposed rules would apply when the Agency has authorized the responsible party to provide notice as part of community relations activities approved by the Agency. The stated purpose of these requirements is to fully inform the public in a timely manner about offsite impacts or potential impacts from contamination and the responses to those impacts.

### **Public Outreach**

In the proposal, the Agency states that it conducted public outreach on the original draft language and, as a result, changed its approach, which is reflected by the current proposal. Because the Agency made substantial changes before filing the proposal to the Board, the Agency states it “cannot at this time represent that there is any level of concurrence by interested parties on the overall concepts guiding the proposal.” Stat. at 7. Moreover, the Agency asserts that differences remain as to details of the well survey procedures and community relations requirements.

### **Proposal Content Requirements: 35 Ill. Adm. Code 102.202**

According to the Agency, the proposed new part 1505 is technically feasible and economically reasonable. The Agency states the only new technical requirement introduced is the establishment of a website document repository. Despite this new requirement, the Agency concludes the proposal raises no issues of technical feasibility. Stat. at 21.

The Agency contends that proposed Subpart C will undoubtedly increase costs for responsible parties voluntarily accepting notice and community relations obligations. Stat. at 21. The Agency asserts that by proposing a structure with two levels of activities, costs should be limited because most sites with contamination impacting or threatening offsite properties or wells should fall into the reduced requirement group. *Id.*

The Agency has no estimates about costs to private entities performing community relations activities. The Agency states that the Office of Community Relations (ORC), however, has prepared some rough estimates of costs of compliance for the Agency. The ORC states it would cost in the range of \$9,500 to \$12,000 per occurrence to develop a fact sheet and contact list, prepare a news release, and distribute the information associated with the activities required by the proposed new rules. Stat. at 22. The estimate could increase by as much as \$4,500 to \$6,000 to prepare and implement a community relations plan. The ORC estimates that the

increased costs to the Agency for reviewing documents and the related activities will range from \$2,200 to \$3,200 or from \$3,200 to \$4,800 if the community relations plan is included.

In addressing the applicability of the “incorporation by reference” and “published study or report” requirements of Section 102.202, the Agency stated that the proposal includes no incorporations by reference, and that no published studies or research reports were used in developing the rules. 35 Ill. Adm. Code 102.202(d), (e); *see also* 35 Ill. Adm. Code 102.202(k).

### **CONCLUSION**

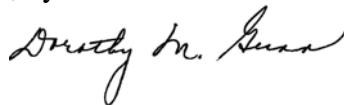
The Board finds that the Agency’s rulemaking satisfies the content requirements of Section 102.202 of the Board’s procedural rules and accepts the rulemaking for hearing. 35 Ill. Adm. Code 102.202.

In order to comply with the 240-day statutory adoption deadline, the Board must file adopted rules with the Secretary of State no later than September 17, 2006. Based on its current meeting schedule, the Board anticipates adopting a first notice order no later than April 2006, a second notice order no later than June 2006, and final rules no later than the Board’s September 7, 2006 scheduled meeting.

Because the Agency states that the version of the proposal filed with the Board has not been the subject of public hearings, the Board expects to hold at least one hearing on the Agency’s proposal as filed, prior to adopting the proposal for first notice. The hearing officer is directed to schedule hearing and public comment schedules expeditiously, to allow the Board to meet the tight statutory adoption timetable. In the interests of saving time, the hearing officer is directed to base the Board’s notice list on any public outreach mailing lists the Agency may have developed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 2, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board