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ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
STANDARDS AND REQUIREMENTS	)	
FOR POTABLE WATER WELL	)	R06-023
SURVEYS AND FOR COMMUNITY	)	(Rulemaking -
RELATIONS ACTIVITIES	)	Public Water)
PERFORMED IN CONJUNCTION	)	
WITH AGENCY NOTICES OF	)	
THREATS FROM CONTAMINATION	)	
UNDER P.A. 94-134	)	
	)	
NEW 35 ILL. ADM. CODE 1505	)	

Report of proceedings had at the hearing in  
the above-entitled cause at 160 North LaSalle  
Street, Room N-502, Chicago, Illinois, commencing at  
10:00 a.m. on the 28th day of March, A.D., 2006.

## 1 APPEARANCES:

2 Ms. Amy C. Antoniulli  
3 (Illinois Pollution Control Board)  
4 100 West Randolph Street  
5 Suite 11-500  
6 Chicago, Illinois 60601  
7 Phone: (312) 814-3665

8 Mr. Nicholas J. Melas  
9 (Illinois Pollution Control Board)  
10 100 West Randolph Street  
11 Suite 11-500  
12 Chicago, Illinois 60601  
13 Phone: (312) 814-3932

14 Ms. Alisa Liu  
15 (Illinois Pollution Control Board)  
16 100 West Randolph Street  
17 Suite 11-500  
18 Chicago, Illinois 60601  
19 Phone: (312) 814-8916

20 Mr. Anand Rao  
21 (Illinois Pollution Control Board)  
22 100 West Randolph Street  
23 Suite 11-500  
24 Chicago, Illinois 60601  
25 Phone: (312) 814-3956

26 Mr. G. Tanner Girard  
27 (Illinois Pollution Control Board)  
28 704 North Schrader Avenue  
29 Havana, Illinois 62644  
30 Phone: (309) 543-2230

31 Mr. Thomas E. Johnson  
32 (Illinois Pollution Control Board)  
33 2125 South First Street  
34 Champaign, Illinois 61820  
35 Phone: (217) 278-3109

36 Ms. Carol L. Fuller  
37 (Illinois Environmental Protection Agency)  
38 1021 North Grand Avenue East  
39 Springfield, Illinois 62794  
40 Phone: (217) 524-8807

1 APPEARANCES: (continued)

2 Mr. Kurt Neibergall  
(Illinois Environmental Protection Agency)  
3 1021 North Grand Avenue East  
Springfield, Illinois 62794  
4 Phone: (217) 785-3819

5 Mr. Richard P. Cobb  
(Illinois Environmental Protection Agency)  
6 1021 North Grand Avenue East  
Springfield, Illinois 62794  
7 Phone: (217) 785-4787

8 Mr. H. Mark Wight  
(Illinois Environmental Protection Agency)  
9 1021 North Grand Avenue East  
Springfield, Illinois 62794  
10 Phone: (217) 782-5544

11 Mr. Scott O. Phillips  
(Illinois Environmental Protection Agency)  
12 1021 North Grand Avenue East  
Springfield, Illinois 62794  
13 Phone: (217) 782-5544

14 Mr. Gary King  
(Illinois Environmental Protection Agency)  
15 1021 North Grand Avenue East  
Springfield, Illinois 62794  
16 Phone: (217) 785-9407

17 Ms. Joyce Munie  
(Illinois Environmental Protection Agency)  
18 1021 North Grand Avenue East  
Springfield, Illinois 62794  
19 Phone: (217) 524-3300

20 Ms. Kimberly A. Geving  
(Illinois Environmental Protection Agency)  
21 1021 North Grand Avenue East  
Springfield, Illinois 62794  
22 Phone: (217) 782-5544

23

24

1 APPEARANCES: (continued)

2 Ms. Stefanie N. Diers  
3 (Illinois Environmental Protection Agency)  
4 1021 North Grand Avenue East  
5 Springfield, Illinois 62794  
6 Phone: (217) 782-5544

5 Ms. Deborah J. Williams  
6 (Illinois Environmental Protection Agency)  
7 1021 North Grand Avenue East  
8 Springfield, Illinois 62794  
9 Phone: (217) 782-5544

8 Ms. Deirdre K. Hirner  
9 (Illinois Environmental Regulatory Group)  
10 3150 Roland Avenue  
11 Springfield, Illinois 62703  
12 Phone: (217) 523-4942

11 Ms. Monica T. Rios  
12 (Hodge, Dwyer, Zeman)  
13 3150 Roland Avenue  
14 Springfield, Illinois 62705  
15 Phone: (217) 523-4900

14 Ms. Ann Muniz  
15 Ms. Bernadette Dinschel  
16 Mr. Keith Harley  
17 Mr. Dan Billings  
18 Mr. Josh Atlas

17 \* \* \* \* \*

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1 MS. ANTONIOLLI: Good morning, and  
2 welcome to the Illinois Pollution Control  
3 Board Chicago Hearing. On the docket,  
4 R06-23, which the Board has captioned "In the  
5 Matter Of Standards and Requirements For  
6 Potable Water Well Surveys And For Community  
7 Relations Activities Performed In Conjunction  
8 With Agency Notices From Contamination." And  
9 that's under P.A. 94-314, the new  
10 35 Illinois Administrative Code Part 1505.  
11 And, as I said, docketed as R06-23.

12 My name is Amy Antoniolli, and I  
13 am assigned the hearing officer in this  
14 rulemaking. The Agency is seeking in this  
15 proceeding to add a new part, 1505, which  
16 would allow and regulate the use -- And this  
17 rulemaking was filed on January 20th, 2006,  
18 by the Illinois Environmental Protection  
19 Agency. The Board accepted the proposal for  
20 hearing on February 2nd, 2006. Today is the  
21 first hearing; and a second hearing is  
22 scheduled for May 23rd, to take place at  
23 10:00 a.m. in the Board's offices in  
24 Springfield.

1                   To my left is Member Nicholas  
2                   Melas. He's the Board member assigned to  
3                   this matter. And seated to the left of  
4                   Member Melas is our acting chairman, Tanner  
5                   Girard. And to the left of Chairman Girard  
6                   is Member Tom Johnson. Also present from the  
7                   Board's technical unit today is Anand Rao and  
8                   Alisa Liu.

9                   If you'd like to testify today and  
10                  you haven't told me already, please let me  
11                  know. Today's proceeding is governed by the  
12                  Board's procedural rules. All information  
13                  that is relevant and not repetitious or  
14                  privileged will be admitted into the record.  
15                  We will start today with the testimony of the  
16                  proponent, which is the Agency, three Agency  
17                  witnesses that have prefiled testimony in  
18                  this matter -- Mr. Gary King, Mr. Richard  
19                  Cobb, and Mr. Kurt Neibergall on behalf of  
20                  the Illinois Environmental Protection  
21                  Agency -- followed by any questions for those  
22                  witnesses.

23                  Then we'll proceed with testimony  
24                  from two other participants that have

1           prefiled, Ms. Bernadette Dinschel,  
2           individually, and Deirdre K. Hirner, on  
3           behalf of the Illinois Environmental  
4           Regulatory Group, followed by questions for  
5           those witnesses.

6                         Please note that any questions  
7           posed by Board members or by staff are  
8           designed to help to develop a complete record  
9           for the Board's decision and don't reflect  
10          any bias. And after that, anyone else can  
11          testify regarding the proposal. Like all  
12          witnesses who wish to testify, you will be  
13          sworn in and may be asked questions about  
14          your testimony. We'll conclude today's  
15          hearing with some procedural items.

16                         Member Melas, before we begin,  
17          would you like to add anything?

18                         MR. MELAS: I'd like to just welcome  
19          everyone to this hearing. I'm pleased to see  
20          so many people here in attendance. I look  
21          forward to hearing your testimony. Thank  
22          you.

23                         MS. ANTONIOLLI: And for the court  
24          reporter today, who's transcribing the



1 proceeding, please speak up and don't talk  
2 over one another so that we produce a clear  
3 transcript.

4 Are there any questions about the  
5 procedures that we follow today or the order  
6 of the hearing?

7 And seeing none, I'd ask that the  
8 court reporter swear in the witnesses.

9 (Witnesses sworn.)

10 MS. ANTONIOLLI: And we'll turn it  
11 over to the proponent for opening statements.

12 MR. WIGHT: Thank you. My name is  
13 Mark Wight. I'm an assistant counsel with  
14 the Illinois Environmental Protection Agency,  
15 Bureau of Land. Also assigned to this  
16 project are Kim Geving, who is sitting over  
17 here at the second table to my right. Kim is  
18 assistant counsel with the Bureau of Land.  
19 Next to Kim is Stefanie Diers, who's  
20 assistant counsel with the Bureau of Water.  
21 And next to Stefanie is Deb Williams, who is  
22 also assistant counsel with the Bureau of  
23 Water.

24 Also here on behalf of the Agency

1           are six witnesses. As the hearing officer  
2           has mentioned, three have filed prefiled  
3           testimony. They are Rick Cobb, on my  
4           immediate left; Rick is deputy manager of the  
5           Division of Public Water Supplies in the  
6           Bureau of Water. Gary King, two places to my  
7           right; Gary is manager of the Division of  
8           Remediation Management in the Bureau of Land.  
9           And Kurt Neibergall, two places to my left;  
10          Kurt is manager of the Office of Community  
11          Relations.

12                         Additional witnesses on the  
13          witness panel will be Joyce Munie. Joyce is  
14          on my far right. Joyce is manager of the  
15          Site Remediation Program in the Bureau of  
16          Land and recent manager of the Permit Section  
17          in the Bureau of Land. Scott Phillips, on my  
18          immediate right; Scott is manager of the  
19          Regulatory Development Section in the  
20          Division of Legal Counsel. And Carol Fuller,  
21          on my far left; Carol is a community  
22          relations coordinator with the Office of  
23          Community Relations.

24                         We had also planned on Doug Clay,

1           manager of the Leaking Underground Storage  
2           Tank Section in the Bureau of Land as one of  
3           our witnesses; but due to a death this  
4           weekend, Doug had to remain in Springfield  
5           for a funeral. Gary King is well acquainted  
6           with the LUST program. And if we have any  
7           program-specific questions, he should be able  
8           to handle most of those. Also, I'm sure,  
9           Mr. Clay will be available for the May  
10          hearing if necessary.

11                         Before continuing, I just wanted  
12          to point out that we do have extra copies of  
13          the documents that we filed in this  
14          proceeding. They're on the table behind us.  
15          There should be more than enough copies for  
16          the folks here; but if you did need to sign  
17          up for extra copies, you can sign your name  
18          and e-mail address or mailing address and  
19          we'll send additional copies out to you when  
20          we return to Springfield. Or you can simply  
21          go to the Board's website and download the  
22          documents.

23                         The Agency's proposed Part 1505  
24          originates in the statutory requirements of

1 Title VI-D of the Environmental Protection  
2 Act as enacted by Public Act 94-314,  
3 effective July 25th, 2005. Title VI-D of the  
4 Act is entitled "Right to Know." It is an  
5 expression of the legislature's intent that  
6 the public be better informed by the  
7 government and by responsible parties when it  
8 is determined that soil or groundwater  
9 contamination has impacted or threatens to  
10 impact off-site property uses.

11 There are several components to  
12 Title VI-D. The centerpiece is a requirement  
13 that the Agency provide notification to  
14 certain affected parties when these  
15 contamination issues have been discovered.  
16 Title VI-D also authorizes the Agency to  
17 allow a responsible party who has implemented  
18 community relations activities to provide  
19 notice in lieu of the Agency.

20 In conjunction with these  
21 notification requirements, Title VI-D  
22 requires the Agency to propose rules for  
23 potable water well surveys and for community  
24 relations activities within 180 days of the

1 effective date of the legislation. The  
2 potable water well survey requirements will  
3 help to ensure accurate and complete  
4 identification of potable water wells that  
5 may be threatened or impacted by groundwater  
6 contamination. The community relations  
7 requirements will help to ensure complete,  
8 accurate, and timely notice to affected  
9 parties of threats or impacts from  
10 contamination and, if the scope of the  
11 contamination warrants, a broader dialogue  
12 with the interested and affected public to  
13 respond to community concerns about  
14 contamination related matters.

15 The well survey and community  
16 relations requirements cut arose several of  
17 the Illinois EPA's organizational structures.  
18 The Agency's Bureaus of Land and Water, it's  
19 Office of Community Relations, and the  
20 Division of Legal Counsel all are implicated  
21 in the administration of these requirements.  
22 As a result, the panel of witnesses before  
23 you today is somewhat larger than the normal  
24 panel of witnesses that we bring in support

1 of an Agency proposal, but each member of the  
2 panel will be directly involved in some  
3 capacity in administrating and implementing  
4 Part 1505.

5 Before we begin our presentation,  
6 I also would like to thank the many people  
7 who have participated in our outreach  
8 efforts. There are too many to name  
9 individually, but we do appreciate their  
10 assistance. Because of the statutory time  
11 limits, we were unable to spend as much time  
12 on the outreach as we might have liked.  
13 However, we do feel we have reached a fairly  
14 broad cross-section of industry and public  
15 interest groups, and there's no question that  
16 the proposal has been shaped by their  
17 questions and comments. So thank you again  
18 to those who have participated in our  
19 outreach.

20 Gary, Scott, Kurt, or Rick, do any  
21 of you have some opening comments?

22 Well, we've already sworn the  
23 witnesses; so if the Board is ready to  
24 proceed, we can begin by identifying the

1           prefiled testimony and getting that admitted.

2                   MS. ANTONIOLLI: Sure.

3                   MR. WIGHT: Do any have Board members  
4                   or staff need copies of the prefiled  
5                   testimony?

6   WHEREUPON:

7                   RICHARD P. COBB,  
8   called as a witness herein, having been first duly  
9   sworn, was examined and testified as follows:

10                                   EXAMINATION

11   BY MR. WIGHT:

12                   Q.       Mr. Cobb, I'm handing you a document,  
13   and I'd like you to take a look at that document.  
14   Do you recognize the document?

15                   A.       Yes, I do.

16                   Q.       Would you please tell us what it is?

17                   A.       This is my testimony that I prefiled  
18   with the Board regarding the applicability section  
19   of the proposed Part 1505, Section 1505.100.

20                   Q.       Is this a true and correct copy of the  
21   document that you filed with the Board?

22                   A.       Yes, it is.

23                   MR. WIGHT: Okay. I move that this  
24   copy of the testimony be admitted as an

1 exhibit and admitted to the record as if  
2 read.

3 MS. ANTONIOLLI: Okay. And is there  
4 any objection to entering the testimony of  
5 Richard Cobb on the background of proposal  
6 and proposed Subpart A as Exhibit -- we'll  
7 make it 1?

8 And seeing no objection, I will  
9 mark this as Exhibit 1 and enter it into the  
10 record.

11 MR. WIGHT: Okay. Thank you.

12 WHEREUPON:

13 GARY KING,  
14 called as a witness herein, having been first duly  
15 sworn, was examined and testified as follows:

16 EXAMINATION

17 BY MR. WIGHT:

18 Q. Mr. King, I'm handing you a document.  
19 Would you please look it over? Do you recognize the  
20 document?

21 A. Yes, I do.

22 Q. Would you please tell us what it is?

23 A. This is a written copy of the  
24 testimony that I have prefiled in this procedure.



1 Q. And this is a true and correct copy of  
2 that document as prefiled?

3 A. Yes, it is.

4 MR. WIGHT: I'd like to move that  
5 Mr. King's testimony be admitted to the  
6 record as if read.

7 MS. ANTONIOLLI: Is there any  
8 objection to entering the testimony of Gary  
9 King on proposed Subpart B into the record as  
10 Exhibit 2?

11 Seeing none, I'll mark it as Exhibit 2  
12 and enter it.

13 WHEREUPON:

14 KURT NEIBERGALL,  
15 called as a witness herein, having been first duly  
16 sworn, was examined and testified as follows:

17 EXAMINATION

18 BY MR. WIGHT:

19 Q. Mr. Neibergall, would you please take  
20 a look at that document? Do you recognize the  
21 document?

22 A. Yes, I do.

23 Q. Would you please tell us what it is?

24 A. This is my prepared prefiled testimony

1 on Subpart C, the standards and requirements for  
2 community relations activities of the proposed  
3 rules.

4 Q. And is that a true and correct copy of  
5 the document that was filed with the Board on  
6 March 14th?

7 A. Yes, it is.

8 Q. Okay. Thank you.

9 MR. WIGHT: I move that  
10 Mr. Neibergall's testimony be admitted as an  
11 exhibit and entered into the record as if  
12 read.

13 MS. ANTONIOLLI: Okay. And is there  
14 any objection to entering Mr. Kurt  
15 Neibergall's testimony on proposed Subpart C  
16 into the record as Exhibit 3?

17 And seeing none, I will mark it as  
18 Exhibit 3 and enter it into the record.

19 MR. WIGHT: We'd like to proceed then  
20 with a brief synopsis of the prefiled  
21 testimony, and Mr. Cobb will begin with his  
22 synopsis of the testimony on Subpart A.

23 MR. COBB: Thank you. In recent  
24 years, the Illinois Environmental Protection

1 Agency has become aware of contamination in  
2 the environment in certain areas of the state  
3 that threaten the safety of drinking water  
4 supplies from groundwater contamination  
5 sources, and experience from working on  
6 multiple sites were commonly used.  
7 Commercial and industrial solvents migrated  
8 into the groundwater from soil contamination  
9 highlighted the need for early notification  
10 to potable well users, in particular,  
11 private, semi-private wells, since those  
12 wells are not routinely sampled by any type  
13 of a government program. The purpose of the  
14 notice is so that individuals can test their  
15 water and basically make important decisions  
16 that may impact their family's health.

17 As Mike Wight indicated, Public  
18 Act 94-314 was signed into law in July of  
19 2005, and that Act amended the Environmental  
20 Protection to mandate that the Illinois EPA  
21 give timely notification to Illinois citizens  
22 about contamination in soil or groundwater  
23 that may be a threat to potable water  
24 supplies. This is specifically in reference

1 to contamination that originates from  
2 permitted facilities or other sites as  
3 measured and/or modeled to pose an off-site  
4 threat of exposure to the public. In certain  
5 circumstances, responsible parties or  
6 remedial applicants may be allowed to issue  
7 the notice as part of an Agency-approved  
8 community relations tactic.

9 With input from the citizens and  
10 business, Illinois EPA has developed the  
11 proposed regulations that are now before the  
12 Pollution Control Board. The purpose and  
13 scope of the proposed regulation at Section  
14 1505.100 described the requirements for  
15 identifying drinking water wells in an area  
16 of concern and for performing community  
17 relations activities to notify and establish  
18 communication with the public who may be  
19 affected by contamination. And, if you will,  
20 then, where community relations plans are  
21 proposed in lieu of Agency notice, then  
22 people are voluntarily wanting to use that  
23 route, the regulations also become the  
24 standard by which those community relations

1 plans are judged.

2 And that concludes my synopsis.

3 MS. ANTONIOLLI: Okay. Thank you.

4 MR. WIGHT: I believe Mr. King also  
5 has a summary of his testimony on Subpart B.

6 MR. KING: Good morning. My name is  
7 Gary King. I'm the manager of the Division  
8 of Remediation Management within the Bureau  
9 of Land. My testimony here today is focusing  
10 on the implementation of Subpart B, which is  
11 the subpart that deals with the potable water  
12 supply well surveys. And I'm talking with  
13 regards to Subpart B in the context of the  
14 Site Remediation Program, the LUST program,  
15 and RCRA Closure Program.

16 Just to provide -- I'm just going  
17 to summarize kind of a little bit of history  
18 of how the Bureau of Land got involved with  
19 the requirements as to well surveys. Back in  
20 2001, there was -- we discovered areas of  
21 groundwater contamination in DuPage County,  
22 and that contamination had impacted or had  
23 threatened to impact, as we found out,  
24 hundreds of private wells in that area. And

1 as a result of that, we began to revise our  
2 internal administrative procedures so that we  
3 could set up requirements for surveying water  
4 supply wells to identify the location of  
5 potable water wells in relationship to  
6 cleanup sites.

7 We implemented -- We came up with  
8 a procedure implementing more generic Board  
9 rules, and we completed that in February of  
10 2003. And we've been using those procedures  
11 since 2003 for sites within the SRP, LUST,  
12 and RCRA Closure programs so that they knew  
13 what their responsibilities would be. The  
14 Board just recently completed Docket A of the  
15 LUST program, and part of the rules there  
16 dealt with water well survey requirements.  
17 And the rules that were developed for that  
18 program and then put in place were based on  
19 the template that we created in this internal  
20 procedure in February of 2003.

21 And as the Board's well aware,  
22 there was a lot of vigorous debate within the  
23 context of the LUST rules, but those well  
24 survey procedures were accepted without any

1 comment or dispute. The Subpart B that we're  
2 proposing in this proceeding follows that  
3 same template of the 2003 BOL procedures. As  
4 a result of the fact that we've been  
5 implementing this for the last three years, I  
6 really do not expect that Subpart B is going  
7 to cause any significant burden for persons  
8 participating in these programs that's  
9 unacceptable. It obviously causes a burden  
10 for people to have to do those -- all those  
11 well survey procedures, but it certainly is  
12 an accepted thing for the entities in our  
13 program.

14 I'll just spend a few minutes  
15 talking about what's in Subpart B, the rule  
16 provisions. There's three sections there.  
17 The first one 1505.200 sets forth the purpose  
18 and scope of the subpart. Section 1505.205  
19 contains the applicability provisions.

20 Subsection (a) there provides  
21 that -- And I think this is an important  
22 point here. Subsection (a) provides that  
23 initial applicability is based on whether or  
24 not a person is performing a response action

1           pursuant to Board rules that govern how  
2           releases of contaminants are to be addressed.  
3           One of the key thoughts here is that it is  
4           pursuant to Board rules.  It doesn't mean  
5           that these rules are going to apply in  
6           situations where a person is not in a program  
7           that's requiring them to -- requiring the  
8           need for well surveys.  So, for instance, if  
9           a company was just doing its own real estate  
10          transaction and is not part of an Agency  
11          program, this does not automatically kick  
12          them into a requirement to do those  
13          procedures.

14                         Note that in Errata Sheet 1 we put  
15           in a definition of a person performing a  
16           response action.  The principle outlined  
17           there is not one of liability; it's one of a  
18           person who's within a program, whether they  
19           would be a liable party or not, that would be  
20           responsible for doing the well survey  
21           procedures.  Within the Site Remediation  
22           Program, we have people enter the program who  
23           are not owners and operators and yet they --  
24           and may not be liable parties from a



1 liability standpoint, but they, as well,  
2 would have to follow these procedures.

3 We also made it clear, though,  
4 that persons who are working for a person who  
5 is the responsible person -- For instance, a  
6 contractor. If a contractor is working for a  
7 person who's entered the program, the  
8 contractor is not required to meet these  
9 rules. I wanted to clear clarify that.

10 One of the things in  
11 1505.205(a)(2) that has an issue of  
12 particular importance is a provision that  
13 deals with the superseding of less stringent  
14 provisions. As I mentioned before, the Board  
15 has just gone through the process of adopting  
16 rules within the LUST program that deal with  
17 the well survey requirements. Those  
18 requirements would apply to sites in the LUST  
19 program as opposed to Subpart B. They're  
20 almost -- They're virtually identical.  
21 There's just some minor phrasing that's  
22 different. So these rules will not apply,  
23 but the LUST program rules will.

24 Now, for the SRP program, we have

1 a little bit different situation there  
2 because the rules are more generic in nature  
3 within Part 740. And they also have --  
4 They're, to some extent, more stringent than  
5 the rules here; and to another extent,  
6 they're less stringent. And so in that sense  
7 we will be mixing and melding those so that  
8 any -- a person will have to meet the  
9 requirements of both these procedures and the  
10 SRP rules.

11 1505.210 kind of lays out the  
12 specific procedures as far as what has to  
13 happen as far as the well surveys. There are  
14 four categories of wells, potable water  
15 supply wells, in Illinois: private,  
16 semi-private, non-community, and community  
17 water system wells. The first three  
18 categories, the survey distance is 200 feet.  
19 For the fourth category, it's 2,500 feet.  
20 That's in the Subpart B. So the same with  
21 the SRP program, there's been -- in Part 740  
22 there's been a uniform 1,000-foot requirement  
23 for all four categories. The way we intend  
24 to interpret this is that for the first three

1 categories for sites in the SRP program,  
2 they'll be subject to the 1,000-foot  
3 requirement. For the fourth category,  
4 community water systems, they'll be subject  
5 to a 2,500-foot requirement.

6 We made a number of changes in  
7 Errata Sheet 1 with regards to our original  
8 proposal in Subpart B. Those changes were  
9 not intended to change the overall direction  
10 of where we were headed. However, we did --  
11 after we filed the proposal, we continued to  
12 have outreach meetings. And we met with  
13 members of the Site Remediation Advisory  
14 Committee on an informal basis, and they  
15 really expressed some concerns that what we  
16 had put together in Subpart B was not  
17 consistent with the TACO rule. So we went  
18 back and took another look at what we had and  
19 really were able to resolve those  
20 inconsistencies so that Subpart B is  
21 consistent with the provisions of TACO.

22 I think the rest of the items I  
23 have there are pretty self-explanatory, so I  
24 think I'll conclude my testimony with that.

1 Thank you.

2 MR. WIGHT: Thank you, Gary. And I  
3 think Kurt Neibergall has a similar synopsis  
4 of his testimony on Subpart C.

5 MR. NEIBERGALL: Thank you, Mark.  
6 Again, my name is Kurt Neibergall. I'm the  
7 manager of the office of Community Relations  
8 for the Illinois Environmental Protection  
9 Agency. I'd like to offer this general, sort  
10 of, summary of Subpart C proposed rules.

11 The Agency strongly believes the  
12 public has a right to know about an  
13 environmental contamination that affects or  
14 may affect citizens lives or their  
15 livelihood. Title VI-D, Right-to-Know  
16 provisions of the Environmental Protection  
17 Act, places responsibility to give notices to  
18 the public of off-site contamination threats  
19 on the Agency. Section 25d-3 of the Act  
20 allows the Agency to offer the responsible  
21 party the opportunity to assume the Agency's  
22 notice obligations under the appropriate  
23 circumstances, as several of our witnesses  
24 pointed out. If the responsible party

1 accepts the Agency's offer in good faith to  
2 undertake notice work, then compliance with  
3 the standards and requirements of Subpart C,  
4 community relations activities provisions, of  
5 these proposed rules is mandatory.

6 Critical communications with  
7 individuals, groups, and communities about  
8 off-site contamination impacts or potential  
9 impacts must be done in a complete, accurate,  
10 and timely manner. The level of involvement  
11 of Agency staff in the development and  
12 issuance of a notification package in  
13 community relations activities outlined in  
14 Subpart C is intended to ensure the public  
15 receives at least the same amount of  
16 quality -- same amount and quality of  
17 information that would be contained in an  
18 Agency-issued notification package with  
19 necessary follow up.

20 The Agency is sensitive to  
21 resource commitments in the notification  
22 process and therefore is proposing two levels  
23 of community relations activities reflecting  
24 our view that not every off-site impact or

1 potential impact justifies a full community  
2 relations plan effort. A two-tiered approach  
3 to community relations activities is proposed  
4 based on a number of affected or potentially  
5 affected properties. This reflects a general  
6 notion that if the site has limited impacts  
7 or potential impacts off of that site, fewer  
8 people in the surrounding community at large  
9 may be concerned or interested in information  
10 about the site.

11 For sites with fewer or more  
12 limited off-site impacts or potential  
13 impacts, a fact sheet and a contact list is  
14 proposed with fact sheet updates as  
15 necessary. For sites with broader off-site  
16 impacts or potential impacts on the  
17 surrounding community, a community relations  
18 plan, a fact sheet with a contact list, and a  
19 document repository is proposed.

20 The community relations plan, in  
21 essence, is a planning document that lays out  
22 a public outreach program to establish and  
23 maintain a two-way dialogue with the  
24 community. The fact sheet required at the

1 sites with broader impacts include responses  
2 to key community concerns as expressed by  
3 identified affected, potentially affected, or  
4 interested parties. Finally, for sites with  
5 broader off-site impacts, a document  
6 repository must be established and maintained  
7 at a World Wide Web Internet site as well as  
8 at a physical location in a public place if  
9 there is such a demand.

10 And that concludes my general  
11 summary of Subpart C. Thank you.

12 MR. WIGHT: I think that takes care of  
13 the formal part of our presentation, so we're  
14 ready to begin taking questions as soon as  
15 you'd like.

16 MS. ANTONIOLLI: And even before we do  
17 questions, we have received our errata sheet,  
18 I guess, a little closer to the hearing date,  
19 and Mr. King explained that the errata sheet,  
20 at least applicable to Subpart B, took into  
21 consideration the TACO rules. Is that the  
22 same with the other parts? Or would you like  
23 to give a little, maybe, explanation just  
24 about the errata sheet alone?

1                   MR. WIGHT: I think the prefilled  
2 testimony reflects the changes in the errata  
3 sheet, and I don't think we've prepared  
4 anything more formal than that. But if you  
5 would like something additional, we'll try to  
6 expand on what we've presented to this point.

7                   MS. ANTONIOLLI: No, that's good. We  
8 can start with questions from here.

9                   Is there anyone that has questions  
10 for the Agency that would like to start? And  
11 we can always start here with the Board's  
12 questions; and then if anyone would like to  
13 add or ask questions as we proceed, just let  
14 us know. Do any of the Board members have  
15 any questions to start?

16                   MR. JOHNSON: I had a question about  
17 your definition of responsible party, and I  
18 guess that's Subpart C. And in quotes here  
19 it says Agency may authorize the responsible  
20 party to provide notice as part of your  
21 approved community relations activity  
22 developed and implemented in accordance with  
23 Subpart C. Is there a more specific  
24 definition of who the responsible party is,



1 or do you think that's unnecessary?

2 MR. PHILLIPS: Scott Phillips. I  
3 think that it's -- we really don't need a  
4 more specific definition. I think what was  
5 intended with our language there was, by  
6 using the term responsible party, we were  
7 not, as Mr. King pointed out in his  
8 testimony, just limiting that to the  
9 legally -- what one thinks of as the legally  
10 liable party, but that we were thinking that  
11 the opportunity should be afforded to SRP  
12 applicants who may or may not fall into the  
13 legally responsible category, that they're  
14 not responsible for the release that is  
15 causing the notice to be issued.

16 I think we've got that flexibility  
17 in the way the law is drafted. You can note  
18 a difference between Subsection (c) and  
19 Subsection (d) of 25d-3, where 25d-3(d)  
20 refers to responsible parties with respect to  
21 the release or the substantial threat of  
22 release, they are responsible for all the  
23 cost recovery if the Agency issues the  
24 notice. That responsible party, in that

1 context, means the party responsible for the  
2 release from whom we can obtain cost  
3 recovery. Whereas, in subsection (d), it  
4 just refers to responsible parties. So I  
5 think that's a broader category which could  
6 include the situations for the SRP applicants  
7 who are not necessarily legally liable but  
8 they are responsible for issuing the notice.

9 MR. JOHNSON: It's my understanding  
10 from reading this that you have to make the  
11 offer to that individual to allow them -- So  
12 there's not going to be three people fighting  
13 over who gets to do the notice or has to do  
14 the notice, you guys make that determination?

15 MR. PHILLIPS: That is correct. The  
16 whole thrust of Public Act 94-314 was to put  
17 the primary responsibility for issuing these  
18 notices upon the Illinois EPA. Only under a  
19 very specific set of specifics -- and that's  
20 reflected in subsection (c) -- would the  
21 Agency have the discretion to allow another  
22 party to issue that notice in lieu of the  
23 Agency. And then that party has -- It's a  
24 voluntary action on their part. They don't

1           have to do it. We make the offer; they can  
2           choose whether or not to accept that offer.  
3           If they don't, then the Agency does it and  
4           would seek cost recovery from the liable  
5           party.

6                       MR. JOHNSON: Thank you.

7                       MR. MELAS: May I follow up with one  
8           other question on that same line?

9                       MR. PHILLIPS: Yes, sir.

10                      MR. MELAS: You have made the offer  
11           and the responsible party, whomever -- the  
12           property owner, operator, whomever he may  
13           be -- what follow-up does the Agency do to  
14           make sure that the person, in actuality, does  
15           provide the required notices to all of the  
16           interested parties? Is there some procedure  
17           that you contemplate utilizing? Because the  
18           guy could accept the offer in very good faith  
19           and for some reason or other fail to follow  
20           through.

21                      MR. PHILLIPS: Well, we would be  
22           monitoring that situation. Kurt can give a  
23           more detailed response here, but we would be  
24           evaluating the completeness of the notice.

1           Our community relations staff would be  
2           monitoring the activities to ensure that  
3           those activities would, in fact, occur.

4                         And another feature of what we  
5           have in the proposal is that once we do  
6           approve the community relations plan by the  
7           party, then that party is obligated to  
8           perform that plan and is subject to  
9           enforcement if they do not.

10                        MR. NEIBERGALL: May I add to that,  
11           Scott?

12                        MR. PHILLIPS: Yes.

13                        MR. NEIBERGALL: Just to give you a  
14           little background on the office of community  
15           relations, we have about ten community  
16           relations coordinator positions sort of akin  
17           to project managers. And basically the way  
18           this would work is our internal group that  
19           made the notification decision recommendation  
20           to the director and this offer was made to a  
21           responsible party, a community relations  
22           coordinator would be assigned to that  
23           particular site. And so acting sort of in a  
24           project manager role, they would continue to

1 track progress on that and, in fact, report  
2 back to our internal contaminant evaluation  
3 group to make sure that all the time lines  
4 and notice work that's required is done and  
5 the follow-ups. So there would be somebody  
6 assigned to that particular action and would  
7 follow through.

8 MR. RAO: I have a follow-up to  
9 Mr. Melas's question. In section 1505.335,  
10 you have some provisions that deal with  
11 compliance monitoring. And in Subsection  
12 (b)(2) it says that the Agency may monitor  
13 the implementation of the approved CRPs and  
14 the distribution of approved fact sheets,  
15 et cetera. So how often do you monitor these  
16 kind of situations? Do you assign a  
17 coordinator in every case that deals with  
18 community outreach, or is it done on some  
19 intermittent basis?

20 MR. NEIBERGALL: Yes, we do. At any  
21 site or facility that has -- you know, in  
22 this case, off-site contamination threats  
23 where the community would have an interest  
24 and with potential impacts, we would assign a

1 community relations coordinator. We have,  
2 again, ten coordinators who have quite a bit  
3 of experience with the Agency and may have  
4 been tracking a particular site or facility  
5 in the case at an operational facility for  
6 many, many years in the Agency. So someone  
7 is always assigned. If someone leaves our  
8 unit, someone picks up the assignment to  
9 continue any necessary oversight or outreach  
10 work. A lot of this work, notification work,  
11 you know, maintaining communications with the  
12 community, is done by our coordinators  
13 independent of an action by a responsible  
14 party. We try to keep -- touch base. We  
15 regularly review community relations plans,  
16 make sure they're updated, contact lists are  
17 updated, that kind of thing. We make sure  
18 the repositories are up to date and people  
19 have the information or know how to get it.

20 MR. RAO: Thank you.

21 MS. ANTONIOLLI: And going back to the  
22 responsible party term, we have the  
23 understanding that there's the responsible  
24 party and then there's also the responsible

1 parties that have been authorized by the  
2 Agency to provide notice, which is a subset  
3 of that group. But then, as I was reading  
4 throughout Subpart C, I see that that subset  
5 party, the one who's authorized to give  
6 notice, has been referred to with different  
7 terms: like, the "submitter" in parts; or  
8 it's also been "persons subject to Subpart C"  
9 in places; in other places, "persons  
10 accepting the Agency's offer to provide  
11 notice pursuant to Subsections (a) and (c)";  
12 and in some cases, "the person."

13 So as I understand it, once they  
14 agree to provide notice, that triggers this  
15 whole -- they have to follow through from  
16 start to finish. So would you consider  
17 having a global term for this person that you  
18 use throughout Subpart C that sort of  
19 clarifies who this person is in all the  
20 different sections?

21 MR. PHILLIPS: Certainly. Certainly  
22 we can look at that issue. That is our  
23 intent, to make this as clear as possible.  
24 We'd be able to work something out there.

1 MS. ANTONIOLLI: And I think that  
2 would just make it clear that once you start,  
3 you have to follow through.

4 MR. PHILLIPS: Right. And that's  
5 certainly a theme that we want very clear in  
6 these rules as well.

7 MR. JOHNSON: And the term  
8 "responsible party," to me implies liability.  
9 I don't know what else you're going to use.  
10 I'm just telling you the lawyer in me reads  
11 that and wants to file suit.

12 MR. PHILLIPS: One thing that we did,  
13 under 25d-7(b) -- These rules are being  
14 proposed under Subsection (a) of 25d-7.  
15 Under Subsection (b), the Agency has  
16 currently under development -- and we should  
17 be proposing those problems sometime early in  
18 April for first notice -- rules pertaining to  
19 cost recovery for the Agency's cost when the  
20 Agency issues notice. That's the second  
21 rulemaking that's required in this  
22 Right-To-Know Law. And in that particular  
23 rulemaking, one of the comments that we did  
24 receive from industry was along the same line



1           about they wanted to be able to use that same  
2           methodology in the SRP program, where you may  
3           not have a legally responsible party under  
4           that terminology.

5                         So what we're planning to do in  
6           that particular rulemaking is to make those  
7           rules applicable to responsible parties, as  
8           reflected in the rule, and to parties in the  
9           SRP program, kind of distinguish them but  
10          make it very clear that those rules will also  
11          apply to them should they, again, voluntarily  
12          accept the responsibility to issue the  
13          notice. Those rules will define how those  
14          costs will be assessed.

15                        I mean, we can look at something  
16          here to clarify that particular point along  
17          those same lines.

18                        MR. GIRARD: I have a question going  
19          back to the community relations plan and the  
20          contact list, so maybe Mr. Neibergall can  
21          answer this. It seems to me fairly  
22          straightforward on how you would figure out  
23          who the owners are of affected property in  
24          terms of developing or updating the contact

1 list. But how do you go about finding out  
2 who the occupants are as opposed to the  
3 owners? What kind of burden does that place  
4 on the responsible party?

5 MR. NEIBERGALL: Yeah, that's an issue  
6 that we've dealt with significantly in  
7 outreach, and others are offering testimony  
8 on it; and it's key to this notification. I  
9 think we feel strongly that, of course, the  
10 whole focus of this Right-To-Know Law is to  
11 make sure that people that are being impacted  
12 or potentially impacted, in this case an  
13 occupant of a residence that maybe has a  
14 private well that has contamination or  
15 potential contamination, be properly notified  
16 and given accurate information. And, of  
17 course, sometimes that could be a renter as  
18 opposed to a property owner. We deal with  
19 this quite a bit already with outreach work  
20 we're engaged in ourselves. It is difficult  
21 sometimes.

22 We, first off, know the address of  
23 the residence as we sort of put together a  
24 plan and identify affected neighborhoods.

1 Many times there are different Internet-type  
2 research tools and directories that you can  
3 go to to find current names for residents.  
4 Often it takes actually getting out and  
5 talking to neighbors or going door to door to  
6 get that information. So we would start  
7 with, and we would expect the responsible  
8 party to start with, resources that are  
9 available research-wise and then, you know,  
10 do follow-up that would be reasonable to  
11 identify the occupant.

12 One of the things we heard from  
13 our citizens that have been involved in the  
14 development with our Right-To-Know  
15 subcommittee and actually living through some  
16 contamination issues of their own is that  
17 it's very important to try and identify the  
18 occupant by name or by family and address  
19 correspondence to them as such. So that  
20 would be our -- We would make a good faith  
21 attempt to do that. And if all else fails --  
22 as stated in testimony, we've had situations  
23 where we can't identify a particular  
24 occupant -- again, we know the address, and

1 we would mail it to a resident at that  
2 particular location.

3 MR. GIRARD: Can you mail things like  
4 that certified, or you'd just mail it?

5 MR. NEIBERGALL: You would mail  
6 them -- I think one of our original drafts of  
7 the rulemaking proposed a certified return  
8 receipt type of situation. But we discussed  
9 that throughout the outreach process and felt  
10 that that was overly burdensome, and we don't  
11 often go to that length in Agency  
12 correspondence.

13 The other thing that we're trying  
14 to do with notification is work with the  
15 local governments. And in this case, a lot  
16 of times between the State Department of  
17 Public Health, we would be working with the  
18 local county health department. They are  
19 there in the community or nearby in the  
20 county, and so we would look to them to  
21 provide guidance on how best to get out that  
22 information. But again, the real key here is  
23 to put that information in the hands of  
24 people that are potentially affected so they

1 can make informed choices.

2 MR. GIRARD: Thank you.

3 MS. ANTONIOLLI: And you'd say, with  
4 interested parties, that the Agency usually  
5 puts that same effort into finding out who  
6 the interested, maybe, groups are or citizens  
7 who are not in the area?

8 MR. NEIBERGALL: That's correct. As  
9 far as the contact list, in the situation  
10 where we are looking at a broader  
11 environmental impact and we wanted to --  
12 asking the responsible parties or ourselves  
13 to reach out to those that are interested, a  
14 lot of times it requires, you know, hitting  
15 the bricks and going to the community,  
16 talking to the local leaders, either the  
17 actual elected officials or maybe there are  
18 recognized community leaders, church leaders,  
19 other folks that know the community, know the  
20 neighborhoods, and finding out are there  
21 groups, active groups, in the area. We  
22 have -- We work with a lot of different  
23 environmental groups and civic groups or  
24 neighborhood groups; so if we have one

1 facility in that community, we may even have  
2 knowledge of other groups that are already  
3 active or were active on other sites or other  
4 issues. And so we would -- Of course the  
5 Office of Community Relations would provide  
6 that information to a responsible party,  
7 saying here's a good starting point. But a  
8 lot of times it's important to just survey or  
9 really interview folks in the area to have an  
10 understanding of the kinds of groups that  
11 might be interested.

12 Carol Fuller works on these kinds  
13 of site-related notices. Do you want to add  
14 anything at all?

15 MS. FULLER: Yes, I would like to add  
16 just a little bit -- Carol Fuller, Office of  
17 Community Relations -- on the issue of owners  
18 versus occupants. Some of the tools that are  
19 out there -- for instance, if a person who is  
20 operating under Board rules to do a response  
21 action decides to use one of these mailing  
22 lists provider services, that is generally  
23 going to have the names of the occupants who  
24 live at a certain address, not the owner. It

1           may or may not be recently updated. You'll  
2           find that out. That's generally going to  
3           give you who lives there. And then if you  
4           need the owner of record because the law  
5           requires we notify the owner of record, that  
6           can be found out, I guess everybody knows,  
7           through the county tax assessor's records.

8                         So there's more than one way to go  
9           about this. Sometimes it's a narrative  
10          process. But as Kurt mentioned, there are  
11          Internet search tools available to find out  
12          who's living at an address. We've certainly  
13          used those over the years. And then as far  
14          as the additional interested parties, many  
15          times when we do reconnaissance around a  
16          given site and just talk to perhaps the mayor  
17          or the county health official, they'll let us  
18          know what concerns have come up about the  
19          site, and we may find out through talking to  
20          local officials that there's a -- say, a  
21          nursing home nearby that may not be  
22          physically impacted, but they would be  
23          concerned. If they see people doing work,  
24          they would want to know how to explain this

1 to their residents in their facility because  
2 they have a responsibility for them.

3 MR. JOHNSON: So you would anticipate  
4 the responsibility designee doing all the  
5 research needed to identify these folks?

6 MR. NEIBERGALL: Yes.

7 MR. JOHNSON: Ultimately you guys are  
8 going to be responsible, right? I mean, when  
9 it comes down to it, if they don't do it  
10 right or nobody volunteers to take on this  
11 task, you're going to be doing it?

12 MR. COBB: That's correct.

13 MR. NEIBERGALL: That's correct, yes.

14 MR. JOHNSON: How much time -- I guess  
15 give me the rationale. I wasn't at any of  
16 these stakeholder meetings or the outreach.  
17 Give me the rationale that you came up with  
18 to have this responsibility designee or  
19 responsible party in charge of this under  
20 your supervision.

21 MR. NEIBERGALL: Well, I guess I would  
22 say the Act defines this opportunity.

23 MR. JOHNSON: Oh, okay.

24 MR. COBB: Yeah, that was statutory in



1 nature.

2 MR. JOHNSON: That debate was on the  
3 house floor.

4 MR. PHILLIPS: And when the  
5 legislation was being put together, I  
6 think -- One of the features of this bill,  
7 94-314 that actually made it through versus  
8 some of the other bills that were proposed  
9 that did not was that this bill allowed us to  
10 take a look at these sites on a site-by-site  
11 basis and didn't mandate a particular  
12 procedure for every site, you know, a  
13 cookie-cutter approach, which we felt would  
14 not provide the public with the best type of  
15 notice. We felt that you really need to take  
16 a look at these sites individually and try to  
17 tailor the type of notice, the extent of  
18 notice, to the site in question.

19 And also, that type of flexibility  
20 was built into this, that some of these sites  
21 may require the Agency to issue the notice  
22 itself because the timing of it, that people  
23 are drinking the water, for example, and  
24 you've got to get that notice out right away;

1           whereas, some of these other sites that  
2           notice might be required, that might be a  
3           threat, they're not drinking the water now,  
4           they may -- you know, projected model or  
5           whatever, in a couple months from now they  
6           may be at risk, where there's some time to  
7           afford a party the opportunity to do this if  
8           they want to do it.

9                         So there may be some time for some  
10           of these sites that's available for us to go  
11           through this process. So that was really the  
12           thought process.

13                        MR. COBB: I have something to add to  
14           this. Scott, as we were working on  
15           development of the legislation, we were, in  
16           fact, working with a particular site, Kurt  
17           and I were both involved in it; and in this  
18           case, this was a precursor to the law, but we  
19           had gone through the Downers Grove and Lisle  
20           experiences. And we were indicating to the  
21           party that Illinois EPA is going to be doing  
22           this notice, and immediately they -- And  
23           remember, one of the intents of the notice is  
24           to fill the gap of no monitoring for private

1 wells, for example. It's a notice -- For  
2 example, let's say there's a threat. We  
3 recommend -- in some cases, the minimum  
4 bottom line is that we recommend you sample  
5 your wells for these volatile organic  
6 chemicals.

7 This particular example that we  
8 worked with while we were working on the  
9 legislation, we more or less indicated we  
10 were going to do the notice, and they turned  
11 around and sampled all of the wells the very  
12 next day. So that, in fact, is the ultimate.  
13 They actually went out at their own expense  
14 to determine the threat to the wells by  
15 sampling all of the wells and then held a  
16 public availability session that we  
17 participated in. So that, in fact -- As we  
18 were developing this legislation, we had some  
19 of those experiences; and this, in fact,  
20 would -- you know, you could pull this out in  
21 that situation and achieve the intent of  
22 Right-To-Know. Instead of just recommending  
23 sampling, in fact, the company may decide to  
24 just go ahead and sample the wells. That's

1 better even than notice.

2 MR. RAO: Just to follow up to  
3 Mr. Johnson's question, when you say that  
4 this Act and the rules gives the Agency  
5 flexibility to, you know, decide when to  
6 provide notice, are -- is it once you find  
7 out there is off-site migration in a soil or  
8 groundwater contamination, does that  
9 automatically produce notice requirement?

10 MR. PHILLIPS: Well, the flexibility  
11 isn't to when we provide notice. That's very  
12 specific. That's 25d-3(a) and (b). Where  
13 the flexibility lies is when we take a look  
14 at the release itself and whether or not  
15 there is time for us to actually go through  
16 this process of offering the responsible  
17 party the opportunity to issue the notice and  
18 get their community relations plan activity  
19 approved. In some sites there may be that  
20 time available; some sites there may not be.

21 MR. RAO: Thank you.

22 MR. COBB: Just to add to that,  
23 Dr. Rao, I think that it might be based on  
24 the hydrogeology of the situation. You know,

1 is the contamination just in the saturated  
2 zone and at the water table? Has the plume  
3 moved next to the property boundary? Has it  
4 already moved off site? As Mr. Phillips  
5 indicates, it's a site-specific evaluation  
6 process. And there may be certain  
7 circumstances where we have an opportunity to  
8 work on that, and others we better move and  
9 get the notice out as soon as possible.

10 MR. RAO: We have a few questions for  
11 the Agency based on the proposal.

12 MS. LIU: Good morning. In the  
13 Agency's statement of reasons, the Agency  
14 explains that the difficulty with the  
15 statutory requirement of all of this is that  
16 it affects as many as 18 to 20 parts of the  
17 rules, and so you propose this overarching  
18 new part. And we were wondering if you could  
19 identify for us what those 18 to 20 parts  
20 would be.

21 MR. RAO: You don't have to do it  
22 right now.

23 MS. ANTONIOLLI: And also, if you  
24 think eventually down the road it would be

1           worthwhile to add citations to this part and  
2           to those parts, or if you considered that and  
3           decided it wasn't worth it to do it that way.

4                   MS. LIU: The possibility being that  
5           in future rulemaking, as those parts are  
6           opened up, this could be something to keep  
7           note of as the opportunity arises.

8                   MR. PHILLIPS: Going into the  
9           individual parts was one of the models that  
10          we were thinking about early on in this  
11          process before we settled on this particular  
12          approach. But we felt that that was a lot  
13          more complicated than what it really needed  
14          to be to accomplish what the purpose of this  
15          statute is. We can try to identify some of  
16          those areas where these rules may, in fact,  
17          affect the other portions of the rules. To  
18          some extent, I think we can identify those.

19                   MR. RAO: Another follow-up to that:  
20          Does the Agency foresee any problems or  
21          concerns that this proposed part applies  
22          across a number of different programs of the  
23          Agency in terms of implementing the Board  
24          rules under the various programs? Do you

1           foresee any concerns or problems how the  
2           rules are implemented?

3                   MR. KING:  The simple answer is no.  
4           We'll figure out a way to make it work.  For  
5           the land programs identified, there's three  
6           key areas where we need to be focused on.  
7           We've developed internal procedures as to how  
8           we bring sites forward to make notice  
9           decisions and have notable trigger into  
10          Subpart C.  And we're in the process of  
11          gearing up to make sure that this works  
12          effectively.

13                   MR. COBB:  And I'll add to that, too.  
14          In the Bureau of Water, similarly we've  
15          developed a strategy for anything that we see  
16          via inspection or that may be permitted under  
17          a State operating or construction permit.  
18          And, of course, Section 39 of the Act  
19          requires compliance with Part 620 and 12(a)  
20          of the Environmental Protection Act.

21                   So we do have certain sites under  
22          State construction and operating permits that  
23          have groundwater monitoring.  And, in fact,  
24          we're evaluating those sites to determine

1           which may pose a threat to off-site potable  
2           wells. So there was kind of a stand,  
3           similarly, to what Mr. King indicated for the  
4           Bureau of Land for the Bureau of Water.  
5           We've also gone through a process of training  
6           our staff. One of the keys pieces of this is  
7           using the Internet GIS system that's  
8           available on the Agency's website that can  
9           help identify where off-site wells are,  
10          basically hydrogeologic information,  
11          et cetera. So we've trained regional staff  
12          and we've trained internal staff in the  
13          Bureau.

14                         And similarly, the director has  
15                         established a multimedia contaminant  
16                         evaluation group whereby the Bureau, after  
17                         screening sites, can make recommendations to  
18                         do notifications. So we're trying to  
19                         coordinate in that fashion.

20                         I, like Mr. King, say no, or we're  
21                         working to make it so that we don't have any  
22                         issues.

23                         MR. RAO: Looking at your errata  
24                         sheet, Section 1505,210(c), some of the



1 changes made to this subsection, you replace  
2 a reference to Class I groundwater quality  
3 standards to groundwater quality standards at  
4 Part 620, Class I, III, and Class II  
5 groundwater standards. Could you please  
6 explain the rationale for the change?

7 MR. KING: I was a little slow getting  
8 to the page.

9 MR. RAO: It's 1505.210(c).

10 MS. ANTONIOLLI: It's on page 3 of the  
11 errata sheet.

12 MR. KING: And the question ...

13 MR. RAO: The proposed rule referred  
14 to, you know, the applicable Class I  
15 groundwater quality standards in reference to  
16 the TACO rules, and I think the errata sheet  
17 changed that to general groundwater quality  
18 standards. And I was wondering what was the  
19 rationale.

20 MR. COBB: I think I know the answer  
21 to that one. Dr. Rao, if you go to the --  
22 Let's see. It's almost the middle of the  
23 paragraph, you see the example, e.g., Class I  
24 and Class III?

1 MR. RAO: Mm-hmm.

2 MR. COBB: Because those are the, if  
3 you recall, the Board's groundwater quality  
4 standards. The nondegradation standards, if  
5 you will, of Section 620.301 apply to Class I  
6 and Class III. So then later on, after that  
7 example was given, it was just -- you know,  
8 for conservation of the words, merely just a  
9 drafting, not having to spell it all out.  
10 It's intended to be Class I and Class III.  
11 But you're right, later on it just says 620,  
12 but what we're talking about is Class I and  
13 Class III. Remember, Class III is --

14 MR. RAO: Special resource.

15 MR. COBB: -- special resource  
16 groundwater, if you will. If you go to the  
17 nondegradation provisions of the Board's  
18 groundwater quality standards, Section  
19 623.01, for example, applies to Class I and  
20 Class III. And until more site specifics --  
21 If an area is designated as Class III  
22 groundwater, and we have those areas in the  
23 state with the dedicated nature preserves,  
24 the standards that apply until different

1 standards are developed are the Class I  
2 standards, if you will. So 12(A), the  
3 concept of threat, applies to Class I and  
4 Class III.

5 MR. RAO: There's some other sections  
6 in the rule that still refer to just Class I  
7 standard. Should those be changed?

8 MR. WIGHT: We'll have to take a  
9 second look at that. As the primary drafter,  
10 sometimes I relied on context and didn't  
11 always repeat the same language. But we'll  
12 go back and take a look at it.

13 MR. RAO: Just for making sure the  
14 rules are consistent.

15 MS. LIU: While you've got that page  
16 open, I've got a question on 210(c)(1).  
17 There's a reference to, quote, the extent of  
18 modeled groundwater contamination shall be  
19 determined using the procedures of 35  
20 Illinois Administrative Code 742 or another  
21 model or methodology, unquote.

22 Does the phrase "extent of modeled  
23 groundwater contamination" refer to the  
24 extent of contamination at the present time,

1 or could model refer to sometime in the  
2 future anticipating that it will migrate at a  
3 certain rate?

4 MR. KING: The 742 model is an  
5 infinite time model, so you really don't have  
6 to take that into account. It assumes you've  
7 got an infinite amount of time and this is  
8 the extent of the contamination as far as it  
9 can possibly go.

10 MS. LIU: Thank you.

11 MR. COBB: Gary, that does include  
12 predictions.

13 MR. WIGHT: Right. That's correct.

14 MS. LIU: At various time periods, one  
15 month, ten years, that kind of thing?

16 MR. COBB: Correct.

17 MR. RAO: Mr. Wight, there may be one  
18 more typographical error maybe you can take a  
19 look at. It's the same section, 1505.210(c),  
20 Subsection 2(a) and (b). In the errata  
21 sheet, there's a phrase which reads "of the  
22 measured and modeled extent of the  
23 groundwater contamination." I was wondering  
24 whether it should be "measured or modeled."

1                   MR. WIGHT: Yeah. That's an issue I  
2 struggled with, and I'm not always sure how  
3 to approach that. You think "or" would be  
4 preferable to "and" at that point?

5                   MR. RAO: Yeah, because I don't know  
6 under TACO, when they do the modeling to  
7 predict the extent of the plumb, do they  
8 also measure a sample of the groundwater?

9                   MR. KING: Yes. The answer is yes.

10                  MS. ANTONIOLLI: They do both.

11                  MR. RAO: So can you explain a little  
12 bit more what this measure or model means in  
13 the context of this?

14                  MR. KING: I mean, to some extent the  
15 word "measured" there is superfluous in the  
16 sense that if you have contamination, you're  
17 modeling how far it's going to go and you're  
18 looking at a future time. The modeling is  
19 always going to show some distance further  
20 than the measured distanced. So I think we  
21 just -- we included measured because you  
22 could be in a situation where there was, in  
23 fact, a -- a measured sample was taken of  
24 groundwater off site and was found within a

1 setback, which certainly for us would have a  
2 higher level of expectancy as far as notice  
3 getting out more quickly than if it was a  
4 model situation.

5 MR. RAO: I had a question about  
6 Section 25b-3(c) of the Act. Section  
7 25b-3(c) sets forth that the Agency may allow  
8 a responsible party to provide Agency  
9 approved notices in lieu of notices required  
10 to be given by the Agency only at sites which  
11 the responsible party has implemented a  
12 community response plan. Will you please  
13 explain the statutory intent regarding the  
14 implementation of a community response plan  
15 and comment on whether the proposed Subpart C  
16 is consistent with the statutory  
17 requirements? Basically what it means when  
18 they say the responsible party must implement  
19 a community response plan.

20 MR. PHILLIPS: The way we structured  
21 the proposal and our reading of the statute  
22 is that we look at the notice and the  
23 community relations plan as kind of a package  
24 arrangement. We don't want a situation

1           where -- You can't isolate the notice from  
2           the follow-up work that's needed as specified  
3           in the community relations plan, that both  
4           have to be approved by the Agency. Otherwise  
5           you could have a situation where a party  
6           could have an approved notice, issue the  
7           notice, but there's no follow-up work. The  
8           public wouldn't know who to contact or  
9           couldn't contact the party.

10                         The person that is going to be  
11           engaging in the notice activities in lieu of  
12           the Agency, it's imperative that they have  
13           the internal process set up, the  
14           infrastructure to support the notice that  
15           we're going to be issuing.

16                         So I guess the answer to your  
17           question is, yes, we believe this is  
18           consistent with the statutory language  
19           because the notice and the community  
20           relations plan portion of this go hand and  
21           hand. They have to.

22                         MR. RAO: Okay. The reason I'm asking  
23           this question is I was looking at Subpart C,  
24           which is a tiered approach. You know, you

1           have one section that I think just deals with  
2           the notice for five or less. And for that  
3           part, you don't have anything termed that  
4           community response plan. They just do a  
5           notice. So I was just asking you the  
6           question to see if you consider the notice  
7           requirements to meet the statutory  
8           requirements.

9                         MR. PHILLIPS: Yes. Kurt, do you have  
10           anything to add to that?

11                        MR. NEIBERGALL: In the tiered  
12           situation with the five or fewer affected or  
13           potentially affected properties, the fact  
14           sheet is sort of the basic communication  
15           tool. There is, in the fact sheet, as Scott  
16           pointed out, information about who to contact  
17           with further questions. And often when you  
18           put out information, technical information  
19           like that or information that people don't  
20           readily understand, there's quite a bit of  
21           personal follow-up to make sure they have all  
22           their questions answered.

23                        MS. ANTONIOLLI: So this may be a  
24           formality, but just to call -- Because in



1           both situations the procedure wouldn't  
2           change; but if you called the instances where  
3           there's that limited -- the fewer properties  
4           affected, also a community relations plan and  
5           then just had two different kinds, that at  
6           least would follow the statutory language, I  
7           think.

8                         MR. NEIBERGALL:  What I would point  
9           out just to sort of differentiate the two,  
10          the community relations plan for the broader  
11          effort is not only the fact sheet.  It's a  
12          given in both situations.  But consistent  
13          with 25b-7, in maintaining that two-way  
14          dialogue, that outreach, with the community,  
15          it also would have a strategy for additional  
16          public meetings or informational availability  
17          sessions, living room meetings.  It could  
18          have site tours.  It could have a number of  
19          activities or events that would help the  
20          community understand the situation and have  
21          an opportunity to get answers to the  
22          questions they have beyond just the fact  
23          sheet.

24                         MS. ANTONIOLLI:  And there would

1 definitely be a more extensive program there;  
2 but under the Act, it says that the  
3 notification can't go out unless there's been  
4 an approved community relations plan.

5 Yes, do you want to introduce  
6 yourself?

7 MS. HIRNER: I'm Deirdre Hirner,  
8 executive director of the Illinois  
9 Environmental Regulatory Group. I've not  
10 been sworn in, so you might want to do that.

11 MS. ANTONIOLLI: Would you like to be  
12 sworn in now? Okay.

13 (Witness sworn.)

14 MS. HIRNER: Regarding the  
15 legislation, the question you're asking about  
16 the community relations plan in 25d-3(c) of  
17 the legislation, before it got to the Agency  
18 level to write the rules and regulations, in  
19 negotiating the terms of the legislation  
20 itself, there were a number of industry  
21 representatives who were involved in that  
22 negotiation. And a number of the companies  
23 have longstanding community relations plans  
24 that they have had for many, many years, and

1           they asked this language be placed into the  
2           statute in order to give them the ability to  
3           use their existing community relations  
4           processes in order to be able to help the  
5           Agency provide notice.

6                         So this was actually placed in  
7           with a separate thought process behind it  
8           from the subsequent 25d-7 provisions. So  
9           that's a little -- If that may shed a little  
10          light, that's why this particular piece is in  
11          the statute.

12                        MR. RAO: It does. We were wondering  
13          why it was written that way. Thank you very  
14          much.

15                        MS. FULLER: If I can just add  
16          something to that discussion? On the Tier 1  
17          approach, which is the site that would have  
18          five or fewer properties involved, we were  
19          looking at, and I believe the thought process  
20          is, that in the act of putting together the  
21          questions and concerns in the fact sheet, you  
22          actually have to do the legwork. You have to  
23          find out from the citizens at the site; and  
24          in this case it would be a small group,

1           probably talking to them one on one.  So  
2           you're doing community relations just to  
3           develop the fact sheet.

4                       MS. ANTONIOLLI:  So practically it's a  
5           descriptive term for those additional  
6           properties that you'd have to contact.

7                       MR. COBB:  I think the term implement  
8           is key because it's not just a plan, per se,  
9           it's an implemented plan.  So it's an action.  
10          As D.K. said, there are sites that already  
11          have implemented, and then there are other  
12          sites that will implement in developing the  
13          fact sheet.

14                      MS. ANTONIOLLI:  That does make a  
15          difference.

16                      MR. COBB:  So it's an action verb  
17          there.

18                      MS. ANTONIOLLI:  As long as we're on  
19          that Section 25d-3(c), I had a question about  
20          those requirements -- or in the statutory  
21          language, (c) 1 through 5 there.  The statute  
22          lays out pretty specific items that the  
23          notice must require -- must contain.  So even  
24          looking at Section 1505.310, again, notes

1           that when contact lists and fact sheets are  
2           sent out when there's a limited number of  
3           properties involved, must those notices also  
4           contain 1 through 5, the information?

5                   MR. PHILLIPS: In 25d-3, the language,  
6           those five -- those six items there that are  
7           listed on there say notice issued under this  
8           section may contain the following  
9           information. So there is some flexibility  
10          there in terms of what is to be included. I  
11          mean, this is a good construct here, these  
12          six items, good basic information, but it's  
13          not mandatory under the statute given the  
14          site-specific circumstances. So I think  
15          there's flexibility there.

16                   MS. ANTONIOLLI: Because I was, then,  
17          looking at the section 1505.310(b)(2) and  
18          letters A through H under (b)(2), and I  
19          didn't -- so there's flexibility there with  
20          what's required to be in those fact sheets,  
21          but I didn't see, you know, a clear  
22          identification of the contaminant released or  
23          suspected to have been released that's talked  
24          about in the statute as part of those A

1 through H requirements.

2 MR. NEIBERGALL: I guess I would just  
3 suggest that the nature and extent of  
4 contaminants identified on site and off site  
5 where the release occurred, that defining the  
6 nature and extent would be clearly  
7 identifying the contaminants of concern.

8 MS. ANTONIOLLI: And sometimes as far  
9 as Board rules we take the statutory language  
10 and include it in there, and that may be  
11 just -- you just may be assuming that all  
12 that information is included in these  
13 A through H items. And then the other -- the  
14 name and address of the site or facility  
15 where the release occurred or is suspected to  
16 have occurred, I assume that information  
17 would be part of the notice, but it's also  
18 not -- I guess under -- See, we have G, the  
19 name of the representatives of the business,  
20 site, or facility; we don't have a clear  
21 reference to the name and address of the  
22 site. So even though it may be part of the  
23 application anyway, it just might be helpful  
24 to kind of use the same language that's in

1 the statute.

2 MR. RAO: Looking at Section  
3 1505.315(b), this section sets forth a model  
4 community relations plan which is provided in  
5 Appendix A, the proposal. It says that this  
6 model would be appropriate for a more complex  
7 site. Would it be helpful to the regulative  
8 community if the rules provide a model for a  
9 more typical site, not a complex site? And  
10 also, can you please explain a little bit  
11 about what you mean by a complex site from a  
12 community relations perspective?

13 MR. JOHNSON: Say that again, Anand.  
14 I didn't --

15 MR. RAO: Explain a complex site and  
16 give some examples of a complex site.

17 MR. NEIBERGALL: To answer the first  
18 part of the question, if I understand it  
19 correctly, we have the two-tiered approach  
20 with the five or fewer properties. This  
21 would be the five or more properties, more  
22 complex, broader impacts type of site. That  
23 is the only -- As we've proposed it, that is  
24 the only type of site that would require a

1 community relations plan. So for the five or  
2 fewer affected properties, we're suggesting  
3 that, as Carol, I think, pointed out earlier,  
4 you sort of go through the community  
5 relations planning process without developing  
6 an actual written plan that needs to be  
7 submitted to the Agency for that category and  
8 size.

9 MR. RAO: So when you say complex,  
10 you're basically talking about five or  
11 greater number of affected --

12 MR. NEIBERGALL: Yes. Again, we  
13 wrestled with that in work group  
14 deliberations, you know, how to make a cut  
15 off here. And I think it's just sort of  
16 based on our experience. The more complex  
17 sites -- You could have five properties that  
18 cover the state of Wyoming, and that would be  
19 probably complex. But, you know, generally,  
20 we're looking at fewer impacts around the  
21 site. And as a general concept, as the scope  
22 of the potential problem expands, that there  
23 be more interest in the community to have  
24 knowledge and information about the



1 activities and site.

2 MS. FULLER: And if I could just add  
3 something, our definition of the more complex  
4 site, it might be, you know, the physical  
5 complexities, the hydrogeology that Mr. Cobb  
6 was talking about earlier; that it's just  
7 difficult to ascertain quickly where the  
8 contamination might go and who it might  
9 affect, so it takes time to do. And  
10 meanwhile, you're having ongoing dialogue  
11 with the community.

12 The other thing is, because there  
13 might be a lot of people concerned at  
14 different levels that may have private wells  
15 or may not have private wells, not sure if  
16 they're affected or not, if the time element  
17 tends to be a long time, you're going to have  
18 to talk to people at different levels and  
19 have public outreach meetings and things that  
20 would described in the community relations  
21 plan, which makes it more necessary.

22 MS. LIU: Because of this time element  
23 issue that you mentioned and you don't always  
24 know what's going to happen, Ms. Hirner, in

1 her prefiled testimony expressed the concern  
2 that you don't always know what's going to  
3 happen when you issue these facts sheets, in  
4 particular what the closure documentation  
5 would look like. She requested that the  
6 proposal contain some sort of recognition  
7 that the documentation might not be ready on  
8 the initial forms. Is there some appropriate  
9 way to do that?

10 MR. NEIBERGALL: Mr. Wight was  
11 indicating, and I think our response is, we,  
12 again, dealt with that in work group  
13 discussion and listened carefully to the  
14 outreach comments we received. And as we  
15 develop a fact sheet, any given fact sheet --  
16 and this would be the Agency's approach  
17 also -- the idea here is to give the public  
18 timely and accurate information. If that's  
19 not available at the time that it's necessary  
20 to do that fact sheet, we would anticipate  
21 that, and I believe the language reflects, we  
22 would ask the responsible party, as we would  
23 do, to do a supplemental fact sheet at the  
24 time those kinds of decisions were made and

1           any other significant information that the  
2           public needed to know about.

3                       MR. WIGHT: The references he's  
4           referring to are at 1505.310(b)(2), just  
5           above the provisions A through H that we were  
6           talking about a question or two ago. And  
7           you'll find similar language in 1505.315 for  
8           the fact sheet there as well. But you'll see  
9           at the end of the introductory language under  
10          Subsection (2) and just prior to Subsection  
11          (2)(a), the fact sheet and any required  
12          updates shall contain at a minimum the  
13          following information to the extent  
14          available. And I think that to the extent  
15          available sort of qualifies the timing  
16          issues.

17                       Now, I know D.K. may be would like  
18          some additional language in there, and she  
19          can express that if she does. But this was  
20          our attempt to accommodate that. There are  
21          times when we know not all the information  
22          will be available. If it's not available,  
23          there's another provision that says you have  
24          to explain why it's not available and when

1           you estimate it might be available, and then  
2           as Kurt pointed out, update the fact sheets  
3           as new information of a material nature  
4           becomes available. So it's an ongoing  
5           process, and I think we've tried to  
6           accommodate that in the language here.

7                           Does that answer your question?

8                   MS. LIU: Thank you. For those times  
9           where a responsible party implements their  
10          own community relations plan and is allowed  
11          to issue Agency notices, would the Agency  
12          review each notice, each piece of community  
13          outreach before it's allowed to go public?

14                   MR. NEIBERGALL: Yes. The short  
15          answer is yes. We would expect that as a  
16          community relations plan developed or as a  
17          fact sheet developed or any other kind of  
18          significant outreach, that the Agency  
19          community relations coordinator, in  
20          consultation with other project team members,  
21          would review various efforts, either written  
22          or event-related, and provide input into  
23          those.

24                   MR. WIGHT: I think the regulatory

1 provision that addresses that is 1505.325,  
2 the submission of review of fact sheets and  
3 community relations plans.

4 MS. LIU: In each one of these cases,  
5 would there be at least one initial  
6 notification that came from the Agency itself  
7 on official Agency letterhead before a  
8 company is allowed to start doing these  
9 things on their own?

10 MR. NEIBERGALL: I'll go ahead and  
11 answer the question. We wouldn't anticipate  
12 it. Although in our development with our  
13 outreach work groups and Right-To-Know  
14 subcommittee over the last year and a half, I  
15 think that citizens involved and others had  
16 expressed that the ultimate would be to have  
17 an official-looking government letterhead,  
18 local governmental letter correspondence; and  
19 that's what we would work towards if the  
20 Agency was doing the notice, to work with all  
21 levels of government to get the information  
22 packaged correctly and out to people that are  
23 potentially impacted.

24 In the case where the responsible

1 party is given the opportunity, you know, we  
2 could certainly make suggestions, but it  
3 would come from that company. And of course  
4 in any kind of letter or fact sheet, there  
5 would be information about Agency contacts at  
6 our level or the Department of Public Health  
7 or at the local level so people would have  
8 government contacts to follow up with if they  
9 so choose.

10 But, no, the correspondence  
11 wouldn't be on our letterhead in that  
12 situation.

13 MS. LIU: In your outreach meetings,  
14 was there any concern from citizens groups  
15 that if a letter didn't come in an  
16 official-looking capacity, someone might  
17 simply disregard it?

18 MR. COBB: I'll speak to that. If you  
19 look at the statute under Section 25d-3(c),  
20 it required us to go through and lay out  
21 methods by which notices that the Agency  
22 would be giving, we were required to consult  
23 with members of the public and citizens.  
24 And, if you will, in Attachment 3 of my

1           prefiled testimony, you'll see the outcome of  
2           that consultation process.

3                         And, in fact, Ms. Hirner,  
4           Ms. Dinschel, and Ms. Muniz participated in  
5           this development of a resolution that lays  
6           out the methods of notice. So this, in fact,  
7           does kind of lay out a template by which  
8           notices are given. And as we're reviewing  
9           notice or plans that are going to be sent  
10          out, I'm sure we would look to see if it  
11          meets the expectations of this resolution.

12                         This didn't require rulemaking.  
13          It simply required a consultation process, so  
14          we chose to document this via resolution and  
15          as a subcommittee of the Government of  
16          Groundwater Advisory Council. I'm hoping  
17          maybe that sort of helps answer the question.  
18          It is one of the key provisions that we heard  
19          about before and after the law. We worked on  
20          its pilot notification processes before the  
21          law was even enacted or shortly thereafter it  
22          was enacted, and official-looking letterhead  
23          is something that's necessary. Now, that may  
24          be coming from a company or, maybe as we're

1 looking at that, we haven't gotten to one of  
2 those yet. Maybe they're indicating they're  
3 working with all parties, including us, and  
4 maybe that's described in this letter.  
5 That's the way I would envision that.

6 MR. NEIBERGALL: I would only add that  
7 I think it's an important point, that direct  
8 notification is one way to provide notice to  
9 citizens. In working with companies or in  
10 our own efforts, the Agency's own efforts, we  
11 would look for multiple ways to get that  
12 message out, including contacting local media  
13 for articles. And hopefully we can get the  
14 importance of any kind of issues before the  
15 public and the need to do well testing, for  
16 instance, through just multiple avenues and  
17 make sure that people have contacts at all  
18 levels of government to follow up with their  
19 questions besides a company under their  
20 notice work.

21 MR. COBB: I would just add that on  
22 page 31 of Attachment 3 of my prefiled  
23 testimony, in the recommendations for methods  
24 by which notice shall be provided, just take



1 a look at the third paragraph from the top of  
2 page 31: The methods by which notice is  
3 given should apply to both IEPA-issued  
4 notices and responsible party-issued notices  
5 under an approved community relations plan.  
6 The notification methods may be applied  
7 singly or in combination to effectively and  
8 efficiently reach the target audience, taking  
9 site-specific considerations into account.  
10 The methods include personal notification,  
11 public meetings, signs, electronic  
12 notification, print media, actions taken by  
13 local responsible bodies and units,  
14 activities of citizen advisory groups, and  
15 communications through responsible party  
16 community outreach programs.

17 So that just further emphasizes  
18 what Mr. Neibergall indicated and, in fact,  
19 is laid out here.

20 MS. ANTONIOLLI: Mr. Neibergall, you  
21 talk about a pilot project that happened in  
22 the summer of 2005 in your prefiled  
23 testimony. It starts on page 11. Can you  
24 talk a little bit about that, like how many

1 notices were sent out and responses that you  
2 received from it?

3 MR. NEIBERGALL: Yes. I'd give just a  
4 real quick overview, but then I'd let Carol  
5 add to that since she was directly involved  
6 as sort of the community relations  
7 coordinator on this pilot work, as well, I  
8 would add, that several of the citizens that  
9 are here today who participated in our  
10 Right-To-Know outreach committee.

11 But basically, without going into  
12 too many details about the South Chicago  
13 Heights -- the technical details about the  
14 South Chicago Heights notification, our  
15 Agency worked very closely, as we always do,  
16 with the Illinois Department of Public Health  
17 and, with this particular site, the Cook  
18 County Health Department, to put together a  
19 package, a notification package, for the --  
20 sort of the target area for citizens with  
21 private wells around the sites that had  
22 identified problems.

23 And the package includes a cover  
24 letter which really tells people what they

1           need to know right away. I believe the  
2           package was mailed to approximately 2,200 or  
3           2,300 residents in this area of concern. And  
4           as Mr. Cobb pointed out in previous  
5           testimony, we started on this notification  
6           effort with the GIS database work, which has  
7           indicated sort of the level of private wells  
8           in the area without going out and doing  
9           neighborhood-to-neighborhood reconnaissance  
10          to exactly identify those wells. In this  
11          instance we sort of bounded the area of  
12          concern, worked with the local Cook County  
13          folks and, I believe, public works to sort of  
14          identify the neighborhoods and develop,  
15          through using a vendor that could give us a  
16          database of names in that area of concern, a  
17          mailing list and then pare it down and mail  
18          this package, which includes the notice  
19          letter telling people what they need to know.  
20          It starts right off saying that if you are on  
21          a public water supply, you don't need to be  
22          concerned with this; we're at targeting folks  
23          that have private wells in the area.

24                           In this case we went beyond -- we

1           did do a fact sheet with the notice letter.  
2           We sort of tried to explain the technical  
3           situation and what the concerns were. So if  
4           people wanted to read further beyond the  
5           notice letter and get a little bit more of  
6           the details, as some people like to do, they  
7           had that available. Of course there was  
8           contact information at all three levels of  
9           government for follow-up questions.

10                         We also decided in this case to  
11           have a public meeting, so notice of that was  
12           provided. And we actually held an  
13           informational meeting where the general  
14           public can come and talk to us. There was  
15           identified at the local county level a  
16           significant population of the area was  
17           Spanish speaking, so everything was  
18           translated and sent as a package together.

19                         So I think Carol can speak to  
20           the -- sort of the other thing we did with  
21           the notification, sort of pilot that we did  
22           here was to try and survey folks to see what  
23           they got out of this.

24                         MS. FULLER: We surveyed a portion --

1 I think we surveyed about 750 of the original  
2 addressees were who were mailed to in the  
3 2,300 contact list for the pilot project and  
4 asked them was the information enough, was it  
5 too much, were we overwhelming you, was it  
6 helpful, just all kinds of questions to find  
7 out if they felt satisfied that they had been  
8 provided the right kind of information at the  
9 right level, was it easily understandable.  
10 We also gave them a list of laboratories and  
11 asked some of those laboratories to  
12 participate in public meetings, answer  
13 questions about having private wells tested.

14 And the responses to the survey  
15 were very good. People felt overwhelmingly  
16 that the information provided was good. And  
17 I think it helped that we worked with the  
18 citizens as well as Cook County Health  
19 Department and Illinois Department of Public  
20 Health in developing to try to meet the needs  
21 of those folks. We also worked with, as Kurt  
22 mentioned, the public works operators for the  
23 three areas that we were dealing with, South  
24 Chicago Heights, Chicago Heights, and Steger.

1           They not only helped us to target the  
2           mailing, but they also let us know what  
3           concerns were out there about the water  
4           supplies and helped a little bit in our  
5           understanding of how to address the materials  
6           and develop the materials.

7                       MS. ANTONIOLLI: Thank you.

8                       MR. COBB: If willing, we have  
9           citizens here who participated; you may want  
10          to ask them for their impressions of the  
11          process too since they were part of that if  
12          you so desire.

13                      MS. ANTONIOLLI: Definitely. And I  
14          think at this time we'll take a short break,  
15          and we'll come back and finish up questions  
16          and hear from some people from the public and  
17          take more testimony. So it is about 11:41,  
18          and we'll come back at ten to.

19                               (A short break was had.)

20                      MS. ANTONIOLLI: We're back on the  
21          record. It is about five minutes to 12:00.  
22          We are continuing with a few questions for  
23          the Agency's panel.

24                               I have a few mostly procedural

1 items. Generally throughout the proposal --  
2 and granted, especially in subsection C, this  
3 is a voluntary program -- but the Board  
4 generally in rulemaking uses the term "must"  
5 instead of "shall." Would there be any  
6 objection to changing, where it's  
7 appropriate, the "shall" to "must"?

8 MR. WIGHT: No.

9 MS. ANTONIOLLI: And then generally --  
10 and this can be for all the witnesses, the  
11 time frame -- I think in Subpart C the time  
12 frame from beginning to end can end up being  
13 about a two-and-a-half-month period before  
14 the public is notified of the release or the  
15 contamination. Did you have any comments on  
16 this time frame from the public or anyone  
17 else during your outreach, or did it seem  
18 like a sufficient time frame for everyone  
19 involved?

20 MR. NEIBERGALL: There was  
21 considerable discussion because the statute,  
22 of course, for some of the statutory notices  
23 requires a 60-day window to get that notice  
24 done. And so we were -- you know, and,

1           again, that would be the Agency's -- if the  
2           Agency were to take upon the notification  
3           work itself once we determine that notice was  
4           necessary, we would try to strictly follow  
5           that. And, of course, allowing the  
6           responsible parties the opportunity to do  
7           this work and the coordination involved  
8           between the Agency staff and responsible  
9           party in crafting and issuing the notice  
10          would lead to a slightly longer time frame.

11                         I guess I would summarize our  
12          discussion as we don't think that that is  
13          unreasonable, the two-and-a-half-month period  
14          or the 90-day period to get it done. I would  
15          add that we had discussions that if there was  
16          an immediate threat that was discovered with  
17          credible scientific data, we would probably  
18          not offer, as I think earlier testimony  
19          indicated, the opportunity to the responsible  
20          party to do this work. In other situations  
21          like this, where we actually have confirmed  
22          levels of contamination in private wells at  
23          or near or above a particular standard, we  
24          have gone out and called potentially affected



1 or affected, in that case, families, gone  
2 door to door, left door hangers, and by other  
3 means get notice out to those folks about  
4 potential health impacts in working with the  
5 Department of Public Health and local county  
6 health departments.

7 If circumstances warrant, as I  
8 think was earlier testimony, we would allow  
9 the responsible party to do this work. But  
10 if the Agency deemed it was more of an  
11 immediate threat, we would take matters into  
12 our own hands. That doesn't mean we would  
13 not coordinate with the responsible party,  
14 though, make sure they were aware of  
15 everything we were doing.

16 MR. COBB: I just want to add to that.  
17 Under 25d-3(a), there is no time frame, so  
18 the 60-day piece is more with your automatic  
19 triggers, through your immediate removals,  
20 sealed orders, et cetera. We could even go  
21 faster. Depending on the impending nature or  
22 threat, we could move as fast as we can under  
23 the 25d-3 provisions.

24 MS. ANTONIOLLI: Okay.

1                   MR. WIGHT: I'd like to add to that  
2                   that in 1505.305(b)(1), you'll see that  
3                   Subpart C notice opportunities are basically  
4                   restricted to the 25d-3(a) sites. The (b)  
5                   sites do have that strict 60-day limit, and  
6                   those are more emergency circumstances. If  
7                   you read down to the 25d-3(b) sites, those  
8                   are removal actions and those sorts of things  
9                   that are more emergent. So with the strict  
10                  60-day time limit, you wouldn't be able to  
11                  comply with Subpart C within that 60 days, so  
12                  we basically limited Subpart C to the  
13                  Subsection A scenario, where you just  
14                  identify the contamination plume and know  
15                  enough about that to proceed under that  
16                  provision.

17                  MS. ANTONIOLLI: We're looking at  
18                  right now Section 1505.330 and 335. Anand,  
19                  would you look to --

20                  MR. RAO: I was just asking Amy if I  
21                  could ask you this on record. In section  
22                  1505.330 subsection (e), it states that the  
23                  Agency may, to the extent consistent with  
24                  review deadlines, provide the submitter with

1 reasonable opportunity to correct  
2 deficiencies. Would it be acceptable to the  
3 Agency if we changed that subsection to read  
4 "Agency will," or is that an option that the  
5 Agency has reserved for itself, in certain  
6 circumstances you would do it?

7 MR. WIGHT: Well, I think it's  
8 primarily a timing issue, and that's why we  
9 left it discretionary. It was mainly  
10 concerned about how quickly we felt we had to  
11 move in a certain situation. I think it's a  
12 general rule. We don't object to trying to  
13 work things out with responsible parties if  
14 we have a disagreement about the approach,  
15 but we didn't want to lock ourselves into a  
16 mandatory requirement to take the time to do  
17 that if we followed the fundamental  
18 procedures and time seems to be of the  
19 essence.

20 MR. RAO: Would it be possible for the  
21 Agency to add a few sentences in there as to  
22 when you will provide the submitter with a  
23 reasonable opportunity? The reason I ask is  
24 sometimes they ask the Board to explain; it's

1 better if you provide the language for this  
2 subsection.

3 And there's one more. Under  
4 1505.335(B)(2), it states that the Agency may  
5 monitor the implementation of approved CRPs.  
6 And from what Mr. Neibergall testified, you  
7 always monitor. So would it be acceptable to  
8 the Agency if we say the Agency "must"  
9 monitor instead of "may"?

10 MR. WIGHT: We certainly would go back  
11 and discuss that. Are you just asking us to  
12 take a second look at it? I think we would  
13 want to discuss the implications of that a  
14 little more thoroughly than to just give an  
15 off-the-cuff answer at this point.

16 MS. ANTONIOLLI: Sure. You can think  
17 about it.

18 MR. RAO: Thank you.

19 MS. ANTONIOLLI: And one last section  
20 to look, as far as my questions, and that's  
21 section 1505 -- this is of the errata  
22 sheet -- .320. And in the errata sheet there  
23 were some changes made to the section. And  
24 with the changes, I think that when we read

1 through it, it may be -- we may be able to  
2 clarify, actually, by just taking out part of  
3 that section. It says persons developing a  
4 CRP pursuant to Section 1505.315 of this part  
5 shall also establish a document repository  
6 for the purpose of displaying documents and  
7 providing copies of those documents. The  
8 document repository shall be established at a  
9 World Wide Web site unless -- and that's  
10 where, I think, we wanted to avoid having the  
11 possibility of having just a repository at a  
12 physical location rather than also at a World  
13 Wide Web site when there was -- when there  
14 was a request by an individual.

15 So what we would propose, I guess,  
16 is to end the sentence after World Wide Web  
17 site and eliminate "unless" to the end of the  
18 sentence so there was no either/or scenario.

19 MR. WIGHT: Okay. We'll look at it.

20 MS. ANTONIOLLI: Okay. Board members,  
21 do you have any further questions, any other  
22 questions for the Agency?

23 Okay. At this point,  
24 Ms. Bernadette Dinschel has prefiled

1 testimony in this rulemaking. And if you'd  
2 like to at this time, Ms. Dinschel, you can  
3 introduce yourself and maybe tell us a little  
4 bit about who you are and your background and  
5 involvement with this rulemaking.

6 MS. DINSCHEL: My name is Bernadette  
7 Dinschel, and I'm a citizen of Lisle,  
8 Illinois, and I was associated with the  
9 Lockformer spill that occurred.

10 MR. WIGHT: Has she been sworn in?

11 MS. ANTONIOLLI: She was sworn in at  
12 the beginning.

13 MR. WIGHT: I'm sorry.

14 MS. DINSCHEL: The number of wells,  
15 private wells, that were affected by the  
16 spill of TCE at that location was more  
17 than -- we're not sure of the number still,  
18 but were more than 150 private wells. So the  
19 impact was pretty substantial, and the  
20 distance that that plume traveled, which I  
21 think is not normal, was actually tagged at  
22 2 and a half miles.

23 So when they went to remediate  
24 their property -- when the federal government

1           came in to do the emergency remediation, they  
2           found levels of 2,000 parts per million at  
3           their source, and that was after they had  
4           allegedly been involved in a ten-year  
5           investigation on the property. So after all  
6           that time, the impact of what was still there  
7           was substantial.

8                         Since I was in the immediate area,  
9           I became concerned, and that's why I'm still  
10          here today. And I'd be willing to take any  
11          questions from the Board if they had any.

12                        MS. ANTONIOLLI: So what was your --  
13          Did you help participate in the rulemaking --  
14          or the proposal before the general assembly  
15          that became the RTK Law?

16                        MS. DINSCHER: Personally I did not  
17          get involved in that drafting. There were  
18          others that were involved. My immediate  
19          involvement, other than being part of the  
20          community action group that was formed  
21          initially when we found out about the  
22          situation, once we learned that the cleanup  
23          would begin and that issues of connecting  
24          people to water were being handled above and

1           beyond my capability because they involved a  
2           lot of politics, I stayed involved because  
3           nowhere along the line did anybody address  
4           the fact that we do have a right to know. So  
5           when I was asked by other citizens to  
6           participate in a Right-To-Know subcommittee,  
7           I did that.

8                       MS. ANTONIOLLI: Okay. And would you  
9           like to talk about the rule as it ended up  
10          and the rules that are being proposed today  
11          before us? What is your thought on those?

12                      MS. DINSCHER: Well, as the rule --  
13          the law, I guess. The law does state that  
14          they need to notify property owners. And  
15          that sounds pretty nice, that the property  
16          owners should be notified. But in the scheme  
17          of things, not everybody is privileged enough  
18          to own real estate, so that's why we have  
19          apartments and other situations. And when  
20          the ruling was put into effect, it seemed to  
21          follow the letter of the law in stating that  
22          it should follow -- it should notify property  
23          owners. I think because of our subcommittee  
24          involvement, we contributed to the fact that



1 property owners are not the only group that  
2 should be notified and that residents should  
3 be notified. It would be nice to think that  
4 every property owner would be responsible and  
5 act -- even if they're required by law to act  
6 and notify their residents, some of them may  
7 not. Just because the law is there doesn't  
8 mean everybody is going to follow it. So  
9 this is sort of added insurance that the  
10 people who are, in fact, using the water get  
11 notice. And if it came down to the simplest  
12 form of notification of knocking on someone's  
13 door and saying your water may not be safe,  
14 that is a requirement that I think is  
15 necessary regardless of any discussion of  
16 expense or cost involved. It could be that  
17 simple if it boils down to we don't have  
18 money for mailing.

19 The thing is, in the Lockformer  
20 situation, there were many responsible  
21 parties that I respect that knew of the  
22 situation. And as I said in my testimony,  
23 they didn't -- for a number of reasons that  
24 may have been valid, chose not to notify,

1           were allowed to notify, because it wasn't  
2           their jurisdiction or they didn't have the  
3           authority to notify. And it's unfortunate  
4           that government agency's, people that we look  
5           to as leaders in the community, felt that  
6           they didn't have any responsibility to notify  
7           because they weren't sure who was supposed to  
8           notify if anybody should be notified. So  
9           firsthand notification, I think, is  
10          important.

11                               Can you ask anything more  
12          specific?

13                       MS. ANTONIOLLI: Does that summarize  
14          what you talked about in your prefiled  
15          testimony?

16                       MS. DINSCHER: What I would add is  
17          that responsible parties may not always act  
18          responsibly to their constituents, whoever  
19          they may be. So firsthand notification is  
20          valid. People's health can depend upon it.  
21          I'm sure that water in the future is going to  
22          become the most precious commodity that we're  
23          going to be dealing with, so it would be nice  
24          if we had some ground rules in place to

1           assure people that they will receive notice.

2                       On Monday, March 20th, 2006, the  
3           Village of Lisle Board met again, and they  
4           received an update on the cleanup at  
5           Lockformer, and a very good presentation was  
6           made. And the first question that the Board  
7           asked was how much did this cleanup cost.  
8           And for the answer to that question, it cost  
9           Lockformer initially about 8 million to do  
10          the emergency cleanup, which lasted at least  
11          three and a half years.

12                      The second question that the Board  
13          asked was will we be notified in the future  
14          by the provisions in the law that something  
15          may be wrong with the water. The answer was,  
16          yes, the law will, in effect, protect you  
17          because now we've revisited it and we will  
18          notify you if there is something wrong with  
19          the water. In asking that question, I think  
20          the trustee wanted to act responsibly; and if  
21          the Board was notified, they would, in fact,  
22          notify their constituents.

23                      So of all the questions he could  
24          have asked six years after the fact, the

1 question of money came up and will we be  
2 notified so that we can pass on that  
3 notification.

4 MR. GIRARD: Amy, I have a question.

5 Ms. Dinschel, do you believe that  
6 the proposal we have in front of us takes  
7 care of the kind of problems you experienced?

8 MS. DINSCHER: I'm going to only  
9 address Section C because I think the water  
10 survey -- the well survey information has  
11 come a long way, but I'm less qualified to  
12 address that. I think the proposal before  
13 you is a compromise, and I don't think it's  
14 necessary to compromise the public safety,  
15 individual health issues that will be  
16 affected by a poor water source. So I think  
17 a compromise is just not appropriate. That's  
18 my opinion.

19 But the fact is that it is there  
20 in Section C, that if it's appropriate to the  
21 appointed party that they notify, they can do  
22 that. But unless they're required or must  
23 notify, all things being equal, they will  
24 probably say, well, this is one thing we

1 don't have to do and we'll cross that off the  
2 list. And yet that's the first string of  
3 people who need to be notified because  
4 they're the people using the water. So I  
5 would -- I'm pleased that it's stated, but  
6 the fact that it's only stated and appears to  
7 be an option doesn't secure the fact that  
8 individuals will be notified. They have to  
9 rely on a whole bunch of other people to be  
10 responsible and caring about providing safe  
11 water to them, and that just doesn't always  
12 happen.

13 MR. GIRARD: So how would you rewrite  
14 the rules? Would you require that the Agency  
15 in all cases notify affected persons?

16 MS. DINSCHER: That they in all cases  
17 notify property owners and occupants to the  
18 best of their ability. We found, also in  
19 discussion during subcommittee, that it  
20 wasn't always easy to even find property  
21 owners. So that in itself was a challenge at  
22 times. So I don't think -- I don't see any  
23 advantage to the public by not notifying  
24 occupants. So as the rule is written, I

1 think it should definitely include  
2 notification without exception to property  
3 owners and occupants.

4 MR. GIRARD: Thank you.

5 MS. ANTONIOLLI: Ms. Dinschel, I have  
6 in front of me your prefiled testimony dated  
7 March 14th that you prefiled with the Board,  
8 and you have just summarized it and talked a  
9 little bit about what is contained in this  
10 prefiled testimony, including your  
11 involvement that you live in Lisle and your  
12 involvement with the Right-To-Know  
13 subcommittee.

14 Do you or does anyone else object  
15 to me entering this prefiled testimony in as  
16 a hearing officer exhibit, Hearing Officer  
17 Exhibit A, to this rulemaking? I don't have  
18 copies of it, unfortunately, but it's been on  
19 the website. I'm not sure if you've brought  
20 any with you today.

21 MS. DINSCHER: I do.

22 MS. ANTONIOLLI: So you do have  
23 copies. Those are available for the public  
24 to look at. Does anybody object at this

1 time?

2 Indicating no objection, I will  
3 enter your prefile testimony in as Hearing  
4 Officer Exhibit A.

5 MS. DINSCHER: Thank you.

6 MS. ANTONIOLLI: And does anyone else  
7 have questions for Ms. Dinschel at this time?

8 MS. LIU: Since you're very intimately  
9 familiar with this whole process, how do you  
10 feel about a proposal to allow a company to  
11 do the notification process to you rather  
12 than official government Agency?

13 MS. DINSCHER: When I first read that  
14 option, I shuddered. I shared my feelings  
15 with the Agency that if, in fact, that  
16 company had been Lockformer, where would we  
17 be today? Because they told us a lot of  
18 things; they lied through their teeth,  
19 basically. So my reference for notification  
20 by a company or other responsible party was  
21 not comforting to me at all.

22 And it may be a practical matter  
23 in that the Agency may not be staffed enough  
24 to take on these responsibilities as we go

1 forward, and so I'm putting a plug in for new  
2 hires for the Agency, because people need to  
3 be notified.

4 And the other thing that came up  
5 in discussion was, in the event that the  
6 Agency is understaffed and may not have any  
7 control over funding for new hires, some  
8 companies, well-established, can in fact  
9 provide a good service. And I was opposed to  
10 having a company or another agent other than  
11 the Agency send out notices; but as the  
12 ruling states, the Agency has to review the  
13 information.

14 So in our Steger pilot, we  
15 insisted that the stationery -- and I'm so  
16 glad you brought up stationery -- that the  
17 letterhead actually be from the Department of  
18 Health. And the reason why we did that in  
19 that particular situation -- The letterhead  
20 was Department of Health, Cook County, and it  
21 was co-signed by the Agency and someone else,  
22 I think, and it was a joint effort. And the  
23 official look of the information was, I  
24 think, appropriate. And the reason we



1           insisted in that case that the Department of  
2           Health stationery be used as opposed to the  
3           Agency is that someone up state may not --  
4           may feel that the IEPA, who lives in  
5           Springfield, doesn't really know about us.  
6           So some people objected to -- you know, are  
7           we going to make a phone call now to  
8           Springfield, are we going to be making long  
9           distance calls to Springfield. There were  
10          seniors on limited budget who say, you know,  
11          I'm going to dial a 1 and an area code and  
12          this is happening in my backyard, and I've  
13          got to go to all these other people in places  
14          I don't know.

15                         So we thought it was important in  
16          that case to at least have someone familiar,  
17          something with a local area code that they  
18          could call. And the Department of Health in  
19          that situation seemed to be someone they feel  
20          familiar with in terms of importance and  
21          someone that they could have access to and  
22          wouldn't be calling long distance to find out  
23          what was going on. It was just a simple  
24          practical matter.

1                   So I guess in the long run, having  
2                   someone else other than the Agency notify --  
3                   we'll just have to see how it works out. If  
4                   the party tries to refrain from telling the  
5                   story, people will pick up on it and the  
6                   trust will be lost immediately. I think  
7                   companies need to reestablish trust with the  
8                   public. And right now, because of these  
9                   situations, there isn't very good public  
10                  trust of companies. And the Agency lost some  
11                  trust in this factor too, and I think they're  
12                  trying to regain all this.

13                  MS. ANTONIOLLI: Any other questions?

14                  MR. JOHNSON: I noted in your  
15                  prefiled -- First of all, thank you for  
16                  coming. It's great when members of the  
17                  public come and do the right thing.

18                  I did note in your prefiled  
19                  testimony that you indicated that your health  
20                  has been seriously compromised by this  
21                  Lockformer spill. And I was curious as to  
22                  whether or not you are now a party to a civil  
23                  suit against them.

24                  MS. DINSCHER: No. I have never been

1 a party in a civil suit or any other suit. I  
2 have never filed suit against them.

3 MR. JOHNSON: Thank you.

4 MS. ANTONIOLLI: Okay.

5 MR. RAO: Just a follow-up question to  
6 the Agency based on what was testified to.

7 MS. ANTONIOLLI: Sure.

8 MR. RAO: I had a question about your  
9 coming to the outreach survey that you did.  
10 In that survey did you, by any chance, also  
11 ask, you know, the affected people about who  
12 should be sending these notices, whether it  
13 should be coming from a public health agency  
14 or the responsible party?

15 MS. FULLER: I don't believe that was  
16 part of the survey that we sent out. It was  
17 more like we had worked on the initial  
18 package with the Right-To-Know committee,  
19 which included not only these citizens but  
20 other citizens and also public health  
21 officials from other counties. And so we had  
22 kind of decided on this pilot to do the  
23 letterhead from Cook County Health  
24 Department. That seemed to be acceptable. I

1 don't know that that would be the only thing  
2 that would be acceptable, but certainly we  
3 were shooting for that based on the input we  
4 had gotten.

5 Now, it could be that we would  
6 have other local health departments that  
7 simply don't have the staff or resources to  
8 participate in mailing to that degree that we  
9 were able to get from the participation from  
10 Cook County. And, in fact, we did the  
11 mailing. They sent the letterhead. We  
12 provided for everything. We wouldn't always  
13 be able to do that, either. And certainly if  
14 a responsible party is taking it upon  
15 themselves to do the notification, although  
16 it's an Agency-approved notification, we  
17 wouldn't be able to ensure that a local  
18 county health department or city or whatever  
19 would be willing to have their name on  
20 something that's coming a company. So we  
21 would encourage that, but we couldn't  
22 guarantee it.

23 MR. RAO: What's the Agency's position  
24 on this, your coming forward with a giant

1 notice with your letterhead on it.

2 MR. NEIBERGALL: With a company?

3 MR. RAO: Yeah.

4 MR. NEIBERGALL: I think that's  
5 something to consider. We've done it either  
6 way now, either ourselves, notification, or  
7 we've had some companies work through some  
8 recent notification work.

9 I might point out also -- and Mark  
10 can cite the specific references in the  
11 proposed rule. But in working with companies  
12 recently, nothing limits the Agency from  
13 putting out supplemental information. In  
14 fact, on a couple of sites that we're  
15 currently working on we have supplemented  
16 what the responsible party has done and put  
17 out our own information and contact  
18 information and additional responses to  
19 citizens concerns. So, I mean, I would just  
20 point out that that's sort of a tag-team  
21 approach that could be used.

22 But in relation to the question, I  
23 guess, of a joint letterhead with a company,  
24 I'm not sure, from a public policy

1           standpoint -- Can we think of any other  
2           Agency situations where we've done that with  
3           not another government Agency but with a  
4           private company?

5                   MR. PHILLIPS: I can't think of any  
6           right offhand.

7                   MR. COBB: I wanted to add something  
8           more on the question of the method of notice  
9           and leading up to the way we did it in the  
10          Steger, South Chicago pilot. We started the  
11          kind of stakeholder input process in December  
12          of 2004 and ultimately did the notice in July  
13          of '05. We talked about those methods during  
14          that period, so there wasn't a lot of time  
15          spent in discussing what methods might work  
16          best when the Agency is doing the  
17          notification. Just to add that to the  
18          record.

19                   MS. ANTONIOLLI: Thank you.

20                   Ms. Dinschel, thank you. Would  
21          you like to add anything else at this point?

22                   MS. DINSCHER: No.

23                   MS. ANTONIOLLI: Thank you for your  
24          testimony.

1                   We've also received prefiled  
2                   testimony from Ms. Hirner on behalf of the  
3                   Illinois Environmental Regulatory Group.  
4                   Would you like to talk about your prefiled  
5                   testimony?

6                   MS. RIOS: Hello. I'm Monica Rios  
7                   from Hodge, Dwyer, Zeman, here on behalf of  
8                   the Illinois Environmental Regulatory Group.  
9                   We did file the testimony of our executive  
10                  director, D.K. Hirner. And today she will  
11                  summarize her testimony and provide some  
12                  comments on the issues raised today and  
13                  answer any questions that the Board or the  
14                  Agency or the public might have. At this  
15                  time, we'd like to ask that her prefile  
16                  testimony be entered into the record as if  
17                  read.

18                  MS. ANTONIOLLI: Is there any  
19                  objection to entering Ms. Hirner's prefile  
20                  testimony into the record as Exhibit 4?

21                  Seeing none, I'll mark this as  
22                  Exhibit 4 and enter it into the record.

23                  MS. HIRNER: As Monica said, I'm  
24                  Deirdre Hirner, executive director of ERG. I

1 would like to give a synopsis of my prefiled  
2 testimony. And also, I've jotted down some  
3 questions that the Board members and staff  
4 have raised during the course of their  
5 discussion with the Agency, and I can maybe  
6 shed some light on those issues from my own  
7 perspective, if that's okay.

8 I would like to thank the Agency  
9 for its outreach efforts. It's obvious that  
10 the Agency worked very hard to develop a  
11 regulation that implements both the spirit  
12 and letter of the community Right-To-Know  
13 Law. And I'm pleased to offer ERG's support  
14 for the regulations as reported in the  
15 Agency's errata sheet. I have four minor  
16 concerns, and I'll address those very briefly  
17 for you as they were touched upon in my  
18 prefiled testimony.

19 First issue is the preliminary  
20 inclusion of the closure plan documentation  
21 in the fact sheets. The second deals with  
22 the physical location of the document  
23 repository. The third is the definition of  
24 responsible parties. And the fourth is the



1 appearance that community relations  
2 activities require notification of occupants  
3 in the model community relations plan.

4 As relates to the first, the  
5 inclusion of the closure plan in the  
6 notification, I know Mr. Wight has addressed  
7 that briefly, and I think that does go some  
8 way. But perhaps if we look at the community  
9 relations process as the process and the  
10 notification as what you do in allowing your  
11 community relations plan to help identify how  
12 you are going to give that process, we can  
13 make some steps for ongoing input and kind of  
14 outline what may be expected of the  
15 regulation community at certain times along  
16 the way.

17 The second issue regarding the  
18 physical location of the document repository,  
19 ERG members -- there are a number of ERG  
20 member companies who have had very long  
21 ongoing community relations activities. And  
22 what they have found is that in some areas of  
23 the state, there is very limited access to  
24 World Wide Web repositories, and in some

1 instances it actually works much better --  
2 let's say in rural areas or poorer  
3 communities where people don't have access to  
4 World Wide Web in their homes, they're going  
5 to have to go to a library maybe to even  
6 access the World Wide Web. But in some  
7 instances, the physical documents themselves  
8 in a location would better suit the needs.  
9 So we would ask your consideration of some  
10 flexibility in where those documents are  
11 located.

12 The third -- and you've talked a  
13 lot about this already, in regards to the  
14 definition of the responsible party. As  
15 you've pointed out, there are a number of  
16 definitions of responsible party. And if,  
17 for example, you look at CERCLA, the  
18 responsible party denotes having very strict  
19 liability. And if we look at the definition  
20 that we have in the proposal, it addresses a  
21 person performing a response action meaning  
22 the responsible party. And as you've pointed  
23 out, there are a number of places in  
24 Subpart C where many different terms are

1           used. So, you know, perhaps it would be  
2           possible throughout Subpart C to use the  
3           person performing the response action or,  
4           alternatively, to actually define responsible  
5           party for purposes of this particular section  
6           so that it's really clear that we're talking  
7           about conducting the activity and not the  
8           liability that we think of when we think of  
9           CERCLA and other programs.

10                         The final area that we have some  
11           concern about is the inclusion -- the  
12           appearance that you be required to notify  
13           occupants. The law talks about -- The law  
14           requires that we notify owners. And we think  
15           it's a very good idea to notify occupants,  
16           and that all people who are potentially  
17           impacted by a release should be notified. We  
18           think that the Agency's language in the  
19           proposed rule that we notify the occupants to  
20           the extent reasonably practicable is very  
21           good language. Because based on experience  
22           of some of ERG's member companies -- Two  
23           perspectives: To give you a positive  
24           example, one of our member companies had a

1 release and there was a population, actually,  
2 of homeless people that lived on a sandbar  
3 near the site where the release occurred.  
4 And this particular company had a very active  
5 community relations program and found a  
6 mechanism to identify people who were  
7 actually homeless but who could be impacted.  
8 In other situations, we found that sometimes  
9 with occupants which are a transient  
10 population, maybe more transient than  
11 property owners, in some instances -- Let's  
12 say we try to contact occupants by certified  
13 mail. Experience has shown that a lot of  
14 really bad news comes in certified mail, that  
15 your bills are due, this is due, that is due,  
16 and that people will actually not accept a  
17 certified letter because, if they accept it  
18 and they sign for it, therefore they're bound  
19 by the bad news, thinking that it's bad news  
20 even though we're trying to be protective of  
21 the public health and welfare. And so in  
22 that particular situation, it may be better  
23 to find within that community how you best  
24 notify those occupants.

1                   And I think our resistance to a  
2                   mandatory identification of occupants beyond  
3                   that the law requires ownership is that if  
4                   you make your best effort to notify the  
5                   occupants, and based on past experience you  
6                   don't notify the occupants, now you've opened  
7                   the regulated community up for yet another  
8                   avenue for lawsuit when it may well be  
9                   something that is beyond their control. And  
10                  I think we have no hesitancy whatsoever in  
11                  saying, yes, we should do everything we can  
12                  to notify the occupants, but we just see a  
13                  problem as it's being laid out as a mandate  
14                  of the regulation.

15                  So that's kind of a synopsis of my  
16                  prefiled testimony. I'll answer questions.  
17                  And I noted some things that you all had  
18                  questions about; if you'd like, I may speak  
19                  to those.

20                  MS. ANTONIOLLI: Does anybody have  
21                  questions at this point for Ms. Hirner?

22                  MS. HIRNER: The question regarding  
23                  the community relations plan, again I think I  
24                  would like to highlight that we see the

1 community relations plan as a process and  
2 that that process is to help us decide how we  
3 need to give notice. For example, the  
4 A through H elements that you discussed as  
5 being part of a community relations plan,  
6 that's how you get to the notice or how you  
7 get to the ongoing dialogue; but I think that  
8 perhaps we could clear it up a little bit,  
9 that that's the community relations plan  
10 A through H, and when you give notice, it  
11 needs to include 1 through 6 of the  
12 legislation because they're not really  
13 exactly the same thing. One subsumes the  
14 other.

15 The other thing I'd like to speak  
16 to is 1505.330(d), the enforcement mechanism.  
17 We really believe that if the Agency does  
18 indeed allow the regulated entity to be the  
19 person giving the notice, there is a greater  
20 deal of requirement that the Agency approves  
21 what the regulated entity or person who  
22 committed the release has to send in terms of  
23 public notice and they have to require it  
24 along the way -- or approve it along the way.

1           And that if the regulated entity fails in  
2           some mechanism to properly notice the public,  
3           there is enforcement against the regulated  
4           entity. So we think that there's pretty  
5           strong language in here for requiring  
6           compliance with the law.

7                         And with that, I think I have  
8           nothing to offer at this time but to answer  
9           questions if you have any.

10                        MS. ANTONIOLLI: When you talked about  
11           the World Wide Web repository and how, in  
12           some instances, a physical location is the  
13           best method for the public to get this  
14           information, are you recommending that the  
15           Word Wide Web site not exist? I think in  
16           that case, would there be both a website that  
17           has the information and a physical  
18           repository?

19                        MS. HIRNER: You know, I think once  
20           you have compiled the documents, having them  
21           uploaded in some form or fashion is not  
22           problematic. But the ability to have them at  
23           a physical location, we think is pretty  
24           important. And in some instances, maybe more

1 important. If you get into downstate  
2 Illinois and some places, people have  
3 dial-up. And trying to download those  
4 documents from an old dial-up network is  
5 tough.

6 MS. ANTONIOLLI: And do you think the  
7 way the Agency addressed that section in  
8 Errata Sheet 1 is sufficient?

9 MS. HIRNER: I think so.

10 MS. ANTONIOLLI: Okay. Any further  
11 questions?

12 Agency?

13 MR. WIGHT: I don't think we do. And  
14 it's not that we don't think her points are  
15 well taken, but we've already had ongoing  
16 dialogue and understand most of their  
17 concerns and objections at this point.

18 MS. ANTONIOLLI: Let's go off the  
19 record for one minute.

20 (Discussion off the record.)

21 MS. ANTONIOLLI: Back on the record.

22 And the Board has scheduled a  
23 second hearing in this matter for May 23rd,  
24 2006, and that will take place in



1 Springfield. The hearing will begin at  
2 10:00 a.m. in the Board's office. Any person  
3 wishing to testify should prefile testimony  
4 with the Board by May 9th, 2006.

5 We expect to have the transcript  
6 of today's hearing by April 7th, which is  
7 next Friday, a week from this Friday. Soon  
8 after we receive it, the Board will post the  
9 transcript on our website, which is  
10 [www.ipcb.state.il.us](http://www.ipcb.state.il.us). There the transcript  
11 as well as the Agency's proposal and all of  
12 the Board orders throughout this proceeding  
13 will be viewable and downloadable. You can  
14 also contact the clerk's office of the Board,  
15 and the clerk will make copies of any order  
16 or document on the website at 75 cents per  
17 page.

18 Anyone can file a public comment  
19 in this proceeding with the clerk of the  
20 Board. But please note that when filing a  
21 public comment, you must serve all of the  
22 people on the service list with a copy of the  
23 public comment. I have extra copies of the  
24 service list here today with me, so come talk

1 to me after the hearing if you need one.

2 If there is nothing further, I  
3 wish to thank you all for your comments and  
4 your testimony and for being here today.

5 This hearing is closed, and we will see you  
6 again on May 23rd. Thank you.

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1 STATE OF ILLINOIS )  
 ) SS.  
2 COUNTY OF COOK )

3

4 Kathy A. O'Donnell, being first duly sworn,  
5 on oath says that she is a Registered Professional  
6 Reporter doing business in the City of Chicago,  
7 County of Cook and the State of Illinois;

8 That she reported in shorthand the  
9 proceedings had at the foregoing Illinois Pollution  
10 Control Board hearing;

11 And that the foregoing is a true and  
12 correct transcript of her shorthand notes so taken  
13 as aforesaid and contains all the proceedings had at  
14 the said Illinois Pollution Control Board hearing.

15

16 \_\_\_\_\_  
17 KATHY A. O'DONNELL, RPR

18

19 CSR No. 084-004466  
20 SUBSCRIBED AND SWORN TO  
before me this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 2005.

21

22

23 \_\_\_\_\_  
NOTARY PUBLIC

24