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APPEARANCES

Board Members present:

Board Member Thomas E. Johnson  
Alisa Liu, Environmental Scientist

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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BY: Mr. Gary King  
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BY: Mr. Douglas Clay  
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BY: Mr. Scott O. Phillips  
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10 BY: Mr. Kurt Neibergall  
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13 BY: Ms. Carol L. Fuller  
Community Relation Coordinator  
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16 BY: Mr. Richard P. Cobb  
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19 ILLINOIS ENVIRONMENTAL REGULATORY GROUP

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22  
23 Ms. Ann Muniz  
24 Ms. Bernadette Dinschel

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PROCEEDINGS

(May 23, 2006; 10:07 a.m.)

HEARING OFFICER ANTONIOLLI: Good morning, everyone, and welcome to the Illinois Pollution Control Board Springfield hearing on docket R06-23, which the Board has captioned "In the Matter of Standards and Requirements For Potable Water Well Surveys and For Community Relations Activities Performed in Conjunction With Agency Notices of Threats From Contamination Under PA 94-314." It's the new 35 Illinois Administrative Code Part 1505 and docketed as R06-23.

My name is Amy Antoniolli and I'm assigned as the hearing officer in this rulemaking. In this proceeding the Agency is seeking to add a new part which would create standards and requirements for potable water well surveys and for community relations activities in response to threats from soil and groundwater contamination. This rulemaking was filed on January 20, 2006, by the Illinois Environmental Protection Agency. The Board accepted the proposal for hearing on February 2, 2006, and today is the second hearing.

And actually, I'm going to ask the gentleman in the last row, could you keep the door open for us? We're just expecting a couple more people to join us shortly,

1 so don't want them to think it's closed.

2           The first hearing was held on March 28, 2006, in  
3 the Board's offices in Chicago, and the purpose of  
4 today's hearing is twofold. The rulemaking is subject to  
5 Section 27(b) of the Environmental Protection Act, which  
6 requires the Board to request the Department of Commerce  
7 and Economic Opportunity to conduct an economic impact  
8 study on certain proposed rules prior to adoption of  
9 those rules. If the DCEO chooses to conduct the impact  
10 study, the DCEO has 30 to 45 days after the request to  
11 produce a study of economic impact. As required, the  
12 Board requested in a letter dated February 22 that the  
13 DCEO conduct an economic impact study. To date, the DCEO  
14 has not responded.

15           The second purpose is to allow proponents to  
16 testify today, allow members of the public who wish to  
17 testify the opportunity to do so and to ask questions of  
18 the proponents in this case, the Environmental Protection  
19 Agency. If you'd like to testify today and you haven't  
20 already told me, please do so at our -- at a break we  
21 take.

22           Today's proceeding is governed by the Board's  
23 procedural rules. All information that is relevant and  
24 not repetitious or privileged will be admitted into the

1 record. Member Nicholas Melas is the board member  
2 assigned to this matter, but he is not with us today. We  
3 have Member Thomas Johnson, who's here to my left, and  
4 also to the left of Member Johnson is, from our technical  
5 unit, Alisa Liu.

6 Okay. Then we will begin with the testimony of  
7 the proponent. Three agency witnesses have prefiled  
8 testimony, and those are Mr. Scott Phillips, Mr. Gary  
9 King and Mr. Kurt Neibergall. Then we'll follow with  
10 questions for the agency witnesses that have prefiled  
11 testimony and the rest of the panel they have here today  
12 to answer questions. We will then proceed with testimony  
13 from other participants. Ms. Ann Muniz has prefiled  
14 testimony and we will have questions for her. Please  
15 note that any questions posed by board members or staff  
16 are designed to help develop a more complete record for  
17 the Board's decision and do not reflect any bias. After  
18 that, anyone else can testify, like I said earlier, and  
19 like all witnesses who wish to testify, they will be  
20 sworn in and asked questions about their testimony, and  
21 then we'll conclude today's hearing with some procedural  
22 items.

23 And, Member Johnson, before we begin, would you  
24 like to add anything?



1                   BOARD MEMBER JOHNSON: No. I know you were  
2 all expecting to see Nick here, and he called me right  
3 before the hearing and asked me to express his regret at  
4 not being able to be here today but to assure you all  
5 that he will read the transcript in detail.

6                   HEARING OFFICER ANTONIOLLI: Okay. And for  
7 the court reporter who's transcribing today's proceeding,  
8 please speak up and speak clearly. And are there any  
9 questions about the proceedings that we will follow  
10 today? And seeing none, as you testify, please introduce  
11 yourself. Let us know your position and title and then  
12 proceed with your testimony. So, Mr. Wight, would you  
13 like to begin with opening statements?

14                   MR. WIGHT: Yes, yes, that would be fine.  
15 Thank you.

16                   HEARING OFFICER ANTONIOLLI: Okay.

17                   MR. WIGHT: My name is Mark Wight. I'm an  
18 assistant counsel with the Illinois Environmental  
19 Protection Agency and I work with the Bureau of Land.  
20 Also assigned to this project -- and I -- they're behind  
21 me, so I guess they'll have to raise their hands as I  
22 call their names -- but Kim Geving, assistant counsel  
23 with the Bureau of Land; Stefanie Diers, assistant  
24 counsel with the Bureau of Water; and Deb Williams, also

1 assistant counsel with the Bureau of Water.

2 Also here on behalf of the Agency are seven  
3 witnesses, and all the witnesses will be involved in some  
4 way in the implementation of Part 1505 once it becomes  
5 final. Three have prefiled testimony for this second  
6 hearing, and on my immediate left, the first is Scott  
7 Phillips. Scott is managing attorney for the Bureau of  
8 Land and Bureau of Water Regulatory Section in the  
9 Division of Legal Counsel. Two places to my right is  
10 Kurt Neibergall. Kurt is the manager of the Office of  
11 Community Relations. And down on the left on the end is  
12 Gary King. Gary's the manager of the Division of  
13 Remediation Management in the Bureau of Land.

14 Additional witnesses on the witness panel are  
15 Rick Cobb on my immediate right. Rick is deputy manager  
16 of the Division of Public Water Supplies in the Bureau of  
17 Water. Joyce Munie on my -- second from my left, Joyce  
18 is manager of the Site Remediation Program in the Bureau  
19 of Land and also recent manager of the Bureau of Land  
20 Permit Section. Doug Clay on the far right kind of  
21 tucked back in the corner there, Doug is manager of the  
22 Leaking Underground Storage Tank Section in the Bureau of  
23 Land; and Carol Fuller, third from my right, who is the  
24 community relations coordinator with the Office of

1 Community Relations.

2 I'd like to point out that we have provided  
3 copies of all agency documents previously filed in this  
4 proceeding, and they're on the table over by the door.  
5 There should be plenty of copies for the participants  
6 today, but if not, copies can be downloaded from the  
7 Board's Web site following the link to pending rules at  
8 docket R06-23, or you can call me at the Agency's  
9 Division of Legal Counsel and I'll be happy to e-mail  
10 copies or send out hard copies via regular mail.

11 The Agency's proposed rule originates in the  
12 statutory requirements of Title VI-D of the Environmental  
13 Protection Act as enacted in Public Act 94-314, effective  
14 July 25, 2005. Title VI-D is entitled "Right to Know."  
15 There are several components to Title VI-D, and the main  
16 component is the requirement that the Agency provide  
17 notice to certain affected parties, members of the public  
18 in specified circumstances involving groundwater  
19 contamination, soil contamination or other environmental  
20 threats. Title VI-D also authorizes the Agency to allow  
21 a responsible party who has implemented community  
22 relations activities to provide the notice in lieu of the  
23 Agency.

24 In conjunction with these notification

1 requirements, Title VI-D required the Agency to file a  
2 proposal with the Board within 180 days of the effective  
3 date of the legislation. The Agency filed its proposal  
4 on January 20, 2006, and the Agency provided testimony in  
5 support of its proposal as modified by errata sheet  
6 number one at the March 28 hearing in Chicago.

7 In response to the proposal and the Agency's  
8 testimony, there were several questions and comments by  
9 board members and staff and by other participants at the  
10 hearing. Following the hearing, the agency workgroup  
11 reviewed the transcript, identified several provisions  
12 that required further amendment or additional information  
13 and prepared its errata sheet number two. The Agency has  
14 prefiled the written testimony of Scott Phillips, Gary  
15 King and Kurt Neibergall in support of the amendments  
16 proposed in errata sheet number two and to provide  
17 additional information where requested. That summarizes  
18 the substance of our testimony today.

19 Before continuing with the testimony, I need to  
20 make some corrections to errata sheet number two. All of  
21 them pertain to the use of the phrase "responsible party"  
22 in Subpart C, and conceptually, these are not new  
23 changes. Conceptually we've covered the reason for these  
24 changes in the testimony, specifically in Mr. Phillips'

1 testimony, but these were changes that were overlooked in  
2 preparing the errata sheet, so I need to call them to  
3 your attention.

4 In Section 1505.305(b)(2), there are two  
5 references to responsible party. Again, that's  
6 1505.305(b)(2). The first of those references I  
7 overlooked, and in that provision, "responsible party"  
8 should be stricken there and replaced with the word  
9 "person."

10 The second change is at Section  
11 1505.310(b)(2)(C). In the second sentence there, the  
12 phrase "responsible party" appears. The word  
13 "responsible" should be stricken and replaced with the  
14 word "authorized."

15 BOARD MEMBER JOHNSON: What section was that  
16 again?

17 MR. WIGHT: That's 1505.310(b)(2)(C). In  
18 the second sentence, the phrase "responsible party"  
19 appears. We'd like to strike the word "responsible" and  
20 replace that with the word "authorized."

21 BOARD MEMBER JOHNSON: Thanks.

22 HEARING OFFICER ANTONIOLLI: Okay.

23 MR. WIGHT: Section 1505.315(b)(2)(D), Roman  
24 numeral V. Again, that's 1505.315(b)(2)(D), Roman

1 numeral V. Again, in the second sentence the phrase  
2 "responsible party" appears, and we would like to strike  
3 "responsible" and replace that with "authorized."

4 HEARING OFFICER ANTONIOLLI: Okay.

5 MR. WIGHT: Section 1505.320, there's a  
6 fairly large paragraph there with introductory language.  
7 There's new language proposed by the Agency in about the  
8 middle of the paragraph. The phrase "responsible party"  
9 appears there. Again, strike the word "responsible" and  
10 replace it with the word "authorized."

11 HEARING OFFICER ANTONIOLLI: Okay.

12 MR. WIGHT: And finally, in Section  
13 1505.Appendix A, paragraph 4(e), that also is new  
14 language proposed by the Agency. Again, that's  
15 1005.Appendix A, paragraph 4(e). In the second sentence,  
16 again the phrase "responsible party" appears. The word  
17 "responsible" should be stricken and replaced with the  
18 word "authorized."

19 I apologize for the inconvenience of making the  
20 changes, but I think those were the items that were  
21 overlooked, and we should be back on track now, so --

22 HEARING OFFICER ANTONIOLLI: Okay. Thank  
23 you.

24 MR. WIGHT: We're ready to proceed with

1 testimony if you're ready.

2 HEARING OFFICER ANTONIOLLI: Yes.

3 MR. WIGHT: Okay. Mr. Phillips, I'm handing  
4 you a document. Would you please take a minute to look  
5 that over?

6 HEARING OFFICER ANTONIOLLI: Mr. Wight, can  
7 I have them sworn in --

8 MR. WIGHT: Oh, I'm sorry. Sure.

9 HEARING OFFICER ANTONIOLLI: -- first? And  
10 then I'll let you go.

11 MR. WIGHT: I'll step out of the way.

12 (Witnesses sworn.)

13 HEARING OFFICER ANTONIOLLI: Thank you.

14 MR. WIGHT: Okay. Mr. Phillips, I'm -- I've  
15 handed you a document. Would you please take a look at  
16 that and see if you recognize it?

17 MR. PHILLIPS: Yes. That is my testimony  
18 that we prefiled.

19 MR. WIGHT: Okay. And that's a true and  
20 correct copy of the testimony that was prefiled with the  
21 Board?

22 MR. PHILLIPS: Yes.

23 MR. WIGHT: Okay. Thank you. I'd like to  
24 move that Mr. Phillips' testimony be marked as an exhibit

1 and entered into the record as if read.

2 HEARING OFFICER ANTONIOLLI: Okay. And is  
3 there any objection to entering Mr. Phillips' prefiled  
4 testimony to the record as Exhibit 5? And seeing none,  
5 I'll mark it as Exhibit 5, and you can go ahead with your  
6 testimony.

7 MR. WIGHT: Could we go ahead and admit all  
8 the testimony at this point and then I can --

9 HEARING OFFICER ANTONIOLLI: Yes.

10 MR. WIGHT: -- go back and -- Mr. King,  
11 handing you a document, would you please look that over?

12 MR. KING: Okay.

13 MR. WIGHT: Do you recognize it?

14 MR. KING: Yes, I do.

15 MR. WIGHT: Would you tell us what it is,  
16 please?

17 MR. KING: This is testimony that I prepared  
18 in response to the last hearing.

19 MR. WIGHT: Okay. And is this a true and  
20 correct copy of that testimony as prefiled with the  
21 Board?

22 MR. KING: Yes, it is.

23 MR. WIGHT: Thank you. Again, I'd like to  
24 move that this be marked as an exhibit and admitted to



1 the record as if read.

2 HEARING OFFICER ANTONIOLLI: Okay. And is  
3 there any objection to entering Mr. King's prefiled  
4 testimony into the record as Exhibit 6? And seeing none,  
5 I'm marking it as Exhibit 6.

6 MR. WIGHT: Mr. Neibergall, I'm handing you  
7 a document. Would you please take a look at that?

8 MR. NEIBERGALL: Okay.

9 MR. WIGHT: Do you recognize the document?

10 MR. NEIBERGALL: Yes, I do.

11 MR. WIGHT: Would you please tell us what it  
12 is?

13 MR. NEIBERGALL: This is my prefiled  
14 testimony on Part 1505, the community relations  
15 activities rules.

16 MR. WIGHT: Okay. And is this a true and  
17 correct copy of the document that was prefiled with the  
18 Board?

19 MR. NEIBERGALL: Yes, it is.

20 MR. WIGHT: Okay. Thanks. Once again, I'd  
21 like to move that the testimony of Mr. Neibergall be  
22 marked as an exhibit and admitted to the record as if  
23 read.

24 HEARING OFFICER ANTONIOLLI: Okay. And is

1 there any objection to entering Mr. Neibergall's prefiled  
2 testimony into the record as Exhibit 7? And seeing none,  
3 I'm marking this as Exhibit 7, entering it into the  
4 record.

5 MR. WIGHT: Okay. We'll start with  
6 Mr. Phillips, and I think he has a few opening remarks to  
7 make, and then we'll move on from there.

8 MR. PHILLIPS: Yes. I'll just summarize a  
9 few of the major points in my testimony that we just  
10 filed. There were several issues that were brought up at  
11 the last hearing that we have addressed in errata sheet  
12 number two. I'll just summarize some of those particular  
13 points. One of the issues that came up at the last  
14 hearing was a rather simple drafting issue. In a number  
15 of locations the Board had asked what -- if we could  
16 modify the word "shall," to use the word "must" instead  
17 of using the word "shall," and we made that particular  
18 change throughout the proposal, so you will see "must"  
19 being used where we formerly used "shall."

20 Another issue that came up at the hearing, it  
21 revolved around the use of the term "responsible party."  
22 I think we saw that there was some confusion using that  
23 particular term in this regulatory proposal. Although  
24 there -- it was suggested that we amend the definition of

1 responsible party that we put in the rule to clarify that  
2 particular definition, that could be done, but as we  
3 thought about it, the term "responsible party" just has a  
4 connotation outside of these rules that we thought that  
5 perhaps the better course of action was to get away from  
6 that term altogether and use a term that doesn't have  
7 these -- the liability connotations that have attached  
8 over the years to the term "responsible party," so what  
9 we have done in this particular proposal is deleted the  
10 use of the term "responsible party" throughout the rules,  
11 and we use instead the phrase "authorized party." We  
12 think that's a better description of what was intended  
13 and I think it's -- as I said, it's a more neutral term.  
14 It doesn't denote any type of liability associated with  
15 the matter. It is just the party whom the Agency has  
16 authorized to provide this notice in lieu of the Agency  
17 providing that notice. So you will see that particular  
18 change throughout the rule.

19           Also at the last hearing I think the Board had  
20 brought up the issue that -- in Subpart C that the use of  
21 the -- we use various terms in Subpart C that relate to  
22 the description of the party. The Board at that time had  
23 asked if we could standardize the use of our language in  
24 that to -- at the time it was to "responsible party."

1 Again, we changed that to "authorized party" throughout,  
2 so we should be consistent with the additions that  
3 Mr. Wight had mentioned today throughout the proposal,  
4 that we should be using the term "authorized party,"  
5 Subparts A, B and C.

6 Also at the last hearing the issue came up about,  
7 well, which parts of the Board's administrative rules may  
8 be potentially affected by this proposal. Again, the way  
9 this proposal is structured, the well site survey  
10 provisions apply whenever the person is required to  
11 perform a well site survey as part of a response action  
12 pursuant to board rules, and we think that that language  
13 is a good descriptor of when this -- these rules apply,  
14 but we did provide to the Board a listing here of those  
15 parts where we believe in one form or another the -- a  
16 well site survey may be required. It's a list -- I  
17 believe we have 14 -- yes, 14 parts which we identified,  
18 a couple parts that we showed that may apply, but  
19 actually the terms -- like, for the generator  
20 requirements, we believe that Part 724 will kind of  
21 subsume the requirements there. So it's kind of  
22 difficult to identify the parts, but I think we did  
23 provide the listing where this may play a role. We still  
24 believe that it's best to keep the language broad, not

1 include a listing in this -- these particular rules, but  
2 as those parts get amended from time to time, that then a  
3 cross-reference back to the technical standards in these  
4 rules would be the better way to go in terms of how these  
5 various parts are correlated to the part that we have  
6 here in 1505.

7           And then finally, at the last hearing the Agency  
8 was asked to consider making mandatory the discretionary  
9 compliance monitoring requirement in Section  
10 1505.335(b)(2). As we looked at that, we determined that  
11 that particular subsection really isn't necessary. It  
12 just provided a description of how the Agency would  
13 exercise its authority under Section 4(e) of the Act for  
14 monitoring the compliance with these particular rules.  
15 The -- This was not really needed in the board rules, so  
16 rather than make it mandatory, we felt that we could just  
17 strike this particular provision and we would operate  
18 under the existing statutory authority that we have under  
19 Section 4(e) of the Act to investigate violations of the  
20 Act and board rules as needed, so I think that should  
21 clarify those particular points.

22           That's all I have in terms of just summary.

23           MR. WIGHT: Okay. Gary, did you have any  
24 summary or --

1                   MR. KING: My testimonial statement is so  
2 short that I -- it would be a daunting task to try to  
3 summarize it, so I won't attempt to do that.

4                   HEARING OFFICER ANTONIOLLI: Okay.

5                   MR. WIGHT: Thank you. And, Kurt, do you  
6 have a brief summary of your prefiled testimony?

7                   MR. NEIBERGALL: Yes, I do. I'd like to  
8 make a few remarks. Again, my name is Kurt Neibergall,  
9 and I'm the manager of the Office of Community Relations  
10 for Illinois EPA. I'd like to briefly highlight some of  
11 the Agency's proposed changes to the standards and  
12 requirements for community relations activities in  
13 response to questions and comments that were received at  
14 the first hearing in Chicago on March 28.

15                   In the first hearing, the concern was expressed  
16 that the Agency's proposal did not clearly establish the  
17 notice requirement from Section 25d-3 of the Act and that  
18 the content of the fact sheets were not entirely  
19 consistent with the contents of the notice as set forth  
20 in the Act. The Agency has revised Section 1505.310(b)  
21 and 1505.315(b) to make it clear that the notice is  
22 separate from the fact sheet and to incorporate the  
23 statutory language for the contents of the notice.

24                   Additionally, there have been several questions

1 and comments about whose letterhead should be used on  
2 notice correspondence. When the Agency provides notice  
3 under the Act, it will be on Agency letterhead or local  
4 health department letterhead if we can secure their full  
5 participation in the notice activities for a particular  
6 site. As an aside, I'd just like to say that the Agency  
7 has recently started outreach and Right-to-Know training  
8 sessions with some local health departments, and we held  
9 two sessions in northern Illinois last week, or I guess  
10 two weeks ago, and where 11 different counties -- staff  
11 from 11 different counties were represented at that  
12 training, so we're starting to coordinate more with some  
13 of the health departments and do some preliminary  
14 outreach ahead of having a particular site to work on.  
15 Hopefully we can work closely, then, on the notice  
16 requirements and activities.

17           When the authorized party is providing notice and  
18 related documents, the Agency continues to believe it is  
19 inappropriate to use government letterhead because this  
20 correspondence is not considered official agency  
21 business. However, as provided for in the Act and  
22 proposed rules, the Agency will approve the content of  
23 this notification package and the agency contact  
24 information will be included in the letter notices and

1 fact sheets if citizens have questions and want to talk  
2 with an agency staff person.

3           With respect to the document repositories, the  
4 Agency has proposed clarifying changes to Section  
5 1505.320 to emphasize our intent that a Web site document  
6 repository is a mandatory requirement in cases calling  
7 for expanded community relations activities and that a  
8 physical document repository may also be required under  
9 certain circumstances if requested by the public or  
10 government officials. We continue to believe that access  
11 to Web-based information and maps will provide the public  
12 with convenient access to help them educate themselves  
13 about a potential health threat from a given site and  
14 monitor the progress being made to investigate and  
15 mitigate the environmental problems.

16           Concerns have also been raised in testimony by  
17 others with regard to notification of occupants of  
18 off-site properties affected or potentially affected by  
19 contamination from a given site. Agency has proposed  
20 changes to Appendix A where the contact list provisions  
21 under the elements of the community relations plan are  
22 given to mirror the language provided in Sections  
23 1505.310 and 1505.315 for contact lists with respect to  
24 occupants; that is, occupants of properties affected or



1 potentially affected by groundwater or soil contamination  
2 should be given equal notice as property owners to the  
3 extent reasonably practicable to identify those  
4 occupants. It is imperative that accurate and complete  
5 information about potential public health threats is  
6 given directly to those who are in need of it in a timely  
7 manner so that they can make informed decisions about  
8 their families' health and well-being.

9           And then finally, we've been joined by a couple  
10 of special people, I think, and I'd like to for the  
11 record state that -- take this opportunity to acknowledge  
12 the efforts of two citizens, Ann Muniz and Bernadette  
13 Dinschel, who have interacted with the Agency over the  
14 last year and a half in formulating proposed notification  
15 recommendations for the Right-to-Know law in this  
16 rulemaking. They have really shared their perspectives  
17 in living through and dealing with this type of  
18 contamination in their private wells and their personal  
19 insights have truly added value to the discussions, and I  
20 wish to thank them both on behalf of the Agency for their  
21 contributions. Thank you.

22           MR. WIGHT: Okay. I think that concludes  
23 our formal presentation, so we're ready for questions if  
24 you are.

1 HEARING OFFICER ANTONIOLLI: For questions?  
2 Sure. Member Johnson or our technical unit, Alisa, do  
3 you have any questions?

4 BOARD MEMBER JOHNSON: We'll start with  
5 Alisa.

6 MS. LIU: You want to start with the  
7 audience first?

8 HEARING OFFICER ANTONIOLLI: Sure. Anyone  
9 is welcome to ask questions at this point. Does anyone  
10 have any questions for the Agency? Okay. We do have  
11 some --

12 BOARD MEMBER JOHNSON: I can comment that  
13 this is about the most responsive second hearing that  
14 I've ever been involved in. It seems as though  
15 everything -- nearly everything that was discussed at the  
16 first hearing was addressed in one way or another, and I  
17 appreciate everybody's work in doing so, so I don't have  
18 any questions now. Her questions might lead to some for  
19 me later, but we'll let Alisa.

20 HEARING OFFICER ANTONIOLLI: I do have a  
21 comment before we begin with questions, and this is  
22 something a little bit more technical based on what --  
23 when we went to first notice with this rulemaking, we did  
24 have to change when filing with the Secretary of State

1 the subtitle, and we changed it from Subtitle N to a new  
2 Subtitle O, and so although that was reflected in the  
3 Illinois Register, we will base our second notice opinion  
4 and order on that subtitle, and then in addition, we will  
5 also for organizational reasons and to avoid any  
6 confusion with other regulations that are -- that involve  
7 drycleaner rules, currently in the 1500s, we are going to  
8 renumber the sequence to the 1600s too, and the Board  
9 will make those changes at second notice. So that's just  
10 a comment on the Board's behalf, and we can continue with  
11 questions too.

12 MS. LIU: Good morning to the Agency, and  
13 thank you for having such a strong representation here  
14 today from all the different sections. That's wonderful.  
15 In your second errata sheet, I notice that the Agency is  
16 proposing to delete the section that Scott Phillips spoke  
17 of, 1505.335(b)(2), on Agency compliance monitoring of  
18 community relations, and the section goes to the Agency's  
19 implementation of monitoring of people performing this  
20 type of work. For some of the board rules, they're often  
21 complementary agency implementation rules, and I was  
22 wondering if the Agency had any plans to develop  
23 implementation rules for this new section.

24 MR. PHILLIPS: Although we really haven't

1 discussed that particular issue, I think it -- at this  
2 point, unless there are some perceived difficulties in  
3 the actual implementation, we're not contemplating some  
4 additional implementation rules. For this -- The -- As  
5 far as monitoring the compliance with these particular  
6 rules, we would just monitor compliance with them as we  
7 do with all the Board's regulatory programs under our  
8 authority under Section 4 of the Environmental Protection  
9 Act. So that's how we would do that, but as it -- you  
10 know, obviously, if we are implementing the program and  
11 there is a perceived need for something along that lines,  
12 we certainly would look at that particular issue, but  
13 right now, no, we are not anticipating rules --  
14 additional rules for implementing this particular  
15 section. Of course we have pending right now a first  
16 notice of the cost recovery rules that we are required to  
17 adopt under the Right-to-Know law as well, but nothing in  
18 addition to that we're contemplating at this -- at least  
19 at this point.

20 MS. LIU: I know that you testified that the  
21 Agency already has a statutory authority to do those  
22 things --

23 MR. PHILLIPS: Yes.

24 MS. LIU: -- and actually putting them in

1 the rule might limit your ability to delegate the scarce  
2 agency resources that you have. I was just wondering,  
3 the way that it was previously worded, there was some  
4 discretion built in, I think, and I was wondering if  
5 there was a way to maybe perhaps retain some of that  
6 language rather than completely delete it without  
7 compromising your ability to delegate those resources.

8 MR. PHILLIPS: Well, I think -- I may be  
9 wrong, but my recollection of the way this issue kind of  
10 came up was in the context of whether this should be  
11 mandatory or discretionary, and I guess when I heard that  
12 issue I was thinking perhaps what we were contemplating  
13 there is JCAR's taking a look at this rule and saying,  
14 okay, well, what's the basis for the exercise of the  
15 particular discretion here, and that's why perhaps the  
16 suggestion came out about it being mandatory. I guess we  
17 just did not -- don't think that really it's -- It's kind  
18 of surplusage in the rule as we went back and thought  
19 about it. It just really -- I mean, we -- many -- I  
20 mean, the whole range of board rules that we have  
21 enforcement programs, investigating programs and  
22 compliance programs, we don't necessarily have in those  
23 rules specific authority for the Agency, either  
24 discretionary or mandatory, to perform the Section 4(e)

1 type of -- the Environmental Protection Act investigative  
2 function, so we thought this really didn't need to be  
3 there, so we just struck it.

4 HEARING OFFICER ANTONIOLLI: And having  
5 deleted this section, does that change the way that you  
6 would foresee implementing the program or would it --  
7 would you still -- would the Agency foresee still doing  
8 all of these things that are included in -- it's that  
9 Section 1505.335.

10 MR. PHILLIPS: On a case-by-case basis we  
11 would monitor the proper implementation by the party of  
12 these requirements and their commitment to perform this  
13 type of work. Kurt, I mean --

14 MR. NEIBERGALL: Yeah, I would say, you  
15 know, these are very public activities. We're going out,  
16 doing outreach and public notice here, and I think if we  
17 foresaw a problem or if we heard of any kind of issues,  
18 we would certainly do these kinds of activities to follow  
19 up to make sure we had -- you know, that the authorized  
20 party had completed what was required of them, but I  
21 think to consider doing this on every site that we were  
22 to go to notice with, either the one -- you know, that  
23 responsible parties had had the opportunity to do would  
24 be a daunting task given our resources at this time.

1 HEARING OFFICER ANTONIOLLI: So if there  
2 were no problems that you saw with the authorized party  
3 implementing the community relations plan, would you --  
4 would the Agency maybe not send someone to all the  
5 public -- scheduled public meetings?

6 MR. NEIBERGALL: I think that would be a --  
7 With the example of a public meeting, I think the Agency  
8 unless it was, you know, impossible with scheduling would  
9 want to have a presence at any public meeting. That's a  
10 very critical step in communications with the public  
11 because it's beyond the written word and you are  
12 actually, you know, understanding the issues and the  
13 follow-up questions and things, so at every public  
14 meeting that responsible parties host, we usually have a  
15 presence if the Agency's involved at that particular  
16 site.

17 HEARING OFFICER ANTONIOLLI: Okay.

18 MR. NEIBERGALL: We'll continue to do that.

19 HEARING OFFICER ANTONIOLLI: And then as far  
20 as what -- in that first Section A, the timeliness and  
21 completeness of information, the timeliness is provided  
22 in that section in other places or the deadlines by which  
23 they need to get their fact sheets to you?

24 MR. NEIBERGALL: Right, right, and the

1 complete list is also covered in that we have to approve  
2 the final notice package, so we would make sure it was  
3 accurate and completed at the time of distribution.

4 HEARING OFFICER ANTONIOLLI: Okay.

5 BOARD MEMBER JOHNSON: One problem I foresaw  
6 with leaving that in would be the potential for the  
7 public being given some unreasonable expectations of you  
8 doing it in every case when in fact it was a  
9 discretionary thing, so --

10 MR. PHILLIPS: Right.

11 HEARING OFFICER ANTONIOLLI: Is there  
12 anything further? Any further questions?

13 MS. LIU: No.

14 HEARING OFFICER ANTONIOLLI: Okay. Well, if  
15 that concludes our questions for the Agency's panel, we  
16 can proceed on to prefiled testimony from Ms. Ann Muniz.  
17 Am I pronouncing your last name correctly?

18 MS. MUNIZ: Muniz is okay.

19 HEARING OFFICER ANTONIOLLI: Muniz?

20 MS. MUNIZ: That's fine.

21 HEARING OFFICER ANTONIOLLI: Okay.

22 MS. LIU: How do you say it?

23 MS. MUNIZ: Muniz is the proper  
24 pronunciation.



1 HEARING OFFICER ANTONIOLLI: Muniz. Okay.  
2 Well, that's -- we can do that. Thank you. And I'll  
3 also note for the record that Ms. Bernadette Dinschel is  
4 here, as Mr. Neibergall noted earlier. She testified on  
5 her own behalf at the first hearing in Chicago. And  
6 also, Ms. D.K. Hirner is here on behalf of the Illinois  
7 Environmental Regulatory Group, who also testified at the  
8 Board's first hearing in this rulemaking.

9 So with that, Ms. Muniz, I will allow you to  
10 introduce yourself and --

11 MS. MUNIZ: Okay.

12 HEARING OFFICER ANTONIOLLI: And I can have  
13 you sworn in if you'd like to present your testimony.

14 (Witness sworn.)

15 HEARING OFFICER ANTONIOLLI: Thank you.

16 MS. MUNIZ: My name is Ann Muniz, and I'm a  
17 citizen who's been directly affected by groundwater  
18 contamination and non-notification. As stated in my  
19 prefiled testimony, my private well was contaminated with  
20 trichloroethylene and tetrachloroethylene. I believe  
21 what happened in Lisle and Downers Grove was a wake-up  
22 call for state and local officials and agencies. We were  
23 the ones that fell through the crack in every instance.  
24 My testimony will concentrate on what happened in Downers

1 Grove.

2 I believe the Downers Grove ordeal caused  
3 hundreds of adults and children to be needlessly exposed  
4 to these chemicals, including my family. Local community  
5 wells had been abandoned nearly ten years prior, but  
6 nearby households on private wells were never notified  
7 because no one was required to notify them. When our  
8 contamination became public, the blame shifting began.  
9 County and village officials denied receiving the well  
10 site survey reports regarding the community wells, and  
11 because we lived in an unincorporated area, village  
12 officials refused any type of assistance.

13 Eventually we found out about the Water -- DuPage  
14 Water Commission and began to attend their meetings.  
15 Through FOIA requests and further investigations, two  
16 women and I found out that the Water Commission had  
17 almost 200 million dollars' surplus that was obtained  
18 through a great part from taxes charged to almost all the  
19 residents of DuPage County. We asked for assistance  
20 through loans and Commissioners Benson and Poole agreed  
21 we should get that assistance. They instructed staff to  
22 come up with a way to offer us loans, and we were  
23 ecstatic. These loans were to be 2 percent loans. Then  
24 we found out that the PRPs were going to borrow the money

1 and pay a portion of our connection fees.

2 HEARING OFFICER ANTONIOLLI: Can I interrupt  
3 you for a minute and describe what PRP --

4 MS. MUNIZ: Potentially responsible parties.

5 HEARING OFFICER ANTONIOLLI: Okay. Thank  
6 you.

7 MS. MUNIZ: That an ordinance was going to  
8 be passed that required everyone to connect to Lake  
9 Michigan water and abandon their wells and the \$2,000  
10 that the potentially responsible parties refused to pay  
11 would be loaned to us interest-free by the Village over a  
12 period of ten years.

13 When I saw a map of the area to be covered by the  
14 ordinance, it was larger than the designated  
15 contamination area. At a public works meeting, I  
16 requested that the residents be contacted to inform them  
17 of this ordinance. The committee agreed and instructed  
18 staff to send out letters. County officials utilized tax  
19 records to notify homeowners, which did not prove to be  
20 an efficient notification method. The letters and  
21 notices went to the owners of record. Some people were  
22 not notified. Those not notified include those whose  
23 homes are owned by a trust, those who own the home with  
24 the bank and renters. For some reason, entire blocks of

1 residents did not receive notification. I can't tell you  
2 the number of calls I received. I made copies of my  
3 notices and distributed them to those who called me.

4 I have a problem with these rules in that I would  
5 like to see owners and occupants notified. I think the  
6 wording "extent reasonably practicable" allows -- I don't  
7 know what you're using for the alleged polluters -- an  
8 avenue to not notify the occupants. I think it's  
9 extremely important -- I think it's vital that the  
10 occupants be notified, and my suggestion is in Section  
11 1505.310 (b)(1)(A) and (B) to put owners and occupants  
12 and strike out C, because in my particular situation, if  
13 there was a loophole, they took it, and -- which is one  
14 of the reasons why we're here trying to make sure that  
15 this law passes and that -- I mean, it did pass, but to  
16 make sure that there's no avenues for them to not notify  
17 the occupants.

18 HEARING OFFICER ANTONIOLLI: Okay. Thank  
19 you.

20 MS. MUNIZ: I think the rest of my testimony  
21 is --

22 MS. LIU: You can continue to read it,  
23 please.

24 MS. MUNIZ: Well, I'm not reading my

1 testimony. That was just kind of a summary. My  
2 testimony was --

3 HEARING OFFICER ANTONIOLLI: And what you  
4 presented today was different than your prefiled  
5 testimony, and we do have copies of your prefiled  
6 testimony here. Would you mind if we entered it into the  
7 record as Hearing Officer Exhibit B and then that way  
8 it'll be part of the record too?

9 MS. MUNIZ: Yes.

10 HEARING OFFICER ANTONIOLLI: So are there  
11 any objections to entering Ms. Muniz' prefiled testimony  
12 into the record as Hearing Officer Exhibit B? And if  
13 none, I will mark it as --

14 BOARD MEMBER JOHNSON: I will point out that  
15 the copies on the table there are missing the last four  
16 pages or so, so whoever copied her prefiled testimony  
17 missed a few pages, so -- but rest assured we've got it  
18 in my booklet here and it's been read, so --

19 HEARING OFFICER ANTONIOLLI: Yes.

20 MS. MUNIZ: I'd be happy to answer any  
21 questions.

22 HEARING OFFICER ANTONIOLLI: Do we have any  
23 questions for Ms. Muniz at this point?

24 MS. LIU: I would just like to say thank you

1 very much for coming and sharing your story and  
2 continuing to be involved and -- you've come a long way,  
3 sounds like, from the beginning to here. And I was  
4 wondering, besides the owner and occupants issue, is  
5 there anything else that you would like to see this rule  
6 do to accomplish --

7 MS. MUNIZ: I think this rule is long  
8 overdue. I think that it's been needed for a long time,  
9 and I think it's pretty sad that catastrophic situations  
10 have to occur before people do the right thing and the  
11 laws get changed to make them do it.

12 HEARING OFFICER ANTONIOLLI: Okay. Any  
13 response to --

14 MR. WIGHT: No. I think we understand the  
15 point.

16 HEARING OFFICER ANTONIOLLI: Okay. Well,  
17 thank you very much for your participation, and with  
18 that, is there anything else -- would anyone else like to  
19 make a statement on the record or have any questions?

20 MS. LIU: Can we do a redirect of the Agency  
21 based on her testimony?

22 HEARING OFFICER ANTONIOLLI: Sure, you can  
23 ask questions based on -- if you'd like to.

24 BOARD MEMBER JOHNSON: If you're going to

1 use those fancy terms, you'd better go to law school.

2 MS. LIU: I'm not lawyer, so when she  
3 mentioned switching back to your original proposal and  
4 using the term "owners and occupants" without that phrase  
5 "to the extent reasonably practicable," what would be the  
6 enforcement implications if we were to change it to  
7 "owners and occupants" and the responsible party --  
8 authorized party did not notify one occupant per se?  
9 What would be the enforcement action against them?

10 MR. NEIBERGALL: I could speak of just  
11 about -- I don't want to speak about the enforcement  
12 action, but just about the issue. One of the things that  
13 I had done in my -- put in my first testimony before the  
14 first hearing was the idea that we make every attempt  
15 when we're doing this kind of notification to go door to  
16 door if we're -- instead of mailing if the situation  
17 warrants that. You know, you might not be able --  
18 sometimes these -- the search capabilities of some of  
19 these vendors to get the kinds of renter information you  
20 need to put on a letter -- you know, on the letter and  
21 title it to somebody is not available or it's inaccurate,  
22 but that you always can go back to writing "dear  
23 resident" on it and making sure it gets delivered to that  
24 house where those occupants are living and make sure

1 they're home after hours, that they get that piece of --  
2 you know, important piece of notification. It doesn't --  
3 You know, it doesn't have their name addressed to them if  
4 we can't find it, but you can make the delivery, and so I  
5 think that's important to know, and that's what we  
6 attempt to do whenever we go out, because after all, it's  
7 not the owner that lives somewhere else in another state  
8 that you have to worry about. It's the family that's in  
9 that home.

10 MS. LIU: You mentioned whenever we go out,  
11 but in this case it might be another authorized party  
12 doing it, and I think she's very concerned about a  
13 loophole.

14 MR. NEIBERGALL: Right.

15 HEARING OFFICER ANTONIOLLI: Mr. Neibergall,  
16 what do you think the difference would be under the  
17 proposed rules and the situation that Ms. Muniz  
18 experienced? Do you think there's a difference now in  
19 what is required and how an authorized party would have  
20 to inform occupants?

21 MR. NEIBERGALL: Yeah, and -- okay. I --  
22 yes.

23 HEARING OFFICER ANTONIOLLI: And I think in  
24 the context of the Agency now is -- would be overseeing



1 that process.

2 MR. NEIBERGALL: Right. Well, I think we  
3 have to the extent practicable and also that the  
4 authorized party would have to show us or give us  
5 information on how they were deriving the occupant  
6 information, but just speaking practically, I think we  
7 would -- if we had gaps with occupants and we have  
8 certain areas identified for notification and we clearly  
9 don't have the resident information, we would look at  
10 other methods and ask the authorized party to step up and  
11 to make the proper notifications, and if that wasn't  
12 possible or we couldn't get them to do that, the Agency  
13 would probably take action on their own to do that.  
14 Ms. Fuller might have some other comments on that because  
15 she does quite a bit of this kind of work. Any thoughts?

16 MS. FULLER: Well, I was just thinking that  
17 what you said earlier speaks to the issue that maybe we  
18 can elaborate just a bit, because when we do obtain  
19 mailing lists from one of these outside vendors, they  
20 would typically have the name and address of the party at  
21 that home, at that address, and those things change over  
22 time. They don't update their mailing list information  
23 for private residences as often as businesses, so it  
24 might have fallen by the wayside as far as updating.

1 Might be five years old even, three to five years old.  
2 So in any case, when you're mailing from one of these  
3 mailing list -- vendor lists, I think you ought to have a  
4 name or current resident simply because it might be out  
5 of date, and if you do that, you're covering the issue.  
6 You're always going to get it to the resident. So in  
7 addition to that, if the responsible parties that are  
8 taking on the notification are looking at county records  
9 for ownership, they will also get the owner of record.  
10 They will also be mailing to whoever owns the residence  
11 even if they're in a different location.

12 HEARING OFFICER ANTONIOLLI: Okay.

13 MR. NEIBERGALL: And I might add that when  
14 we do that kind of work and we have an inaccurate  
15 information on the occupant there, often by delivering  
16 that material and giving an agency contact person a  
17 number, they call us and get added accurately to our  
18 mailing list and then receive the correspondence  
19 thereafter, or in personal contact at meetings we do the  
20 same thing. We keep a mailing list and we add people  
21 that way.

22 HEARING OFFICER ANTONIOLLI: Okay.

23 BOARD MEMBER JOHNSON: Well, clearly the  
24 wording was not put in there to provide a loophole for

1 anybody. Do you -- Is there -- From an enforcement  
2 perspective, is there any difference on how you would go  
3 about enforcement procedure in a situation where "extent  
4 reasonably practicable" was in the rule versus it not  
5 being, or would it be the exact same thing? I don't even  
6 know who I'm asking. Who am I asking? Gary? Defer to  
7 him?

8 MR. KING: Be the same thing, I mean,  
9 because those -- in essence, the words "as extent  
10 practicable" is part of the law anyways. I mean, if  
11 somebody was required to identify an occupant, they would  
12 be required to take all those steps that are practicable,  
13 and if they've done those, then I don't think you  
14 could -- you can impose liability against them.

15 BOARD MEMBER JOHNSON: Okay.

16 MR. KING: At least that would be my  
17 opinion.

18 HEARING OFFICER ANTONIOLLI: Yes?

19 MS. HIRNER: I haven't been sworn in.

20 HEARING OFFICER ANTONIOLLI: Okay. Would  
21 you like to introduce yourself and we can have you sworn  
22 in?

23 MS. HIRNER: Uh-huh. My name is D.K.  
24 Hirner, and I'm the executive director of the Illinois

1 Environmental Regulatory Group.

2 HEARING OFFICER ANTONIOLLI: And can you  
3 swear her in?

4 (Witness sworn.)

5 MS. HIRNER: I would guess from the  
6 perspective of the regulated entity is that our goal is  
7 to try to identify and notify every occupant if the  
8 regulated entity is the one who becomes authorized to  
9 provide the notice. I guess from our concern is that  
10 first the law just requires that we notify owners, and  
11 then although there may or may not be -- that the Agency  
12 may or may not anticipate a difference in an enforcement  
13 mechanism if the words "to the extent practicable" are  
14 not there. If in the scenario that one occupant is not  
15 notified and it is a requirement in the law and it is  
16 not -- that person is not notified either because, you  
17 know, the records are bad and you can't get to the  
18 person, there is now the potential -- a whole -- there is  
19 the potential for additional enforcement because you did  
20 not notify an occupant although you tried, and there is  
21 also a whole new avenue of, you know, private citizens  
22 sued for not complying with the law, so "to the extent  
23 reasonably practicable" makes it very operational and  
24 very achievable from the regulated entity's perspective,

1 and again, it's -- you know, it's dancing on the head of  
2 a pin, but it really is -- it just kind of comes down to  
3 that.

4 HEARING OFFICER ANTONIOLLI: Okay. Thank  
5 you. Anything further? No? Any questions from anyone?  
6 Okay. Anything further, Mr. Wight? No?

7 MR. WIGHT: No.

8 HEARING OFFICER ANTONIOLLI: Okay. Well,  
9 thank you, everyone, for the testimony that you've  
10 provided today. We expect to have a transcript of  
11 today's hearing within eight business days; am I right?  
12 Which would bring us to June 2. Therefore, the Board  
13 will accept public comments on this proposal until June  
14 29. There will be an additional public comment period of  
15 at least 45 days after the Board adopts these rules for  
16 second notice, but after second notice the Board can no  
17 longer make substantive changes to the rule text.

18 Today's hearing concludes hearings scheduled by  
19 the Board in this matter, but any party may request  
20 additional hearings pursuant to the Board's procedural  
21 rules.

22 Once we receive it, the Board will post the  
23 transcript on our Board's Web site, which is  
24 [www.ipcb.state.il.us](http://www.ipcb.state.il.us). There the transcript as well as

1 the Agency's proposal, hearing -- the transcript from  
2 today's hearing and the first hearing will be viewable  
3 and downloadable at no charge. Anyone can file a public  
4 comment, but please note that when filing a public  
5 comment, you must serve all the people on the service  
6 list with a copy. Today I have brought copies of the  
7 current service list, and they are at the table at the  
8 side of the room.

9 If there's nothing further, then I wish to thank  
10 everyone again for your comments and your testimony, and  
11 this hearing is adjourned. Thank you.

12 (Hearing adjourned.)

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1 STATE OF ILLINOIS )  
 ) SS  
2 COUNTY OF BOND )

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4 I, KAREN WAUGH, a Notary Public and Certified  
5 Shorthand Reporter in and for the County of Bond, State  
6 of Illinois, DO HEREBY CERTIFY that I was present at  
7 Illinois Pollution Control Board, Springfield, Illinois,  
8 on May 23, 2006, and did record the aforesaid Hearing;  
9 that same was taken down in shorthand by me and  
10 afterwards transcribed, and that the above and foregoing  
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand  
13 and affixed my Notarial Seal this 31st day of May, 2006.

14

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Notary Public--CSR

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#084-003688

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