BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:	)	
	)	
STANDARDS AND REQUIREMENTS	)	
FOR POTABLE WATER WELL	)	R06-023
SURVEYS AND FOR COMMUNITY	)	(Rulemaking – Land, Water)
RELATIONS ACTIVITIES PERFORMED	)	
IN CONJUNCTION WITH AGENCY	)	
NOTICES OF THREATS FROM	)	
CONTAMINATION	)	
	)	
35 Ill. Adm. Code 1505	)	

NOTICE

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

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

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James R. Thompson Center
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Amy Antoniolli, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Illinois EPA") Motion To Refile Statement of Reasons and the Statement of Reasons, a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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

DATE: January 27, 2006

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

THIS FILING SUBMITTED ON RECYCLED PAPER

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	)	
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AGENCY'S MOTION TO REFILE STATEMENT OF REASONS

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Illinois EPA"), pursuant to 35 Ill. Adm. Code 102.402 and 101.Subpart E, moves that the Illinois Pollution Control Board ("Board") accept the attached Statement of Reasons in lieu of the Statement of Reasons filed in the above-captioned rulemaking on January 20, 2006.

In support of this motion, the Illinois EPA states as follows:

The Hearing Officer for the above-captioned proceeding, Amy Antoniolli, has notified the Illinois EPA that the Statement of Reasons originally filed for the proceeding is missing pages 17 and 18. For compliance with 35 Ill. Adm. Code 102.202(b) and in the interests of presenting a complete description of the proposal to the Board, the Agency has attached to this motion an original and nine copies of the Statement of Reasons including pages 17 and 18.

The Illinois EPA respectfully requests that the Board accept the attached Statement of Reasons as a replacement for the originally filed document.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

By: Mark Wight
Mark Wight, Assistant Counsel

DATED: January 27, 2006

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

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CONTAMINATION	)	
	)	
35 Ill. Adm. Code 1505	)	

STATEMENT OF REASONS

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

I. FACTS IN SUPPORT, PURPOSE AND EFFECT

A. Legislation

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

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

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

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[1] 415 ILCS 5/25d-1 – 25d-10.
[2] See 35 Ill. Adm. Code 742.Subpart E for information about Tier 1 remediation objectives.
[3] See 35 Ill. Adm. Code 620 for information about Class I groundwater quality standards.
[4] The Agency may select a greater or lesser distance as appropriate to the circumstances.

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

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

The Agency workgroup first explored an approach to community relations activities

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

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

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

B. Regulatory Development

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

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

[6] Examples include private water companies, environmental consulting companies, the Illinois Association of Groundwater Professionals, and the Homebuilders Association of Illinois.

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

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

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

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

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

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

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

[11] Included were representatives of the Illinois Energy Association, Ameren, the Chemical Industry Council of Illinois, the Illinois State Chamber, the Illinois Environmental Regulatory Group, the Illinois Petroleum Council,

proposing to create a mandatory requirement for community relations activities.

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

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

II. THE PROPOSED REGULATIONS

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

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

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

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

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

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

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

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

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

A. SUBPART A

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

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

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if this is an appropriate location.

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

B. SUBPART B

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

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

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

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

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

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

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

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

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

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

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

C. SUBPART C

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

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

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

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

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

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

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

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

and to establish a continuing dialogue with those parties about contamination related issues and the response actions taken to address the contamination.

Under Sections 1505.310 and 1505.315, both fact sheets and CRPs must be updated to reflect the development of new information or material changes to previously provided information. Once fact sheets are updated and approved by the Agency, they must be redistributed.

Section 1505.320 provides for the establishment of a document repository for releases requiring full community relations plans under Section 1505.315. The repository may be established at a web site unless a request is received for the establishment of a repository at a physical location. In that case, both the web site and physical repository must be established and maintained. Copies of documents must be available upon request. Repositories may be discontinued after 180 days from the date of the Agency's issuance of completion documentation for the response action.

Section 1505.325 requires the submission of fact sheets and community relations plans to the Agency for review and approval prior to distribution of a fact sheet or implementation of the CRP. The responsible party must submit the initial fact sheet, CRP, or both to the Agency within 30 days of accepting the Agency's offer to provide notice. Updates to such documents must be provided to the Agency within ten days of their preparation. If the CRP is required, the web site document repository also must be established within 30 days of acceptance of the Agency's offer. These time periods are aggressive, but community relations activities must be timely to be effective.

Once fact sheets and CRPs are submitted to the Agency, it will conduct a review under

Section 1505.330. The Agency will have 30 days from the date of receipt to complete the review and notify the submitter whether the fact sheet or CRP has been approved, approved with conditions or modifications, or disapproved. Standards for reviews are provided at subsection (b). If the fact sheet or CRP is disapproved or approved with conditions or modifications, a revised fact sheet or CRP must be resubmitted to the Agency within ten days of receiving the Agency's determination. If the revised documents are not re-submitted within ten days, subsection (d) states the Agency may provide public notice and seek cost recovery pursuant to Title VI-D, pursue an enforcement action, or both. If the Agency seeks cost recovery or pursues enforcement, the person performing the remediation may assert as a defense that the Agency's decision on the document(s) was erroneous and that the documents should have been approved as submitted.

The Agency has proposed this approach to appeals because allowing direct appeals of community relations determinations may delay indefinitely the development and implementation of community relations activities. As proposed, the person performing the remediation is not significantly disadvantaged by a potentially adverse Agency determination unless the Agency decides to seek cost recovery for providing notice or to pursue an enforcement action. If the Agency does neither, any purported adverse impact to the responsible party must be balanced against the loss of the opportunity to provide timely information to the public.

If the Agency does pursue one or both of its options, the person then may challenge the Agency's original determination on the documents. This approach thus reduces delays while preserving due process. Effective community relations activities must precede or parallel the response actions and not lag behind them. If community relations activities are delayed while the

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

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

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

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

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

III. TECHNICAL FEASIBILITY AND ECONOMIC REASONABLENESS

A. TECHNICAL FEASIBILITY

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

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

B. ECONOMIC REASONABLENESS

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

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

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

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

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

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

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

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

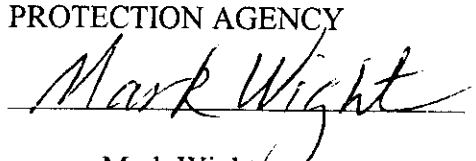
It is currently planned that the Agency will provide as many as seven witnesses in support of the proposal: Doug Clay, Rick Cobb, Carol Fuller, Gary King, Joyce Munie, Kurt Neibergall, and Scott Phillips. Rick Cobb, Deputy Manager of the Bureau of Water's Division of Public Water Supplies, will testify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

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

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

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY



Mark Wight
Assistant Counsel

DATED: January 20, 2006

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[THIS FILING IS SUBMITTED ON RECYCLED PAPER]

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Agency's Motion To Refile Statement of Reasons and the Statement of Reasons upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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

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

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

Amy Antoniolli, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(First Class Mail)

and mailing them from Springfield, Illinois on January 27, 2006, with sufficient postage affixed as indicated above.

Melinda Brandt

SUBSCRIBED AND SWORN TO BEFORE ME

This 27th day of January, 2006.

Brenda Boehner
Notary Public

OFFICIAL SEAL
BRENDA BOEHNER
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 11-3-2009

THIS FILING SUBMITTED ON RECYCLED PAPER