

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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MAY - 9 2006

STATE OF ILLINOIS  
Pollution Control Board

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

R06-023  
(Rulemaking - Land)

**NOTICE**

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Attached Service List

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 Testimony of Scott O. Phillips, Testimony of Gary P. King, Testimony of Kurt D. Neibergall, and Agency's Errata Sheet No. 2, 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: May 8, 2006

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THIS FILING SUBMITTED ON RECYCLED PAPER

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R06-023  
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AGENCY'S ERRATA SHEET NO. 2

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY (Agency )

submits this ERRATA SHEET NO. 2 for the above-titled matter to the Illinois Pollution Control Board (Board). The revisions proposed below are to the Board's First Notice Order issued April 20, 2006. They are proposed primarily to address questions and comments received at the March 28, 2006, hearing in Chicago and also to supplement and clarify the Agency's previous submissions. The Agency will provide testimony in support of the proposed revisions. The revisions are as follows:

**Contents:**

SUBPART C: STANDARDS AND REQUIREMENTS FOR COMMUNITY RELATIONS ACTIVITIES

Section	
1505.300	Purpose and Scope
1505.305	Applicability
1505.310	<u>Notices and Community Relations Plans for Limited Community Relations Activities</u> <del>Contact Lists and Fact Sheets</del>
1505.315	<u>Notices, Fact Sheets and Community Relations Plans for Expanded Community Relations Activities</u>
1505.320	Establishment of Document Repository
1505.325	Submission of <u>Notices, Contact Lists,</u> Fact Sheets and Community Relations Plans for Review
1505.330	Agency Reviews of <u>Notices, Contact Lists,</u> Fact Sheets and Community Relations Plans

- 1505.335 Implementation of Community Relations Plans and Distribution of Notices and Fact Sheets; ~~Compliance Monitoring and Records Retention~~
- 1505.340 Compliance

**Section 1505.100:**

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

**Section 1505.110:**

“Authorized party” means the person authorized by the Agency under subsection (c) of Section 25d-3 of the Act [415 ILCS 5/25d-3(c)] and Subpart C of this Part to provide notice as part of Agency-approved community relations activities in lieu of a notice required to be given by the Agency.

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

**Section 1505.115:**

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

**Section 1505.200:**

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

**Sections 1505.205(a) and (a)(1):**

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

**Sections 1505.210(a) and (b):**

- a) When applicable Board rules require a well survey to determine the existence and location of potable water supply wells, persons subject to this Subpart B must shall identify all private, semi-private, and non-community water system wells located at the property where the release occurred or within 200 feet of the property where the release occurred, all community water system (“CWS”) wells located at the property where the release occurred or within 2,500 feet of the property where the release occurred, and all setback zones and regulated recharge areas in which all or any portion of the property where the release occurred is located.

- b) Actions taken to identify the wells and associated protected areas must ~~shall~~ include, but are not ~~be~~ limited to, the following:

**Section 1505.210(c):**

- c) In addition to identifying potable water supply wells and associated protected areas pursuant to subsections (a) and (b) of this Section, persons subject to this Subpart B must ~~shall~~ expand the area of the potable water supply well survey if measured or modeled groundwater contamination extends beyond a boundary of the property where the release occurred in concentrations exceeding the applicable remediation objectives of 35 Ill. Adm. Code 742.Appendix B: Table E for the groundwater ingestion exposure route or the applicable groundwater quality standards at 35 Ill. Adm. Code 620 (e.g., Class I, Class III). If there is no Table E objective or Part 620 standard, the objective must ~~shall~~ be determined or approved by the Agency in accordance with 35 Ill. Adm. Code 620.Subpart F.
- 1) The extent of modeled groundwater contamination must ~~shall~~ be determined using the procedures of 35 Ill. Adm. Code 742 or another model or methodology approved by the Agency. When modeling the extent of groundwater contamination, the modeling must ~~shall~~ include the impact from soil contamination in concentrations exceeding the applicable remediation objectives for the soil component of the groundwater ingestion exposure route.
  - 2) At a minimum, the expanded well survey must ~~shall~~ identify the following:
    - A) All private, semi-private, and non-community water system wells located within 200 feet, and all community water system wells located within 2,500 feet, of the measured or ~~and~~ modeled extent of groundwater contamination exceeding the applicable remediation objectives of Part 742 or Part 620 remediation objectives for the groundwater ingestion exposure route or the applicable Part 620 groundwater quality standards; and
    - B) All setback zones and regulated recharge areas in which any portion of the measured or ~~and~~ modeled extent of groundwater contamination exceeding the applicable remediation objectives of Part 742 or Part 620 remediation objectives for the groundwater ingestion exposure route or the applicable Part 620 groundwater quality standards is located.

**Section 1505.210(d):**

- d) The Agency may, based on site-specific circumstances or information collection deficiencies (e.g., incomplete, conflicting or imprecise information, information assembled from unverified sources), require additional investigation to determine the existence or location of potable water supply wells, setback zones or regulated recharge areas. The additional investigation may include, but ~~is shall not be~~ limited to, physical well surveys (e.g., interviewing property owners, investigating individual properties for wellheads, distributing door hangers or other materials requesting information about the existence of potable wells).

**Sections 1505.210(e) and (e)(2):**

- e) Documentation of a potable water supply well survey conducted in accordance with this Section ~~must shall~~ include, but ~~is not be~~ limited to, the following:
  - 2) The maps showing the well locations, setback zones and regulated recharge areas pursuant to subsection (e)(1) of this Section ~~must shall~~ show those areas in relation to the measured ~~or and~~ modeled extent of groundwater contamination exceeding the applicable remediation objectives of Part 742 ~~or Part 620~~ for the groundwater ingestion exposure route or the applicable Part 620 groundwater quality standards.

**Section 1505.300(a):**

- a) The purpose of this Subpart C is to establish the minimum standards and requirements for the development and implementation of community relations activities in accordance with Section 25d-7 of the Act when the Agency has authorized a person ~~the responsible party~~ to provide the notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of the Agency-approved community relations activities. In addition, it is the purpose of this Part to ensure that these community relations activities fully inform communities and individuals in a timely manner about offsite impacts or potential impacts from soil or groundwater contamination, or both, and the responses to such impacts. This Subpart C contains requirements for the content, submission for review, distribution and implementation of notices, contact lists, fact sheets and community relations plans, and the establishment and maintenance of document repositories.

**Sections 1505.305(a) and (b):**

- a) Whenever the Agency determines that it must provide notice pursuant to subsection (a) of Section 25d-3 of the Act, the Agency may authorize a person ~~the responsible party~~ to provide the notice as part of the Agency-approved community relations activities developed and implemented in accordance with this Subpart C.
- b) Nothing in this Subpart C requires the development and implementation of community relations activities in accordance with this Subpart unless:
  - 1) The Agency notifies the person ~~responsible party~~ in writing that a notice must be issued under subsection (a) of Section 25d-3 of the Act;
  - 2) As a part of the written notice to the responsible party, the Agency offers the person ~~responsible party~~ the opportunity to provide the notice in lieu of the Agency issuing the notice; and
  - 3) The person ~~responsible party~~ accepts the Agency's offer and notifies the Agency in writing within seven days of receipt of the Agency's offer (unless a longer period of time is provided in the Agency's notice letter) that it intends to provide the notice as part of the community relations activities developed and implemented in accordance with Subpart C of this Part in lieu of the Agency providing the notice.

**Section 1505.310(a):**            Notices and Community Relations Plans for Limited Community Relations Activities Contact Lists and Fact Sheets

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

**Section 1505.310(b):**

- b) An authorized party ~~The person authorized to provide notice as part of community relations activities and~~ within the limits set forth in subsection (a) of this Section must ~~shall~~ develop a notice and a community relations plan (CRP) consisting of a contact list and ~~develop and distribute a fact sheet~~ in accordance with this subsection (b).
  - 1) Notices issued under subsection (c) of Section 25d-3 of the Act and this Part must be distributed in accordance with Section 1505.335 of this Part to the contact list as derived from subsection (b)(2) of this Section and may contain the following information:

- A) The name and address of the site or facility where the release occurred or is suspected to have occurred;
- B) The identification of the contaminant released or suspected to have been released;
- C) Information as to whether the contaminant was released or suspected to have been released into the air, land, or water;
- D) A brief description of the potential adverse health effects posed by the contaminant;
- E) A recommendation that water systems with wells impacted or potentially impacted by the contamination be appropriately tested; and
- F) The name, business address, and phone number of persons at the Agency from whom additional information about the release or suspected release can be obtained. [415 ILCS 5/25d-3(c)]

- 24) The authorized party ~~person must shall~~ prepare a contact list including, but not limited to, the following affected, potentially affected or interested persons, as applicable:
- A) Owners of properties served by private, semi-private or non-community water system wells that have been or may be impacted by groundwater contamination from the release;
  - B) Owners of offsite properties with soil contamination posing a threat of exposure above the appropriate Tier 1 remediation objectives for the current use(s);
  - C) Occupants of the properties identified in subsections (b)(2)(1)(A) and (b)(2)(1)(B) of this Section to the extent reasonably practicable. The contact list must shall include the methods by which the responsible party has attempted to identify the occupants;
  - D) Owners of properties without potable water supply wells but with groundwater that has been or may be impacted by groundwater contamination from the release; and

E) Officials of each unit of government serving the affected properties, including state and federal legislators, county board chairs and county clerks, township supervisors, and mayor or village presidents and city or village clerks. Officials of specialized districts (e.g., school, drainage, park districts) may be excluded from the contact list unless required pursuant to subsections (b)(2)(4)(A) through (b)(2)(4)(D) of this Section.

32) The ~~authorized party person~~ must shall develop a fact sheet for the release and response action. The fact sheet must shall be distributed in accordance with Section 1505.335 of this Part to the contact list as derived from subsection (b)(2)(4) of this Section. The fact sheet must shall be written clearly and concisely in non-technical, non-legal terminology. The fact sheet and any required updates, must shall contain, at a minimum, the following information to the extent available:

**Section 1505.310(c) and (d):**

- c) For information that is not available when a fact sheet is prepared pursuant to subsection (b)(3)(2) of this Section, the submission of the fact sheet to the Agency for review must shall be accompanied by an explanation of why the information is unavailable at the time of the submission of the fact sheet and an estimate of when the missing information will be supplied in a revised fact sheet.
- d) Fact sheets and contact lists developed in accordance with this Section must shall be updated and redistributed whenever new information is obtained or developed or circumstances change so that there is a material change to the information required or provided in the fact sheet (e.g., completion of site investigation and characterization of the nature and extent of contaminants, higher concentrations of contaminants than previously detected, evidence of additional contaminants of concern or of a larger area affected by contamination, approval of plans or reports, completion of response action activities).

**Section 1505.315(a): Notices, Fact Sheets, and Community Relations Plans Plan for Expanded Community Relations Activities**

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

**Section 1505.315(b):**

b) ~~An authorized party~~ ~~The person authorized to provide notice as part of community relations activities and~~ exceeding the limits set forth in subsection (a) of this Section ~~must shall~~ develop ~~and implement~~ a notice and a community relations plan and fact sheet in accordance with this subsection (b). Section 1505. Appendix A of this Part contains the outline of a model community relations plan that may be appropriate for a site subject to this Section. ~~would be appropriate for a complex site.~~

1) Notices must be developed in accordance with subsection (b)(1) of Section 1505.310 of this Part and distributed in accordance with Section 1505.335 of this Part to the contact list as derived from subsection (b)(2)(D) of this Section.

24) The CRP must be implemented in accordance with Section 1505.335 of this Part and must shall include, but is not be limited to, the following elements to the extent related to the contaminants being addressed in the response action:

- A) A description of the site or facility and details of the release and any related soil or groundwater contamination;
- B) A list of community issues and concerns collected from affected, potentially affected, and interested parties identified through the process outlined in subsection (b)(2)(4)(D) of this Section;
- C) A community relations program including elements of outreach, methods for maintaining a dialogue with affected, potentially affected, and interested parties, and a schedule for activities and objectives; and
- D) The process for identifying and updating the contact list, which must shall consist of affected, potentially affected, and interested parties including, but not limited to:
  - i) Owners of properties served by private, semi-private or non-community water systems that have been or may be impacted by groundwater contamination from the release;
  - ii) Owners and operators of community water system wells that have been or may be impacted by groundwater contamination from the release;

- iii) Owners of properties without potable water supply wells but with groundwater that has been or may be impacted by groundwater contamination from the release;
- iv) Owners of offsite properties with soil contamination posing a threat of exposure above the appropriate Tier 1 remediation objectives for the current use(s);
- v) Occupants of the properties identified in subsections (b)(2)(4)(D)(i) and (b)(2)(4)(D)(iv) of this Section to the extent reasonably practicable. The community relations plan must shall include the methods by which the responsible party will attempt to identify the occupants;
- vi) Local, state and federal officials whose jurisdiction covers the affected and potentially affected properties including: mayor or village president, city or village clerk, township supervisors, county board chair and county clerk, city and county health department administrator; state and federal legislators; and
- vii) Citizens, identified groups, organizations or businesses within a minimum of 1000 feet from the site where the release occurred that may have an interest in learning about affected and potentially affected properties (e.g., public and private school administrator(s), Parent-Teacher Association (PTA) leader(s); day care center, senior center and nursing home management; neighborhood or homeowner association or other community leader(s) as identified; hospital and clinic management; and recognized environmental or citizen advisory groups). If approved by the Agency, the initial minimum distance of 1000 feet may be expanded or contracted as the CRP and contact list are updated based on new information developed during the response action.

32) Along with the development of a notice and CRP in accordance with subsections subsection (b)(1) and (b)(2) of this Section, the authorized party persons subject to this subsection (b) must shall develop and distribute a fact sheet for the release and response action. The fact sheet must shall be distributed in accordance with

Section 1505.335 of this Part to the contact list as derived from ~~in~~ subsection (b)(2)(4)(D) of this Section. The fact sheet must shall be written clearly and concisely in non-technical, non-legal terminology. If a significant portion of the population surrounding the site where the release occurred is non-English speaking, the fact sheet must shall be produced and distributed in both English and the other predominant language. The fact sheet and any required updates must shall contain, at a minimum, the following information to the extent available:

**Section 1505.315(c) and (d):**

- c) For information that is not available when a fact sheet is prepared pursuant to subsection (b)(3)(2) of this Section, the submission of the fact sheet to the Agency for review must shall be accompanied by an explanation of why the information is unavailable at the time of the submission of the fact sheet and an estimate of when the missing information will be supplied in a revised fact sheet.
- d) Updates:
  - 1) Fact sheets developed in accordance with subsection (b)(2) of this Section must shall be updated and redistributed whenever new information is obtained or developed or circumstances change so that there is a material change to the information required or provided in the fact sheet (e.g., completion of site investigation and characterization of the nature and extent of contaminants, higher concentrations of contaminants than previously detected, evidence of additional contaminants of concern or of a larger area affected by contamination, approval of plans or reports, completion of response action activities).
  - 2) The CRP including, but not limited to, the contact list must shall be reviewed on a regular basis and updated, as necessary, to ensure that timely and accurate information is provided to affected, potentially affected and interested parties and communities about releases of contaminants with actual or potential impacts to offsite wells, offsite property uses, or both. A current version of the publicly available CRP must shall be kept in the document repository described in Section 1505.320.

**Section 1505.320:**

Authorized parties ~~Persons~~ developing a CRP pursuant to Section 1505.315 of this Part also must shall establish a document repository for the purpose of displaying documents and providing copies of those documents. The document repository must shall be

established at a World Wide Web site. ~~unless the person authorized to provide the notice as part of community relations activities or the Agency receives a request for a document repository at a physical location.~~ A document repository at a physical location also must be established if a request for a repository at a physical location is made to the responsible party or to the Agency. If an individual requests a document repository at a physical location, the authorized party ~~person authorized to provide the notice~~ may satisfy the request by providing a complete set of copies of the documents to the party making the request. If two or more individuals, one or more groups of individuals (e.g., citizen or neighborhood groups, civic organizations), or a local government official or administrator requests a document repository at a physical location, the authorized party ~~person authorized to provide the notice~~ must shall establish and maintain the document repository at both a World Wide Web site and at a physical location as described under subsection (c) of this Section.

**Section 1505.320(a):**

- a) The document repository must shall include the notice, community relations plan, all public notices (e.g., proof of publication for newspaper or other published notices, letters, door hangers, or other forms of public notification), all fact sheets, all applications, plans and reports submitted to the Agency for review and approval and subsequent Agency comment packages, and all final determinations by the Agency, such as a No Further Remediation Letter, permit modification, or other project completion documentation.
  - 1) The authorized party ~~person~~ must shall update the repository promptly and continuously as notices, fact sheets, plans, reports, comment packages and Agency decisions are generated throughout the process.
  - 2) The documents must shall be created, organized and indexed so that affected, potentially affected, or interested persons can identify, locate and download documents of interest.
  - 3) The repository must shall include the business, site or facility representative's e-mail, postal address and telephone number where inquiries can be directed and persons can request copies of repository documents and other site-related documents by mail.

**Section 1505.320(b)(3) (new):**

- b) 3) System capacity must be sufficient to support the viewing and downloading of the documents in the repository and to accommodate the anticipated number of viewers.

**Sections 1505.320(c) and (d):**

- c) Repositories at physical locations:
  - 1) Repositories established at physical locations must shall be established no later than ten business days after receipt of a request for a repository at a physical location or receipt of the Agency's notification that a request has been made to the Agency, whichever is earlier.
  - 2) Repositories established at a physical location must shall be at a public location (e.g., public library, city hall) and open to the public at times convenient to affected, potentially affected, or interested persons.
- d) Information deemed trade secrets or non-disclosable in accordance with Board procedures at 35 Ill. Adm. Code 130 or Agency procedures at 2 Ill. Adm. Code 1828 may be redacted or excluded from the repository consistent with the requirement for providing the public all documents that have not been deemed confidential. Information to be added to the document repository also must shall be screened to ensure that personal information identifying affected, potentially affected, or interested persons or their exact property locations is are not disclosed.

**Section 1505.325:** Submission of Notices, Contact Lists, Fact Sheets and Community Relations Plans for Review

- a) Except as provided in subsection (b) of this Section or subsection (d) of Section 1505.330 of this Part, authorized parties persons accepting the Agency's offer to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities must shall, within 30 days of the date of their acceptance:
  - 1) Submit to the Agency a notice and community relations plan fact sheet and contact list satisfying the requirements of subsection (b) of Section 1505.310 of this Part or a notice, CRP, fact sheet and contact list satisfying the requirements of subsection (b) of Section 1505.315 of this Part; and
  - 2) Establish a web site document repository if required in accordance with Section 1505.320 of this Part.
- b) Updates of CRPs, fact sheets or both and updates of contact lists prepared pursuant to subsection (d) of Section 1505.310 or subsection (d) of Section 1505.315 of this Part also must shall be submitted for Agency review in accordance with subsection (a) of this Section except that the updates must shall be submitted to the Agency within ten days of preparing the revised

CRP or developing or obtaining new information that would materially change the information required or provided in the fact sheet.

- c) If authorized by the Agency, CRPs, notices, contact lists or fact sheets may be filed in specified electronic formats.

**Section 1505.330:** Agency Reviews of Notices, Contact Lists, Fact Sheets and Community Relations Plans

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

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

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

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

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

- a) Implementation of the CRP or distribution of a notice or fact sheet must ~~shall~~ begin within five days of receipt of the Agency's approval of the document(s) CRP or the fact sheet or within ten days of the date the document(s) is deemed approved pursuant to subsection (f) of Section 1505.330 of this Part.
- ~~b) — Compliance monitoring:~~
- b+) Authorized parties ~~Persons authorized by the Agency to provide notice pursuant to subsections (a) and (e) of Section 25d-3 of the Act as part of community relations activities~~ must ~~shall~~:
  - 1A) Provide to the Agency copies of all public notices (including, but not limited to, proof of publication for newspaper or other

published notices), news releases, letters, door hangers, or other forms of public notification; and

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

#### Section 1505.340:

An authorized party must not ~~No person authorized by the Agency to provide notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act as part of community relations activities shall~~ fail to comply with the requirements of this Subpart C or the provisions of community relations activities approved by the Agency.

## Section 1505.Appendix A:

This Appendix A lists the four key elements of a community relations plan for an authorized party proceeding under Section 1505.315 of this Part and several factors that might should be included with each element in a community relations plan prepared for the a-complex site where the release occurred. Unless otherwise required by rule, all the factors listed with each element may not be necessary for each site developing and implementing a community relations plan pursuant to Section 1505.315 of this Part, 1505, but each factor should be considered when developing the any community relations plan.

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

- B.\* Owners and operators of community water system wells that have been or may be impacted by groundwater contamination from the release;
- C.\* Owners of properties without potable water supply wells but with groundwater that has been or may be impacted by groundwater contamination from the release;
- D.\* Owners ~~and occupants~~ of offsite properties with soil contamination posing a threat of exposure above the appropriate Tier 1 remediation objectives for the current use(s);
- E. Occupants of properties identified in paragraphs A and D to the extent reasonably practicable. The community relations plan must include the methods by which the responsible party will attempt to identify the occupants;
- F.\* Local, state and federal officials whose jurisdiction covers the affected and potentially affected properties including: mayor or village president, city or village clerk, township supervisors, county board chair and county clerk, city and county health department administrator; state and federal legislators; and
- G.\* Citizens, identified groups, organizations or businesses within a minimum of 1000 feet from the site where the release occurred that may have an interest in learning about affected and potentially affected properties (e.g., public and private school administrator(s), Parent-Teacher Association (PTA) leader(s); day care center, senior center and nursing home management; neighborhood or homeowner association or other community leader(s) as identified; hospital and clinic management; and recognized environmental or citizen advisory groups). If approved by the Agency, the initial minimum distance of 1000 feet may be expanded or contracted as the CRP and contact list are updated based on new information developed during the response action.

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

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

R06-023  
(Rulemaking - Land)

TESTIMONY OF GARY P. KING ON PROPOSED REVISIONS TO FIRST NOTICE  
PROPOSAL

My name is Gary King. I am the manager of the Division of Remediation Management within the Bureau of Land (BOL) at the Illinois Environmental Protection Agency. In this position I am the senior manager responsible for the Site Remediation Program (SRP) and Leaking Underground Storage Tank (LUST) Program. I have had senior manager responsibility for these programs since the time they were established. Today I will testify with regards to revisions to Subpart B well survey procedures that the Agency is proposing in Errata Sheet No. 2 in response to comments received at the March 28<sup>th</sup> hearing in Chicago. Most sites using the well survey requirements will be in the Site Remediation or LUST Programs. BOL and Bureau of Water permitted facilities performing response actions pursuant to Board rules also will use the survey procedures of Subpart B.

On pages 56-59 of the transcript for the March 28<sup>th</sup> hearing, the Agency was asked about the references in Section 1505.210(c) to Part 620 groundwater quality standards and the Tier 1 remediation objectives of TACO, 35 Ill. Adm. Code 742. On page 59, the Agency was asked if the references to these standards and objectives are

consistent throughout the proposal. The Agency has taken another look at the references and concluded that the references are correct as proposed.

In Section 1505.210(c), the Part 742 remediation objectives and the Part 620 groundwater quality standards are used in conjunction with the measured or modeled extent of groundwater contamination to help determine the area of the potable water well survey once it has been concluded that the groundwater contamination has or will migrate off-site from the property where the release occurred. Both references are included because some response actions will be performed under rules that require compliance with TACO remediation objectives and some will be performed under rules that require compliance with Part 620 groundwater quality standards. The use of either should lead to identification of wells that have been impacted or threatened by contamination. While the existing references are correct, some clarifying language has been proposed at Sections 1505.210(c)(2)(A), (c)(2)(B) and (e)(2).

In Subpart C there are references to Class I groundwater quality standards and Tier 1 remediation objectives in Sections 1505.310(a)(1) and (a)(2), 1505.315(a)(1) and (a)(2), and a few other miscellaneous provisions. In this context, the references track the language from the statutory triggers on which the notice requirements are based, Sections 25d-3(a)(1) and (a)(2) of the Act, and are therefore appropriate for Subpart C community relations requirements. (415 ILCS 5/25d-3(a)(1), (a)(2))

At pages 60-61 of the transcript, the Agency was asked to confirm the consistency of the use of the phrases “measured or modeled” and “measured and modeled” in Sections 1505.210(c)(2)(A) and (c)(2)(B). In both cases, the phrases have been amended from “measured and modeled” to “measured or modeled” consistent with the

understanding that the Board's convention is that "and" means "both" and "or" means "either or both." This change also has been made at Section 1505.210(e)(2).

In most cases, characterization of groundwater contaminant concentrations will include both measured and modeled data, and the Agency would expect to see both. However, there may be exceptions. For example, in the case of soil contamination with concentrations exceeding the remediation objectives for the soil component of the groundwater ingestion exposure route, there may be only modeled data for groundwater contamination if contaminants have not yet migrated to groundwater. When determining the appropriate area of the well survey and reporting the results of the survey, the Agency expects to see both data sets with measured data showing current impacts and modeled data showing projected impacts. For purposes of Part 1505, this information is useful in judging how quickly notice must be provided if notice is necessary. However, because two data sets may not always be available, "measured or modeled" is the correct choice.

This concludes my testimony.

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1505) )

STATE OF ILLINOIS  
Pollution Control Board  
R06-023  
(Rulemaking – Land)

TESTIMONY OF KURT D. NEIBERGALL ON PROPOSED REVISIONS TO FIRST  
NOTICE PROPOSAL

My name is Kurt D. Neibergall, and I am the Manager of the Office of Community Relations (OCR), reporting to the Associate Director within the Illinois Environmental Protection Agency (Illinois EPA). I received a Bachelor of Science degree in agricultural engineering from the University of Illinois in 1980 and have worked for state government for the past 25 years in various capacities in the environmental field. For the last five years, I have managed a staff of ten coordinators in the Illinois EPA's Office of Community Relations. This group works across all Agency programs and is involved in the conduct of the majority of Agency public participation activities, facilitating communications among involved Agency staff, other government organizations, public officials, and the interested public on site-specific and, often, program outreach matters.

My testimony today concerns revisions the Agency is proposing in Errata Sheet No. 2 to the First Notice version of 35 Ill. Adm. Code 1505 in response to questions and comments received at the Chicago hearing on March 28, 2006. Most of the changes

covered in my testimony are found in Subpart C of the proposal, the community relations provisions.

At pages 62-68 of the March 28<sup>th</sup> hearing transcript, there are several questions about whether the Agency's proposal is consistent with Section 25d-3(c) of the Act (415 ILCS 5/25d-3(c)), which provides that a "community relations plan" is necessary if the Agency is to authorize a party to provide notice in lieu of the Agency. In Sections 1505.310 and 1505.315, the Agency originally proposed two levels of community relations activities, one based on a fact sheet and contact list and one based on a community relations plan outline developed from the U. S. EPA's "Community Relations in Superfund: A Handbook" (EPA/540/R-92/009) (Jan. 1992) and "Superfund Community Involvement Handbook" (EPA 540-K-01-003) (2002). The Agency further proposed that the fact sheet and contact list would provide the basis for community relations activities at sites with lesser contamination impacts while the community relations plan outline would provide the basis for community relations activities at sites with greater contamination impacts. Only the latter was characterized in the proposal as a "community relations plan."

To be consistent with the statutory requirements, the Agency has revised Section 1505.310(b) to reflect that the preparation and distribution of the contact list and fact sheet also constitute the implementation of a community relations plan. This change further requires several conforming and clarifying changes throughout the remainder of the proposal including the deletion of the definition of "community relations plan" in Section 1505.110. That definition describes only the approach required in Section 1505.315.

At pages 68-71 of the March 28<sup>th</sup> transcript and again at pages 117-118 (Ms. Hirner's testimony), concern was expressed that the Agency's proposal did not clearly establish the notice requirement from Section 25d-3 of the Act and that the contents of the fact sheets were not entirely consistent with the contents of the notice as set forth in Sections 25d-3(c)(1) – (6) of the Act. The Agency has revised Sections 1505.310(b) and 1505.315(b) to make clear the notice is separate from the fact sheet and to incorporate the statutory language for the contents of the notice. This change also has required several other conforming and clarifying changes in the proposal, primarily in Subpart C.

At pages 71-73 of the March 28<sup>th</sup> transcript, the Agency was asked if it might not be more helpful to the regulated community to include in the Appendix a model community relations plan for a "typical" site rather than a "complex" site. The example chosen for Appendix A is based on the U.S. EPA guidance documents mentioned above and has been used as a guide by the Agency in developing its own community relations plans. A CRP using all of the listed factors under each of the four elements would be a very thorough CRP that, if timely implemented in good faith, should lead to full, open dialogue between the responsible party (revised to "authorized party" in Errata Sheet No. 2) and the interested and affected public under Section 1505.315.

However, in response to comments received during outreach and to promote flexibility for site-specific conditions, the Agency proposed in its Errata Sheet No. 1 to move the structure from Section 1505.315 to Appendix A and clarify that use of this model is not mandatory. Having reviewed the model, the Agency continues to believe that providing the detailed model in Appendix A is appropriate for two reasons: 1) It would be difficult to describe the "typical" site and to provide a model that is always

appropriate for that site; and 2) providing a more detailed model, that is in use in established programs, serves as a menu from which a selection can be made in consultation with the Agency's community relations coordinators that is appropriate for each site subject to Section 1505.315. In response to the Board inquiry, the Agency has proposed amendments to Section 1505.315(b) and in the introductory language to Appendix A to remove references to "complex" sites and to clarify further that there is some flexibility when using the model.

At transcript pages 77-81, 104 -05 (Ms. Dinschel's testimony), and again at 107-10, there were several questions and comments about whose letterhead should be used for the notices. When the Agency provides a notice, the notice will be on Agency letterhead and in accordance with the recommendations of the Groundwater Advisory Council Notice Committee. (See Exh. 1, Testimony of Richard P. Cobb at 2-5 and Attachment III; Exh. 3, Testimony of Kurt D. Neibergall at 6-13 and Attachment 4) When the Agency provides a notice and the local health department agrees to be involved in the notice, the Agency will encourage the use of the health department letterhead. (See Exh. 3, Testimony of Kurt D. Neibergall at Attachment 3) When the authorized party is providing the notice and related documents, the Agency will not provide letterhead because the notice, although approved by the Agency, is not official Agency business or correspondence.

At pages 90-92 of the transcript, the Agency was asked if it would consider revising Section 1505.330(e) to state that the Agency "will" provide the responsible party (revised to "authorized party" in Errata Sheet No. 2) with a reasonable opportunity to correct deficiencies in notice and community relations documents before issuing

disapprovals or approvals with modifications if the opportunity can be offered within the Agency's review deadlines. The Agency's first proposal provides that the Agency "may" offer such an opportunity. The Agency has proposed to change the language so that the Agency "will" offer the opportunity.

At pages 92-93 of the transcript, the Agency was asked to consider clarifying an ambiguity in the introductory language at Section 1505.320, which might be construed as creating an either/or scenario regarding the establishment of document repositories at web sites and physical locations. It is the Agency's intent that the web site repository be mandatory in all cases and that the physical repository also be required under certain conditions if requested by the public. The Agency has proposed changes to eliminate any ambiguity on this matter.

At pages 112-13 of the transcript, Ms. Hirner expressed concern that the contact list provisions in Appendix A do not reflect the language in Sections 1505.310(b)(2) and 1505.315(b)(2)(D) (section numbers as revised in Errata Sheet No. 2) with regard to the notification of occupants of off-site properties affected by contamination. To address this concern, the Agency has proposed changes to Appendix A consistent with the language in Sections 1505.310 and 1505.315.

Errata Sheet No. 2 also contains a substantive change to Subpart C that is not in response to issues raised at the first hearing. Instead, it comes from a comment received at one of the Agency's outreach sessions. At Section 1505.320(b) a new subsection (b)(3) has been added to provide that system capacity for web site repositories must be sufficient for anticipated demand. Considering site-specific differences, there is no bright line standard that can be proposed here. However, the general standard proposed by the

Agency serves as a reminder to those establishing web site repositories that system capacity must be taken into consideration and gives the Agency some regulatory leverage if complaints about inaccessibility are received from the public.

Finally, miscellaneous, non-substantive revisions are proposed in Subpart C and throughout the draft to clarify and correct previously proposed phrasing and grammatical errors.

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1505) )

STATE OF ILLINOIS  
Pollution Control Board  
R06-029  
(Rulemaking - Land)

TESTIMONY OF SCOTT O. PHILLIPS ON PROPOSED REVISIONS TO FIRST NOTICE PROPOSAL

My name is Scott Phillips. I am the managing attorney for the Division of Legal Counsel's Bureau of Land and Bureau of Water Regulatory Section within the Illinois Environmental Protection Agency. Today I will testify about several revisions proposed by the Agency in Errata Sheet No. 2 in response to questions and comments received at the March 28<sup>th</sup> hearing.

The first issue concerns a relatively simple drafting measure. At pages 86-87, the Board asked that the Agency use "must" in place of "shall" where appropriate. The Agency has made those changes throughout the proposal.

The phrase "responsible party" is the subject of the next two issues. The phrase is used at Section 25d-3(c) of the Environmental Protection Act ("Act") (415 ILCS 5/25d-3(c)) to identify persons who may be authorized by the Agency to provide notice in lieu of the Agency to owners of off-site properties adversely affected by migrating contamination. It also is used at Section 25d-3(d) of the Act to identify parties who may be subject to cost recovery actions by the Agency when the Agency has provided the notice.

At pages 32-35 and 40 of the March 28<sup>th</sup> transcript and again at pages 114-15 (Ms. Hirner's testimony), concerns were expressed by several participants that the phrase "responsible party" should be defined in this proposal. The concern was that the phrase carries with it connotations of legal liability for the release that is the subject of the notice, and the Agency shares those concerns. Moreover, the Agency believes the phrase should be interpreted differently for the community relations rules than for the cost recovery rules.

The Agency's position is that this phrase should not have its traditional liability connotations for purposes of the community relations requirements of Part 1505. Rather, it should be broad enough to accommodate parties who might be performing response actions even though they have no legal responsibility to do so or have not been adjudicated to have that responsibility. This scenario is most likely to arise in the Agency's voluntary cleanup program, the Site Remediation Program (35 Ill. Adm. Code 740), where developers and subsequent purchasers frequently enroll to clean up properties previously contaminated by others. Often these parties have community relations capabilities and experience and might be willing to take on the task of providing the notice. The Agency does not think it serves the public interest to exclude these parties simply because they are not the parties who caused the release. To the contrary, they are well positioned to provide interested and affected persons with the information about conditions at the site and the response action because they are the parties assuming the responsibility for addressing the release.

One alternative for resolving the issue would be to define "responsible party" for purposes of Part 1505 so that it would not have liability connotations. From a strictly

legal perspective, this should work. However, the Agency is concerned that the liability connotations are so deeply ingrained in the phrase that there is a strong possibility of resistance to use of the community relations procedures simply because parties will not want to accept the label of responsible party. In addition, the chances for confusion will be increased because the Agency does expect that the phrase will carry its traditional liability connotations when it is used in the Agency's cost recovery rules to be promulgated under Sections 25d-3(d) and 25d-7(b) of the Act.

Therefore, the Agency proposes in its Errata Sheet No. 2 to define and use the phrase "authorized party" in Part 1505 when describing the parties authorized by the Agency to provide notice in lieu of the notice the Agency is required to give. This phrase is used irrespective of the party's legal liability for cleanup of the release. This alternative should eliminate any misunderstanding or reluctance to participate in the community relations activities by persons who associate "responsible party" with legal liability.

Also on the issue of "responsible parties," the Board requested at pages 38-41 of the transcript that the Agency consider revising the proposal so there is consistent use of the term "responsible party" in Subpart C. In the earlier versions, the Agency had used several contextual references to describe parties working their way through the Subpart C requirements. In Errata Sheet No. 2, the Agency has proposed using where appropriate the previously discussed "authorized party" in place of "responsible party" to describe more consistently persons authorized by the Agency to provide the notice.

At pages 53-56 of the transcript the Agency was asked to identify the other Parts of the Board's administrative rules potentially affected by the potable water well survey

provisions in Subpart B. These minimum standards and requirements for well surveys will become operative when a person performing a response action “pursuant to applicable Board rules” is required to perform a well survey as part of the response action. The Agency also was asked to comment on whether the affected Parts should be listed in Part 1505 and/or amended when opened in the future to cross-reference Part 1505.

The Agency believes the following Parts will be affected by the Subpart B well survey standards and requirements:

- 1) 35 Ill. Adm. Code 615: Existing Activities in a Setback Zone or Regulated Recharge Area;
- 2) 35 Ill. Adm. Code 616: New Activities in a Setback Zone or Regulated Recharge Area;
- 3) 35 Ill. Adm. Code 620: Groundwater Quality;
- 4) 35 Ill. Adm. Code 704: UIC Permit Program;
- 5) 35 Ill. Adm. Code 723: Standards Applicable to Transporters of Hazardous Waste;
- 6) 35 Ill. Adm. Code 724: Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities;
- 7) 35 Ill. Adm. Code 725: Interim Status Standards for Owners and Operators of Hazardous Waste Treatment, Storage, and Disposal Facilities;
- 8) 35 Ill. Adm. Code 731: Underground Storage Tanks;
- 9) 35 Ill. Adm. Code 740: Site Remediation Program;
- 10) 35 Ill. Adm. Code 807: Solid Waste;
- 11) 35 Ill. Adm. Code 811: Standards for New Solid Waste Landfills;
- 12) 35 Ill. Adm. Code 815: Procedural Requirements for All Landfills Exempt from Permits;

- 13) 35 Ill. Adm. Code 817: Requirements for New Steel and Foundry Industry Wastes Landfills; and
- 14) 35 Ill. Adm. Code 830: Standards for Compost Facilities.

In addition, other Parts not listed here will be affected because of their relationship to the listed Parts. For example, Part 724 will subsume Part 722 (Standards Applicable to Generators of Hazardous Waste) if generators have releases of hazardous wastes that require “response actions” (as defined in Part 1505 and distinguished from “corrective action” requirements under the groundwater monitoring provisions). Part 811 will subsume Part 814 (Standards for Existing Landfills and Units) for releases at existing solid waste landfills that require response actions. Further, Parts 732 (Petroleum Underground Storage Tanks) and 734 (Petroleum Underground Storage Tanks (Releases Reported On Or After June 24, 2002)) would have been included on the list, but they now contain well survey procedures equivalent to Subpart B and will not require reference to Part 1505.

Because of the broad impact of the well survey rules, the Agency chose to propose a single Part with broad applicability language rather than attempt to open and amend the several individual Parts. The Agency prefers not to list affected Parts in the applicability section of Subpart B. The concern is that listing the Parts then may operate as a limitation. Overlooked and subsequently adopted or amended Parts with response action requirements would be excluded unless something very much like the Agency’s proposed generic language were included along with the listed Parts. For example, the Agency is developing regulations for municipal waste transfer stations containing contingency plan and closure plan requirements to investigate and address releases of contaminants. Once the new Part is adopted, Part 1505 would have to be reopened and

amended to keep the list of affected Parts current. Although there might be ways of drafting around these problems, the drafting alternatives would tend to defeat the original purpose of listing the Parts. The Agency thinks the better approach is to refrain from listing the affected Parts in Subpart B but to cross-reference Part 1505 as the affected Parts are opened or adopted in the future.

Finally, at page 92 of the March 28<sup>th</sup> transcript, the Agency was asked to consider making mandatory the discretionary compliance monitoring requirement at Section 1505.335(b)(2). Additional discussion related to this issue is found at pages 35-38 of the transcript. As originally proposed, the compliance monitoring requirement provides that the Agency “may” monitor implementation of approved community relations activities and offers some examples of steps the Agency might take as part of its monitoring activities. At pages 36-38 the Agency testified that community relations coordinators will be assigned to each case where a responsible party is authorized to provide the notice as part of community relations activities.

The Agency’s community relations coordinators have a number of duties in addition to those that will follow the adoption of Part 1505. The primary functions of the coordinators under Part 1505 will be to review the required documents, work with the responsible parties to ensure the documents contain complete and accurate information and that the interested and affected public has been identified, issue Agency final determinations, and provide information to the public as Agency contact persons under Sections 1505.310(b)(3)(H) and 1505.315(b)(3)(J) (as revised per Errata Sheet No. 2). Compliance monitoring also will be a part of the coordinator’s job, but the distribution of resources in this area will be uneven with some sites undoubtedly requiring a larger share

of these limited resources than others. The coordinators and their managers must make these decisions on a on a case-by-case basis and within the context of the coordinators' other duties.

The Agency has statutory authority pursuant to Section 4(e) of the Act (415 ILCS 5/4(e)), as well as implied authority, to monitor compliance with the rules it administers. Section 1505.335(b)(2) was added merely to make the parameters of the program clear to participants and the public. Therefore, in Errata Sheet No. 2, the Agency proposes removal of the provision from the proposal rather than turning it into a limitation on the Agency's discretion to allocate its compliance and enforcement resources.

This concludes my testimony.

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**PROOF OF SERVICE**

I, the undersigned, on oath state that I have served the attached Testimony of Scott O. Phillips, Testimony of Gary P. King, Testimony of Kurt D. Neibergall, and Agency's Errata Sheet No. 2, upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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

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

Matt Dunn  
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Chicago, Illinois 60601  
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Amy Antonioli, Hearing Officer  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, Illinois 60601  
**(UPS - Next Day)**

(Attached Service List - **First Class Mail**)

and mailing them from Springfield, Illinois on May 8<sup>th</sup>, 2006, with sufficient postage affixed as indicated above.

*Beverly Bolt*

SUBSCRIBED AND SWORN TO BEFORE ME

This 8<sup>th</sup> day of May, 2006.

*Brenda Boehner*  
Notary Public



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