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STATE OF ILLINOIS
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD
August 28, 2014

IN THE MATTER OF:)
)
STANDARDS AND REQUIREMENTS FOR) R14-23
POTABLE WATER SUPPLY WELL) (Rulemaking - Land)
SURVEYS AND FOR COMMUNITY)
RELATIONS ACTIVITIES PERFORMED IN)
CONJUNCTION WITH AGENCY NOTICES)
OF THREATS FROM CONTAMINATION:)
PROPOSED AMENDMENTS TO 35 ILL.)
ADM. CODE 1600)

HEARING OFFICER ORDER

On June 17, 2014, the Illinois Environmental Protection Agency (Agency) filed a rulemaking proposal to amend Part 1600 of the Board's Subtitle O Right to Know regulations. On July 24, 2014, the Board accepted the Agency's proposal for hearing. Also, on July 24, 2014, a hearing officer order scheduled the first hearing on Thursday, September 4, 2014, in Springfield. The order also set deadlines of Thursday, August 21, 2014, to pre-file testimony for the first hearing and Thursday, August 28, 2014, to pre-file written questions based on pre-filed testimony.

On Thursday, August 21, 2014, the Agency timely pre-filed the testimony of Mr. Bradley Frost, the Acting Manager of the Agency's Office of Community Relations.

The Board and its staff have reviewed the Agency's proposal and Mr. Frost's pre-filed testimony. The Board poses questions based on those filings that are filed with this order as Attachment A. The Board directs the Agency to prepare to respond to them at the first hearing on September 4, 2014. The Board may raise follow-up questions in the course of the first hearing.

IT IS SO ORDERED.

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Attachment A to Hearing Officer Order of August 28, 2014

- 1) The Agency's proposed definition of "Class I groundwater quality standards" refers to 35 Ill. Adm. Code 620.210 (Class I: Potable Resource Groundwater). Please clarify whether the proposed definition should refer to 35 Ill. Adm. Code 620.410 (Groundwater Quality Standards for Class I: Potable Resource Groundwater).
- 2) In the Agency's proposed definition of "volatile chemicals," please explain the rationale for using Henry's Law Constant of greater than 1.0×10^{-2} instead of 1.9×10^{-2} as used in the TACO regulations at 35 Ill. Adm. Code 742.200.
- 3) In Section 1600.300(a), the Agency proposes to clarify that the requirements of Part 1600, Subpart C establish the "minimum" requirements for the content, submission for review, distribution, and implementation of notices, contact lists, fact sheets, and community relations plans (CRPs), and the establishment and maintenance of document repositories. Please comment on whether the proposed clarification would subject parties authorized to provide notice pursuant to Section 1600.100 to any additional obligations beyond what is currently required under Part 1600.
- 4) The Agency's proposed Sections 1600.310(a)(2) and 1600.315(a)(2) require public notification only if "[m]easured offsite groundwater contamination from volatile chemicals poses a threat of indoor inhalation exposure above the appropriate Tier I remediation objectives for the current use(s). . . ." Please clarify whether the proposed language should parallel the proposed language at Sections 1600.310(a)(4) and 1600.315(a)(4) by indicating that the offsite groundwater contamination is "from the site where the release occurred".
- 5) The Agency's proposed regulations require the use of only measured offsite groundwater contamination (Sections 1600.310(a)(2), 1600.315(a)(2)) and measured offsite soil gas contamination (Sections 1600.310(a)(4) and 1600.315(a)(4)) to trigger public notification requirements because contamination predicted by modeling may not be reliable. Please clarify whether access to measured offsite groundwater or soil gas contamination is always available. If not, please comment on whether the rules should allow use of modeled offsite groundwater or soil gas contamination as an alternative.
- 6) The proposed changes to Sections 1600.310(b)(3)(C) and 1600.315(b)(3)(C) remove the obligation of an authorized party to inform affected or potentially affected parties through a fact sheet of any precautionary measures that should be taken to avoid or reduce potential public health impacts. Instead, the Agency's proposal requires the fact sheet to include "[a] description of the appropriate actions that affected or potentially affected should take to evaluate the potential for threats to human health via a completed exposure pathway."

The Agency explains at page 8 of its Statement of Reasons that this proposed revision "will clarify that water well sampling and gas sampling do not, in isolation, avoid or reduce the potential public health impacts. Rather, such testing enables the owner or occupant to determine if a threat to human health exists and, thereafter, take any steps he

Attachment A to Hearing Officer Order of August 28, 2014

or she feels are needed to address those concerns.” Please comment on whether it would be helpful to the affected or potentially affected parties to be aware of any precautionary measures that they should take to avoid or reduce potential public health impacts posed by specific contaminants of concern.

- 7) In some proposed sections, the term “parties” is replaced by “persons” regarding those affected, potentially affected, or interested. *See, e.g.* proposed Section 1600.310(b)(3)(G). However, the term “parties” is retained in other sections, including Section 1600.310(b)(3)(C). Please clarify the Agency’s intent and comment on whether the term “parties” must be replaced by “persons” in other sections of Part 1600.