

ILLINOIS POLLUTION CONTROL BOARD  
July 6, 2006

IN THE MATTER OF: )  
)  
STANDARDS AND REQUIREMENTS FOR )  
POTABLE WATER WELL SURVEYS AND ) R06-23  
FOR COMMUNITY RELATIONS ACTIVITIES ) Rulemaking - Land  
PERFORMED IN CONJUNCTION WITH )  
AGENCY NOTICES OF THREATS FROM )  
CONTAMINATION UNDER P.A. 94-314: )  
NEW 35 ILL. ADM. CODE PART 1600 )

Proposed Rule. Second Notice.

OPINION AND ORDER OF THE BOARD (by N.J. Melas):

This rulemaking proposes to add a new Part 1600 to the Board's regulations concerning standards and requirements for potable water well surveys and community relations activities in response to threats from soil and water contamination. On January 20, 2006, the Illinois Environmental Protection Agency (Agency) filed this proposal in response to Public Act 94-314, effective July 25, 2005, which added a new Title VI-D ("Right-To-Know") to the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*). Public Act 94-314 requires the Board to adopt well survey and community relations rules within 240 days of the effective date of P.A. 94-314, or no later than September 17, 2006. The Board meeting immediately before that date is scheduled for September 7, 2006.

The Board adopted first-notice rules on April 20, 2006. At submittal of this rulemaking for first notice, the Joint Committee on Administrative Rules (JCAR) amended the assigned subtitle from O to N. The rules were published in the *Illinois Register* at 30 Ill. Reg. 18, 8061 (May 5, 2006). As discussed in more detail below, the Board's proposal for second notice changes the numbering of this rulemaking from 1505 *et seq.* to 1600 *et seq.* to more clearly differentiate the proposed rules from existing rules at Part 1500 *et seq.* Today's caption reflects that change.

To date, the Board has received five written public comments. The 45-day first-notice public comment period ended June 29, 2006. The proposal adopted today makes amendments and clarifications based on the Agency's errata sheet 2, filed May 9, 2006, and issues discussed at hearing. The Board also incorporates changes made by JCAR prior to first-notice publication.

Today the Board adopts this proposal for second-notice review by JCAR. The Board describes the new Part 1600, discusses the various issues raised at hearing and in public comments, and changes made at second notice in more detail below.

**PROCEDURAL BACKGROUND**

On January 20, 2006, the Agency filed this proposal for rulemaking pursuant to Sections 27 and 28 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 102.202(b).<sup>1</sup> The Board accepted the rulemaking for hearing on February 2, 2006. Hearing Officer Amy Antonioli held the first hearing on March 28, 2006, in Chicago,<sup>2</sup> and the second hearing on May 23, 2006, in Springfield.<sup>3</sup>

Mr. Gary King, Mr. Richard Cobb, Mr. Kurt Niebergall, Ms. Joyce Munie, Ms. Carol Fuller, and Mr. Scott Phillips testified on behalf of the Agency at both hearings. Mr. King, manager of the Division of Remediation Management within the Bureau of Land at the Agency, testified regarding the new potable water well survey rules and how they will be integrated with the site remediation, leaking underground storage tank, and Resource Conservation and Recovery Act closure programs. Mr. Cobb, Deputy Manager of the Division of Public Water Supplies of the Agency's Bureau of Water, discussed the background of P.A. 94-314 and the purpose and scope of the proposed Part 1600. Mr. Niebergall, Manager of the Office of Community Relations, talked about the purpose, scope, and reasoning behind the proposed standards and requirements for community relations activities. Mr. Douglas Clay, manager of the Leaking Underground Storage Tank Section in the Bureau of Land, was also present on behalf of the Agency at the second hearing.

Ms. Dierdre K. Hirner, on behalf of the Illinois Environmental Regulatory Group (IERG), and Ms. Bernadette Dinschel, individually, also testified at the first hearing. Ms. Ann Muniz presented testimony at the second hearing.

The Board has received five public comments. Mr. Michael Perkins filed the first public comment (PC 1). The Agency filed the second public comment (PC 2). The third public comment was filed by Citizens Against Ruining the Environment (C.A.R.E.) (PC 3), the fourth filed by Ms. Dinschel (PC 4), and the fifth by IERG (PC 5). The Agency has filed two errata sheets with amendments to the original proposal.

### **SUMMARY OF PROPOSED NEW PART 1600**

Public Act 94-314 directs the Agency to propose rules requiring potable water well surveys and community relations activities in response to releases of contaminants that have impacted or may impact offsite groundwater or soil. In response, the Agency has proposed a new Part that codifies procedures currently followed by the Agency in conducting potable water supply well surveys when those surveys are required under the Act or Board rules. Also required by Public Act 94-314, the proposed new part defines how the Agency, or any party authorized by the Agency, must conduct community relations activities in response to releases of contaminants that have impacted or may impact offsite potable water supply wells. As correctly noted by C.A.R.E. in its post-hearing public comment, the regulations governing community

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<sup>1</sup> The Agency's statement of reasons will be cited to as "Stat. of Reas. at \_."

<sup>2</sup> The transcript from the March 28, 2006 hearing will be cited to as "Tr.1 at \_."

<sup>3</sup> The transcript from the May 23, 2006 hearing will be cited to as "Tr.2 at \_."

relations activities are in addition to, not in lieu of, any existing reporting and notification requirements. PC 3 at 4.

The proposed new Part 1600 contains three subparts. Subpart A contains general information. Subpart B contains the procedures for performing potable water well surveys as part of response actions taken to address releases of contaminants. Subpart C contains the standards and requirements for community relations activities to be developed and implemented when the authorized party agrees to take on the Agency's notice obligations as part of Agency-approved community relations activities.

## **CHANGES PROPOSED IN ERRATA SHEET 2 AND IN PUBLIC COMMENTS**

Subsequent to first-notice publication in the Illinois Register, the Agency submitted a second errata sheet suggesting several changes to the rule language. In addition, the Board received many suggestions filed in public comments. Below the Board discusses the suggested changes.

### **References to Groundwater Quality Standards and Remediation Objectives**

In response to a question at hearing, the Agency clarifies in errata sheet 2 why references to groundwater quality standards and Tier I remediation objectives vary from Subpart B to Subpart C in the proposal. Hearing Exh. 6 at 1-2. The Agency explains that in Subpart B, the Part 742 remediation objectives and Part 620 groundwater quality standards are used together with the measured or modeled extent of groundwater contamination. *Id.* at 2. Both references are required because some response actions will be performed pursuant to the Tiered Approach to Corrective Action Objectives (TACO) remediation objectives and others will be performed under the groundwater quality standards. Together, compliance with the regulations and modeling will help identify the wells that have been impacted or threatened by contamination once it has been concluded that groundwater contamination has or will migrate off-site.

Subpart C references Class I groundwater quality standards and Tier I remediation objectives, among other provisions. In this subpart, the references are required by Section 25d-3(a)(1), (a)(2) of the Act. P.A. 94-314, *eff.* July 24, 2005, *to be codified as* 415 ILCS 5/25d-3(a)(1), (a)(2).

### **“Measured or modeled” Extent of Groundwater Contamination**

In errata sheet 2, the Agency the changes the phrase “measured and modeled” to “measured or modeled” in Sections 1600.210(c)(2)(A), (B), and (e)(2). Hearing Exh. 6 at 2-3. The Agency contends that the amended language reflects “the understanding that the Board’s convention is that ‘and’ means ‘both’ and ‘or’ means ‘either or both.’” *Id.* at 3. According to the Agency, characterization of groundwater contaminant concentrations will usually require both measured and modeled data, but there are exceptions. For example, in the case of soil contamination where contaminants have not yet migrated to groundwater, groundwater contamination can only be modeled, as it is not yet measurable. *Id.* Because two data sets may

not always be available, contends the Agency, “measured or modeled” is the appropriate choice. *Id.*

### **What Constitutes a “Community Relations Plan”**

In the original proposal, the Agency proposed two levels of community relations activities. One level, for sites with lesser contamination, required distribution of a fact sheet and contact and the second level, for sites with greater contamination impacts, required a community relations plan (CRP). To be consistent with statutory requirements, the Agency revised Section 1600.310(b) in errata sheet 2 so that both levels of notification constituted implementation of a community relations plan. Hearing Exh. 7 at 2. The requirements under the plan depend on the extent of the contamination.

The Agency also revised Section 1600.310(b) to clarify that notice is separate from the fact sheet and incorporated the statutory language for the required contents of the notice. *Id.*

### **Public Notices: Letterhead**

At hearing the parties discussed whose letterhead should be used for public notices. Tr.2 at 77-78, 104-05. The Agency states that when the Agency provides notice, the notice will be on Agency letterhead and in accordance with the recommendations of the Groundwater Advisory Council Notice Committee. Hearing Exh. 7 at 4; citing Exh. 1, 3. When a health department is involved in the notice, the Agency states it will encourage the use of health department letterhead. Finally, when the authorized party is providing notice, the Agency will not provide letterhead because, states the Agency, although approved by the Agency the notice is not official Agency business or correspondence. *Id.*

### **Fact Sheets: Content**

C.A.R.E. believes that the rule should require authorized parties to distribute a fact sheet under Section 1600.310, where a release affects five or fewer wells. PC 3 at 2. C.A.R.E. suggests adding a provision analogous to the requirements in Section 1600.315(b)(3) to ensure that communities and individuals are fully informed. PC 3 at 2.

Additionally, C.A.R.E. insists that fact sheets notify recipients of their right under §1600.320 to request a document repository at a physical location since many recipients may be without a computer. PC 3 at 2. C.A.R.E. urges that the fact sheet also contain verification that the information contained in the sheet is approved by the Agency and notice that the fact sheet is not junk mail. PC 3 at 2. Moreover, C.A.R.E. believes that either the Agency or the authorized party should include information to fact sheet recipients about the availability of Toxicological Profiles, ToxFAQs (frequently asked questions about hazardous substances), and other resources freely provided by the federal Agency for the Toxic Substances and Disease Registry. PC 3 at 4.

### **Mandatory Website Repository**

In errata sheet 2 the Agency amended language in Section 1600.320 to clarify that a website repository is mandatory in all cases, and a physical repository is an additional requirement under certain conditions if requested by the public. Hearing Exh. 7 at 5. The Agency also added a requirement, based on comments during the Agency's outreach sessions, that system capacity for web site repositories must be sufficient for the anticipated demand. *Id.*

IERG states that according to the current Section 1600.320, upon request of one individual, the authorized party must provide the individual with a copy of the complete document repository. Proposed 35 Ill. Adm. Code 1600.320. If further requests are made, the authorized party must establish a physical repository at a public location. IERG contends that the two-tiered approach of providing physical documents is inefficient and potentially burdensome. IERG recommends, instead, that a physical repository in a public location should be made upon the initial request. PC 5 at 4.

C.A.R.E. suggests that the rule limit the content of the online document repository to prevent authorized parties from including advertisements or information unapproved by the agency. PC 3 at 2.

### **Replacing “Responsible Party” With “Authorized Party”**

As noted by Ms. Hirner at hearing, several participants recommended deleting or defining the term “responsible party” from the proposed rule language. The concern was that the phrase is associated with legal liability in cost recovery rules or for the triggering release of contaminants. According to the Agency, “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.” Hearing Exh. 5 at 3.

Instead of defining the “responsible party” for the purposes of Part 1600, the Agency proposes in errata sheet 2 to define and use the phrase “authorized party” when describing any party authorized by the Agency to provide notice in lieu of the Agency. Hearing Exh. 7

In response to a request by the Board (TR.1 at 38-41), the Agency also revised the proposal so there is consistent use of the term “authorized party” in Subpart C. IERG supports using the term “authorized party” to replace the term “responsible party.” PC 5 at 2.

C.A.R.E. believes the Board should amend the proposed Section 1600.305 to allow the Agency discretion to choose one authorized party among several candidates or allow multiple authorized parties to work cooperatively to avoid disputes and resulting delays. PC 3 at 2. C.A.R.E. reasons that at many sites, there may be more than one entity that could be authorized to conduct community relations activities and each may have differing interests in providing notice. *Id.*

### **Board Rules Potentially Affected by Potable Water Well Survey Rules and Regulations**

The Agency has identified the various Parts that require a person performing a response action to perform a well survey as part of the response action. The Agency decided not to list the Parts in the applicability language of Part 1600.Subpart B, but rather to cross-reference Part 1600 as the affected parts are opened or adopted in the future. Hearing Exh. 5 at 6. The Agency lists the following sections as 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 Waste Landfills; and
14. 35 Ill. Adm. Code 830: Standards for Compost Facilities.

#### **Compliance Monitoring Requirement**

As originally proposed, Section 1600.335(b)(2) gave the Agency discretion to monitor implementation of approved community relations activities and provided examples of the types of monitoring the Agency may perform. Hearing Exh. 5 at 6. In errata sheet 2, the Agency

deleted the provision to avoid making that section a limitation on the Agency's discretion to allocate its compliance and enforcement resources.

The Agency states that the primary functions of the Agency's community relations coordinators 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." Hearing Exh. 5 at 6. Further, the Agency states that Section 4(e) of the Act gives the Agency authority to monitor compliance with the rules it administers. 415 ILCS 5/4(e) (2004).

### **Notification of Occupants "to the Extent Reasonably Practicable"**

The proposal currently requires the identification and notification of such occupants "to the extent reasonably practicable." See Proposed 35 Ill. Adm. Code 1600.310(b)(2), 1600.315(b)(2)(D), 1600.Appendix A. In errata sheet 2, the Agency amended language in the sample community relations plan contained in Appendix A to match the rule language for preparing a contact list including occupants of properties that have been or may be impacted by groundwater contamination from the release. Hearing Exh. 7 at 5.

Mrs. Dinschel and Ms. Muniz have both experienced contamination of their private wells by groundwater contamination migrating from offsite. Both fear that the language requiring notification of occupants "to the extent reasonably practicable" creates a loophole that authorized parties may use to avoid notifying occupants. Ms. Dinschel's primary concern is whether notification under the new Part 1600 will be adequate. Ms. Dinschel sets forth a hypothetical in which occupants are not notified because the authorized party does not have the time or resources to identify occupants and provide timely notification. Post-hearing, Mrs. Dinschel and Ms. Muniz seek clarification of what "to the extent reasonably practicable" means.

C.A.R.E. is concerned that in requiring authorized parties to identify occupants "to the extent reasonably practicable" under Section 1600.310(b)(2)(C) and Section 1600.315(b)(2)(D)(v), the proposed rule does not list specific methods for identification. PC 3 at 1. C.A.R.E. proposes specific methods for identifying necessary parties. PC 3 at 1.

At hearing, Ms. Hirner identified the difficulties associated with notifying occupants and reiterated IERG's concern that an absolute requirement exposes the regulated community to enforcement actions even if the authorized party has made a good faith effort to notify all occupants.

The Agency specifically addressed the occupant notification concern in a public comment filed on June 27, 2006. The Agency stated:

The community relations concept includes more than affected property owners and more than simple notice. Section 25d-7(a) of the Act indicates that the community relations activities adopted by the Board must foster and maintain a dialogue with the community. The Agency's position is that the dialogue with the

broader community must include first and foremost the occupants of affected properties, those who may be directly at risk from migrating contamination.

The Agency also stated “the Agency remains committed to its proposed language for the inclusion of occupants on the contact lists.” PC 4 at 8. The Agency asserts that in some cases it can be difficult to notify every occupant. *Id.* at 6. By overseeing an authorized party’s preparation of occupant information, however, the Agency can advise the authorized party on how to make the proper notifications or the Agency can take action on its own. Tr.2 at 41. IERG agrees with the Agency and supports the current language. PC 5 at 3.

### **Agency Review**

C.A.R.E. recommends that the Agency be required to provide notice if it does not approve the draft notice of an authorized party after the thirty-day review of an amended fact sheet. PC 3 at 3. Therefore, C.A.R.E. requests that under Section 1600.330(d), “may provide notice” be changed to “must provide notice.” PC 3 at 3. In addition, C.A.R.E. recommends that the rule identify citizens’ rights to prompt an investigation or file a complaint before the Board for violations of the Act or regulations promulgated under the Act if the required notification does not occur. PC 3 at 4.

IERG contends that Section 1600.330(d), regarding Agency review is unclear. IERG recommends that the Board strike subsections (d) through (f), and suggests replacement language.

### **Enforcement of the Proposed Section 1600**

Ms. Dinschel asks whether participating in a voluntary remediation program could shield participants from compliance with this rulemaking. C.A.R.E. contends the rule should explicitly identify the enforcement rights of affected residents under the Act. C.A.R.E. asserts that the rule, or at least the Board’s order adopting this rulemaking for second notice, should explicitly set forth the avenues a citizen may pursue. PC 3 at 4.

C.A.R.E. requests that the Board clarify in its Order accompanying the final rule that nothing in these regulations relieves an authorized party from its reporting and notice obligations under other environmental laws such as the Comprehensive Environmental Response, Compensation and Liability Act or the Safe Drinking Water Act. PC 3 at 3.

### **DISCUSSION OF SECOND-NOTICE PROPOSAL**

Today the Board adopts the rulemaking for second notice, adding a new Part 1600 to the Board’s rules establishing regulations for conducting potable water well surveys and community relations activities in response to threats from soil and groundwater contamination, for second notice.

### **Subpart A**



Subpart A sets forth the scope, purpose, and applicability of Part 1600. Subpart A also provides a list of definitions. In errata sheet 2, the Agency proposes to amend this Subpart by deleting the definition of “community relations plan” and adding a definition of “authorized party.” The Board agrees with the Agency that the replacement of the term “responsible party” with “authorized party” throughout the proposal is a positive change because it eliminates potential liability connotations that the public may associate with the Agency’s cost recovery rules. The Board also agrees that by defining the term “authorized party” in Subpart A, references to persons authorized by the Agency to provide notice are more consistent throughout the remainder of the proposal.

### **Subpart B**

If someone performs a response action pursuant to Board rules that requires a well survey as part of a site investigation, then Subpart B requires compliance with minimum standards and requirements for those surveys. Stat. of Reas. at 10. The Board rules requiring the response action, on the other hand, govern the submission and review of well survey documentation and appeals of Agency final determinations concerning well survey procedures. *Id.* at 11. In ongoing response actions, if the well survey has not been performed as of the effective date of this rule, then the survey must conform to the proposed standards. If the well survey is already complete, but no final determination by the Agency has yet been made, Agency approval may depend on whether the well survey satisfies the new standards. *Id.* at 11. If the well survey does not follow the proposed Subpart B procedures, the Agency may require additional survey actions.

The Agency clarified in errata sheet 2 that the appropriate phrase for characterizing groundwater contaminant concentrations should read the “measured or modeled” data. The Board agrees with the Agency’s argument that a determination of the extent of groundwater contamination will usually require both measured and modeled data, but there may be exceptions. Therefore, the Board agrees that because there may be a situation where both data sets are not available, “measured or modeled” is the appropriate phrasing for the data requirement.

### **Subpart C**

As set forth in the proposal, community relations activities are voluntary and performed as authorized by the Agency in place of the Agency’s notice obligations under Section 25d-3 of the Act. P.A. 94-314, *eff.* July 24, 2005 (*to be codified as 415 ILCS 5/25d-3*). Stat. of Reas. at 14. Pursuant to Section 25d-3, the Agency’s decision that notice must be given triggers the implementation of community relations activities. *Id.* The Agency may choose to notify the authorized party that notice must be issued, and can offer the authorized party the option to provide notice instead of the Agency. Once an authorized party notifies the Agency that it wishes to proceed, compliance with Subpart C becomes mandatory. The authorized party assumes the obligation to provide notice, but the entire process must be done with Agency oversight. *Id.* at 15.

### **The Definition of “Authorized Party”**

The Board recognizes C.A.R.E.’s point that at many sites there may be more than one entity that could be authorized to conduct community relations activities that may have differing interests in providing notice. The Board declines to “include specific language in the rule stating that the Agency has discretion to choose one authorized party among several candidates, or to allow multiple authorized parties.” The Board does, however, amend the definition of “authorized party.” By changing the definition to read that “authorized party” means “a” person rather than “the” person, the definition allows the Agency to authorize more than one party. The Board makes this change to the rule text in today’s order.

### **What Constitutes a “Community Relations Plan”**

The Agency has proposed two tiers of community relations activities. Stat. of Reas. at 16. The Agency’s original proposal required authorized parties to create a CRP only for releases that pose a threat of groundwater contamination or offsite soil contamination at more than five properties. The Board adopts the amendment to Section 1600.310(b) in errata sheet 2, which requires authorized parties to create and execute a CRP for both tiers of activities.

### **Fact Sheets: Content**

The Board finds C.A.R.E.’s suggestion that fact sheets distributed under Section 1600.310 must provide responses to key community concerns is well-reasoned. Fact sheets distributed pursuant to Section 1600.315(b)(3)(G), where a release affects more than five wells or properties, must contain responses to key community concerns. The Board finds such responses should also be required where a release affects five or fewer wells or properties. The Board makes this change to the rule text. The Board, however, does not make C.A.R.E.’s suggested change that fact sheets additionally inform recipients of their right to request a document repository at a physical location. The Board believes this is not warranted since Section 1600.315(b)(3), subsections (H) and (I), require fact sheets to include the internet address of the document repository, and information about how to obtain copies.

The Board also declines C.A.R.E.’s suggestion that fact sheets contain information about the availability of Toxicological Profiles, ToxFAQs, or other resources provided by the United States Environmental Protection Agency for the Toxic Substances and Disease Registry. Section 1600.315(b)(3)(A) already requires fact sheets to include the *nature and extent* of the contaminants identified at 35 Ill. Adm. Code 1600.315(b)(3)(A). The Board finds that the rules as currently drafted require fact sheets to contain contact information of an Agency designated staff person and a statement that additional information may be available by contacting that staff person. For this reason, the Board declines to make C.A.R.E.’s additional requested changes that the fact sheet has been approved by the Agency and statement that the fact sheet is not junk mail. PC 3 at 3.

### **Mandatory Website Repository**

As discussed above, under the more comprehensive CRP requirements, a person authorized to give notice must create an online document repository. Pursuant to the proposed Section 1600.320, the repository must be established at a web site and a physical repository is also mandatory if any person requests one. The Board agrees with IERG's recommendation that a physical repository be made in a public location upon the initial request, as opposed to the Agency's proposed two-tiered approach. The Board makes that change to the proposed rules.

The Board, however, does not add an explicit requirement that the online document repository be limited to prevent authorized parties from including advertisements. The Board finds that although advertisements are not acceptable materials to include in a document repository, the Agency's oversight authority is already adequate to prevent authorized parties from including such materials.

### **Compliance Monitoring Requirement**

In errata sheet 2, the Agency proposes deleting Section 1600.335(b)(2), regarding Agency monitoring of an authorized party's implementation of community relations activities. The Agency believes this section is discretionary and that the types of monitoring discussed are implicit in the Agency's statutory authority to investigate violations of the Act. Tr.2 at 29-32. The Agency stated it would, for example, attend all public meetings scheduled by the authorized party. Tr.2 at 31. The Board supports the Agency's explanation and today's language reflects that deletion.

### **Notification of Occupants "to the Extent Reasonably Practicable"**

Regarding the public's concern about notification of occupants, the Board emphasizes that under the new Part 1600, occupants will not fail to be identified on a contact list solely because of an authorized party's limited financial resources. Pursuant to Section 1600.330(b)(5)(A), the Agency must review the authorized party's contact list and whether that list adequately identifies occupants to the extent reasonably practicable and whether the authorized party has included the methods used to identify the occupants. If an authorized party fails to adequately notify occupants, the Agency will provide notice and then seek cost recovery from the authorized party. Proposed 35 Ill. Adm. Code 1600.330(d).

In its post-hearing public comment, the Agency listed several methods typically used to identify and notify parties. PC 2 at 7. The Board declines to include specific methods of identification in the rule language at the risk of limiting information sources. The Board concurs, however, that the Agency and authorized parties will typically use one or more of the following methods to identify occupants:

Identifying occupants starts with identifying addresses - locations of affected properties where occupants might be found - and then identifying the actual occupants, if any. In no particular order, approaches used individually or in concert by the Agency to gather relevant information include, but are not limited to: 1) Reviews of county property records, 2) reviews of local street guides, 3) use of local library resources, 4) use of commercial mailing lists, 5) interviews

with local public water supply operators and municipal officials, 6) windshield or walking surveys of affected neighborhoods, and 7) door-to-door canvassing including interviews and distribution of door hangers. PC 2 at 7.

### **Agency Review**

The Board has reviewed both C.A.R.E.'s and IERG's suggestions concerning Agency review of notices, contact lists, fact sheets, and CRPs. The Board does not make the change suggested by C.A.R.E. The Board finds it is important to allow the Agency discretion to decide whether to provide notice in lieu of the authorized party or to pursue an enforcement action. The Board believes the Agency can appropriately decide whether to provide immediate notice if contamination is imminent, or, whether there is adequate time to pursue enforcement of the Act and Part 1600.

The Board finds IERG's suggested changes to Section 1600.330, subparts (d) through (f) add clarity to the Agency review process and today's order reflects those suggestions.

### **Enforcement of the Proposed Part 1600**

In specific response to Ms. Dinschel's post-hearing comment, the Board notes that voluntary cleanups are performed under the site remediation program found at Section 740 of the Board's rules. 35 Ill. Adm. Code 740 *et seq.* Participation in the site remediation program does not shield participants from complying with the Right to Know Act or the proposed Part 1600 rules. As noted by C.A.R.E. in its public comment, nothing in the Right-to-Know Act or this rulemaking relieves an authorized party or the Agency from reporting and notice obligations under other federal and State environmental laws.

If an authorized party fails to perform the activities required under Subpart C, then the Agency may provide public notice and seek cost recovery pursuant to Title VI-D, pursue an enforcement action, or both. These alternatives allow the Agency to promptly notify the public and avoid potential delays to the development and implementation of community relations activities.

Citizens may also request the Agency to investigate potential violations of the Act and Board rules pursuant to Section 30 of the Act. 415 ILCS 5/30 (2004). Alternatively, any person with standing may pursue an enforcement action by filing a formal complaint with the Board. 415 ILCS 5/31(d)(1).

### **Technical Feasibility and Economic Reasonableness**

Section 27(b) of the Act requires the Board to request the Department of Commerce and Economic Opportunity (DCEO) to conduct an economic impact statement on certain proposed rules prior to adoption of those rules. As required, the Board requested in a letter dated February 22, 2006, that the DCEO perform an economic impact study. To date the DCEO has not responded. The Board received no testimony or comments regarding the DCEO's decision not to perform an economic impact study on this rulemaking.

The Board agrees with the Agency that both parts of the proposal are technically feasible. The Agency states that the requirements for potable water well surveys are economically reasonable and procedures are already required by the Agency and followed by persons performing response actions for soil or groundwater contamination pursuant to applicable Board rules. The Board finds the water well survey requirements of Subpart B economically reasonable.

The Agency concedes that the new standards and requirements for community relations activities may cost the Agency, and the authorized party with respect to the release or threat of a release, considerably more in instances where there is an impact or threat of impact to offsite property. Nonetheless, the Board agrees that the statute mandates the Agency to propose, and the Board to adopt, water well survey and community right-to-know regulations. In fact, the statute itself is quite specific about who must be given notice, in what circumstances, and what information must be included in the notices. The Board finds that the Agency's proposed community right-to-know rules, as amended, meet the intent and purpose of P.A. 94-314, and are economically reasonable.

Accordingly, the Board finds the proposed rule technically feasible and economically reasonable for both the authorized party as well as the State. The Board also finds that the proposed rulemaking will benefit the environment and the community because it will provide the public with valuable and timely information regarding public health and the environment and ensures protection of potable water wells.

The Board adopts the proposal, as amended, making additional technical corrections necessary to keep the rule language consistent with regulatory language typically reviewed by JCAR and adopted by the Board.

### **CONCLUSION**

The proposed rulemaking creates a new Part 1600 of the Board's regulations, establishing regulations for conducting potable water well surveys and community relations activities in response to threats from soil and groundwater contamination. The Board finds that the second notice proposal adequately addresses the concerns raised by the participants involved in this rulemaking, including Mrs. Dinschel, Ms. Muniz, C.A.R.E., IERG, and the Agency. As discussed above and at hearing, the Agency indicates that it will provide oversight to the authorized party in preparing the contact list to ensure that occupants are notified to the extent reasonably practicable.

In addition to those amendments proposed in the Agency's errata sheet 2 and adopted today, the Board makes the following changes to the rule text based on discussions at hearing and in public comments: (1) amends the term "authorized party" to mean "a" person authorized by the Agency, rather than "the" person authorized by the Agency, to allow the Agency to authorize more than one party to perform community relations activities; (2) requires that fact sheets distributed in instances where a release affects five or fewer off-site wells or properties contain responses to key community concerns; (3) requires that a physical repository be made in

a public location upon the initial request; and (4) amends the Agency review section to clarify the section's intent.

The Board adopts the rule for second-notice review by JCAR. The 45-day second-notice public comment period will begin on the date written notice is received by JCAR and the Board will accept comments only from JCAR during the second-notice period. *See* 35 Ill. Adm. Code 102.606.

## **ORDER**

The Board directs the Clerk to cause the filing of the following rule with the Joint Committee on Administrative Rules for its second-notice review.

### TITLE 35: ENVIRONMENTAL PROTECTION SUBTITLE O: RIGHT TO KNOW CHAPTER I: POLLUTION CONTROL BOARD

#### PART 1600

#### STANDARDS AND REQUIREMENTS FOR POTABLE WATER SUPPLY WELL SURVEYS AND FOR COMMUNITY RELATIONS ACTIVITIES PERFORMED IN CONJUNCTION WITH AGENCY NOTICES OF THREATS FROM CONTAMINATION

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- 1600.315 Notices, Fact Sheets and Community Relations Plans for Expanded Community Relations Activities
- 1600.320 Establishment of Document Repository
- 1600.325 Submission of Notices, Contact Lists, Fact Sheets and Community Relations Plans for Review
- 1600.330 Agency Reviews of Notices, Contact Lists, Fact Sheets and Community Relations Plans
- 1600.335 Implementation of Community Relations Plans and Distribution of Notices and Fact Sheets; Records Retention
- 1600.340 Compliance

#### APPENDIX A Contents of a Model Community Relations Plan

**AUTHORITY:** Implementing Sections 25d-3(c) and 25d-7(a) and authorized by Section 25d-7(a) of the Environmental Protection Act [415 ILCS 5/25d-3(c), and 25d-7(a)].

**SOURCE:** Adopted in \_\_\_\_\_ at \_\_\_\_ Ill. Reg. \_\_\_\_\_, effective, \_\_\_\_\_, 200\_\_\_\_.

#### SUBPART A: GENERAL

##### Section 1600.100 Purpose and Scope

- a) 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 to provide the notice pursuant to subsections (a) and (c) of Section 25d-3 of the Act [415 ILCS 5/25d-3(a) and (c)] as part of the Agency-approved community relations activities.
- b) 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 who has implemented community relations activities to provide the notice in place of the Agency.
- c) The standards and requirements in Subpart C of this Part are for community relations activities performed by parties 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. Nothing in this Part relieves an authorized party from reporting and notice obligations under other federal and State environmental laws.

Section 1600.105      Applicability

Subparts B and C of this Part contain separate and independent applicability provisions.

Section 1600.110      Definitions

Except as stated in this Section, or unless a different meaning of a word or term is clear from the context, the definitions of words or terms in this Part shall be the same as that applied to the same words or terms in Title I or Title VI-D of the Environmental Protection Act.

"Act" means the Environmental Protection Act [415 ILCS 5].

*"Agency" is the Illinois Environmental Protection Agency. [415 ILCS 5/3.105]*

"Authorized party" means a 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.

*"Board" is the Pollution Control Board. [415 ILCS 5/3.130]*

*"Contaminant" is any solid, liquid or gaseous matter, any odor, or any form of energy, from whatever source. [415 ILCS 5/3.165]*

*"Contamination" or "contaminate", when used in connection with groundwater, means water pollution of such groundwater. [415 ILCS 5/3.170]*

*"Person" means individual, trust, firm, joint stock company, joint venture, consortium, commercial entity, corporation (including a government corporation), partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body, including the United States Government and each department, agency and instrumentality of the United States. [415 ILCS 5/58.2]*

"Person performing a response action" means the person(s) taking responsibility for addressing a release by authorizing or approving the performance of a response action (e.g., Leaking Underground Storage Tank Program owner or operator, Site Remediation Program Remediation Applicant, permittees). The phrase does not include persons who have been hired or authorized to perform the response action by the person taking responsibility for the release or persons with whom the person taking responsibility for the release has contracted or subcontracted to perform the response action.

*"Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the*



*environment, but excludes any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer or such persons; emissions from the engine exhaust of a motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station engine; release of source, byproduct, or special nuclear material from a nuclear incident, as those terms are defined in the federal Atomic Energy Act of 1954, if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under Section 170 of such Act; and the normal application of fertilizer. [415 ILCS 5/3.395]*

“Response action” means any action or series of actions taken to address a release of contaminants or its effects as may be necessary or appropriate to protect human health or the environment. A response action may include, but is not limited to, release investigation and characterization, soil remediation, and groundwater remediation.

#### Section 1600.115 Severability

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 will not affect the validity of this Part as a whole or any Subpart, Section, subsection, sentence or clause thereof not adjudged invalid.

### SUBPART B: STANDARDS AND REQUIREMENTS FOR POTABLE WATER SUPPLY WELL SURVEYS

#### Section 1600.200 Purpose and Scope

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 use to perform potable water supply well surveys and for the documentation of the results of well surveys in reports to the Agency.

#### Section 1600.205 Applicability

- 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 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

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 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.
  - 2) Applicable Board rules requiring potable water supply well surveys as part of response actions may supersede the requirements of this Subpart B only to the extent their express provisions are equivalent to or more stringent than the standards and requirements of this Subpart B.
- b) Persons performing response actions pursuant to applicable Board rules who already have initiated the response action for a release as of the effective date of this Part may be required by the Agency to perform an otherwise required potable water supply well survey in accordance with this Subpart B if:
- 1) The Agency requires the performance of a well survey in accordance with the applicable Board rules; and
  - 2) The well survey:
    - A) Has not been performed as of the effective date of this Part; or
    - B) Has been performed but has not been approved by the Agency as of the effective date of this Part and the well survey performed does not satisfy the requirements of this Subpart B.
- c) Nothing in this Subpart B is intended to prohibit the use of all or some of the standards and requirements set forth in this Subpart B in other rules or contexts as authorized by those rules, Board or court orders, or other applicable law.

#### Section 1600.210 Procedures for Potable Water Supply Well Surveys

- 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 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 include, but are not limited to, the following:
- 1) Contacting the Agency's Division of Public Water Supplies to identify community water system wells and associated setback zones and regulated recharge areas;
  - 2) Using current information from the Illinois State Geological Survey, the Illinois State Water Survey, and the Illinois Department of Public Health (or the county or local health department delegated by the Illinois Department of Public Health to permit potable water supply wells) to identify potable water supply wells, other than community water system wells, and their setback zones; and
  - 3) Contacting the local public water supply entities to identify properties that receive potable water from a public water supply.
- 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 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 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 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 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 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 and modeled extent of groundwater contamination exceeding the applicable remediation

objectives of Part 742 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 modeled extent of groundwater contamination exceeding the applicable remediation objectives of Part 742 for the groundwater ingestion exposure route or Part 620 remediation objectives is located.
- 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 not 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 water supply wells).
- e) Documentation of a potable water supply well survey conducted in accordance with this Section must include, but is not limited to, the following:
- 1) One or more maps to a scale clearly showing the following:
    - A) The locations of the community water system wells and other potable water supply wells identified pursuant to this Section; and
    - B) The location and extent of setback zones and regulated recharge areas identified pursuant to this Section.
  - 2) The maps showing the well locations, setback zones and regulated recharge areas pursuant to subsection (e)(1) of this Section must show those areas in relation to the measured or modeled extent of groundwater contamination exceeding the applicable remediation objectives of Part 742 for the groundwater ingestion exposure route or the applicable Part 620 groundwater quality standards.
  - 3) One or more tables listing the applicable setback zones and regulated recharge areas for each community water system well and other potable water supply wells identified pursuant to this Section.
  - 4) A narrative that, at a minimum, identifies each entity contacted to identify potable water supply wells and protected areas pursuant to this Section, the name and title of each person contacted at each entity, and field observations, if any, associated with the identification and location of potable water supply wells.

## SUBPART C: STANDARDS AND REQUIREMENTS FOR COMMUNITY RELATIONS ACTIVITIES

### Section 1600.300 Purpose and Scope

- 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 under Section 1600.305 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 (CRP), and the establishment and maintenance of document repositories.
- b) Subpart C Not a Limitation:
  - 1) This Subpart C establishes minimum requirements for community relations activities when such activities are to be performed in place of a notice by the Agency in accordance with subsection (a) of Section 25d-3 of the Act. Nothing in this Subpart C is intended to prohibit or prevent a person from implementing other community relations activities sooner than required by this Subpart or under circumstances in addition to those described in this Subpart. The Agency may recommend that community relations activities be performed at other times and under other circumstances and may offer assistance with development and implementation of such activities where resources permit.
  - 2) Nothing in this Subpart C is intended to limit in any way the Agency's authority to provide independent notice of threats of exposure to the public from soil or groundwater contamination, or both, in accordance with Title VI-D of the Act [415 ILCS 5/25d-1 through 25d-10] and implementing rules or under any other authority.

### Section 1600.305 Applicability

- 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 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 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 person, the Agency offers the person the opportunity to provide the notice in lieu of the Agency issuing the notice; and
  - 3) The person accepts the Agency's offer and notifies the Agency in writing within seven days after 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.
- c) Nothing in this Subpart C is intended to prohibit the use of all or some of the standards and requirements set forth in this Subpart C in other rules or contexts as authorized by those rules, Board or court orders, or other applicable law.

Section 1600.310 Notices and Community Relations Plans for Limited Community Relations Activities

- a) Authorized parties must comply with community relations requirements in this Section if:
  - 1) Measured or modeled groundwater contamination from the site where the release occurred (including the impact from soil contamination in concentrations exceeding the applicable remediation objectives for the soil component of the groundwater ingestion exposure route) poses a threat above the Class I groundwater quality standards at 35 Ill. Adm. Code 620 at five or fewer offsite private, semi-private or non-community water system wells; or
  - 2) Offsite soil contamination from the site where the release occurred poses a threat of exposure to the public above the appropriate Tier 1 remediation objectives for the current use(s) at five or fewer offsite properties.
- b) An authorized party, within the limits set forth in subsection (a) of this Section, must develop a notice and CRP consisting of a contact list and 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 1505.355 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)]*

- 2) The authorized party must 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)(A) and (b)(2)(B) of this Section to the extent reasonably practicable. The contact list must include the methods by which the authorized 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 mayors 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)(A) through (b)(2)(D) of this Section.

- 3) The authorized party must develop a fact sheet for the release and response action. The fact sheet must be distributed in accordance with Section 1600.335 of this Part to the contact list as derived from subsection (b)(2) of this Section. The fact sheet must be written clearly and concisely in non-technical, non-legal terminology. The fact sheet and any required updates, must contain, at a minimum, the following information to the extent available:
- A) The nature and extent of the contaminants identified on and off the site where the release occurred;
  - B) A brief description of the pathways of potential exposure and the potential adverse public health effects posed by the contaminants;
  - C) A description of any precautionary measures affected or potentially affected parties should take to avoid or reduce potential public health impacts, including potable water supply well sampling and analysis recommendations, as appropriate;
  - D) A non-technical description of the steps that are proposed to address the contamination including, but not limited to, soil excavation and treatment, disposal or redistribution, pump-and-treat, bio-remediation, reliance on engineered barriers or institutional controls, groundwater monitoring, and so forth;
  - E) The anticipated remediation schedule through completion of the project, including any operation, maintenance or monitoring following construction of the remedy;
  - F) The nature of the closure documentation expected from the Agency (e.g., focused or comprehensive No Further Remediation (“NFR”) Letter, permit modification, reliance on engineered barriers or institutional controls);
  - G) Responses to key community concerns as expressed by affected, potentially affected and interested parties;
  - H) The date of preparation of the fact sheet, the name of the representative(s) of the business, site or facility from whom information and site-related documents may be obtained, and e-



mail address, postal address and telephone number where the representative(s) can be reached; and

- I) The name, e-mail address, postal address and telephone number of the Agency's designated staff person and a statement that additional information and site-related documents may be available by contacting the Agency's designated staff person or by filing a request for site-specific information with the appropriate Agency bureau in accordance with the Freedom of Information Act [5 ILCS 140].
- c) For information that is not available when a fact sheet is prepared pursuant to subsection (b)(3) of this Section, the submission of the fact sheet to the Agency for review must 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 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 1600.315 Community Relations Plans

- a) Authorized parties must comply with the community relations requirements in this Section if:
  - 1) Measured or modeled groundwater contamination from the site where the release occurred (including the impact from soil contamination in concentrations exceeding the applicable remediation objectives for the soil component of the groundwater ingestion exposure route) poses a threat above the Class I groundwater quality standards at 35 Ill. Adm. Code 620 at more than five offsite private, semi-private or non-community water system wells or one or more community water system wells; or
  - 2) Offsite soil contamination from the site where the release occurred poses a threat of exposure to the public above the appropriate Tier 1 remediation objectives for the current use(s) at more than five offsite properties.
- b) An authorized party exceeding the limits set forth in subsection (a) of this Section must develop a notice and a community relations plan and fact sheet in accordance

with this subsection (b). 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.

- 1) Notices must be developed in accordance with subsection (b)(1) of Section 1600.310 of this Part and distributed in accordance with Section 1600.335 of this Part to the contact list as derived from subsection (b)(2)(D) of this Section.
- 2) The CRP must be implemented in accordance with Section 1600.335 of this Part and must include, but is not 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)(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 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)(D)(i) and (b)(2)(D)(iv) of this Section to the extent reasonably practicable. The community relations plan must include the methods by which the authorized 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 1,000 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 administrators, Parent-Teacher Association (PTA) leaders; day care center, senior center and nursing home management; neighborhood or homeowner association or other community leaders as identified; hospital and clinic management; and recognized environmental or citizen advisory groups). If approved by the Agency, the initial minimum distance of 1,000 feet may be expanded or contracted as the CRP and contact list are updated based on new information developed during the response action.
- 3) Along with the development of a notice and CRP in accordance with subsections (b)(1) and (b)(2) of this Section, the authorized party must develop and distribute a fact sheet for the release and response action. The fact sheet must be distributed in accordance with Section 1600.335 of this Part to the contact list as derived from subsection (b)(1)(D) of this Section. The fact sheet must 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 be produced and distributed in both English and another predominant language. The fact sheet and any required updates must contain, at a minimum, the following information to the extent available:
- A) The nature and extent of the contaminants identified on-site and off-site of the site where the release occurred;
  - B) A brief description of the pathways of potential exposure and the potential adverse public health effects posed by the contaminants;

- C) A description of any precautionary measures affected or potentially affected parties should take to avoid or reduce potential public health impacts, including potable water supply well sampling recommendations, as appropriate;
  - D) A non-technical description of the steps that are proposed to address the contamination including, but not limited to, soil excavation and treatment, disposal or redistribution, pump-and-treat, bio-remediation, reliance on engineered barriers or institutional controls, groundwater monitoring, and so forth;
  - E) The anticipated remediation schedule through completion of the project, including any operation, maintenance or monitoring following construction of the remedy;
  - F) The nature of the closure documentation expected from the Agency (e.g., focused or comprehensive NFR Letter, permit modification, reliance on engineered barriers or institutional controls);
  - G) Responses to key community concerns as expressed by affected, potentially affected and interested parties;
  - H) The World Wide Web address of the Document Repository established pursuant to Section 1600.320 of this Part and the address and hours of the document repository established at a physical location, if also required pursuant to Section 1600.320 of this Part;
  - I) The date of preparation of the fact sheet, the name of the representative(s) of the business, site or facility from whom information and copies of repository and other site-related documents may be obtained, and e-mail address, postal address and telephone number where the representative(s) can be reached; and
  - J) The name, e-mail address, postal address and telephone number of the Agency's designated staff person and a statement that additional information and site-related documents may be available by contacting the Agency's designated staff person or by filing a request for site-specific information with the appropriate Agency bureau in accordance with the Freedom of Information Act [5 ILCS 140].
- c) For information that is not available when a fact sheet is prepared pursuant to subsection (b)(2) of this Section, the submission of the fact sheet to the Agency for review 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 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 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 be kept in the document repository described in Section 1600.320.

#### Section 1600.320 Establishment of Document Repository

Authorized parties developing a CRP pursuant to Section 1600.315 of this Part also must establish a document repository for the purpose of displaying documents and providing copies of those documents. The document repository must be established at a World Wide Web site. The authorized party must also establish a document repository at a physical location, as described under subsection (c) of this Section, if a request for a repository at a physical location is made to the authorized party or to the Agency.

- a) The document repository must 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 must 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 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 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.
- b) Repositories at World Wide Web Sites:
- 1) The documents must be in a readily available format for downloading and printing (e.g, portable document format (.pdf), graphic interchange format (.gif), tagged image file format (.tiff), joint photographic group format (.jpgf)) with links to web sites where software to view and print the documents may be downloaded.
  - 2) Documents that cannot be converted to a readily available format for downloading and printing must be described in the document index, identified as available upon request, and made available in accordance with subsection (a)(3) of this Section.
  - 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.
- c) Repositories at Physical Locations:
- 1) Repositories established at physical locations must 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 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 be screened to ensure that personal information identifying affected, potentially affected, or interested persons or their exact property locations is not disclosed.

- e) The document repository may be discontinued no less than 180 days 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” (see 415 ILCS 5/4(y))).

**Section 1600.325**      **Submission of Notices, Contact Lists, Fact Sheets and Community Relations Plans for Review**

- a) Except as provided in subsection (b) of this Section or Section 1600.330(d) of this Part, authorized parties must, within 30 days after the date of their acceptance:
  - 1) Submit to the Agency a notice and community relations plan satisfying the requirements of subsection (b) of Section 1600.310 of this Part or a notice, CRP, fact sheet and contact list satisfying the requirements of subsection (b) of Section 1600.315 of this Part; and
  - 2) Establish a web site document repository if required in accordance with Section 1600.320 of this Part.
- b) Updates of CRPs, fact sheets or both and updates of contact lists prepared pursuant to Section 1600.310(d) or Section 1600.315(d) of this Part also must be submitted for Agency review in accordance with subsection (a) of this Section except that the updates must be submitted to the Agency within ten days after 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 1600.330**      **Agency Reviews of Notices, Contact Lists, Fact Sheets and Community Relations Plans**

- a) The Agency has 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) or approve of the document(s) with conditions or modifications. All reviews must 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 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 may waive the time period for review upon a request from the Agency or at the authorized party’s discretion.

- b) When reviewing a notice, contact list, fact sheet or CRP, the Agency must consider:
- 1) Whether the notice complies with the requirements of subsection (b) of Section 1600.310 of this Part or subsection (b) of Section 1600.315 of this Part;
  - 2) Whether the CRP contains the elements required by Section 1600.315(b) of this Part;
  - 3) Whether the fact sheet contains the elements required by Section 1600.310(b) of this Part or Section 1600.315(b) 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 CRP is consistent with the information contained in the Agency's records and any field observations; and
  - 5) Whether authorized parties have clearly defined:
    - A) Persons required to be included in the contact list for notices and fact sheets in accordance with Section 1600.310(b) of this Part or Section 1600.315(b) 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 notify the authorized party in writing whether the notice, contact list, fact sheet or CRP is approved, approved with conditions or modifications, or disapproved. The notification must be made by certified or registered mail postmarked with a date stamp and with return receipt requested. If the Agency disapproves a document, or approves a document with conditions or modifications, the notification must contain the following information, as applicable:
- 1) An explanation of the specific information or documentation, if any, that the Agency determines the authorized party 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 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 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 must submit a revised version of the document to the Agency within ten days after receiving the Agency's disapproval or approval with conditions or modifications.
  - e) If a revised notice, contact list, fact sheet or CRP is not received by the Agency within ten days, or if a revised document is 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 pursuant to Title VI-D of the Act, or pursue an enforcement action against the authorized party for failure to develop and implement an Agency-approved notice, contact list, fact sheet or CRP.
    - 1) In addition to any other defenses that may be available to the authorized party, it 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 submitted to and rejected by the Agency satisfies the requirements for such documents as set forth in Sections 1600.310 and 1600.315 of this Part.
    - 2) The defense described in subsection (e)(1) does not limit the use of this defense in other circumstances where appropriate.
  - f) The Agency will, to the extent consistent with review deadlines, provide the authorized party 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.
  - g) 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 will be deemed approved as submitted.

- a) Implementation of the CRP or distribution of a notice or fact sheet must begin within five days after receipt of the Agency's approval of the document or within ten days after the date the document is deemed approved pursuant to Section 1600.330(f) of this Part.
- b) Authorized parties must:
  - 1) 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
  - 2) Inform the Agency in writing two weeks in advance of plans to hold public meetings or press conferences about site activities or developments.
- c) Authorized parties must 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" (see 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 1600.340 Compliance

An authorized party must comply with the requirements of this Subpart C or the provisions of community relations activities approved by the Agency.

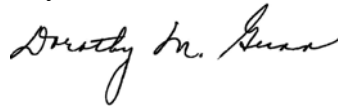
This Appendix A lists the four key elements of a community relations plan for an authorized party proceeding under Section 1600.315 of this Part and several factors that might be included with each element in a community relations plan prepared for the site where the release occurred. Unless otherwise 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 this Part, but each factor should be considered when developing the 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 off-site 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 CRP must include the methods by which the authorized 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 1,000 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 administrators, Parent-Teacher Association leaders; day care center, senior center and nursing home management; neighborhood or homeowner association or other community leaders as identified; hospital and clinic management; and recognized environmental or citizen advisory groups). If approved by the Agency, the initial minimum distance of 1,000 feet may be expanded or contracted as the CRP and contact list are updated based on new information developed during the response action.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 6, 2006, by a vote of 4-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board