

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

NOTICE OF FILING

TO: ALL PARTIES ON THE ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's Pre-Filed Testimony of Bradley Frost a copy of which is herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 

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DATED: August 21, 2014

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

PRE-FILED TESTIMONY OF BRADLEY FROST, ON THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY'S PROPOSED AMEDNMENTS TO 35
ILL. ADM. CODE 1600

My name is Bradley Frost. I am the Acting Manager of the Office of Community Relations (“OCR”) within the Illinois Environmental Protection Agency (“Agency”). I received a Bachelor of English from the University of Illinois at Urbana-Champaign in 1992 and have worked for the Agency since December 1992 in the Office of Community Relations. Since January 2014, I have been in my current position as Acting Manager of the Office of Community Relations. OCR fosters critical communications with the public to provide interested parties with the information needed to make informed decisions about environmental matters that potentially impacts them, their family, or their community. OCR works across all Agency programs and conducts the majority of Agency public participation activities. This includes facilitating communications among involved Agency staff, other government organizations, public officials, and interested members of the public regarding site-specific and program outreach matters. Relevant to this testimony, the Office of Community Relations is tasked to coordinate the Right to Know implementation for the Agency.

My testimony will focus on the proposed amendments to the following sections of 35 Ill. Adm. Code 1600 (“Right to Know rules”): Section 1600.110; Section 1600.300; Section 1600.310; Section 1600.315; Section 1600.320; Section 1600.325; and Section 1600.APPENDIX A. These amendments incorporate changes to the Environmental Protection Act (“the Act”)(415 ILCS 5, *et seq.*) and the Illinois Pollution Control Board’s (“the Board”) Tiered Approach to Corrective Action Objectives rules (“the TACO rules”)(35 Ill. Adm. Code 742, *et seq.*) that occurred since the Board adopted the Right to Know rules.

In 2009, the Act was amended to include “soil gas” as an environmental medium of concern that could trigger public notification. 415 ILCS 5/25d-2. In 2013, the Board adopted amendments to the TACO rules, which established Tier 1 remediation objectives for soil gas and groundwater via the indoor inhalation exposure route. 35 Ill. Adm. Code 742.515. These amendments necessitate corresponding changes to the Right to Know rules, which are incorporated in the Agency’s proposal to the Board.

The Agency’s proposed amendments fall into two categories: (1) suggested changes to account for the addition of soil gas as an environmental medium of concern and the threat of indoor inhalation of vapors from off-site groundwater contamination and (2) suggested changes to ensure consistent use of acronyms and terms within the Right to Know rules. My testimony concerns both sets of proposed amendments.

Section 1600.110 – Definitions

Section 1600.110 contains the definitions of relevant terms used in the Right to Know rules. The Agency proposes adding the following terms to account for the changes to the Act and the TACO rules: building control technology; soil gas; and volatile

chemicals. The Agency proposes specifically defining these terms because each relates to the detection or remediation of soil gas contamination or the threat of exposure to vapors from groundwater contamination. In addition, the Agency proposes defining the following terms for consistency within the rule: Class I groundwater quality standards; CRP; and Tier 1 remediation objectives.

Section 1600.300 - Purpose and Scope

Section 1600.300 establishes the breadth of the community relations activities necessary for Agency-authorized parties to conduct in accordance with 35 Ill. Adm. Code 1600.Subpart C. This includes the minimum standards and requirements for community relations activities to be developed and implemented when an Agency-authorized party voluntarily agrees to assume the Agency's notice obligations. This Section requires that Agency-authorized parties notify certain members of the public regarding offsite threats of exposure to soil or groundwater contamination. Communications with individuals and communities about off-site contamination impacts or potential impacts must be done in a timely, complete and accurate manner. The exchange of information allows a household or business to make informed decisions about protection of their health and/or property.

The Agency proposes amending this Section to add soil gas as an environmental medium of concern that would trigger public notification, under certain circumstances. This amendment accounts for the 2009 amendments to the Act.

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

Section 1600.310 sets forth: the circumstances under which notice is required if there is a threat of exposure from a release to five or fewer offsite properties; the persons

to whom notice should be provided; and the minimum contents of a community relations plan (“CRP”) and fact sheet issued to those persons.

Scope of Section 1600.310

Section 1600.310 currently requires public notification if there is a threat of exposure to groundwater contamination above the Class I groundwater quality standards at five or fewer offsite properties or if there is offsite soil contamination from the release that exceeds the appropriate Tier 1 remediation objectives at five or fewer offsite properties. The Agency proposes amending this Section to require public notification if there is offsite soil gas contamination from the release that exceeds the appropriate Tier 1 remediation objectives at five or fewer offsite properties. The Agency also proposes amending this Section to require public notification if there is measured offsite groundwater contamination that poses a threat of indoor inhalation exposure above the appropriate Tier 1 remediation objectives at five or fewer offsite properties.

It is important to note that the Agency proposes requiring notice to offsite properties to which there is a threat of exposure to groundwater contamination via the indoor inhalation exposure route only if there are actual measured contaminant concentrations in offsite groundwater. The Agency made this determination because of concerns that requiring notice to offsite properties to which there is a threat of exposure to groundwater contamination via the indoor inhalation exposure route based on modeled offsite groundwater contamination would produce unreliable results. Section 25d-3a of the Act requires that the Agency’s Right to Know “determination be based on credible, scientific information.” 415 ILCS 5/25d-3a. Section 1600.310(a)(1) requires lateral modeling of contaminant concentrations, using the R26 model, when determining the

threat of exposure to groundwater contamination that exceeds the Class I groundwater quality standards. However, the use of the R26 model to estimate downgradient contaminants in groundwater in combination with the Johnson & Ettinger model to estimate the upward vertical migration of contaminants into buildings relies on multiple, broad assumptions to predict impact. In conjunction, these predictions are unreliable and therefore, would not satisfy the Act's requirement that the Agency's Right to Know determinations be based on "credible, scientific information."

Persons to Whom Notice Should Be Provided

Section 1600.310(b)(2) outlines the non-exhaustive contact list of affected, potentially affected, and interested persons who must be notified of actual or threats of offsite contamination. Section 1600.310(b)(2) presently requires notice to owners and occupants of offsite properties with soil contamination above the appropriate Tier 1 remediation objectives, owners of offsite properties served by water system wells or groundwater impacted by groundwater contamination from the release, and certain government officials serving the affected offsite properties. The Agency proposes amending Section 1600.310(b)(2) by requiring notice to: (1) owners of offsite properties with buildings located above groundwater with measured contamination that poses a threat of indoor inhalation exposure above the appropriate Tier 1 remediation levels and (2) owners of offsite properties with measured soil gas contamination posing a threat of exposure above the appropriate Tier 1 remediation objectives. These proposed amendments each account for changes to the Act and the TACO rules.

The Agency also proposes amending the list of government officials who require notice. First, the Agency proposes deleting the requirement that township supervisors

serving affected or potentially affected properties be notified in every instance. The Agency has found that township supervisors do not, in every instance, perform duties that assist in effectuating the intent of the notices issued under the Right to Know rules. It is important to note that this Section is not an exhaustive list of persons who may receive notice and Agency-approved parties are not barred from notifying township supervisors if the unique circumstances of a release require such notice. Rather, the Agency proposes that such notice not be required for every release. Second, the Agency proposes requiring notice to environmental health administrators for state and local health departments that serve the affected or potentially affected properties. The Agency proposes this change for consistency with other Sections of the Right to Know rules.

Contents of Notices Made Under Section 1600.310

Section 1600.310(b)(3) sets forth the minimum contents of the fact sheets regarding a release and related response action. These fact sheets, which are usually developed in a question and answer format, are intended to directly and efficiently respond to the key questions that have been or are expected to be raised by the impacted community. The fact sheet spells out the known extent of an environmental release, potential health impacts from the release, and planned response actions in non-technical and non-legal terms, to the extent possible. It is the Agency's position that it is important to make available to citizens in a timely and responsible manner all credible, scientific information known to the Agency.

The Agency has proposed two substantive amendments to Section 1600.310(b)(3). First, the Agency proposes adding building control technologies as an option that (1) an Agency-authorized party may utilize to address contamination (*see*

Section 1600.310(b)(3)(D)) and (2) on which an Agency-authorized party may rely as part of its closure documentation expected from the Agency (*see* Section 1600.310(b)(3)(F)). Building control technologies are technologies or barriers that may be used to address soil gas contamination or the threat of indoor inhalation of vapors from groundwater contamination. Accordingly, the Agency believes it is necessary to include building control technologies as an option available to address contamination that impacts offsite properties. Second, the Agency proposes amending Section 1600.310(b)(3)(C) to state that actions such as potable water supply well sampling or soil gas sampling may be used to evaluate the potential for threats to human health. This amendment removes the text that such actions “. . . avoid or reduce the potential public health impacts. . .” from the Right to Know rules. The Agency believes this change will clarify that potable water supply well and soil gas sampling do not, in isolation, avoid or reduce the potential public health impacts. Rather, such testing enables the owner or occupant to confirm whether a threat to human health exists and, thereafter, take any steps needed to address those concerns.

Section 1600.315 – Notices, Fact Sheet and Community Relations Plans for Expanded Community Relations Activities.

Section 1600.315 provides for comprehensive community relations activities when there is a threat of exposure from a release to more than five offsite properties. In many ways, Section 1600.315 mirrors Section 1600.310. Section 1600.315 requires: (1) notice for a threat of exposure to the same environmental media of concern as Section 1600.310; (2) notice to certain members of the public, including the affected, potentially affected, or interested persons identified in Section 1600.310; and (3) the development of

a fact sheet that contains the same information as a fact sheet developed under Section 1600.310. Given these similarities, the Agency proposes amending Section 1600.315 in a manner that mirrors the proposed amendments to Section 1600.310. The basis for these amendments is identical to the rationale set forth above.

In addition to the amendments that mirror Section 1600.310, the Agency proposes amending Section 1600.315(b)(3) to require Agency-authorized parties to provide fact sheets in English and any predominant language or languages of an area affected by a release. Section 1600.315(b)(3) currently requires Agency-authorized parties to provide fact sheets in English and one other predominant language, if necessary. This amendment recognizes that certain areas of the state may have more than one predominant language other than English. Although Section 1600.315 differs from Section 1600.310 in other respects, including requiring notice to additional parties and mandating additional recordkeeping, those subsections of Section 1600.315 are not affected by the Agency's proposed amendments. Thus, my testimony does not address the other existing differences between the two Sections.

Section 1600.320 – Establishment of a Document Repository

The Agency proposes two amendments to Section 1600.320, each of which is to ensure consistent use of acronyms within Part 1600.

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

The Agency proposes two amendments to Section 1600.320, each of which is to ensure consistent use of acronyms and terms within Part 1600.

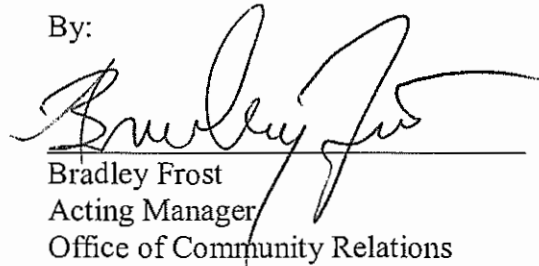
Section 1600.APPENDIX A – Contents of a Model Community Relations Plan

Section 1600.APPENDIX A outlines the contents of a model Community Relations Plan that an Agency-authorized party may employ when proceeding under Section 1600.315. This Appendix contains guidance regarding the information necessary to describe the site at which a release occurred, relevant community issues and concerns, a community relations program, and the persons necessary to include in the contact list. The Agency proposes amending the portion of the Appendix that describes the contact list to mirror the comparable amendments to Sections 1600.310 and 1600.315. The rationale for these amendments is the same as in those Sections.

Conclusion

This concludes my pre-filed testimony. I will supplement the testimony as needed during the hearing and am happy to address any questions.

By:



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[THIS FILING IS SUBMITTED ON RECYCLED PAPER]

CERTIFICATE OF SERVICE

I, the undersigned, an attorney, state that I have served the attached REGULATORY PROPOSAL containing the Illinois Environmental Protection Agency's Notice of Filing and Pre-Filed Testimony of Bradley Frost upon persons listed on the Service List, by mailing a true copy thereof in an envelope duly addressed bearing proper first class postage and deposited in the United States mail at Springfield, Illinois on August 21, 2014.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

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