# Illinois's Right-to-Know Law: Notifying Residents of Off-Site Contamination

Nine years ago, residents in Lisle, Illinois, a comfortable suburban community in the Chicago metropolitan area, learned that the drinking water supplied by some of their private water wells showed detections of an industrial solvent. The contamination had migrated from a nearby manufacturing facility that was undergoing cleanup pursuant to the Illinois Environmental Protection Agency's (Illinois EPA's) voluntary cleanup program. After Illinois EPA learned of the contamination in these private water wells, it stepped in to confirm the claims. The Agency's investigation soon progressed into other subdivisions.

Several months after the Lisle investigation began, Illinois EPA initiated a second investigation in Downers Grove, the village located directly east of Lisle. This second investigation began in June 2001, after results from a dozen private well samples in Downers Grove revealed eight detections of similar chemicals related to solvents.

In both the Lisle and Downers Grove cases, the contamination was linked to decades-old solvent-handling practices. And as the public learned that solvents were being detected in an increasing number of private drinking water wells, the question that residents, local officials, and state and federal legislators alike began to ask was, "Why weren't we told about this sooner?"

***Aiming to make "Why wasn't I told?" an obsolete question***

As a result of these two cases—one of which involved "one of the most intensive ground water investigations ever undertaken in Northern Illinois"[1]—a broad-based coalition of lawmakers, local officials, regulators, industry representatives, and citizens—joined forces to ensure that persons who might be affected by the off-site migration of contaminants from known contaminated sites would be notified of the threat by Illinois EPA. Illinois's right-to-know law was adopted on July 25, 2005,[2] and the right-to-know regulations became effective January 1, 2006.

Illinois's right-to-know regulations, the most comprehensive in the United States, are designed

**Carol J. Forrest**


Published online in Wiley InterScience (www.interscience.wiley.com).
DOI: 10.1002/tqem.20222

to provide timely notice to residents who are using private, semiprivate, or non-community water wells when there is a potential for contamination in their drinking water. The regulations also notify residents of the likely presence of contaminants in the soil on their property.

Notification is intended to allow residents who may be affected to take steps to protect their health. The notification requirements apply to off-site migration of contaminants from all types of sites, whether they are governed by Resource Conservation and Recovery Act permits, the state's leaking underground storage tank program, or Illinois's voluntary cleanup program, or involve contamination of unknown origin.

**This article offers some background on the cases that led to adoption of the Illinois right-to-know law. It also explains how the law and regulations operate.**

Illinois's right-to-know requirements provide a template for regulators in other states, for the regulated community, for persons and groups who are concerned about health and environmental conditions, and for community relations professionals who are seeking an approach to informing the public about potentially hazardous environmental conditions.

This article offers some background on the cases that led to adoption of the Illinois right-to-know law. It also explains how the law and regulations operate.

## Two Cases: Lockformer/Lisle and Ellsworth Industrial Park/Downers Grove

### *The Lockformer/Lisle Case*

In 1999, Lockformer, a metal fabricator located in the village of Lisle, Illinois, sought to have the municipality pass an ordinance prohibiting the drilling of water supply wells near its facility. Procuring the ordinance was one of the steps the company sought to take in order to obtain a "no further remediation" letter under Illinois EPA's voluntary cleanup program, the Site Remediation Program (SRP).

Lockformer had entered the SRP in 1994 to address spills that had taken place at its Lisle facility. The spills involved a common industrial solvent, trichloroethylene (TCE). The company requested the ordinance in an attempt to preclude the possibility of human exposure to TCE through groundwater ingestion.

Some might have assumed that seeking the ordinance would help put the issue to rest. Instead, the company's request triggered questions on the part of nearby residents. Although Lisle has a public water supply and water mains are installed within its corporate limits, some homeowners had never connected to the public water supply. These residents were still using their private water wells for drinking water.

Lockformer maintained that no TCE had migrated beyond their property line. But several dozen residents with private wells were leery of this claim; they had water from their wells sampled and tested.

The analyses showed detections of TCE in 20 of the wells. Concentrations of TCE in six of the wells exceeded the federal maximum contaminant level (MCL) for treated drinking water of five parts per billion. Additionally, under Illinois law, any detections of man-made substances—which TCE is—violate the state's groundwater quality standards. (See **Exhibit 1** for discussion of Illinois nondegradation standards for groundwater.)

After an attorney for some Lisle residents approached Illinois EPA with these analytical results in late 2000, the Agency asked Lockformer to collect and analyze off-site private well samples to investigate the residents' claims. Lockformer refused the request.

**Exhibit 1. Illinois's Groundwater Protection Act and Federal Maximum Contaminant Levels**

Most of the news stories (and some of the fact sheets) about the Lockformer/Lisle and Ellsworth Industrial Park/Downers Grove investigations refer to federal maximum contaminant levels (MCLs), which establish after-treatment limits for contaminants in drinking water from public water supplies. Illinois EPA and the Illinois Department of Public Health use MCLs as "health-related comparison values for private well water."

MCLs are not enforceable relative to private water supply wells, however. In addition, they may violate Illinois's nondegradation standards, which were established by the state's Groundwater Protection Act of 1987. These standards are more strict than MCLs and are designed to protect beneficial uses of groundwater.

Rick Cobb, deputy division manager for public water supplies in Illinois, explains, "Our nondegradation standards aren't intended to allow contamination up to a numerical standard—they're there to prevent man-made contaminants from entering the groundwater or to prevent contamination with naturally occurring substances that would exceed background levels for these substances. Our goal is to ensure that we have a safe source to draw from."

Regarding the Lisle and Downers Grove cases, and the impending groundwater cleanups at these sites, Cobb adds, "We don't want to write off groundwater, even if it's shallow, because we may need it as the population grows. These communities are using Lake Michigan water now, but we may need to supplement that supply with local groundwater sometime in the future."

In addition, to residents in Lisle and Downers Grove who were affected by the contamination incidents, news that concentrations of TCE or PCE were detectable (but below MCL values) was not necessarily reassuring. Carol Fuller, a community relations coordinator for Illinois EPA's Office of Community Relations, explains, "We talked to a lot of people whose drinking water tested below the MCLs, but TCE or PCE was still detectable, and they didn't want their kids drinking it. They learned that TCE was a possible carcinogen, and they didn't want any in their drinking water. Consequently, they no longer wanted to use their private water wells for a source of drinking water."

Illinois EPA's then director, Renee Cipriano, was concerned about the situation. At her direction, the Agency stepped in to collect and analyze its own samples. This work took place during bitterly cold weather in December 2000 and January 2001.

Stan Black, the Illinois EPA community relations coordinator who was charged with heading up community relations activities for the Lockformer/Lisle case, recounts some of the difficulties involved in identifying private well users in the village. "We had to compare the names and addresses of people who were paying for sewer services, but not for water services. We worked closely with the village—they were extraordinarily helpful."

Black explains that as the investigation progressed, samples were collected in two additional unincorporated subdivisions near Lisle, as well as in one unincorporated subdivision in Woodridge, a municipality located to the south of Lisle. Approximately 300 private water wells were sampled during the investigation.

In some of the neighborhoods, more than 70 percent of the samples contained concentrations of TCE. In other neighborhoods, water samples collected from private wells showed either no detections of TCE or detections of TCE concentrations that were below the MCL, but still in violation of the state's nondegradation standards.

According to Black, Lockformer refused to admit that TCE from its operations could have migrated off its site. "It was eventually determined that the bedding of a sewer pipe had apparently provided a preferential pathway to the fractured dolomite bedrock. That was apparently what allowed the TCE to travel two-and-a-half miles away from the facility without degrading," Black explains. Virtually all of the private drinking water wells were completed in the fractured dolomite.

Illinois EPA referred the Lockformer case to the state attorney general's office in January 2001. The attorney general moved very quickly on the case, based on the demonstrated threat to human health. By January 22, it had negotiated

an agreed preliminary injunction order requiring Lockformer and other parties potentially responsible for the TCE contamination at the Lisle site to supply bottled water to homes in the areas where TCE had been detected. As additional neighborhoods were found to have contaminated water in their wells, the attorney general's office arranged for their residents to receive bottled water too.

### *The Ellsworth Industrial Park/Downers Grove Case*

As if the Lockformer/Lisle case wasn't creating enough public concern, information gathered during the investigation soon revealed the presence of another source of contamination—and another area in which private drinking water wells were contaminated: Lisle's municipal neighbor to the east, Downers Grove.

**Compelling multiple potentially responsible parties in the industrial park to investigate the extent of the contamination and its source (or sources)—and requiring them to speed an alternate drinking water supply to residents whose well water contained contaminants—posed problems for Illinois EPA.**

"Based on calls I was receiving from citizens," says Black, "I asked the people who were collecting the Lisle samples if they could take a few samples in Downers Grove. They took the samples on May first, and we had detections of PCE [tetrachloroethylene], TCE, and some degradation products." The likely sources: businesses inhabiting the Ellsworth Industrial Park on the west side of Downers Grove.

Out of the 135 businesses located in the industrial park, investigations ultimately revealed a number that had used the solvents that were found in the groundwater. Thus, the Ellsworth Industrial Park/Downers Grove investigation commenced in June 2001.

Illinois EPA oversaw sampling in Downers Grove throughout the summer of 2001, continuing into the fall and winter. Also involved in the sampling effort were the Illinois Department of Public Health and the health department for DuPage County (where the sites were located).

Community relations coordinator Carol Fuller, who works in the Illinois EPA Office of Community Relations, had been given the job of handling community relations for the Ellsworth Industrial Park/Downers Grove investigation. She worked with technical staff and with the City of Downers Grove to identify private water supply wells over a large area that included both incorporated and unincorporated areas.

The task of identifying residents with private wells proved to be daunting. "It was quite an effort," says Fuller. "We had to work with the city to find out who was on the public water supply and who wasn't. We had to drive around, knock on doors, and leave door hangers asking people to call us later if they weren't at home when we knocked."

As in the Lockformer/Lisle case, the process was difficult. "Some of the unincorporated areas were surrounded by incorporated neighborhoods, and some main thoroughfares had water mains—but they were not available to the numerous homes in the unincorporated area of contamination without further water main extensions and costly individual connections," Fuller explains.

Compelling multiple potentially responsible parties (PRPs) in the industrial park to investigate the extent of the contamination and its source (or sources)—and requiring them to speed an alternate drinking water supply to residents whose well water contained contaminants—posed problems for Illinois EPA. Unlike the United States Environmental Protection Agency (US EPA), the state agency lacked administrative authority to require investigations and off-site cleanups. Moreover, the expense of the investigation and cleanup—even assuming Illinois EPA could recover it later—was beyond the state agency's resources.

So in October 2001, Illinois EPA requested US EPA's assistance with the investigation. While Il-

linois EPA continued to coordinate well sampling, the federal agency worked with the PRPs. US EPA executed an agreed order with the PRPs and arranged for bottled water to be delivered to residents with private wells in the areas of Downers Grove that were affected by the contamination.

### *Aftermath of the Lisle and Downers Grove Cases*

Outcry over the large number of residents affected or threatened by contamination in Lisle and Downers Grove led Illinois EPA to form the Governor's Action Team, which met for the first time in January 2002. This group was made up of more than 40 members, including state and federal legislators, other officials from the state, county, and municipal levels, representatives from several Illinois agencies (state EPA, state Department of Public Health, and the state attorney general's office), and representatives of citizen groups. In addition to discussing problems and solutions associated with the Lockformer/Lisle and Ellsworth Industrial Park/Downers Grove cases, the action team sought ways to protect Illinois's residents and environmental resources from other sources of contamination.

Ultimately, about 900 private wells in unincorporated Downers Grove were investigated. Of those, 850 were eventually hooked up to public water supplies at some cost to residents, with additional money provided by the PRPs and by a combination of local, state, and federal funds. All of the private wells within the area of concern were properly closed, and no one is allowed to have an open well in this area.

In Lisle, Woodridge, and the unincorporated areas near the two villages, more than 250 private wells were properly abandoned, and the residences were connected to public water supply lines.

Cleanup is proceeding at Lockformer. In addition, US EPA is planning to release a remedial investigation draft report on the Ellsworth Industrial Park investigation sometime in 2009.

Even though residents near the Lockformer and Ellsworth Industrial Park sites are no longer exposed to solvent contamination through their drinking water, the cases have had far-reaching ramifications. The questions "Who knew and when did they know it?" proved particularly compelling.

Illinois EPA has a strong Office of Community Relations, and its professionals have an excellent track record of performing community outreach in conjunction with contaminated sites throughout the state. However, the Agency had not been aware of the off-site contamination that occurred in these instances. Nor, at the time the Lisle and Downers Grove cases came to light, did the Agency itself have the administrative authority to require companies to clean up contamination or to engage in community relations activities.

**Even though residents near the Lockformer and Ellsworth Industrial Park sites are no longer exposed to solvent contamination through their drinking water, the cases have had far-reaching ramifications.**

In the furor that erupted over these two cases, "Who knew and when did they know it?" evolved into "Why wasn't I told?" Local and state officials, legislators, and residents decided that was a question that no one should ever have to ask again.

## Responding to the Lisle and Downers Grove Cases: A New Law Provides Administrative Authority, Requires Identification of Water Wells, and Mandates Notification to Residents

### *A Broad-Based Effort*

Creation of Illinois's right-to-know requirements involved a broad-based effort. State legisla-

tors who served the DuPage County area, where the solvent-contaminated wells were found, proved to be some of the staunchest supporters of the legislation, as were industry groups and residents and local officials who had endured the ordeal. Illinois EPA worked with several advisory groups, including the Interagency Coordinating Committee on Groundwater (ICCG), the Groundwater Advisory Council (GAC), and the Right-to-Know Committee.

The ICCG, which was established by the Illinois Groundwater Protection Act, is composed of representatives from Illinois state agencies, including Illinois EPA; the state's Departments of Public Health, Agriculture, and Natural Resources; and the Office of the State Fire Marshal, among others.

The GAC has members representing a range of interests, including the environment, industrial and commercial interests, agriculture, local government, regional planning, public water supplies, and the water well-drilling industry. Representatives of these interests met to advise on crafting the regulations ensuring that sites with potential off-site impacts would be identified and that people who could be affected by contamination would be notified.

The Right-to-Know Committee, which was a subcommittee of, and appointed by, the GAC, worked with Illinois EPA on developing methods of notification. This group included citizen members as well as representatives from the GAC and Illinois EPA.

See **Exhibit 2** for information on Web-based resources on the right-to-know regulations.

### *Illinois Right-to-Know Legislation: Three Key Components*

"Before right-to-know, we had always done community relations on a site-by-site basis," says Kurt Neibergall, manager of Illinois EPA's Office of Community Relations. "This is a more systematic approach to ensure that we are working with all of the sites that need our attention. We view the right-to-know program as strengthening our approach," he says.

The right-to-know legislation, which was signed into law July 25, 2005, includes three vital components:

- It grants Illinois EPA administrative authority to issue "information demand letters" requiring PRPs to provide information on contamination and allows the Agency to compel cleanup or containment of hazardous contaminants.
- It requires PRPs to ensure that private water wells within the vicinity of their sites are identified. (Illinois EPA fulfills this function if there is no identifiable responsible party.)
- It requires Illinois EPA to notify persons whose property may be affected or threatened by the off-site migration of contaminants.

### *"A Negotiated Process"*

Scott Phillips, a manager in Illinois EPA's Division of Legal Counsel, describes the creation of

**Exhibit 2. Web Resources on Illinois EPA's Right-to-Know Regulations**

Additional information about the Illinois right-to-know regulations is available at http://www.epa.state.il.us/community-relations/right-to-know/index.html or by visiting the Illinois EPA Web page at http://www.epa.state.il.us/ and clicking on the "right-to-know" button under "Agency links" at the left side of the home page. The right-to-know link provides access to fact sheets, information on private water wells, and other useful information.

Information on the Groundwater Advisory Council and the Interagency Coordination Committee on Groundwater is available at http://www.epa.state.il.us/water/groundwater/groundwater-advisory-council.html.

the right-to-know law as "a negotiated process." "Initially," he says, "there were competing bills in the legislature. One of the bills would have required that we issue postcards or letters to neighbors in any situation in which contamination was detected. Not only would this have been costly, but in some areas, people would be receiving postcard upon postcard. After a while, they wouldn't even pay attention to them anymore. So we had to address that."

Phillips notes that much of the debate over the law did not involve the notification process itself, however. Instead, the debate focused on a proposal giving the Agency power to issue information demand letters and to compel cleanups or containment.

Phillips explains that the ability to require such actions from owners or operators of sites or facilities is vital to the notification process. "The nexus between the two is important. Once you give notification that there may be a problem, it's important that we have the ability to do something about the problem. Now we can require the responsible party to perform an investigation and perform a cleanup."

Phillips continues, "The authority under the right-to-know law is unique in the Illinois Environmental Protection Act. Industry opposed it because it was the first time administrative order authority was given to our Agency."

Rick Cobb, deputy division manager for public water supplies, adds that although it is difficult to quantify the effect on responsible parties of the Agency's newfound authority to issue demand letters and to compel cleanups or containment, "just having the authority means that companies are doing more because they know it's out there."

Carol Fuller agrees. "We've talked with consultants about the right-to-know requirements. Once they know about them, and know that we can issue information demand letters, they recognize that it is in their clients' best interest to come forward with information about contamination," she says.

### *Regulations Requiring Well Surveys*

The regulations for well surveys are provided in 35 Illinois Administrative Code Subpart B: Standards and Requirements for Potable Water Supply Well Surveys, Sections 1600.200 to 1600.210. While Illinois EPA cannot require testing of private water supply wells or prohibit their owners from using them (even if the water they provide contains contaminants), the right-to-know regulations can at least ensure that people who use private drinking water wells will be identified and notified that potentially hazardous environmental conditions may exist.

**The right-to-know regulations can at least ensure that people who use private drinking water wells will be identified and notified that potentially hazardous environmental conditions may exist.**

Rick Cobb explains that the state's Source Water Assessment Program (SWAP) database, which went online in 2002, makes it possible for the Agency and others, including consultants, to identify about half of the private water wells in Illinois. "We estimate that there are about 400,000 private drinking water wells out there, and the available records in the database represent about half of these," he says, adding that these wells are defined as serving owner-occupied, single-family dwellings. Drillers are required to submit the logs of the wells they drill to the Illinois State Geological Survey (ISGS).

Cobb continues, "In the mid-1990s, the ISGS began to digitize the well information with the intention of including it in a single database. Combined with aerial photos, geological data, and zoning information, it [the SWAP database] provides a good screening tool for environmental professionals who must determine if private water wells are nearby."

Cobb explains that if the SWAP database had been available at the outset of the Lockformer/Lisle and Ellsworth Industrial Park/Downers Grove cases, even though it does not include all private drinking water wells, it would have shown enough density of private wells so that both Illinois EPA and the companies involved would have realized that many residents in the area were using private wells.

Cobb notes that an added feature of the SWAP database is its link to the Illinois State Water Survey (ISWS) data. Although the ISWS database does not include all of the geological or zoning information contained in the SWAP database, it has water quality data, which is important for enforcing the state's nondegradation requirements under the Illinois Groundwater Protection Act of 1987.

**According to Neibergall, Illinois EPA and the various advisory groups providing input into the right-to-know law and subsequent regulations went through many iterations regarding what sorts of conditions should trigger public notification.**

The Office of Community Relations' Kurt Neibergall further explains that the inclusion of requirements in the right-to-know regulations for a systematic approach to identifying all of the water wells in proximity to a contaminated site is a vital component. He notes, "Different state programs had different requirements for well surveys—for example, under our Site Remediation Program, owners were required to identify private water wells within a 1,000-foot radius of the site and community water supply wells within a 2,500-foot radius—but there was no single, prescriptive approach as to the level of effort people needed to make to identify nearby water wells. Under the right-to-know regulations, we included a systematic approach to performing a well survey. People have to follow a certain format and use a set method for identifying wells."

### *The Notification Requirements and How They Were Written*

According to Neibergall, Illinois EPA and the various advisory groups providing input into the right-to-know law and subsequent regulations went through many iterations regarding what sorts of conditions should trigger public notification. "We finally decided that notification should be made *if* there was a release and it went off site, *and* there were receptors, *and* the concentrations presented a potential exposure. What we wanted to do was respond to the threat of exposure and make sure people were notified of that," Neibergall says.

Community relations coordinator Stan Black adds, "The intent is to let people know before contamination shows up in their wells. The whole regulation is triggered by threat. In the Lockformer case, we had impacts two-and-a-half miles away. No one thought the TCE could travel that far, but we had a fractured dolomite aquifer. Even if you are technically astute, you don't always know at the outset how far the threat goes."

After considering the triggering criteria for notification, the advisory groups then addressed the timing of notification—an important issue, given how long it can take to obtain and analyze investigative data. "The advisory groups said, 'Look, we know you don't always have all the information, but we want to know that there might be a problem as soon as you know,'" Neibergall explains.

Timeliness of notification is an element of the right-to-know requirements that Illinois EPA must sometimes confront with "authorized parties"—those responsible for a site who elect to take on community relations activities themselves under the Office of Community Relations' oversight.

"We sometimes have disagreements about providing information before companies want to disclose it. They would prefer to wait until they

have completed their investigations, but if we have credible, scientific information about contamination, we need to get that information out so that people can protect themselves by getting their wells tested," Neibergall explains, adding, "We want to avoid a situation where notification takes six months or more."

Illinois has set a rigorous timetable for making notifications to ensure that potentially affected parties receive information promptly. Neibergall points out that, in cases of imminent danger, Illinois EPA makes immediate notification.

"We had a case last year where we discovered that methane was detected at the perimeter of a closed landfill. Since there were houses nearby, we went door-to-door right away with the McHenry County Health Department to take samples and to let the residents know what was happening. That wasn't a situation where we felt we could wait," he says.

## What the Right-to-Know Law Requires

The right-to-know law[3] requires Illinois EPA to "[e]valuate releases of contaminants whenever it determines that the extent of soil or groundwater contamination may extend beyond the boundary of the site where the release occurred."[4] The law further states that "[t]he Agency's determination must be based on the credible, scientific information available to it, and the Agency is not required to perform additional investigations or studies beyond those required by applicable federal or state laws."[5]

The law lays out requirements for notice to be made by Illinois EPA to owners and occupants of property that is affected or may be affected by off-site groundwater or soil contamination. Specifics regarding the off-site conditions requiring notification and the requirements of the notification program (which are discussed in the following sections) are laid out in the regulations. The statute specifies, however, "The methods by which the Agency gives the notices required under this Section shall be determined in consultation with members of the public and appropriate members of the regulated community and may include, but shall not be limited to, personal notification, public meetings, signs, electronic notification, and print media."[6]

## Triggering Conditions for Notification

Requirements for notification come into play when "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 route)[7] poses a threat above the Class I groundwater standards" to off-site private, semi-private, or non-community water system wells[8] or "off-site soil contamination from the site where the release occurred poses a threat of exposure to the public above the appropriate Tier I remediation objective[9] for the current use(s)" at off-site properties.[10]

**The law lays out requirements for notice to be made by Illinois EPA to owners and occupants of property that is affected or may be affected by off-site groundwater or soil contamination.**

As these provisions indicate, both actual analytical results and computer modeling of the likely extent of contamination are used to determine whether off-site wells or properties are affected or may be affected by contamination above the state's regulatory limits.

Neibergall observes that, in addition to soil and groundwater concerns, several of the sites for which notifications have been made have posed potential threats to the public via vapor intrusion. Illinois is currently working on legislation regarding this threat. Once the state has fully developed its approach to managing vapor intrusion and the risks it poses, Neibergall says that

requirements for notifying potentially affected persons about this threat will be codified in the right-to-know regulations.

### How Sites Are Identified

According to Neibergall, Illinois EPA's Contaminant Evaluation Group (CEG) determines whether sites meet the criteria for off-site impacts under the law. The CEG is composed of senior managers from the Agency's Bureaus of Land, Air, and Water; its Division of Legal Counsel; the Toxicology Assessment Unit; the Office of Community Relations; and the Agency director's office. The CEG shares information via e-mail and meets monthly or bimonthly as needed to discuss whether the right-to-know regulations apply to specific sites.

**The community relations activities required in the regulations may be supplemented if Illinois EPA or the authorized party for the site believes that additional activities are warranted.**

### Involvement of State and County Public Health Departments

Although Illinois EPA has its own toxicologists, it works closely with the Illinois Department of Public Health's Division of Environmental Health Toxicology Section, which interprets analytical data and provides information on possible health effects of contaminants. "This is the health-related information that we put in the notices and fact sheets. We get their concurrence on what we send out," says Neibergall.

Illinois EPA also works with county health departments. The Agency has run training sessions on the right-to-know requirements and on the SWAP database for county health departments, primarily in northern Illinois, where the groundwater is most vulnerable to contamination. The Agency has also prepared a training program on SWAP-database use that is available on CD-ROM to county health departments.

Community relations coordinator Stan Black explains, "We like to work with county health departments in developing messages for residents who are living near a contaminated site. We generally ask if a member of the health department wants to be involved or wants to be listed as a contact in the mailings. If a county health department doesn't have the resources or interest to work with us, however, we work with the Illinois Department of Public Health."

### Community Relations Regulations Under Right-to-Know

The requirements for public notification of potential groundwater or soil contamination are spelled out in 35 Illinois Administrative Code Subpart C: Standards and Requirements for Community Relations Activities, Sections 1600.300 through 1600.340, including Appendix A to Section 1600, "Contents of a Model Community Relations Plan." These regulations include the minimum requirements regarding the contents of notices and fact sheets, submission to Illinois EPA for review, development of contact lists, distribution of notices and fact sheets, and, when required, the development of community relations plans and the establishment and maintenance of document repositories.

The community relations activities required in the regulations may be supplemented if Illinois EPA or the authorized party for the site believes that additional activities are warranted. Neibergall stresses that flexibility is important in community relations; it may be necessary in some communities to use a variety of different methods to ensure that the public receives information.

He also points out that the Office of Community Relations works with authorized parties to help them identify cases where it may be wise to distribute information that reaches beyond the requirements set forth in the regulations. "If a nursing home is located a few blocks away

from where the modeled extent of groundwater contamination may reach, or if it is on a public water supply rather than private well, and thus doesn't need to be notified under the regulations, it may still be wise to send them a fact sheet if the people associated with it are going to be hearing about the contamination from others," he says.

An authorized party may engage in community relations activities before Illinois EPA informs them that notifications must be made under the right-to-know requirements. In addition, Illinois EPA may recommend that community relations activities be initiated in cases that do not meet the triggering conditions set by the right-to-know law if the level of public interest or concern is likely to be significant.

## Who Performs Community Relations Activities?

Under the right-to-know law, Illinois EPA is responsible for performing community relations activities. As noted above, however, the Agency can delegate these activities to authorized parties and then oversee their activities.

Once a site is identified as one that meets the criteria for off-site impacts under the right-to-know law, Illinois EPA notifies the responsible party in writing that the off-site conditions will require notification of potentially affected property owners and residents, including renters (see **Exhibit 3**). In this letter, the Agency offers the responsible party the option of performing the required notification and community relations activities itself as the "authorized party" under the oversight of the Office of Community Relations. Alternatively, the responsible party can choose to reimburse Illinois EPA for performing these activities for its site.

From 2006 through 2008, approximately 70 sites were considered by the Contaminant Evaluation Group. In most of these cases, community relations activities are already under way. "If we have already sent out letters and fact sheets about a site, if we already have a good contact list and have been engaging in a dialogue with the community, then we haven't required separate notifications under the right-to-know regulations," Neibergall says.

As of the end of 2008, notifications for approximately 30 sites had been handled under the right-to-know regulations. Interestingly, of these 30, all but two of the responsible parties have elected to take on the notification and community relations activities as "authorized parties" with Agency oversight. "We gave them the opportunity and they really stepped up," Neibergall says.

## Two Levels of Effort in Community Relations

The regulations recognize that not all situations require a major community relations program. The regulatory provisions allow for two levels of effort—"limited" and "expanded" community relations activities—depending on the number of off-site properties that may be affected.

Limited community relations activities are required for measured or modeled groundwater

**Exhibit 3. Including Renters in the Notification Scheme**

Illinois EPA's Office of Community Relations fought hard to ensure that authorized parties would attempt to identify—and notify—renters of properties that might be affected by off-site contamination. "We wanted them to put forth a reasonable effort," explains Carol Fuller. "Residents told us that if people receive a letter addressed to 'occupant,' they may not read it. Citizens told us that if it's addressed to them or to the former occupants by name, they are more likely to read it."

contamination that poses a threat to "five or fewer off-site private, semi-private, or non-community water system wells"[11] and in cases where "off-site soil contamination from the site where the release occurred poses a threat . . . for the current use(s) at five or fewer off-site properties."[12]

Expanded community relations activities are required for measured or modeled groundwater contamination that poses a threat to "more than five off-site private, semi-private, or non-community water system wells"[13] or where "off-site soil contamination from the site where the release occurred poses a threat . . . for the current use(s) at more than five off-site properties."[14]

**The Office of Community Relations emphasizes that the intent of the right-to-know law and regulations is to let people know about the threat of contamination before it shows up in their drinking-water wells or on their property.**

The requirements related to the two levels of community relations effort are discussed in more detail in the following sections.

### Limited Community Relations Activities

Where limited community relations (CR) activities are required, off-site effects by definition affect only a relatively small number of persons or properties (five or fewer). In such cases, the authorized party must prepare a notice to be sent out to those affected and must develop a limited community relations plan (consisting of a contact list and a fact sheet).

Although the community relations plan in such cases is abbreviated compared to that required to support expanded community relations activities, compilation of the contact list and preparation of the fact sheet (both of which must be submitted to Illinois EPA's Office of Community Relations for review and approval) require significant effort and attention to detail.

#### *Notice Contents (Limited CR Activities)*

The notice that is sent out to affected parties may be required to contain several elements, including:

- the name and address of the site or facility where the release occurred or is suspected to have occurred;
- a map of the affected area;
- identification of the contaminant released or suspected to have been released;
- information as to whether the contaminant was released or suspected to have been released into the air, land, or water;
- a brief description of the potential adverse health effects posed by the contaminant;
- a recommendation that water systems with wells impacted or potentially impacted by the contamination be appropriately tested; and
- 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.[15]

#### *Contact List (Limited CR Activities)*

The Office of Community Relations emphasizes that the intent of the right-to-know law and regulations is to let people know about the threat of contamination before it shows up in their drinking-water wells or on their property. Thus, the contact list must include (but definitely should not be limited to) all affected, potentially affected, or interested persons.

The contact list must clearly define (to the Agency's satisfaction) the "nearby populations that may be affected by or concerned about site activities . . . including, but not limited to, residences, businesses, daycare centers, schools, nursing homes, hospitals, and clinics."[16]

Neibergall emphasizes that Illinois EPA encourages authorized parties to consider includ-

ing in their contact lists persons, organizations, or businesses that may be outside the actual or modeled "affected area," but that may be near enough so that people may raise questions about whether they are in fact at risk of exposure. At a minimum, the regulations require that the contact list include:

- 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;
- owners of off-site properties with soil contamination posing a threat of exposure above the appropriate Tier I remediation objectives for the current use(s);
- occupants of the previously described properties, to the extent reasonably practicable (the contact list must also include the methods by which the authorized party has attempted to identify the occupants);
- 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
- 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 (such as school, drainage, and park districts) may be excluded unless these districts are owners or occupants of the previously described properties.[17]

Contact lists must be updated whenever new information is obtained or developed in order to ensure that revised fact sheets are sent to all those who may be affected by or have an interest in on-site or off-site conditions.

### *Fact Sheets (Limited CR Activities)*

In addition to the notice, the regulations require that authorized parties (or Illinois EPA, in cases where it is fulfilling the notification function) prepare and distribute a fact sheet on both on-site and off-site conditions to all of the parties on the contact list. The regulations direct that fact sheets be "written clearly and concisely in non-technical, non-legal terminology."[18]

Meeting the requirements applicable to fact sheets means using clear wording and providing information even when not all investigative tasks have been completed. This often takes considerable work.

**Meeting the requirements applicable to fact sheets means using clear wording and providing information even when not all investigative tasks have been completed.**

"We usually have to coach the authorized parties when it comes to the fact sheet," says Neibergall. "We have haggles over wording and have to work with them to get the right tone that isn't too technical, but that doesn't gloss over the issues. We also have disagreements sometimes about putting out information before we have as much information about conditions at the site that some authorized parties want, but the fact sheets get done. We have to explain to them that people want information—even if we don't know everything yet."

Under the regulations, the following information should be included in the fact sheet to the extent that it is available:

- the nature and extent of the contaminants identified on and off the site where the release occurred;
- a brief description of the pathways of potential exposure and the potential adverse public health effects posed by the contaminants;

- a description of any precautionary measures that 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;
- a nontechnical description of the steps that are proposed to address the contamination, including (but not limited to) soil excavation and treatment, disposal, redistribution, pump-and-treat, bioremediation, reliance on engineered barriers or institutional controls, groundwater monitoring, and other steps;
- the anticipated remediation schedule through completion of the project, including any operation, maintenance, or monitoring following construction of the remedy;
- the nature of the closure documentation expected from the Agency (e.g., a focused or comprehensive "no further remediation" letter, permit modifications, or reliance on engineered barriers or institutional controls);
- responses to key community concerns as expressed by affected, potentially affected, and interested parties;
- the date of preparation of the fact sheet, the name of the representative of the business, site, or facility from whom information and site-related documents may be obtained, and the e-mail address, postal address, and telephone number where the representative can be reached; and
- the name, e-mail address, postal address, and telephone number of the Agency's designated staff person, along with 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.[19]

**Authorized parties must submit their notices, contact lists, and fact sheets to Illinois EPA for review within 30 days after accepting the authorized-party role.**

Fact sheets 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 by the fact sheet."[20]

### *Review of Documentation by Illinois EPA and Applicable Distribution Dates for Notification*

Authorized parties must submit their notices, contact lists, and fact sheets to Illinois EPA for review within 30 days after accepting the authorized-party role. When conducting its review, the Agency considers whether these documents meet the requirements set forth in the regulations, as well as whether the information they contain is consistent with the Agency's own records and the field observations of its staff.

The Agency has 30 days from receipt of the notice, contact list, and fact sheets to review and approve or disapprove of these documents. The Agency can also approve the documents with modifications.

If the Agency disapproves one or more of the documents, or approves a document with conditions or modifications, the authorized party must resubmit a revised version within 10 days of receiving the disapproval or the approval with conditions or modifications. If the Agency does not issue its final determination on the documents within 30 days after receipt, the documents will be deemed approved as submitted.

Distribution of the notice and fact sheet must begin within five days after receipt of the Agency's approval of the document or within 10 days of the date the notice is deemed approved (if no determination is made by the Agency within 30 days).[21]

## Expanded Community Relations Activities

Sites that require expanded community relations activities are those that involve more than five affected properties. Such sites may sometimes be situated in areas where communication with affected or potentially affected residents or property owners is relatively uncomplicated (for example, a single neighborhood whose residents all speak English).

However, sites subject to expanded activities may also be situated in areas with diverse populations, high population density, or mixed land use. Such areas can present a substantial challenge to authorized parties—who must not only develop contact lists, but also consider the specific questions or concerns that people who live or work in such areas may have. As a result, in addition to the notice and fact sheets, authorized parties must also prepare formal community relations plans in the case of expanded community relations activities.

Preparation of a formal community relations plan includes development of a contact list. It also requires the authorized party to perform research into the area affected by the migration of contamination with an eye toward identifying specific questions or concerns and specific demographic features (e.g., the primary language of residents) in order to ensure that its communication efforts fit the needs of the affected community.

In addition, the regulations applicable to expanded community relations activities require authorized parties to establish document repositories where interested parties can obtain information.

### *Notice Contents (Expanded CR Activities)*

Notices used in expanded community relations activities must include the same contents and undergo the same submittal and review processes as those previously discussed under the section on limited community relations activities.

### *Fact Sheets (Expanded CR Activities)*

The list of required contents for fact sheets used in connection with expanded community relations activities includes one additional element beyond those listed above in the discussion of limited community relations activities: the World Wide Web address of the document repository that must be established as part of the expanded community relations program.[22]

Another important requirement for fact sheets prepared under the expanded program involves language: If a "significant portion" of the population is non-English-speaking, the fact sheet must be produced and distributed in both English and the other predominant language.[23]

**Notices used in expanded community relations activities must include the same contents and undergo the same submittal and review processes as those contained in the section on limited community relations activities.**

Fact sheets used in connection with the expanded program must undergo the same submittal and review processes as those previously discussed under the section on limited community relations activities. They also must be updated when new information becomes available.

### *The Community Relations Plan*

An authorized party who is handling expanded community relations activities must prepare a community relations plan (CRP) in accordance with the requirements contained in Section 1600.315 (b)(2) and Appendix A, "Contents of a Model Community Relations Plan," of the right-to-know regulations. The CRP consists of four key elements: a site/facility description, a summary of community issues

and concerns, a community relations program, and a contact list. These elements are discussed in more detail below.

The CRP elements track with the requirements for community assessment and planning performed under other federal and state environmental programs. Persons who are performing community assessments in order to design voluntary community relations programs may also find that including these elements in their studies will increase the likelihood of implementing successful community relations programs.

**The CRP elements track with the requirements for community assessment and planning performed under other federal and state environmental programs.**

## Elements of the Community Relations Plan

### *Site/Facility Description*

The CRP should provide a brief overview about the site where the release occurred. The overview should include (but not be limited to):

- a description of the business, site, or facility;
- a description of its current operations;
- a description of previous land uses;
- a description of previous remedial activities;
- the nature and extent of known contamination;
- the known or potential threat to public health and the environment; and
- a map (at an appropriate scale) detailing the site location and surrounding area and showing roads and streets, homes and businesses, and geographic and other significant features.[24]

### *Community Issues and Concerns*

Through research work, interviews, and surveys of a representative sample of affected, potentially affected, and interested persons, the authorized party should develop a brief summary describing:

- the demographics of the area surrounding the site where the release occurred (including, but not limited to, residences, businesses, daycare centers, schools, nursing homes, hospitals, and clinics);
- the approximate percentage of non-English-speaking persons among the affected, potentially affected, and interested parties, and specification of their preferred language;
- key community concerns; and
- any preferred methods of communication.[25]

### *Community Relations Program*

The plan should include a community relations program with the following elements:

- objectives that aim to keep affected, potentially affected, and interested parties apprised about conditions at the site, response actions, and actual or potential public health impacts;
- an action plan to keep affected, potentially affected, and interested parties apprised about conditions at the site, response actions, and actual or potential public health impacts;
- a schedule that will keep affected, potentially affected, and interested parties apprised about conditions at the site, response actions, and actual or potential public health impacts;
- explanation of how the public will be notified about mailings or meetings;
- identity of the contact person(s) for the community relations program;
- contact information for public inquiries; and
- details about the location of, and access to, the document repository.[26]

### *Contact List (Expanded CR Activities)*

When expanded community relations activities are involved, the community relations plan should outline the process for:

- identifying a contact list and developing a contact database of affected, potentially affected, and interested parties; and
- updating the contact list and developing an updated contact database of affected, potentially affected, and interested parties, including the following:
  - owners of properties served by private, semiprivate, or non-community water systems that have been or may be impacted by groundwater contamination from the release;
  - occupants of the above-described properties to the extent reasonably practicable (the CRP must include methods by which the authorized party will attempt to identify occupants);
  - owners and operators of community water system wells that have been or may be impacted by groundwater contamination from the release;
  - owners of properties without potable water supply wells, but with groundwater that has been or may be impacted by groundwater contamination from the release;
  - 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) ;
  - occupants of the above-mentioned properties to the extent reasonably practicable (the CRP must include methods by which the authorized party will attempt to identify occupants);
  - 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, and state and federal legislators; and
  - 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, daycare centers, senior centers, nursing home managers, neighborhood or homeowner associations or other community leaders as identified, hospital and clinic managers, 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.[27]

**Requirements for submittal and review of CRPs are the same as those applicable to the notices, contact lists, and fact sheets required under limited community relations programs.**

### *Required Submittal and Review of the Community Relations Plan*

Requirements for submittal and review of CRPs are the same as those applicable to the notices, contact lists, and fact sheets required under limited community relations programs.

### Document Repositories

Where expanded community relations activities are involved, the authorized party must

establish a document repository "for the purpose of displaying documents and providing copies of those documents."[28] The document repository must be established online, at a Web site. Since not all potentially interested residents use the Internet, a document repository may also be established at a physical location, such as a local library, if a request for such a repository is made to the authorized party or to the Agency.[29] The document repository must include:

- the notice;
- the community relations plan;
- all public notices (including 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, along with subsequent Agency comment packages;
- all final determinations by the Agency, such as "no further remediation" letters, permit modifications, or other project completion documentation; and
- a business, site, or facility representative's e-mail, postal address, and telephone number where inquiries can be directed and where persons can request copies of repository documents and other site-related documents by mail.[30]

Documents in the repository must be created, organized, and indexed in a manner that allows affected, potentially affected, or interested persons to identify, locate, and download documents of interest.[31]

The repository must be updated promptly and continuously as notices, fact sheets, plans, reports, comment packages, and Agency decisions are generated. The repository must remain in operation for at least 180 days after the Agency issues project completion documentation.

The document repository may exclude information items that are deemed to be trade secrets or non-disclosable. Information must be screened before it is added to the repository to avoid disclosing personal information that identifies affected, potentially affected, or interested persons or their exact property locations.[32]

## Conclusion

Illinois's right-to-know requirements provide an excellent template for regulators, company owners, consultants, and others who must address the issue of actual or potential off-site migration of contaminants from a contaminated site.

As environmental professionals, local officials, and others who work with the public (and who are familiar with the concept of "community outrage") will attest, anger often erupts when community members learn that others knew of a potentially hazardous situation that might affect them, but did not share the information. Although no one likes to hear that contamination may be affecting their property or their health, people invariably prefer to receive this information sooner rather than later.

## Notes

1. U.S. Environmental Protection Agency, Region 5 Cleanup Sites, Ellsworth Industrial Park Site, http://www.epa.gov/region5/sites/ellsworth.

2. Public Act 094-0314 (2005).

3. Adopted as 415 ILCS 5/Title VI-D of the Illinois Environmental Protection Act (Right-to-Know).

4. 415 ILCS 5/25d-2.

5. Ibid., at 5/25d-3.

6. Ibid., at 5/25d-3(c).

7. "The soil component of the groundwater ingestion route" is an exposure route used in Illinois's Tiered Approach to Corrective Action Objectives (TACO), which includes methods for developing risk-based cleanup objectives.

8. 35 Illinois Administrative Code Section 1600.310(a)(1).

9. Also under TACO.
10. 35 Illinois Administrative Code Section 1600.310(a)(2)
11. Ibid., at 1600.310(a)(1).
12. Ibid., at 1600.310(a)(2).
13. Ibid., at 1600.315(a)(1).
14. Ibid., at 1600.315(a)(2).
15. Ibid., at 1600.310(b)(1)(A-F).
16. Ibid., at 1600.330(b)(5)(B).
17. Ibid., at 1600.310(b)(2)(A-E).
18. Ibid., at 1600.310(b)(3).
19. Ibid., at 1600.310(b)(3)(A-I).
20. Ibid., at 1600.310(d).
21. Ibid., at 1600.330.
22. Ibid., at 1600.315(b)(3)(H).
23. Ibid., at 1600.315(b)(3).
24. Ibid., at 1600, Appendix A.
25. Ibid.
26. Ibid.
27. Ibid.
28. Ibid., at 1600.320.
29. Ibid.
30. Ibid., at 1600.320(a).
31. Ibid., at 1600.320(a)(2).
32. Ibid., at 1600.320(d).

---

**Carol J. Forrest** has more than 20 years of experience in the environmental consulting and management field. She is president of Rose Hill Communications, Inc., which specializes in environmental community relations/public involvement and environmental, risk, and crisis communication, and has worked with more than 50 private- and public-sector clients throughout the United States on site investigations, public communication programs, and corporate and facility environmental and safety programs. She holds a master's of management degree from the J. L. Kellogg Graduate School of Management at Northwestern University. She coauthored *The Practical Guide to Environmental Community Relations*, published by John Wiley & Sons (1997). She is based in Wheaton, Illinois. She can be reached at caroljforrest@aol.com.

---