

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

SITE REMEDIATION PROGRAM
35 Ill. Adm. Code 740

R97-11
(Rulemaking - Land)

TESTIMONY OF LAWRENCE W. EASTEP ON PROPOSED SUBPART A

My name is Lawrence W. Eastep. I am the manager of the Remedial Project Management Section of the Bureau of Land of the Illinois Environmental Protection Agency ("Agency"). The Remedial Project Management Section ("RPMS") is generally responsible for all Bureau of Land environmental remedial actions except for leaking underground storage tanks. The RPMS works cooperatively with the United States Environmental Protection Agency to manage Superfund activities in Illinois, including the 37 sites currently listed on the National Priorities List. It also continues to pursue remediation for many non-CERCLA sites that may pose environmental threats. Finally, the RPMS manages the voluntary Site Remediation Program, which allows and encourages many private party clean-ups.

I graduated from the University of Missouri at Rolla in 1969 with a B.S. in Civil Engineering. I received my M.S. in Civil Engineering (Sanitary/Environmental) in 1976 from the same institution. With a brief exception from late 1978 to early 1979, I have been employed by the Agency since 1971 in a variety of positions including manager of the Bureau of Land Permit Section from 1983 through 1993. I assumed my current

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responsibilities in January 1994. I am registered as a Professional Engineer in Illinois. I have over twenty-five years experience in the environmental engineering field. A brief summary of my education and work experience is included as Attachment 1.

Today I will be testifying in support of Subpart A of the proposed 35 Ill. Adm. Code 740: Site Remediation Program. Subpart A contains general provisions in support of the regulations such as the purpose, applicability, definitions, incorporations by reference, and severability. It also contains a statutory permit waiver and a statement of Agency authority.

Subpart A: General

Section 740.100 Purpose

This section repeats the statutory purpose for the Site Remediation Program ("Program") as set forth in Section 58.1(a)(1) of the Act. That purpose is to establish procedures for investigation and remediation at sites where there is a release, threatened release, or suspected release of hazardous substances, pesticides, or petroleum and for the review and approval of those activities.

Section 740.105 Applicability

Section 740.105 paraphrases the applicability provisions of Title XVII. Subsection (a) provides that the procedures of the Part generally are available to persons required under the Act or electing to perform investigative or remedial activities at sites where there is a release, threatened release or suspected release

either case, delegations and the accompanying grants for operating expenses would be jeopardized. A similar scenario led to a phased federal withdrawal of state administrative authority for the LUST program between August 1995 and April 1996.

As a result of these concerns, the exceptions provide that persons whose sites are subject to such programs are excluded from the Program procedures. As a practical matter many of the exclusions to the program would not be able to work very well in the total context of these rules anyway. For example, under Superfund, or CERCLA, remedial activities are required to follow the detailed and prescriptive requirements of the national contingency plan ("NCP"). Compliance with the NCP is also necessary for cost recovery purposes.

However, if it is clear under federal law or regulation that no conflict would occur, or if there is some other federal authorization or approval acknowledging the suitability of these procedures in lieu of those provided in a delegated program, then subsection (b) authorizes the use of the Program's procedures. An example of formal federal authorization or approval for the use of these procedures would be a Memorandum of Agreement between the U.S. EPA and the Agency. This type of agreement was established for the Program predecessor, the Pre-Notice Site Cleanup Program ("PNSCP"). The agreement provided that, with the exception of sites already subject to federal action, sites successfully completing investigation and remediation under the PNSCP would not be subject to federal action under the Superfund

of hazardous substances, pesticides or petroleum. "Persons required under the Act" are those who are the object of formal enforcement activities. The procedures also are available to persons who may not be required to perform investigative or remedial activities but who may have commercial or personal reasons for doing so. The use of the procedures is not mandatory in either case, but subsection (e) requires that they must be followed if the participant wishes to obtain the No Further Remediation Letter under Section 740.605.

Sections 740.105(a)(1) through (a)(4) note the exceptions to the use of the procedures. The purpose of the exceptions is to keep procedures based on state law from interfering with delegated federal programs or with federal court orders or administrative orders issued by the United States Environmental Protection Agency ("U.S. EPA"). Programs administered by the state under federal delegations or cooperative agreements are based on established regulations that usually specify their own investigative and remedial requirements in the event of a release. The leaking underground storage tank ("LUST") program is an example. To obtain the delegation or cooperative agreement, these regulations have been approved by the U.S. EPA as at least as stringent as federal requirements. Allowing persons who are subject to such programs to use unapproved alternative provisions would require new applications and approvals from the U.S. EPA or would risk a finding by the U.S. EPA that the procedures are less stringent than federal law. In

Section 740.115

Agency Authority

Section 740.115 reaffirms the Agency's authority to take action as appropriate where authorized under provisions of the Act. In addition, the section and the accompanying Board Note expand the use of some of the proposed procedures to sites where participants are seeking an Agency release under Section 4(y) of the Act. This is necessary to correct an oversight in Title XVII. Under the PNSCP, a variety of large and small sites were addressed with procedures tailored to site-specific needs. Title XVII sets forth a prescriptive approach that is appropriate for more complex circumstances or for those wanting the maximum protection offered by the NFR Letter. Even though small releases traditionally were handled by the PNSCP under service agreements, Title XVII does not take into account these sites or other circumstances that may be handled more appropriately with minimal procedures.

One example would be where a tank truck hauling petroleum is involved in an accident and releases a small quantity of petroleum. The remediation may be accomplished quickly within hours or days. The trucking company does not want to be burdened with site investigation, planning and reporting requirements, but it does want a written acknowledgment from the Agency that the release has been properly remediated. Under these circumstances limited procedures and a release under Section 4(y) are appropriate.

A second example of the need for minimal procedures and a

law in the absence of exceptional circumstances. This in effect approved PNSCP procedures as a substitute for potential federal requirements under the Superfund law. The Agency is working with the U.S. EPA on extending the agreement to the Site Remediation Program. A copy of the Memorandum of Agreement is included as Attachment 2.

Subsection (c) is a transitional rule that allows persons in the existing program to use these rules if they so choose and gives the Agency flexibility in accepting previously prepared documents or actions as compliant with these rules. Persons previously under the old Pre-Notice Site Cleanup Program may stay under that program if they choose. If they do use this part, any actions taken after the effective date of the legislation and/or these rules would have to comply with the new procedures.

Subsection (d) is based on Section 58.1(c) of the Act and authorizes the use of Part 740 as an alternative to the investigation and remediation procedures developed under the Illinois Pesticide Act.

Section 740.110 Permit Waiver

This section is taken directly from the enabling legislation at Section 58.4 and authorizes waivers for program participants of state permits not otherwise required by federal law. Many permit requirements typically focus on operating facilities, not sites undergoing a very short term remediation. Additionally, these rules and the Part 742 rules are intended to be protective of human health and the environment during the remediation phase.

The definition of "contaminant of concern" is identical to the statutory definition of "regulated substance of concern" but has been added here to maintain consistency with proposed Part 742.

The definition "remediation site" has been added to clear up ambiguity created by multiple uses of the statutory definition of "site." The definition of "site" was broad enough to encompass both the source property within its legal boundaries as well as the area to be remediated, which may extend across property boundaries. Because the word was used in both contexts, it was decided to add the concept of "remediation site," which specifically means the area to be remediated regardless of property boundaries.

Section 740.125 Incorporations by Reference

All the test methods and documents referred to in this section will be discussed as necessary in the testimony on the Subparts where they are found.

Section 740.130 Severability

This section provides direction to the courts if the regulations are challenged and found in any portion to be unconstitutional.

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4(y) release would be for facilities that are or have been owned or operated by the federal government. These typically include sites owned by the Departments of Defense or Energy. They are handled under grants from the federal government. The procedures for site investigation and determining remediation objectives as well as the 4(y) releases may be useful for these sites.

Both the Agency and the Committee have agreed that there still is a need for streamlined approaches to some sites (including risk-based remediation objectives) and for the Section 4(y) release. As proposed, the choice of Program options remains with the participant. However, unless the Agency has the authority to enter into service agreements and bill for services as in the past, it will not have the resources to address these special circumstances in the most efficient manner. Instead, as a practical matter, the participants will be forced to comply with the full procedures proposed today in order to obtain Agency oversight and a written release.

Section 740.120 Definitions

Section 740.120 contains the definitions necessary to interpret Part 740. Many of the definitions provided in Title XVII are not used here because they have instead been included with the procedures proposed under Part 742. Several definitions from the Agency rules for the PNSCP at 35 Ill. Adm. Code 859 have been added to clarify the application, billing and payment procedures under Subparts B and C. Most of the definitions are self-explanatory, but a few require additional explanation.

ATTACHMENT ONE

ADDENDUM NO. 1

**SUPERFUND MEMORANDUM OF AGREEMENT
BETWEEN THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, REGION V**

I. BACKGROUND

The Illinois Environmental Protection Agency ("IEPA") and the United States Environmental Protection Agency, Region V ("Region V") entered a Superfund Memorandum of Agreement ("SMOA") effective December 18, 1991. Among other things, the SMOA established operating procedures for general Superfund program coordination and communication between IEPA and Region V.

II. BROWNFIELDS

In 1993 IEPA and Region V began developing strategies to promote the remediation and redevelopment of "Brownfield" sites. Both agencies recognize that a key factor to the Brownfields program in Illinois is for both agencies to exercise their authorities and use their resources in ways that are mutually complementary and are not duplicative. Two operational factors are important in this regard. First, the IEPA has successfully operated a voluntary cleanup since the late 1980s. This program, more formally known as the Pre-Notice Site Cleanup Program ("PNSCP"), provides guidance, assistance and oversight by IEPA to owners and operators of sites in Illinois who perform site assessment and remediation in accordance with the practices, and under the approval, of the IEPA. In addition IEPA has established a consistent cleanup objectives process across all its remediation programs (PNSCP, CERCLA, RCRA, and LUST) which is protective of human health and the environment. Second, USEPA has administered a national site assessment program to assess sites listed on the federal CERCLIS list. This assessment process identifies and prioritizes sites for remediation needs and also establishes a "no further remedial action planned" or NFRAP category of sites. As a result of the success of these two programs, IEPA and Region V have concluded that the principles and procedures set forth in this Addendum will meaningfully assist in the remediation and development of Brownfield sites.

III. PRINCIPLES

If a site in Illinois has been remediated or investigated under the practices and procedures of the Illinois PNSCP and IEPA has approved the remediation as complete or made a no-action determination upon review of an investigation, consistent with existing information the site will not be expected to require further response actions. Accordingly, Region 5 will not plan or anticipate any federal action under Superfund law unless, in exceptional circumstances, the site poses an imminent threat or emergency situation. Region 5 will also continue to work with Illinois to remove any concerns about federal activity under Superfund so as to encourage appropriate redevelopment.

ATTACHMENT TWO

RESUME
LAWRENCE W. EASTEP, P.E.
MANAGER, REMEDIAL PROJECT MANAGEMENT SECTION
BUREAU OF LAND
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

EDUCATION
1969

UNIVERSITY OF MISSOURI AT ROLLA
B. S. CIVIL ENGINEERING

1976

UNIVERSITY OF MISSOURI AT ROLLA
M. S. CIVIL ENGINEERING (SANITARY/ENVIRONMENTAL)

EXPERIENCE

1/94 -
PRESENT

MANAGER, REMEDIAL PROJECT MANAGEMENT SECTION,
BUREAU OF LAND - RESPONSIBLE FOR SUPERFUND
CLEANUPS, THE VOLUNTARY SITE REMEDIATION PROGRAM
AND STATE FUNDED REMEDIAL ACTIONS.

5/83 - 1/94

MANAGER, BUREAU OF LAND PERMIT SECTION -
RESPONSIBLE FOR STATE (SOLID WASTE) AND
RCRA (HAZARDOUS WASTE) PERMITTING.

5/83 - 2/79

MANAGER, INDUSTRIAL UNIT, DIVISION OF WATER
POLLUTION CONTROL PERMIT SECTION - RESPONSIBLE FOR
STATE AND NPDES PERMITS FOR INDUSTRY, AND
DEVELOPMENT OF THE STATE PRETREATMENT PROGRAM.

2/79 - 7/78

ENGINEER, SHEPHERD MORGAN AND SCHWAB, CONSULTING
ENGINEER, GRANITE CITY, ILLINOIS

7/78 - 10/71

FIELD OPERATIONS ENGINEER IN DIVISION OF WATER
POLLUTION CONTROL, PEORIA AND COLLINSVILLE OFFICES

10/71 - 1/71

FIELD ENGINEER, FLUOR CORPORATION, JOLIET,
ILLINOIS

8/70 - 1/69

FIELD ENGINEER, BECHTEL CORPORATION, PONCE, PUERTO
RICO

REGISTERED AS PROFESSIONAL ENGINEER IN ILLINOIS

ATTACHMENT ONE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 05 1988

REPLY TO THE ATTENTION OF:
RA-19J

Mary A. Gade, Director
Illinois Environmental Protection Agency
P.O. Box 19276
Springfield, Illinois 62794-9276

Dear Ms. Gade:

We have received and reviewed your proposed Brownfield Amendment to the Superfund Memorandum Of Agreement (SMOA), which exists between the United States Environmental Protection Agency (U.S. EPA) Region 5, and the Illinois Environmental Protection Agency (IEPA).

We have concluded that such an amendment will serve our Agencies well, from the perspective of assisting economically depressed communities throughout the State of Illinois to achieve cleanups of potentially contaminated sites, and hopefully being able to return those sites to commercial viability.

It is our understanding that the enclosed SMOA amendment executed between the Federal Government and the State of Illinois is the first of its kind in the nation, and we are hopeful that this precedent will foster similar Federal/State partnership building with other States in Region 5, and the other Regions and their States throughout the country.

We have been made aware of HB 359, introduced in the Illinois Legislature, which proposes to eliminate the State Voluntary Cleanup Program as it now exists. If HB 359 is enacted into law, the enclosed SMOA amendment between our Agencies would no longer apply.

We look forward to pursuing these Brownfield endeavors with you, and appreciate your continuing participation in the Superfund Program.

Sincerely,

Valdas V. Adamkus
Regional Administrator

Enclosure

ATTACHMENT TWO

This Principle does not apply to sites which have been listed on the National Priorities List or sites subject to an order or other enforcement action under Superfund law or sites imminently threatening public health or the environment. Future IEPA activities at the site will be based on the conditions of the remediation approval and whether any imminent threat subsequently arises.

IV. REPORTING

On an annual basis IEPA will report to Region V on the Following:

- 1) number of sites in the PNSCP;
- 2) sites entering the PNSCP the previous year;
- 3) sites having received approvals by IEPA of full or partial completions in the previous year;

For the Illinois Environmental Protection Agency



Director, Illinois Environmental Protection Agency

For the U.S. Environmental Protection Agency, Region V


Region V Regional Administrator
U.S. Environmental Protection Agency

Date

4/06/95.

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