

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
) R09-9
PROPOSED AMENDMENTS TO TIERED) (Rulemaking - Land)
APPROACH TO CORRECTIVE ACTION)
OBJECTIVES (35 ILL. ADM. CODE 742))

NOTICE OF FILING

TO: Mr. John T. Therriault	Mr. Richard McGill
Assistant Clerk of the Board	Hearing Officer
Illinois Pollution Control Board	Illinois Pollution Control Board
100 W. Randolph Street	100 W. Randolph Street
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA U.S. MAIL)

(SEE PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board **PRE-FILED QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**, a copy of which is herewith served upon you.

Respectfully submitted,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: December 17, 2008

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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached PRE-FILED QUESTIONS FOR THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY SUBMITTED BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP upon:

Mr. John T. Therriault
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via electronic mail on December 17, 2008; and upon:

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APPROACH TO CORRECTIVE ACTION) (Rulemaking - Land)
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**PRE-FILED QUESTIONS FOR THE ILLINOIS
ENVIRONMENTAL PROTECTION AGENCY SUBMITTED
BY THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP (“IERG”), by and through its attorneys, Alec M. Davis and HODGE DWYER ZEMAN, and submits the following Pre-Filed Questions for the Illinois Environmental Protection Agency (“Agency”) for presentation at the hearing scheduled in the above-referenced matter:

1. The outdoor inhalation pathway can be excluded in several ways. Can the vapor intrusion pathway be excluded in the same manners? Is it correct that the primary difference impacting the manner in which the pathways can be excluded is that the vapor intrusion pathway must consider the impact a building (i.e., chimney effect) has on the migration route?

2. Can the Agency provide draft language that will be included in No Further Remediation (“NFR”) Letters for the following circumstances:

a. Where a site with a building location achieves the remediation objectives for all pathways, including vapor intrusion;

b. Where there is no building on the site; and

c. Where there is no building on the site when the NFR Letter is issued, but there is a likelihood of construction of a building with a known location in the future? An unknown location?

3. Is it the Agency's intention to require in an NFR Letter issued for scenario 2(c) above: (i) the use of a Building Control Technology for future construction, or (ii) that the site be re-enrolled and re-evaluated pursuant to the applicable program requirements?

4. In terms of the vapor intrusion pathway, will there be a difference between the requirements in an NFR Letter and those stated in an ELUC? Can the Agency provide an explanation of the impact the proposed vapor intrusion pathway will have on the effectiveness of ELUCs?

5. If a responsible party is required to evaluate off-site impacts and identifies some impact, is an ELUC necessary? How will off-site vapor intrusion from groundwater pathway be institutionally excluded on adjacent properties? Are ELUCs an institutional control option?

6. Does the Agency intend to amend the model ELUC language to address the impacts of the vapor intrusion pathway?

7. Will the Agency require actual data or allow modeling of groundwater to evaluate the vapor intrusion pathway to an off-site building?

8. If there is a well at the property boundary and it exceeds the remediation objectives ("ROs") for the vapor intrusion groundwater pathway, will the site still qualify for an NFR letter? For example, the remediation site might not have any buildings and

the indoor inhalation ROs might not apply, but presumably the groundwater (and exceedance) might go off-site.

9. What, if any, obligations under the Illinois Environmental Protection Act does a responsible party have in terms of the vapor intrusion groundwater pathway for off-site properties?

10. The default foc used for calculating C_{sat} for the outdoor inhalation pathway (0.6%) is the default foc for soils in the 0-3 foot depth interval. Is that correct?

a. Hypothetically speaking, when calculating a site-specific C_{sat} for this pathway, could a remedial applicant use a site-specific foc for this same depth interval?

b. Would the answer to 10(a) change, if the sample being screened came from, for example, the 8-10 foot depth interval?

11. The Agency's website (<http://www.epa.state.il.us/land/taco/vapor-intrusion-rulemaking.html>, visited December 11, 2008) contains some "answers to common questions about the proposed rule":

Q. Will Illinois EPA re-open sites that have already earned a No Further Remediation letter and require them to evaluate the indoor inhalation pathway?

A. No. Illinois EPA would take action only if new site-specific information indicates a vapor intrusion problem. In such an event, the action would begin with voidance of the NFR letter.

Q. I have an approved remedial action plan under the existing TACO regulations. What happens if the rule takes effect before I receive the NFR letter?

A. You will be required to evaluate the indoor inhalation exposure route. Also, the remedial action plan would need to

be revisited to ensure the site meets the updated remediation objectives for the other pathways.

It would seem, by these above-quoted questions and answers, that if a responsible party is operating in accordance with an approved remedial action plan, upon the adoption of these proposed amendments that approved plan will no longer be valid. Is this correct?

a. Are the answers to the above-quoted questions somehow derived from a portion of the proposed amendments?

i. If so, where?

ii. If not, what is the basis upon which the above quoted answers are derived?

b. How many active projects does the Agency believe will be impacted by this policy? What does the Agency expect the additional costs to be for such active projects?

c. Is the Agency prepared to expeditiously review and approve changes to remedial action plans? If so, what actions are being taken in preparation?

d. Does the Agency expect responsible parties to be performing the evaluations required by these proposed amendments prior to the evaluations being adopted as a final rule?

e. How does the Agency intend to handle the situation of a party who has submitted a Remedial or Corrective Action Completion Report prior to the adoption of the amendments, but has not yet received an NFR Letter?

f. Does the policy reflected on the Agency's website apply only to modifications to plans necessitated by the new vapor intrusion pathway, or does it also apply to the other changes introduced by this proposal? If the policy does apply to other changes, can you please explain why the Agency has chosen to deviate from past practice, where an approved plan would not have been required to be re-drafted? In addition, when will the updates to the Part 742 tables become effective?

g. Does the owner of a former remediation site with a "pre-indoor inhalation" NFR Letter have the option to use the standard "building control technology" requirement for the construction of a new building without re-enrolling the site?

12. Can a responsible party use past soil gas data for compliance with the vapor intrusion ROs that were obtained using different sampling methods than described in the proposed amendments? If no, is there an opportunity on a case-by-case basis to use the past sampling data?

13. The proposed Section 742.227, Demonstration of Compliance with Soil Gas Remediation Objectives for the Indoor Inhalation Exposure Route, sets forth the requirements for collection of soil gas data. It is unclear how these requirements apply to exclusion of the indoor inhalation exposure route under Tier 3. Section 742.935(a)(3)(B) seems to require that samples conform with the above described requirements of Section 742.227, yet subsection (b) seems to envision sampling procedures other than those described in Section 742.227. Which interpretation is intended?

a. Subsection (d) of Section 742.227 specifies that soil gas samples be collected at a depth of at least 3 feet. Is it the Agency's intent to require, in all circumstances, that subslab samples of soil gas be collected at a depth of 3 feet or greater under Tier 3?

* * *

IERG reserves the right to supplement these questions.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP

By: /s/ Katherine D. Hodge
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Dated: December 17, 2008

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