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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JAN 15 2009

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R09-9
TIERED APPROACH TO CORRECTIVE) (Rulemaking-Land)
ACTION OBJECTIVES)
(35 Ill. Adm. Code 742))
)

STATE OF ILLINOIS
Pollution Control Board

NOTICE

Dorothy Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
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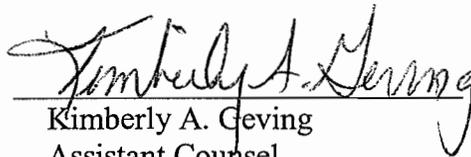
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Participants on the Service List
(Via First Class Mail)

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 ("Illinois EPA") Responses to Pre-filed Questions and Errata Sheet Number 2 a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel

DATE: January 13, 2009

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ILLINOIS EPA'S RESPONSES TO PRE-FILED QUESTIONS

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA"), by and through one of its attorneys, Kimberly A. Geving, and submits the following Pre-Filed Answers in Response to the Pre-Filed Questions of Kara Magyar, Gail Artrip, P.E., and the Illinois Environmental Regulatory Group ("IERG").

Question of Kara Magyar

Question 1) Ms. Magyar requested that the Illinois EPA provide its rationale for assuming the value of Q_{soil} being zero at a distance greater than five feet.

Answer: In Tiers 1 and 2, the default value for the volumetric rate of soil gas into a building (Q_{soil}) is zero, meaning that advection is not factored into the calculation of remediation objectives. This is because other parameter values are suitably conservative.

In Tier 3, however, remediation objectives for the indoor inhalation exposure route must take into account the possible migration of chemicals caused by both diffusion and advection. If contamination is within five feet of an existing or potential building or man-made pathway, then a Q_{soil} value of $83.33 \text{ cm}^3/\text{sec}$ must be used in calculating the attenuation factor (equation J&E8a), unless additional site-specific information indicates a different remediation objective is reasonable and appropriate. A Q_{soil} assessment under Tier 3 is a balancing factor to make sure alternative evaluations remain health-protective.

The five foot setback and $83.33\text{cm}^3/\text{sec}$ values are from USEPA's *Users Guide for Evaluating Subsurface Vapor Intrusion Into Buildings* (EPA/68/W-02/33, February 2004).

Questions of Gail Artrip, P.E. (Carlson Environmental)

Question 1) If I have soil and ground water issues on my site, in addition to evaluating indoor inhalation on my site as per the proposed TACO rules, would I also have to evaluate potential off-site lateral migration of measured impacts via Equation R-26 to assess the potential for (ground water component of) indoor inhalation exceedances on my neighbor's property as well? As an alternative, could I install monitoring wells along our shared property boundary to measure actual ground water concentrations? If either approach results in potential off-site exceedances of the ground water component of indoor inhalation, what will I be required to do (neighbor notification, ELUC requiring installation, operation, and maintenance of a building control technology, etc.)? If an ELUC is required on my neighbor's property and he is reluctant to comply, can I still get my NFR? Is it reasonable to assume that only ground water (not soil) transport onto adjoiners' properties will require evaluation?

Answer: To determine if off-site properties are at risk from indoor inhalation route exposures, site evaluators have the option of running TACO equation R26, collecting groundwater samples, or collecting soil gas samples at the down gradient property boundary. With respect to the indoor inhalation route, soil gas data trumps groundwater sample data and R26 modeling results. Groundwater sample data trumps R26 modeling results when addressing the indoor inhalation route.

If R26 predicts groundwater impacts will migrate off-site at concentrations above the groundwater indoor inhalation remediation objectives, but soil gas concentrations at the source or down gradient property boundary of the remediation site are below the soil gas remediation objectives, no further analysis of off-site properties is necessary in regards to the indoor inhalation route.

If R26 predicts groundwater impacts will migrate off-site at concentrations above the groundwater indoor inhalation remediation objectives, but groundwater samples at the down gradient property boundary are below the indoor inhalation remediation objectives, no further analysis is necessary in regards to the indoor inhalation route.

Using both the J&E and the R26 models to predict down gradient risks associated with the indoor inhalation route is an extremely conservative, but allowable, option.

Off-site properties impacted above the indoor inhalation remediation objectives will require an ELUC. Illinois EPA will not issue a No Further Remediation letter without an ELUC in place when off-site properties are affected.

It is reasonable to assume that only contaminants in groundwater, not soil, will migrate off-site, but exceptions to this scenario may occur.

Question 2) P. 9 of Gary King's Nov. 14, 2008 pre-filed testimony says, "Building-specific default values for the following parameters...The same default values must be used for the same parameters when performing Tier 2 calculations. The actual values of these parameters do not have a great impact on the remediation objectives; however, the default values are based on a conservative representation of the type of buildings that are or may be present at the site in the future. Without these conservative values, restrictions would be required on the minimum size of a building that can be

constructed over the contaminated area.” I understand the Illinois EPA’s institutional control-related challenge, but take issue with the defaults not having a great impact on the remediation objectives. In our preliminary analysis, we are finding that the building dimensions can significantly alter the Tier 2 remediation objectives. Our clients are industrial users, and instead of 65 feet x 65 feet x 10 feet tall (the default assumptions), tend to have buildings that are 500 ft x 500 ft x 25 ft tall, and this does have a dramatic effect on the Tier 2 indoor inhalation remediation objectives. In putting together our SRP reports, we will run the Tier 2 calculations using the building dimension defaults. If there are no exceedances, the outcome is straightforward. However, if the Tier 2 remediation objectives using the default building dimensions predict an exceedance, our inclination is to also run the Tier 2 calculations using the existing building-specific dimensions, and present both outcomes. If no exceedances are predicted using the building-specific dimensions, is there a proposed institutional control option that would allow us to avoid putting in a (unnecessary) building control technology until the existing building is demolished and a future building is constructed? For example, perhaps our NFR has a condition that requires a building control technology or max. size for future construction (when the existing building is torn down). Somehow the Illinois EPA’s approval letter/NFR will acknowledge that the current building conditions are acceptable. Surely no one thinks it’s a good idea to install an unnecessary mitigation system (based on modeling) in an existing building just to get an NFR. Obviously if our Tier 2 calculation with building-specific inputs indicates a problem, we would have to install a building control technology. We recognize that Tier 3 does allow for use of building-specific dimensions, however, are finding that inclusion of the advection component in the

modeling has a profound effect on the Tier 3 remediation objectives. In some instances, it overwhelms the benefits of the larger building. In general, it is not intuitive that a larger building is more prone to cause or promote the advection phenomenon.

Answer: Illinois EPA has not put forward any institutional control option to allow the use of site-specific dimensions of existing buildings under Tier 2. As proposed, building size parameters may only be adjusted under Tier 3. The Q_{soil} assessment under Tier 3 is a balancing factor to make sure alternative evaluations remain health-protective.

Question 3) P. 15 of Gary King's pre-filed testimony notes that when comparing the calculated soil gas remediation objective to soil gas samples from the site, Section 742.717(k) instructs site evaluators to use soil gas data collected at a depth at least 3 feet below the ground surface..." Does this contradict 742.717(k) where it discusses the need for soil gas samples to have been obtained from a depth of 5 feet?

Answer: As filed, Section 742.717(k) states:

The calculated soil gas remediation objective shall be compared to concentrations of soil gas collected at a depth at least 3 feet below ground surface and above the saturated zone. If a valid sample cannot be collected, a soil gas sampling plan shall be approved by the Agency under Tier 3.

This is consistent with Gary King's pre-filed testimony. Ms. Artrip is referencing an earlier draft version of the proposed amendments.

Question 4) P. 18 of Gary King's pre-filed testimony says, "It is possible to calculate a Tier 2 soil remediation objective more stringent than the Tier 1 soil remediation objective for the indoor inhalation pathway; in such cases, the Tier 1 remediation objective applies." This seems to contradict 742.717(l).

Answer: Section 742.717(l) does not exist. Ms. Artrip is referencing an earlier draft version of the proposed amendments.

Questions of the IERG

Question 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?

Answer: No and no. To exclude the indoor inhalation pathway, site evaluators must follow the requirements of Section 742.312.

Question 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?

Answer: As part of this rulemaking, Illinois EPA has not provided language to be used in future No Further Remediation letters. This is consistent with past practice. However, in response to the specific scenarios presented as part of this question, Illinois EPA makes the following observations:

- a. The NFR letter will be worded as before (pre-indoor inhalation).

b. and c. are the same for purposes of the NFR letter. Illinois EPA intends for the entire site to be safe for current and future building occupants, regardless of where those buildings are located.

Question 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?

Answer: At a site with no existing buildings, the NFR letter may require installation of a Building Control Technology ("BCT") for a future building. If a site owner prefers not to install the BCT, they have the option of re-enrolling the site and cleaning up the remaining contamination so that an institutional control is no longer necessary.

Due to this question and the preceding two questions, Illinois EPA would like to clarify that the location of an existing building does not control evaluation of the indoor inhalation exposure route. Illinois EPA's approach to management of the indoor inhalation pathway is site-wide and based on the location of the contaminant source. Illinois EPA intends for the entire site to be safe for current and future building occupants, regardless of where those buildings are located.

Question 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?

Answer: For every exposure route, the NFR letter addresses on-site contamination and the ELUC addresses off-site contamination. ELUCs for the indoor inhalation route will be the same as ELUCs for any other exposure route.

Question 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?

Answer: ELUCs are required anytime off-site contamination above the remediation objectives is left in place. Refer to Section 742.312 for pathway exclusion options for the indoor inhalation route.

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

Answer: Yes, as necessary.

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

Answer: To determine if off-site properties are at risk from indoor inhalation route exposures, site evaluators have the option of running TACO equation R26, collecting groundwater samples, or collecting soil gas samples at the down gradient property boundary. With respect to the indoor inhalation route, soil gas data trumps groundwater sample data and R26 modeling results. Groundwater sample data trumps R26 modeling results when addressing the indoor inhalation route.

If R26 predicts groundwater impacts will migrate off-site at concentrations above the groundwater indoor inhalation remediation objectives, but soil gas concentrations at

the source or down gradient property boundary of the remediation site are below the soil gas remediation objectives, no further analysis of off-site properties is necessary in regards to the indoor inhalation route.

If R26 predicts groundwater impacts will migrate off-site at concentrations above the groundwater indoor inhalation remediation objectives, but groundwater samples at the down gradient property boundary are below the indoor inhalation remediation objectives, no further analysis is necessary in regards to the indoor inhalation route.

Using both the J&E and the R26 models to predict down gradient risks associated with the indoor inhalation route is an extremely conservative, but allowable, option.

Question 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.

Answer: Yes, if the site meets the soil gas remediation objectives at the property boundary. If soil gas concentrations exceed remediation objectives, the site evaluator must investigate off-site. If contamination is identified off-site, the site evaluator must either clean up the contamination or negotiate an ELUC. The absence of any buildings—on-site or off-site—does not matter when performing the site investigation.

Question 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?

Answer: The same obligations exist as with any other exposure pathway when off-site properties are contaminated.

Question 10) The default f_{oc} used for calculating C_{sat} for the outdoor inhalation pathway (0.6%) is the default f_{oc} 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 f_{oc} 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?

Answer: Yes, the default f_{oc} used for calculating C_{sat} for the outdoor inhalation pathway is the default f_{oc} for soils in the 0-3 foot depth interval.

- a. Yes.
- b. Yes. For the outdoor inhalation pathway, the surface f_{oc} value-- either default or site-specific—must be used.

Question 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 revised 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?

Answer: The answer to the opening paragraph is yes.

- a. Yes. There is no citation to a specific rule section, but based on previous experience, Board rules have effective dates that govern Agency implementation. When the Board adopts the rules, that is when they become

effective, unless the Board expressly states otherwise in its final opinion and order.

- b. Unknown. Cost increases are expected to vary widely depending on site and contaminant characteristics and the willingness of affected property owners to accept building control technologies and institutional controls.
- c. Yes. Staff training began last fall and will continue.
- d. No. However, in keeping with current practice, responsible parties are encouraged to evaluate the indoor inhalation pathway on a site-specific basis if impacts are suspected or if performing a full risk assessment under Tier 3. The methodology may differ from the proposed rules, but is subject to Illinois EPA approval.
- e. Illinois EPA has proposed that the rules take effect immediately upon adoption. It will be up to the Board to decide the implementation schedule. If the rules are adopted prior to issuance of an NFR determination, then a party will be required to evaluate the indoor inhalation pathway.
- f. See answer to e) above. When the rules become effective, any site that has not closed will be subject to all of the amendments, including the updated remediation objectives for other exposure routes. Illinois EPA is not deviating from past practice. This is consistent with past practice.
- g. Yes, but no new NFR letter will be issued unless the owner re-enrolls the property in the Site Remediation Program.

Question 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?

Answer: The validity of past sampling data will be determined by Illinois EPA on a case-by-case basis.

Question 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?

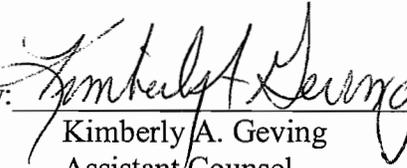
a. Subsection (d) of Section 742.227 specifies that soil gas samples be collected at a depth of at least 3 feet. Is it the Agency's intent to require, in all circumstances, that subslab samples of soil gas be collected at a depth of 3 feet or greater under Tier 3?

Answer: Both interpretations are intended. Section 742.935(a)(3)(B) is available for sites choosing to use sub-slab soil gas data. Site evaluators under Tier 3 who opt to collect exterior soil gas samples are directed to follow Section 742.227. Sub-slab samples are generally collected immediately under the slab; depths will vary depending on building construction. Section 742.227(d) is specific to soil gas samples taken beneath the ground surface, not beneath the slab of a building.

That concludes the Illinois EPA's responses to pre-filed questions. Illinois EPA witnesses will be available at hearing to provide further testimony regarding these questions or any other questions that may arise.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Kimberly A. Geving
Assistant Counsel

Dated: January 13, 2009

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ERRATA SHEET NUMBER 2

NOW COMES the Illinois Environmental Protection Agency ("Illinois EPA") through one of its attorneys, Kimberly Geving, and submits this ERRATA SHEET NUMBER 2 to the Illinois Pollution Control Board ("Board") and the participants listed on the Service List. Tracey Hurley and Gary King will provide oral testimony in support of these changes at the hearing on January 27, 2009.

Section

742.105(i)	<u>A no further remediation determination issued by the Agency under this Part addresses the potential of contaminants present in soil, soil gas, and groundwater to reach human receptors. It does not evaluate the safety or protectiveness of buildings on or off-site.</u>
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742.227	At the end of the opening paragraph to this Section please add the following sentence: <u>Proposals to use sub-slab soil gas data shall follow Section 742.935(b).</u>
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Appendix A, Table L	For the chemical m-Xylene change 1.50E+00 to <u>1.50E+02.</u>
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Appendix B, Table A	For the chemical 1,4-Dichlorobenzene (p-Dichlorobenzene) change the Ingestion value from
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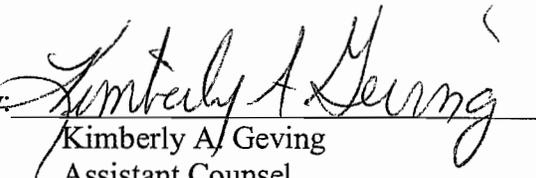
120^e to 5,500^b and change the Outdoor Inhalation value from 3.3^e to 12,000^b. [NOTE: this is a change to an Errata Sheet 1 change. We are adding to our original change.]

Appendix C, Table M

For the symbol Q_{soil} in the column entitled "Source" delete the references to "Part 742.505(a)(2)(D) and Part 742.505(b)(5)."

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
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By: 
Kimberly A. Geving
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DATE: January 13, 2009

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COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Responses to Pre-Filed Questions and Errata Sheet Number 2 upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

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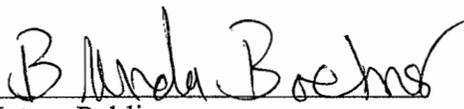
Participants on the Service List

and mailing them (First Class Mail) from Springfield, Illinois on January 13, 2009, with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME

This 13th day of January, 2009.


Notary Public



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Lawrence L. Fieber, Principal			

Total number of participants: 34

