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February 24, 2009

Mr. Richard R. McGill, Jr.
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

RE: Prefiled Questions
Rulemaking R09-9
In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action
Objectives (35 Ill. Adm. Code 742)

Dear Mr. McGill:

The intent of this letter is to present issues regarding proposed Vapor Intrusion Pathway amendments to Tiered Approach to Corrective Action Objectives (TACO). We offer the following comments regarding proposed vapor intrusion regulations:

- Creation of Tier 1 vapor intrusion risk-based health objectives for indoor air volatile organic compounds (VOCs). This would allow the user/remedial applicant to use empirical indoor air quality survey results on a site with an existing building to determine if a problem exists. The present rulemaking only allows for a Tier 3 evaluation to use this avenue of rebuttal. Without a set of published guidelines, a property owner with an existing NFR closure document would have no way of proving a problem is NOT present without obtaining additional subsurface data and applying a predictive model to determine if the need for additional remediation is required. Other states with indoor air VOC objectives include Minnesota and California.

We advocate this addition to the proposed rules to allow exclusion of the vapor intrusion pathway by using indoor air quality (IAQ) data without additional subsurface testing. Submission of IAQ data as a Tier 3 package (not listed as an option within 35 IAC 742.935) would result in risk-based site-specific objectives for each site, and place undue burden on the consultant and regulator to determine if the intent of the regulation has been properly addressed. It is intuitive that IAQ data indicating no significant impact is inherently superior evidence than any data obtained outside the building envelope.

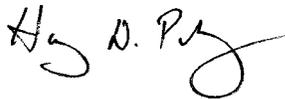
A major driving force for application of TACO (typically applied in a voluntary fashion to promote on-site health and well-being) is future marketability of the subject property. As a part of property transaction due diligence, a Phase I Environmental Site Assessment conforming to ASTM standard 1527-05 is typically performed (Note: ASTM E 1527-00 is incorporated into the proposed regulation by reference. This document has been replaced by ASTM E 1527-05).

If a potential vapor intrusion issue is identified, the user is directed to ASTM E 2600-08 *Standard Practice for Assessment for Vapor Intrusion into Structures on Property Involved in Real Estate Transactions* (incorporated into proposed regulations by reference).

ASTM 2600-08 advocates the user to perform indoor air sampling prior to mitigation to determine if a potential IAQ problem actually is present within the building. We all recognize that many false positives can be obtained through use of this method. In support, the IEPA consultant (Dr. Salhotra, page 82, January 27, 2009) stated: "*you can divide all the methods (other states and ASTM) into two categories, so the first one is where you evaluate the pathway by collecting indoor air samples, so you go inside the building, whether it is commercial, industrial or a residential, and you measure the indoor air concentration and then you see if it meets the indoor air standard.*" Dr. Salhotra then states within his slides the IAQ testing should only be used as a last resort, and Dr. King also discourages IAQ testing, except as a last resort. We respectfully disagree. Conducting soil gas, soil, or groundwater testing on a property is at least equally as intrusive as indoor air testing.

Without IAQ testing and a recognized standard to compare results, we question the validity of the basic paradigm for this regulation. Previously promulgated soil and groundwater remediation objectives were based on ingestion or inhalation at the point of contact, and are defensible as such. IAQ values (point of contact) should be Tier 1. We believe the vapor intrusion regulation should be tied into a definable IAQ standard or else it is simply begging the question. A property owner needs an IAQ standard to be presented in a format that allows for a simple and affordable pathway exclusion.

Sincerely,

A handwritten signature in black ink, appearing to read "Harvey D. Pokorny". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Harvey D. Pokorny, PG
Senior Project Manager