

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF )  
 )  
 PROPOSED AMENDMENTS TO: )  
 TIERED APPROACH TO CORRECTIVE ) R11-9  
 ACTION OBJECTIVES (TACO) (INDOOR ) (Rulemaking – Land)  
 INHALATION): AMENDMENTS TO 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
<b>(VIA ELECTRONIC MAIL)</b>	<b>(VIA U.S. MAIL)</b>

**(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 the **PUBLIC COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP ON PROPOSED SECOND NOTICE**, a copy of which is herewith served upon you.

Respectfully submitted,

By: /s/ Alec M. Davis  
Alec M. Davis

Dated: February 1, 2013

Alec M. Davis  
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ILLINOIS ENVIRONMENTAL  
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**CERTIFICATE OF SERVICE**

I, Alec M. Davis, the undersigned, hereby certify that I have served the attached

**PUBLIC COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY**

**GROUP ON PROPOSED SECOND NOTICE** upon:

Mr. John T. Therriault  
Assistant Clerk of the Board  
Illinois Pollution Control Board  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601

via electronic mail on February 1, 2013, and upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois  
on February 1, 2013.

/s/ Alec M. Davis

Alec M. Davis

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PROPOSED AMENDMENTS TO:	)	
TIERED APPROACH TO CORRECTIVE	)	R11-9
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INHALATION); AMENDMENTS TO 35 ILL.	)	
ADM. CODE 742	)	

**PUBLIC COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY**

**GROUP ON PROPOSED SECOND NOTICE**

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorney, Alec M. Davis, and pursuant to the Illinois Pollution Control Board’s (“Board”) January 10, 2013, Proposed Second Notice Opinion and Order, hereby submits the following PUBLIC COMMENTS in the above-referenced matter.

IERG is a not-for-profit Illinois corporation affiliated with the Illinois Chamber of Commerce. IERG is composed of fifty-one (51) member companies that are regulated by governmental agencies that promulgate, administer or enforce environmental laws, regulations, rules or other policies. IERG has participated at the Board’s hearings and filed comments in this matter, as well as the predecessor (R09-9) rulemaking. IERG has a number of Member companies that perform remediation activities pursuant to the TACO rules, and are very interested in the outcome of this rulemaking.

IERG had the opportunity to participate in discussions with the Site Remediation Advisory Committee, and would concur with their comments in whole. Further, IERG has had the opportunity to review the comments filed by the Illinois EPA and agrees with the positions laid out by the Agency. IERG files these comments today, however, not just to concur with those two submittals, but to focus on a matter of particular importance to its members: the

inclusion in the Board's January 10 Opinion and Order of the 100 foot source-building horizontal separation distance.

Before developing a position on the Board's inclusion of this new requirement, IERG first sought to understand the genesis behind it. Between this rulemaking and its predecessor (R09-9), the Board has held four public hearings and received scores of public comments. However, this Proposed Second Notice is the first mention, to IERG's knowledge, of any concern for source-building horizontal separation. IERG suspects that the Board relied, at least in part, on comments filed by the Illinois Petroleum Council ("IPC") on September 28, 2012, which, as far as IERG can tell, is the only reference to such a requirement. Again, in an attempt to understand the rationale behind such a requirement, IERG met with the IPC to learn of the concerns that would necessitate this language, and came away with the impression IPC did not support the language included by the Board, and that perhaps its inclusion was based on a misunderstanding of IPC's September 28 comments.

The Board's Opinion and Order references the USEPA 2002 vapor intrusion guidance as well as guidance from Wisconsin and Michigan as support for such its 100 foot source-building horizontal separation condition. As an initial point, it is important to note that the 100-foot limit in all three cases is from guidance, and does not have the force of regulations as the proposed requirement would have in TACO. Furthermore, in all three cases, 100 feet is established as a screening level, indicating that further study may be warranted; not that a remedy is necessarily required. By the time that a Remedial Applicant has met the site-specific remediation objectives under TACO and all requirements have been met under the SRP or other regulatory program, screening levels are no longer relevant. An arbitrary imposition of a 100 foot distance from a contaminant source, without any site-specific information indicating a potential risk, would be

counter to the risk-based underpinnings of TACO that has been the basis for all other exposure pathways.

For the foregoing reasons, IERG opposes the Board's Proposed Second-Notice changes requiring a 100 foot source-building horizontal separation distance. IERG feels, as with other aspects of the rulemaking, that such an important issue deserves to be thoroughly discussed and vetted, rather than thrown in at the last minute. IERG is willing to work with the Agency to craft a well-reasoned approach to alleviating the Board's concerns in a subsequent rulemaking if the Board believes that is necessary, but strongly resists the inclusion of an arbitrary limit as being proposed by the Board.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

Dated: February 1, 2013

By: /s/ Alec M. Davis  
Alec M. Davis

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