

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
(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 the **PUBLIC COMMENTS OF THE SITE REMEDIATION ADVISORY COMMITTEE 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

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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 SITE REMEDIATION ADVISORY COMMITTEE 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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PUBLIC COMMENTS OF THE SITE REMEDIATION ADVISORY COMMITTEE

ON PROPOSED SECOND NOTICE

The Site Remediation Advisory Committee (“SRAC”)¹ pursuant to the Illinois Pollution Control Board’s (“Board”) January 10, 2013, Proposed Second Notice Opinion and Order, submits the following PUBLIC COMMENTS in the above-referenced matter.

The January 10 Opinion and Order included a number of proposed changes from the First-Notice Proposal (36 Ill. Reg. 7340, May 18, 2012), most notably the imposition of a 100 foot source-building horizontal separation distance, as well as requiring full concrete slab-on-grade or full concrete basement floors and walls for existing or potential buildings whenever Tier 1 or Tier 2 remediation objectives (“ROs”) had been calculated based on that modeled assumption. For the reasons specified below, SRAC strongly opposes the Board’s proposed changes.

SOURCE-BUILDING HORIZONTAL SEPARATION

The proposed requirement of a source-building horizontal separation distance is arbitrary and inappropriate within the context of TACO and unnecessary in protection of public health. The Illinois EPA’s proposal was carefully calibrated based on known and potential site risks based on the administration of the SRP and other remedial programs which require thorough site investigation.

¹ SRAC is established by Section 58.11 of the Illinois Environmental Protection Act, 415 ILCS 5/58.11, and consists of members from the Illinois State Chamber of Commerce, Illinois Manufacturer's Association, Chemical Industry Council of Illinois, Consulting Engineers Council of Illinois, Illinois Bankers Association, the Community Bankers Association of Illinois, and the National Solid Waste Management Association. Among its statutory charges, SRAC is to review, evaluate, and make recommendations regarding State laws, rules, and procedures that relate to site remediations. 415 ILCS 5/58.11 (b)(1).

Agency approval of remedial objectives and issuance of an NFR is based on comparison of known site conditions to standard or calculated risk based values which are based on a number of conservative assumptions. While the Board may intend the 100 foot buffer as an additional measure of safety, in fact considerable margins of safety are already built into the process rendering the Board's proposal not only redundant but counter-productive.

In fact, the Board's proposal could potentially have an extremely costly and burdensome impact on many sites, and particularly small sites, such as gas station sites. For example, assume that a LUST incident at a gas station site is completely delineated on-site to Tier 1 residential standards for all pathways for soil and groundwater. In other words, no offsite institutional controls or notifications would otherwise be required (such as ELUCs, HAAs, groundwater ordinances, groundwater use restrictions, or even groundwater ordinance notifications). In such case, solely because of the Board's proposed buffer, the LUST owner would still need to obtain an ELUC from each and every offsite property owner with a building (or, for that matter, vacant property that could be a potential future building site) within 100 feet of the plume -- even though no contamination has migrated offsite or is likely to based on site conditions. Indeed, at small sites located in densely developed areas, such as many gas station sites, this could result in the need for multiple ELUCs. It is not hard to envision a corner gas station site abutting a residential area on one or more sides and other commercial properties on the other sides which would require 6 or more ELUCs even though Tier 1 residential ROs were met on-site.

The need to gather multiple ELUCs could very well grind progress at sites in the LUST and SRP programs to a halt. It is extremely difficult and costly to obtain many ELUCs from offsite property owners who frequently don't share in the desire to have a restriction placed on their property. As a result, small sites may never achieve closure under the Board's proposed regulations, a result which would burden the UST program and discourage use of the SRP program. Either way,

the Board would have frustrated the goal of having a scientifically valid and reliable methodology to achieve site closure.

While 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 a condition, this reliance is misplaced. 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.

One of the initial requirements of Illinois' remedial programs, SRP, LUST, etc., is to define the nature and extent of contamination. An NFR letter cannot be issued until this step is complete and all potential exposure pathways have been addressed. Given the extensive investigation and evaluation that is already required under TACO in order to characterize a site, the imposition of an arbitrary source-building horizontal distance is inappropriate.

The reliance on these other guidance documents raises the issue that there does not appear to be a basis for this proposal in the substantial record generated in this proceeding. Between this rulemaking and its predecessor (R09-9), the Board has held four public hearings and received scores of public comments. At no point did the Board or any other participant question the Agency's risk evaluation or in any way document the need for additional separation. While SRAC appreciates the Board alerting the participants to this issue through its Proposed Second Notice, SRAC respectfully states that this proposal would significantly change the rules proposed by the Board at First Notice despite the lack of support in the record for such a change. As a result, moving forward with this

proposal without further hearings and submission of evidence on this issue would undermine the validity of the rule as a whole.

FULL CONCRETE SLAB-ON-GRADE OR BASEMENT FLOORS AND WALLS

As with the 100 foot source-building horizontal distance, the requirement for a full concrete base is inconsistent with the precepts of TACO. As is the case with the other exposure routes, if a Remedial Applicant has completed an investigation/remediation and has met all Tier 1 TACO ROs, an unrestricted NFR letter should be issued. Imposing a deed restriction requiring a concrete base would be detrimental to the value of the property, and inconsistent with the other TACO exposure routes.

There is no reason that relying on the full concrete base assumption needs to be embodied in an institutional control. Relying on a full concrete base is just one of the many assumptions of the Johnson & Ettinger ("J&E") Model. ROs are commonly developed using assumed or default parameters that may not be true in every case. For example, in calculating the indoor inhalation ROs, the Agency assumed default sizes for industrial/commercial and residential buildings, yet, as the Board found, there was no need to impose building size restrictions as institutional controls under Tier 1 or 2. Indeed, the J&E Model – taken as a whole – is a very conservative model which is intended to be adequately protective even if all of the assumptions underlying the model are not true in each and every case. As SRAC suggested in its October 1, 2012 comments, the Board could include a footnote in the RO tables providing notice that the ROs are based on the full concrete base assumption.

While SRAC supports the importance of preserving the conditions which support the issuance of an NFR through Institutional Controls, SRAC notes that only the most significant conditions, such as use and the maintenance of required barriers should be included. The more conditions are included in the Institutional Control, the more difficult they are to enforce and the

more likely that the conditions will be compromised. SRAC believes that including this condition is an additional and unnecessary protection.

OTHER ISSUES

In its Proposed Second-Notice, the Board asked for public comments on a number of other issues besides those addressed above. One of which asked whether similar-acting chemical provisions should apply when developing soil gas and groundwater ROs under Tier 1, 2, or 3, given that J&E Equations 1 and 2 provide “indoor air remediation objectives” ($RO_{\text{indoor air}}$, mg/m³) for carcinogenic and noncarcinogenic contaminants, respectively, at the point of human exposure, which are then used in the calculation of soil gas and groundwater ROs. SRAC has had the opportunity to review the Illinois EPA’s comments and concurs with the Agency’s rationale and conclusion that the similar-acting chemical provisions should not apply in developing soil gas and groundwater ROs for the indoor inhalation pathway under Tier 1, 2, or 3.

Another question raised by the Board in its Proposed Second-Notice is whether soil gas ROs capped at the “soil vapor saturation limit” (C_v^{sat}) account for the presence of free product (*i.e.*, non-aqueous phase liquids or “NAPLs”). SRAC is having some difficulty truly understanding this question, as the presence of free product is precluded as a TACO “speed bump,” and SRAC is not aware of any changes to that requirement being proposed in this indoor inhalation pathway rulemaking. The capping of the soil gas ROs, as SRAC understands it, is simply to reflect a physical reality that when a calculated risk-based RO exceeds the saturation limit (the maximum possible soil vapor concentration), the RO be capped at that saturation limit because it is physically impossible for that value to be exceeded. SRAC is comfortable with the Agency’s proposal in this regard.

Finally, and for the reasons identified in the Agency’s comments, SRAC objects to the requirement to use soil gas to document the mode of transport through advection or diffusion alone. We discussed this issue extensively with the Agency and came to the agreement that soil or groundwater sampling data would be sufficient to identify the appropriate mode of transport and that

expensive soil gas sampling should be used only as a quantification tool and not a screening tool. The Board's proposal would raise the cost of performing these assessments significantly without adding any additional measure of risk protection.

For the foregoing reasons, SRAC opposes the Board's Proposed Second-Notice changes requiring a 100 foot source-building horizontal separation distance, as well as requiring full concrete slab-on-grade or full concrete basement floors and walls. SRAC is willing to continue to work with the Agency to address the Board's concerns, but cannot support the Board advancing such a proposal to Second-Notice. SRAC thanks the Board for the opportunity to submit these comments, and for its consideration.

Respectfully submitted,

THE SITE REMEDIATION
ADVISORY COMMITTEE,

Dated: February 1, 2013

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