

**RECEIVED**

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD CLERK'S OFFICE

OCT 23 2000

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

R00-19(A) and (B)  
(Rulemaking - Land)

STATE OF ILLINOIS  
Pollution Control Board

*P.C.#1*



**NOTICE OF FILING**

TO: Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601  
**(VIA FEDERAL EXPRESS)**

Amy L. Jackson, Esq.  
Hearing Officer  
Illinois Pollution Control Board  
600 South Second Street  
Suite 402  
Springfield, Illinois 62704  
**(VIA FIRST CLASS MAIL)**

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have filed today with the Clerk of the Illinois Pollution Control Board an original and nine copies of the **ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF THOMAS G. SAFLEY, ENTRY OF APPEARANCE OF KAREN L. BERNOTEIT and COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP UPON PROPOSED REVISIONS TO 35 ILL. ADMIN. CODE PART 742**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: *Kath D. Hodge*  
One of Its Attorneys

Dated: October 20, 2000

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THIS FILING SUBMITTED ON RECYCLED PAPER

**CERTIFICATE OF SERVICE**

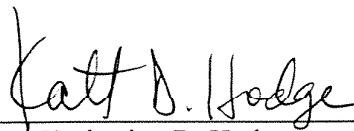
I, Katherine D. Hodge, the undersigned, certify that I have served a copy of the attached ENTRY OF APPEARANCE OF KATHERINE D. HODGE, ENTRY OF APPEARANCE OF THOMAS G. SAFLEY, ENTRY OF APPEARANCE OF KAREN L. BERNOTEIT and COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP UPON PROPOSED REVISIONS TO 35 ILL. ADMIN. CODE PART 742 upon:

Ms. Dorothy M. Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street  
Suite 11-500  
Chicago, Illinois 60601

by sending said documents via Federal Express in Springfield, Illinois on October 20, 2000; and upon

(SEE ATTACHED SERVICE LIST)

by depositing copies of said documents in the United States Mail in Springfield, Illinois on October 20, 2000.

  
\_\_\_\_\_  
Katherine D. Hodge

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IERG:001/Fil/R00-19 COS-EOAs and Comments

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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STATE OF ILLINOIS  
Pollution Control Board  
R00-19(A) and (B)  
(Rulemaking - Land)

**ENTRY OF APPEARANCE OF KATHERINE D. HODGE**

NOW COMES KATHERINE D. HODGE, of the law firm of HODGE &  
DWYER, and hereby enters her appearance in this matter on behalf of the Illinois  
Environmental Regulatory Group.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: Kath D. Hodge  
Katherine D. Hodge

Dated: October 20, 2000

Katherine D. Hodge  
Thomas G. Safley  
HODGE & DWYER  
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IERG:001/Fil/R00-19/ KDH Appearance

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 23 2000

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
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APPROACH TO CORRECTIVE ACTION )  
OBJECTIVES (35 ILL. ADM. CODE 742) )

R00-19(A) and (B)  
(Rulemaking – Land)

**ENTRY OF APPEARANCE OF KAREN L. BERNOTEIT**

NOW COMES KAREN L. BERNOTEIT, of the Illinois Environmental  
Regulatory Group, and hereby enters her appearance in this matter on behalf of the  
Illinois Environmental Regulatory Group.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: Karen L. Bernoteit  
Karen L. Bernoteit *KDH*

Dated: October 20, 2000

Karen L. Bernoteit  
Illinois Environmental Regulatory Group  
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IERG:001/Fil/R00-19/KLB Appearance

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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OCT 23 2000

IN THE MATTER OF: )  
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APPROACH TO CORRECTIVE ACTION )  
OBJECTIVES (35 ILL. ADM. CODE 742) )

R00-19(A) STATE OF ILLINOIS  
(Rulemaking and Control Board)

ENTRY OF APPEARANCE OF THOMAS G. SAFLEY

NOW COMES THOMAS G. SAFLEY, of the law firm of HODGE & DWYER,  
and hereby enters her appearance in this matter on behalf of the Illinois Environmental  
Regulatory Group.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By:   
Thomas G. Safley

Dated: October 20, 2000

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IERG:001/Fil/R00-19/TGS Appearance



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO TIERED ) R00-19(A) and (B)  
APPROACH TO CORRECTIVE ACTION ) (Rulemaking – Land)  
OBJECTIVES (35 ILL. ADM. CODE 742) )

**COMMENTS OF THE ILLINOIS  
ENVIRONMENTAL REGULATORY GROUP  
UPON PROPOSED REVISIONS TO 35 ILL. ADMIN. CODE PART 742**

NOW COMES HODGE & DWYER, on behalf of the Illinois Environmental Regulatory Group (“IERG”), and provides the following comments with respect to the proposed revisions to the Board’s Tiered Approach to Corrective Action Objectives (“TACO”) regulations, 35 Ill. Admin. Code Part 742.

**I. INTRODUCTION**

IERG is a not-for-profit Illinois corporation comprised of 68 member companies engaged in industry, commerce, manufacturing, agriculture, trade, transportation or other related activities, and which persons, entities, or businesses are regulated by governmental agencies which promulgate, administer, or enforce environmental laws, regulations, rules or policies. IERG was organized to promote and advance the interests of its members before governmental agencies such as the Illinois Environmental Protection Agency (“the Agency”) and the Illinois Pollution Control Board (“Board”). IERG is also an affiliate of the Illinois State Chamber of Commerce, which has more than 5,000 members in the State.

IERG appreciates this opportunity to comment upon the proposed revisions to the Board’s TACO regulations, 35 Ill. Admin. Code Part 742.

IERG commends the Board for its efforts in revising its TACO regulations.

While IERG is supportive of most of the Board's revisions, IERG has concerns with respect to some specific provisions of the proposed revisions to the TACO regulations relating to the Environmental Land Use Control ("ELUC"), which are contained in Subdocket A of this rulemaking. Further, IERG has concerns regarding the promulgation at this time of the technical revisions to the TACO regulations contained in Subdocket B of this rulemaking, in light of the fact that related revisions to Parts 732 and 740 of 35 Ill. Admin. Code will soon be before the Board for consideration.

The Board has an integral role in the development and enforcement of environmental requirements in this State. Likewise, the TACO regulations have played an integral role in promoting the cleanup of environmental contamination in this State. IERG and its members welcome this opportunity to comment upon the way that those regulations will be revised.

## II. DISCUSSION

### A. Subdocket A: ELUC

Subdocket A of this rulemaking relates to revisions to the TACO regulations meant to implement the ELUC as a means of assuring future compliance with land use restrictions related to cleanups of environmental contamination. IERG is concerned that these proposed revisions do not specify how the Agency will transition from its present use of restrictive covenants, deed restrictions, and negative easements to assure future compliance, to use of the ELUC.

Presently, 42 Ill. Admin. Code § 1010 allows the use of restrictive covenants, deed restrictions, and negative easements to assure future compliance with land use

restrictions. 42 Ill. Admin. Code § 1010(a). Proposed revisions to Section 1010 will abolish the use of these mechanisms in favor of the ELUC.

Some members of IERG, and other parties around the State, in reliance on the current TACO regulations, have submitted requests for No Further Remediation letters (“NFR letters”) to the Agency that incorporate restrictive covenants, deed restrictions, and negative easements. These parties have incurred substantial costs in negotiating with third parties to secure these covenants, restrictions, and easements. The proposed revisions to the TACO regulations do not specify whether the revisions to Section 1010 would apply to these pending requests for NFR letters.

If the Agency construes the revisions to Section 1010 to apply to requests for NFR letters pending on the effective date of the ELUC regulations, the persons who submitted those requests would incur additional costs to renegotiate ELUCs with third parties, and would risk the possibility that the third parties would refuse to enter into ELUCs, thus reopening sites at which closure had been achieved. In light of this fact, the requirement that ELUCs rather than common law instruments be used as institutional controls should not be applied retroactively.

Accordingly, IERG respectfully urges the Board to include in the revisions to the TACO regulations a provision regarding the implementation of the revisions to Section 1010. Specifically, IERG prays that the Board include in Section 1010 a provision mandating that the revisions thereto apply only to requests for NFR letters submitted to the Agency for review after the effective date of the revisions proposed in Subdocket A, and that requests for NFR letters submitted to the Agency for review before

the effective date of the ELUC regulations are governed by the provisions of Section 1010 as it existed at the time of filing of the request for the NFR letter.

B. Subdocket B: Technical Revisions

Subdocket B of this rulemaking includes revisions to the technical requirements of the TACO regulations. IERG is concerned that these proposed revisions cannot be fully considered at this time, because related revisions to other parts of Title 35 are not currently before the Board for review.

The TACO regulations of Part 742 may be utilized by persons proceeding under several different environmental contamination cleanup programs administered by the Agency, including Part 732 of Title 35, the Petroleum Underground Storage Tanks Program, and Part 740 of Title 35, the Site Remediation Program. 35 Ill. Admin. Code 742.105(b). As the Board is aware, the Agency is currently drafting proposed revisions to Part 732 and Part 740. It is IERG's understanding that the Agency will transmit its proposed revisions to Part 732 to the Board in the near future; IERG is unsure of the status of the proposed revisions to Part 740.

The proposed revisions to Part 732 and Part 740 are closely related to the revisions to Part 742 currently before the Board in Subdocket B to this rulemaking. Given the integrated nature of these proposed revisions, IERG is concerned that the proposed revisions to Part 742 currently before the Board in Subdocket B cannot be fully considered by the Board, by IERG, or by other parties with an interest in the revisions, until the Agency's proposed revisions to Parts 732 and 740 are also before the Board for consideration.

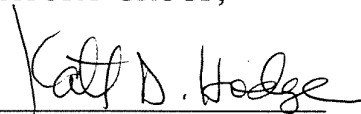
Accordingly, IERG respectfully urges the Board to hold Subdocket B of this rulemaking until the Agency has submitted its proposed revisions to Parts 732 and 740 to the Board for consideration as well, so that all interested parties may fully consider the proposed revisions to all of these Parts of Title 35.

**III. CONCLUSION**

IERG appreciates the opportunity to participate in this proceeding. IERG respectfully requests that the Board consider the comments set forth herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By:   
Katherine D. Hodge

Dated: October 20, 2000

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IERG:001/R-Dockets/Fil/R0019/Comments



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(Rulemaking - Land)

*P. C. # 1*

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Hearing Officer  
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Springfield, Illinois 62704  
**(VIA FIRST CLASS MAIL)**

(PERSONS ON ATTACHED SERVICE LIST)

PLEASE TAKE NOTICE that I have filed today with the Clerk of the Illinois Pollution Control Board an original and nine copies of the **CORRECTION TO COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP UPON PROPOSED REVISIONS TO 35 ILL. ADMIN. CODE PART 742**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By: *Kath D. Hodge*  
One of Its Attorneys

Dated: October 25, 2000

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**CERTIFICATE OF SERVICE**

I, Katherine D. Hodge, the undersigned, certify that I have served a copy of the attached CORRECTION TO COMMENTS OF THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP UPON PROPOSED REVISIONS TO 35 ILL. ADMIN. CODE

PART 742 upon:

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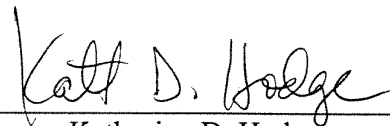
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by depositing copies of said documents in the United States Mail in Springfield, Illinois  
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Katherine D. Hodge

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R00-19(A) and (B) )  
(Rulemaking – Land) )  
**STATE OF ILLINOIS**  
*Pollution Control Board*

**CORRECTION TO COMMENTS OF THE ILLINOIS  
ENVIRONMENTAL REGULATORY GROUP  
UPON PROPOSED REVISIONS TO 35 ILL. ADMIN. CODE PART 742**

NOW COMES HODGE & DWYER, on behalf of the Illinois Environmental Regulatory Group (“IERG”), and submits the following corrections to its comments with respect to the proposed revisions to the Illinois Pollution Control Board’s (“Board”) Tiered Approach to Corrective Action Objectives (“TACO”) regulations, 35 Ill. Admin. Code Part 742.

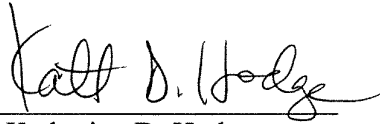
On October 20, 2000, IERG filed comments with the Board relating to the proposed revisions to the Board’s Tiered Approach to Corrective Action Objectives (“TACO”) regulations, 35 Ill. Admin. Code Part 742. It has been brought to IERG’s attention that in those comments, IERG referred to “42 Ill. Admin. Code § 1010” and “Section 1010.” See IERG Comments at 2-4.

These references were typographical errors. IERG’s comments should have referred to “35 Ill. Admin. Code § 742.1010” and “Section 742.1010.”

IERG apologizes for any inconvenience caused by these errors, and respectfully requests that the Board consider the comments set forth herein.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL  
REGULATORY GROUP,

By:   
Katherine D. Hodge

Dated: October 25, 2000

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