

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)	
)	
PROPOSED AMENDMENTS TO TIERED)	R06-10
APPROACH TO CORRECTIVE ACTION)	(Rulemaking - Land)
OBJECTIVES (35 ILL. ADM. CODE 742))	

NOTICE OF FILING

TO: Ms. Dorothy M. Gunn	Richard R. McGill, Jr., Esq.
Clerk of the Board	Illinois Pollution Control Board
Illinois Pollution Control Board	James R. Thompson Center
100 West Randolph Street	100 West Randolph
Suite 11-500	Suite 11-500
Chicago, Illinois 60601	Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS 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 a **PRE-FILED TESTIMONY OF BRIAN H. MARTIN**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ Katherine D. Hodge
One of Its Attorneys

Dated: February 22, 2006

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CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached **PRE-FILED TESTIMONY OF BRIAN H. MARTIN** upon:

Ms. Dorothy M. Gunn
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via electronic mail on February 22, 2006; and upon:

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PRE-FILED TESTIMONY OF BRIAN H. MARTIN

NOW COMES the Illinois Environmental Regulatory Group (“IERG”), by and through its attorneys, HODGE DWYER ZEMAN, and submits the following Pre-Filed Testimony of Brian H. Martin for presentation at the March 1, 2006 hearing scheduled in the above-referenced matter:

Testimony of Brian H. Martin

Good Morning. My name is Brian Howard Martin, and I am a Consulting Environmental Scientist at Ameren Services in St. Louis, Missouri, and I have over 23 years of experience working in the environmental field. In addition, I represent the Illinois Manufacturer’s Association as current Chairman of the Site Remediation Advisory Committee (“SRAC”), and I am Chairman of the IERG Corrective Action Work Group, which includes numerous companies engaged in industry, commerce, manufacturing, and transportation related activity. On behalf of IERG and its member companies, I want to thank the Illinois Pollution Control Board (“Board”) for the opportunity to present this testimony today.

SRAC and IERG Meetings with Illinois EPA

As you may know, Section 58.11 of the Illinois Environmental Protection Act (“Act”) authorized the SRAC. SRAC 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, Illinois Realtor Association, and the National Solid Waste Management Association. Additional groups, such as IERG, the Illinois Petroleum Council, the Illinois Petroleum Marketer's Association, and City of Chicago, participate on an ad hoc basis. SRAC also extended an invitation to participate to the environmental community. The collective experience of such a diversified group of SRAC members has greatly facilitated the development of the issues that SRAC and the Illinois EPA (“Agency” or “Illinois EPA”) have had to address in the development of the Part 740 and Part 742 regulations. The participants’ clear understanding of these issues has fostered a consensus between members and the Agency regarding the revisions and amendments to the TACO regulations. The consensus-building process required all parties, especially within the regulated community, to proceed in a spirit of compromise in order to produce the current SRP and TACO regulations.

On January 20, 2005, SRAC, IERG, and representatives from the Illinois EPA’s Bureau of Land met to discuss many of the proposed TACO amendments included in this rulemaking. Throughout 2005, the group continued to meet and discuss the amendments, and the group was able to reach agreements on most of the proposed amendments to the TACO regulations. SRAC and IERG support the Illinois EPA’s proposed amendments to the regulations. Subsequent to SRAC and IERG’s meetings with Illinois EPA, the Agency added one significant amendment to the proposed TACO amendments, the addition of the worker protection risk scenario to residential land use. I am testifying today to offer support in general for the Agency’s proposal here.

PNA Comments

More specifically, I would also like to provide some supporting comments relative to the polynuclear aromatic hydrocarbon (“PNA”) background concentrations that were included as footnotes in Appendix B, Tables A and B, and linkage to the new Table H. During the January 31, 2006 hearing, several questions were raised regarding the PNA background concentrations, and Illinois EPA responded to the questions by providing supplemental testimony for this hearing in order to further clarify the record. I would like to offer additional comments on behalf of SRAC and IERG on the adoption of the PNA background values as footnotes in the Tier 1 tables and the link to the new Table H.

The Illinois electric utilities including ComEd, Ameren-IP, Ameren-CIPS and Ameren-CILCO sponsored, and participated in, the studies of the Illinois PNA background concentrations for areas outside of the City of Chicago. The objective of this investigation was to determine ambient concentrations of PNAs due to natural and human activities in non-impacted residential and commercial (including some agricultural and light industrial) areas. The sampling protocol goal was to obtain PNA data from residential areas with no known sources of PNAs (*i.e.*, strong data bias to the residential land use including rural areas adjacent to communities). The protocol did not attempt to characterize PNAs on a statewide basis meaning that industrial, commercial, rural, agricultural, and recreational areas were not investigated. My understanding is that the protocol for the City of Chicago’s Brownfield Grant PNA investigation was similar.

Mr. Eastep stated in his supplemental testimony regarding the new PNA footnotes:

The purpose of incorporating the new PNA numbers as footnotes directing the reader to a new table was to avoid the “area background” connotation. In the original legislation, the concept of “area background” was needed to ensure persons remediating sites were not required to clean up to levels lower than “background” while at the same time protecting the public from increased levels of risk. This made sense when referring to regulated substances in the vicinity of a site or an area local to the site. For example, the steelmaking industry was prevalent around Granite City, southeast Chicago, and a few other areas around the State. In the general area of these steel mills, slag was frequently used for construction purposes, and regulated substances may have been dispersed as a result of air emissions. Thus, many sites in the area of these mills would be expected to be contaminated by releases from the mills. Section 58.5 of the Act states that these sites do not have to clean up beyond what is considered “area background.” However, the Act goes on to state that these sites can’t be converted to residential use unless the contamination meets risk-based residential standards. Thus, even though a site might not have to be cleaned up to below background, it still can’t cause the residents to be subjected to excess risk.

See Supplemental Testimony of Lawrence Eastep, PCB No. R06-10 (Feb. 21, 2006). We concur with this as well as with the relevance of examples provided by Mr. Eastep.

I would also like to offer some additional insight regarding the use of TACO background concentrations at SRP remediation sites. In general, the concentrations of inorganic chemicals in background soils are less than Tier 1 residential remedial objectives and are not used to characterize risk. *See* Appendix A, Table G Concentrations of Inorganic Chemicals in Background Soils. However, it is a common practice to use Table G concentrations as a screen to determine if inorganic chemicals are contaminants of concern at a site requiring source characterization and additional TACO evaluations. The presence of inorganic chemicals in concentrations less than those listed in Table G is due to natural, geologic sources. Thus, inorganic chemicals are not contaminants of concern for the remediation site.

I would now like to comment on the new Table H. In general, Table H can be used, as with Table G, for determining if a PNA is a contaminant of concern at a remediation site. PNA concentrations in Table H are not appropriate for “area background.” Concentrations were not determined as part of a local area around a remediation site, and remediation should not be subject to the prohibition from converting the site to residential use. Also note that TACO area background provisions contain a prohibition from converting a commercial/industrial site to residential use. This residential conversion prohibition is not relevant in many cases because there is no increase in risk to people. The Act and existing rules were written with the goal to address situations where remediation site contaminants of concerns are from an industrial source. Many remediation sites including commercial and industrial sites have PNAs concentrations less than the proposed Table H concentrations but greater than Tier 1 residential ROs. Requiring the remedial applicant to remediate to achieve Tier 1 residential would result in “islands of clean” and would “chill” the recycling of commercial/industrial properties to a residential land use. The increased cost to achieve the Tier 1 ROs will not result in a decreased risk to the residential community. This prohibition must not apply to remediation sites with PNA concentrations less than those listed in Table H. The Table H concentrations must be considered as the applicable PNA ROs.

Today’s proposed amendment to the PNA ROs is similar to the amendments the Board adopted regarding the Tier 1 remediation objective for arsenic. Since the arsenic Tier 1 remediation objective is less than the Table G concentration, arsenic is an exception. Arsenic was found to be present everywhere above the Tier 1 residential

objectives including residential areas, natural areas, and many other uncontaminated areas. Based on this determination, Illinois EPA proposed amendments to TACO for arsenic background concentrations, which the Board adopted. These amendments were based on the record that ambient arsenic concentrations were above Tier 1 objectives and posed no additional or incremental excess risk over what the public was exposed to every day. The amendment included the removal of the arsenic Tier 1 objective and replacing it with a footnote that directed the reader to the background table.

Conclusion

I have concluded my testimony and appreciate this opportunity to participate in the development of the record in this proceeding. I will be happy to respond to questions.

* * *

IERG reserves the right to supplement or modify this pre-filed testimony.

Respectfully submitted,

By: /s/ Katherine D. Hodge
One of its Attorneys

Dated: February 22, 2006

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