

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 **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S COMMENTS** and **ENTRY OF APPEARANCE OF MONICA T. RIOS**, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

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

Dated: April 17, 2006

Katherine D. Hodge
Monica T. Rios
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

CERTIFICATE OF SERVICE

I, Katherine D. Hodge, the undersigned, hereby certify that I have served the attached **THE ILLINOIS ENVIRONMENTAL REGULATORY GROUP'S COMMENTS** and **ENTRY OF APPEARANCE OF MONICA T. RIOS** upon:

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

via electronic mail on April 17, 2006; and upon:

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

William G. Dickett
Sidley Austin Brown & Wood LLP
Bank One Plaza
One South Dearborn Street, Suite 2800
Chicago, Illinois 60603

Kimberly A. Geving
Assistant Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Annet Godiksen
Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

Mr. Bob Mankowski
Environmental Protection Industries
16650 South Canal
South Holland, Illinois 60473

Ms. Lisa Frede
Chemical Industry Council of Illinois
2250 East Devon Avenue, Suite 239
Des Plaines, Illinois 60018-4509

Mark R. Sargis, Esq.
Bellande & Sargis Law Group, LLP
19 South LaSalle Street, Suite 1203
Chicago, Illinois 60603

Tracy Lundein
Hanson Engineers, Inc.
1525 South Sixth Street
Springfield, Illinois 62703-2886

Douglas G. Soutter
Conestoga-Rovers & Associates
8615 West Bryn Mawr Avenue
Chicago, Illinois 60631

Georgia Vlahos
Naval Training Center
2601A Paul Jones Street
Great Lakes, Illinois 60088-2845

Matthew J. Dunn, Division Chief
Office of the Attorney General
Environmental Bureau
188 West Randolph Street, 20th Floor
Chicago, Illinois 60601

Diane H. Richardson
Commonwealth Edison Company
10 South Dearborn, 35 FNW
Chicago, Illinois 60603

Monte Nienkerk
Clayton Group Services, Inc.
A Bureau Veritas Company
3140 Finley Road
Downers Grove, Illinois 60515

Elizabeth Steinhour
Weaver Boos & Gordon Consultants LLC
2021 Timberbrook Lane
Springfield, Illinois 62702

Mark Marszalek
Andrews Environmental Engineering
3535 Mayflower Boulevard
Springfield, Illinois 62711

Jarrett Thomas, Vice President
Suburban Laboratories, Inc.
4140 Litt Drive
Hillside, Illinois 60162

Stanley Yonkauski
William Richardson, Chief Legal Counsel
Illinois Department of Natural Resources
Legal Division
One Natural Resources Way
Springfield, Illinois 62702-1271

Raymond T. Reott
Jorge T. Mihalopoulos
Reott Law Offices, LLC
35 East Wacker Drive
Suite 650
Chicago, Illinois 60601

Steven Gobelman
Thomas Benson
Illinois Department of Transportation
2300 South Dirksen Parkway, Room 330
Springfield, Illinois 62764

Dr. Douglas C. Hambley, P.E., P.G.
Graef Anhalt Schloemer & Associates, Inc.
8501 West Higgins Road, Suite 280
Chicago, Illinois 60631-2801

Erin Curley
Environmental Department Manager
Midwest Engineering Services
4243 West 166th Street
Oak Forest, Illinois 60452

Chetan Trivedi
Trivedi Associates, Inc.
2055 Steeplebrook Court
Naperville, Illinois 60565

John W. Hochwarter
Jeffrey Larson
Missman Stanley & Associates
333 East State Street
Rockford, Illinois 61110-0827

David L. Rieser, Esq.
McGuire Woods LLP
77 West Wacker Drive, Suite 4100
Chicago, Illinois 60601-1681

Charles A. King, Esq.
Chicago Department of Law
30 North LaSalle Street, Suite 900
Chicago, Illinois 60602

Musette H. Vogel
The Stolar Partnership
The Lammert Building, 70th Floor
911 Washington Avenue
St. Louis, Missouri 63101-1290

Harry Walton
SRAC
2510 Brooks Drive
Decatur, Illinois 62521

by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois, on April 17, 2006.

/s/Katherine D. Hodge
Katherine D. Hodge

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).)

**THE ILLINOIS ENVIRONMENTAL
REGULATORY GROUP'S COMMENTS**

NOW COMES the ILLINOIS ENVIRONMENTAL REGULATORY GROUP ("IERG"), by and through its attorneys, HODGE DWYER ZEMAN, and submits the following comments in the above-referenced matter:

I. INTRODUCTION

In January 2005, IERG staff, members of the Site Remediation Advisory Committee ("SRAC"), and representatives of the Illinois Environmental Protection Agency ("Agency") met to discuss the Agency's proposed rulemaking amending provisions of the Tiered Approach to Corrective Action Objectives ("TACO"). Since the initial meeting, IERG has continued to be active in the development of this rulemaking. IERG, SRAC, and the Agency have been able to reach a consensus regarding the proposed revisions and amendments to the TACO regulations. IERG generally supports the Agency's proposed amendments to the regulations and requests that the Board take further action in this rulemaking consistent with IERG's comments.

II. RETROACTIVITY OF MANDATORY FORMS

IERG understands that the Agency's proposed mandatory use of model forms found in the appendices to the proposed regulations will not be retroactively applied. The Agency does not intend to apply the model forms to owners or operators of sites who

have negotiated and executed Highway Authority Agreements, Environmental Land Use Covenants, or other agreements with the appropriate agency prior to the effective date of the rules. *See* Transcript of March 1, 2006, Hearing at 10-11, *In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Admin. Code 742)*, PCB No. R06-10 at 3 (Ill. Pol. Control. Bd. Mar. 10, 2006). These owners or operators will not be required to renegotiate the agreements, even where the agreements may not be identical to the new forms. In order to clarify that the proposed model forms will not be retroactively applied, IERG respectfully requests that the Illinois Pollution Control Board (“Board”) address this issue in its final opinion in this matter.

III. PNA BACKGROUND STUDY

IERG wants to clarify an issue raised by the Board during the March 1, 2006, hearing regarding sampling sites for the Illinois polynuclear aromatic hydrocarbon (“PNA”) background concentration study. In IERG’s Prefiled Testimony of Mr. Brian Martin, Mr. Martin stated,

[t]he 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.

Prefiled Testimony of Brian H. Martin at 3, *In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Admin. Code 742)*, PCB No. R06-10 (Ill. Pol. Control. Bd. Feb. 22, 2006). The “non-impacted residential lands”

referenced above are residential and commercial sites not impacted by direct industrial sources. The sampling method chosen for the study eliminated both industrial locations where there would be a known likelihood of contamination and non-populated areas where contamination would likely not be present. Transcript of March 1, 2006, Hearing at 20, *In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Admin. Code 742)*, PCB No. R06-10 (Ill. Pol. Control. Bd. Mar. 10, 2006).

The Board questioned the apparent contradictory language of the first and last sentences in the paragraph above quoting IERG's prefiled testimony. In response, Mr. Martin explained,

[w]e were trying to identify background PAHs in populated areas, small cities, things like that. In some cases where it was necessary to find representative samples for populated areas, there might have been samples, and probably were samples collected from agricultural land at the edge of town, for example, but it was still considered to be within a population center.

Id. To further clarify Mr. Martin's response, "industrial, commercial, rural, agricultural, and recreational areas were not investigated" outside of populated areas, that is, on a statewide basis. However, a limited number of such types of sites that were either located in, adjacent to, or contiguous with incorporated municipalities or urban areas were sampled as warranted by the study's sampling methodology. Some of these adjacent or contiguous sites were primarily used for agricultural or light industrial purposes.

The PNA background studies conducted in Illinois over the last few years concluded that “several PNA compounds were found to be present in almost every sample collected throughout the state.” Prefiled Testimony of Lawrence W. Eastep, *In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives* (35 Ill. Admin. Code 742), PCB No. R06-10 (Ill. Pol. Control. Bd. Jan 10, 2006). As currently written, the TACO regulations require the owner, operator, or remedial applicant to “remediate below naturally occurring levels” in order to meet the remedial objectives for certain PNAs. *Id.* In his prefiled testimony, Mr. Larry Eastep explained that allowing owners, operators, or remedial applicants of sites to take into account PNA background levels will help keep costs low and “allow them to focus on contaminants of concern, while still protecting human health and the environment.” *Id.* Mr. Martin also commented on the usefulness of considering PNA background concentrations. He stated in his pre-filed testimony,

[t]he 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. . . .The Table H concentrations must be considered as the applicable PNA ROs.

Prefiled Testimony of Brian H. Martin at 5, *In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives* (35 Ill. Admin. Code 742), PCB No. R06-10 (Ill. Pol. Control. Bd. Feb. 22, 2006). The regulated community recognizes the

benefits of the Agency's proposal, and IERG respectfully requests that the Board adopt the Agency's proposed amendments related to the incorporation of PNA background concentrations into the TACO regulations.

IV. ADLs AS REMEDIATION OBJECTIVES

During the hearing held on March 1, 2006, laboratory community representatives raised issues concerning the use of Alternative Detection Limits ("ADLs") as TACO Tier 1 remediation objectives ("ROs"), when risk-based ROs are less than the practical quantification limits ("PQLs") and/or method detection limits ("MDLs"). IERG staff was actively involved in the development of the TACO standards and understands the laboratory community's concerns, but believes that these concerns may be unfounded and are better addressed in a separate rulemaking.

As the Board knows, TACO is the Agency's method for developing ROs for contaminated soil and groundwater. These ROs protect human health and take into account site conditions and land use. ROs generated by TACO are risk-based, site-specific, and used in conjunction with Illinois' corrective action programs, such as the Leaking Underground Storage Tank Program, Site Remediation Program, and RCRA Closure and Corrective Action. These programs use the TACO process to assure environmental conditions at a site do not pose a risk to human health and the environment. Because of the wide range of sites and contaminants of concern in which TACO can be applied, TACO itself does not provide procedures for characterizing a site and evaluation of the potential contamination at the site. Adequate characterization of the

extent and nature of contaminants is critical to the TACO process, but it is program specific, as provided by each program's regulatory requirements.

The Agency's 2006 proposed amendments to TACO do not include changes to ADLs. The concerns raised by the representatives of the laboratories during the first and second hearings regarding this perceived need to change the manner in which ADLs are established are not appropriate to this rulemaking. Changing the ADL regulatory structure to address the laboratory representatives' concerns would be in conflict with TACO protective and "conservative" policy goals. The current ADL compliance policy assures that the Tier 1 ROs are protective in all exposure scenarios. The regulated community, which includes the financial and lending industry, developers and the legal community, rely upon the current TACO policy and process, which provide cost effective tools to address theoretical risks.

Accordingly, IERG urges the Board to adopt the Agency's TACO amendments without addressing the ADL issue. IERG further recommends that the ADL issues and concerns raised by the laboratory community be discussed between the Agency and interested parties. If necessary, amendments to the applicable regulatory programs may then be proposed to address any outstanding issues.

V. CONCLUSION

IERG appreciates the opportunity to participate in this proceeding. IERG respectfully requests that the Board take further action in this proceeding consistent with IERG's comments.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL
REGULATORY GROUP,

By: /s/ Katherine D. Hodge
Katherine D. Hodge

Dated: April 17, 2006

Katherine D. Hodge
Monica T. Rios
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900

IERG:001/R Dockets/Filings/R06-10 /TACO Comments

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))

ENTRY OF APPEARANCE OF MONICA T. RIOS

NOW COMES Monica T. Rios, of the law firm HODGE DWYER ZEMAN, and
hereby enters her appearance in this matter on behalf of the Illinois Environmental
Regulatory Group.

Respectfully submitted,

By: Monica T. Rios
Monica T. Rios

Dated: April 17, 2006

Monica T. Rios
HODGE DWYER ZEMAN
3150 Roland Avenue
Post Office Box 5776
Springfield, Illinois 62705-5776
(217) 523-4900