

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO TIERED) R09-9
APPROACH TO CORRECTIVE ACTION) (Rulemaking - Land)
OBJECTIVES (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 **PRE-FILED TESTIMONY OF BRIAN H. MARTIN**, a copy of which is herewith served upon you.

Respectfully submitted,

Dated: March 5, 2009

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

Katherine D. Hodge
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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PRE-FILED TESTIMONY OF BRIAN H. MARTIN

NOW COMES the Site Remediation Advisory Committee (“SRAC”), and submits the following PRE-FILED TESTIMONY OF BRIAN H. MARTIN for presentation at the March 17, 2009, hearing scheduled in the above-referenced matter.

Testimony of Brian H. Martin

I. INTRODUCTION

Good Morning. My name is Brian Howard Martin, and I am a Consulting Environmental Scientist at Ameren Services in St. Louis, Missouri. 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 SRAC.¹ On behalf of SRAC, I want to thank the Illinois Pollution Control Board (“Board”) for the opportunity to present this testimony today.

As described by Gary King at the January 27, 2009 hearing in Springfield, SRAC has been active in working with the Illinois Environmental Protection Agency (“Illinois EPA” or “Agency”) in developing this proposal since 2007. My testimony today is intended to speak, on behalf of SRAC, in support of the averaging approach proposed by

¹ SRAC is authorized 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, 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.

the Agency in Errata Sheet Number 3, as well as to provide further elaboration on concerns originally raised by Illinois Environmental Regulatory Group (“IERG”), in its Pre-Filed Questions and subsequently in follow-up questions at the first hearing, regarding the impact of the effective date of the proposed rule on on-going remediation projects and the contents of No Further Remediation (“NFR”) letters.

II. SOIL DATA AVERAGING

SRAC supports the approach to averaging as proposed by the Illinois EPA in Errata Sheet Number 3. SRAC appreciates the Agency’s willingness to work with us on this issue. Appropriately implemented, this approach will provide flexibility and help streamline some site remediation projects. Based on our experience with the Illinois EPA's remediation programs and the use of averaging in other settings, SRAC believes that the Illinois EPA review will satisfactorily determine when this pathway can be safely excluded based on the data submitted by remedial applicants. Should more information be needed or if there are questions about the data, the discussions can proceed under the more comprehensive Tier 3 review.

III. IMPLEMENTATION OF THE PROPOSAL AND NFR LETTERS

The proposal, in addition to creating the new indoor inhalation pathway, also updates a number of Remediation Objectives (“ROs”) for various chemicals for all of the pathways. Although the Agency has indicated that it does not intend to require responsible parties to be implementing the requirements of this proposal prior to its adoption as a final rule, the Agency has stated that it intends to require that sites that have not been closed be subject to all of the amendments, including the updated ROs, immediately upon the effective date of these rules. Illinois EPA’s Responses to Prefiled

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Questions, *In the Matter of: Proposed Amendments to Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742)*, R9-09 at 12-13, Answers 11(d)-(f) (Ill.Pol.Control.Bd. Jan. 15, 2009). Consequently, many responsible parties are considering the proposed amended regulations as if they were in force today because failure to do so could potentially result in the rejection of their Remedial Action Completion Reports (“RACR”). An NFR letter issued for those projects, prior to the effective date of these amendments, may provide no indication of the fact that the indoor inhalation exposure route and/or the updated ROs were evaluated, above and beyond what was required by the currently applicable regulations.

Alternatively, the implementation of these amendments could potentially impact on-going projects, for which the clean-up efforts have proceeded and been completed under the currently applicable regulations, but which have not yet received their NFR letter, requiring them to return to their sites and perform additional work, if the applicable ROs had changed, or if they had not evaluated the indoor inhalation pathway. It seems unfair to require responsible parties, who have diligently complied with the regulatory requirements applicable at the time of their action, to be denied an NFR letter on the basis that the Agency was still considering their completion report at the time these proposed amendments are adopted.

IV. RECOMMENDATIONS

Based on the concerns described above, SRAC recommends that in reviewing this proposal, the Board consider the possibility of including some clarification regarding the schedule for implementation in the final regulation. Such a schedule would provide a degree of certainty regarding both which regulatory requirements are applicable to any

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particular on-going remediation project, as well as certainty regarding the status of future NFR letters.

SRAC would suggest that the applicability of the proposed amendments to a particular remediation project be based on the date of submission of a complete and acceptable RACR. Those sites that have submitted their RACR prior to the effective date of the amendments currently under consideration would be subject to the requirements applicable at the time of RACR submission. Accordingly, SRAC would suggest that NFR letters issued for completed projects should explicitly state that the site met the requirements contained in the Tiered Approach to Corrective Action Objectives regulation as of the date of the submission of the RACR. Additionally, it would also be useful for current on-going projects which are evaluating the indoor inhalation exposure route to have the option to request that the NFR letter issued for that site specify that the indoor inhalation exposure route was evaluated.

V. CONCLUSION

Again, I would like to thank the Agency for its willingness to work with SRAC, and consider the averaging issue, as well as other issues that we have raised in the past. I believe that having the option available to perform soil averaging, in the appropriate situations, will prove to be beneficial to remediation projects. I also believe that the issues identified regarding the content of NFR letters and the impact of implementation on on-going projects can be adequately addressed through an approach such as I have suggested.

On behalf of SRAC, I would like to thank the Board for providing the opportunity to present testimony in this rulemaking. I would be happy to respond to any questions regarding my testimony.

Respectfully submitted,

Dated: March 5, 2009

By: Brian H. Martin
Brian H. Martin

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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:

Mr. John T. Therriault
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via electronic mail on March 5, 2009; and upon:

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by depositing said documents in the United States Mail, postage prepaid, in Springfield,
Illinois on March 5, 2009.

/s/ Katherine D. Hodge

Katherine D. Hodge

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