

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:)
)
PROPOSED AMENDMENTS TO) R09-9
TIERED APPROACH TO CORRECTIVE) (Rulemaking-Land)
ACTION OBJECTIVES)
(35 Ill. Adm. Code 742))
)

RECEIVED
CLERK'S OFFICE
OCT 05 2009
STATE OF ILLINOIS
Pollution Control Board

NOTICE

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Via First Class Mail)

Bill Richardson
Chief Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271
(Via First Class Mail)

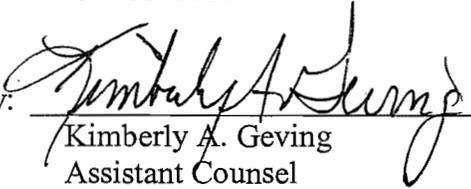
Matt Dunn
Environmental Bureau Chief
Office of the Attorney General
James R. Thompson Center
100 W. Randolph, 12th Floor
Chicago, Illinois 60601
(Via First Class Mail)

Richard McGill
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601
(Via First Class Mail)

Participants on the Service List
(Via First Class Mail)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board the Illinois Environmental Protection Agency's ("Illinois EPA") Motion to Stay Proceedings a copy of each of which is herewith served upon you.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel

DATE: October 2, 2009

1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

(217) 782-5544

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
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R09-9
(Rulemaking-Land)

MOTION TO STAY PROCEEDINGS

NOW COMES the Illinois Environmental Protection Agency (“Illinois EPA”), by and through one of its attorneys, Kimberly Geving, and pursuant to 35 Ill. Adm. Code 101.514, moves the Illinois Pollution Control Board (“Board”) to grant Illinois EPA’s Motion to Stay Proceedings for a portion of the proceedings in the above-captioned matter as outlined below.

In support of its motion, Illinois EPA states that, as a matter of fact, subsequent to the conclusion of the hearings and pre-first notice comment period, Illinois EPA was contacted by representatives of USEPA Region 5, who expressed serious concerns with part of Illinois EPA’s proposal. USEPA indicated that they believe our proposal is inconsistent with national policy and inconsistent with the way the Johnson and Ettinger model is supposed to operate. Because Illinois EPA values USEPA’s expertise and takes USEPA’s concerns seriously, we have been working diligently to understand and evaluate their issues of concern.

The purpose of this motion is to request that the Board grant a partial stay of the proceedings in this matter- specifically, to the particular proposed amendments that pertain to vapor intrusion, so that we can fully evaluate USEPA’s concerns, the impact of

those concerns on the Illinois EPA proposal, and the latest research findings on vapor intrusion. Illinois EPA requests that the stay be granted for a period of up to twelve (12) months.

During the twelve month period, Illinois EPA commits to giving the Board status reports every three months detailing the progress of Illinois EPA's evaluation. If Illinois EPA is able to complete its evaluation before the conclusion of the twelve month period, Illinois EPA will file an interim status report with the Board indicating that no further time is necessary in the stay of the proceedings.

Additionally, Illinois EPA requests that the Board allow the remainder of the proposed amendments to continue forward to first notice.

WHEREFORE, the Illinois EPA respectfully requests that the Board grant its Motion to Stay Proceedings on the following proposed amendments only:

Section

Table of Contents

The following headings from the Table of Contents:

742.222 Determination of Soil Vapor Saturation Limit

742.227 Demonstration of Compliance with Soil Gas Remediation Objectives for the Indoor Inhalation Exposure Route

742.312 Indoor Inhalation Route

742.515 Tier 1 Remediation Objectives Table for the Indoor Inhalation Exposure Route

742.717 Indoor Inhalation Equations for Soil and Soil Gas

742.812 Indoor Inhalation Equations

742.935 Indoor Inhalation Exposure Route

Subpart L: Building Control Technologies

Section

742.1200 Building Control Technologies

742.1205 Building Control Technology
Proposals

742.1210 Building Control Technology
Requirements

Appendix A, Table J: List of TACO
Volatile Chemicals for the Indoor Inhalation
Exposure Route

Appendix A, Table K: Soil Vapor
Saturation Limits (C_v^{sat}) for Volatile
Chemicals

Appendix A, Table L: Soil Saturation
Limits (C_{sat}) for Volatile Chemicals for the
Indoor Inhalation Exposure Route

742.105(i) (from Errata 2)

This subsection in its entirety.

742.110(b)

The reference to Table G.

742.110(c)

The references to the “and modified Johnson
and Ettinger Model (J & E Model)” and
Table L.

742.115(a)(1)(B)

This subsection in its entirety.

742.115(a)(2)

The reference to (a)(1)(B).

742.115(a)(4)

This subsection in its entirety.

742.200 & Errata 3

The definitions for: “Building,” “Building
Control Technology,” “Capillary Fringe,”
“Saturated Zone,” “Soil Gas,” “Soil Vapor
Saturation Limit,” “Unconfined Aquifer,”
and “Water Table,” and for “Volatile
Chemical,” the phrase “For purposes of the
indoor inhalation exposure route, elemental
mercury is included in this definition.”

742.210(a)

The following incorporations by reference:

ASTM D 1945-03, Standard Test Method for Analysis of Natural Gas by Gas Chromatography, approved May 10, 2003.

ASTM D 1946-90, Standard Practice for Analysis of Reformed Gas by Gas Chromatography, approved June 1, 2006.

ASTM E 2121-03, Standard Practice for Installing Radon Mitigation Systems in Existing Low-Rise Residential Buildings, approved February 10, 2003.

ASTM E 2600-08, Standard Practice for Assessment for Vapor Intrusion into Structures on Property Involved in Real Estate Transactions, approved March 7, 2008.

“Reference Handbook for Site-Specific Assessment of Subsurface Vapor Intrusion to Indoor Air,” Electric Power Research Institute (EPRI), Inc., Program No. 1008492, (March 2005).

“Assessment of Vapor Intrusion in Homes Near the Raymark Superfund Site Using Basement and Sub-Slab Air Samples,” EPA Publication No. EPA/600/R-05/147 (March 2006).

“Model Standards and Techniques for Control of Radon in New Residential Buildings” EPA Publication No. EPA/402/R-94/009 (March 1994).

Johnson, Paul C. (2005). Identification of Application Specific Critical Inputs for the 1991 Johnson and Ettinger Vapor Intrusion Algorithm. Ground Water Monitoring and Remediation. 25(1), 63-78.

Murray, Donald M. and Burmaster, David E. (1995). Residential Air Exchange Rates in the United States: Empirical and Estimated Parametric Distributions by Season and Climatic Region. Risk Analysis. 15(4), 459-465.

“Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils,” OSWER Draft Guidance, EPA Publication No. EPA/530D-02/004 (November 2002).

“Users Guide for Evaluating Subsurface Vapor Intrusion into Buildings,” EPA. EPA/68/W-02/33, (February 2004).

“Vapor Intrusion Pathway: A Practical Guide,” Technical and Regulatory Guidance. Interstate Technology and Regulatory Council (January 2007).

- 742.220(a) The new language “and indoor” in this subsection.
- 742.220(c)(1) The new language “For the indoor inhalation exposure route, the value listed in Appendix A, Table L shall be used.”
- 742.220(c)(2) The new language “For the indoor inhalation exposure route, the value derived from Equation J&E 6a in Appendix C, Table L shall be used; or”
- 742.222 This section in its entirety.
- 742.225(d)- Errata 3 The new language “and indoor inhalation”
- 742.227 This section in its entirety.
- 742.312 This section in its entirety.
- 742.500(a) The reference to Table G.
- 742.505(a)(5) This subsection in its entirety.
- 742.505(b)(5) This subsection in its entirety.

742.510(a)	The new language “except for the indoor inhalation exposure route, in which the requirements of Section 742.515 and Appendix B, Table G shall be followed.”
742.510(a)(6)	The new language “and indoor”
742.515	This section in its entirety.
742.600(a)	The reference to Table L.
742.600(b)	The reference to Table M.
742.600(e)(3)	The new language “and indoor”
742.600(e)(4)	This subsection in its entirety.
742.600(f)	This subsection in its entirety.
742.605(a)	The references to Table M.
742.610(b)(1)	The reference to Table M.
742.610(b)(4)	The references to Table M.
742.700(a)	The reference to Table L and new language “and the modified J&E.”
742.700(e)	This subsection in its entirety.
742.700(f)	The reference to Table L.
742.700(f)(1)	The new language “For the indoor inhalation exposure route, only the J&E equations can be used.”
742.700(f)(3)	The references to Tables L and M.
742.700(g)	The new language “The indoor inhalation exposure route does not apply to the construction worker population.”
742.705(a)	The references to Table M and J&E.

742.705(b)	The references to Table M and all J&E language.
742.705(c)	The references to Table M.
742.705(f)	The references to Tables L and M.
742.717	This section in its entirety.
742.805(e)	This subsection in its entirety.
742.812	This section in its entirety.
742.900(c)(10)	This subsection in its entirety.
742.920	The new language “Any request for site-specific remediation objectives due to impracticality of remediation that involves the indoor inhalation exposure route shall follow Section 742.935 in lieu of this Section.”
742.925	The new language “A demonstration that involves the indoor inhalation exposure route shall follow Section 742.935 in lieu of this Section.”
742.935	This section in its entirety.
742.1000(a)(7)	This subsection in its entirety.
742.1010(a)	The new language “indoor inhalation building control technologies.”
742.1010(d)(8)(C)	The new language “indoor inhalation building control technologies.”
742.1015(j)	This subsection in its entirety.
SUBPART L: BUILDING CONTROL TECHNOLOGIES	This Subpart in its entirety.
742.1200 Building Control Technologies	
742.1205 Building Control Technology Proposals	
742.1210 Building Control Technology Requirements	

742. Appendix A, Table J:
List of TACO Volatile
Chemicals for the Indoor Inhalation
Exposure Route

The entire table.

742. Appendix A, Table K:
Soil Vapor Saturation
Limits (C_v^{sat}) for Volatile Chemicals

The entire table.

742. Appendix A, Table L:
Soil Saturation Limits
(C_{sat}) for Volatile Chemicals for the
Indoor Inhalation Exposure Route

The entire table (Errata sheets 1, 2, and 3 also made changes to this table. Those changes would be included in putting the entire table on hold during the stay of proceedings).

742. Appendix B, Table A
Tier 1 Soil Remediation Objectives for
Residential Properties

Footnote f: See Appendix B, Table G for soil and soil gas remediation objectives for residential properties for the indoor inhalation exposure route.

742. Appendix B, Table B
Tier 1 Soil Remediation Objectives
For Industrial/Commercial Properties

Footnote f: See Appendix B, Table G for soil remediation objectives for industrial/commercial properties for the indoor inhalation exposure route.

Footnote k: See Appendix B, Table G for soil gas remediation objectives for industrial/commercial properties for the indoor inhalation exposure route.

742. Appendix B, Table G
Tier 1 Indoor Inhalation Remediation
Objectives for Residential and
Industrial/Commercial Properties
for the Indoor Inhalation Exposure
Route

The entire table, including all changes to it that were made in Errata sheets 1, 3, and 4.

742.Appendix C, Table E
Default Physical and Chemical
Parameters

The column for Dimensionless Henry's Law Constant (H')(13°C) For the Indoor Inhalation Exposure Route.

Footnote b: Dimensionless Henry's Law Constant at 13°C is not calculated because the chemical is not volatile and does not require evaluation under the indoor inhalation exposure route.

742.Appendix C, Table F
Methods for Determining
Physical Soil Parameters

For the parameter η or θ_T (total soil porosity), in the Method column, the phrase "or Equation J&E 16 in Appendix C, Table L for J&E Model" should be stayed.

For the parameter θ_a or θ_{as} (air-filled soil porosity), in the Method column, the phrase "or Equation J&E 18 in Appendix C, Table L for J&E Model" should be stayed.

For the parameter θ_w or θ_{ws} (water-filled soil porosity), in the Method column, the phrase "or Equation J&E 17 in Appendix C, Table L for J&E Model" should be stayed.

742.Appendix C, Table L
J&E Equations

The table in its entirety, including all changes to it that were made in Errata sheets 3 and 4.

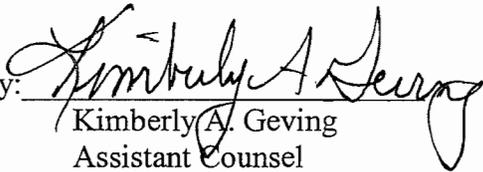
742.Appendix C, Table M
J&E Parameters

The table in its entirety, including the changes that were made in Errata sheets 2 and 3.

The above list includes all of the items that Illinois EPA desires to include in its Motion to Stay Proceedings.

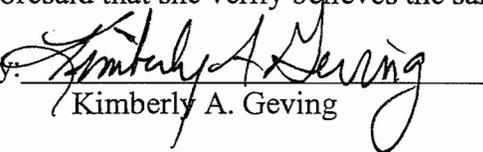
Respectfully submitted,

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

By: 
Kimberly A. Geving
Assistant Counsel
Division of Legal Counsel

CERTIFICATION STATEMENT

In accordance with 35 Ill. Adm. Code 101.504 and under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that she verily believes the same to be true.

By: 
Kimberly A. Geving

DATED: October 2, 2009

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
(217) 782-5544

STATE OF ILLINOIS)
)
COUNTY OF SANGAMON)

PROOF OF SERVICE

I, the undersigned, on oath state that I have served the attached Motion to Stay Proceedings upon the persons to whom they are directed, by placing a copy of each in an envelope addressed to:

Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Bill Richardson
Chief Legal Counsel
Illinois Dept. of Natural Resources
One Natural Resources Way
Springfield, Illinois 62702-1271

Matt Dunn
Environmental Bureau Chief
Office of the Attorney General
James R. Thompson Center
100 W. Randolph, 12th Floor
Chicago, Illinois 60601

Richard McGill
Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph, Suite 11-500
Chicago, Illinois 60601

Participants on the Service List

and mailing them (First Class Mail) from Springfield, Illinois on October 2, 2009, with sufficient postage affixed as indicated above.



SUBSCRIBED AND SWORN TO BEFORE ME
This 2nd day of October, 2009.

Brenda Boehner
Notary Public



		Economic Opportunity Requesting Economic Impact Study	
9/16/2008	Order	Order of the Board by T. E. Johnson: Board accepts proposal for hearing and grants motion for relief from filing requirements	
9/3/2008	Initial Filing	Agency's Motion for Acceptance; Certification of Origination; Motion for Leave From Filing Requirement; List of Studies and Reports Used in Regulatory Development; Statement of Reasons; Proposed Amendments; Appearance of Kimberly A. Geving for the Agency	

Service List

Party Name	Address	City/State/Zip	Phone/Fax
Illinois Environmental Protection Agency Interested Party <ul style="list-style-type: none"> Kimberly A. Geving - Assistant Counsel 	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276	217/782- 5544 217/782- 9807
IEPA Petitioner <ul style="list-style-type: none"> Kimberly A. Geving - Assistant Counsel 	1021 North Grand Avenue East P.O. Box 19276	Springfield IL 62794-9276	217/782- 5544 217/782- 9807
Hodge Dwyer & Driver Complainant <ul style="list-style-type: none"> Katherine D. Hodge Monica T. Rios 	3150 Roland Avenue Post Office Box 5776	Springfield IL 62705-5776	217/523- 4900 217/523- 4948
Mayer, Brown LLP Interested Party <ul style="list-style-type: none"> Kevin G. Desharnais 	71 South Wacker Drive	Chicago IL 60606-4637	312/782- 0600 312/701- 7711
EPI Interested Party <ul style="list-style-type: none"> Bob Mankowski 	16650 South Canal	South Holland IL 60473	
Chemical Industry Council of Illinois Interested Party	1400 East Touhy Avenue Suite 100	DesPlaines IL 60019-3338	

<ul style="list-style-type: none"> • Lisa Frede 			
<u>Bellande & Sargis Law Group, LLP</u> Interested Party <ul style="list-style-type: none"> • Mark Robert Sargis 	19 South LaSalle Street Suite 1203	Chicago IL 60603	312/853-8701 312/853-8702
<u>Hanson Engineers, Inc.</u> Interested Party <ul style="list-style-type: none"> • Tracy Lundein 	1525 South Sixth Street	Springfield IL 62703-2886	217/788-2450 217/788-2503
<u>Conestoga-Rovers & Associates</u> Interested Party <ul style="list-style-type: none"> • Douglas G. Soutter 	8615 West Bryn Mawr Avenue	Chicago IL 60631	773/380-9933 773/380-6421
<u>Office of the Attorney General</u> Interested Party <ul style="list-style-type: none"> • Matthew J. Dunn - Division Chief 	Environmental Bureau 69 W. Washington, 18th Floor	Chicago IL 60602	312/814-0660 312/814-2347
<u>Navy Facilities and Engineering Command</u> Interested Party <ul style="list-style-type: none"> • Mark Schultz - Regional Environmental Coordinator 	201 Decatur Avenue Building 1A	Great Lakes IL 60088-2801	847/688-2600 847/688-2319
<u>Illinois Pollution Control Board</u> Interested Party <ul style="list-style-type: none"> • - Clerk of the Board • Richard McGill - Hearing Officer 	100 W. Randolph St. Suite 11-500	Chicago IL 60601	312/814-3620 312/814-3669
<u>Commonwealth Edison</u> Interested Party <ul style="list-style-type: none"> • Diane H. Richardson 	10 South Dearborn Street 35FNW	Chicago IL 60603	
<u>Clayton Group Services</u> Interested Party <ul style="list-style-type: none"> • Monte Nienkerk 	3140 Finley Road	Downers Grove IL 60515	
<u>Weaver Boos & Gordon</u> Interested Party <ul style="list-style-type: none"> • Elizabeth Steinhour 	2021 Timberbrook Lane	Springfield IL 62702	
<u>Andrews Environmental Engineering</u>	3300 Ginger Creek Drive	Springfield IL 62711	

Interested Party			
<ul style="list-style-type: none"> • Kenneth W. Liss 			
<u>Missman Stanley & Associates</u> Interested Party	333 East State Street	Rockford IL 61110-0827	
<ul style="list-style-type: none"> • Jeffrey Larson • John W. Hochwarter 			
<u>Trivedi Associates, Inc.</u> Interested Party	2055 Steeplebrook Court	Naperville IL 60565	
<ul style="list-style-type: none"> • Chetan Trivedi 			
<u>Illinois Department of Natural Resources</u> Interested Party	One Natural Resources Way	Springfield IL 62702-1271	217/782-1809 217/524-9640
<ul style="list-style-type: none"> • Mitchell Cohen - General Counsel • Stan Yonkauski 			
<u>Suburban Laboratories, Inc.</u> Interested Party	4140 Litt Drive	Hillside IL 60162	708-544-3260
<ul style="list-style-type: none"> • Jarrett Thomas - V.P. 			
<u>Illinois Department of Transportation</u> Interested Party	2300 S. Dirksen Parkway Room 302	Springfield IL 62764	
<ul style="list-style-type: none"> • Steven Gobelman 			
<u>McGuire Woods LLP</u> Interested Party	77 W. Wacker Suite 4100	Chicago IL 60601	312/849-8100
<ul style="list-style-type: none"> • David Rieser 			
<u>Reott Law Offices, LLC</u> Interested Party	35 East Wacker Drive Suite 650	Chicago IL 60601	312/332-7544
<ul style="list-style-type: none"> • Jorge T. Mihalopoulos • Raymond T. Reott 			
<u>Environmental Management & Technologies, Inc.</u> Interested Party	3010 Gill Street	Bloomington IL 61704	309/661-2300 309661-2306
<ul style="list-style-type: none"> • Craig Gocker - President 			
<u>IL Environmental Regulatory Group</u> Interested Party	215 East Adams Street	Springfield IL 62701	217/522-5512 217/522-5518
<ul style="list-style-type: none"> • Alec M. Davis 			
<u>Chicago Department of Law</u>	30 N. LaSalle Street	Chicago IL 60602	312/742-3990

Interested Party	Suite 900		312/744-6798
<ul style="list-style-type: none"> Charles A. King - Assistant Corporation Counsel 			
SRAC Interested Party	2510 Brooks Drive	Decatur IL 62521	
<ul style="list-style-type: none"> Harry Walton 			
Burns & McDonnell Engineering Company, Inc. Interested Party	210 South Clark Street, Suite 2235 The Clark Adams Building	Chicago IL 60603	6306751625
<ul style="list-style-type: none"> Lawrence L. Fieber - Principal 			
Total number of participants: 28			

Notice List			
Party Name	Address	City/State/Zip	Phone/Fax
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<ul style="list-style-type: none"> Sheila H. Deely Stephanie Jackson 			
Jones, Day, Reavis & Pogue Interested Party	77 West Wacker Drive	Chicago IL 60601-1692	312/782-3939 312/782-8585
<ul style="list-style-type: none"> LaNail C. Griffin 			
Illinois Power Company Interested Party	500 South 27th Street P.O. Box 511	Decatur IL 62525-1805	217/424-6833
<ul style="list-style-type: none"> Brian Martin 			
Hinshaw & Culbertson Interested Party	416 Main Street 6 th Floor	Peoria IL 61602-3133	309/674-1025 309/674-9328
<ul style="list-style-type: none"> Jon S. Faletto 			
Mohan, Alewelt, Prillaman & Adami Interested Party	First of America Center 1 North Old State Capitol Plaza, Suite 325	Springfield IL 62701-1323	217/528-2517 217/528-2553
<ul style="list-style-type: none"> Fred C. Prillaman 			
Sonnenschein Nath & Rosenthal Interested Party	One Metropolitan Square Suite 3000	St. Louis MO 63102	314/241-1800
<ul style="list-style-type: none"> Frank H. Hackmann 			
Deutsch, Levy & Engel, Chartered Interested Party	225 West Washington Street Suite # 1700	Chicago IL 60606	312/346-1460 312/346-1859