

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

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STATE OF ILLINOIS
Pollution Control Board

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)
P.C. #2



NOTICE OF FILING

TO: ATTACHED SERVICE LIST

PLEASE TAKE NOTICE that today I have filed with the Office of the Clerk of the Illinois Pollution Control Board an original and nine copies of **POST-HEARING COMMENTS OF THE ILLINOIS STEEL GROUP**, copies of which are hereby served upon you.

David L. Rieser
Attorney for the Illinois Steel Group

DATED: October 23, 2000

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD OCT 23 2000

STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF)
)
PROPOSED AMENDMENTS TO TIERED) R00-19(Dockets A &B)
APPROACH TO CORRECTIVE ACTION) (Rulemaking -Land)
OBJECTIVES (TACO) (35 Ill. Adm. Code 742))

POST-HEARING COMMENTS OF THE ILLINOIS STEEL GROUP

The Illinois Steel Group ("ISG"), by and through its attorneys, Ross & Hardies, files these post-hearing comments with respect to the amendments to the Tiered Approach to Corrective Action Regulations ("TACO") regulations proposed by the Illinois Environmental Protection Agency ("IEPA"). These comments are intended to address both the proposed Environmental Land Use Control ("ELUC") proposal contained in Docket A and the remaining TACO proposals contained in Docket B. The ISG generally supports the adoption of these proposed amendments with some reservations discussed below, but believes additional consideration should be given to the implementation and effective dates of the proposed TACO changes in Docket B. As always, the ISG appreciates the IEPA's hard work in preparing and proposing these regulations.

1. ELUCs

The ISG agrees that the Board should adopt the proposed ELUC amendments. The ELUC is an important concept that will enhance the use of institutional controls and, therefore, TACO in Illinois. The ELUC law and regulations will clarify the type of instruments that will be required for sites for which No Further Remediation letters are currently not issued.

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Further, although Gary King testified that the IEPA had not observed any problems with violations of institutional controls (T. 93, September 11), Section 742.1010(c)(2) will clarify the mechanism for enforcement and underscore the importance of complying with the institutional controls.

2. **Dry weight/wet weight**

The ISG does not agree that the Board should adopt the proposed revision at Section 742.225(f) to require all compliance samples to be reported on a dry weight basis. As Jim O'Brien of the IEPA testified, this revision arose solely out of the need to achieve mathematical consistency among different samples taken at different times and not out of any real environmental problems at given sites. (T. 67, 98, August 25). The IEPA had been administering sampling programs for many years, even prior to the promulgation of TACO, and had not seen any need to propose this requirement previously. This requirement does not arise out of any ASTM standard and is not a universally required sampling requirement under SW-846. (T. 99-101, August 25). The IEPA acknowledged that sampling without the dry weight normalization more accurately represented actual field conditions to which people might be exposed. (T. 104, August 25). It is hard to identify another sampling requirement that the Board has imposed which is not already required on a national basis. The fact that neither ASTM nor SW 846 universally require dry weight sampling suggests that it is not a simple national requirement. The Board correctly noted that the use of dry weight sampling could have the result of increasing the remediation standards for certain sites. (T. 105, August 25). Other than a bureaucratic mind set in favor of mathematic "normalization," the IEPA provided no real reason why the Board should

adopt a sampling requirement which is not consistently and nationally required. The ISG submits that the Board should not do so.

3. **Engineered Barriers**

The IEPA proposed revisions to Subpart C and to Section 742.1105 to clarify the requirements for engineered barriers using either in place media or barriers constructed with clean fill. While the ISG does not object to the proposal in general, the Board should clarify in its adopting order that a person seeking to use in place media (i.e. soil or other geologic materials) or fill does not have to sample for the entire suite of Tier I contaminants unless there is a site specific reason to believe that any of these contaminants are present in the media or fill. In that event, the sampling should solely be for those contaminants believed to be present.

Similarly, the Board should delete the language included at the end of Section 742.1105(c)(3)(C)(iii) which states "... and not within ten feet of any manmade pathway." This language references concerns regarding either the source or contaminated media and not the "soil, sand, gravel or other geologic materials" to which this section is addressed. This language is very confusing in the context in which it is used and should be deleted.

4. **Effective Date**

Finally, the Board should clarify the effective date for the proposed changes in TACO. Many of these changes, including the new Tier I objectives, detection levels and sampling requirements could directly modify regulatory objectives for ongoing investigations and remediation projects. It would be unfair, arbitrary and capricious for the Board and then the IEPA to simply impose these new requirements on ongoing activities, where the new requirements would substantially change the cost or direction of the activities. It is also unfair

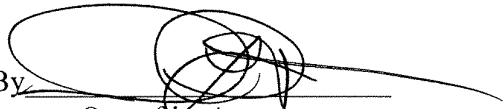
for these changes to be adopted without some determination as to when the new standards will apply. While the ISG appreciates the pragmatic, case by case, approach suggested by Larry Eastep, (T. 143, 144, August 25), the ISG believes that this approach requires regulatory criteria to be fairly applied by different project managers across numerous sites.

Chairman Manning and Board Member Kazcllis correctly noted that the Board's efforts to resolve this issue are hampered by the fact that planned revisions to underground storage tank and site remediation program regulations have not yet been proposed. Some of these issues may be addressed in these regulations, although the application of these TACO revisions in RCRA sites will not be the subject of these proposals. One simple response to this issue would be for the Board to state in its opinion that the revisions will not be effective until the regulations for the implementing programs are changed to provide for the revisions. This may be appropriate since the correct application of these revisions may differ from program to program or even contaminant to contaminant.

The other response would be for the Board to set an effective date in its order adopting these regulations as to when these regulations could be applied to different types of sites. For example, the Board could state that the IEPA can only impose these revisions on sites for which a release is reported after the effective date of the regulations. The other alternative would be to apply these changes to sites which are registered in the SRP or RCRA programs after the effective date of the regulations. In any event, the Board should clearly advise persons remediating sites when these rules apply and this determination should not be left to the unfettered discretion of the IEPA.

The ISG welcomes the opportunity to participate in the hearings before the Board and appreciates the opportunity to submit these comments. Except for the reservations expressed herein, the ISG supports the adoption of both Docket A and Docket B.

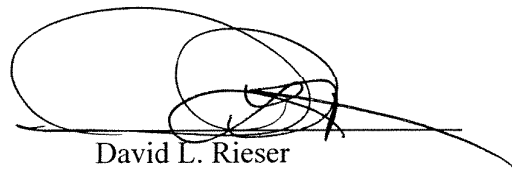
ILLINOIS STEEL GROUP

By 
One of its Attorneys

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CERTIFICATE OF SERVICE

I, DAVID L. RIESER, an attorney, hereby certify that I have served the attached **POST-HEARING COMMENTS OF THE ILLINOIS STEEL GROUP** upon the attached Service List via first class U.S. mail from 150 N. Michigan Avenue on October 23, 2000.



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