

5th & Hill Neighborhood Rights Campaign

Groundwater and Institutional Control Information Sheet

BIG PICTURE:

We want the IL EPA to work with AmerenIP to come up with a plan to remediate (clean) the toxic groundwater in the 5th & Hill area. As of right now, Ameren's plan is literally to leave the toxic contaminated groundwater in place, untouched, and they can do that because of a groundwater prohibition ordinance that the City of Champaign passed in 2007.

WHAT WE WANT FROM THE CITY OF CHAMPAIGN:

We want the City of Champaign to hold a study session to consider amending its groundwater restriction ordinance to exclude the geographic area of 5th & Hill or repeal the ordinance altogether. If the City amends its ordinance, then Ameren will not be able to use the City's ordinance as its method for remediating the contaminated groundwater, and they will have to go back to the drawing board with the IL EPA to come up with a real plan to address the groundwater contamination - a plan that will have to involve physically addressing the groundwater (through a filter system, through chemical treatments, and/or physical barriers to prevent the spread of contamination).

SYNOPSIS OF THE PROBLEM:

Under the IL EPA's guidelines, IL EPA cannot make Ameren physically address the toxic groundwater because a city ordinance is standing in the way - we want to amend that ordinance so that it does not apply to 5th & Hill area or repeal the ordinance altogether. If that ordinance can be amended to exclude the 5th & Hill area, then the IL EPA will have to work with Ameren to come up with a strategy for physically remediating (cleaning) the groundwater (filter it through a pump mechanism; treat it chemically; install physical barriers; or some combination of all of these).

OVERVIEW OF THE ORDINANCE:

In June 2007, the City of Champaign passed a citywide "Groundwater Restrictions" ordinance (Council Bill No. 2007-138). This ordinance prohibits the use of groundwater for potable (water used for human or domestic consumption) purposes through the use of groundwater wells. This ordinance, under the IL EPA's regulations, allows companies responsible for cleaning up toxic contamination to NOT clean up contaminated groundwater, because, rather than coming up with a plan to clean-up the water, the companies can cite this city ordinance as their "plan" for how to "address" contaminated groundwater.

Because the ordinance is citywide, AmerenIP is using this ordinance as their means of dealing with groundwater contamination in the 5th & Hill neighborhood. That is, in Ameren's "clean-up" plan that has been approved by the IL EPA, Ameren states that they will "not address" the toxic groundwater because they will rely on the City of Champaign's groundwater ordinance, which functions as an "institutional control" under the IL EPA's guidelines. (more on institutional controls below)

This means that AmerenIP will NOT be cleaning up any of the contaminated groundwater resulting from their toxic site.

Under the IL EPA's strange guidelines, companies can latch on to these ordinances wherever they

exist, and the IL EPA cannot then force the company to come up with a plan for remediating (cleaning) the toxic groundwater.

*NOTE: Any company, with any kind of toxic groundwater contamination, regardless of where it is in the City, can rely on this ordinance to get out of cleaning up the groundwater, as long as the ordinance exists as a citywide ordinance.

WHAT THE ORDINANCE ACTUALLY DOES:

The ordinance passed by the Champaign City Council in June 2007 is a "groundwater ordinance" that prohibits Champaign residents from drilling private water wells for drinking purposes.

However, in the city of Champaign, a 20 year-old ordinance already prohibits residents who are served by public water supplies from drilling private water wells. In other words, if the City's 2007 groundwater ordinance were repealed today, City residents would still be prohibited from drilling private wells.

For the purposes of disallowing private drinking wells, the 2007 ordinance is redundant.

The real purpose of the ordinance, therefore, is to serve as an "institutional control" under the IL EPA's guidelines, in order to give polluting companies a "strategy" for "remediating" contaminated groundwater.

WHAT IS AN INSTITUTIONAL CONTROL?

There are basically two ways to protect humans from coming into contact with toxic contamination:

1. You remove or contain the contamination so that humans do not encounter it; or,
2. You use legal mechanisms to control human behavior so that you keep humans away from the contamination. - These legal mechanisms are called "institutional controls."

The City's 2007 groundwater ordinance is actually known, under the IL EPA, as an "institutional control" ordinance. Institutional control ordinances are made available to polluting corporations (or corporations responsible for pollution) so that, rather than cleaning-up or containing toxic contamination, these corporations can use "legal mechanisms" that supposedly limit residents' contact with toxic chemicals.

Under the IL EPA's Site Remediation Program, whenever local governments enact these ordinances, polluting corporations can latch onto these ordinances and use them as their way of dealing with contamination, rather than coming up with a real clean-up plan.

Institutional controls literally do nothing to remove or reduce toxic contamination.

INSTITUTIONAL CONTROLS SHOULD BE A MEASURE OF LAST RESORT, NOT FIRST RESORT:

Because institutional controls, such as the City's groundwater restriction ordinance, literally do nothing to remove, clean, or contain contamination - and in the case of 5th & Hill, actually do little to alter human behavior to remove humans from coming in contact with contamination - they should be used as a measure of last resort, or as part of a number of other efforts to limit humans' exposure to contamination. They should be used when it is truly impossible to do a physical clean-up, rather than as a measure of first resort, especially in residential neighborhoods.

A real clean-up means removing and reducing, if not eliminating, the amount of toxic contamination actually present in the environment.

WHAT IMPACT DOES THE GROUNDWATER ORDINANCE HAVE ON 5TH & HILL RESIDENTS?

The fact of the matter is that the City's ordinance does nothing to reduce residents' possible exposure to toxic chemicals in the groundwater from the 5th & Hill site because:

a) residents in the 5th & Hill neighborhood do not operate private drinking wells and have no intention of drinking the toxic groundwater, and are in fact already prohibited (by the 20 year-old City ordinance) from drilling private wells; and

b) the residents' and community's risk of exposure to the toxic groundwater is not primarily from ingestion (drinking) but from breathing toxic vapors that are emitted from the groundwater and that travel up through the soil into the places where people live.

THE GROUNDWATER ORDINANCE PRESUMES THAT CONTAMINATED GROUNDWATER IS ONLY A PROBLEM IF YOU DRINK IT:

The groundwater ordinance only prohibits residents from drilling wells and drinking contaminated groundwater.

However, it is important to understand that there are three "pathways" for humans to be exposed to toxins in contaminated groundwater:

1. Ingestion/drinking (this is the pathway this ordinance seeks to exclude, though it is already excluded by the prior 20 year old ordinance);
2. Contact - touching contaminated groundwater (basements flood and people have to get in the basements to clean, etc., and may be encountering contaminated groundwater); and,
3. Inhalation - vapors from contaminated groundwater can through soil and into people's homes, particularly their basements through cracks in the foundation and even through a sump pump. This happens with contaminated soil as well, as in the case of radon gas and how it can enter a person's home through the basement.

Inhalation is actually the main pathway that is of concern to us, and the groundwater ordinance not only does nothing to address inhalation, but it increases the risk by allowing Ameren to leave the contaminated groundwater in place, unaddressed.

THE CITY DOES NOT HAVE THE EXPERTISE TO DETERMINE WHETHER LEAVING TOXIC CONTAMINATED GROUNDWATER IN PLACE IN A RESIDENTIAL AREA IS A HAZARD TO HUMAN HEALTH:

The IL EPA should have the responsibility of figuring out whether and how Ameren should address the groundwater contamination. But under the IL EPA's strange rules, as long as the ordinance exists and Ameren can use it, the IL EPA is prohibited from forcing Ameren to come up with a clean-up plan for the groundwater. We believe that this issue should go back to the IL EPA, but under their rules, the only way to make that happen is to amend the ordinance so that it does not apply to the 5th & Hill area, and then IL EPA will have to work with Ameren to come up with another plan for the groundwater. This information was confirmed to us by Greg Dunn, of the IL EPA.