

DEC 08 2010

STATE OF ILLINOIS  
Pollution Control Board

ILLINOIS POLLUTION CONTROL BOARD  
December 8, 2010

IN THE MATTER OF: )  
)  
TIERED APPROACH TO CORRECTIVE ) R11-9  
ACTION OBJECTIVES (TACO) (INDOOR ) (Rulemaking - Land)  
INHALATION): AMENDMENTS TO 35 ILL.)  
ADM. CODE 742 )

ORIGINAL

**HEARING OFFICER ORDER**

On November 18, 2010, the Board issued an order accepting for hearing this rulemaking proposal filed by the Illinois Environmental Protection Agency (IEPA). The Board's order noted, however, that IEPA's proposal lacked (1) an electronic version of the proposed amendments and (2) the materials proposed to be incorporated by reference into 35 Ill. Adm. Code 742. The Board directed that IEPA "file these items unless the hearing officer orders otherwise for good cause shown." Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742, R11-9, slip op. at 1 (Nov. 18, 2010).

On November 22, 2010, IEPA filed an electronic version of the proposed amendments. On December 1, 2010, IEPA filed a motion for relief from the filing requirements with respect to certain of the materials proposed to be incorporated by reference (Mot.). In the motion, IEPA maintains that the titles for which it seeks relief are already in the Board's possession as "[t]hey are the exact same documents that [IEPA] originally submitted with its proposal in docket R09-9 (which was the first proposal to introduce the indoor inhalation pathway to Part 742)." Mot. at 1. IEPA adds that these titles are "voluminous, multiple volume documents that would be unduly burdensome and costly to copy." *Id.* In the pending R11-9 proceeding, IEPA explains, the proposal "only adds four new titles to the Incorporations by Reference that were not already submitted in the old docket." *Id.* For those new titles, IEPA provides, with the motion, four copies of each of the four publications. *Id.* at 2.

The hearing officer grants IEPA's motion and therefore directs the Clerk to place into the R11-9 record all of those documents from the R09-9 record that were both filed by IEPA and proposed by IEPA to be incorporated by reference. *See* 35 Ill. Adm. Code 101.306(a). The hearing officer further directs the Clerk to place a copy of this order into the R09-9 record.

Finally, two documents currently proposed by IEPA to be incorporated by reference into 35 Ill. Adm. Code 742 were neither addressed in IEPA's December 1, 2010 motion nor filed by IEPA in docket R09-9:

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<sup>1</sup> Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO) (35 Ill. Adm. Code 742), R09-9. On November 18, 2010, the Board granted IEPA's motion for voluntarily withdrawal of the TACO rulemaking proposal in docket R09-9.

(1) "United States Environmental Protection Agency, Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW-846 through Revision IVB (February 2007) available at <http://www.epa.gov/sw-846/main.htm>" (SW-846); and

(2) "'Risk Assessment Guidance for Superfund, Vol. I: Human Health Evaluation Manual (Part E, Supplemental Guidance for Dermal Risk Assessment) Final', EPA Publication No. EPA/540/R/99/005 (July 2004)" (Part E, Dermal Risk Guidance).

First, the hearing officer notes that in the R09-9 proceeding, the Board granted an IEPA motion to waive the requirement to file SW-846 because the document is voluminous and already possessed by the Board. See Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO) (35 Ill. Adm. Code 742), R09-9, slip op. at 1 (Sept. 16, 2008). The hearing officer likewise waives the filing requirement for SW-846 in R11-9. Second, the hearing officer directs IEPA to file four copies of Part E, Dermal Risk Guidance by January 7, 2011.

IT IS SO ORDERED.



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