

ILLINOIS POLLUTION CONTROL BOARD

November 18, 2010

IN THE MATTER OF: )  
)  
PROPOSED AMENDMENTS TO TIERED ) R09-9  
APPROACH TO CORRECTIVE ACTION ) (Rulemaking - Land)  
OBJECTIVES (TACO) (35 ILL. ADM. CODE )  
742) )

ORDER OF THE BOARD (by T.E. Johnson):

The Board today grants the motion of the Illinois Environmental Protection Agency (IEPA) to voluntarily withdraw this rulemaking proposal. Below, the Board provides a brief procedural history of this proceeding before discussing and ruling on IEPA's motion.

**PROCEDURAL HISTORY**

On September 3, 2008, the Board received a rulemaking proposal from IEPA to amend the Board's rules concerning the Tiered Approach to Corrective Action Objectives (TACO). The proposal was docketed as R09-9, Proposed Amendments to Tiered Approach to Corrective Action Objectives (TACO) (35 Ill. Adm. Code 742). With the proposed amendments, IEPA sought both to add the indoor inhalation exposure route to the existing risk-based methodology of TACO and to update remediation objectives for all of TACO's exposure routes.

On September 16, 2008, the Board accepted IEPA's proposal for hearing. The Board held two public hearings, one in Springfield on January 27, 2009, and the other in Chicago on March 18, 2009. The Board received six public comments. The proposal has not proceeded to first notice under the Administrative Procedure Act (5 ILCS 100/5-40 (2008)).

In an order of November 5, 2009, the Board granted IEPA's motion to stay that portion of the rulemaking proposal concerning indoor inhalation, after which IEPA filed several status reports as directed. On October 21, 2010, IEPA filed a motion to voluntarily withdraw the entire rulemaking proposal (Mot.).

**DISCUSSION**

In its motion for voluntary withdrawal of the rulemaking proposal, IEPA represents that since the Board's grant of a partial stay, substantial changes have been made to the indoor inhalation provisions of the proposal. Mot. at 1. IEPA believes that these changes will address the concerns that the United States Environmental Protection Agency (USEPA) had raised with IEPA. *Id.* USEPA's concerns led to IEPA's motion for partial stay.

IEPA asserts, however, that with the passage of over two years since IEPA initially proposed this rulemaking, "the amendments in the remainder of the proposal are now out of date

and in need of further amendment.” Mot. at 1. IEPA seeks to withdraw the rulemaking proposal “in its entirety.” *Id.* at 2. IEPA states that it intends to “imminently file a new regulatory proposal addressing only the indoor inhalation provisions”<sup>1</sup> and to propose “[a]ny additional amendments to Part 742 . . . at some later date.” *Id.*

The Board notes that no participant has filed a response to IEPA’s motion for voluntary withdrawal. The failure to respond constitutes waiver of any objection to the Board granting the motion. *See* 35 Ill. Adm. Code 101.500(d). The Board grants IEPA’s motion, dismisses this rulemaking proposal, and closes the docket.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 18, 2010, by a vote of 4-0.



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John Therriault, Assistant Clerk  
Illinois Pollution Control Board

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<sup>1</sup> On November 9, 2010, IEPA filed a new TACO rulemaking proposal concerning indoor inhalation, which has been docketed as R11-9, Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742. The Board accepted that proposal for hearing in a separate order of November 18, 2010.