

Board Solicits Additional Public Comments Before It Will Adopt Second-Notice Proposal Adding Indoor Inhalation Pathway to TACO

The Board, on January 10, 2013, adopted a *proposed* second-notice opinion and order for public comment in the rulemaking docketed as Tiered Approach to Corrective Action Objectives (TACO) (Indoor Inhalation): Amendments to 35 Ill. Adm. Code 742 (R11-9). Primarily, the amendments add provisions to TACO for the protection of building occupants from “vapor intrusion.” Addressing this “indoor inhalation” exposure route involves evaluating the potential for vapors to migrate into buildings from subsurface volatile chemical contamination. Before proceeding to adopt second-notice rules for review by the Joint Committee on Administrative Rules (JCAR), the Board seeks additional public comment.

Specifically, the Board requests public comment on whether the potential for contamination to diffuse laterally warrants requiring that a minimum “source-building horizontal separation distance” be met before allowing the indoor inhalation exposure route to be excluded based upon building/contamination proximity. The Board also solicits public comment on the addition of rules that would accomplish two things: (1) the TACO Tier 1 and Tier 2 remediation objectives (ROs) for the indoor inhalation exposure route would apply only where the existing or potential building within 100 feet, horizontally, of the contamination has a full concrete slab-on-grade or a full concrete basement floor and walls; and (2) an institutional control would have to be placed on the property whenever the TACO indoor inhalation ROs applied at the site rely upon the assumed presence of a building with a full concrete slab-on-grade or a full concrete basement floor and walls.

Additionally, the Board solicits public comment on whether similar-acting chemical provisions should apply when developing soil gas and groundwater ROs under Tier 1, 2, or 3, given that Johnson & Ettinger Equations 1 and 2 provide “indoor air remediation objectives” for carcinogenic and noncarcinogenic contaminants, respectively, at the point of human exposure, which are then used in the calculation of the soil gas and groundwater ROs. The Board also seeks public comment on whether soil gas ROs capped at the “soil vapor saturation limit” account for the presence of free product.

All public comments must be *received* by the Clerk of the Board by 4:30 pm on Friday, February 1, 2013. This supplemental period of public comment is short for two reasons. First, the issues on which the Board seeks participant input are narrow relative to the breadth of the matters already covered in this rulemaking. Second, Section 5-40(e) of the Illinois Administrative Procedure Act (IAPA) (5 ILCS 100/5-40(e) (2008)) provides that no rule may be adopted, or filed with the Secretary of State, more than one year after the date on which the first-notice period commenced. The first-notice amendments proposed in R11-9 were published in the *Illinois Register* on May 18, 2012 (36 Ill. Reg. 7340). If the Board does not meet the one-year deadline imposed by the IAPA, the Board will need to submit another proposal to first-notice publication, which would delay adoption of the amendments.

To allow the required time for JCAR review and comply with the IAPA’s one-year deadline, the Board plans to place the matter of a final second-notice opinion and order

on the Board's agenda for adoption at the regularly-scheduled meeting of February 21 or March 7, 2013.

Public comments must be filed with the Clerk of the Board. Public comments may be filed at the following address:

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

In addition, public comments may be filed electronically through COOL at www.ipcb.state.il.us. Any questions about electronic filing through COOL should be directed to the Clerk's Office at (312) 814-3629.

Opinions and orders of the Board, hearing transcripts, and other documents in rulemaking records are posted on the Board's Web site and may be downloaded from the Web without charge.

For more information, contact Richard McGill at (312)-814-6983 or email at Richard.McGill@illinois.gov.