

ILLINOIS POLLUTION CONTROL BOARD
October 1, 2009

IN THE MATTER OF:)
)
EXEMPTIONS FROM THE DEFINITION OF) R10-7
VOM, USEPA AMENDMENTS (January 1,) (Rulemaking - Air)
2009 through June 30, 2009))

NOTICE OF HEARINGS

**RECEIVED
CLERK'S OFFICE**

TYPE OF HEARING: Merit hearing

OCT 01 2009

DATE AND LOCATION:

**STATE OF ILLINOIS
Pollution Control Board**

1:00 p.m., Thursday, November 19, 2009
Pollution Control Board, Conference Room
100 West Randolph Street, Suite 11-500
Chicago, Illinois

This hearing may be continued on the record by the Hearing Officer if the level of public interest so warrants.

ATTENDING BOARD MEMBER: G. Tanner Girard

HEARING OFFICER: Michael J. McCambridge
312-814-6924

DATED: October 1, 2009

For the sake of expedience, the Hearing Officer encourages the pre-submission of testimony and exhibits, but will not require such pre-submission. **Any person wishing to submit oral testimony, rather than pre-submitting testimony for introduction into the record as though read, should notify the Hearing Officer in advance of the hearing date.**

HEARING OFFICER ORDER

Scope of the Hearing¹

The Board reserved this docket pursuant to Sections 7.2 and 9.1(e) of the Environmental Protection Act (Act) (415 ILCS 5/7.2 and 9.1(e) (2008)) for adoption of rules identical-in-substance to USEPA amendments to the federal definition of “volatile organic compound” (VOC) (40 C.F.R. 51.100(s) (2008)) that occurred during the period January 1, 2009 through June 30, 2009. The Illinois definition of “volatile organic material” (VOM) is derived from and intended to be the same as that federal definition. VOM is intended by the Board to have the same operative meaning in Illinois as USEPA ascribes to VOC.

Compounds exempted from the definition of VOM have negligible photochemical reactivity. As such, they participate only minimally in formation of tropospheric ozone formation. For this reason, USEPA does not require that they be subject to VOM limitations or VOM content requirements, and USEPA does not allow the State to claim VOM credit for control of their emissions.

USEPA amended its definition of VOC on January 21, 2009 (at 74 Fed. Reg. 3427) to add two compounds to the list of those exempted from the definition. Those compounds are propylene carbonate (PC) (IUPAC name 4-methyl-1,3-dioxolan-2-one; CAS no. 108-32-7) and dimethyl carbonate (DMC) (IUPAC name; CAS no. 616-38-6). USEPA stated as follows with regard to uses for these compounds:

Propylene carbonate . . . is an odorless non-viscous clear liquid with a low vapor pressure (0.023 mm Hg at 20(C) and low evaporation rate compared to many other commonly used organic solvents. It has been used in cosmetics, as an adhesive component in food packaging, as a solvent for plasticizers and synthetic fibers and polymers, and as a solvent for aerial pesticide application. 74 Fed. Reg. at 3438.

Dimethyl carbonate . . . may be used as a solvent in paints and coatings. The petitioner anticipated that it might be used in waterborne paints and adhesives because it is partially water soluble. It is also used as a methylation and carbonylation agent in organic synthesis. It can be used as a fuel additive. 74 Fed. Reg. at 3439.

Sections 7.2 and 9.1(e) of the Act (415 ILCS 5/7.2 and 9.1(e) (2008)) provide the Board little discretion but to adopt amendments that are identical-in-substance to a federal exemption from the definition of VOM. Section 9.1(e) states in pertinent part as follows:

¹ The Board does not usually hold public hearings on identical-in-substance rules. This hearing is held pursuant to Section 9.1(e) of the Environmental Protection Act (415 ILCS 5/9.1(e) (2008)), as required by Section 110 of the federal Clean Air Act (42 U.S.C. § 7410 (2006)), because this proceeding would entail a SIP revision.

The Board shall exempt from regulation under the State Implementation Plan for ozone the volatile organic compounds which have been determined by the U.S. Environmental Protection Agency to be exempt from regulation under state implementation plans for ozone due to negligible photochemical reactivity. In accordance with Section 7.2, the Board shall adopt regulations identical in substance to the U.S. Environmental Protection Agency exemptions or deletion of exemptions . . . in the Federal Register by amending the list of exemptions to the Board's definitions of volatile organic material found at 35 Ill. Adm. Code 211. 415 ILCS 5/7.2 and 9.1(e) (2008).

Section 7.2 adds the following limitations relative to the scope of the Board's discretion:

In the context of a mandate that the Board adopt regulations to secure federal authorization of a program, regulations that are "identical in substance" means State regulations which require the same actions with respect to protection of the environment, by the same group of affected persons, as would federal regulations if USEPA administered the subject program in Illinois . . . [T]he Board shall adopt the verbatim text of such USEPA regulations as are necessary and appropriate for authorization of the program. In adopting "identical in substance" regulations, the only changes that may be made by the Board to the federal regulations are those changes that are necessary for compliance with the Illinois Administrative Code, and technical changes that in no way change the scope or meaning of any portion of the regulations. 415 ILCS 5/7.2 and 7.2 (2008).

For these reasons, the Board lacks the discretion to address the technical merits of exemption of any compound or class of compounds from the definition. The Board has discretion only how best to incorporate the exemption into the Illinois definition of VOM.

The scope of the hearing will be limited to how the Board can best incorporate the federal exemption of propylene carbonate and dimethyl carbonate from the Illinois definition of VOM.

Notice and Service List

Pursuant to 35 Ill. Adm. Code 102.422, a notice and service list will be established. Persons on the notice list will receive notice of all *Board actions and Hearing Officer orders*. 35 Ill. Adm. Code 102.422(a). In comparison, Section 102.422(b) states in part:

The hearing officer may establish a service list for any regulatory proceeding, in addition to the notice list. The hearing officer may direct participants to serve copies of all documents upon the persons listed on the service list. *** For purposes of fast-track rulemakings under Section 28.5 of the Act, participants of record will be the individuals on the service list. 35 Ill. Adm. Code 422(b).

Persons on the service list will receive notice of Board actions and Hearing Officer orders, as well as testimony and filings in the proceeding. The service list is reserved for persons who will be testifying and participating in the rulemaking. With the development of the Board's website (www.ipcb.state.il.us), COOL system and electronic filing, all prefiled testimony, public comments, and other filings will be available for viewing and downloading expeditiously. The only exception will be voluminous filings, which will be available on request. Furthermore, with the development of COOL, persons not on the service list, who wish to file a public comment and only a public comment, need not serve their comments on the service list in this proceeding.

The following persons are on the service list:

Charles Matoesian, Attorney
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276

Michael J. McCambridge, Hearing Officer
Illinois Pollution Control Board
100 West Randolph St., Suite 11-500
Chicago, Illinois 60601

To be placed on either the "Notice List" or the "Service List" contact the Hearing Officer at the address or phone number below. You may also sign up using the COOL system for "e notify" as well as for the notice list. "E Notify" is a system whereby an email is automatically sent when a filing is docketed in the COOL system. This system will notify participants of filings almost immediately and the documents will be available for viewing, downloading, or printing.

Pre-filing of Testimony

The Hearing Officer will allow the submission of pre-filed testimony for the hearing. In the discretion of the Hearing Officer, pre-filed testimony will be entered into the record as if read upon request of the testifying party, after that person has been sworn on the record. Pre-filed testimony for the hearing must be served upon all persons on the service list as of 4:30 p.m., October 30, 2009. Persons may receive a copy of the service list by contacting the Hearing Officer or the Clerk of the Board (312-814-3620) after 9:30 a.m. on November 2, 2009. All testimony must be submitted to the Board and all persons on the service list no later than November 6, 2009.

IT IS SO ORDERED.

Michael J. McCambridge
Hearing Officer
Illinois Pollution Control Board
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(312) 814-4925
mccambm@ipcb.state.il.us