

ILLINOIS POLLUTION CONTROL BOARD
October 19, 2023

IN THE MATTER OF:)
)
DEFINITION OF VOM, USEPA) R24-8
AMENDMENTS (January 1, 2023, through) (Identical-in-Substance Rulemaking - Air)
June 30, 2023))

Proposed Rule. Proposal for Public Comment.

OPINION AND ORDER OF THE BOARD (by B.F. Currie):

The Board today proposes amendments to the Illinois definition of “volatile organic material” (VOM) that are identical in substance (IIS) to United States Environmental Protection Agency (USEPA) actions during the first half of 2023.

This is an IIS rulemaking under Sections 7.2 and 9.1(e) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/7.2 and 9.1(e) (2022)). Section 9.1(e) of the Act (415 ILCS 5/9.1(e) (2022)) requires the Board to expand the exclusion from ozone regulation “due to negligible photochemical reactivity.” 415 ILCS 5/9.1(e) (2022).

Section 9.1(e) of the Act and Section 1-5(c)(1) of the Administrative Procedure Act (APA) (5 ILCS 100/5-1-5(c)(1) (2022)) further provide that Title VII of the Act (415 ILCS 5/Tit. VII (2020)) and Section 5-35 of the APA (5 ILCS 100/5-35 (2020)) do not apply to IIS rulemaking. Accordingly, the Board does not adopt a “First Notice” proposal and then a “Second Notice” proposal for review by JCAR. However, Section 7.2 of the Act requires the Board to consider comments from USEPA, the Illinois Environmental Protection Agency (Agency), the Attorney General, and the public before adopting IIS rules.

During the update period of this docket, on February 8, 2023, the United States Environmental Protection Agency (USEPA) added a single exclusion from the federal definition of “volatile organic compound” (VOC) codified at 40 C.F.R. 51.100(s). The Board today proposes amendments to Illinois’ definition of VOM (35 Ill. Adm. Code 211.7150) that are identical in substance to the USEPA action.

The Board will submit the proposed amendments for publication in the *Illinois Register* and will accept public comments for 45 days after publication. The Board will also hold a public hearing on December 7, 2023. The Board will then adopt the final rules. The Board requests comment on the amendments. The Board expects to adopt final rules no later than February 2, 2024.

SUMMARY OF PROPOSED AMENDMENTS

Federal Amendment Implemented

USEPA took one action that affected the federal definition of VOC during the first half of 2023 and requires corresponding amendments to the Illinois definition of VOM.

February 8, 2023 (88 Fed. Reg. 8226)

USEPA was asked to review the regulatory definition of volatile organic compounds (VOC) to exempt *trans*-1,1,1,4,4,4-hexafluorobut-2-ene (also known as HFO-1336mzz(E); CAS number 66711-86-2). USEPA took final action to revise the regulatory definition of VOC under the Clean Air Act (CAA). This final action adds HFO-1336mzz(E) to the list of compounds excluded from the regulatory definition of VOC on the basis that this compound makes a negligible contribution to tropospheric ozone (O₃) formation.

The Board must add this compound to the list of compounds excluded from the definition of VOC in 35 Ill. Adm. Code 211.7150.

TIMETABLE TO COMPLETE RULEMAKING

The statutory due date for this proceeding is February 8, 2024 (one year after the USEPA action requiring Board action in this docket). To complete this proceeding by that date, the Board adopts this proposal for public comment. The Board will follow the following schedule to allow for Final Adoption by February 8, 2024:

Board order proposing amendments:	October 19, 2023
Submission for <i>Illinois Register</i> publication:	October 20, 2023
Estimated <i>Illinois Register</i> publication date:	November 3, 2023
Date of public hearing:	December 7, 2023
Estimated end of 45-day public comment period:	December 18, 2023
Board order adopting amendments:	January 18, 2024
Estimated filing and effective date:	January 22, 2024
Estimated <i>Illinois Register</i> publication date:	February 2, 2024

Requests for Comments

The Board requests that interested persons review this opinion and order and submit comments on the proposed amendments. Address questions or written comments concerning this rulemaking, noting docket number R24-8, to:

Don A. Brown, Clerk
Pollution Control Board
60 East Van Buren Street, Suite 630
Chicago, Illinois 60605

312-814-3461
don.brown@illinois.gov

PUBLIC HEARING & RULEMAKING RECORD

The Board expects that the Illinois Environmental Protection Agency (Illinois EPA) will submit these amendments to USEPA to be included in the Illinois state implementation plan (SIP) under section 110 of the federal Clean Air Act (42 U.S.C. § 7410(a) (2019)) and the implementing USEPA regulations. *See* 40 C.F.R. § 51.102 and appendix V (2021).

As authorized by 415 ILCS 5/9.1(e) (2022), the Board scheduled a public hearing to allow the public to comment on the proposed amendments and the anticipated SIP revision.

The Board scheduled a public hearing to allow the public to comment on the proposed amendments. The Board will conduct that hearing by videoconference between Chicago and Springfield, as follows:

11:30 a.m., Thursday, December 7, 2023

Michael A. Bilandic Building
Room N505
160 N. LaSalle Street
Chicago

and

Illinois Environmental Protection Agency Building
Illinois Pollution Control Board Hearing Room, Room 1244N, First Floor
1021 North Grand Avenue East
Springfield

Persons wishing to testify on the record must be physically present at either of the two hearing locations given above. This does not limit the right of any person to submit written public comments on the proposed amendments.

The Board invites public comment on the proposed amendments. The Board will receive public comments until at least 45 days after a notice of these proposed amendments appears in the *Illinois Register*. Anyone may file a public comment with the Board through the Clerk's Office On-Line (COOL) through the Board's website (pcb.illinois.gov). Public comments may also be addressed to the Clerk's office at the mailing address listed above.

After the hearing and public comment period, the Board will promptly issue an order adopting final rule amendments. The Board will then file the amendments with the Office of the Secretary of State, and a Notice of Adopted Amendments will appear in the *Illinois Register*. Any Illinois EPA submission of the associated SIP revision to USEPA would follow that Notice.

The Board finds that these measures will satisfy the federal requirements for SIP revision, in 33 U.S.C. § 7410(a) (2019) and 40 C.F.R. § 51.102, as to subjects included in this proceeding.

DISCUSSION

The Board will first explain the USEPA's decision to exclude HFO-1336mzz(E) from the definition of VOC. The Board also explains a nonsubstantive correction made in response to a comment from the Joint Committee on Administrative Rules (JCAR) regarding the definition in 35 Ill. Adm. Code 211.7150.

USEPA's Decision

On April 28, 2022, USEPA proposed a rule in response to a petition to exclude HFO-1336mzz(E) from the definition of VOC. 88 Fed. Reg. 8226. The petition was based on the argument that HFO-1336mzz(E) has a low reactivity relative to the maximum incremental reactivity (MIR) of ethane. 88 Fed. Reg. 8228. HFO-1336mzz(E) may be used in foam expansion or applications and it has significant performance and energy saving advantages. *Id.* The request to exclude was supported by peer reviewed articles which indicate that HFO-1336mzz(E) has a lower reactivity rate than ethane. USEPA determined that the use of HFO-1336mzz(E) is less reactive than ethane based on a comparison of mass-based MIR and molar-based MIR metrics. 88 Fed. Reg. 8231. Therefore, USEPA considers HFO-1336mzz(E) to be negligibly reactive and eligible for VOC-exempt status in accordance with the USEPA's long-standing policy.

JCAR Comment

JCAR asked the Board to correct an error in a chemical name in the definition of VOM. JCAR made that request in different rulemaking (Amendments to Subtitle B, R18-21 (PC 2)). The Board will include the March 22, 2018, comment from JCAR docketed as PC 2 in R18-11, in this docket as PC 1. In the comment, JCAR suggests changing the chemical name Bis(difluoromethoxy)difluoromethane (HFE-236ca12, CAS No. 78522-47-1) to Bis(difluoromethoxy)difluoromethane (HFE-235ca12, CAS No. 78522-47-1). This change removes a lower case "l" from HFE-236ca12 and replaces that with the number one (1). The Board agrees with that change and makes it here.

Non-Substantive Clarifications

The Board also made additional non-substantive changes for purposes of clarity. First the Board deleted the word "also" before the use of "VOM" and "VOC" at the beginning of the definition. The Board removed the unnecessary quote marks as well. Then in Section 211.7150(c), the Board replaced "thereafter" with "after exclusion" to make clear the time being discussed. The Board invites comments on these clarifications.

ORDER

The Board directs the Clerk to provide notice in the *Illinois Register* of the appended proposed amendments to the Illinois definition of VOM in 35 Ill. Adm. Code 211.7150.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on October 19, 2023, by a vote of 4-0.

A handwritten signature in cursive script that reads "Don A. Brown".

Don A. Brown, Clerk
Illinois Pollution Control Board