

Secretary's Order No.: 2010-A-0007

**RE: Approving Final Amendment to 7 DE Admin. Code 1138,
Emission Standards for Hazardous Air Pollutants for Source Categories,
Section 14.0: "Area Source Miscellaneous Parts or Products
Surface Coating Operations".**

Date of Issuance: March 11, 2010

Effective Date of the Amendment: April 11, 2010

Under the authority vested in the Secretary of the Department of Natural Resources and Environmental Control ("Department" or "DNREC") the following findings, reasons and conclusions are entered as an Order of the Secretary in the above-referenced rulemaking proceeding.

Background and Procedural History

This Order considers the proposed regulatory amendments to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, "Area Source Miscellaneous Parts or Products Surface Coating Operations". The proposed new Section 14.0 will affect surface coating operations that spray-apply coatings which contain any compounds of cadmium, chromium, lead, manganese or nickel. This proposed new section is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart HHHHHH, as well as existing requirements found in similar area source standards found throughout Regulation 1138.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds. Additionally,

many of these compounds, except the manganese compounds, are classified as either known or probable human carcinogens by the EPA. It should be noted that this proposed amendment does not apply to facilities that apply surface coatings to motor vehicles (auto body shops) or mobile equipment, as the Department plans to address these sources in the near future with separate regulatory promulgations.

The Department's Air Quality Management (AQM) Section of the Divisions of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notice 2009-09. The Department published the proposed regulatory amendments in the December 1, 2009 *Delaware Register of Regulation* and held a public hearing on January 5, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated March 1, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendment as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendment is well-supported by the record developed by the Department, and adopt the Report to the extent it is consistent with this Order. The Department's experts developed the record and drafted the proposed Amendment. Throughout the entire regulatory development process regarding this promulgation, the Department received public comments from the regulated community, as noted in the Report, and considered and responded to all timely and relevant public comments in making its determination.

I find that the Department's experts in the AQM Section of the DAWM fully developed the record to support adoption of these Amendments. With the adoption of

the regulation amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, “Area Source Miscellaneous Parts or Products Surface Coating Operations”, Delaware will be able to mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH and provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, a number of which have been classified as either known or probable human carcinogens by the EPA.

In conclusion, the following findings and conclusions are entered:

- 1.) The Department has jurisdiction under its statutory authority to issue an Order adopting these proposed Amendments as final;
- 2.) The Department provided adequate public notice of the proposed Amendment, and provided the public with an adequate opportunity to comment on the proposed Amendment, including at a public hearing;
- 3.) The Department held a public hearing on January 5, 2010 on the proposed Amendment in order to consider public comments before making any final decision, and fully considered and responded to all timely and relevant comments received from the regulated community concerning this matter;
- 4.) The Department’s Hearing Officer’s Report, including its recommended record and the recommended Amendment as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendment does not reflect any substantive change from the proposed regulation Amendment as published in the December 1, 2009, *Delaware Register of Regulations*;

6.) The recommended Amendment should be adopted as final regulation Amendments because Delaware will then be enabled to (1) mirror the recently issued federal rule promulgated by the U.S. Environmental Protection Agency (EPA) at 40 CFR Part 63, Subpart HHHHHH; and (2) provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, a number of which have been classified as either known or probable human carcinogens by the EPA. Moreover, the regulation amendment is well supported by documents in the record; and

7.) The Department shall submit this Order approving the final regulation to the *Delaware Register of Regulations* for publication in its next available issue, and provide such other notice as the law and regulation require and the Department determines is appropriate.

/s/ Collin P. O'Mara
Collin P. O'Mara
Secretary

MEMORANDUM

TO: The Honorable Collin P. O'Mara
Cabinet Secretary, Dept. of Natural Resources and Environmental Control

FROM: Lisa A. Vest
Public Hearing Officer, Office of the Secretary
Department of Natural Resources and Environmental Control

RE: Proposed Amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, new Section 14.0: "Area Source Miscellaneous Parts or Products Surface Coating Operations".

DATE: March 1, 2010

I. Background:

A public hearing was held on Tuesday, January 5, 2010, at 6:17 p.m. at the DNREC's Priscilla Building, 156 S. State Street, Dover, Delaware, to receive comment on the Department's proposal to amend 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, by adding a new section, Section 14.0, "Area Source Miscellaneous Parts or Products Surface Coating Operations". This new Section 14.0 will affect surface coating operations that spray-apply coatings which contain any compounds of cadmium, chromium, lead, manganese or nickel. This proposed new section is based upon a federal rule that the U.S. Environmental Protection Agency (EPA) promulgated at 40 CFR Part 63, Subpart HHHHHH, as well as existing requirements found in similar area source standards found throughout Regulation 1138.

The purpose of this proposed regulatory action is to provide increased protection for Delaware citizens against potential adverse health effects linked to a long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds. Additionally, a

number of these metal compounds, except the manganese compounds, are classified as either known or probable human carcinogens by the EPA. It should be noted that this proposed amendment does not apply to facilities that apply surface coatings to motor vehicles (auto body shops) or mobile equipment, as the Department plans to address these sources in the near future with separate regulatory promulgations.

In 1990, Congress directed the EPA to identify emission sources dealing with a list of 189 specific Hazardous Air Pollutants (HAPs), and then to proceed to issue regulations to reduce the HAP emissions from those source categories. Congress further directed the EPA to initially promulgate regulations with regard to the major sources of HAPs, which are typically major chemical plants and/or petroleum plants. Only after the large emission sources were addressed through regulation was the EPA to proceed to address the smaller area source categories. As directed, in 1992 EPA published its initial listing of the major source categories, and from 1993 to 2004 proceeded to issue over 100 regulations which addressed HAP emissions from these major sources.

In 1999, the EPA published a list of the top 33 HAPs that had the greatest impact to public health. From 1999 to 2002, the EPA began to identify additional sources of small facilities, or area sources, and “miscellaneous coatings” (which includes parts and products of those small area sources) was included in EPA’s listing. In 2007, the EPA issued its first regulation dealing with these additional, or new, area sources. On January 9, 2008, EPA issued yet another area source regulation which affected Delaware, to wit: the paint stripping and miscellaneous surface coating operations applied to paint stripping and surface coating operations at various sources.¹

¹ 40 CFR Part 63, Subpart HHHHHH

Upon EPA's promulgation of 40 CFR Part 63, Subpart HHHHHH in 2008, the Department performed a review of area sources in Delaware and determined that (1) there are sources in Delaware that would be subject to the new Federal rule; and that (2) there are notable differences between that Federal rule and existing Delaware regulations concerning such matters, namely, that the Federal rule was somewhat limited in best management practices when compared to existing Delaware practices. Thus, the Department concluded that Delaware should incorporate this new Federal rule into their existing regulations, hence the present action to create a new Section 14.0 to Delaware Regulations Governing the Control of Air Pollution, DE Admin. Code 1138.

The Department decided to reflect the incorporation of the above-referenced EPA regulation into three separate sections of existing Regulation No. 1138, as it involves three different regulated communities within Delaware: (1) paint stripping operations; (2) spray coating operations for miscellaneous parts or products; and (3) spray coating operations for motor vehicles or mobile equipment. The present proposed action, the addition of Section 14.0, concerns only the spray coating operations for miscellaneous parts or products.

Sources subject to Section 14.0 of 7 DE Admin. 1138 would be facilities that spray-apply coatings to various non-roadway transportation vessels (i.e., rail cars, planes, etc.), as well as miscellaneous items, such as office furniture, filing cabinets, and home furniture. The requirements of the new Federal rule entail that all spray coatings be conducted within enclosures, and that the filters of the exhaust of those enclosures have no less than 98% capture efficiency. To improve the transfer of coatings (thereby limiting the amount of overspray), the spray applications themselves will be limited to

only trained painters. To ensure proper operation, Section 14.0 provides best management practices to ensure the compliance of the coating operation, to wit: (1) to install pressure monitoring devices on the filters; (2) to monitor the filter at least daily to ensure proper operation; (3) to conduct spray coating only when the filter pressure is indicated to be in the manufacturer's recommended range; (4) that the operator take corrective actions whenever the filter malfunctions; and (5) to maintain records that demonstrate the proper operation and maintenance of the control system.

In order to promote awareness of this proposed promulgation to the regulated community throughout Delaware, three separate workshops were held by the Department in September of 2009 to explain the newly adopted Federal regulation, as well as the proposed amendment to the existing State regulation. The proposed promulgation was published in the December 1, 2009 edition of the Delaware Register of Regulations. Following that publication, however, there were several errors noted in the draft regulation which were not caught prior to publication in the Register. These errors were of a clerical and/or grammatical type, and were easily corrected by the Department once noticed by staff members. These minor corrections resulted in only non-substantive changes to the originally proposed regulation, and thus no additional legal noticing and/or public hearing is necessary at this time.

It should be noted that no members of the public attended the hearing on January 5, 2010, nor was there any public comment received by the Department with regard to this proposed promulgation. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on January 5, 2010, Jim Snead of the Department's Air Quality Management (AQM) Section of the Divisions of Air and Waste Management (DAWM), offered the Department's forty-two (42) exhibits pertaining to this proposed amendment, and this Hearing Officer entered them into the formal hearing record developed in this matter. Included within those Departmental exhibits was a copy of the Start Action Notice for this promulgation (SAN Nos. 2009-09), copies of the legal notices regarding the holding of the three public workshops held throughout Delaware in September of 2009 and the holding of this public hearing on January 5, 2010, copies of related EPA reference rules upon which the Department relied in the drafting of this proposed amendment, and copies of the actual proposed amendment to 7 DE Admin. Code 1138, to wit: the incorporation of new Section 14.0 to the same.

For the Secretary's review, and in order for the Secretary to gain a thorough understanding of this proposed promulgation, copies of the above-referenced proposed amendments are attached hereto as Appendix "A", and the same are expressly incorporated into this Hearing Officer's Report.

It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process in this matter, and that the Department has met the required public notice obligations regarding this proposed amendment. It should also be noted that the Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendations as proposed should be applicable to all Delaware citizens equally.

III. Conclusions and Recommendations:

Based on the record developed in this matter, I conclude that the Department has provided appropriate reasoning regarding the need for this proposed amendment to 7 DE Admin. Code 1138, Emission Standards for Hazardous Air Pollutants for Source Categories, Section 14.0, “Miscellaneous Parts or Products Surface Coating Operations”. Accordingly, I recommend promulgation of this proposed amendment in the customary manner provided by law.

Further, I recommend the following findings:

1. The Department has jurisdiction under its statutory authority, 7 Del.C., Chapter 60, to make a determination in this proceeding;
2. The Department provided adequate public notice of both the public workshops and the public hearing in a manner required by the law and regulations;
3. The Department held a public hearing in a manner required by the law and regulations;
4. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and believes the same to be lawful, feasible and desirable, and that the recommendation as proposed should be applicable to all Delaware citizens equally;
5. Promulgation of the aforementioned proposed amendment to 7 DE Admin. Code 1138 will create a new Section, 14.0, to specifically regulate surface coating operations that spray-apply coatings that contain compounds of cadmium, chromium, lead, manganese, or nickel, thus enabling Delaware to

mirror the recent Federal rule promulgated by the EPA, to wit: 40 CFR Part 63, Subpart HHHHHH;

6. The aforementioned proposed amendment to 7 DE Admin. Code 1138 will provide increased protection for Delaware citizens against potential adverse health effects linked to long-term exposure to cadmium, chromium, lead, manganese, or nickel compounds, many of which (except manganese) are classified as either known or probable human carcinogens by the EPA;
7. The creation of new Section 14.0 to 7 DE Admin. Code 1138 will not apply to facilities that apply surface coatings to motor vehicles (auto body shops) or mobile equipment, as the Department plans to address these sources in a separate promulgation later in 2010;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed amendment to this regulation, as published in the December 1, 2009 *Delaware Register of Regulations* and as subsequently revised for non-substantive changes and set forth within Appendix "A" hereto, are adequately supported, not arbitrary or capricious, and are consistent with the applicable laws and regulations. Consequently, they should be approved as a final regulation amendment, which shall go into effect ten days after their publication in the next available issue of the *Delaware Register of Regulations*;

10. The Department shall submit the proposed regulation amendment as final to the Delaware *Register of Regulations* for publication in its next available issue, and shall provide written notice to the persons affected by the Order.

 /s/ Lisa A. Vest .
LISA A. VEST
Public Hearing Officer