

Secretary's Order No.: 2010-A-0030

**RE: Approving Final Amendments to 7 DE Admin. Code 1124,
Control of Volatile Organic Compound Emissions:
Section 11.0, "Mobile Equipment Repair and Refinishing"**

Date of Issuance: September 17, 2010

Effective Date of the Amendment: October 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 proposed regulation amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 11.0, "Mobile Equipment Repair and Refinishing". The purpose of these proposed amendments is to conform to a new model rule developed by the Ozone Transport Commission (OTC). The other OTC states are in the process of adopting a similar regulation. This proposed revision to Delaware's existing Regulation No. 1124 reduces the volatile organic compound (VOC) contents of currently regulated coatings, regulates additional coating categories, requires the use of coating application equipment that provides for high transfer efficiency, and requires that surface cleaning solvent contain no more than 25 grams of VOC per liter.

The Department's Division of Air Quality commenced the regulatory development process with Start Action Notice 2009-34. The Department published the

proposed regulatory amendments in the May 1, 2010 *Delaware Register of Regulations* and held a public hearing on June 10, 2010. The Department's presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer's Report dated September 9, 2010 (Report). The Report recommends certain findings and the adoption of the proposed Amendments as attached to the Report as Appendix A.

Findings and Discussion

I find that the proposed Amendments are 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 Amendments. The Department received public comments, 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 Division of Air Quality fully developed the record to support adoption of these Amendments. With the adoption of these regulatory amendments, Delaware will conform to a new model rule developed by the Ozone Transport Commission (OTC), and will mirror the other OTC states who are in the process of adopting similar regulations as well.

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 Amendments, and provided the public with an adequate opportunity to comment on the proposed Amendments, including at a public hearing;

3.) The Department held a public hearing on June 10, 2010 on the proposed Amendments 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 Amendments as set forth in Appendix A, are adopted to provide additional reasons and findings for this Order;

5.) The recommended Amendments do not reflect any substantive changes from the proposed regulation Amendments as published in the May 1, 2010, *Delaware Register of Regulations*;

6.) The recommended Amendments should be adopted as final regulation Amendments because (1) Delaware will be enabled to conform to a new model rule developed by the Ozone Transport Commission (OTC); (2) the Department's revisions to Section 11.0 of 7 DE Admin. Code 1124 will reduce the volatile organic compound (VOC) contents of currently regulated coatings, regulate additional coating categories, require the use of coating application equipment that provides for high transfer efficiency, and require that surface cleaning solvent contain no more than 25 grams of VOC per liter; and (3) the regulation amendments are well supported by documents in the record; and that

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 Amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions; Section 11.0, "Mobile Equipment Repair and Refinishing"

DATE: September 9, 2010

I. Background:

A public hearing was held on Thursday, June 10, 2010, at 6:00 p.m. at DNREC's Richardson and Robbins Auditorium, 89 Kings Highway, Dover, Delaware, to receive comment on proposed amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions; Section 11.0, "Mobile Equipment Repair and Refinishing". The purpose of these proposed amendments is to conform to a new model rule developed by the Ozone Transport Commission (OTC). The other OTC states are in the process of adopting a similar regulation. This proposed revision to Delaware's existing Regulation No. 1124 reduces the volatile organic compound (VOC) contents of currently regulated coatings, regulates additional coating categories, requires the use of coating application equipment that provides for high transfer efficiency, and requires that surface cleaning solvent contain no more than 25 grams of VOC per liter.

Delaware is in non-attainment of the federally established national ambient air quality standard for ground-level ozone, often referred to as smog. Ozone is not normally

emitted from sources, but is formed in the atmosphere through the reaction of volatile organic compounds (VOC) and nitrogen oxides (NOx), particularly on warm, sunny days. Therefore, Delaware seeks to improve the regulation of emissions of VOC in order to reach attainment status.

Until now, the Delaware auto refinishing industry has been regulated mainly by a federal rule, to wit: 40 CFR 59.100, as shown in 64 FR 48815 (published September 11, 1998). On November 11, 2001, Regulation 1124, Section 11.0, “Mobile Equipment Repair and Refinishing” became effective in Delaware. This regulation, based upon a model rule developed by the Ozone Transport Commission (OTC), did not regulate VOC content, but did institute control of coating spraying and VOC handling activities to further reduce VOC emissions below the federal rule which remains in effect.

The OTC, an organization established by Congress under the Clean Air Act, is charged with helping twelve (12) Northeast and Mid-Atlantic States and the District of Columbia control ground-level ozone. Recently, the OTC revised their auto refinish model rule to reflect improvements in low-VOC, water-borne coating technology, first advanced by the California Air Resources Board (CARB) in their 2005 Suggested Control Measure (SCM) for Automotive Coatings. At least eight California air quality control districts have formally adopted the CARB SCM, five with a compliance date of January 1, 2010, and the remaining three with compliance dates no later than July 1, 2010.

Since conversion from solvent-borne to water-born coatings requires some spray equipment modifications and retraining of painting staff, the successful experience in California has been gratifying. Manufacturers have developed appropriate programs to

help shops with the transition, and discussions between DNREC and business organizations (such as DuPont, PPG and Akzo Nobel) within Delaware's regulated community have found such entities fully supportive of this regulatory activity.

Recognizing that this proposed regulatory promulgation represented a significant perceived change in operation, DNREC reached out to the regulated community to start exposing Delaware body shop personnel to these proposed revisions while the OTC model rule was still in development. Using the listing of permitted shops, three seminars (one held in each county of Delaware) entitled "Best Practices in Collision Repair" were held with presentations by EPA personnel from the "Design for the Environment Auto Refinish Project" group, and from DNREC Divisional staff (Air Quality) who were working on developing Delaware's new regulations pertaining to auto refinishing. Shortly thereafter, DNREC held three workshops (again, one in each county) in order for the regulated community to review the draft proposed Delaware regulation. Concerns with the allowable VOC content of cleaning solvent were explored in those workshops, and the Department engaged in discussions with the regulated community, resulting in a satisfaction resolution for all affected by this proposed promulgation. Other areas of concern expressed in the workshops and subsequent discussions resulted in a number of revisions to the original draft regulation.

It should be noted that no members of the public attended the hearing on June 10, 2010. There was, however, public comment received by the Department with regard to this proposed promulgation, and the same will be addressed in detail below. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on June 10, 2010, Gene Pettingill of the Department's Division of Air Quality Management offered the Department's twenty-four (24) exhibits pertaining to these proposed amendments, 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. 2009-34), copies of the legal notices regarding the holding of this public hearing on June 10, 2010, copies of related reference rules upon which the Department relied in the drafting of these proposed amendments, and copies of the actual proposed amendments to the aforementioned Section (11.0) of 7 DE Admin. Code 1124.

Also contained within the Department's exhibits were copies of the public comment received from Jim Sell (representing the American Coatings Association [ACA], formerly the National Paint and Coating Association (NPCA)). In an email to the Department on June 10, 2010, Mr. Sell thanked the Department for listening to and working with ACA throughout the regulatory promulgation process to further modify Delaware's rule and make this proposed revision "...a more effective, reasonable and enforceable regulation." Concerns were voiced, however, that there might be a clerical error with regard to the standard specified for SCM VOC limits for "truck bed liner coating[s]", and so Mr. Sell questioned the Department on this particular issue. Mr. Pettingill responded to Mr. Sell in a return email dated June 11, 2010, clarifying that the stated VOC limit for this matter was, in fact, as stated, and that it was not a typographical error. Mr. Pettingill further reminded Mr. Sell that this issue was addressed in the workshops held by the Department prior to the actual public hearing of June 10, 2010.

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 these proposed amendments. 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 these proposed amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions: Section 11.0, "Mobile Equipment Repair and Refinishing". Accordingly, I recommend promulgation of these proposed amendments 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 the proceeding 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 considered all timely and relevant public comments in making its determination;
5. The Department has reviewed these proposed amendments 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;
6. Promulgation of the aforementioned proposed amendments to 7 DE Admin. Code 1124 will allow Delaware to conform to a new model rule developed by the Ozone Transport Commission (OTC), and will permit Delaware to mirror the other OTC states who are in the process of adopting a similar regulation as well;
7. The aforementioned proposed amendments to Section 11.0 of 7 DE Admin. Code 1124 will reduce the volatile organic compound (VOC) contents of currently regulated coatings, regulate additional coating categories, require the use of coating application equipment that provides for high transfer efficiency, and require that surface cleaning solvent contain no more than 25 grams of VOC per liter;
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed amendments to these regulations, as published in the May 1, 2010 *Delaware Register of Regulations* as 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, 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 amendments 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

Ahear\ Reg.1124.Sect.11.0.Amndmts.2010.Ord.