

Secretary's Order No.: **2009-A-0008**

RE: Proposed Amendments to Regulation No. 1141 of the *State of Delaware Regulations Governing the Control of Air Pollution: "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products"* - Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants)

Date of Issuance: March 16, 2009

Effective Date of the Amendment: April 11, 2009

I. Background:

A public hearing was held on Wednesday, January 28, 2009, at 6:00 p.m. at the DNREC Priscilla Building conference room, 156 S. State Street, Delaware, to receive public comment on the proposed amendment to existing Delaware Regulation 1141, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products": Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants). The purpose of this amendment is to reduce volatile organic compounds (VOCs) from some commercial and consumer products sold, distributed, manufactured or used in Delaware. VOCs and other compounds can react in the lower atmosphere during hot, sunny days to form ground-level ozone. High levels of ground-level ozone can damage lung tissue, aggravate respiratory conditions and make people more susceptible to respiratory infections. Children are especially vulnerable to ozone's harmful effects.

Currently, Delaware does not meet federal ground-level ozone air quality standards. Delaware is one of twelve Northeast states (and the

District of Columbia) that are part of the Ozone Transport Commission created under the federal Clean Air Act, which works to develop and implement solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. This proposed amendment to Delaware Regulation No. 1141 is based on the recently developed Ozone Transport Commission model rules, which in turn were based on similar California rules that have been in existence since 1998. The amendment, once promulgated, will reduce VOC emissions in Delaware and will become part of DNREC's plan to attain the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) by 2010.

The proposed amendment to Regulation No. 1141 revises existing Section 2.0 by adding the sale, distribution, and manufacture of 23 additional consumer products and product types to the 89 products already in the original rule, which became effective in Delaware in 2005. These products include personal hygiene and grooming, home cleaning, and cleaning of electrical and electronic equipment. If adopted, Section 2.0 of this amendment would reduce such VOC emissions in Delaware by up to 220 tons per year.

Additionally, a new section to existing Regulation 1141, entitled Section 4.0, "Adhesives and Sealants" is proposed at this time. This new section would establish VOC limits for commercially-used adhesive and sealant products, including 25 adhesives, 4 adhesive primers, 5 sealants and 3 sealant primers. The products are primarily used in home

construction, carpet and roof installation, auto repair, and tire retreading operations. If adopted, Section 4.0 is projected to reduce VOC emissions by approximately 365 tons per year.

Various members of the public attended this hearing on January 28, 2009 to offer public comment with regard to the aforementioned amendments to Delaware's existing Regulation 1141, and those comments were thoroughly addressed by the Department during this regulatory promulgation. Proper notice of the hearing was provided as required by law.

After the hearing, the Hearing Officer prepared her report and recommendation in the form of a Hearing Officer's Memorandum to the Secretary dated February 10, 2009, and that Report in its entirety is expressly incorporated herein by reference.

II. Findings:

The Department has provided a reasoned analysis and a sound conclusion with regard to this proposed regulatory action, as reflected in the Hearing Officer's Memorandum of February 10, 2009, which again is attached and expressly incorporated into this Order in its entirety. Moreover, the following findings and conclusions are entered at this time:

1. The Department has jurisdiction under its statutory authority 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 has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined it to be lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens and members of the regulated community equally in order to provide increased public health to Delaware's citizens, as well as to provide greater consistency between current state air toxics standards and the recently promulgated federal standard on which this proposed amendment is based;
5. Promulgation of this proposed amendment would update Delaware's requirements to be consistent with the federal requirements, and is one of several regional measures being adopted to aid in the attainment and maintenance of the eight-hour ozone NAAQS by 2010;
6. The Department anticipates that the revisions to Section 2.0 (Consumer Products) will result in 220 tons per year VOC reduction in the State of Delaware, and that the addition of

Section 4.0 (Adhesives & Sealants) will result in a reduction of approximately 365 tons per year VOC reduction as well;

7. The Department's Response Document dated February 9, 2009, provides a thorough, accurate and balanced summary of the record, and is expressly incorporated herein for that purpose.
8. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
9. The Department's proposed regulatory amendments to Delaware's existing Regulation 1141, as published in the January 1, 2009 *Delaware Register of Regulations* and as revised and set forth within Attachment "B" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and
10. The Department shall submit the proposed regulation as a final regulation 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.

III. Order:

Based on the record developed, as reviewed in the Hearing Officer's Memorandum dated February 10, 2009, and expressly incorporated herein, it is hereby ordered that the proposed amendments to existing Delaware Regulation No. 1141, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products": Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants), be promulgated in final form in the customary manner and established rule-making procedure required by law.

IV. Reasons:

The promulgation of the aforementioned amendments to existing State of Delaware Regulation 1141 will bring Delaware into compliance with Federal standards by updating Delaware's requirements, where appropriate, to be consistent with the same, and will also result in better public health standards for Delaware's citizens. Moreover, this promulgation will reduce VOC emissions in Delaware and will become part of the State of Delaware's plan to attain the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) by 2010.

In developing this regulation, the Department has balanced the absolute environmental need for the State of Delaware to promulgate regulations concerning this matter with the important interests and

public concerns surrounding the same, in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ David S. Small
David S. Small
Acting Secretary

MEMORANDUM

TO: David S. Small, Acting Secretary

FROM: Lisa A. Vest, Hearing Officer

RE: Proposed Amendments to Regulation No. 1141 of the *State of Delaware Regulations Governing the Control of Air Pollution: “Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products” - Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants)*

DATE: February 10, 2009

I. Background:

A public hearing was held on Wednesday, January 28, 2009, at 6:00 p.m. at the DNREC Priscilla Building conference room, 156 S. State Street, Delaware, to receive public comment on the proposed amendment to existing Delaware Regulation 1141, “Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products”: Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants). The purpose of this amendment is to reduce volatile organic compounds (VOCs) from some commercial and consumer products sold, distributed, manufactured or used in Delaware. VOCs and other compounds can react in the lower atmosphere during hot, sunny days to form ground-level ozone. High levels of ground-level ozone can damage lung tissue, aggravate respiratory conditions and make people more susceptible to respiratory infections. Children are especially vulnerable to ozone’s harmful effects.

Currently, Delaware does not meet federal ground-level ozone air quality standards. Delaware is one of twelve Northeast states (and the District of Columbia) that are part of the Ozone Transport Commission created under the federal Clean Air Act, which works to develop and implement solutions to the ground-level ozone problem in the Northeast and Mid-Atlantic regions. This proposed amendment to Delaware Regulation No. 1141 is based on the recently developed Ozone Transport Commission model rules, which in turn were based on similar California rules that have been in existence since 1998. The amendment, once promulgated, will reduce VOC emissions in Delaware and will become part of DNREC's plan to attain the 8-hour ground-level ozone National Ambient Air Quality Standard (NAAQS) by 2010.

The proposed amendment to Regulation No. 1141 revises existing Section 2.0 by adding the sale, distribution, and manufacture of 23 additional consumer products and product types to the 89 products already in the original rule, which became effective in Delaware in 2005. These products include personal hygiene and grooming, home cleaning, and cleaning of electrical and electronic equipment. If adopted, Section 2.0 of this amendment would reduce such VOC emissions in Delaware by up to 220 tons per year.

Additionally, a new section to existing Regulation 1141, entitled Section 4.0, "Adhesives and Sealants" is proposed at this time. This new section would establish VOC limits for commercially-used adhesive and

sealant products, including 25 adhesives, 4 adhesive primers, 5 sealants and 3 sealant primers. The products are primarily used in home construction, carpet and roof installation, auto repair, and tire retreading operations. If adopted, Section 4.0 is projected to reduce VOC emissions by approximately 365 tons per year.

Various members of the public attended this hearing on January 28, 2009 to offer public comment with regard to the aforementioned amendments to Delaware's existing Regulation 1141, and those comments will be addressed below. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on January 29, 2009, Gene Pettingill, Engineer III with the Department's Division of Air and Waste Management, offered the Department's 51 exhibits pertaining to the proposed amendment to Delaware's Regulation 1141. Those exhibits were entered into the record by this Hearing Officer at that time. For brevity's sake, a copy of that extensive Exhibit List is attached hereto as Attachment "A", and is expressly incorporated into this Hearing Officer's Report and the public hearing record in this matter. Mr. Pettingill then proceeded to give a brief presentation regarding the Department's proposed regulatory changes concerning Regulation 1141, specifically, revisions to existing Section 2.0 (Consumer Products) and the proposed addition of Section 4.0 (Adhesives & Sealants).

Mr. Pettingill began by explaining that Regulation 1141 governs the emission of VOCs, which the Department needs to restrict in order to meet the ground-level ozone

levels set by federal regulations. Section 2.0 of Regulation 1141 (the “Consumer Products” portion of that regulation), was originally adopted in 2002 under what was then referred to as the One-Hour Federal Ground-Level Ozone Standard. As a result of that promulgation, in concert with several other current regulations, Delaware met that federal standard in 2005. However, the federal standards have recently been changed to an eight-hour ozone standard, and so Delaware now needs to modify its current regulations in order to come into compliance with this updated federal standard.

The Ozone Transport Commission, which is comprised of 12 states (and the District of Columbia) along the Northeast and the Mid-Atlantic Region, was established by Congress to help individual states promulgate regulations to meet federal ground-level ozone standards. To that end, they have created a set a model rules that the states can utilize when drafting their individual regulations to meet the aforementioned federal standards. Mr. Pettingill explained that the Department utilized the OTC’s model rule on consumer products when drafting the present proposed amendments to Section 2.0, as well as the addition of Section 4.0 for Delaware’s existing Regulation No. 1141. The Department held a public workshop on July 30, 2008 to allow informed public input into the draft proposed regulations.

Following the conclusion of the Department’s presentation at the public hearing on January 28, 2009, there were several members of the public that offered both questions and comments for the Department with regard to this proposed promulgation. These comments, along with the Department’s responses to same, were provided to this Hearing Officer in a formal Response Document dated February 9, 2009. This Response Document is attached hereto as Attachment “B”, and is expressly incorporated herein as

part of the public record in this matter. Attachment “B” also includes a copy of the actual proposed amendments as revised to Delaware’s existing Regulation 1141, which is also being expressly incorporated into the public record generated in this matter at this time.

The aforementioned Response Document from the Department’s Division of Air & Waste Management (as contained in Attachment “B”) encompasses the full range of comment as contained in the public record. There were ten comments, of which the Department recommends adoption of eight and rejection of two. Each comment was meticulously organized according to its source (e.g., transcript, exhibit, letter, etc.), followed by a thorough and rational discussion of the issue based on the record. In most instances, no changes were warranted, but in other situations minor amendments were desirable to reflect existing realities, to correct obvious errors, or to clarify wording. None of these minor changes were deemed substantive to require another hearing.

It should be noted that the Department adhered to all appropriate Delaware statutes and the regulatory development process during the development of these proposed amendments to Regulation No. 1141. Additionally, the Department completed its review of this proposal under the Regulatory Flexibility Act, and determined that this proposed amendment promulgation is lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens and members of the regulated community equally in order to provide increased public health to Delaware’s citizens.

III. Conclusions and Recommendations:

As noted earlier, the Department's Response Document not only captures the relevant aspects of the public record, but also provides a thorough discussion of the issues along with the Department's recommended resolution of each. This Hearing Officer found the dimensions of said Response Document to be very rational and even-handed, and the proposed resolutions to be reasonable and consistent with the record. Based on the above discussion, I conclude that the Department has provided appropriate reasoning regarding the need for the proposed amendments to existing Delaware Regulation 1141, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products" - Section 2.0 (Consumer Products) and Section 4.0 (Adhesives & Sealants), and has thoroughly addressed stakeholder issues as well as taken the steps necessary to protect the public health of the citizens of Delaware. Accordingly, I recommend promulgation of these proposed amendments to this regulation in the customary manner provided by law.

Further, I recommend the following findings:

11. The Department has jurisdiction under its statutory authority to make a determination in this proceeding;
12. The Department provided adequate public notice of the proceeding and the public hearing in a manner required by the law and regulations;

13. The Department held a public hearing in a manner required by the law and regulations;
14. The Department has reviewed this proposed amendment in the light of the Regulatory Flexibility Act, and has determined it to be lawful, feasible and desirable, and that the revisions as proposed should be applied to all Delaware citizens and members of the regulated community equally in order to provide increased public health to Delaware's citizens, as well as to provide greater consistency between current state air toxics standards and the recently promulgated federal standard on which this proposed amendment is based;
15. Promulgation of this proposed amendment would update Delaware's requirements to be consistent with the federal requirements, and is one of several regional measures being adopted to aid in the attainment and maintenance of the eight-hour ozone NAAQS by 2010;
16. The Department anticipates that the revisions to Section 2.0 (Consumer Products) will result in 220 tons per year VOC reduction in the State of Delaware, and that the addition of Section 4.0 (Adhesives & Sealants) will result in a reduction of approximately 365 tons per year VOC reduction as well;

17. The Department's Response Document dated February 9, 2009, provides a thorough, accurate and balanced summary of the record, and is expressly incorporated herein for that purpose.
18. The Department has an adequate record for its decision, and no further public hearing is appropriate or necessary;
19. The Department's proposed regulatory amendments to Delaware's existing Regulation 1141, as published in the January 1, 2009 *Delaware Register of Regulations* and as revised and set forth within Attachment "B" hereto, is adequately supported, not arbitrary or capricious, and is consistent with the applicable laws and regulations. Consequently, it should be approved as a final regulation, which shall go into effect ten days after its publication in the next available issue of the *Delaware Register of Regulations*; and
20. The Department shall submit the proposed regulation as a final regulation 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

Hearing Officer

Ahear\ Reg.1141.Amndmt.09.Sect.2.0 and 4.0.ORD