

Secretary's Order No.: **2006-A-0045**

RE: Proposed Amendments to Delaware Regulation #41: "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, Section 1 – Architectural and Industrial Maintenance Coatings" of the State of Delaware "Regulations Governing the Control of Air Pollution"

Date of Issuance: October 16, 2006

Effective Date of the Amendment: November 11, 2006

I. Background

A public hearing was held on October 2, 2006, to receive comment on proposed revisions to the State Implementation Plan for the Attainment and Maintenance of the National Ambient Air Quality Standards by amending the existing Delaware No. 41 (now Regulation #1141) entitled, "Limiting Emissions of Volatile Organic Compounds From Consumer and Commercial Products, Section 1 – Architectural and Industrial Maintenance Coatings" of the State of Delaware "Regulations Governing the Control of Air Pollution", under Start Action Notice (SAN) 2006-08. The proposed amendments concern the specification of a finite period for certain record retention by manufacturers, a revision to certain

definitions of products affected by this Regulation, corrections of certain typographical errors contained within the existing Regulation, and the renumbering of the entire regulation to be consistent with the style manual of the Code of Delaware Regulations.

The need for these proposed revisions arose as a result of comments received by the Department from stakeholders after the public hearing held on August 22, 2001, which concerned the original promulgation of Section 1 of Regulation 41. The Department subsequently committed to revise Section 1 of this Regulation at the time of the Environmental Appeals Board hearing held in December of 2002, specifically, to reflect the change in the specialty primer definition to include sealing in efflorescence, as well as to include a record retention period of five (5) years by manufacturers. At both the time preceding the hearing of October 2, 2006, and at the hearing itself, the Department received no public objections or concerns about these proposed amendments, with the exception of an e-mail from Jim Sell of the National Paint & Coatings Association, which expressed full support by the NPCA for these proposed amendments to Regulation No. 41. 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 Report to the Secretary dated October 12, 2006, and that report, with its attachment, is expressly incorporated herein by reference.

II. Findings and Conclusions

1. Proper notice was provided as required by law.
2. Promulgation of this proposed amendment will specify a finite period for certain record retention by manufacturers, to wit: five (5) years; will revise the definition of a specialty primer, sealer, undercoater product to include sealing in efflorescence; will correct certain typographical errors which presently exist; and will renumber the entire regulation to be consistent with the style manual of the Code of Delaware Regulations.
3. Promulgation of these proposed revisions will made Delaware's record retention period equivalent to that of Maryland and New Jersey, both of which are fellow Ozone Transport Commission (OTC) member states.
4. With the revision to the definition of a "Specialty Primer, Sealer, and Undercoater", Delaware's definition will be equivalent to that of Pennsylvania, also a fellow OTC member state.
5. These revisions, once promulgated, will fulfill DNREC's commitment made previously to reflect the required change to Delaware's specialty primer definition and to include a specific record retention period within this Regulation.

III. Order

In view of the above findings, it is hereby ordered that the proposed amendments to Regulation No. 41, Section No. 1, (hereinafter to be referred to as Regulation No. 1141, Section No. 1) should be promulgated in final form in accordance with the customary and established rule-making procedure required by law.

IV. Reasons

The adoption of these revisions to Regulation 1141, Section No. 1, represents careful and reasoned action by this agency to consider all comments provided by the public with respect to this issue, and has reflected industry concerns within these proposed revisions. Moreover, in development of these revisions, the Department has taken steps to ensure continued safety of the public health and environment, while taking into account industry concerns, and will assist the Department in furtherance of the policy and purposes of 7 Del. C., Ch. 60.

/s/ John A. Hughes .

John A. Hughes
Secretary