

Secretary's Order No.: 2011-A-0003

RE: Approving Final Amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions; Section 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds"; Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating"; Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems"; and Section 45.0, "Industrial Cleaning Solvents"

Date of Issuance: January 20, 2011

Effective Date of the Amendment: March 11, 2011

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 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds"; Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating"; Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems"; and Section 45.0, "Industrial Cleaning Solvents". It should be noted that this regulatory promulgation initially included additional proposed amendments to be made to 7 DE Admin. Code 1124, at Section 47.0, "Offset Lithographic Printing". The Department has, at this time, formally withdrawn the proposed amendments to Section 47.0, as substantive changes to the same were necessitated as a result of the public comment received by the Department

in this matter. The Department will be addressing its revised proposed amendments to Section 47.0 of 7 DE Admin. Code 1124 in a separate regulatory promulgation in the immediate future.

Section 182(b)(2) of the Clean Air Act requires that all ozone non-attainment areas, including Delaware, must develop or update relevant regulations to implement Reasonably Available Control Technology controls on emission sources covered in the U.S. Environmental Protection Agency (“EPA”)’s Control Techniques Guidelines (“CTG”), or Alternative Control Techniques, and submit the regulations to EPA as State Implementation Plan revisions.

The aforementioned six sections of 7 DE Admin. Code 1124 addressed within these proposed regulation amendments were originally developed in the early 1990’s, based on EPA’s CTGs. From September 2006 to September 2008, the EPA updated relevant CTGs to reflect technology developments or to expand Volatile Organic Compound (“VOC”) emission controls. The aforementioned proposed revisions reflect DNREC’s incorporation of the recent CTG information into existing Delaware Regulation 1124.

The Department’s Air Quality Management (AQM) Section of the Division of Air and Waste Management (DAWM) commenced the regulatory development process with Start Action Notices 2009-14, 2009-22, 2009-23, 2009-26, 2009-24, and 2009-25. The Department published the proposed regulatory amendments in the May 1, 2010 *Delaware Register of Regulations* and held a public hearing on June 2, 2010. The Department’s presiding hearing officer, Lisa A. Vest, prepared a Hearing Officer’s Report dated

December 12, 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 in AQM developed the record and drafted the proposed Amendments. It should be noted that the Department received no public comments with regard to the proposed amendments to the aforementioned Sections to 7 DE Admin. Code 1124.

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 these regulatory amendments, Delaware will have the Department's regulations conform to EPA's regulations, as required by the Clean Air Act.

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 2, 2010 on the proposed Amendments in order to consider public comments before making any final decision;

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 new CTG as issued by the EPA; (2) the Department's revisions to 7 DE Admin. Code 1124 will enable Delaware to do the following: (i) add a new definition section and update the existing work practice standards according to the new CTGs with regard to the handling, storage, and disposal of VOC [Section 8.0]; (ii) set more stringent VOC limits for automobile and light-duty truck coating operations [Section 13.0]; (iii) expand the regulated scope from paper coating units only to "paper, film and foil coating units" [Section 16.0]; (iv) create a more stringent and uniform standard for all 5 coatings of flat wood paneling products [Section 23.0]; (v) add provisions for flexible packaging printing presses and establish efficiency requirements for control systems to be installed on the flexible packaging printing presses [Section 37.0]; and (vi) clarifies that the regulatory requirements for industrial cleaning solvents are triggered based on a limit of "VOC emissions" rather than "solvent used" [Section 45.0]; 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 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds"; Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating"; Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems"; and Section 45.0, "Industrial Cleaning Solvents".

DATE: December 12, 2010

I. Background:

A public hearing was held on Wednesday, June 2, 2010, at 6:00 p.m. at the Department of Natural Resources and Environmental Control ("DNREC", "Department"), 89 Kings Highway, Dover, Delaware to receive comment on proposed amendments to 7 DE Admin. Code 1124, Control of Volatile Organic Compound Emissions; Section 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds"; Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating"; Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems"; and Section 45.0, "Industrial Cleaning Solvents". The purpose of these proposed amendments is to conform to new Control Techniques Guidelines (CTG) issued by the U.S. Environmental Protection Agency (EPA).

It should be noted that this regulatory promulgation initially included additional proposed amendments to be made to 7 DE Admin. Code 1124, at Section 47.0, “Offset Lithographic Printing”. The Department has, at this time, formally withdrawn the proposed amendments to Section 47.0, as substantive changes to the same were necessitated as a result of the public comment received by the Department in this matter. The Department will be addressing its revised proposed amendments to Section 47.0 of 7 DE Admin. Code 1124 in a separate regulatory promulgation in the immediate future.

Section 182(b)(2) of the Clean Air Act (CAA) requires all ozone non-attainment areas, including Delaware, to update relevant regulations for Reasonably Available Control Technology (RACT) controls for emission sources covered in EPA’s CTG, and to submit the regulations to EPA as State Implementation Plan (SIP) revisions. The aforementioned six sections of 7 DE Admin. Code 1124, as addressed within these proposed regulation amendments, were originally developed in the early 1990’s based on EPA’s CTGs. From September 2006 to September 2008, the EPA updated relevant CTGs to reflect technology developments or to expand Volatile Organic Compound (“VOC”) emission controls. The aforementioned proposed revisions reflect DNREC’s incorporation of the recent CTG information into existing Delaware Regulation 1124.

The following is a brief summary of the revisions to each of the affected sections of existing Delaware Regulation 1124:

Section 8.0: Handling, Storage and Disposal of VOC:

For this section, the proposed revision adds a new VOC content limit applicable for cleaning solvents generally used in facilities regulated under Regulation 1124, adds a new definition section, and updates the existing work practice standards according to the

new CTGs. The revision to Section 8.0 is based primarily on the Industrial Cleaning Solvents CTG, however, it does include several work practice recommendations collectively from other new EPA CTGs that have triggered the revisions of other sections being addressed at this time as well.

Section 13.0: Automobile and Light-Duty Truck Coating Operations:

The current Section 13.0 sets up VOC limits in coating materials used in new automobile and light-duty truck coating operations. This revision has more stringent VOC limits for these coating operations to reflect CTG recommendations.

Section 16.0: Paper Coating:

The current Section 16.0 has a VOC emission control standard for paper coating units. This revision expands the regulated scope from paper coating until only to “paper, film and foil coating units”.

Section 23.0: Coating of Flat Wood Paneling:

The current Section 23 has three (3) different VOC control standards for coating processes of three (3) different flat wood paneling products: printed interior panels, natural finish panels, and Class II finish panels. This revision adds tileboard panels and exterior sidings to the related scope, and has a uniform and more stringent standard for all five (5) paneling products.

Section 37.0: Graphic Arts Systems:

The current Section 37.0 applies to packaging printing presses. This revision adds provisions for a special group of packaging printing presses, to wit: flexible packaging printing presses, and establishes efficiency requirements for control systems to be installed on the flexible packaging printing presses.

Section 45.0: Industrial Cleaning Solvents:

The current Section 45.0 has application standards for industrial use of organic cleaning solvents. This revision clarifies that the requirements of Section 45.0 are triggered based on a limit of “VOC emissions” rather than “solvent used”.

It should be noted that no members of the public attended the hearing on June 2, 2010, nor was any public comment received with regard to the above-referenced six (6) sections of 7 DE Admin. Code 1124. Proper notice of the hearing was provided as required by law.

II. Summary of Hearing Record:

At the time of the hearing on June 2, 2010, Gene Pettingill of the Department’s Division of Air Quality Management (AQM) offered the Department’s seven (7) 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 were copies of the Start Action Notices for this promulgation, copies of the legal notices regarding the holding of this public hearing on June 2, 2010, a copy of the Control Techniques Guidelines (CTG) from the EPA which triggered the revisions addressed within this promulgation, 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 sections 7 DE Admin. Code 1124.

Also contained within the Department’s exhibits were copies of the two public comments received with respect to the proposed amendments on Section 47.0 of existing Regulation 1124. As noted above, changes to Section 47.0 were originally proposed and included by the Department in this promulgation; however, the same were subsequently

withdrawn by the Department, and will be addressed in a separate, future promulgation. No other comments were received by the Department concerning this matter.

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 8.0, "Handling, Storage, and Disposal of Volatile Organic Compounds"; Section 13.0, "Automobile and Light-Duty Truck Coating Operations"; Section 16.0, "Paper Coating"; Section 23.0, "Coating of Flat Wood Paneling"; Section 37.0, "Graphic Art Systems"; and Section 45.0, "Industrial Cleaning Solvents". I also recommend the adoption of the proposed regulatory amendments, based upon the reasoning provided by AQM.

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 new Control Techniques Guidelines (CTG) documents as issued by the EPA;
7. The aforementioned proposed amendments to 7 DE Admin. Code 1124 will enable Delaware to do the following: (i) add a new definition section and update the existing work practice standards according to the new CTGs with regard to the handling, storage, and disposal of VOC [Section 8.0]; (ii) set more stringent VOC limits for automobile and light-duty truck coating

operations [Section 13.0]; (iii) expand the regulated scope from paper coating units only to “paper, film and foil coating units” [Section 16.0]; (iv) create a more stringent and uniform standard for all 5 coatings of flat wood paneling products [Section 23.0]; (v) add provisions for flexible packaging printing presses and establish efficiency requirements for control systems to be installed on the flexible packaging printing presses [Section 37.0]; and (vi) clarify that the regulatory requirements for industrial cleaning solvents are triggered based on a limit of “VOC emissions” rather than “solvent used” [Section 45.0];;

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* and the subsequent non-substantive revisions 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*; and

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