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INDEPENDENT REGULATORY REVIEW COMMISSION
333 MARKET STREET, 14TH FLOOR, HARRISBURG, PA 17101

March 25, 2002

Honorable David E. Hess, Chairman
Environmental Quality Board
Rachel Carson State Office Building
400 Market Street, 16th Floor
Harrisburg, PA 17101

Re: Regulation #7-371 (IRRC #2238)
Environmental Quality Board
Architectural and Industrial Maintenance Coatings

Dear Chairman Hess:

Enclosed are our Comments. They will soon be available on our website at www.irrc.state.pa.us.

Our Comments list objections and suggestions for consideration when you prepare the final version of this regulation. We have also specified the regulatory criteria which have not been met. These Comments are not a formal approval or disapproval of the proposed version of this regulation.

If you would like to discuss these Comments, please contact my office at 783-5417.

Sincerely,

Robert E. Nyce
Executive Director
wbg
Enclosure

cc: Honorable Arthur D. Hershey, Majority Chairman, House Environmental Resources and Energy Committee
Honorable Camille George, Democratic Chairman, House Environmental Resources and Energy Committee
Honorable Mary Jo White, Chairman, Senate Environmental Resources and Energy Committee
Honorable Raphael J. Musto, Minority Chairman, Senate Environmental Resources and Energy Committee

Comments of the Independent Regulatory Review Commission

on

Environmental Quality Board Regulation No. 7-371

Architectural and Industrial Maintenance Coatings

March 25, 2002

We submit for your consideration the following objections and recommendations regarding this regulation. Each objection or recommendation includes a reference to the criteria in the Regulatory Review Act (71 P.S. § 745.5a(h) and (i)) which have not been met. The Environmental Quality Board (Board) must respond to these Comments when it submits the final-form regulation. If the final-form regulation is not delivered by February 22, 2004, the regulation will be deemed withdrawn.

1. General. – Fiscal impact and reasonableness.

This proposed rulemaking adopts volatile organic compound (VOC) standards for 46 types of architectural or industrial maintenance (AIM) coatings. These limits, based on the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials' Model Rule (Model Rule), are more restrictive than the federal limits that were adopted in 1998 in the hopes of attaining and maintaining the health-related ozone standard in the Commonwealth. The Ozone Transport Region (OTR) is using the Model Rule to reduce VOC emissions, and the Board has modeled this proposed rulemaking after the Model Rule.

We have four general concerns with this regulation.

First, commentators have suggested a number of adjustments to the proposed rulemaking that more closely track the provisions in the Model Rule. These include an averaging provision (found in Section 3.10) and an AIM specific variance provision (Section 3.8.1). Why were these provisions of the Model Rule not included in the proposed rulemaking?

Second, to decrease VOC content in the products included in the regulation, properties and ingredients of the products may not be the same as the higher-VOC products. How will these potential alterations impact the quality of the products? If the quality decreases, and usage of the lower VOC-products increases, could this pattern diminish the intended decrease in VOC? The Board should explain whether this pattern has been anticipated.

Third, in Item 20a of the RAF, the Department of Environmental Protection (Department) estimates the cost of implementing this regulation will be \$65 million per year. This estimate is based on a report "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules" (Report) issued by E.H. Pechan and Associates. Chapter II, Subsection D(3) of the Report states, "Details on the assumptions used for ARB's cost analysis are provided in the 'Staff Report for the Proposed Suggested Control Measure for Architectural Coatings'" (Staff Report).

Reviewing the Staff Report, it appears that the economic impact figures contained in the report are based on figures developed and applied to the decreased VOC emissions program in

California. This is readily apparent in the “Sources and Treatment of Cost Data” section, which highlights economic data collection from California businesses. How are the figures developed for California applicable to the Commonwealth? The Department should provide its rationale.

Fourth, the proposed rulemaking does not include a scheduled technology assessment on the appropriateness of maintaining future VOC limits. A technology assessment of this type would be valuable in determining whether the proposed rulemaking, once implemented, is effective. The Department should consider adding a future technological assessment to the final-form regulation.

2. Section 130.302. Definitions. – Clarity.

Commentators have requested the following terms be added, deleted or incorporated into existing definitions: 1) the reference for roofing should be eliminated from the definitions of “bituminous roof coating” and “bituminous roof primer”; 2) the definition for “specialty primer” should include “odors or effervescence” and “or recommended for application to exterior wood or wood-based surfaces, or for highly alkaline cement, plaster, and other cementitious surfaces”; a definition for “shellac” should be added; 3) the definition of low solids coating should be changed by adding “or a water-borne clear or semi-transparent stain.”

The Board should consider the concerns of the commentators, and respond to these concerns in the final-form regulation.

3. Section 130.303. Standards. – Fiscal impact and Reasonableness.

Subsections (a)(1) through (3), which address VOC content limits, could have an adverse effect on those industries that manufacture, supply or use AIM coatings. We have two questions about the impact of these sections on the Commonwealth.

First, how do other states in the OTR regulate the same products?

Second, are the Commonwealth’s requirements more restrictive than those found in other states? How will the restrictions of these products affect businesses that utilize these materials?

4. 130.305. Reporting requirements. – Clarity.

This section requires that “Upon request by the Department, each manufacturer of an architectural or industrial maintenance coating subject to this subchapter shall... submit an annual report to the Department.”

Commentators have stated that the reporting requirement in this section would not be useful, and should be deleted. We have two questions. First, is the information included in these reports necessary for the Department to have? Second, what criteria will the Department use to determine when the information will be requested?

5. Table 1. VOC Content Limits for Architectural and Industrial Maintenance Coatings. – Reasonableness and Clarity.

This table outlines the VOC content limits of AIM coatings. We have two concerns with this table.

First, Industrial Maintenance Coatings in Table One have a VOC Content Limit of 340. The Model Rule has the VOC content level at 250. Why did the Board select the VOC limit to be 340 for Industrial Maintenance Coatings?

Second, commentators have requested the following adjustments or additions be made to Table 1: 1) Calcimine recoaters; conversion varnish; concrete surface retarders; impacted

immersion coatings; nuclear coatings; and thermoplastic rubber coatings; 2) the standards for sanding sealers, varnishes and clear and semi-transparent stains should be raised to 550, 450 and 550, respectively; the standard should be 350 for exterior wood primers, sealers and undercoaters; the standard for floor paints should be changed to 280-400; 3) and the standard for bituminous roof primers is too low to allow useful application of the product.

The Board should provide the rationale for these standards, as well as the inclusion or omission of products in Table 1.