

SUPPLEMENTAL BASIS STATEMENT

CHAPTER 152 CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM CONSUMER PRODUCTS

List of Commenters

- (1) Joseph T. Yost
Director, State Affairs
Consumer Specialty Products Association
 - (2) Frances K. Wu
Associate General Counsel
Cosmetic, Toiletry, and Fragrance Association
 - (3) Anne Arnold
Manager, Air Quality Planning Unit
US Environmental Protection Agency, Region 1
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Upcoming Federal Regulations

1. Comment: The commenters noted that the US Environmental Protection Agency intends to revise the existing national rule for consumer products. EPA is expected to publish a proposed rulemaking in September 2007 and issue a final rule in January 2008, with an anticipated effectiveness date of January 2009. Commenter (3) suggests that Maine should ensure its rule is at least as stringent as the proposed federal rule. Commenter (2) questions the necessity of Maine proceeding with this rulemaking in consideration of the upcoming Federal proposal. Commenter (1) strongly urges Maine to join other state agencies to work with EPA in developing revisions to the national regulations. (commenter 1,2, 3)

Response: While the Department agrees that a national approach to regulating consumer products would be the most efficient way of reducing VOC emissions from this sector, we cannot speculate or count on future actions by the US EPA. The Ozone Transport Commission has developed the model rule on which the proposed amendments are based as part of a regional approach to reducing VOC emissions and ozone air pollution in the Northeast and Mid-Atlantic. The sooner these technology-forcing standards are in place, the sooner we can benefit from the reductions in emissions. Because EPA is basing its rulemaking proposal largely on the OTC model, the Department assumes that the existing rule and proposed amendments will be as stringent as whatever EPA proposes; however, if they are not, the Federal standards will take precedence over Maine's standards.

Effective Dates

2. Comment: The commenter supports the effective date of January 1, 2009 established in the proposed regulation, however this commenter points out that the effective date for products registered under the Federal Insecticide, Rodenticide and Fungicide Act (FIFRA) the effective should be given additional time for compliance due to the approval process these

products have to go through with both US EPA and the Maine Board of Pesticides Control. Section 3(E) gives these products an additional year under the existing rule, but not in the amendments. (commenter 3)

Response: The omission of this additional year for compliance for FIFRA-related products was an oversight on the part of the Department in drafting these amendments. The Department has revised subsection 3(E) of the draft rule to read:

“Products registered under FIFRA. For those consumer products that are registered under the Federal Insecticide, Fungicide, and Rodenticide Act, (FIFRA; 7 U.S.C. Section 136-136y), the effective date of the VOC standards specified in Table of Standards is ~~May 2, 2006~~ one year after the date specified in subsection 3(A) of this Chapter.”

Definitions

3. Comment: The commenter pointed out that under the definition of “Existing Product,” the draft rule amendments specify September 1, 2004 as the date that defines “Existing Product.” While September 1, 2004 is the official effective date of the original rule, the standards did not go into effect until May 1, 2005. The commenter asserts that the latter date should be referenced in the definition. (commenter 3)

*Response: The Department agrees with the commenter and has revised subsection 2(A)(20) of the proposed draft regulation to read: “**Existing product.** “Existing Product” means any formulation of the same product category and form sold, supplied, manufactured, or offered for sale in Maine prior to ~~September 1, 2004~~ May 1, 2005, or any subsequently introduced identical formulation.”*

4. Comment: The commenter suggests that the Department revise the definition of Volatile Organic Compound (VOC) in Maine to incorporate the US EPA definition in order to eliminate the need to change Maine’s definition every time EPA changes its definition.

Response: The Department cannot incorporate by reference future changes, so that even if the existing Federal definition were incorporated into Chapter 100, Definitions, where it currently appears, the Department would still have to make revisions each time EPA updated its own definition.

References

5. Comment: The commenter pointed out two section references appearing in the Table of Standards in Section 3 which the Department failed to revise. First the internal reference for the regulatory provisions governing the Charcoal Lighter Material product category must be re-numbered to read “See 3(F).” Second, the reference to provisions governing the Floor Wax Stripper category must be renumbered to read “See 3(H).” (commenter 3)

Response: The Department has made the recommended revisions to the references.

Product Dating Requirements

6. Comment: The commenters pointed out that the Department neglected to revise the date code explanation filing date in subsection 6(B)(1) to reflect the effective date of categories added in this rulemaking. (commenter 2, 3)

Response: The Department has revised subsection 6(B)(1) of the proposed regulation to read: “If a manufacturer uses a code indicating the date of manufacture for any consumer product subject to Section 3, an explanation of the date portion of the code must be filed with the Department no later than May 1, 2005 for products with an effective date of May 1, 2005, or January 1, 2008 for products with an effective date of January 1, 2009.”

Reporting Requirements

7. Comment: The commenters note that the Department erroneously included a provision to address situations in which a responsible party does not have or cannot provide information requested by the Department in subsection 7(C)(3) when this provision belongs in 7(A). (commenter 2, 3)

Response: The Department has moved the language from subsection 7(C)(3) to subsection 7(A) of the revised draft regulation as requested.

Claims of Confidentiality

8. Comment: The commenters requested that the following information be added to subsection 7(A) of the proposed draft regulation: “any claim of confidentiality shall be handled in accordance with Departmental policies governing records that may contain confidential information, SOP Number OC PE 00006, and applicable law.” (commenter 2, 3)

Response: The Department appreciates the fact that manufacturers may be required in some instances to submit documents that contain confidential business information under provisions of this rule. The Department has a Standard Operating Procedure to ensure that documents that are submitted with claims of confidentiality are treated appropriately and in accordance with applicable law. However, the Department declines to make this addition because this issue was handled in the 2004 promulgation of this rule with the addition of a note outlining the Department’s confidentiality provisions following subsections 5(B), 6(B), 7(B), 8, and 9 in order to emphasize the Department’s commitment to handling such documents properly. This confidentiality note was inadvertently deleted from all but one section during the process of drafting the amendments and has been reinserted in all five locations in the revised draft.

Testing Standards

9. Comment: The commenter noted that the OTC Model Rule included a flexibility provision in incorporating the ASTM standard incorporated by reference in Section 9 of the proposed regulation and suggests that the Department do the same, adding the language, “including any subsequent amendments.” (Commenter 3)

Response: While the Department acknowledges the practicality in maintaining consistency with ASTM standards as they are revised, all revisions to Department regulations need to be approved by the Board of Environmental Protection. Thus, the Department cannot write flexibility for future standards into the rule. If ASTM makes changes to the standards in the future, the Department would need to take amendments to Chapter 152 through the MAPA (Maine Administrative Procedures Act) process at that time.

Safety Concerns Regarding Flammability

10. Comment: The commenter urges the Department to consider excluding the electrical cleaners from the proposed ban on the use of chlorinated solvents in product formulations since the use of two of the three chemical compounds is necessary for the production of a nonflammable product. Subsection 3(M) of the proposed regulation would ban the use of perchloroethylene (Perc), trichloroethylene (TCE) and methylene chloride in electrical cleaners. The commenter urges the DEP to consider the compelling safety concerns about flammability and allow manufacturers to continue to use Perc to formulate this narrowly-defined product category. Since these products are generally used on and around energized surfaces, these products must be formulated with nonflammable compounds to avoid flash fires that have the potential to cause serious burns. The commenter points out that although the energized electrical cleaner category does not fall under this prohibition, consumers may not read the label carefully enough, and could potentially use an electrical cleaner on an energized surface, potentially resulting in a dangerous situation. After weighing the immediate and acutely dangerous flammability risks and also considering the fact that banning the use of Perc will not reduce VOC emissions, the commenter believes that it would be reasonable to allow manufacturers to continue to use these solvents to formulate electrical cleaners. The commenter does not object to the Department banning the use of TCE and methylene chloride in this product category. (Commenter 3)

Response: The Department appreciates and shares the commenter's concern for the safety of consumers using these products. However, according to a CARB (California Air Resources Board) survey of consumer products conducted in 2001, 64 percent of sales of electrical cleaners did not contain perchloroethylene, methylene chloride or trichloroethylene. This tells us that alternatives to chlorinated solvents do exist and were used in the majority of products six years ago. Reducing emissions of perchloroethylene is a high priority of Maine's air quality program, due to the health effects, and the fact that ambient levels are consistently monitored at levels in excess of Maine's standards. We also want to avoid an increase in the use of chlorinated solvents to result from manufacturers re-formulating their products to meet the VOC limits set forth in this Chapter. In addition, Chapter 152, has separate categories for "Electrical cleaner" and "Energized electrical cleaner" and does not prohibit the use of perchloroethylene, methylene chloride or trichloroethylene in the latter category of products which are intended for use in cleaning or degreasing electrical equipment when an electric current or residual electrical potential exists. While it is indeed possible that a consumer could inadvertently use an electrical cleaner on an energized surface, it is not possible for the Department to guard against all potential misuse of products by consumers. The Department believes this exemption of energized electrical cleaners should adequately address the commenter's concern.