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COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

PROPOSED VARIANCE ORDER

NOW, this ____ day of _____, 2004, the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP or the Department), issues this Variance Order to SAU-SEA Swimming Pool Products, Inc. (SAU-SEA) under 25 *Pa. Code* §130.606, after the Department has found and determined the following:

FINDINGS

A. DEP is the agency with the duty and authority to administer and enforce the Air Pollution Control Act, act of January 8, 1960, P.L. 2119, *as amended*, 35 P.S. §§4001-4015 (Air Pollution Control Act) and the rules and regulations promulgated thereunder.

B. SAU-SEA is a New Jersey-based corporation with a business mailing address of 1855 Highway # 206, Southampton, New Jersey 08088.

C. SAU-SEA supplies, sells, offers for sale, manufactures, blends or repackages architectural or industrial maintenance (AIM) coatings, including swimming pool coatings, for use within this Commonwealth.

D. The volatile organic compound (VOC) content of certain AIM coatings, including swimming pool coatings, is regulated by limits set forth in *25 Pa. Code* §130.603(a).

E. AIM coatings, including swimming pool coatings, that are supplied, sold, offered for sale, manufactured, blended or repackaged by SAU-SEA for use in this Commonwealth are regulated under *25 Pa. Code* §§130.601-130.611 (*25 Pa. Code* Chapter 130, Subchapter C).

F. Pursuant to *25 Pa. Code* §130.606, a person who cannot comply with the VOC content limits in *25 Pa. Code* §130.603(a) may apply in writing to the Department for a variance.

G. On June 1, 2004, DEP received from SAU-SEA an application for a variance from the VOC content limit in *25 Pa. Code* §130.603 for swimming pool coatings. The application for variance was dated May 27, 2004. On June 21, 2004 the Department received from SAU-SEA an amendment (dated June 18, 2004) to the May 27, 2004 application for a variance. These documents are jointly referred to in this variance order as the “application for variance.”

H. SAU-SEA claims in its application for variance that it is technologically infeasible for SAU-SEA to reformulate the swimming pool coatings to comply with the VOC content limit for swimming pool coatings specified in *25 Pa. Code* §130.603.

I. SAU-SEA's application for variance lists the following coatings for which SAU-SEA is requesting a variance from the requirements of *25 Pa. Code* §130.603:

1. SAU-SEA ENAMEL TYPE R - Chlorinated Rubber Base Swimming Pool Paint.
2. SAU-SEA ENAMEL TYPE PV - Polyvinyl Base Swimming Pool Paint.
3. SAU-SEA ENAMEL TYPE E – Epoxy Base Swimming Pool Paint.
4. SAU-SEA PLASTER SEALER – Specialized Rubber Coating for Plaster Pools.
5. POOL-SEAL RUBBER BASE POOL PAINT – Commercial Grade Rubber Pool Paint.

J. In the application for variance, SAU-SEA describes a research and development compliance plan by which compliance with the regulations will be achieved.

K. In the application for variance, SAU-SEA indicates that the company's research and development efforts are directed toward a compliance goal of January 1, 2008.

L. On August 14, 2004, DEP gave public notice of the time, place and purpose of two public hearings to take public comment on SAU-SEA's application for variance and on the proposed Variance Order, in the *Pennsylvania Bulletin* and in newspapers of general circulation, in accordance with 25 *Pa. Code* §130.610.

M. DEP held two public hearings on SAU-SEA's application for variance and the proposed Variance Order on September ____, 2004, at __:__ o'clock, at _____ and on September ____, 2004 at __:__ o'clock, at _____, in accordance with 25 *Pa. Code* §130.610.

ORDER

NOW therefore, pursuant to Section 4 of the Air Pollution Control Act, 35 P.S. §4004, and the rules and regulations promulgated thereunder, DEP hereby ORDERS that:

1. Variance. SAU-SEA is granted a variance from the VOC content limits for swimming pool coatings set forth in Section 130.606, Table 1, from January 1, 2005 until December 31, 2007, for the swimming pool coatings listed in Paragraph I above.

2. *Compliance date.* On and after January 1, 2008, SAU-SEA shall not manufacture, sell, offer for sale, blend or repackage, for use in this Commonwealth, swimming pool coatings listed in Paragraph 1 above that do not meet the VOC content limits set forth in *25 Pa. Code* §130.606, Table 1.

3. *Increments of progress necessary to assure timely compliance –progress report.* On or before February 15 of each year, beginning in 2006, and continuing until SAU-SEA has achieved full compliance with the VOC content limit for swimming pool coatings, SAU-SEA shall submit a progress report to the Department detailing SAU-SEA’s efforts and increments of progress in implementing its compliance plan. The progress report must describe the efforts being made toward achieving the VOC limit for swimming pool coatings in *25 Pa. Code* §130.603.

4. *Increments of progress necessary to assure timely compliance – sales figures.* On or before February 15 of each year, beginning in 2006, and continuing until SAU-SEA has achieved full compliance with the VOC limit for swimming pool coatings, SAU-SEA shall submit a report to the Department identifying Pennsylvania sales figures for all coatings covered by Paragraph 1 of this Variance Order that SAU-SEA sold in containers greater than one (1) liter in the calendar year immediately preceding the year of the report. The report shall also include the VOC content for each swimming pool paint covered by Paragraph 1 of this Variance Order, determined in accordance with Section 130.611 of Chapter 130.

5. Correspondence. SAU-SEA shall direct all correspondence to the Department concerning this Variance Order to:

Department of Environmental Protection
Bureau of Air Quality
Division of Air Resource Management
P.O. Box 8468
400 Market Street
Harrisburg, PA 17101
Telephone: 717-787-9495
Fax: 717-772-2303

All correspondence from SAU-SEA to the Department concerning this variance, including the reports required by this Variance Order, shall be signed by a responsible official, as that term is defined in *25 Pa. Code* §121.1.

6. Termination of Variance. This Variance Order will cease to be effective upon failure of SAU-SEA to comply with a term or condition of the Variance Order.

7. SIP revision; effective date. DEP will submit this Variance Order to the United States Environmental Protection Agency (EPA) for approval as a State Implementation Plan (SIP) revision. This Variance Order will become effective upon approval of the Variance Order by EPA as a revision to the Pennsylvania SIP.

8. Revocation, modification or extension. The Department may, for good cause, including air quality considerations, extend, modify or revoke this Variance

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Order after holding a public hearing in accordance with 25 Pa. Code §130.610.

The Department will give SAU-SEA notice of the public hearing at least 14 days in advance of the publication of the public notice of the public hearing.

Any person aggrieved by this action [*the final variance order*] may appeal, pursuant to Section 4 of the Environmental Hearing Board Act, 35 P.S. §7514, and the Administrative Agency Law, 2 Pa.C.S. Chapter 5A, to the Environmental Hearing Board, Second Floor, Rachel Carson State Office Building, 400 Market Street, P.O. Box 8457, Harrisburg, PA 17105-8457, 717-787-3483. TDD users may contact the Board through the Pennsylvania Relay Service, 800-654-5984. Appeals must be filed with the Environmental Hearing Board within 30 days of receipt of written notice of this action [*the final variance order*] unless the appropriate statute provides a different time period. Copies of the appeal form and the Board's rules of practice and procedure may be obtained from the Board. The appeal form and the Board's rules of practice and procedure are also available in braille or on audiotape from the Secretary to the Board at 717-787-3483. This paragraph does not, in and of itself, create any right of appeal beyond that permitted by applicable statutes and decisional law.

Joyce E. Epps, Director
Bureau of Air Quality
Department of Environmental Protection