

DRAFT DRAFT DRAFT DRAFT DRAFT

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 The Sherwin-Williams Company (Sherwin-Williams) 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. Sherwin-Williams is an Ohio-based corporation with a business mailing address of 101 Prospect Avenue, Cleveland, Ohio 44115.

C. Sherwin-Williams supplies, sells, offers for sale, manufactures, blends or repackages architectural or industrial maintenance (AIM) coatings, including interior wiping stains, for use within this Commonwealth.

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

E. AIM coatings, including interior wiping stains, that are supplied, sold, offered for sale, manufactured, blended or repackaged by Sherwin-Williams 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 March 22, 2004, DEP received from Sherwin-Williams an application for a variance from the VOC content limit in *25 Pa. Code* §130.603, for certain interior wiping stains listed in Exhibit A to the application for variance. The application for variance was dated March 16, 2004.

H. Sherwin-Williams claims in the March 16, 2004 application for variance that it is technologically infeasible for Sherwin-Williams to reformulate the interior wiping stains listed in Exhibit A to the application for variance, to comply with the VOC content limit for stains specified in *25 Pa. Code* §130.603, “...without substantially increasing toxicity or fire hazard, or jeopardizing the performance criteria which make these products feasible for application to large surfaces (e.g., floors, paneling, etc.) or fine wood surfaces that will not be subsequently top coated with a clear finish.”

I. In the application for variance, Sherwin-Williams cites “lapping” and “grain raising” as the adverse performance impacts that would result from Sherwin-Williams’ reformulation of interior wiping stains to water-based formulations.

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

K. In the application for variance, Sherwin-Williams indicates that the company’s research and development efforts are directed toward a targeted compliance goal of January 1, 2010.

L. On May 14, 2004, DEP gave public notice of the time, place and purpose of two public hearings to take public comment on Sherwin-Williams' 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 Sherwin-Williams' application for variance and the proposed Variance Order on June 14, 2004, at 1:00 PM at the DEP's Southeast Regional Office, 2 East Main Street, Norristown, PA 19401 and on June 17, 2004 at 1:00 PM at the DEP's Southcentral Regional Office, 909 Elmerton Avenue, Harrisburg, PA 17110, 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. Sherwin-Williams is granted a variance from the VOC content limits for stains set forth in Section 130.606, Table 1, from January 1, 2005 until December 31, 2009, for the interior wiping stains listed in Exhibit A of Sherwin-Williams' application for variance and for reformulations or new color designations for those interior wiping stains which have equivalent or lower VOC content than those product formulations listed in Exhibit A.

2. ***Compliance date.*** On and after January 1, 2010, Sherwin-Williams shall not manufacture, sell, offer for sale, blend or repackage, for use in this Commonwealth, interior wiping stains subject to 25 *Pa. Code* Chapter 130, Subchapter C, 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 Sherwin-Williams has achieved full compliance with the VOC content limit for interior wiping stains, Sherwin-Williams shall submit a progress report to the Department detailing Sherwin-Williams’ 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 interior wiping stains in 25 *Pa. Code* §130.603. Upon cause shown by Sherwin-Williams that the progress report, or a particular portion thereof, but not emission data, if made public, would divulge production or sales figures or methods, processes or production unique to Sherwin-Williams or would otherwise tend to affect adversely the competitive position of Sherwin-Williams by revealing trade secrets, including intellectual property rights, the Department will consider the report or particular portion thereof confidential in the administration of the Air Pollution Control Act, pursuant to section 13.2 of that act (35 P.S. §4013.2) and 25 *Pa. Code* §127.411(d). The Department will implement this provision consistent with sections 112(d) and 114(c) of the Clean Air Act (42 U.S.C.A. §§7412(d) and 7414(c)). Nothing in this provision prevents the disclosure of the report to

Federal, State or local representatives as necessary for purposes of administration of Federal, State or local air pollution control laws, or when relevant in any proceeding under the Air Pollution Control Act.

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 Sherwin-Williams has achieved full compliance with the VOC limit for interior wiping stains, Sherwin-Williams shall submit a report to the Department identifying Pennsylvania sales figures for all coatings in covered by this Variance Order that Sherwin-Williams 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 interior wiping stain listed in Exhibit A, determined in accordance with Section 130.611 of Chapter 130. Upon cause shown by Sherwin-Williams that the progress report, or a particular portion thereof, but not emission data, if made public, would divulge production or sales figures or methods, processes or production unique to Sherwin-Williams or would otherwise tend to affect adversely the competitive position of Sherwin-Williams by revealing trade secrets, including intellectual property rights, the Department will consider the report or particular portion thereof confidential in the administration of the Air Pollution Control Act, pursuant to section 13.2 of that act (35 P.S. §4013.2) and 25 *Pa. Code* §127.411(d). The Department will implement this provision consistent with sections 112(d) and 114(c) of the Clean Air Act (42 U.S.C.A. §§7412(d) and 7414(c)). Nothing in this provision prevents the disclosure of the report to Federal, State or local representatives as necessary

for purposes of administration of Federal, State or local air pollution control laws, or when relevant in any proceeding under the Air Pollution Control Act.

5. *Correspondence.* Sherwin-Williams 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 Sherwin-Williams 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 Sherwin-Williams to comply with a term or condition of the variance.

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

The Department will give Sherwin-Williams 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