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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 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 “clear wood finishes - varnishes,” for use within this Commonwealth.

D. The volatile organic compound (VOC) content of certain AIM coatings, including “clear wood finishes – varnishes,” is regulated by limits set forth in 25 *Pa. Code* §130.603(a).

E. AIM coatings, including “clear wood finishes – varnishes,” 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 September 29, 2004, DEP received from Sherwin-Williams an application for a variance from the VOC content limit in 25 *Pa. Code* §130.603, for certain “clear wood finishes - varnishes” listed in Exhibit A to the application for variance. The application for variance was dated September 29, 2004.

H. Sherwin-Williams claims in the September 29, 2004 application for variance that it is technologically infeasible for Sherwin-Williams to formulate the “clear wood finishes - varnishes” listed in Exhibit A to the application for variance, to comply with the VOC content limit for “clear wood finishes - varnishes” specified in *25 Pa. Code* §130.603, “...without creating unacceptable safety hazards, application, handling and performance problems for nonprofessional users; or substantially decreasing the solids content and thus increasing the number of coats required to achieve desired film thickness.”

I. In the application for variance, Sherwin-Williams cites unsafe traction levels and reduced coating film build as adverse performance impacts that would result from Sherwin-Williams’ reformulation of “clear wood coatings – varnishes” 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 November __, 2004, DEP gave public notice of the time, place and purpose of 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 public hearings on Sherwin-Williams' application for variance and the proposed Variance Order on December 21, 2004 at 10:00 o'clock, at DEP's Southeast Regional Office, 2 East Main Street, Norristown, PA 19401 and on and December 22, 2004, at 1:00 o'clock 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 "clear wood coatings – varnishes" set forth in Section 130.606, Table 1, from January 1, 2005 until December 31, 2009, for Sherwin-Williams'

“clear wood coatings – varnishes” listed in Exhibit A of Sherwin-Williams’ application for variance.

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, “clear wood coatings – varnishes” 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 “clear wood coatings – varnishes”, 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 show that progress is being made toward achieving the VOC limit for “clear wood coatings – varnishes” 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 “clear wood coatings – varnishes”, Sherwin-Williams shall submit a report to the Department identifying Pennsylvania sales figures for all coatings in Exhibit A of the application for variance 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 “clear wood coatings – varnishes” 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.

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

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appeal beyond that permitted by applicable statutes and decisional law.

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