

# NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

## Office of Climate Air & Energy

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OCT 14 2020

Mr. Peter D. Lopez  
Regional Administrator  
U.S. Environmental Protection Agency, Region 2  
290 Broadway, 26<sup>th</sup> Floor  
New York, NY 10007-1866

Dear Administrator Lopez:

On behalf of the Governor of the State of New York, I am submitting for approval by the U.S. Environmental Protection Agency (EPA) a State Implementation Plan (SIP) revision to incorporate revisions to Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 205 and Part 200.

The New York State Department of Environmental Conservation (DEC) has revised 6 NYCRR Subpart 205, "Architectural and Industrial Maintenance Coatings" with attendant revisions to 6 NYCRR Part 200, "General Provisions." Architectural and industrial maintenance (AIM) coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. The rule was revised to reduce the VOC limit on 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories, eliminate the VOC content limit exemption on quart (and smaller) containers of floor coatings, and eliminate "bundling" of small containers. This rule applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in the State of New York.

A public review process was held for the proposed revisions. A "Notice of Proposed Rulemaking" that included information for three public hearings was published in the Environmental Notice Bulletin (ENB) and the New York State Register on March 6, 2019. Legislative public hearings were held on May 6, 2019 in Albany; May 13, 2019 in Stony Brook; and May 14, 2019 in Long Island City on the proposed revisions to the regulations and the proposed subsequent submission as a SIP revision.

The following documents are enclosed with this SIP revision:

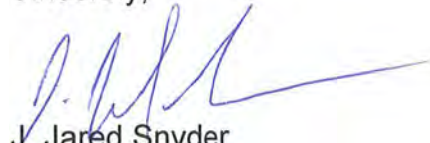
1. Express Terms for 6 NYCRR Part 205, "Architectural and Industrial Maintenance Coatings," and 6 NYCRR Part 200, "General Provisions," as proposed on March 6, 2019;
2. Notice of proposed rulemaking, including public hearing information, as published in the ENB and State Register on March 6, 2019;
3. Newspaper proofs of publication for the proposed rulemaking;
4. Transcripts of the public hearings held in Albany on May 6, 2019; in Stony Brook on May 13, 2019; and in Long Island City on May 14, 2019;



5. Assessment of Public Comments for all comments received on the proposed rulemaking;
6. Certificate of Adoption dated December 11, 2019;
7. Express Terms for 6 NYCRR Part 205 and Part 200 as adopted on December 11, 2019; and
8. Notice of Adoption published in the ENB and State Register on December 31, 2019.

If you have any questions or concerns, please contact Mr. Steven Flint, Director, Division of Air Resources at (518) 402-8452.

Sincerely,



J. Jared Snyder  
Deputy Commissioner  
Office of Climate, Air & Energy

Enclosures

c: R. Ruvo, EPA Region 2

## Express Terms

### 6 NYCRR PART 205, ARCHITECTURAL AND INDUSTRIAL MAINTENANCE (AIM) COATINGS

#### Section 205.1 Applicability.

(a) Except as provided in subdivision (b) of this section, this rule is applicable to any person who supplies, sells, offers for sale, or manufacturers any architectural coating for use within the State of New York, as well as any person who applies or solicits the application of any architectural coating within the State of New York.

(b) This rule does not apply to:

(1) any architectural coating that is supplied, sold, offered for sale or manufactured for use outside of the State of New York or for shipment to other manufacturers for reformulation or repackaging; and

(2) any aerosol coating product[;].

[(3) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less; and

(4) any asphalt pavement and asphalt based surface coating regulated under Part 241 of this Title.]

Section 205.2 Definitions.

(a) ‘Adhesive’. Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

(b) ‘Aerosol coating product’. A pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marketing applications.

(c) ‘Aluminum roof coating’. A coating labeled and formulated exclusively for application to roofs and containing at least 84 grams of elemental aluminum pigment per liter of coating (at least 0.7 pounds per gallon). Pigment content shall be determined in accordance with South Coast Air Quality Management District (SCAQMD) Method 318-95 (See Table 1, section 200.9 of this Title).

([c]d) ‘Antenna coating’. A coating labeled and formulated exclusively for application to equipment and associated structural appurtenances [tat] that are used to receive or transmit electromagnetic signals.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([d]e) ‘Antifouling coating’. A coating labeled and formulated for application to submerged stationary

structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating must be registered with both the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. section 136 *et. seq.*)(see Table 1, section 200.9 of this Title) and with the department pursuant to Part 326 of this Title.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings

([e]f) ‘Appurtenance’. Any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways; fixed ladders; catwalks; fire escapes; and window screens.

([f]g) ‘Architectural coating’. A coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.

Coatings applied in shop applications or to nonstationary structures such as airplanes, ships, boats, railcars, and automobiles, [and] as well as adhesives, are not considered architectural coatings for the purposes of this rule.

(h) ‘Basement specialty coatings’. For products manufactured on or after January 1, 2021, a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to

provide a hydrostatic seal for basements and other below-grade surfaces. Basement specialty coatings must meet the following criteria:

(1) Coating must be capable of withstanding at least 10 psi of hydrostatic pressure, as determined in accordance with American Society for Testing and Materials (ASTM) ASTM D7088-04 (see Table 1, section 200.9 of this Title).

(2) Coating must be resistant to mold and mildew growth and must achieve a microbial growth rating of 8 or more, as determined in accordance with ASTM D3273-16 and ASTM D3274-09 (2013) (see Table 1, section 200.9 of this Title).

[(g)]i) ‘Bitumens’. Black or brown materials including, but not limited to, asphalt, tar, pitch, and asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

[(h)]j) ‘Bituminous roof coating’. A coating which incorporates bitumens that is labeled and formulated exclusively for roofing[.] with the primary purpose of preventing water penetration.

[(I)]k) ‘Bituminous roof primer’. A primer which incorporates bitumens that is labeled and formulated exclusively for roofing[.]and intended for the purpose of preparing a weathered or aged surface or improving the adhesion of subsequent surfacing components.

([j]l) ‘Bond breaker’. A coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

([k]m) ‘Calcimine recoaters’. Flat solvent borne coatings formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-painted substrates.

([l]n) ‘Clear brushing lacquers’. Clear wood finishes, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, which are intended exclusively for application by brush and which are labeled as specified in subdivision 205.4([e]g) of this Part.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

([m]o) ‘Clear wood coatings’. [clear]Clear and semi-transparent coatings, including lacquers and varnishes applied to wood substrates to provide a transparent or translucent solid film.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for clear wood coatings.

([n]p) ‘Coating’. A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

([o]q) ‘Colorant’. A concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

([p]r) ‘Concrete curing compound’. A coating labeled and formulated for application to freshly poured concrete to [retard the evaporation of water.] perform one or more of the following functions:

(1) retard the evaporation of water; or

(2) harden or dustproof the surface of freshly poured concrete.

(s) ‘Concrete/Masonry Sealer’. A clear or opaque coating that is labeled and formulated primarily for application to concrete and masonry surfaces to perform one or more of the following functions:

(1) prevent penetration of water; or

(2) provide resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light; or

(3) harden or dustproof the surface of aged or cured concrete.

([q]t) ‘Concrete surface retarders’. A mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.



(u) 'Conjugated oil varnish'. A clear or semi-transparent wood coating, labeled as such, excluding lacquers or shellacs, based on a natural occurring conjugated vegetable oil (Tung oil) and modified with other natural or synthetic resins; a minimum of fifty percent of the resin solids consisting of conjugated oil. Supplied as a single component product, conjugated oil varnishes penetrate and seal the wood. Film formation is due to polymerization of the oil. These varnishes may contain small amounts of pigment to control the final gloss or sheen.

([r u]v) 'Conversion varnish'. A clear acid curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. This film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

(w) 'Driveway Sealer'. A coating labeled and formulated for application to worn asphalt driveway surfaces to perform one or more of the following functions:

(1) fill cracks; or

(2) seal the surface to provide protection; or

(3) restore or preserve the appearance.

([s]x) 'Dry fog coating'. A coating labeled and formulated only for spray application such that overspray

droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

([t]y) ‘Exempt compound’. A compound identified under the definition of volatile organic compound (VOC), section 200.1[(cf)] of this Title, as having negligible photochemical reactivity. Exempt compounds content of a coating shall be determined by U.S. EPA Method 24, methods referenced in ASTM D3960-05 (2013), or SCAQMD Method 303-91 (Revised 1993) (see Table 1, section 200.9 of this Title).

([u]z) ‘Faux finishing coating’. A coating labeled and formulated [as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.] to meet one or more of the following criteria:

(1) a glaze or textured coating used to create artistic effects including, but not limited to: dirt, suede, old age, smoke damage, and simulated marble and wood grain; or

(2) a decorative coating used to create a metallic, iridescent, or pearlescent appearance that contains at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon); or

(3) a decorative coating used to create a metallic appearance that contains less than 48 grams of elemental metallic pigment per liter of coating as applied (less than 0.4 pounds per gallon), when testing in accordance with SCAQMD Method 318-95. (see Table 1, section 200.9 of this Title);

or

(4) a decorative coating used to create a metallic appearance that contains greater than 48 grams of elemental metallic pigment per liter of coating as applied (greater than 0.4 pounds per gallon) and which requires a clear topcoat to prevent the degradation of the finish under normal use conditions. The metallic pigment content shall be determined in accordance with SCAQMD Method 318-95 (see Table 1, section 200.9 of this Title); or

(5) a clear topcoat to seal and protect a faux finishing coating that meets requirements (1) - (4) above. These clear topcoats must be sold and used solely as part of a faux finishing coating system and must be labeled in accordance with subdivision 205.4(e).

([v]aa) ‘Fire-resistive coating’. [An opaque] A coating labeled and formulated to protect the structural integrity by increasing the fire endurance of interior or exterior steel and other structural materials[, that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing assemblies of structural materials]. The fire-resistive category includes sprayed fire resistive materials and intumescent fire resistive coatings that are used to bring structural materials into compliance with Federal, State, and local building code requirements. [The fire-resistive coating and the testing agency must be approved by building code officials.] The fire-resistive coating and testing agency must be approved by building code officials. The fire-resistive coating shall be tested in accordance with [American Society for Testing and Materials (ASTM)] ASTM [Designation] E119-[00a]16a (see Table 1, section 200.9 of this Title).

([w]ab) ‘Fire-retardant coating’. A coating labeled and formulated to retard ignition and flame spread, that has been tested and rated by a testing agency approved by building code officials for use in bringing building and construction materials into compliance with Federal, State, and local building code requirements. The fire-retardant coating and the testing agency must be approved by building code officials. The fire-retardant coating shall be tested in accordance with ASTM [Designation] E 84-[01]16 (see Table 1, section 200.9 of this Title).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([x]ac) ‘Flat coating’. A coating that is not defined under any other definition in this rule and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM [Designation] D523-[89 (1999)]14 (see Table 1, section 200.9 of this Title).

([y]ad) ‘Floor coating’. An opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, garage floors, and other horizontal surfaces which may be subjected to foot traffic.

([z]ae) ‘Flow coating’. A coating labeled and formulated exclusively for use to maintain the protective coating systems present on utility transformer units.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([aa]af) ‘Form-release compound’. A coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal or some material other than concrete.

([ab]ag) ‘Graphic arts coating or sign paint’. A coating labeled and formulated for hand-application using brush, airbrush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

([ac]ah) ‘High temperature coating’. A high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

([ad]ai) ‘Impacted immersion coating’. A high performance maintenance coating formulated and recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

([ae]aj) ‘Industrial maintenance coating’. A high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates, including floors, exposed to one or more of the following extreme environmental conditions listed in paragraphs (1)-(5) of this subdivision and labeled as specified in [section] subdivision 205.4([d]f) of this Part:

- (1) immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions),

or chronic exposures of interior surfaces to moisture condensation; or

(2) acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions; or

(3) [repeated exposure to temperatures above 121°C (250°F);] frequent exposure to temperatures above 121°C (250°F); or

(4) [repeated (frequent)] frequent heavy abrasion, including mechanical wear and [repeated (frequent)] frequent scrubbing with industrial solvents, cleansers, or scouring agents; or

(5) exterior exposure of metal structures and structural components.

([af]ak) ‘Lacquer’. A clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

([ag]al) ‘Low solids coating’. A coating containing 0.12 kilogram or less of solids per liter (one pound or less of solids per gallon) of coating material[.] as recommended for application by the manufacturer. The VOC content for low solids coatings shall be calculated as defined in paragraph 205.6(b)(2).

([ah]am) ‘Magnesite cement coating’. A coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

([ai]an) ‘Manufacturer’s formulation data’. Data on a material (such as a coating) that are supplied by the materials manufacturer based on the manufacturer’s knowledge of the ingredients used to manufacture that material, rather than an EPA reference test method. Manufacturer’s formulation data may include but are not limited to information on density, VOC content, and coating solids content.

(ao) ‘Manufacturer’s maximum thinning recommendation’. The maximum recommendation for thinning that is indicated on the label or lid of the coating container.

([aj]ap) ‘Mastic texture coating’. A coating labeled and formulated to cover holes and minor cracks and conceal surface irregularities, which is applied in a single coat of at least 10 mils (at least 0.010 inch) dry film thickness.

(aq) ‘Medium density fiberboard’. A composite wood product, panel, molding, or other building material composed of cellulosic fibers (usually wood) made by dry forming and pressing of resonated fiber mat.

([ak]ar) ‘Metallic pigmented coating’. A coating that is labeled and formulated to provide a metallic appearance. Metallic pigmented coatings must contain [containing] at least 48 grams of elemental metallic pigment (excluding zinc) per liter of coating as applied (at least 0.4 pounds per gallon), when

tested in accordance with [South Coast Air Quality Management District Method] SCAQMD 318-95 (see Table 1, section 200.9 of this Title).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for Industrial Maintenance Coatings or other applicable category as set forth in subdivision 205.3(a).

([al]as) ‘Multi-color coating’. A coating that is packaged in a single container and that is labeled and formulated to [exhibits]exhibit more than one color when applied in a single coat.

([am]at) ‘Nonflat coating’. A coating that is not defined under any other definition in this rule and registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60-degree meter according to ASTM [Designation] D523-[89 (1999)]14 (see Table 1, section 200.9 of this Title).

([an]au) ‘Nonflat - high gloss coating’. A nonflat coating that registers a gloss of 70 or [above] greater on a 60-degree meter according to ASTM [Designation] D523-[89 (1999)]14 (see Table 1, section 200.9 of this Title).

([ao) ‘Nonindustrial use’. Nonindustrial use means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; and utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.]



([ap]av) ‘Nuclear coating’. A protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM [Method] D4082-[02]10, see Table 1, section 200.9 of this Title), relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed ASTM [Method] D3912-[95 (2001)]10 (see Table 1, section 200.9 of this Title).

(aw) ‘Particleboard’. A composite wood product panel, molding, or other building material composed of cellulosic material (usually wood) in the form of discrete particles, as distinguished from fibers, flakes, or strands, which are pressed together with resin.

(ax) ‘Pearlescent’. Exhibiting various colors depending on the angles of illumination and viewing, as observed in mother-of-pearl.

(ay) ‘Plywood’. A panel product consisting of layers of wood veneers or composite core pressed together with resin. Plywood includes panel products made by either hot or cold pressing (with resin) veneers to a platform.

([aq]az) ‘Post-consumer coating’. [A finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.] Finished coatings generated by a business or consumer that have served their intended end uses and are recovered from or otherwise diverted from the waste stream for the purpose of recycling.

([ar]ba) ‘Pre-treatment wash primer’. A primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM [Designation] D1613-[96 (1999)]06(2012) (see Table 1, section 200.9 of this Title), that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

([as]bb) ‘Primer’. A coating labeled and formulated for application to a substrate to provide a firm bond between the substrate and subsequent coats.

(bc) ‘Primer, sealer, and undercoater’. A coating labeled and formulated for one or more of the following purposes:

- (1) to provide a firm bond between the substrate and the subsequent coatings; or
- (2) to prevent subsequent coatings from being absorbed by the substrate; or
- (3) to prevent harm to subsequent coatings by materials in the substrate; or
- (4) to provide a smooth surface for the subsequent application of coatings; or
- (5) to provide a clear finish coat to seal the substrate; or
- (6) to block materials from penetrating into or leaching out of a substrate.

([at]bd) ‘Quick-dry enamel’. A nonflat coating that is labeled as specified in [section]subdivision 205.4([h]k) of this Part and that is formulated to have the following characteristics:

(1) [is]capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27°C (60 and 80°F);

(2) when tested in accordance with ASTM[Designation] D[1640-95 (1999)]1640M-14 (see Table 1, section 200.9 of this Title), sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and

(3) has a dried film gloss of 70 or above on a 60-degree meter.

(4) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for flat, nonflat or nonflat-high gloss.

([au]be) ‘Quick-dry primer sealer and undercoater’. A primer sealer or undercoater that is dry to the touch in 30 minutes and can be relocated in two hours when tested in accordance with ASTM [Designation] D1640[-95 (1999)]D1640M- 14 (see Table 1, section 200.9 of this Title).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for specialty primers, sealers and undercoaters.

(bf) 'Reactive penetrating sealer'. A clear or pigmented coating labeled and formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis, acids, and salts. Reactive penetrating sealers must penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate. Reactive penetrating sealers line the pores of concrete and masonry substrates with a hydrophobic coating, but do not form a surface film. Reactive penetrating sealers must meet all the following criteria:

(1) The reactive penetrating sealer must improve water repellency at least 80 percent after application on a concrete or masonry substrate. This performance must be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67-14, or C97M-15 or ASTM C140M-16 (see Table 1, section 200.9 of this Title); and

(2) The reactive penetrating sealer must not reduce the water vapor transmission rate by more than 2 percent after application on a concrete or masonry substrate. This performance must be verified on standardized test specimens, in accordance with ASTM E96M-16 (see Table 1, section 200.9 of this Title); and

(3) Products labeled and formulated for vehicular traffic surface chloride screening applications must meet the performance criteria listed in the National Cooperative Highway Research Report 244 (1981). (see Table 1, section 200.9 of this Title).

(4) Reactive penetrating sealers must be labeled as such, in accordance with the labeling requirements in subdivision 205.4(1).

(bg) 'Reactive penetrating carbonate stone sealer'. A clear or pigmented coating labeled and formulated for application to above-grade carbonate stone substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis, acids, and salts. Reactive penetrating carbonate stone sealers must penetrate into carbonate stone substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate. Reactive penetrating carbonate stone sealers line the pores of carbonate stone substrates with a hydrophobic coating, but do not form a surface film. Reactive penetrating carbonate stone sealers must meet all the following criteria:

- (1) The reactive penetrating carbonate stone sealer must improve water repellency at least 80 percent after application on a carbonate stone substrate. This performance must be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67-14 or ASTM C97M-15, or ASTM C140M-16 (see Table 1, section 200.9 of this Title); and
- (2) The reactive penetrating carbonate stone sealer must not reduce the water vapor transmission rate by more than 10 percent after application on a carbonate stone substrate. This performance must be verified on standardized test specimens, in accordance with ASTM E96M- 16. (see Table 1, section 200.9 of this Title).

(3) Reactive penetrating carbonate stone sealers must be labeled as such, in accordance with the labeling requirements in subdivision 205.4(m).

([av]bh) ‘Recycled coating’. An architectural coating formulated such that [not less than 50 percent of the weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.] it contains a minimum of 50% by volume post-consumer coating, with a maximum of 50% by volume secondary industrial materials or virgin materials.

([aw]bi) [‘Residence’] ‘Residential’. Areas where people reside or lodge, including, but not limited to, single- and multiple-family dwellings, condominiums, mobile homes, apartment complexes, motels and hotels.

([ax]bj) ‘Responsible official’. A president, vice president, secretary, treasurer, general partner, proprietor, principal executive officer, ranking elected official, or any other person who performs policy or decision making functions and is authorized to legally bind a corporation, partnership, sole proprietorship, or government entity which operates a facility that is subject to the provisions of this Part. Whenever the term ‘responsible official’ is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the "designated representative" with regard to all matters under title IV of the act.

([ay]bk) ‘Roof coating’. A non-bituminous coating labeled and formulated [exclusively] for application to roofs for the primary purpose of preventing water penetration, [of the substrate by water or] reflecting [heat and] ultraviolet light, or reflecting solar radiation. [Metallic pigmented roof coatings which

qualify as metallic pigmented coatings shall not be considered in this category, but shall be considered to be in the metallic pigmented coatings category.]

([az]bl) ‘Rust preventive coating’. A coating formulated [exclusively for nonindustrial use] to prevent the corrosion of metal surfaces for one or more of the following applications: [and labeled as specified in section 205.4(f) of this Part.]

(1) direct-to-metal coating; or

(2) coating intended for application over rusty, previously coated surfaces.

(3) The rust preventative coating category does not include the following:

(i) coatings that are required to be applied as a topcoat over a primer; or

(ii) coatings that are intended for use on wood or any other nonmetallic surface.

(4) Rust Preventative coatings are for metal substrates only and must be labeled as such, in accordance with the labeling requirements in subsection 205.4 (i).

([ba]bm) ‘Sanding sealer’. A clear or semi-transparent wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a

lacquer is not included in this category, but it is included in the lacquer category.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

([bb]bn) ‘Sealer’. A coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

([bc]bo) ‘Secondary’ [‘coating (rework)’]‘industrial materials’. [A fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process.] Products or by-products of the paint manufacturing process that are of known composition and have economic value but can no longer be used for their intended use.

(bp) ‘Semitransparent coating’. A coating that contains binders and colored pigments and formulated to change the color of the surface, but not conceal the grain pattern or texture.

([bd]bq) ‘Shellac’. A clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*Laciffer lacca*), [thinned with alcohol] and formulated to dry by evaporation without a chemical reaction.

([be]br) ‘Shop application’. Application of a coating to a product or a component of a product in or on



the premises of a factory or a shop as part of a manufacturing, production, or repairing process (*e.g.*, original equipment manufacturing coatings).

[(bf) ‘Small AIM coatings manufacturer’. A manufacturer (including all subsidiaries of the manufacturer and any parent company of the manufacturer and all of its subsidiaries) of architectural and industrial maintenance (AIM) coatings that manufactures (regardless of location) an amount of less than 3,000,000 gallons per year of any and all of the coatings listed in section 205.3(a) of this Part regardless of whether for sale in New York State or elsewhere. This amount includes coatings produced by the manufacturer and sold under another label, but does not include coatings produced by another entity and sold under the small manufacturer’s label].

[(bg]bs) ‘Solicit’. To require for use or to specify by written or oral contract.

[(bh]bt) ‘Specialty primer, sealer and undercoater’.

(1) For products manufactured before January 1, 2021, [A] a coating labeled as specified in [section]subdivision 205.4([g]j) of this Part and that is formulated for application to a substrate to seal fire, smoke or water damage, to condition excessively chalky surfaces, or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM [Designation] D4214-[98] 07(2015) (see Table 1, section 200.9 of this Title).

(2) For products manufactured on or after January 1, 2021, a coating that is formulated for application to a substrate to block water-soluble stains resulting from fire damage, smoke

damage, or water damage. Specialty primers, sealers, and undercoaters must be labeled in accordance with subdivision 205.4(i).

([bi]bu) ‘Stain’. A [clear] semi-transparent or opaque coating labeled and formulated to change the color of a surface but not conceal the grain pattern or texture.

(bv) ‘Stone consolidant’. For products manufactured on or after January 1, 2021, a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. Stone consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material. Stone consolidants must be specified and used in accordance with ASTM E2167-01(2008). (see Table 1, section 200.9 of this Title). Stone consolidants are for professional use only and must be labeled as such in accordance with the labeling requirements in subdivision 205.4(n).

([bj]bw) ‘Swimming pool coating’. A coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

(1) For products manufactured on or after January 1, 2021, swimming pool coatings include coatings used for swimming pool repair and maintenance.

([bk]bx) ‘Swimming pool repair and maintenance coating’. A rubber based coating labeled and

formulated to be used over existing rubber based coatings for the repair and maintenance of swimming pools.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for swimming pool coatings.

([bl]by) ‘Temperature-indicator safety coating’. A coating labeled and formulated as a color-changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([bm]bz) ‘Thermoplastic rubber coating and mastic’. A coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments, and modifying resins.

([bn]ca) ‘Tint base’. An architectural coating to which coloring is added after packaging in sale units to produce a desired color.

([bo]cb) ‘Traffic marking coating’. A coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks and airport runways.

(cc) ‘Tub and tile refinish coating’. For products manufactured on or after January 1, 2021, a clear or opaque coating that is labeled and formulated exclusively for refinishing the surface of a bathtub, shower, sink, or countertop. Tub and tile refinish coatings must meet all of the following criteria:

(1) The coating must have a scratch hardness of 3H or harder and a gouge hardness of 4H or harder. This must be determined on bonderite 1000, in accordance with ASTM D3363-05 (2011). (see Table 1, section 200.9 of this Title);

(2) The coating must have a weight loss of 20 milligrams or less after 1000 cycles. This must be determined with CD-17 wheels on bonderite 1000, in accordance with ASTM D4060-14. (see Table 1, section 200.9 of this Title);

(3) The coating must withstand 1000 hours or more of exposure with few or no #8 blisters. This must be determined on unscribed bonderite, in accordance with ASTM D4585/ D4585M-13, and ASTM D714-02 (2009). (see Table 1, section 200.9 of this Title); and,

(4) The coating must have an adhesion rating of 4B or better after 24 hours of recovery. This must be determined on inscribed bonderite, in accordance with ASTM D4585/ D4585M-13 and ASTM D3359-09e2. (see Table 1, section 200.9 of this Title).

[(bp) ‘Undercoater’. A coating labeled and formulated to provide a smooth surface for subsequent coatings.]

[(bq]cd) ‘Varnish’. A clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

(ce) ‘Veneer’. Thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

(cf) ‘Virgin materials’. Materials that contain no post-consumer coatings or secondary industrial coatings.

[(br]cg) ‘VOC content’. The weight of VOC per volume of coating, calculated according to the procedures specified in subdivision 205.6 of this Part. VOC content is VOC regulatory, as defined in

subdivision 205.2(ch) and calculated according to the procedures specified in subdivision 205.6(b), for all coatings except those in the low solids category. For coatings in the low solids category, the VOC content is VOC (ls), as calculated in paragraph 205.6(b)(2). If the coating is a multi-component product, the VOC content is VOC regulatory as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing. VOC content must include maximum amount of thinning solvent recommended by the manufacturer.

(ch) ‘VOC regulatory’. VOC regulatory is the weight of VOC per volume of coating, less the volume of water and exempt compounds.

([bs]ci) ‘Waterproofing sealer’. A coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for concrete/masonry sealers.

([bt]cj) ‘Waterproofing concrete/masonry sealer’. A clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, and staining.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for concrete/masonry sealers.

(ck) 'Waterproofing membrane'. For products manufactured on or after January 1, 2021, a clear or opaque coating labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane that prevents any penetration of liquid water into the substrate. Waterproofing membranes are intended for the following waterproofing applications: below-grade surfaces, between concrete slabs, inside tunnels, inside concrete planters, and under flooring materials. Waterproofing membranes must meet the following criteria:

(1) coating must be applied in a single coat of at least 25 mils (at least 0.025 inch) dry film thickness; and

(2) coatings must meet or exceed the requirements contained in ASTM C836/ C836M-15. (see Table 1, section 200.9 of this Title).

(3) The waterproofing membrane category does not include topcoats that are included in the concrete/masonry sealer category (e.g., parking deck topcoats, pedestrian deck topcoats, etc.).

(cl) 'Wood coatings'. For products manufactured on or after January 1, 2021, coatings labeled and formulated for application to wood substrates only. The wood coatings category includes the following clear and semitransparent coatings: lacquers; varnishes; sanding sealers; penetrating oils; clear stains; wood conditioners used as undercoats; and wood sealers used as topcoats. The wood coatings category also includes the following opaque wood coatings; opaque lacquers; opaque sanding sealers; and opaque lacquer undercoaters. The wood coatings category does not include the following: clear sealers that are

labeled and formulated for use on concrete/masonry surfaces; or coatings intended for substrates other than wood. Wood coatings must be labeled “For Wood Substrates Only”, in accordance with subdivision 205.4(o).

([bu]cm) ‘Wood preservative’. A coating labeled and formulated to protect exposed wood from decay or insect attack, that is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, *et. seq.*) (see Table 1, section 200.9 of this Title) and with Part 326 of this Title.

(cn) ‘Wood substrate’. A substrate made of wood, particleboard, plywood, medium density fiberboard, rattan, wicker, bamboo, or composite products with exposed wood grain. Wood products do not include items comprised of simulated wood.

(co) ‘Zinc-rich primer’. For products manufactured on or after January 1, 2021, a coating that meets all of the following specifications:

(1) coating contains at least 65 percent metallic zinc powder or zinc dust by weight of total solids;

(2) coating is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings; and,

(3) coating is intended for professional use only and labeled as such, in accordance with the labeling requirements in subdivision 205.4 (o) of this part.



Section 205.3 Standards.

**Subdivision 205.3(a) is deleted and a new subdivision 205.3(a) is added.**

[(a) *VOC content limits.* Except as provided in subdivisions (b) and (g) of this section, no person shall manufacture, blend, or repackage for sale within the State of New York, supply, sell, or offer for sale within the State of New York or solicit for application or apply within the State of New York any architectural coating manufactured on or after January 1, 2005 which contains volatile organic compounds in excess of the limits specified in the following Table of Standards. Limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. *Manufacturer's maximum recommendation* means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

Table of Standards - VOC Content Limits For Architectural Coatings

<i>Coating category</i>	<i>VOC content limit (grams per liter)</i>
Flat coatings	100
Nonflat coatings	150

Nonflat - high gloss coatings	250
Antenna coatings	530
Antifouling coatings	400
Bituminous roof coatings	300
Bituminous roof primers	350
Bond breakers	350
Calcimine recoaters	475
Clear wood coatings	
• Clear brushing lacquers	680
• Lacquers (including lacquer sanding sealers)	550
• Sanding sealers (other than lacquer sanding sealers)	350
• Varnishes	350
• Conversion varnishes	725
Concrete curing compounds	350
Concrete surface retarders	780
Dry fog coatings	400
Faux finishing coatings	350
Fire resistive coatings	350
Fire-retardant coatings	
• Clear	650
• Opaque	350
Floor coatings	250
Flow coatings	420

Form-release compounds	250
Graphic arts coatings (sign paints)	500
High temperature coatings	420
Impacted immersion coatings	780
Industrial maintenance coatings	340
Low solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	300
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	200
Quick-dry enamels	250
Quick-dry primers, sealers and undercoaters	200
Recycled coatings	250
Roof coatings	250
Rust preventive coatings	400
Shellacs:	
• Clear	730
• Opaque	550
Specialty primers, sealers, and undercoaters	350
Stains	250

Swimming pool coatings and swimming pool repair and maintenance coatings	340
Temperature-indicator safety coatings	550
Thermoplastic rubber coatings and mastics	550
Traffic marking coatings	150
Waterproofing sealers	250
Waterproofing concrete/masonry sealers	400
Wood preservatives	350]

(a) ‘VOC Content Limits’. Except as provided in subsections (b) through (h), no person shall:

(1) Manufacture, blend or repackage for sale within the State of New York;

(2) Supply, sell, or offer for sale within the State of New York; or

(3) Solicit for application or apply within the Department any architectural coating with a VOC content in excess of the corresponding limit specific in the Table in this subdivision, after the specified effective date. Limits are expressed as VOC content, thinned to manufacturer’s maximum thinning recommendation, excluding any colorant added to tint bases.

<u>Coating Category</u>	<u>VOC Content Limit</u>	<u>VOC Content Limit</u>
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	<u>(grams per liter)</u>	<u>(grams per liter)</u>
	<u>Effective Until</u> <u>December 31, 2020</u>	<u>Effective</u> <u>January 1, 2021</u>
<u>Flat Coatings</u>	<u>100</u>	<u>50</u>
<u>Nonflat Coatings</u>	<u>150</u>	<u>100</u>
<u>Nonflat – High Gloss Coatings</u>	<u>250</u>	<u>150</u>
<u>‘Specialty Coatings’</u>		
<u>Aluminum Roof Coating</u>	<u>N/A</u>	<u>450</u>
<u>Antenna Coatings</u>	<u>530</u>	<u>N/A</u>
<u>Antifouling Coatings</u>	<u>400</u>	<u>N/A</u>
<u>Basement Specialty Coatings</u>	<u>N/A</u>	<u>400</u>
<u>Bituminous Roof Coatings</u>	<u>300</u>	<u>270</u>
<u>Bituminous Roof Primers</u>	<u>350</u>	<u>350</u>
<u>Bond Breakers</u>	<u>350</u>	<u>350</u>
<u>Calcimine Recoaters</u>	<u>475</u>	<u>475</u>
<u>‘Clear Wood Coatings’</u>		
• <u>Clear Brushing Lacquers</u>	<u>680</u>	<u>N/A</u>
• <u>Lacquers (including lacquer sanding sealers)</u>	<u>550</u>	<u>N/A</u>
• <u>Sanding Sealers (other than lacquer sanding sealers)</u>	<u>350</u>	<u>N/A</u>

<u>• Varnishes</u>	<u>350</u>	<u>N/A</u>
<u>Concrete Curing Compounds</u>	<u>350</u>	<u>350</u>
<u>Concrete/Masonry Sealer</u>	<u>N/A</u>	<u>100</u>
<u>Concrete Surface Retarders</u>	<u>780</u>	<u>780</u>
<u>Conjugated Oil Varnish</u>	<u>N/A</u>	<u>450</u>
<u>Conversion Varnish</u>	<u>725</u>	<u>725</u>
<u>Driveway Sealers</u>	<u>N/A</u>	<u>50</u>
<u>Dry Fog Coatings</u>	<u>400</u>	<u>150</u>
<u>Faux Finishing Coatings</u>	<u>350</u>	<u>350</u>
<u>Fire-Resistive Coatings</u>	<u>350</u>	<u>350</u>
<u>'Fire-Retardant Coatings'</u>		
<u>• Clear</u>	<u>650</u>	<u>N/A</u>
<u>• Opaque</u>	<u>350</u>	<u>N/A</u>
<u>Floor Coatings</u>	<u>250</u>	<u>100</u>
<u>Flow Coatings</u>	<u>420</u>	<u>N/A</u>
<u>Form-Release Compounds</u>	<u>250</u>	<u>250</u>
<u>Graphic Arts Coatings (Sign Paints)</u>	<u>500</u>	<u>500</u>
<u>High-Temperature Coatings</u>	<u>420</u>	<u>420</u>
<u>Impacted Immersion Coatings</u>	<u>780</u>	<u>780</u>
<u>Industrial Maintenance Coatings</u>	<u>340</u>	<u>250</u>
<u>Low-Solids Coatings</u>	<u>120</u>	<u>120</u>
<u>Magnesite Cement Coatings</u>	<u>450</u>	<u>450</u>

<u>Mastic Texture Coatings</u>	<u>300</u>	<u>100</u>
<u>Metallic Pigmented Coatings</u>	<u>500</u>	<u>500</u>
<u>Multi-Color Coatings</u>	<u>250</u>	<u>250</u>
<u>Nuclear Coatings</u>	<u>450</u>	<u>450</u>
<u>Pre-Treatment Wash Primers</u>	<u>420</u>	<u>420</u>
<u>Primers, Sealers, and Undercoaters</u>	<u>200</u>	<u>100</u>
<u>Quick-Dry Enamels</u>	<u>250</u>	<u>N/A</u>
<u>Quick-Dry Primers, Sealers and Undercoaters</u>	<u>200</u>	<u>N/A</u>
<u>Reactive Penetrating Sealer</u>	<u>N/A</u>	<u>350</u>
<u>Reactive Penetrating Carbonate Stone Sealer</u>	<u>N/A</u>	<u>500</u>
<u>Recycled Coatings</u>	<u>250</u>	<u>250</u>
<u>Roof Coatings</u>	<u>250</u>	<u>250</u>
<u>Rust Preventative Coatings</u>	<u>400</u>	<u>250</u>
<u>'Shellacs'</u>		
• <u>Clear</u>	<u>730</u>	<u>730</u>
• <u>Opaque</u>	<u>550</u>	<u>550</u>
<u>Specialty Primers, Sealers, and Undercoaters</u>	<u>350</u>	<u>100</u>
<u>Stains</u>	<u>250</u>	<u>250</u>
<u>Stone Consolidant</u>	<u>N/A</u>	<u>450</u>

<u>Swimming Pool Coatings</u>	<u>340</u>	<u>340</u>
<u>Swimming Pool Repair and Maintenance Coatings</u>	<u>340</u>	<u>N/A</u>
<u>Temperature-Indicator Safety Coatings</u>	<u>550</u>	<u>N/A</u>
<u>Thermoplastic Rubber Coatings and Mastics</u>	<u>550</u>	<u>550</u>
<u>Traffic Marking Coatings</u>	<u>150</u>	<u>100</u>
<u>Tub and Tile Refinish</u>	<u>N/A</u>	<u>420</u>
<u>Waterproofing Membranes</u>	<u>N/A</u>	<u>250</u>
<u>Waterproofing Sealers</u>	<u>250</u>	<u>N/A</u>
<u>Waterproofing Concrete/Masonry Sealers</u>	<u>400</u>	<u>N/A</u>
<u>Wood Coatings</u>	<u>N/A</u>	<u>275</u>
<u>Wood Preservatives</u>	<u>350</u>	<u>350</u>
<u>Zinc-Rich Primer</u>	<u>N/A</u>	<u>340</u>

(b) ‘Most restrictive VOC limit for products manufactured before January 1, 2021’. If anywhere on the container of any architectural coating, or any label sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on the manufacturer’s behalf, including retailers who sell under a private label, representation is made that the coating meets the definition of or is recommended for use or may be used for more than one of the coating categories listed in subdivision (a) of this section, then the most restrictive VOC content limit shall apply. This provision does not apply to the coating categories listed below in paragraphs (1)-[(19)] (21) of this



subdivision:

(1) lacquer coatings (including lacquer sanding sealers);

(2) metallic pigmented coatings;

(3) shellacs;

(4) fire-retardant coatings;

(5) pretreatment wash primers;

(6) industrial maintenance coatings;

(7) low-solids coatings;

(8) wood preservatives;

(9) high temperature coatings;

(10) temperature-indicator safety coatings;

(11) antenna coatings;

(12) antifouling coatings;

(13) flow coatings;

(14) bituminous roof primers;

(15) thermoplastic rubber coatings and mastics;

(16) specialty primers, sealers, and undercoaters;

(17) calcimine recoaters;

(18) impacted immersion coatings; [and]

(19) nuclear coatings[.];

(20) thermoplastic rubber coatings and mastic; and

(21) concrete surface retarders.

(c) 'Most restrictive VOC limit for products manufactured on or after January 1, 2021'. If a coating is recommended for use in more than one of the specialty coating categories listed in subdivision 205.3(a),

the most restrictive (or lowest) VOC content limit shall apply. This requirement applies to usage recommendations that appear anywhere on the coating container, anywhere on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf. This provision does not apply to the coating categories listed below in paragraphs (1) – (17) of this subsection.

(1) aluminum roof coatings;

(2) bituminous roof primers;

(3) high temperature coatings;

(4) industrial maintenance coatings;

(5) low-solids coatings

(6) metallic pigmented coatings

(7) pretreatment wash primers

(8) shellacs

(9) specialty primers, sealers, and undercoaters

(10) wood coatings

(11) wood preservatives

(12) zinc-rich primers

(13) calcimine recoaters

(14) impacted immersion coatings

(15) nuclear coatings

(16) thermoplastic rubber coatings and mastic

(17) concrete surface retarders

[(c)(d)] 'Painting practices'. Any person who applies architectural coatings shall ensure that all containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, or rolling, padding, ragging or other means, shall be closed when not in use. These architectural coatings containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOC-containing materials used for thinning and cleanup

shall also be closed when not in use.

([d]e) ‘Thinning’. No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOC limit specified in subdivision (a) of this section.

([e]f) ‘Rust preventive coatings’. No person shall apply or solicit the application of any rust preventive coating, manufactured before January 1, 2021, for industrial use, unless such a rust preventive coating complies with the industrial maintenance coating VOC limit specified in subdivision (a) of this section.

([f]g) ‘Coatings not listed in subdivision (a) of this section’. For any coating that does not meet any of the definitions for the specialty coatings categories listed in subdivision (a) of this section, the VOC content limit shall be determined by classifying the coating as a flat coating, nonflat coating, or nonflat-high gloss coating as those terms are defined in subdivisions 205.2([x]ac), ([am]at) and ([an]au) of this Part and the corresponding flat or nonflat coating [limit shall apply.] VOC limit in subdivision 205.3(a) shall apply.

([g]h) ‘Sell through of coatings’. A coating manufactured prior [to January 1, 2005, or previously granted an exemption pursuant to section 205.7 of this Part,]to the effective date specified for that coating in subdivision 205.3(a), may be sold, supplied, or offered for sale until [May 15, 2007] December 31, 2022, so long as the coating complied with standards in effect at the time the coating was manufactured.

Section 205.4 Container labeling requirements.

(a) Each manufacturer of any architectural coatings subject to this rule manufactured on or after January 1, 2005 shall display the information listed in paragraphs (1) – (3) [subdivisions (a)-(c)] of this section on the coating container (or label affixed there to) in which the coating is sold or distributed.

[[a]1] ‘Date code’. The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the director, Division of Air Resources, Department of Environmental Conservation [by January 1, 2005 or] within 90 days of making the product available for sale in New York State.

[[b]2] ‘Thinning recommendations’. A statement of the manufacturer’s recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

[[c]3] ‘VOC content’.

(b) For products manufactured before January 1, 2021: Each container of any coating subject to this rule shall display either the maximum or the actual VOC content of the coating, as supplied, including the

maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using manufacturer's formulation data or shall be determined using the test methods in [section]subdivision 205.6([b]c) of this Part. The equations in [section]subdivision 205.6([a]b) of this Part shall be used to calculate VOC content.

(c) For products manufactured on or after January 1, 2021: Each container of any coating subject to this part shall display one of the following values in grams of VOC per liter coating:

(1) Maximum VOC content as determined from all potential product formulations; or

(2) VOC content as determined from actual formulation data; or

(3) VOC content as determined using the test methods in subdivision 205.6(c).

(d) If the manufacturer does not recommend thinning, the container must display the VOC content, as supplied. If the manufacturer recommends thinning, the container must display the VOC content including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredient that general ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing. VOC content shall be determined as defined by the equations in section 205.6.

(e) 'Faux finishing coatings'. For products manufactured on or after January 1, 2021, the labels of all

clear topcoat Faux finishing coatings shall prominently display the statement “This product can only be sold or used as part of a Faux finishing coating system.”

([d]f) ‘Industrial maintenance coatings’. [In addition to the information specified in subdivisions (a)-(c) of this section, each manufacturer of any industrial maintenance coating subject to this rule shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions listed below in paragraphs (1)-(3) of this subdivision.] The labels of all industrial maintenance coatings shall prominently display at least one of the following statements:

(1) “For industrial use only.”

(2) “For professional use only.”

(3) “Not for residential use” or “Not intended for residential use.”

([e]g) ‘Clear brushing lacquers’. The labels of all clear brushing lacquers manufactured before January 1, 2021 shall prominently display the statements “For brush application only,” and “This product must not be thinned or sprayed.”

([I]h) ‘Non-flat high-gloss coatings’. The labels of all non-flat high-gloss coatings shall prominently display the words “High gloss.”



[[f]i) ‘Rust preventive coatings’. The labels of all rust preventive coatings shall prominently display the statement “For metal substrates only.”

[[g]j) ‘Specialty primers, sealers and undercoaters’. For products manufactured before January 1, 2021, [The]the labels of all specialty primers, sealers and undercoaters shall prominently display one or more of the descriptions listed in paragraphs [in] (1)-(5) of this subdivision.

(1) “For blocking stains.”

(2) “For fire-damaged substrates.”

(3) “For smoke-damaged substrates.”

(4) “For water-damaged substrates.”

(5) “For excessively chalky substrates.”

(6) For products manufactured on or after January 1, 2021, the labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed in paragraphs 205.4(j)(2) through 205.4(j)(4).

[[h]k) ‘Quick-dry enamels’. The labels of all quick dry enamels manufactured before January 1, 2021, shall prominently display the words “Quick dry” and the dry hard time.

(l) ‘Reactive penetrating sealers’ For products manufactured on or after January 1, 2021, the labels of all reactive penetrating sealers shall prominently display the statement “Reactive penetrating sealer.”

(m) ‘Reactive penetrating carbonate stone sealers’. For products manufactured on or after January 1, 2021, the labels of all reactive penetrating carbonate stone sealers shall prominently display the statement “Reactive penetrating carbonate stone sealer.”

(n) ‘Stone consolidants’. For products manufactured on or after January 1, 2021, the labels of all stone consolidants shall prominently display the statement “Stone Consolidant – For Professional Use Only.”

(o) ‘Wood coatings’. For products manufactured on or after January 1, 2021, the labels of all Wood Coatings shall prominently display the statement “For Wood Substrates Only.”

(p) ‘Zinc rich primers’. For products manufactured on or after January 1, 2021, the labels of all Zinc Rich Primers shall prominently display one or more of the following statements listed in paragraphs (1)–(3) below:

(1) “For Professional Use Only”

(2) “For Industrial Use Only”

(3) “Not for residential use” or “Not intended for residential use”

Section 205.5 Reporting requirements.

**Subdivisions 205.5 (a-d) are deleted and new subdivisions 205.5(a and b) are added.**

[(a) Each manufacturer of a product subject to a VOC content limit in section 205.3(a) of this Part shall keep records demonstrating compliance with the VOC content limits. Such records shall clearly list each product by name (and identifying number, if applicable) as shown on the product label and in applicable sales and technical literature, the VOC content as determined in section 205.6 of this Part, the name(s) and chemical abstract service (CAS) number of the VOC constituents in the product, the dates of the VOC content determinations, and the coating category and the applicable VOC content limit. These records shall be kept for a period not less than five years and shall be made available to the department within 90 days of request.

(b) A responsible official from each manufacturer shall upon request of the director, Division of Air Resources, Department of Environmental Conservation provide data concerning the distribution and sales of coatings subject to a VOC content limit in section 205.3(a) of this Part. The responsible official shall within 90 days provide information including, but not limited to:

- (1) the name and mailing address of the manufacturer;
- (2) the name, address and telephone number of a contact person;
- (3) the name of the product as it appears on the label and the coating category in section 205.3(a) under which it is regulated;

(4) whether it is marketed for interior or exterior use or both;

(5) the number of gallons sold in New York State in containers greater than one liter and less than one liter;

(6) the actual VOC content and VOC content limit in grams per liter. If thinning is recommended, list the actual VOC content and VOC content limit after recommended thinning. If containers less than one liter have a different VOC content than containers greater than one liter, list separately;

(7) the names and CAS number of the VOC constituents in the product; and

(8) the names and CAS number of any compounds in the products specifically exempted under section 200.1(c) of this Title.

(c) 'Toxic exempt compounds'. For each architectural coating that contains perchloroethylene or methylene chloride, the manufacturer shall, on or before April 1st of each calendar year beginning with the year 2006, report to the director, Division of Air Resources, Department of Environmental Conservation the following information for products sold in the State during the preceding year:

(1) the product brand name and a copy of the product label with the legible usage instructions;

(2) the product category listed in section 205.3(a) of this Part to which the coating belongs;

(3) the total sales in the State of New York during the calendar year to the nearest gallon; and

(4) the volume percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the coating.

(d) 'Recycled coatings'. Manufacturers of recycled coatings must submit a letter signed by a responsible official to the director, Division of Air Resources, Department of Environmental Conservation certifying their status as a recycled paint manufacturer. The manufacturer shall, on or before April 1st of each calendar year beginning with the year 2006, submit an annual report to the director, Division of Air Resources, Department of Environmental Conservation. The report shall include for all recycled coatings the total number of gallons distributed in the State during the preceding year, and shall describe the method used by the manufacturer to calculate State distribution.]

(a) A responsible official from each manufacturer shall upon request of the director or his or her delegate, provide data concerning the distribution and sales of architectural coatings. The responsible official shall, within 180 days of written request, provide information including, but not limited to:

(1) the name and mailing address of the manufacturer;

(2) the name, address and telephone number of a contact person;

(3) the name of the coating product as it appears on the label and the coating category in 205.3(a) of this Part under which the product is regulated;

(4) whether the product is marketed for interior or exterior use or both;

(5) the number of gallons sold in New York State in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);

(6) the VOC actual content and the VOC regulatory content in grams per liter;

(7) the names and CAS numbers of the VOC constituents of the product;

(8) the names and CAS numbers of any compound in the product specifically exempted from the VOC definition;

(9) whether the product is marketed as solventborne, waterborne, or 100 percent solids;

(10) description of resin or binder in the product;

(11) whether the coating is a single-component or multi-component product;

(12) the density of the product in pounds per gallon;

(13) the percent of weight of solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition;

(14) the percent by volume of solids, water and any compounds in the product specifically exempted from the VOC definition.

(b) All data listed in paragraphs (a)(1 – 14) shall be maintained by the responsible official for a minimum of three years. Data submitted by the responsible official to the Department may be claimed as confidential in accordance with Part 616 of this Title.

#### Section 205.6 Compliance provisions and test methods.

(a) For the purpose of determining compliance with the VOC content limits in [section]subdivision 205.3(a) of this Part, the VOC content of a coating shall be determined by using the procedures described in paragraphs ([a]b)(1) or (b)(2) of this section, as appropriate. The VOC content of a tint base shall be determined prior to the addition of the colorant. If the manufacturer does not recommend thinning, the VOC content must be calculated for the product as supplied. If the manufacturer recommends thinning, the VOC content must be calculated including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC Content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC Content must include the VOCs emitted during curing.

([a]b) 'Calculation of VOC content'.

(1) With the exception of low solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOC content using the following equation:

$$\text{VOC content} = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})}$$

where:

VOC content	= grams of VOC per liter of coating
$W_s$	= weight of volatiles, in grams
$W_w$	= weight of water, in grams
$W_{ec}$	= weight of exempt compounds, in grams
$V_m$	= volume of coating, in liters
$V_w$	= volume of water, in liters
$V_{ec}$	= volume of exempt compounds, in liters

(2) For low solids coatings, determine the VOC content in units of grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using the following equation:

$$\text{VOC content (ls)} = (W_s - W_w - W_{ec})$$



(Vm)

where:

VOC content (ls)	= the VOC content of a low solids coating in grams per liter of coating
Ws	= weight of volatile, in grams
Ww	= weight of water, in grams
Wec	= weight of exempt compounds, in grams
Vm	= volume of coating, in liters

([b]c) ‘VOC content of coatings’. To determine the physical properties of a coating in order to perform the calculations in subdivision ([a]b) of this section, the reference method for VOC content is found at 40 CFR part 60, appendix A, method 24 (2000) (see Table 1, section 200.9 of this Title), except as provided in subdivisions ([c]d) and ([d]e) of this section. An alternate method to determine the VOC content of coatings is South Coast Air Quality Management District Method 304-91 (Revised February 1996) (see Table 1, section 200.9 of this Title). The exempt compounds content shall be determined by methods referenced in ASTM D3960-05 (2013), South Coast Air Quality Management District Method 303-91 (Revised August 1996), or Bay Area Air Quality Management District (BAAQMD) Method 41 (Revised 2005), as applicable. (see Table 1, section 200.9 of this Title). To determine the VOC content of a coating, the manufacturer may use 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title), or an alternative method, as provided in subdivision ([c]d) of this section, manufacturer’s formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (e.g., quality assurance checks, recordkeeping). However, if there are any

inconsistencies between the results of a 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) test and any other methods for determining VOC content, the 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) results will govern, except when an alternative method is approved as specified in subdivision ([c]d) of this section. The director, Division of Air Resources, Department of Environmental Conservation may require the manufacturer to conduct a 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) analysis to determine the VOC content.

([c]d) ‘Alternative test methods’. Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subdivision ([b]c) of this section, after review and approval in writing by the director, Division of Air Resources, Department of Environmental Conservation and the EPA, may also be used.

([d]e) ‘Methacrylate traffic coating markings’. Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of 40 CFR part 60, appendix A, method 24 found at 40 CFR part 59, subpart D, appendix A (see Table 1, section 200.9 of this Title). This method has not been approved for methacrylate multicomponent coatings used for other purposes than as traffic marking coatings or for other classes of multicomponent coatings.

**Section 205.7 is deleted**

[Section 205.7 Limited exemption for small AIM coatings manufacturers.

(a) Small AIM coatings manufacturers may request for an exemption to the VOC content limits in section 205.3(a) of this Part. This request shall include a demonstration acceptable to the director, Division of Air Resources, Department of Environmental Conservation on the small manufacturers' inability to produce coatings that meet the VOC content limits based on economic and/or technical feasibility.

(b) The request shall at a minimum include the following small AIM coatings manufacturers' production and product information:

(1) The total quantity (gallons) and the VOC content of each and all of the coatings listed in section 205.3(a) of this Part manufactured by the company for each of the three previous years.

(2) Documentation and analysis supporting the economic or technical infeasibility of meeting the VOC content limits for each coating listed in section 205.3(a) of this Part requesting an exemption.

(3) A statement from a responsible official in the company certifying the accuracy and completeness of the information provided in the request.

(c) The request shall be made at least one year prior to the compliance date of January 1, 2005 and be made to the director, Division of Air Resources, Department of Environmental Conservation. The department reserves the right to request additional information from the responsible official.

(d) The director, Division of Air Resources, Department of Environmental Conservation shall grant or deny the limited exemption in its discretion based on the information supplied pursuant to subdivision (b) of this section at least six months prior to the compliance date of January 1, 2005.

(e) Small AIM coatings manufacturers that have been granted a limited exemption under subdivision (d) of this section shall submit, by April 1st of each year the exemption remains in effect, a report to the director, Division of Air Resources, Department of Environmental Conservation that includes the following manufacturing information from the previous calendar year:

(1) the quantity of the individual coatings listed under section 205.3(a) of this Part produced by the company and the VOC content of the coatings which have been granted an exemption from the VOC content limits in section 205.3(a) of this Part under this section;

(2) the quantity of coatings manufactured for each of the product names of the coatings which have been granted an exemption from the VOC content limits in section 205.3(a) of this Part under this section were marketed under; and

(3) a statement from a responsible official certifying the accuracy and completeness of the information provided in the report.

(f) Any exemption granted under subdivision (d) of this section may remain in effect no later than December 31, 2006.

(g) Limited exemptions for small AIM coatings manufacturers as approved by the director, Division of Air Resources, Department of Environmental Conservation under this Part, will be submitted to the EPA as State Implementation Plan revisions for approval.]

Section 205.[8]Z Severability.

[Each section, or portion thereof, of this Part shall be deemed severable, and in the event that any section, or portion thereof, of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.]

Each provision of this Part shall be deemed severable, and in the event that any provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.

6 NYCRR Part 200, General Provisions

Express Terms

(Sections 200.1 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

		**
<u>205.2(c)</u>	<u>South Coast Air Quality Management District Method 318-95 (Approved July 1996)</u>	***
205.2[(d)](e)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 <i>et seq.</i>	
<u>205.2(h)</u>	<u>ASTM, D7088-04 (Approved 2004)</u>	****
<u>205.2(h)</u>	<u>ASTM, 3273-16 (Approved 2016)</u>	****
<u>205.2(h)</u>	<u>ASTM, 3274-09 (Reapproved 2013)</u>	****
[205.2(v)	ASTM, E119-00A (Approved July 10, 2000)	****]
[205.2(w)	ASTM, E84-01 (Approved July 10, 2001)	****]
[205.2(x)	ASTM, D523-89 (Reapproved 1999)	****]
<u>205.2(y)</u>	<u>ASTM, 3960-05 (Reapproved 2013)</u>	****
<u>205.2(y)</u>	<u>South Coast Air Quality Management District Method 303-91 (Revised 1993)</u>	***
<u>205.2(z)</u>	<u>South Coast Air Quality Management District Method 318-95</u>	***
<u>205.2(aa)</u>	<u>ASTM, E119-16a (Approved 2016)</u>	****
<u>205.2(ab)</u>	<u>ASTM, E84-16 (Approved 2016)</u>	****
<u>205.2(ac)</u>	<u>ASTM, D523-14 (Approved 2014)</u>	****
[205.2(am)	ASTM, D523-89 (Reapproved 1999)	****]
[205.2(an)	ASTM, D523-89 (Reapproved 1999)	****]
[205.2(ap)	ASTM, D4082-02 (Approved January 10, 2002)	****]

[205.2(ap)	ASTM, D3912-95 (Reapproved 2001)	****]
[205.2(ar)	ASTM, D1613-96 (Reapproved 1999)	****]
205.2[(ak)](ar)	South Coast Air Quality Management District Method 318-95 (Approved July 1996)	***
[205.2(at)(2)	ASTM, D1640-95 (Reapproved 1999)	****]
<u>205.2(at)</u>	<u>ASTM, D523-14 (Approved 2014)</u>	****
[205.2(au)	ASTM, D1640-95 (Reapproved 1999)	****]
<u>205.2(au)</u>	<u>ASTM, D523-14 (Approved 2014)</u>	****
<u>205.2(av)</u>	<u>ASTM, D4082-10 (Approved 2010)</u>	****
<u>205.2(av)</u>	<u>ASTM, D3912-10 (Approved 2010)</u>	****
<u>205.2(ba)</u>	<u>ASTM, D1613-06 (Reapproved 2012)</u>	****
<u>205.2(bd)</u>	<u>ASTM, D1640M-14 (Approved 2014)</u>	****
<u>205.2(be)</u>	<u>ASTM, D1640M-14 (Approved 2014)</u>	****
<u>205.2(bf)</u>	<u>ASTM, C67-14 (Approved 2014)</u>	****
<u>205.2(bf)</u>	<u>ASTM, C97M-15 (Approved 2015)</u>	****
<u>205.2(bf)</u>	<u>ASTM, C140M-16 (Approved 2016)</u>	****
<u>205.2(bf)</u>	<u>ASTM, E96M-16 (Approved 2016)</u>	****
<u>205.2(bf)</u>	<u>National Cooperative Highway Research Report 244 (1981)</u>	
<u>205.2(bg)</u>	<u>ASTM, C67-14 (Approved 2014)</u>	****
<u>205.2(bg)</u>	<u>ASTM, C97M-15 (Approved 2015)</u>	****
<u>205.2(bg)</u>	<u>ASTM, C140M-16 (Approved 2016)</u>	****
<u>205.2(bg)</u>	<u>ASTM, E96M-16 (Approved 2016)</u>	****
[205.2(bh)	ASTM, D4214-98 (Approved August 10, 1998)	****]
<u>205.2(bt)</u>	<u>ASTM, D4214-07 (Reapproved 2015)</u>	****
<u>205.2(bv)</u>	<u>ASTM, E2167-01 (Reapproved 2008)</u>	****
<u>205.2(cc)</u>	<u>ASTM, D3363-05 (Reapproved 2011)</u>	****
<u>205.2(cc)</u>	<u>ASTM, D4060-14 (Approved 2014)</u>	****
<u>205.2(cc)</u>	<u>ASTM, D4585-13 (Approved 2013)</u>	****

<u>205.2(cc)</u>	<u>ASTM, D3359-09e2</u>	<u>****</u>
<u>205.2(cc)</u>	<u>ASTM, D714-02 (Reapproved 2009)</u>	<u>****</u>
<u>205.2(ck)</u>	<u>ASTM, C836M-15</u>	<u>****</u>
205.2((bu)) <u>(cm)</u>	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 <i>et. seq.</i>	**
205.6(b)	40 CFR Part 60, Appendix A, method 24	*
205.6(b)	South Coast Air Quality Management District Method 304-91 (Revised February 1996)	***
[205.6(b)	South Coast Air Quality Management District Method 303-91 (Revised August 1996)	***]
205.6(b)	<u>ASTM, D3960-05 (2013)</u>	<u>****</u>
<u>205.6(b)</u>	<u>Bay Area Air Quality Management District Method 41 (Revised 2005)</u>	<u>***</u>
205.6(d)	40 CFR Part 59, Subpart D, Appendix A	*





## ENB - Statewide Notices 3/6/2019

### Public Notice

#### Notice of Proposed Rulemaking

#### 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings

#### 6 NYCRR Part 200, General Provisions

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:

NYS DEC is proposing to amend existing Part 205, entitled: "Architectural and Industrial Maintenance (AIM) Coatings," of Title 6 of the Official Compilation of Codes, Rules and Regulation of the State of New York (6 NYCRR) and the attendant revisions to Part 200.

AIM coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. VOC content is regulated in Part 205 for 52 coating categories. The current VOC limits were set in 2004 and the industry and technology has changed and improved since then to make lower VOC options available. Because New York State has a nonattainment area for ozone, the Clean Air Act (CAA) requires the state to develop strategies to reduce VOC emissions. The revisions to this rule are part of that effort. The major revisions to this proposal are intended to reduce the VOC limit on 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories and eliminate the quart exemption. This proposal applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in New York State. Part 205 will also be submitted to United States Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan for New York State.

**Written comments on the proposed rule may be submitted until 5:00 p.m. on May 20, 2019.** For further information, contact:

Ona Papageorgiou  
NYS DEC - Division of Air Resources  
625 Broadway  
Albany, NY 12233-3250  
Phone: (518) 402-8403  
E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Requests for information and comments related to the SIP revision may be obtained from Robert D. Bielawa, NYS DEC -Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). **Written statements may be submitted until 5 pm May 20, 2019.**

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

**Date:** 5/6/2019  
**Time:** 11:00 a.m.  
**Location:** NYS DEC  
625 Broadway, Public Assembly Room 129A/B  
Albany, NY 12233

**Date:** 5/13/2019  
**Time:** 11:00 a.m.  
**Location:** SUNY @ Stony Brook  
50 Circle Road, Room B02  
Stony Brook, NY 11790

**Date:** 5/14/2019  
**Time:** 11:00 a.m.  
**Location:** 1 Hunter's Point Plaza  
47-40 21st Street,  
Room 834 NYSDOT  
Long Island City, NY 11101

NYS DEC will provide interpreter services for deaf persons at no **charge**. **Written requests for interpreter services are required and should be submitted by April 29, 2019 to:** Richard McAuley, NYS DEC, 625 Broadway, Albany NY 12233-3250, Phone: (518) 402-8438, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

**Contact:** Ona Papageorgiou, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3250, Phone: (518) 402-8403, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

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**Action taken:** Amendment of Appendixes 1 and 2 of Title 4 NYCRR.  
**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.  
**Purpose:** To classify positions in the exempt class and the non-competitive classes.  
**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00011-P.  
**Final rule as compared with last published rule:** No changes.  
**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov  
**Assessment of Public Comment**  
 The agency received no public comment.

**NOTICE OF ADOPTION**

**Jurisdictional Classification**

**I.D. No.** CVS-46-18-00012-A  
**Filing No.** 138  
**Filing Date:** 2019-02-13  
**Effective Date:** 2019-03-06

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Appendix 2 of Title 4 NYCRR.  
**Statutory authority:** Civil Service Law, section 6(1)  
**Subject:** Jurisdictional Classification.

**Purpose:** To delete positions from and classify positions in the non-competitive class.

**Text or summary was published** in the November 14, 2018 issue of the Register, I.D. No. CVS-46-18-00012-P.

**Final rule as compared with last published rule:** No changes.

**Text of rule and any required statements and analyses may be obtained from:** Jennifer Paul, NYS Department of Civil Service, Empire State Plaza, Agency Building 1, Albany, NY 12239, (518) 473-6598, email: commops@cs.ny.gov.

**Assessment of Public Comment**  
 The agency received no public comment.

**Department of Environmental Conservation**

**PROPOSED RULE MAKING HEARING(S) SCHEDULED**

**Regulate Volatile Organic Compounds (VOCs) in Architectural and Industrial Maintenance (AIM) Coatings**

**I.D. No.** ENV-10-19-00003-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Amendment of Parts 200 and 205 of Title 6 NYCRR.  
**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** Regulate volatile organic compounds (VOCs) in architectural and industrial maintenance (AIM) coatings.

**Purpose:** To set new and lower VOC limits for certain coating categories. Update categories and methods.

**Public hearing(s) will be held at:** 11:00 a.m., May 6, 2019 at Department of Environmental Conservation, 625 Broadway, Public Assembly Rm. 129A/B, Albany, NY; 11:00 a.m., May 13, 2019 at SUNY at Stony Brook, 50 Circle Rd., Rm. B02, Stony Brook, NY; and 11:00 a.m., May 14, 2019 at Department of Transportation, One Hunter’s Point Plaza, 47-40 21st St., Rm. 834, Long Island City, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/proproregulations.html#public>):** Architectural and industrial maintenance (AIM) coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. VOC content is regulated in Part 205 for 52 coating categories. The major revisions to this proposal are to reduce the VOC limit on 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories and eliminate the quart exemption. This proposal applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in the State of New York.

**Changes to Section 205.1, Applicability:** The proposed revisions remove the exemption provided to coatings sold in one liter (1.057 quart) containers. This is often referred to as the “quart exemption.”

**Changes to Section 205.2, Definitions:** Transitional language was added to all definitions which are proposed to be changed. The definitions contain language stating that categories eliminated on January 1, 2021 will be absorbed by another category.

The Department is also revising Section 205.2 by:

- Eliminating fifteen categories from the rule. These being antenna coatings, antifouling coatings, clear brushing lacquers, lacquers, sanding sealers, varnishes, clear fire retardant coatings, opaque fire retardant coatings, flow coatings, quick dry enamels, quick dry primers sealers and undercoaters, swimming pool repair and maintenance coatings, temperature indicator coatings, waterproofing sealers and waterproofing concrete/masonry sealers.

- Adding twelve new categories to the rule. These being aluminum roof, basement specialty coatings, concrete/masonry sealer, conjugated oil varnish, driveway sealer, reactive penetrating sealer, reactive penetrating carbonate stone sealer, stone consolidants, tub and tile refinishing, waterproofing membranes, wood coatings, zinc-rich primers.

**Changes to Section 205.3, Standards:**

The current and proposed standards are shown in the table below.

Coating Category	VOC Content Limit (grams per liter)	VOC Content Limit (grams per liter)
	Effective Until December 31, 2020	Effective January 1, 2021
Flat Coatings	100	50
Nonflat Coatings	150	100
Nonflat – High Gloss Coatings	250	150
‘Specialty Coatings’		
Aluminum Roof	N/A	450
Antenna Coatings	530	N/A
Antifouling Coatings	400	N/A
Basement Specialty Coatings	N/A	400
Bituminous Roof Coatings	300	270
Bituminous Roof Primers	350	350
Bond Breakers	350	350
Calcimine Recoaters	475	475
‘Clear Wood Coatings’		
• Clear Brushing Lacquers	680	N/A
• Lacquers (including lacquer sanding sealers)	550	N/A
• Sanding Sealers (other than lacquer sanding sealers)	350	N/A
• Varnishes	350	N/A
Concrete Curing Compounds	350	350
Concrete/Masonry Sealer	N/A	100

Coating Category	VOC Content Limit (grams per liter)	VOC Content Limit (grams per liter)
Concrete Surface Retarders	780	780
Conjugated Oil Varnish	N/A	450
Conversion Varnish	725	725
Driveway Sealers	N/A	50
Dry Fog Coatings	400	150
Faux Finishing Coatings	350	350
Fire Resistive Coatings	350	350
‘Fire Retardant Coatings’		
• Clear	650	N/A
• Opaque	350	N/A
Floor Coatings	250	100
Flow Coatings	420	N/A
Form Release Compounds	250	250
Graphic Arts Coatings (Sign Paints)	500	500
High Temperature Coatings	420	420
Impacted Immersion Coatings	780	780
Industrial Maintenance Coatings	340	250
Low Solids Coatings	120	120
Magnesite Cement Coatings	450	450
Mastic Texture Coatings	300	100
Metallic Pigmented Coatings	500	500
Multi Color Coatings	250	250
Nuclear Coatings	450	450
Pre Treatment Wash Primers	420	420
Primers, Sealers, and Undercoaters	200	100
Quick Dry Enamels	250	N/A
Quick Dry Primers, Sealers and Undercoaters	200	N/A
Reactive Penetrating Sealer	N/A	350
Reactive Penetrating Carbonate Stone Sealer	N/A	500
Recycled Coatings	250	250
Roof Coatings	250	250
Rust Preventative Coatings	400	250
‘Shellacs’		
• Clear	730	730
• Opaque	550	550
Specialty Primers, Sealers, and Undercoaters	350	100
Stains	250	250
Stone Consolidant	N/A	450
Swimming Pool Coatings	340	340
Swimming Pool Repair and Maintenance Coatings	340	N/A
Temperature Indicator Safety Coatings	550	N/A
Thermoplastic Rubber Coatings and Mastics	550	550

Coating Category	VOC Content Limit (grams per liter)	VOC Content Limit (grams per liter)
Traffic Marking Coatings	150	100
Tub and Tile Refinish	N/A	420
Waterproofing Membranes	N/A	250
Waterproofing Sealers	250	N/A
Waterproofing Concrete/Masonry Sealers	400	N/A
Wood Coatings	N/A	275
Wood Preservatives	350	350
Zinc-Rich Primer	N/A	340

The most restrictive limit subdivision 205.3(b) was updated and subdivision 25.3(c) was added to reflect the new and removed categories.

Changes to Section 205.4, Container labeling requirements: The labeling requirements were updated to reflect the new and removed categories.

Changes to Section 205.5, Reporting requirements: The existing language was removed and replaced with language requiring manufacturers to preserve and provide certain information upon the request of the Director. The information proposed for retention includes facility information and product information to be maintained by a responsible official for a minimum of three years.

Changes to Section 205.6, Compliance provisions and test methods: The Department is adding the following text to subdivision 205.6(a); “If the manufacturer does not recommend thinning, the VOC Content must be calculated for the product as supplied. If the manufacturer recommends thinning, the VOC Content must be calculated including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC Content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC Content must include the VOCs emitted during curing.”

In addition, new and updated test methods have been added.

Changes to Section 205.7, Limited exemption for small AIM coatings manufacturers: This Section has been removed.

Changes to Section 200.9 Referenced Material: This Section was updated to cite the changed and updated test methods referenced throughout Part 205.

**Text of proposed rule and any required statements and analyses may be obtained from:** Ona Papageorgiou, NYSDEC, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

**Data, views or arguments may be submitted to:** Same as above.

**Public comment will be received until:** May 20, 2019.

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

**Summary of Regulatory Impact Statement (Full text is posted at the following State website: <http://www.dec.ny.gov/regulations/propregulations.html#public>):**

**INTRODUCTION**

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, “Architectural and Industrial Maintenance (AIM) Coatings,” and Part 200, “General Provisions” (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to lower VOC emissions by lowering VOC limits for some coating categories. DEC will be required to incorporate the revisions to Part 205 and the attendant revisions to Part 200 into New York’s SIP, and provide the revised SIP to EPA for review and approval.

**STATUTORY AUTHORITY**

The statutory authority for the promulgation of 6 NYCRR Part 205 and the attendant revision to 6 NYCRR Part 200 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

**LEGISLATIVE OBJECTIVES**

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices.

**NEEDS AND BENEFITS**

New York faces a significant public health challenge from ground-level

ozone which causes health effects ranging from respiratory disease to death. In response to this public health concern, New York has enacted a series of regulations designed to control ozone and its chemical precursors, including VOCs. In the course of establishing this regulatory framework, New York has promulgated regulations under 6 NYCRR Part 205 to limit the VOCs emitted from architectural and industrial maintenance coatings (AIM coatings).

The 2008 8-hour ozone NAAQS level is 0.075 parts per million (ppm). In 2015 the EPA reduced the 8-hour ozone NAAQS to a level of 0.070 ppm. Areas in New York are currently designated as nonattainment for the 2008 and 2015 ozone NAAQS.

Pursuant to the Clean Air Act, New York State is required to develop and implement enforceable strategies that will bring the entire state into attainment for the 2008 and 2015 8-hour ozone NAAQS. DEC is proposing to revise Part 205 to get further VOC reductions necessary to achieve compliance with the 2008 and 2015 ozone NAAQS.

The OTC estimated that the OTC Region’s specific percent reductions in the architectural and industrial maintenance coating sector resulting from implementation of the rule are as follows<sup>1</sup>:

Coating Category	Percent VOC reduction
Flat, Non Flat	32.4
Traffic Markings	9.7
Industrial Maintenance	38
Other Specialty Coatings	34.3
Overall AIM Coating Reduction	33.7

Applying these categorical reductions to New York, DEC estimates the rule revisions will achieve VOC mass reductions of approximately 16 tons per day (TPD).

Summary of the proposed rule  
 DEC proposes to revise Part 205 consistent with a model rule developed by the Ozone Transport Commission (OTC) in 2011. Key provisions of this proposal include:

- Eliminating 15 coating categories and sub-categories
- Adding 12 new coating categories
- Lowering VOC limits on 12 coating categories
- Broadening the scope of DEC’s data collecting authority
- Adding transitional language
- Updating definitions and codes (revise section 200.9)
- Eliminating the quart exemption (not included in the model rule)

Brief discussions of the DEC’s proposed revisions to Part 205 are presented below.

Eliminate 15 coating categories and sub-categories

The coating categories proposed for elimination with the coating category it is proposed to be absorbed by:

Eliminated Category	Absorbed By
Antenna Coatings (530 grams per liter (g/l))	Industrial Maintenance (250 g/l)
Antifouling Coatings (400 g/l)	Industrial Maintenance (250 g/l)
Clear Wood Coatings	
• Clear Brushing Lacquers (680 g/l)	
• Lacquers (550 g/l)	Wood Coatings (275 g/l)
• Sanding Sealers (350 g/l)	
• Varnishes (350 g/l)	
Fire Retardant Coatings	
• Clear (650 g/l)	Industrial Maintenance (250 g/l)
• Opaque (350 g/l)	
Flow Coatings (420 g/l)	Industrial Maintenance (250 g/l)
Quick Dry Enamels (250 g/l)	Flat (50 g/l) or Nonflat (100 g/l) or Nonflat High Gloss (150 g/l)
Quick Dry Primers, Sealers & Undercoaters (200 g/l)	Specialty Primers, Sealers & Undercoaters (100 g/l)
Swimming Pool Repair & Maintenance Coatings (340 g/l)	Swimming Pool Coatings (340 g/l)
Temperature Indicator Coatings (550 g/l)	Industrial Maintenance (250 g/l)
Waterproofing Sealers (250 g/l)	Concrete/Masonry Sealers (100 g/l) or Waterproofing Membranes (250 g/l)

Eliminated Category	Absorbed By
Waterproofing Concrete/Masonry Sealers (400 g/l)	Basement Specialty Coatings (400 g/l) or Concrete/Masonry Sealers (100 g/l) or Waterproofing Membranes (250 g/l)

Add 12 new coating categories  
 The coating categories proposed for addition are:

New Category	Limit (g/l)
Aluminum Roof	450
Basement Specialty Coatings	400
Concrete/Masonry Sealer	100
Conjugated Oil Varnish	450
Driveway Sealer	50
Reactive Penetrating Sealer	350
Reactive Penetrating Carbonate Stone Sealer	500
Stone Consolidants	450
Tub and Tile Refinish	420
Waterproofing Membranes	250
Wood Coatings	275
Zinc-Rich Primer	340

Lower VOC limits on 12 coating categories  
 The coating categories proposed for lowered VOC limits are:

Category	Limit lowered (g/l)
Bituminous Roof Coatings	From 300 to 270
Dry Fog Coatings	From 400 to 150
Flat Coatings	From 100 to 50
Floor Coatings	From 250 to 100
Industrial Maintenance	From 340 to 250
Mastic Texture Coatings	From 300 to 100
Nonflat Coatings	From 150 to 100
Nonflat-High Gloss	From 250 to 150
Primers, Sealers & Undercoaters	From 200 to 100
Rust Preventative	From 400 to 250
Specialty Primers, Sealers & Undercoaters	From 350 to 100
Traffic Marking	From 150 to 100

Add transitional language

At the request of stakeholders, DEC is revising sections 205.2 and 205.3 by adding transitional language to clarify definitions, including those related to the new coating categories, and explicitly identifying when certain categories will be phased out and new ones phased in under the revised rule.

Update definitions and codes as necessary

DEC is revising Section 205.2, “Definitions”, to clarify and update specific definitions that are currently unclear or require updating to reflect the other program changes.

DEC is also revising subdivision 205.3(b), which is the “most restrictive VOC limit” provision of the rule to address the new and eliminated coating categories.

Section 205.6 will be updated to reflect the most up-to-date ASTM publications. As a result of these updates, Section 200.9 will also be updated.

Eliminate the quart exemption

DEC is revising paragraph 205.1(b)(3) of the applicability section to eliminate what is known as the “quart exemption.” Currently, Part 205 does not regulate coatings sold in containers with a volume of one liter (1.057 quart) or less. Manufacturers and suppliers may circumvent the VOC limits in Part 205 by selling the coatings in bundles of quart containers inside a larger pail resulting in greater than anticipated VOC emissions. To address this issue, the proposed revision will eliminate the language of Part 205 exempting quart containers. This provision is not included in the OTC AIM Model Rule.

Broaden the scope of DEC’s data collection authority

DEC is broadening the scope of its authority to collect information pursuant to the reporting requirements in Section 205.5 of the rule. This

revision allows DEC to request more information than under the existing rule and gives manufacturers additional time to respond. Currently, DEC cannot request information on products manufactured for use outside of the state (which could then be sold back into the state) or sold in the state in containers of one liter or less. In the past, some manufacturers have voluntarily provided this information when requested, but others have not. The collection of this information is important in developing emission inventories and enforcing the rule.

#### COSTS

In 2007, CARB implemented the VOC limits being proposed in the revisions to Part 205. CARB conducted a thorough study of affected businesses to determine control costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected.

#### PAPERWORK

The proposed changes to Part 205 broaden the scope of DEC's authority to collect information. Specifically, Section 205.5 requires that manufacturers keep data on file for three years. If DEC requests this information, the manufacturer's responsible official shall provide this information within 180 days of written request.

#### LOCAL GOVERNMENT MANDATES

No record keeping, reporting, or other requirements will be imposed on local governments. The authority and responsibility for implementing and administering Part 205 resides solely with DEC. Requirements for record keeping, reporting, etc. are applicable only to the person(s) who manufactures, sells, supplies, or offers AIM coatings for sale.

#### DUPLICATION BETWEEN THIS REGULATION AND OTHER REGULATIONS AND LAWS

The revisions to Part 205 regulate all of the architectural and industrial maintenance coatings regulated by the federal government under 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Architectural Coatings. The federal rule was developed in 1998 and has not been revised since. The AIM coating sector has seen many technological advancements since 1998, and as a result, manufacturers have been able to formulate quality coatings with lower VOC content.

While the definitions in Part 205 are somewhat different than that in the federal rule, the VOC limits within Part 205 are at least as stringent, and more often more stringent, than those set in the federal rule. Part 205 contains all coatings listed in the federal rule. Therefore, with the exception of coatings that contain post consumer recycled content, a manufacturer need only comply with the limits in Part 205 to be in compliance with the architectural coatings VOC content limits for the New York State and the federal rule.

#### ALTERNATIVES

The following alternatives have been evaluated to address the goals set forth above:

1. No action taken;
2. Revising paragraph 205.1(b)(3); and
3. Removing paragraphs 205.3(b)(1)-(19).

#### FEDERAL STANDARDS

Both the current version of Part 205 (2003) and this proposed rule are more stringent than the current federal AIM coatings standard, 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Architectural Coatings. The federal standard became effective in 1998 and AIM coating technology has advanced to allow for quality products formulated with lower VOCs. The New York Metropolitan Area continues to be designated non-attainment for ozone and as a result, additional VOC emission reductions need to be achieved.

#### COMPLIANCE SCHEDULE

The proposed effective date for the revisions to Part 205 is January 1, 2021. The sell-through provision allows for product manufactured before January 1, 2021 to be sold through December 31, 2022.

<sup>1</sup> "Model Regulations for Nitrogen Oxides (NOx) and Photo-reactive Volatile Organic Compounds (VOCs) Technical Support Document" (Revised August, 2016)

#### Regulatory Flexibility Analysis

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Main-

tenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### EFFECT OF THE RULE

Local governments are not expected to be directly affected by the proposed revisions to Part 205. The revisions to Part 205 may require small businesses to reformulate coatings to bring them into compliance with the new VOC limits as well as label accordingly. Small businesses may not have the level of research and development staff available as larger businesses, so this rulemaking may have a greater impact on small businesses. Since 2010 DEC staff have communicated with small businesses as well as coatings associations to prepare businesses for the proposed changes. According to the U.S. Census Bureau, County Business Patterns Report for 2015 show that New York State had 88 paint manufacturing facilities, of which, at least two were small businesses or manufacturers.

#### COMPLIANCE REQUIREMENTS

Local governments are not expected to be directly affected by the proposed revisions to Part 205. Small businesses that manufacture AIM coatings will need to comply with the proposed VOC content limits of Part 205. In addition, these small businesses will need to comply with the labeling requirements of Part 205 which requires manufacturers to display specific information on the coating container or label. The label information required include:

- the date the coating was manufactured or the date code representing the date of manufacture

- the manufacturer's recommendations for thinning of the coating
- the maximum or actual VOC content of the coating

There are additional labeling requirements or specific instructions for:

- industrial maintenance coatings
- clear brushing lacquers
- faux finishing coatings
- rust preventive coatings
- quick dry enamels
- non flat high gloss coatings
- specialty primers, sealers, and undercoaters
- quick dry enamels
- reactive penetrating sealers
- reactive penetrating carbonate stone sealers
- stone consolidants
- wood coatings
- zinc rich primers

Small businesses which manufacture AIM coatings will be expected to comply with the reporting requirements of Part 205. The proposed changes to Part 205 broaden the scope of the DEC's authority to collect information. Specifically, Part 205.5 requires that manufacturers keep the following data on file for three years:

- (1) name and mailing address of the manufacturer;
- (2) name, address and telephone number of a contact person;
- (3) name of the coating product as it appears on the label and the applicable coating category;
- (4) whether the product is marketed for interior or exterior use or both;
- (5) number of gallons sold in New York State in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);
- (6) VOC Actual content and the VOC Regulatory content in grams per liter;
- (7) names and chemical abstract service (CAS) numbers of the VOC constituents of the product;
- (8) names and CAS numbers of any compound in the product specifically exempted from the VOC definition, as listed in subsections 205.2 (cg) and (ch);
- (9) whether the product is marketed as solventborne, waterborne, or 100 percent solids;
- (10) description of resin or binder in the product;
- (11) whether the coating is a single-component or multi-component product;
- (12) density of the product in pounds per gallon;
- (13) percent of weight of solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition, as listed in subsections 205.2 (cg) and (ch); and
- (14) percent by volume of solids, water and any compounds in the product specifically exempted from the VOC definition, as listed in subsection 205.2 (cg) and (ch).

If requested, the manufacturer would be required to provide this information to the DEC within 180 days.

#### PROFESSIONAL SERVICES

It is not anticipated that small businesses that manufacture AIM coat-

ings will need professional services to comply with the proposed revisions to Part 205. However, if a business does not want to reformulate in-house, they may choose to purchase a formulation outside of their business.

#### COMPLIANCE COSTS

The proposed revisions to Part 205 closely match the California Air Resources Board (CARB) 2007 Suggested Control Measure (SCM) for AIM coatings. CARB performed a cost analysis as part of the development of its SCM AIM report in 2007. Because the proposed revisions match so closely with CARB's measures, DEC utilized CARB's cost analysis for the purpose of estimating compliance costs for this rule making.

CARB conducted a thorough study of affected businesses to determine control costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected. DEC staff note that these costs were estimated in 2007 and that formulations and research have improved. Staff have concluded that compliance costs should be lower as a result of these improvements. While the 2007 CARB report stated that there may be an impact on the smallest operations research and formulations experience since then should minimize this impact.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Local governments are not expected to be directly affected by the proposed revisions to Part 205. The limits and requirements proposed in the revisions to Part 205 are technically feasible as they have been in effect in California since 2008. In addition, the coating categories which are not listed under the CARB rule were requested by industry stakeholders who also offered technically feasible limits associated with each category. DEC staff did not conduct independent cost analysis, rather depended on the CARB 2007 analysis to assess the economic feasibility. The CARB cost information does include information supplied by manufacturers who market AIM coatings nationally and therefore extend to New York State. In their 2007 SCM, CARB determined that most manufacturers or marketers of AIM coatings would absorb the cost of the proposed changes with no significant impacts on profitability. Nevertheless, to help minimize the potential impact on small businesses, the proposed changes to Part 205 include a two year sell through provision. This provision allows manufacturers to sell products compliant with the current standard (and manufactured prior to the effective date of the proposed revisions) for two years after the new standard takes effect.

#### MINIMIZING ADVERSE IMPACT

Local governments are not expected to be directly affected by the proposed revisions to Part 205. In recognition of the potential for adverse impacts on small businesses, DEC staff led a stakeholder process with manufacturers and coatings associations, including a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. DEC staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties was also conducted.

The proposed VOC limits have been in effect in California since 2007 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including small businesses, have had ample time to research, prepare and implement re-formulation strategies.

#### SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As stated above, local governments are not expected to be directly affected by the proposed revisions to Part 205. In recognition of the potential adverse impacts on small businesses, DEC staff met with many stakeholders, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. DEC staff also gave presentations at ACA and MNYCA meetings and provided educational outreach on the proposed rule. These outreach efforts, including meetings and communications with DEC staff, have been ongoing since 2012. Additionally, the public, including those involved in small businesses and local governments, will have the opportunity to review and comment on the proposed rule in accordance with State rulemaking procedures and requirements.

#### CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 205. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce impacts on affected sources, Part 205 will not become effective immediately after promulgation and offers a sell-through of two years.

#### INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

#### Rural Area Flexibility Analysis

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The last survey conducted by DEC in 2005 resulted in a list of 121 manufacturers associated with coatings throughout New York State. The U.S. Census Bureau, County Business Patterns Report for 2015 shows that New York State had 88 paint manufacturing facilities. Part 205 will apply to manufacturers, sellers and advertisers statewide and, as a result, stores which sell AIM coatings in rural areas will be subject to the revised rule. The proposed revisions should not single out or impact rural areas.

#### COMPLIANCE REQUIREMENTS

On January 1, 2021, revised Part 205 will apply to manufacturers, sellers and advertisers of AIM coatings. Manufacturers will be required to formulate and label coatings in compliance with the revisions to Part 205. Retailers and advertisers will be required to sell and advertise compliant coatings.

#### COSTS

In 2007, CARB implemented the VOC limits proposed in the revisions to Part 205 and conducted a thorough study of affected businesses to determine compliance costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected. DEC staff note that these costs were estimated in 2007 and that formulations and research have improved. Staff concluded that compliance costs should be lower as a result of these improvements. Costs associated with the proposed revisions to Part 205 are not expected to be greater in rural areas.

#### MINIMIZING ADVERSE IMPACT

The revisions to Part 205 have statewide applicability and do not specifically affect rural areas. DEC conducted a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. DEC staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties was also conducted.

The proposed VOC limits have been in effect in California since 2007 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including those located in rural areas of the state, have had ample time to research, prepare and implement re-formulation strategies.

#### RURAL AREA PARTICIPATION

The revisions to Part 205 have statewide applicability and do not specifically affect rural areas. As stated above, DEC staff met with many stakeholders, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. DEC staff also gave public presentations at ACA and MNYCA meetings, providing educational outreach on the proposed rule. These outreach efforts, including meetings and communications with DEC staff, have been ongoing since 2012. Additionally, the public, including those located in rural areas of the state, will have the opportunity to review and comment on the proposed rule in accordance with State rulemaking procedures and requirements.

#### INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

**Job Impact Statement**

The Department of Environmental Conservation (Department) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

**NATURE OF IMPACT**

Part 205 may impact jobs and employment opportunities with manufacturers producing AIM coatings in New York State. The regulation, as proposed, will require lowered VOC limits which would likely require reformulation of any products which do not meet the new limits. The time and expertise required to reformulate AIM coatings may result in increased employment for consultation and testing. However, reformulation guidance has been made available through the American Coatings Association (ACA) and through raw material chemical distributors so the increase may be limited.

The impact on the Department consists of time for rulemaking development and outreach. Department enforcement staff will continue to conduct enforcement activities to ensure compliance with the current Part 205, and the revised rule is not expected to require additional staff time to implement the rule.

**CATEGORIES AND NUMBERS OF JOBS OR EMPLOYMENT OPPORTUNITIES AFFECTED**

Changes to Part 205 may impact coating and raw material manufacturers, distributors and stores that sell coatings. This would include companies that sell or manufacture coatings for New York State sales. In the last New York State survey in 2005 it was estimated that over 75 million gallons of AIM coatings were sold in New York State.

The revisions to Part 205 may lead to increased time and expertise spent reformulating impacted coating categories. Manufacturers that sell into California, Utah and Delaware have already reformulated their coatings, so those companies should not be impacted. Those companies which need to reformulate will either need to spend more in house resources for reformulation or will need to hire outside help to reformulate.

**REGIONS OF ADVERSE IMPACT**

The paint and coatings industry sector which is impacted by this rule are distributed throughout the state. Manufacturers may be found both up-state and in the New York City metropolitan area. Since this is a statewide rulemaking, the Department does not expect it to have any region-specific adverse impacts.

**MINIMIZING ADVERSE IMPACT**

To minimize any adverse impacts Department staff conducted a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. Department staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties has also been supported.

The proposed VOC limits have been in effect in California since 2007 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including small businesses, have had ample time to research, prepare and implement re-formulation strategies.

**SELF-EMPLOYMENT OPPORTUNITIES**

The adoption of revised Part 205 is not expected to result in negative impacts to self-employment opportunities.

**INITIAL REVIEW**

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

**Department of Health**

**EMERGENCY/PROPOSED  
RULE MAKING  
NO HEARING(S) SCHEDULED**

**Body Scanners in Local Correctional Facilities**

**I.D. No.** HLT-10-19-00004-EP

**Filing No.** 145

**Filing Date:** 2019-02-15

**Effective Date:** 2019-02-15

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Proposed Action:** Addition of section 16.70; amendment of Part 89 of Title 10 NYCRR.

**Statutory authority:** Public Health Law, sections 201, 225 and 3502

**Finding of necessity for emergency rule:** Preservation of public safety.

**Specific reasons underlying the finding of necessity:** Compliance with the requirements of the State Administrative Procedure Act for filing of a regulation on a non-emergency basis including the requirement for a period of time for public comment cannot be met because to do so would be detrimental to the health and safety of inmates in local correctional facilities.

Effective January 30, 2019, Public Health Law § 3502(6) permits unlicensed personnel working at local correctional facilities to utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program. Such equipment is intended to be used as an efficient method of detecting contraband, such as knives and other weapons, as well as illegal drugs including heroin and opioids, and will enhance the safety of both inmates and correction officers.

The regulations provide protections to the inmates and staff by establishing requirements and controls to ensure appropriate operation of the body scanning imaging equipment. These include testing of the equipment by a licensed medical physicist prior to use and annually thereafter; annual training for operators of the equipment to ensure proper operation and application; establishment of policies and procedures to guide use of the equipment; and documentation and inspection requirements to monitor and ensure that inmates are not overexposed to radiation based on the dose limits in the law.

Delaying these regulations would prevent local correctional facilities from enhancing security programs through the use of body imaging scanning equipment while minimizing the risks posed to inmates by exposure to ionization.

**Subject:** Body Scanners in Local Correctional Facilities.

**Purpose:** Establish operational requirements for local correctional facilities that use body scanning imaging equipment for security purposes.

**Text of emergency/proposed rule:** Pursuant to the authority vested in the Public Health and Health Planning Council and the Commissioner of Health by sections 201, 225, and 3502 of the Public Health Law, Parts 16 and 89 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York are amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

New section 16.70 is added to Part 16 to read as follows:

*16.70 Use of Body Scanning.*

(a) *Practitioners licensed under Article 35 of the Public Health Law and unlicensed personnel employed at a local correctional facility may utilize body imaging scanning equipment that applies ionizing radiation to humans for purposes of screening inmates committed to such facility, solely in connection with the implementation of such facility's security program and in accordance with the provisions of this Part.*

(b) *Definitions*

(1) *"Body imaging scanning equipment" or "equipment" means equipment that utilizes a low dose of ionizing radiation to produce an anatomical image capable of detecting objects placed on, attached to or secreted within a person's body. The utilization of body imaging scanning equipment is for purposes of screening inmates committed to such facility, in connection with the implementation of such facility's security program.*

(2) *"Local correctional facility" shall mean a local correctional facility as defined in Correction Law section 2(16).*





Miller Advertising Agency, Inc. • 220 West 42nd Street, 12th Floor • New York, New York 10036 • 212-929-2200

# INVOICE

NYS DEPT. OF ENV. CONSERVATION - A988  
Attn: Anne Behan  
625 Broadway  
Albany, NY 12233-3251

Client Number 020173  
Invoice Number 872579 - 054  
Invoice Date 03/28/19  
Net 30 Page 2

Regarding  
**RICHARD MCAULEY**

Media	Description	Ad Number	Insert Dates	Ad Size	Times	Rate	Amount
NEW YORK POST	NOTICE OF P>	R228010519	03/06	1.00	1	4633.27	4633.27
						10% COMMISSION	463.33
<b>NEW YORK POST TOTAL</b>						<b>\$5,096.60</b>	
NEWSDAY	NOTICE OF P>	R228010619	03/06	1.00	1	1767.15	1767.15
						10% COMMISSION	176.72
<b>NEWSDAY TOTAL</b>						<b>\$1,943.87</b>	
ALBANY TIMES UNION	NOTICE OF P>	R228010719	03/06	1.00	1	173.25	173.25
						10% COMMISSION	17.32
<b>ALBANY TIMES UNION TOTAL</b>						<b>\$190.57</b>	
BUFFALO NEWS	NOTICE OF P>	R228011119	03/06	1.00	1	1882.65	1882.65
						10% COMMISSION	188.27
<b>BUFFALO NEWS TOTAL</b>						<b>\$2,070.92</b>	
SYRACUSE POST-STANDARD	NOTICE OF P>	R228010919	03/05	1.00	1	167.08	167.08
						10% COMMISSION	16.71
<b>SYRACUSE POST-STANDARD TOTAL</b>						<b>\$183.79</b>	
GLENS FALLS POST STAR	NOTICE OF P>	R228010819	03/06	1.00	1	83.68	83.68
						10% COMMISSION	8.37
<b>GLENS FALLS POST STAR* TOTAL</b>						<b>\$92.05</b>	
ROCHESTER DEMOCRAT*	NOTICE OF P>	R228011019	03/06	1.00	1	1980.00	1980.00
						10% COMMISSION	198.00
<b>ROCHESTER DEMOCRAT* TOTAL</b>						<b>\$2,178.00</b>	

**INVOICE TOTAL \$11,755.80**

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Internet : <http://www.milleraa.com>

Email : [JGurpersaud@milleraa.com](mailto:JGurpersaud@milleraa.com)

**State of New York**  
COUNTY OF NEW YORK



SS:

0000138011-01

Rubiel Gonzalez

being duly sworn,

says that he/she is the principal Clerk of the Publisher of the

**New York Post**

a daily newspaper of general circulation printed and published in the English language, in the County of New York, State of New York; that advertisement hereto annexed has been regularly published in the said "New York Post" once,

on the 6th of March, 2019

*Rubiel Gonzalez*

Sworn to before me on this 6 day of March, 2019

*[Signature]*

**Notary Public**

RICHARD C SAVIN  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 01SA6304152  
Qualified in Dutchess County  
My Commission Expires May 27, 2022

### NOTICE OF PUBLIC HEARING

#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed revisions to 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings, and 6 NYCRR Part 200, General Provisions.

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Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility.

Date	Time	Location
5/6/2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
5/13/2019	11:00 am	SUNY @ Stony Brook, 50 Circle Road, Room B02, Stony Brook, NY 11790
5/14/2019	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSB03, Long Island City, NY 11101

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

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Information may be obtained from Ona Papageorgiou, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm, May 20, 2019.

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**REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt

**REGION 5** - Hudson Street Extension, Box 220, Warrensburg NY 12885, Attention: James Coutant

**REGION 6** - Watertown State Office Bldg, 317 Washington St., Watertown, NY 13601, Attention: Bob Jacobs

**REGION 7** - 615 Erie Boulevard West, Syracuse, NY 13204-2400, Attention: Thomas Eika

**REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

# NEWSDAY AFFIDAVIT OF PUBLICATION

MILLER ADVERTISING  
220 WEST 42ND STREET, 12TH FLOOR  
NEW YORK, NY 10036

STATE OF NEW YORK)

Legal Notice No. 0021472360


:SS.:

COUNTY OF SUFFOLK)

Darryl Murphy of Newsday Media Group., Suffolk County, N.Y., being duly sworn, says that such person is, and at the time of publication of the annexed Notice was a duly authorized custodian of records of Newsday Media Group, the publisher of NEWSDAY, a newspaper published in the County of Suffolk, County of Nassau, County of Queens, and elsewhere in the State of New York and other places, and that the Notice of which the annexed is a true copy, was published in the following editions/counties of said newspaper on the following dates:

Wednesday      March 06, 2019      Nassau, Suffolk and Queens

**SWORN** to before me this  
6 Day of March, 2019.



---

CHRISTOPHER LAWSON  
Notary Public - State of New York  
No. 01LA6348406  
Qualified in Suffolk County  
My Commission Expires September 26, 2020





# TIMES UNION

**timesunion.com**

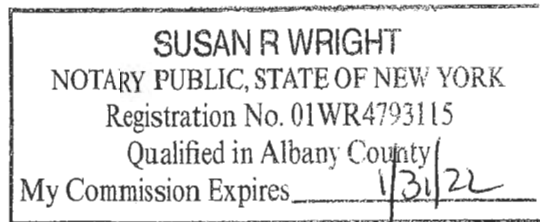
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MILLER ADVERTISING  
220 WEST 42TH STREET  
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NEW YORK, NY 10036

Account Number: 50930000002  
Order Number: 0004043742  
Order Invoice Text:

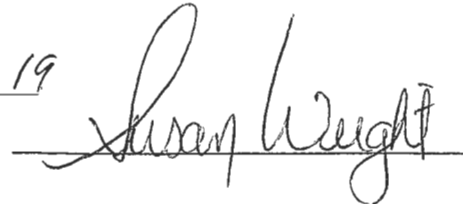
A Loveridge / T Tomes / S Rawling / R Bernard / T Duquette of the city of Albany, being duly sworn, says that he/she is principal Clerk of THE TIMES UNION, a daily newspaper printed in the county of Albany, Town of Colonie, and Published in the County of Albany, Town of Colonie and the city of Albany, aforesaid and that notice of which a printed copy is annexed has been regularly published in the said ALBANY TIMES UNION on the following dates

03-06-2019



  
\_\_\_\_\_

Sworn to before me, this 7 day of March 20 19

  
\_\_\_\_\_

Notary Public  
Albany County

RENSSELAER

NOTICE OF SALE

SUPREME COURT-COUNTY OF ALBANY

WELLS FARGO BANK, NA, Plaintiff, AGAINST MARK E. CASE, SR. AKA MARK CASE, SR. AKA MARK E. CASE AKA MARK CASE, and LORRAINE CASE, et al. Defendant(s)

Pursuant to a judgment of foreclosure and sale duly entered on July 6, 2018.

I, the undersigned Referee, will sell at public auction at the Albany County Courthouse, 16 Eagle Street, Albany, NY 12207 on March 27, 2019 at 9:30 AM premises known as 7C CR 361, RENSSELAERVILLE, NY 12147

All that certain plot piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Town of Rensselaerville, County of Albany and State of New York. Section 149, Block 1 and Lot 43.20.

Approximate amount of judgment \$166,955.85 plus interest and costs. Premises will be sold subject to provisions of filed Judgment. Index #900649/2015.

LINDA BLOM JOHNSON, ESQ., Referee, Aldridge Pite, LLP - Attorneys for Plaintiff - 40 Marcus Drive, Suite 200, Melville, NY 11747

TU41 4038091

ent of Foreclosure dated No... of Rensselaer, wherein CIT... LAER COUNTY CHIEF FIS... BERT OSGOOD, ET AL. are... ction at the RENSSELAER... (2180, on April 3, 2019 at... L PARK, NY 12018. Section

STATE, LYING AND BEING D STATE OF NEW YORK

gment Index #237286/2011... ants Concourse, Suite 310,

TU41 4040644

ceive sealed bids for project... m local time on 3/25/19 at... uch proposals will be publicly... e (607) 777-5464. All work on... ten (10) calendar days after... e-Bid Conference is sched... parties shall meet at Bing-

at the campus at Binghamton...

dge Reports)

ed from the campus at the... sical Facilities Department... of the State Finance Law... y, a deposit-check of \$49.00... eet the deposit requirement... deem the bidder's submis... ble.

ions contained in the Informa... not less than five (5) percent

New York to encourage minor... subcontractors and suppliers.

all bids: TU 1T.(0004043922)

rate contracts for HVAC Work... ord Hills Correctional Facility... ceived by the Office of Gener... of Contract Management, 35th... half of the Department of Cor... ty, March 27, 2019, when they... submitted in accordance with... ed check, bank check, or bid

ond and a Labor and Material... 9 and 137 of the State Finance... be between \$1,000,000 and

uric in the Division of Contract... John Lewycky, Deputy Direc... 18) 486-1650.

ite to take field measurements... 00 a.m. on March 15, 2019 at... Bedford Hills, NY. Phone the... in advance of the date to pro-

ules and regulations promulgat... maximum feasible participation... ss Enterprises ("MWBES") and

NOTICE OF PUBLIC HEARING

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed revisions to 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings, and 6 NYCRR Part 200, General Provisions.

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Table with 3 columns: Date, Time, Location. Rows include 5/6/2019 at NYSDEC, 5/13/2019 at SUNY @ Stony Brook, and 5/14/2019 at Hunter's Point Plaza.

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REGION 8 - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng
REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

\*\*\* Proof of Publication \*\*\*

WARREN COUNTY AFFIDAVIT

STATE OF NEW YORK:

County of Warren, ss:

Debbie Kerr being duly sworn,

says that (s)he is an authorized designee for Lee Enterprises, publishers of THE POST-STAR, a daily newspaper published in Glens Falls, Warren County, State of New York, and that the printed notice attached hereto was cut from the said POST-STAR, and that the said notice was published therein, namely

Public Hearing  
Mar. 6, 2019

MILLER ADVERTISING-LEGAL

220 WEST 42ND STREET, 12TH FLOOR  
NEW YORK NY 10036

ORDER NUMBER 70195

Signed this 6<sup>th</sup> day of Mar., 2019

Debbie Kerr

Sworn to before me this 6 day of March, 2019

[Signature]

Section: Legals

Category: 001 Legal Notices - Warren County

PUBLISHED ON: 03/06/2019

TOTAL AD COST: 83.68

FILED ON: 3/6/2019

**BRIAN J. CORCORAN**  
Notary Public - State of New York  
No. 01CO6133976  
Qualified in Saratoga County  
My Commission Expires September 19, 2021



**NOTICE OF PUBLIC HEARING****NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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- REGION 8** - 6274 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng
- REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

001 LEGAL NOTICES

NOTICE OF PUBLIC HEARING
NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION
Public Hearing to be held on March 13, 2019, at 10:00 a.m. at the New York State Department of Environmental Conservation...

001 LEGAL NOTICES

NOTICE OF SALE SUPREME COURT OF WASHINGTON
PLANTIFF MORTGAGE COMPANY, Plaintiff vs. SHANE PATRICK COOPER, Defendant
March 29, 2019, copy of which may be examined at the office of the Clerk of the Superior Court...

001 LEGAL NOTICES

NOTICE OF SALE SUPREME COURT OF WASHINGTON
WILMINGTON SAVINGS FUND SOCIETY OF WASHINGTON, FSR, AS TRUSTEE OF THE WASHINGTON MORTGAGE LOAN TRUST A, Plaintiff
Any unknown heirs to the Estate of Robert A. Malot, et al., Defendant...

001 LEGAL NOTICES

NOTICE TO NYBS BIDDERS ENLIGHTENED BIDDERS
AWARDED CONTRACTORS AND SUBCONTRACTORS AND SUPPLIERS OF THE Mechanical, Electrical and Plumbing Division...
002 LEGALS/NOTICE-LLC
LEGAL NOTICE
NOTICE OF FORMATION OF LLC VAN NEST PROPERTY, LLC...

001 LEGAL NOTICES

MONITY GROUP ENTERPRISE LLC, Arts of Org. filed with the SONY on 03/05/19. Office loc: Warren County, SONY has been designated an agent with authority to prosecute against the LLC...

001 LEGAL NOTICES

NOTICE TO BIDDERS
Please take notice that the Town of Queensbury, NY 12054, is soliciting bids for the construction of a new 100 ft single span steel multi-girder bridge over the Hudson River...

001 LEGAL NOTICES

NOTICE OF SALE
I, Tracy Ferrall, hereby give notice that a First Judgment of Foreclosure dated February 23, 2018, and entered in the Office of the Clerk of the County of Washington...

001 LEGAL NOTICES

NOTICE OF SALE
I, Tracy Ferrall, hereby give notice that a First Judgment of Foreclosure dated February 23, 2018, and entered in the Office of the Clerk of the County of Washington...

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All roof loads advertising in this newspaper is subject to the Full Housing Act, which makes it illegal to advertise "any preference, limitation or discrimination, on the basis of race, color, religion, sex, handicap, familial status or national origin, or intention to make any such preference, limitation or discrimination."
AARP Auto Insurance Program

# THE POST-STANDARD

## LEGAL AFFIDAVIT

INV#: 0009054451

# ADVANCE

MEDIA NEW YORK

syracuse.com | THE POST-STANDARD

NYup.com

MILLER ADVERTISING AGENCY INC  
220 W 42 ST 12TH FL  
NEW YORK, NY 10036

Name: MILLER ADVERTISING AGENCY INC

Sales Rep: Pamela Gallagher

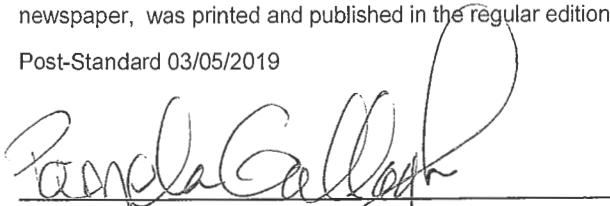
Account Number: 1001507

INV#: 0009054451

Date	Position	Description	P.O. Number	Ad Size
03/05/2019	Other Legals NY		IO# R2280109	3 x 77 L


State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 03/05/2019



Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 5th day of March 2019



NOTARY PUBLIC

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

ANNE PETRO  
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Qualified in Onondaga County  
Commission Expires: 10-30-2021

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03/05/2019	Other Legals NY		IO# R2280109	3 x 77 L

### NOTICE OF PUBLIC HEARING

#### NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), notice is hereby given that the New York State Department of Environmental Conservation (Department) will hold the following legislative public hearings on the proposed revisions to 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings, and 6 NYCRR Part 200, General Provisions.

Architectural and industrial maintenance (AIM) coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. The VOC content is regulated in Part 205 through the application of VOC limits for 52 coating categories. The current VOC limits were set in 2004 and the industry and technology has changed and improved since then to make lower VOC options available. Because the New York Metropolitan Area is designated non-attainment for ozone, the State must develop strategies to reduce VOC emissions and the revisions to this rule are part of that effort. The major revisions to this proposal are to reduce the VOC limit on 12 existing coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories and eliminate the quart exemption. This proposal applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in the State of New York. Part 205 will also be submitted to EPA as a revision to the State Implementation Plan (SIP) for New York State. Part 200 will be revised to update all attendant test methods in Part 205.

Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:

Date	Time	Location
5/6/2019	11:00 am	NYSDEC, 625 Broadway, Public Assembly Room 129A/B, Albany, NY 12233
5/13/2019	11:00 am	SUNY @ Stony Brook, 50 Circle Road, Room B02, Stony Brook, NY 11790
5/14/2019	11:00 am	1 Hunter's Point Plaza, 47-40 21st Street, Room 834 NYSDOT, Long Island City, NY 11101

The Department will provide interpreter services for deaf persons at no charge. Written requests for interpreter services are required and should be submitted by April 29, 2019, to Richard McAuley, NYSDEC, 625 Broadway, Albany NY 12233-3250, (518) 402-8438, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

Pursuant to Part 617 of the implementing regulations for the State Environmental Quality Review Act, the Department has prepared a Negative Declaration stating that the proposed actions will not have a significant effect on the environment.

The Department invites all persons, organizations, corporations, and government agencies that may be affected by the proposed revisions to attend the hearings. At each hearing, persons who wish to make a statement will be invited to speak. It is requested that oral statements also be submitted in writing. The Department will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing.

Information may be obtained from Ona Papageorgiou, P. E., NYSDEC Division of Air Resources, 625 Broadway, Albany NY 12233-3251, telephone, (518) 402-8396; email, [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm, May 20, 2019.

Requests for information and comments related to the SIP revision may be obtained from Robert D. Bielawa, P.E., NYSDEC Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). Written statements may be submitted until 5 pm, May 20, 2019.

The proposed regulation may be obtained from any of the following Department offices:

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**REGION 2** - Hunters Point Plaza, 47-40 21st Street, Long Island City, NY 11101, Attention: Sam Lieblich

**REGION 3** - 21 South Putt Corners Road, New Paltz, NY 12561, Attention: George Sweikert

**REGION 4** - 1130 North Westcott Rd., Schenectady, NY 12306, Attention: Victoria Schmitt

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**REGION 8** - 6214 East Avon-Lima Road, Avon, NY 14414, Attention: Yuan Zeng

**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

**AFFIDAVIT OF PUBLICATION**

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**STATE OF NEW YORK  
COUNTY OF NEW YORK**

Ambika Mohan being duly sworn hereby declares and says, that she is the Advertising Account Executive responsible for placing the attached advertisement for publication in Rochester Democrat & Chronicle for Miller Advertising Agency, Inc; located in New York, NY, and that the NYSDEC Notice of Complete Application advertisement, of which the annexed is a true copy, has been published in the said publication on the following issue date(s):

Mar. 6, 2019

Ambika Mohan  
Ambika Mohan

**Subscribed to and Sworn before me**

This 18<sup>th</sup> day of April, 2019

Donna Perez  
Notary Public

Donna Perez  
Notary Public State Of New York  
No. 01PE6151365  
Qualified In New York County  
Commission Expires August, 14<sup>th</sup> - 2022

**NOTICE OF PUBLIC HEARING**

**NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION**

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**REGION 9** - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emery

Legals

To place a legal ad, please call 663-446-7000

NOTICE BY PUBLIC HEARING: THE STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION... (Notice regarding environmental regulations and public hearings)

Legal Notice: SUMMONS AND NOTICE... (Legal notice regarding a summons and notice for a legal proceeding)

Blair & Prosser

NOTICE TO BIDDERS: Blair & Prosser... (Notice to bidders regarding a public work project)

LEGAL NOTICE

LEGAL NOTICE: SUPPLEMENTAL SUMMONS AND NOTICE... (Supplemental summons and notice regarding a legal case)

Legal Notices

LEGAL NOTICE: Various legal notices including notices of formation and other legal proceedings.

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LEGAL NOTICE: PHILLIPS LYTTLE LLP... (Legal notice from Phillips Lytle LLP regarding a legal matter)

LEGAL NOTICE: PHILLIPS LYTTLE LLP... (Additional legal notice from Phillips Lytle LLP)

LEGAL NOTICE: Various legal notices including notices of formation.

NOTICE OF FORMATION: Notice of Formation of Lankford & Property Investors, LLC, Act of...

NOTICE OF FORMATION: Notice of Formation of Estabrook Hospitality LLC

LEGAL NOTICE: Various legal notices including notices of formation.

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Tell us what you like, meet a car you'll love.

At Cars.com, we give you everything you need to fall in love with your next car. We'll match you with the vehicle that suits your lifestyle and even let you choose the salesperson you want to work with, before hitting the lot.



# THE BUFFALO NEWS

## -Affidavit-

Matthew Donnelly of the City of Buffalo, New York, being duly sworn, deposes and says that he/she is Principal Clerk of THE BUFFALO NEWS INC., Publisher of THE BUFFALO NEWS, a newspaper published in said city, that the notice of which the annexed printed slip taken from said newspaper is a copy, was inserted and published therein 1 times, the first insertion being on **03/06/2019** and the last insertion being on **03/06/2019**

Matthew Donnelly

Dates Ad Ran:

Buffalo News (P1) 03/06/19

Sworn to before me this 22 day of March 2019

Barbara Anne Juzwiak  
Notary Public, Erie County, New York

BARBARA ANNE JUZWIAK  
Notary Public, State of New York  
Appointed in Niagara County  
My Commission Expires 1/1/2022

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REGION 9 - 270 Michigan Avenue, Buffalo, NY 14202, Attention: Michael Emay		



Miscellaneous Wanted

WANTED: Please call: (716) 348-2823. TURSODO NECKTIE: WANTED - Please call: (716) 348-2823. WANTED: Please call: (716) 348-2823.

WANTED: Old Radio Tubes; Tube Amps, Tube Testers Cash paid. 716-622-9154.

WANTED TO BUY: SEALED WHISKEY, BOURBON. Paying cash for sealed vintage bottles bourbon, rye, F&W's, etc. No prohibition bottles, sealed. Collections outside, call local Buffalo Buyer. 716-683-6660 \$1,000.

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ANNOUNCEMENTS

766 Bids & Proposals: as non-responsive and rejected. The City of Buffalo will not be responsible for full or partial refund of Contract Documents, including any Addenda obtained from any other source. The City of Buffalo reserves the right to reject any and all bids and to waive any infirmities thereon.

766 Bids & Proposals: The Board of Education of Onondaga-Cortland-Madison County of Cooperative Educational Services (BOCES), in accordance with Section 103 of Article 5-A of the General Municipal Law and Article 119-C of the General Municipal Law, will receive bids on:

766 Bids & Proposals: For use by participating BOCES Regional Information Centers listed below in Onondaga County, New York State: Eastern Buffalo BOCES-RC, Greater Southern Tier BOCES-RC, Lower Hudson BOCES-RC, Mohawk BOCES-RC, Northern Tier BOCES-RC, Onondaga-Cortland-Madison BOCES-RC, South Central BOCES-RC, and Western New York Regional Information Center (WNYRIC).

766 Bids & Proposals: Bids will be received until 1:30 P.M. on the 29th day of April, 2019. On that date and time, bids will be publicly opened at Onondaga-Cortland-Madison BOCES, 110 Shrewsbury Road, Liverpool, NY 13088. The Board of Education reserves the right to reject any or all bids in whole or in part. Any bid accepted will be binding from June 1, 2019 to May 31, 2020. Bid forms and specifications can be obtained from the Onondaga-Cortland-Madison BOCES Business Office from 8:00 a.m. to 4:00 p.m., Monday through Friday.

766 Bids & Proposals: Board of Cooperative Educational Services (BOCES) of Onondaga, Cortland, and Seneca Counties, Onondaga County, New York, 8822 Thompson Road, P.O. Box 4754, Syracuse, NY 13221. Sean M. Joyce, Project Manager, Phone: 315-431-6584, Email: sjoyce@ocmboces.org

766 Bids & Proposals: PRE-BID MEETING on March 13, 2019 at 3:00pm at West Side Community Services, 183 Vermont Street, Buffalo, NY 14203.

766 Bids & Proposals: MWBE Compliance and Section 3 requirements will be reviewed at the public meeting. This project is being carried out with financial aid from the Community Development Block Grant (CDBG) program of the United States Department of Housing and Urban Development (HUD).

766 Bids & Proposals: Each bidder's attention is called to the General Municipal Law, which requires a bidder's Certificate of Non-Collusion. Copies of such Certificates are out of the Proposed Form and, unless completed with, will not be accepted.

766 Bids & Proposals: Bidders must submit prior to availability of a contract a statement of qualifications that they will work toward a minority workforce goal of 25% and a women workforce goal of 5%. In addition, a statement must be submitted to be eligible for a contract that the bidder will work toward a business utilization goal for minority business enterprises of 25% and women business enterprises of 5%.

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as non-responsive and rejected. The City of Buffalo will not be responsible for full or partial refund of Contract Documents, including any Addenda obtained from any other source. The City of Buffalo reserves the right to reject any and all bids and to waive any infirmities thereon.

The Board of Education of Onondaga-Cortland-Madison County of Cooperative Educational Services (BOCES), in accordance with Section 103 of Article 5-A of the General Municipal Law and Article 119-C of the General Municipal Law, will receive bids on:

For use by participating BOCES Regional Information Centers listed below in Onondaga County, New York State: Eastern Buffalo BOCES-RC, Greater Southern Tier BOCES-RC, Lower Hudson BOCES-RC, Mohawk BOCES-RC, Northern Tier BOCES-RC, Onondaga-Cortland-Madison BOCES-RC, South Central BOCES-RC, and Western New York Regional Information Center (WNYRIC).

Bids will be received until 1:30 P.M. on the 29th day of April, 2019. On that date and time, bids will be publicly opened at Onondaga-Cortland-Madison BOCES, 110 Shrewsbury Road, Liverpool, NY 13088. The Board of Education reserves the right to reject any or all bids in whole or in part. Any bid accepted will be binding from June 1, 2019 to May 31, 2020. Bid forms and specifications can be obtained from the Onondaga-Cortland-Madison BOCES Business Office from 8:00 a.m. to 4:00 p.m., Monday through Friday.

Board of Cooperative Educational Services (BOCES) of Onondaga, Cortland, and Seneca Counties, Onondaga County, New York, 8822 Thompson Road, P.O. Box 4754, Syracuse, NY 13221. Sean M. Joyce, Project Manager, Phone: 315-431-6584, Email: sjoyce@ocmboces.org

PRE-BID MEETING on March 13, 2019 at 3:00pm at West Side Community Services, 183 Vermont Street, Buffalo, NY 14203.

MWBE Compliance and Section 3 requirements will be reviewed at the public meeting. This project is being carried out with financial aid from the Community Development Block Grant (CDBG) program of the United States Department of Housing and Urban Development (HUD).

Each bidder's attention is called to the General Municipal Law, which requires a bidder's Certificate of Non-Collusion. Copies of such Certificates are out of the Proposed Form and, unless completed with, will not be accepted.

Bidders must submit prior to availability of a contract a statement of qualifications that they will work toward a minority workforce goal of 25% and a women workforce goal of 5%. In addition, a statement must be submitted to be eligible for a contract that the bidder will work toward a business utilization goal for minority business enterprises of 25% and women business enterprises of 5%.

All bidders shall, with their bid, submit a statement committing to providing additional training opportunities to workers, as well as details of workforce diversification program for all employees. Such contract documents may only be obtained from the Department of Planning and Economic Development Office at 200 Park Avenue, Buffalo, NY 14202. Only certified companies, check, cash, checks.

NOTICE OF PUBLIC HEARING: NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION Pursuant to Sections 1-0161, 1-0201, 1-0203, 1-0103, 1-0105, 1-0107, 1-0205, 1-0206, 1-0207, 1-0208, and 1-0209 of the Environmental Conservation Law (ECL), in accordance with the provisions of the Environmental Conservation Law (ECL), notice is hereby given of a public hearing on the proposed revisions to 6 NYCRR Part 202, Architectural and Interior Maintenance (AIM) Code, and 6 NYCRR Part 203, General Provisions.

Hearings for the proposed rule and attendant relations to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility.

The Department will provide interpretive services for deaf persons. Written records for hearing services are required and should be submitted by April 25, 2019, to Sarah McKinley, NYDEC, 625 Broadway, Albany, NY 12242-3500, (518) 402-9424, sarah.mckinley@dec.state.ny.us.

Information may be obtained from Ona Papapanagiotou, P. E., NYDEC Division of Air Resources, 625 Broadway, Albany, NY 12242-3500, (518) 402-9286, onapap@dec.state.ny.us. Written records should be submitted until May 10, 2019.

Puzzle Corner

Crossword / By Eugene Sheffer

Solution time: 21 minutes

ACROSS crossword grid with clues: 1 Shade, 4 Frontiersman, 8 Pocket bread, 12 100 percent, 13 Dutch cheese, 14 Pedestal occupant, 15 Cowboy's sweetie, 16 Do math, 18 Slowpoke, 20 Hydrocarbon suffix, 21 Cushions, 22 Persian Gulf emirate, 24 Nutritional label info, 32 Flamingo's color, 33 Copper head?, 34 Leader of cosmetics, 35 Summer on the Seine, 37 Guns the engine, 39 Toe of Italy's boot, 41 Fashion, 44 Hit with a shun gun, 44 Ms. Thurman, 46 Gossip, 49 Baseball's "Iron Man", 50 Deluge refuge, 56 Now, in a memo, 57 Cowboy's neckwear, 58 Luau bowlful, 59 Quick swim, 60 Winter blanket, 61 Novelist Rand.

Tuesday's Answer

Down crossword grid with clues: 1 Crones, 2 -Bator, 3 First lady of seat, 4 Proclaim, 5 Nabokov novel, 6 Batman portrayer, 7 Kilmer, 8 Village People hit, 9 Accumulate, 10 Hollywood's Lupino, 11 Nanny's charge, 11 Heavy quaff, 17 German conjunction, 19 Wall St. debut, 22 Platner, 23 Attack, 25 Coffin stand, 26 Con.

JUMBLE

JUMBLE word puzzle with grid and clues: 1. BLACE, 2. SAHLS, 3. ARFITF, 4. PLAWOL. Includes 'Wonderword' section with a 7-letter word puzzle.

Cryptoquip

The Cryptoquip is a substitution cipher in which one letter stands for another. If you think that X equals G, it will equal G throughout the puzzle. Single letters, short words and words using an anastrophe give you clues to locating vowels. Solution is by trial and error.

Word Game / By Kathleen Saxe

TODAY'S WORD - ALLUSIVE (ALLUSIVE: uh-LOO-iv: Characterized by indirect references.) Average mark 24 words. Time limit: 35 minutes. Can you find 24 or more words in ALLUSIVE? The list will be published tomorrow. YESTERDAY'S WORD - OSTRICH ostrich sort tiro icht hoist otic stich torch hit horst shirt stir torch choir host short stoic rich coir shot this riot cost

RULES OF THE GAME: 1. Words must be four or more letters. 2. Words that require two letters by the addition of "s" such as "best" or "dog" are not allowed. 3. Additional words made by adding a "d" or an "n" may not be used. For example, "fish" is used, "fishes" or "fishen" are not allowed, but "fisher" and "fishery" are admissible. 4. Proper nouns, slang words, or vulgar or sexually explicit words are not allowed. 5. Contact Word Game creator Kathleen Saxe, written to Word Games, Kathleen Saxe, Universal Uclick, 1305 Walnut St., Kansas City, MO 64106, © 2019 Universal Feature Syndicates, Distributed by Universal Uclick Inc. LPN

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PROCEEDINGS: May 6, 2019

STATE OF NEW YORK  
DEPARTMENT OF ENVIRONMENTAL CONSERVATION  
\*\*\*\*\*

In the Matter  
- of -

A Public Hearing regarding Proposed 6 NYCRR 227-3 Ozone  
Season Oxides of Nitrogen Emission Limits for Simple  
Cycle Regenerative Combustion Turbines and Revisions to  
Part 205 Architectural and Industrial Maintenance  
coatings and Part 200, General Provisions

\*\*\*\*\*

May 6, 2019  
11:01 a.m.  
  
625 Broadway  
Albany, New York

**P R E S E N T:**

MOLLY McBRIDE  
Administrative Law Judge

ONA PAPAGEORGIOU  
Engineer

**A L S O P R E S E N T:**

Members of the Public

**REPORTED BY:** MICHELE AMBROSINO

1 P R O C E E D I N G S

2

3 ALJ McBRIDE: Good morning, everyone. My  
4 name is Molly McBride. I'm an administrative law judge  
5 with the New York State Department of Environmental  
6 Conservation. I'll be presiding over this morning's  
7 hearing. The purpose of this hearing is to receive  
8 public comment regarding the Department's proposed  
9 NYCRR Subpart 227-3 and the Department's proposed  
10 revision to Part 205 and Part 200 General Provisions.

11 Written comments regarding these proposed  
12 changes and regulation will be accepted through 5 p.m.,  
13 May 20th, 2019. We he have an email address for the  
14 submission of comments [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). This email  
15 address as well as the written address for submission  
16 of comments is available at our sign-in table out in  
17 the hallway. Hearings for these proposed rule and  
18 attendant revisions to the existing rule are going to  
19 be held in three locations. We have today's hearing in  
20 the Department's central office on May 13th, 2019, at  
21 11 a.m. A hearing will be held at the Department's  
22 Region 1 office at SUNY Stoney Brook, 50 Circle Road,  
23 Room B02, Stoney Brook, New York on May 14th, 2019, at  
24 11 a.m. A hearing will be held in the Department's  
25 Region 2 office at 1 Hunters Point Plaza, 47-40 21st

1 Street, Room 834, Long Island City, New York. Notice  
2 of the proposed rulemaking was published in the state's  
3 register on February 27th, 2019 as well as posted on  
4 the Department's website and published in the  
5 Department's environmental notice bulletin. The notice  
6 was also published in the New York Post, Newsday, the  
7 Albany Times Union, Buffalo News, Syracuse Post  
8 Standard, Post-Star, and the Rochester Democrat.

9 Notice of this public comment hearing was  
10 also published in the Department's environmental notice  
11 bulletin on March 6th, 2019, and on the publications  
12 that I mentioned for the February 27th notice. Public  
13 comment session is an opportunity for the public to  
14 comment on the proposed rulemaking and proposed  
15 revision. This is not a question-and-answer session.

16 Again, the public comment period closes at  
17 5 p.m. on May 20th, 2019. Both written comments and  
18 all comments made at the public, comments are given  
19 equal rights. The mailing address again is available  
20 in the hallway here today if you would like to get that  
21 before you leave here today.

22 Anyone who wishes to make any comments on  
23 the record today must fill out a speaker card. The  
24 speaker cards are available in the hallway. If you  
25 have not yet completed the card and wish to make a

1 comment please go out into the hallway and fill out a  
2 speaker card for us. We will call the speakers in the  
3 order that they submitted their card here today. If  
4 you are speaking on behalf of a group I would ask that  
5 you please identify the group that you are  
6 representing. When you make your comment please come  
7 forward to the podium and speak into the microphone.  
8 Please speak loudly, slowly, and clearly for the court  
9 reporter's purposes so she can make an accurate record  
10 of today's hearing.

11 If you are reading from prepared remarks I  
12 would ask you that you please give them to the court  
13 reporter after you have completed your comments to  
14 assist her with the transcript. If I mispronounce your  
15 name I apologize, please correct me when you come  
16 forward here. If you did not wish to make a comment on  
17 the record here today you may submit your written  
18 comments again by May 20th, 2019. Before we begin with  
19 the public comments we'll hear from Ona Papageorgiou  
20 from the Department's Division of Air.

21 MS. PAPAGEORGIU: Thank you, Judge  
22 McBride. Good morning. My name is Ona Papageorgiou.  
23 I am a professional engineer with the Division of Air  
24 Resources. The Department is proposing to revise Part  
25 205, Architectural and Industrial Maintenance Coatings

1 also known as AIM coatings. And Part 200 General  
2 Provisions of Title 6 of the Official Compilation of  
3 Codes, Rules, and Regulations of the State of New York.

4 This public hearing is one of three  
5 scheduled for the purposes of receiving statements and  
6 comments on Department of Environmental Conservation's  
7 proposal to revise Part 205 and Part 200.

8 The purpose of this proposal is to lower  
9 volatile organic compound emissions from this source  
10 category. This proposal will address Clean Air Act  
11 requirements including ozone nonattainment and protect  
12 the health of New York State residents. The Department  
13 plans to submit Part 205 to the United States  
14 Environmental Protection Agency as a revision to the  
15 State's implementation Plan for New York State.

16 AIM coatings, such as paint, are applied  
17 to stationary structures for their appurtenances at the  
18 site of installation, portable buildings at the site of  
19 installation, pavements, or curbs. While AIM coatings  
20 are often referred to as paint there are over 50  
21 categories of coatings regulated under Part 205. These  
22 products may contain volatile organic compound as part  
23 of their formulation.

24 The stakeholder process of this rulemaking  
25 began with a stakeholder meeting on May 12th, 2010

1 sponsored by the Ozone Transport Commission. This was  
2 followed up by multiple presentations at professional  
3 meetings for both national and New York based coatings  
4 associations. The comments received during the  
5 stakeholder outreach process were considered in  
6 developing this proposal.

7 This proposal is applicable to any person  
8 who supplies, sells, offers for sale, or manufactures  
9 any architectural coating for use within New York State  
10 as well as any person who applies or solicits the  
11 application of any architectural coating within New  
12 York State.

13 The Part 205 proposal eliminates 15  
14 coating categories, adds 12 new coating categories,  
15 lowers the VOC limits on 12 coating categories,  
16 broadens the scope of DEC's data collecting authority  
17 and eliminates the quart exemption. The proposed  
18 effective date is January 1, 2021 with a two-year  
19 sell-through allowance.

20 The Department is also proposing to adopt  
21 a new Subpart 227-3, Ozone Season Oxides of Nitrogen  
22 Emission Limits for Simple Cycle and Regenerative  
23 Combustion Turbines of Title 6 of the Official  
24 Compilation of Codes, Rules, and Regulations of the  
25 State of New York.

1                   Again, this public hearing is one of the  
2 three scheduled for the purposes of receiving  
3 statements and comments on the Department of  
4 Environmental Conservation's proposal to adopt the  
5 Subpart 227-3.

6                   The Department is proposing to adopt this  
7 ozone season regulation to lower allowable NOX  
8 emissions from simple cycle and regenerative combustion  
9 turbines. The proposal will address Clean Air Act  
10 requirements, including ozone nonattainment and protect  
11 the health of New York State residents. The Department  
12 plans to submit Subpart 227-3 to the United States  
13 Environmental Protection Agency as a revision to the  
14 State Implementation Plan for New York State.

15                   During the development of the current  
16 proposal the Department held stakeholder meetings on  
17 January 20th and 26th of 2017. The Department released  
18 a stakeholder draft outline on June 7th, 2018 to  
19 present more detailed elements of the proposed rule.  
20 Throughout the stakeholder process, the Department also  
21 met with the New York State Independent System  
22 Operator, the New York State Department of Public  
23 Service, and the New York State Energy Research and  
24 Development Authority to discuss the likely element of  
25 the proposed rule and to obtain feedback. The comments



1 received during the stakeholder outreach process were  
2 instrumental in developing this proposal.

3 This proposal is applicable to simple  
4 cycle and regenerative combustion turbines that are  
5 electric generating units with a nameplate capacity of  
6 15 megawatts or greater and that bid into the New York  
7 State Independent System Operator wholesale market.

8 Subpart 227-3 is proposed to be phased-in  
9 with a compliance plan due on March 2nd, 2020. Initial  
10 emission rate limits of 100 parts per million on a dry  
11 volume basis at 15 percent oxygen, which I'll call  
12 PPMVD from here on out, will go into effect on May 1st,  
13 2023. Then on May 1st, 2025 the emission limits will  
14 be reduced to 25 PPMVDs when burning gas and 42 PPMVDs  
15 when burning oil.

16 Sources subject to Subpart 227-3 are  
17 offered several compliance options under this proposal  
18 including emissions averaging with renewable and energy  
19 storage resources, not operating an affected source  
20 during the ozone season and permanently shutting down  
21 an affected source.

22 In addition to providing statements at  
23 this hearing of today, anyone may also submit written  
24 comments related to the proposed Subpart 227-3, Part  
25 205, or Part 200. Any statement made at this hearing

1 today, as well as all written comments received during  
2 the public comment period will be given equal weight  
3 and will become part of the administrative record for  
4 this rulemaking.

5           Anyone who wishes to obtain information or  
6 submit comments related to the proposed Part 205, Part  
7 200, or Subpart 227-3 may contact me, Ona Papageorgiou  
8 at NYS DEC Division of Air Resources, 625 Broadway,  
9 Albany, New York 12233-3250, telephone number  
10 518-402-8396; email [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov), or visit the  
11 Department's website at  
12 [dec.ny.gov/regulations/propregulations.html](http://dec.ny.gov/regulations/propregulations.html).

13           Written comments will be accepted through  
14 5:00 p.m., Monday, May 20th, 2019. Thank you for  
15 attending this hearing.

16           ALJ McBRIDE: Thank you, Ona. We'll start  
17 with our first speaker, Barrett Cupp.

18           MR. CUPP: Thank you. Good morning. I'm  
19 Barrett Cupp. I'm with Sherwin-Williams Company. I'm  
20 the director of product compliance, and I appreciate  
21 the opportunity to speak here today in regards proposed  
22 rule Part 205 AIM coatings. Sherwin-Williams Company  
23 understands support of zero quality goals in the State  
24 of New York on behalf of its citizens including the  
25 current revision of proposed Part 205 AIM coatings rule

1 with the following comments.

2           Sherwin-Williams concern primarily about  
3 the short sell-through period of proposed what appear  
4 to be two years in actuality, and we believe that three  
5 years is more appropriate. One of the primary reasons  
6 that we have for that is during the three-year period  
7 it allows for the sell to complete sell-through from  
8 the shelves from all types of vendors including small  
9 vendors within the state. To not allow for that  
10 opportunity actually creates unintended consequence  
11 where you might have environmental impacts having  
12 removed the products of the shelf, and ultimately  
13 perhaps even declaring them to be wastes, which is a  
14 sacrifice of the raw materials that were either mined  
15 or extracted from the year prior and that it created a  
16 value added opportunity that we would then be  
17 determining.

18           At that point it just becomes waste and we  
19 all understand the environmental lifecycle assessment  
20 and the tradeoffs involved with that sort of process.  
21 That's the primary comment that I have today. There's  
22 confusion on my part with respect to the rule and  
23 whether the court small container exemption would exist  
24 moving forward, and I believe when I read the rule I  
25 don't see that there's any elimination of that, but I

1 heard Ona say that there was. So I remain confused  
2 about that particular issue and hope to pursue that  
3 before this is finalized removal. Submit written  
4 comments appropriate about that. Thank you.

5 ALJ McBRIDE: Thank you. Our next speaker  
6 is David Darling.

7 MR. DARLING: Good morning. I'm David  
8 Darling, Vice President, Health, Safety, and  
9 Environmental Affairs for the American Coatings  
10 Association. ACA is a nonprofit trade organization  
11 that represents paint and coatings manufacturers, raw  
12 material suppliers, and distributors.

13 Today I will discuss ACA concerns with the  
14 proposed DEC AIM rule, specifically the possible  
15 changes to the small container exemption and the  
16 proposed two-year sell-through period. I will also  
17 follow-up with substantive written comments on May  
18 20th. ACA is surprised to see that the New York State  
19 DEC is not adopting the OCT Phase II model rule small  
20 container exemption assuming that's the -- again, the  
21 word "barrier" is commencing this confusion. The rule  
22 has a small container exemption in it, whereas the  
23 language in the regular quart background mentions  
24 removing the language as Ona said earlier. So we're  
25 confused. But we're here to -- we're wondering if New

1 York is following the Phase II model rule why the  
2 exemption is not in there, and we are also wondering  
3 why New York State DEC did not include the three-year  
4 sell-through period. We work with New York State DEC  
5 and the OTC states to develop the model rule language  
6 with the hope that New York and other OTC states adopt  
7 consistent rules.

8 As documented in our April 1st, 2019  
9 letter, it is very difficult for ACA or other  
10 stakeholders to develop substantive comments without  
11 additional information from New York State DEC. In our  
12 letter we've detailed several questions with regard to  
13 the small container exemption to better understand the  
14 extent of circumvention as well as the proposed  
15 two-year sell-through provision. In addition we've  
16 requested a conference call or meeting to discuss our  
17 concerns. Unfortunately, to date New York DEC has not  
18 provided any answers to our questions, nor have we had  
19 DEC agree to any conference call and/or meeting.

20 With regard to economic feasibility, DEC  
21 mentions in the regulatory flexibility analysis for  
22 small businesses and local governments that DEC staff  
23 did not conduct an independent cost analysis, rather  
24 DEC depended upon the CARB 2007 analysis to assess the  
25 economic feasibility of the proposed rule. However,

1 the 2007 CARB analysis includes the small container  
2 exemption as well as the three-year sell-through. As a  
3 result if DEC proceeds with any of these changes we  
4 believe that DEC must redo the regulatory flexibility  
5 analysis because they're not accounted for.

6 With regard to small container exemption  
7 from an administrative procedure perspective the  
8 rulemaking is confusing. Again, as I mentioned earlier  
9 the actual proposed rule language has a small container  
10 exemption in there where the impact statement discusses  
11 the elimination of the exemption. So from a  
12 stakeholder perspective we're not quite clear which way  
13 New York State is going on this. Specifically, in the  
14 impact statement DEC talks about potentially removing  
15 the quart exemption for floor coatings. Second option  
16 is removing the quart exemption for large projects, and  
17 the third option for completely removing the quart  
18 exemption all together.

19 It's important to note that the small  
20 container exemption is a critical compliance option  
21 that we feel the New York State DEC should retain for  
22 all categories. A small container exemption is really  
23 the only remaining alternative compliance mechanisms in  
24 the rule. We considered it a safety valve, and it's  
25 continued to be a critical to the paint and coating

1 industry since it allows use of traditional products in  
2 challenging application scenarios in the field, and  
3 this is especially important given the cold and wet  
4 climate of New York State. This exemption is very  
5 helpful as limits and categories become more stringent  
6 and/or categories are eliminated which is the case of  
7 OTC rules.

8           It's important to keep in context that the  
9 limits of the OTC Phase II rule were developed knowing  
10 that the small container exemption would be available.  
11 If you look at the SCAQMD and CARB, historically in  
12 California, you know, many of its districts where these  
13 limits came from disregarded industry concern about  
14 lower limits. They continually kept on saying, you  
15 know, you can always continue to use the small  
16 container exemption. If the ACA knew at the time when  
17 these limits were being developed that New York State  
18 DEC would not have included this monthly exemption we  
19 would have fought much harder to retain higher limits  
20 for many categories. As a result, if New York State  
21 does continue forward with removing the exemption we're  
22 going to need higher limits for many categories.

23           ACA was also surprised that New York State  
24 DEC did not adopt the OTC Phase II model rule small  
25 container exemption aggregation language. During the

1 development of the Ozone Transport Phase II rule back  
2 in 2010, we worked with OTC states including New York.  
3 We know that the state raised concerns about the  
4 bundling of small containers together. We've partnered  
5 with OTC and New York State DEC to develop so-called  
6 anti-bundling language and that was incorporated in the  
7 OTC Phase II model rule. Several California Air  
8 Districts: Utah, Ohio, Delaware, Maryland,  
9 Connecticut, as well as Rhode Island have adopted this  
10 aggregation language that was developed. And the  
11 California Air Resources Board it has included its  
12 aggregation language in the new CARB SCM that is to be  
13 adopted very soon.

14 Bottom line, we recommend retaining the  
15 small container exemption and as was found in the OCT  
16 Phase II rule and that New York State includes the  
17 aggregation language. Since then DEC could bring  
18 enforcement against companies that are here preventing  
19 the language of the rule. It should also address any  
20 kind of issue with floor coatings and the five-gallon  
21 bucket product that was mentioned in the background  
22 report.

23 Today I want to discuss quickly a couple  
24 of examples of why the small container exemption is  
25 still important to our industry. One example, the



1 original manufacturing equipment or OEM touchup. You  
2 could have a situation where a product including  
3 construction equipment building exterior cladding,  
4 structural steel, or industrial equipment that goes  
5 into the field, you commonly have a small amount of  
6 coating that is shipped along with that product under  
7 the small container exemption in case that substrate is  
8 scratched. If this small container exemption is not  
9 available many times you're going to have to use the  
10 product -- a different type of product, you're going to  
11 have a patchy appearance. You're going to have a  
12 potential for increased corrosion of the touched up  
13 areas, you may even find that maybe that entire piece  
14 of product needs to be recoated from a lifecycle  
15 perspective you're really not saving any type of  
16 emissions. So the small container is very handy in  
17 that regard.

18           Rust preventatives, solvent-borne rust  
19 preventatives are very important and are very useful in  
20 the cold and wet seasons found in New York. Rust  
21 preventatives are effective, durable, single component  
22 products that prevent the corrosion of metal substrates  
23 including doors, fences, lighting fixtures, and  
24 exterior furniture. Homeowners and contractors find  
25 the solvent-borne rust preventatives very useful

1 because they can be applied directly to metal  
2 substrates including rusty or previously coated  
3 surfaces without the need for surface preparation like  
4 sanding or a primer coat and provide a long lasting  
5 durable finish. As compared to waterborne products  
6 solvent-borne dry faster and be applied in colder  
7 weather. Painting projects using waterborne product  
8 tend to take longer time to cure and need additional  
9 surface preparation as well as a prime coat and don't  
10 perform as well.

11                   We know that companies are working on an  
12 exempt compound base products, however these products  
13 are going to be more expensive and will dry slower than  
14 current products available via the small container  
15 exemption. Another example for the need for the small  
16 container exemption is the Historical Building  
17 Preservation. New York State has a very large  
18 inventory of natural stone buildings that are need of  
19 protection and/or restoration. Higher VOC  
20 consolidation treatment products are only available in  
21 New York State via the small container exemption and  
22 are critical to restoring and protecting natural stone  
23 buildings, especially again given the wet and the cold  
24 climate of New York State. Historical preservationists  
25 use these products to replace the natural binding

1 materials of the deteriorated stone while protecting  
2 the treated subsurface from further water-related  
3 damage.

4           Two more quick examples. Stains, wood  
5 stains, are not only enhance the beauty of wood  
6 products including floors, trim, kitchen cabinets, but  
7 prevent wood from absorbing water, protect the wood  
8 from decay, discoloration, and insect attack.  
9 Solvent-borne stains penetrate the surface of the wood.  
10 They don't form a film that's placed over time, and can  
11 be reapplied without extensive surface preparation.  
12 Water-borne stains, on the other hand, may not  
13 penetrate the surface of the wood as well as  
14 solvent-borne products. They form a thin film on the  
15 surface that provides less durability and tends to  
16 degrade and flake over time, and also cause appearance  
17 issues with regard to depth, blocking, and grain  
18 raising.

19           And finally just one last example extreme  
20 high gloss products. Many architectural design  
21 professionals demand an extreme high gloss coating to  
22 execute their style concepts when they design or  
23 redesign a kitchen or other spaces in apartments,  
24 homes, or commercial establishments. Extreme high  
25 gloss coatings are frequently used on exterior doors

1 and windows to provide durable finishes that can stand  
2 up to New York's diverse climate. And these are  
3 typically sold in small containers because they really  
4 don't need, you know, a lot of products to do say a  
5 door or window. These products are also used in many  
6 historic restoration projects throughout the country.

7 Finally, it was mentioned earlier we are  
8 concerned about the two-year sell-through provision.  
9 The proposed two-year sell-through provision is  
10 counterproductive and it's inconsistent with the OTC  
11 Phase 1 and Phase II model rules. Really all the  
12 California air suggested control measures and other  
13 state and local California air district rules.

14 Actually, in fact, every single other AIM rule  
15 in the United States either has a three-year or an  
16 unlimited sell-through. The proposed two-year  
17 sell-through period will require manufactures to travel  
18 to stores, collect products off the shelf, and dispose  
19 of these products at significant and unnecessary  
20 expense to stores, retailers, and manufacturers. New  
21 York State DEC has not accounted for these burdens and  
22 expenses including lost sales revenue, transportation,  
23 disposal costs, or other associated greenhouse gas  
24 emissions from collecting and transporting these  
25 products. DEC has also not accounted for possible

1 environmental impacts associated with these products  
2 being disposed of improperly.

3 As a result, in order to limit the  
4 negative financial and environment impacts associated  
5 with disposing of stranded products that can no longer  
6 be sold, ACA requests DEC include a three-year  
7 sell-through provision. This would be consistent with  
8 every other AIM regulation in the United States and  
9 provide an ample time for architectural coatings to be  
10 sold from the retail shelves. A three-year  
11 sell-through provision would also minimize the  
12 environmental and economic impact of disposing usable  
13 products on the shelves.

14 I leave with last point, exempt compounds.  
15 ACA recommends that New York State DEC add AMP two  
16 amino, two menthyl, one propanol to the list of exempt  
17 compounds in New York State. The coatings industry is  
18 under constant pressure to reformulate products to  
19 lower and lower VOC content. As a result, there is a  
20 critical urgent need for safe, effective, and  
21 affordable exempt compounds, and coating formulators  
22 need all available tools to reformulate both the lower  
23 VOC and reactivity coatings.

24 ALJ McBRIDE: Thank you. Howard Berman.

25 MR. BERMAN: Good morning. Howard Berman

1 with E4 Strategic Solutions appearing today for  
2 Rust-Oleum. We will be submitting written comments as  
3 well. But I want to join the prior two speakers in  
4 voicing confusion over the small container issue. The  
5 draft rule is published on -- it says it's Section  
6 2051B3, this rule does not apply to any architectural  
7 coating that is sold in a container with a volume of  
8 less than one liter or less.

9 This seems to be contradictory to what  
10 statements have made, and we really are just at a loss  
11 as to whether they're in or they're out. Our comments  
12 in writing will reflect that. Otherwise, we support  
13 the statements of the American Coatings Association and  
14 we plan to incorporate that as well. Thank you.

15 ALJ McBRIDE: Thank you. Roger Downs.

16 MR. DOWNS: My name is Roger Downs. I am  
17 the Conservation Director for the Sierra Club Atlantic  
18 Chapter. We are a volunteer led organization of 54,000  
19 members statewide dedicated to protecting New York's  
20 air, water, and remaining wild places. The Sierra Club  
21 will be submitting formal comments on the proposed  
22 regulation to put greater restrictions on allowable NOX  
23 emissions from simple cycle and regenerative combustion  
24 turbines or peaking units during the ozone season.

25 But we would like to take this opportunity

1 to applaud the effort and hope it will lead to the  
2 closure of many of these aging, inefficient, and  
3 polluting electricity generating facilities.

4           Because these units run to meet electrical  
5 loads during peak periods of electricity demand, their  
6 operations tend to correspond with high temperature  
7 summer days and high ozone levels when air conditioning  
8 units strain the capacity over electricity grid. The  
9 resulting air quality degradation and increased NOX  
10 profoundly affects the health of those living near  
11 these peaking plants exacerbating asthma, heart  
12 attacks, and other respiratory ailments that contribute  
13 to tens of thousands of hospital visits annually and  
14 dozens of deaths in New York's nonattainment air  
15 quality regions. This is especially true for  
16 environmental justice areas that should not have to  
17 bear the brunt of dirty and outdated energy policy.

18           In addition to cleaner air and the  
19 associated health and climate benefits the Sierra Club  
20 anticipates that this new regulation will also  
21 facilitate better water resource management as many of  
22 the aging peaking plants also use egregious amounts of  
23 water for cooling. The billions of gallons of water a  
24 day required to cool Ravenswood, Astoria Generating,  
25 and other facilities drawing from New York waters also

1 contain hundreds of millions of larval fish and eggs  
2 that are entrained and entrapped in the industrial  
3 intake structures. The DEC has struggled to rein in  
4 this unnecessary slaughter of critical fisheries  
5 species for decades and misuse of estuarine waters and  
6 we hope that these restrictions on allowable NOX  
7 emissions and other VOCs will translate into shutting  
8 down many harmful cooling waters systems as well.

9           The Sierra Club feels that this regulation  
10 should also be synchronized with the state's current  
11 and emerging climate goals, polices we hope to codify  
12 this year that would see a zero carbon electricity grid  
13 in New York by 2040. Clearly, if we are to achieve  
14 such goals the state cannot allow plants which will be  
15 forced to retire to repower with new units that use the  
16 same climate polluting fuels like fracked gas. Every  
17 effort must be made with this regulatory opportunity  
18 and ensure that every closure is me with the  
19 replacement of renewable energy technology. To this  
20 end we remain uncomfortable some of the current  
21 language in the regulations that could allow for more  
22 lenient air quality rules if the peaking facility  
23 accommodates on-site energy storage. Storage capacity  
24 fed by renewables represents a sound grid enhancement  
25 consistent with our air quality and climate goals but



1 energy storage serviced by the same dirty fuel sources  
2 significantly undermines the overall climate and air  
3 quality goals of this regulation.

4           Again, along with recent regulatory  
5 efforts the ban coal fired power plants in New York,  
6 we're excited that the Department is tackling the next  
7 wave of dirty fuel generation on our way to an eventful  
8 one hundred percent carbon-free grid. We applaud  
9 Governor Cuomo and the Department for your efforts and  
10 look forward to working with you to ensure more of  
11 these peaking plants close down in exchange for solar  
12 and wind generation and installations. Thank you again  
13 for this opportunity to testify.

14           ALJ McBRIDE: Thank you. Gail Pisha.

15           MS. PISHA: Good morning. My name is Gail  
16 Pisha, and I live in Rockland County. Today I'm  
17 representing over 5,500 members of Sierra Club's Lower  
18 Hudson Group who live in Rockland, Westchester, and  
19 Putnam Counties. We support the DEC's intention to  
20 lower nitrous oxide emissions from simple cycle and  
21 regenerative combustion turbines or peaking units  
22 during the ozone season. Old peakers plants, many of  
23 which are close to 50 years old have a high NOX  
24 emission rates and contribute to the formation of the  
25 ground level ozone which is a lung irritant, especially

1 during hot summer months when peaker plants tend to be  
2 used.

3 We in Lower Hudson Group are particularly  
4 aware of this because Rockland County has such a peaker  
5 plant in Hillburn located in a community of color as  
6 all too many peaker plants, unfortunately.

7 Rockland and Westchester are currently  
8 designated by the United States Environmental  
9 Protection Agency as nonattainment areas for ozone and  
10 the American Lung Association currently rates Rockland,  
11 Westchester, and Putnam's air quality with an F for  
12 ozone pollution. In Rockland alone, where the Hillburn  
13 peaker plant is located we've had over at 8,000  
14 pediatric asthma cases, almost 22,000 adult asthma  
15 cases, and almost 13,000 cases of COPD in 2016.

16 So clearly a regulation to reduce NOX will  
17 protect public health especially of the people living  
18 closest to the dirtiest of the dirty fossil fuel peaker  
19 plants, most of which are located in New York City and  
20 Long Island. Reducing NOX will go a long ways with  
21 promoting environmental justice in our state. However,  
22 we need to replace these old dirty peaker plants with  
23 renewable generation to help us meet Governor Cuomo's  
24 goal of achieving a carbon neutral grid by 2040.

25 To fulfill the governor's vision to move

1 New York to a renewable energy future we must replace  
2 these fossil fuel peaker plants with energy storage,  
3 distributed solar, grid scale solar, efficiency and  
4 offshore wind since even new fossil fuel plants emit  
5 some NOX. In this way we can provide jobs for New  
6 Yorkers in the renewable energy economy and reduce  
7 burning of fossil fuels which contribute to climate  
8 change and poor health.

9 Retiring dirty peaker plants and moving  
10 directly to renewable energy will reduce the worst  
11 effects of climate change and make our residents  
12 healthier, both of which will save money and give New  
13 Yorkers a better quality of life. Thank you.

14 ALJ McBRIDE: Thank you. Is there anyone  
15 else who would like to make a comment on the record  
16 here today?

17 (No affirmative response.)

18 ALJ McBRIDE: All right. I'd like to  
19 thank all for coming out here today on behalf of the  
20 Department.

21 (Whereas the above entitled proceeding was  
22 concluded at 11:41 a.m.)

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C E R T I F I C A T I O N

I, MICHELE AMBROSINO, a Shorthand Reporter and  
Notary Public in and for the State of New York, do  
hereby CERTIFY that the record taken by me at the time  
and place noted in the heading hereof is a true and  
accurate transcript of same, to the best of my ability.

Michele Ambrosino

MICHELE AMBROSINO  
Court Reporter

**In the Matter Of:**  
**PROPOSED SUBPART 227-3**

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**HEARING**  
*May 13, 2019*

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STATE OF NEW YORK

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

of

Proposed Subpart 227-3 ("Ozone Season Oxides of Nitrogen (NOx) Emissions Limits for Simply Cycle and Regenerative Combustion Turbines")

and

Proposed Amendments to Part 205 ("Architectural and Industrial Maintenance (AIM) Coatings")

of

Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York

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A P P E A R A N C E S:

NEW YORK STATE DEPARTMENT of ENVIRONMENTAL  
CONSERVATION

Administrative Law Judge  
Office of Hearings & Mediation Services  
625 Broadway, 1st Floor  
Albany, New York 12233

RICHARD A. SHERMAN, ESQ.

ALSO PRESENT:

Ona Papageorgiou, P.E., Professional Engineer 1,  
Bureau of Air Quality Planning Division of Air  
Resources

1  
2           LAW JUDGE: Ladies and gentlemen, if I  
3 can have your attention. We are going on to  
4 the record now. Again, my name is Richard  
5 Sherman. I am an administrative law judge of  
6 New York State Department of Environmental  
7 Conservation. I have been assigned to  
8 conduct today's public hearing on proposed 6  
9 NYCRR Subpart 227-3, which is intended to  
10 lower NOx emissions during the ozone season  
11 and proposed amendments to Parts 200 and 205,  
12 which are intended to reduce V.O.C emissions  
13 from architectural and industrial maintenance  
14 (AIM) coatings.

15           The purpose of today's hearing is to hear  
16 from the public on your concerns and comments  
17 concerning both of these proposed regulations.  
18 If you wish to make a statement today, please  
19 be sure to fill out one of these registration  
20 cards. Give your complete name, organization  
21 you are with, and I will call the speakers in  
22 the order that I receive your cards. If you  
23 have lengthy statements, I encourage you to  
24 submit those lengthy statements in writing. If  
25 speakers run too long today, I will ask you to



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bring your statement to a close. You are still able to submit your comments in writing after today's proceeding, and I will also accept any written comments you might want to turn in today.

I do have complete contact information for submitting written comments. They can be sent by email to the department or can mail them to the central office in Albany, New York. I have the contact information up here with me, if anyone would like to have that after we are done with receiving the oral comments today.

This public hearing was noticed in local papers and also in the Department's Environmental Notice Bulletin and in the State Register in late February and early March. As stated in that notice, all written comments must be received by the department on or before 5:00 p.m. on May 20, 2019.

I understand that department staff has a brief presentation on both proposed regulations, and we will have that now. Ms. Papageorgiou?

MS. PAPAGEORGIU: Thank you. Just to

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be clear, I know this was just mentioned, but we are talking about two regulations today. One of them is a revision, which I am going to start with, and second is a proposed new rule. My name is Ona Papageorgiou. I am a professional engineer with the Division of Air Resources. The department is proposing to revise Part 205, Architectural and Industrial Maintenance coatings, also known as AIM coatings, and Part 200, General Provisions of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This public hearing is one of three scheduled for the purpose of receiving statements and comments on the Department of Environmental Conservation's proposal to revise Part 205 and Part 200.

Now, the purpose of this proposal is to lower volatile organic compounds, also known as VOX emissions, from AIM coating categories. This proposal will address Clean Air Act requirements, including ozone nonattainment, and protect the health of New York State

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residents. The department plans to submit Part 205 to the United States Environmental Protection Agency as a revision to the State Implementation Plan for New York State.

AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements or curbs. While AIM coatings are often referred to as paint, there are over 50 categories of coatings regulated under Part 205. These products may contain volatile organic compounds as part of their formulation.

The stakeholder process of this rulemaking began with a larger meeting on May 12, 2010, sponsored by the Ozone Transport Commission. This was followed up by multiple presentations at professional meetings for both national and New York-based coatings associations. The comments received during the stakeholder outreach process were considered in the development of this proposal.

This proposal is applicable to any person who supplies, sells, offers for sale or

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manufactures any architectural coatings for use within New York State, as well as any person who solicits, who applies or solicits the application of any architectural coating within New York State.

The Part 205 proposal eliminates 15 coating categories, adds 12 new coating categories, lowers the VOC limits on 12 coating categories, broadens the scope of DEC's data collecting authority and eliminates the quart exemption. The proposed effective date is January 1, 2021, with a two-year sell-through allowance.

So the department is also proposing to adopt a new Subpart 227-3 Ozone Season Oxides of Nitrogen Emission Limits for Simple Cycle and Regenerative Combustion. This is also of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This public hearing is also one of three scheduled for the purpose of receiving statements and comments on the Department of Environmental Conservation's proposal to adopt Subpart 227-3.

1  
2           The department is proposing to adopt this  
3 ozone season regulation to lower allowable NOx  
4 emissions from simple cycle and regenerative  
5 combustion turbines. This proposal will  
6 address Clean Air Act requirements, including  
7 ozone nonattainment, and protect the health of  
8 New York State residents. The department plans  
9 to submit Subpart 227-3 to the United States  
10 Environmental Protection Agency as a revision  
11 to the State Implementation Plan for New York  
12 State.

13           During the development of the current  
14 proposal, the department held stakeholder  
15 meetings on January 20th and January 26, 2017.  
16 The department released a stakeholder draft  
17 outline on June 7, 2018, to present more  
18 detailed elements of the proposed rule.  
19 Throughout the stakeholder process, the  
20 department also met with a New York Independent  
21 System Operator, the New York Department of  
22 Public Service, and the New York State Energy  
23 Research and Development Authority to discuss  
24 the likely elements of the proposed rule and to  
25 obtain feedback. The comments received during

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the stakeholder outreach process were instrumental in developing this proposal.

This proposal is applicable to simple cycle and regenerative combustion turbines that are electric-generating units with a nameplate capacity of 15 megawatts or greater and that bid into the NYISO wholesale market.

Subpart 227-3 is proposed to be phased in with the compliance plan due on March 2, 2020. Initial emission rate limits of 100 parts per million on a dry volume basis at 15 percent oxygen -- which I will from here on out call PPMVD -- will go into effect on May 1, 2023. Then on May 1, 2025 the emission limits will be reduced to 25 PPMVD when burning gas and 42 PPMVD when burning oil.

Sources subject to Subpart 227-3 are offered several compliance options under this proposal, including emissions averaging with renewable and energy storage resources, that is one. Not operating an affected source during the ozone season, that is another. And permanently shutting down an affected source.

In addition to providing statements at

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this hearing today, anyone may also submit written comments related to the proposed Subpart 227-3, which I just went over, or what I mentioned earlier, Part 205 and Part 200. Any statements made at this hearing today, as well as any written comments received during the public comment period, will be given equal weight and will become part of the administrative record for this rulemaking.

Anyone who wishes to obtain information or submit comments related to the proposed Part 205, Part 200 or Subpart 227-3 may contact me, Ona Papageorgiou, NYSDEC Division of Air Resources, 625 Broadway, Albany, New York 12233, telephone number is (518)402-8396; or you may email [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). And you may also visit our Web site at [dec.ny.gov/regulations/propregulations.html](http://dec.ny.gov/regulations/propregulations.html). Written comments will be accepted through 5:00 p.m. Monday, May 20, 2019. Thank you for attending this hearing.

LAW JUDGE: Thank you, Ms. Papageorgiou. Now I am going to turn to the speaker cards. I would ask that when I call your name, you

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come up to the podium. Please state your name, your organization, spell your name for the court reporter so we have that accurately transcribed. Please be sure to speak directly into the mic so that the court reporter can get every word you have to say today. I also ask that the audience be respectful of each speaker. With that I will remind anyone who came in late that we have these cards in the hallway behind the hearing room, if anybody wants to fill out a card and speak today. And with that, I will call the first speaker. It's Dr. Bevington.

DR. BEVINGTON: Good morning and thank you. My name is Dr. Charles Bevington, B-E-V-I-N-G-T-O-N. I am a retired educator. I am also the chair of Sierra Club Long Island Group. I just want to speak specifically to my experience as an educator at the Westbury School District eight years, where 23 percent -- between 19 and 23 percent of the students have asthma or asthma related -- and this is, you know, referral from medical physicians. 23 percent of the



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students is a significant number. It's one of the highest on Long Island. It's located in an area of Nassau County where you have one of the major peaker plants, and anything that you can do to control emissions would be significant and very helpful.

You know, as students -- and this is mostly -- as I said, the range was 19 to 23 percent, but middle school, as the students were there longer in the area, the asthma complications got worse. And you can't learn. You are impacted. So I just wanted to say again, thank you for the 227-3.4 and the control requirements that you are putting into place. Thank you.

LAW JUDGE: Thank you, Doctor. Next speaker is Joe Tonini.

MR. TONINI: Good morning. My name is Joe Tonini, T-O-N-I-N-I. I am a longterm resident of Long Island, with homes in Mineola and in Southold. First I want to thank the Department of Environmental Conservation for holding these hearings on proposed regulations for peaking plants. I

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also want to congratulate Commissioner Seggos and Governor Cuomo on enactment of the regulations to control emissions from New York State's coal-fired power plants.

I am a volunteer with the Sierra Club's Clean Energy For All Campaign and also with the Long Island Progressive Coalition client committee. I am here as a climate activist but also I am here as a husband of an asthmatic and a grandfather of five between the ages of one and eight, and one of them, three-year-old Andrew, was also recently diagnosed as an asthma sufferer. I will leave it to others more conversant with the data to describe the relationship between the toxic emissions that come from peaking plants and health impacts they cause and the deaths they contribute to.

As a climate activist, husband and a grandfather, I have three recommendations for the DEC to consider: First, number one, put an ozone monitoring station in Nassau County. Queens to our west and Suffolk to the east both receive F ratings for ozone pollution. Nassau doesn't have an ozone monitoring station and,

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therefore, receives no official grade.

According to the New York State Department of Health, DEC air quality measurements have "limitations." "Values best represent air quality near monitors."

Number two, speed up the proposed timeline for adoption of the regulations. DEC is proposing to implement new regulations starting on May 21, 2023, and then a little bit stronger regulations on May 21, 2025. The Environmental Protection Agency estimates 13 to 22 deaths from the effects of ozone pollution per year in New York State. Between now and May 21, 2025, you could have 78 to 132 deaths, as well as 200,000 exacerbated asthma incidents. And it is important to note that American Lung Association research found that ozone poisoning at levels 16 percent to 80 percent, lower than those the EPA currently considers acceptable, "was associated with deaths from cardiovascular disease, strokes and respiratory causes."

And number three, make these regulations strong. Resist letting them be compromised by those who put profit ahead of the health of the

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people and environment. And I thank you for considering my comments today.

LAW JUDGE: Thank you, Mr. Tonini. Next speaker is James Haggerty. Before Mr. Haggerty speaks, please be certain to put your phones on vibrate, if you have not already done so. A phone going off makes it a little hard for the court reporter to do her job.

MR. HAGGERTY: Hi, my name is James Haggerty, H-A-G-G-E-R-T-Y. I am a student here at Stony Brook University. I am also a member of the Sierra Club on campus, also here to represent students and young people in general. So I am a student at Stony Brook University and a lifelong resident in New York State, and I will review as the Department of Environmental Conservation have an obligation to use your power and regulations to mitigate the problems that pollution is going to cause for my generation.

The proposed regulations of NOx are a great step in the right direction, fighting the

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notion that we must continue to live with the status quo of letting power plants pollute our air in return for cheap electricity. This issue, air pollution and its successor, climate change, is no longer a technological one. To quote *The Six Million Dollar Man*, a TV series much before my time, we have the technology. We can reduce NOx emissions from the simple cycle power plants. We can rebuild the clean air we used to have in New York and, additionally, we can generate completely NOx free electricity with renewable sources.

Your responsibility at the DEC is to be the compass that sets the direction of New York's path towards these goals. Without these steps towards limiting our pollution, my generation and the generations to come will suffer because of choices we did not make. Air pollution and climate change as a whole is an issue that keeps me up at night and is forcing people in my generation to make choices about our lives that prior generations never had to. We, young people at large, are relying on the DEC and the government of the State of New York

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to assume the climate and air pollution action and install these regulations, so that we can continue to have the same standard of living as the generations before us. You can be the people and the institution that goes down in history as the beginning of a landslide for the positive change for our communities. Thank you.

LAW JUDGE: Thank you for the generational reference that I understood. Next speaker is Jessica Enzmann.

MS. ENZMANN: Hello, my name is Jessica. I am a national staffer at the Sierra Club. My last name is E-N-Z-M-A-N-N. I am here to speak about the NOx regs 227-3.4. First I would like to thank the governor, the head of the DEC, and also Bill Fondant (phonetic) for answering all my questions about this hearing.

Thank you for taking action against the dirtiest power plants in New York. Caping nitrogen oxide emissions from peaking power plants is critical for cleaning up air. NOx emissions create ozone which triggers asthma

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attacks in children and adults. By putting strict limits on NOx emissions during the smog season, we can improve public health and quality of life, especially for people living in communities that bear a high burden of pollution.

We encourage you to ensure that the regulation is as rigorous as it can be, by removing loopholes that weaken pollution limits for existing peakers matched with on-site storage -- storing dirty power doesn't make it cleaner -- ensuring that affected plants close for good and are replaced with renewable power combined with battery storage. We cannot replace old, dirty fossil fueled power peaking plants with new, dirty fueled powered peaking plants and still meet the bold goal of 100 percent clean electricity by 2040. Thank you.

LAW JUDGE: Next speaker is Karen Miller.

MS. MILLER: Hello, my name is Karen Miller. I am from OR Energy. We are a long Island-based environmental nonprofit that

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educates, involves and empowers the public to act on renewable energy and environmental protection. We want to thank you for the opportunity to speak today.

We are here to remind you to look to the future and set the high standards necessary to meet our climate and air pollution goals to stronger limits from the nitrogen oxide emissions that our peaker plants create. We need to institute much stronger standards, dramatically draw down and severely limit the nitrogen oxide pollution affecting our residents, cities, especially environmental justice communities these plants occupy.

New Yorkers are entitled to clean air. The use of these plants must be drastically reduced to make this a reality. This can be achieved with significant solar investment and proffer up from valuation of solar in the value of distributed energy resources which reflect the elimination of these emissions, which will give decades of dividend and clean air, climate jobs and on-demand clean energy storage expansion.



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2           We need renewables to be their own bridge  
3 to the future. Time of use, energy efficiency  
4 and other incentives to reduce peaker demand  
5 always are the cheapest and should all be  
6 heavily invested in right now. Then New York  
7 must draft service renewables commitment of  
8 land as we await the decade for offshore wind  
9 to arrive. Let's use this time to create the  
10 grid both as we need it to be for now and as it  
11 will be when thousands of megawatts of offshore  
12 wind come ashore.

13           We must set the priority now by creating  
14 and assuring that any excess clean energy not  
15 only has a repository but is given preference  
16 to be on the bridge to displace these dirty  
17 peaker plants. Since this will greater reduce  
18 financial work peak generation markets, it must  
19 not lead to dirty generation to make a quick  
20 buck in storage for peak demand. This renewal  
21 energy peak demand market fulfillment will  
22 benefit all of New Yorkers all the time, on all  
23 their electric bills, and they should be  
24 rewarded as such. We also need to assure that  
25 there are strict limits of counties on any

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dirty energy used to a stored power for peak demand which would just kill any gains to be had. We cannot burn our way out of the climate and crisis and toxic air-conditions, and it should be prohibited.

Help make New York the future we need now. Let's use this time wisely to systematically replace the culprits, expand efficiency and incentives. Incentivize time of use, increase solar storage capacity that we need to scale storage infrastructure, and assure our storage is not from dirty energy emissions. Thank you.

LAW JUDGE: Next speaker is Bridget Foley.

MS. FOLEY: Hello, my name is Bridget Foley. My last name is F-O-L-E-Y. Today I will be speaking as a volunteer with Sierra Club and New York Renews and a resident of Blue Point. On Long Island we have a robust and wide reach in clean energy and climate justice movement. So the speakers today, we are a small portion of an Island-wide community that is fighting for this.

So the NOx emissions cap immediately makes

1  
2 me think of the communities that this is going  
3 to benefit when I first heard about it. But I  
4 am joining many other people today and asking  
5 that it does not fall short for those exact  
6 communities that it is intended to serve. The  
7 regulation, it cannot allow new fossil fuel  
8 peaking plants that meet the NOx regulation  
9 cap, thanks to new technologies. Sorry, that  
10 wasn't right. But it would be a loophole, so  
11 to speak, that is counterproductive to the  
12 lifesaving public health benefits that the  
13 regulation intends, and equally  
14 counterproductive is the loophole that allows  
15 on-site storage in existing plant. It's  
16 understandable that they are in there, but it  
17 will reverse -- not reverse, but it will  
18 just -- won't allow it to be as productive and  
19 as beneficial as it can be and needs to be.

20 So if it comes to fruition, it can't leave  
21 those holes open. And to best serve us and our  
22 future on Long Island, it needs instead to team  
23 with aggressive implementation of clean energy  
24 technologies and storage, off-shore winds,  
25 bridge scale solar, and also distributed solar.

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So that's it for me. As a member of Long Island, I am in vast support of this. Thank you.

LAW JUDGE: That was the last of the cards I have. Is there someone else here who would like to make a public comment? I am hearing none. It's half past now and I am just going to call a recess for about 20 minutes or so just in case someone comes in late, and I will reopen the record at that to close it out or hear additional speakers. Thank you for your participation today.

(Whereupon, a recess was taken.)

LAW JUDGE: Okay. We are back on the record. I did receive one more speaker card. Is there anyone else who arrived that wanted to speak but was not aware that you needed to fill out a card first? Hearing none, I will call Jan Heubner.

MS. HEUBNER: Hi. I found an article online and I have been following it for a year --

LAW JUDGE: Sorry, since you were not here before, I probably should have gave you

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the spiel. If you would just step to the podium and state your full name and spell your last name for the court reporter and any organization you are with.

MS. HEUBNER: Hi. We just joined the Sierra Club. We are concerned about the environment. We have been following the --

LAW JUDGE: Sorry, could you state your full name and spell your last name for the court reporter.

MS. HEUBNER: Jan Heubner, H-E-U-B-N-E-R. We joined the Sierra Club. We are concerned about the earth. It's the only one we have. There is a power grid backup, it's the largest battery project in the world in Australia, and it was installed a little over a year ago. It cost -- the battery backup alone was done by Tesla Energy and it cost \$66 million. And just recently I found an article online, in one year it saved the Australians \$40 million. So it's two-thirds paid for in one year. And they used to have -- they constantly have bad storms in southern Australia, bad lightning

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storms. So 45-minute power interruptions were common. Now the residents aren't even aware that it has happened. Instead of 45 minutes to fire up the peaker plants, in some milliseconds, so less than a second, the power is restored. The residents aren't even aware that the power went out. It's a good thought.

LAW JUDGE: Thank you for your comments. Again I received no other cards, I assume no one else wants to speak today. With that, the hearing record is closed. I thank you all for coming out.

(Time noted: 11:55 a.m.)

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C E R T I F I C A T E

I, CHRISTINA FERRARO, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the witness whose testimony is hereinbefore set forth was duly sworn by me, and the foregoing transcript is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



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CHRISTINA FERRARO

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<b>visit</b> 10:18	<b>wishes</b> 10:11	<b>York-based</b> 6:20
<b>VOC</b> 7:9	<b>word</b> 11:7	<b>Yorkers</b> 19:16 20:22
<b>volatile</b> 5:21 6:13	<b>work</b> 20:18	<b>young</b> 15:15 16:24
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<b>weight</b> 10:9	<b>York</b> 3:6 4:10 5:14,25 6:5 7:3, 6,20 8:8, 11,20,21, 22 10:15 13:5 14:3,14 15:18 16:11,25 17:22 20:6 21:7,19	
<b>west</b> 13:23		
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**In the Matter Of:**

**IN THE MATTER OF PROPOSED SUBPART 227-3**

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**HEARING**

*May 14, 2019*

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STATE OF NEW YORK

DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter

of

Proposed Subpart 227-3 ("Ozone Season Oxides of Nitrogen (NOx) Emissions Limits for Simply Cycle and Regenerative Combustion Turbines")

and

Proposed Amendments to Part 205 ("Architectural and Industrial Maintenance (AIM) Coatings")

of

Title 6 of the Official Compilation  
of Codes, Rules and Regulations  
of the State of New York

1 Hunters Point Plaza  
47-40 21st Street  
Long Island City, New York 11101

May 14, 2019

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A P P E A R A N C E S:

NEW YORK STATE DEPARTMENT of ENVIRONMENTAL  
CONSERVATION

Administrative Law Judge  
Office of Hearings & Mediation Services  
625 Broadway, 1st Floor  
Albany, New York 12233

MARIA E. VILLA, ESQ.

ALSO PRESENT:

Ona Papageorgiou, P.E., Professional Engineer 1,  
Bureau of Air Quality Planning Division of Air  
Resources

1  
2           LAW JUDGE: We are on the record. This  
3 is an administrative public hearing with a  
4 legislative format, before the New York State  
5 Department of Environmental Conservation, in  
6 the matter of department staff proposed  
7 rulemaking to add Subpart 227-3 to the  
8 Official compilation of Codes, Rules and  
9 Regulations of the State of New York, or 6  
10 NYCRR for short.

11           The new Subpart 227-3 is entitled Ozone  
12 Season Oxides of Nitrogen or NOx Emission  
13 Limits for Simple Cycle and Regenerative  
14 Combustion Turbines. Department staff also  
15 proposes to amend the existing Part 205 of 6  
16 NYCRR entitled Architectural and Industrial  
17 Maintenance or AIM coatings. This amendment  
18 would also require revisions to Part 200 of 6  
19 NYCRR.

20           The primary goal of the new Subpart 227-3  
21 is to lower allowable NOx emissions from simple  
22 cycle and regenerative combustion turbines  
23 during the ozone season. To lower emissions  
24 from the sources will help to address Clean Air  
25 Act requirements, ozone nonattainment and

1  
2 protect the health of New York State residents.  
3 This is not a mandate on local government and  
4 is only applicable to simple cycle and  
5 regenerative combustion turbines. It applies  
6 to any entity that owns or operates a subject  
7 source. The amendments to Part 205 address AIM  
8 coatings which are commonly referred to as  
9 paints. These coatings release volatile  
10 organic compounds (VOC) into the atmosphere.

11 Part 205 regulates VOC content for 52  
12 coating categories. The current VOC limits  
13 were set in 2004 and the industry and  
14 technology have changed and improved since that  
15 time, to make lower VOC options available.  
16 Because New York State has a nonattainment area  
17 for ozone, the Clean Air Act requires the state  
18 to develop strategies to reduce VOC emissions.  
19 The revisions are part of that effort. The  
20 major revisions are intended to reduce the VOC  
21 limit on 12 coating categories, create VOC  
22 limits for 12 additional categories, eliminate  
23 15 coating categories and eliminate the quart  
24 exemption. This proposal applies to any person  
25 who supplies, sells, offers for sale or



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manufactures architectural coatings for use in New York State.

The purpose of this hearing is to receive comment on the proposed rulemaking. So in the back there are some cards to fill out. If you want to speak and put a statement on the record, fill out a card and give it to me and I will call the speakers in the order that I receive the cards. I am Maria Villa. I am serving as the hearing officer for the department. All persons, organizations, corporations or government agencies that may be affected by the proposed rule are invited to submit either written or oral statements. All statements taken today, either written or spoken, will be incorporated into the official record of this proceeding. Statements are not given under oath. There won't be any cross-examination. This isn't a question-and-answer session.

Hearings already have been held in Albany and Stony Brook. A cumulative record will be compiled of all the comments received at the three hearing sessions. So written statements

1  
2 received during the public comment period and  
3 oral statements made at the hearing will be  
4 given equal weight. If you have a lengthy  
5 statement and you can submit it in writing, it  
6 is a big help to the court reporter, or you can  
7 summarize the statement verbally. And written  
8 comments can also be submitted on or before  
9 5:00 p.m. on May 20, 2019, to the Division of  
10 Air Resources. We have here Ms. Ona  
11 Papageorgiou at DEC central office. If you  
12 want to speak to Ms. Papageorgiou about how to  
13 make comments by email, or where to mail them  
14 in, you can talk to her. I also have the  
15 information up here. But rather than detain  
16 us, just ask Ms. Papageorgiou.

17 Department staff has provided me with  
18 copies of the notices of the hearing sessions.  
19 They were published in the February 27, 2019  
20 edition, and this is for Subpart 227-3, and the  
21 March 6, 2019 edition, Part 205, of the  
22 Department's Environmental Notice of Bulletin,  
23 as well as New York State Register.

24 In addition, I have affidavits of  
25 publication of the notice for Subpart 227-3

1  
2 published in the February 27, 2019 editions of  
3 the New York Post, Newsday, The Albany Times  
4 Union, The Buffalo News, The Glens Fall  
5 Post-Star and the Rochester Democrat and  
6 Chronical on February 27, 2019. The notice was  
7 published in the February 26, 2019 edition of  
8 the Syracuse Post Standard. I also have  
9 affidavit of publication for the notice for the  
10 Part 205 hearings and those were published in  
11 the March 6, 2019 editions of the New York  
12 Post, Newsday, The Albany Times Union, The  
13 Buffalo News, The Glens Fall Post-star and The  
14 Rochester Democratic Chronical on February 27,  
15 2019. The notice was published in the March 5,  
16 2019 edition of the Syracuse Post Standard.  
17 And, as I mentioned, we have Ms. Papageorgiou  
18 here with us, and she is going to make a brief  
19 presentation regarding the rule.

20 MS. PAPAGEORGIU: Thank you, Judge  
21 Villa. Just to be clear, I am going to  
22 repeat quite a bit of what Judge Villa just  
23 went through, but to make our hearings  
24 consistent, I am going to go through my  
25 entire hearing statement so it's consistent

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amongst our three hearings. And also we are -- as you probably already know, there are two regulations. So if I start talking about one and you wonder, we will get to the next one after.

My name is Ona Papageorgiou. I am a professional engineer with the Division of Air Resources. The department is proposing to revise Part 205, Architectural and Industrial Maintenance Coatings, which I will refer to as AIM coatings, and Part 200, General Provisions of Title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

This public hearing is one of three scheduled for the purpose of receiving statements and comments on the Department of Environmental Conservation's proposal to revise Part 205 and Part 200.

The purpose of this proposal is to lower volatile organic compounds (VOC) emissions from the source category. This proposal will address Clean Air Act Requirements, including ozone nonattainment, and it will protect the

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health of New York State residents. The department plans to submit Part 205 to the United States Environmental Protection Agency as a revision to the State Implementation Plan for New York State.

AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. While AIM coatings are often referred to as paint, there are over 50 categories of coatings regulated under Part 205. These products may contain volatile organic compounds as part of their formulation.

The stakeholder process of this rulemaking began with a stakeholder meeting on May 12, 2010, sponsored by the Ozone Transport Commission. This was followed up by multiple presentations at professional meetings for both national and New York-based coatings associations. The comments received during the stakeholder outreach process were considered in developing this proposal.

This proposal is applicable to any person

1  
2 who supplies, sells, offers for sale, or  
3 manufactures any architectural coating for use  
4 within New York State, as well as any person  
5 who applies or solicits the application of any  
6 architectural coating within New York State.

7 The Part 205 proposal eliminates 15  
8 coating categories, adds 12 new coating  
9 categories, lowers the VOC limits on 12 coating  
10 categories, broadens the scope of DEC's data  
11 collecting authority and eliminates the quart  
12 exemption. The proposed effective date is  
13 January 1, 2021, with a two-year sell-through  
14 allowance.

15 Moving on to the next. The department is  
16 proposing to adopt a new Subpart 227-3, Ozone  
17 Season Oxides of Nitrogen NOx Emissions Limits  
18 for Simple Cycle and Regenerative Combustion  
19 Turbines of Title 6 of the Official Compilation  
20 of Codes, Rules and Regulations of the State of  
21 New York.

22 This public hearing is also one of three  
23 scheduled and department is proposing to adopt  
24 this ozone season regulation to lower allowable  
25 NOx emissions from simple cycle and

1  
2 regenerative combustion turbines. This  
3 proposal will address Clean Air Act  
4 requirements, including ozone nonattainment,  
5 and it will protect the health of New York  
6 State residents. The department plans to  
7 submit Subpart 227-3 to the United States  
8 Environmental Protection Agency as a revision  
9 to the State Implementation Plan for New York  
10 State.

11 During the development of the current  
12 proposal, the department held stakeholder  
13 meetings on January 20th and 26th of 2017. The  
14 department released a stakeholder draft outline  
15 on June 7, 2018, to present more detailed  
16 elements of the proposed rule. Throughout the  
17 stakeholder process the department also met  
18 with the New York Independent System Operator,  
19 the New York Department of Public Service and  
20 the New York State Energy Research and  
21 Development Authority. And these meetings were  
22 to discuss the likely elements of the proposed  
23 rule and obtain feedback. The comments  
24 received during the stakeholder outreach  
25 process were instrumental in developing this

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proposal.

This proposal is applicable to simple cycle and regenerative combustion turbines that are electric-generating units with a nameplate capacity of 15 megawatts or greater and that bid into the NYISO wholesale market.

Subpart 227-3 is proposed to be phased in with a compliance plan due on March 2, 2020, initial emission rate limits of 100 parts per million on a dry volume basis at 15 percent oxygen, which I will call PPMVD. It's a way of demonstrating parts per million. That 100 parts per million VD will go into effect on May 1, 2023. Then on May 1, 2025, the emission limits will be reduced to 25 PPMVD when burning gas and 42 PPMVD when burning oil.

Sources subject to Subpart 227-3 are offered several compliance options under this proposal. These include emissions averaging with renewable and energy storage resources, not operating an effected source during the ozone season or permanently shutting down that source.

In addition to providing statements at



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this hearing today, anyone may also submit written comments related to the proposed Subpart 227-3 or Part 205 and Part 200. Any statements made at this hearing today, as well as all written comments received during the public comment period, will be given equal weight and will become part of the administrative record for this rulemaking.

Anyone who wishes to obtain information or submit comments related to the proposed Part 205, Part 200 or Subpart 227-3 may contact me, Ona Papageorgiou, at NYSDEC Division of Air Resources, 625 Broadway, Albany, New York 12233, telephone is (518)402-8396, email is [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov), or visit the department's Web site. Written comments will be accepted through 5:00 p.m. Monday, May 20, 2019. Thank you for attending this meeting.

LAW JUDGE: Thank you very much. I am going to go ahead and call the speakers in the order that I received the card. If there is anyone who came in and wants to speak and hasn't filled out a card, please do so and bring it up to me.

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So our first speaker is Samantha Wilt. I think you can stay right where you are, as long as the court reporter can hear you.

MS. WILT: Good morning. My name is Samantha Wilt. I am an energy policy analyst at the NRDC, the National Resources Defense Counsel. NRDC is an international environmental advocacy organization headquartered in New York. Thank you for the opportunity to testify today in support of Subpart 227-3.

We really welcome this effort to reduce the enormous volume of air pollutants from these old, dirty peaker plants. We fully support these rules that will help clear the air for New Yorkers, with a small change recommended to the second compliance option.

These rules are critical for getting rid of the worst stationary sources of air pollution and will help address Clean Air Act requirements and ozone nonattainment. New Yorkers are routinely exposed to some of the highest ozone levels in the Eastern United States and currently 64 percent of New York

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State residents, more than 12 million people, live in counties designated as not meeting the EPA 2015 health-based standard of 270 parts per billion for ozone.

Our failing air quality has serious health consequences for residents in the New York City metro area where the ozone levels are highest. This area records the third most asthma-related deaths in the country. Asthma prevalence among adult New Yorkers increased 24 percent between 2002 and 2010, declining nationwide. Children in the New York City region experienced even higher rates of emergency department visits. So the visits per ten thousand children on population in New York City is 228 versus the rest of the state if you take out New York City, which is 68. So that's 228 versus 68 in the rest of the state. And in the Bronx, that's 425 versus 68 in the rest of the state. And communities of color and low income communities disproportionately bear the impact of this air pollution.

The proposed regulation must be paired with aggressive efforts to promote energy

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storage, distributed solar, utility scale solar, energy efficiency, and offshore wind to ensure these filthy, old peakers are not replaced with new peakers that are also fossil fueled.

We recommend changes in the second compliance option which allows averaging of the output-based emission rate with battery storage and renewable energy. The second compliance option proposed will result in local benefits for communities with the reduced amounts of NOx and the addition of those renewables or battery stored resources in their community. To assure there is local air quality benefits from utilization of renewables or battery storage it is essential the renewable generation or storage under common control only be counted toward the averaging with the existing peaker outlet during peak hours. If, as proposed, the entire output of the renewable or battery resources over 24 hours is used for averaging, it's possible that displacing the dirtiest marginal generation will not occur, as generation or injections that happened during

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hours where clean resources are on the margin could be counted. This would effectively reduce or negate the displacement benefit of those cleaner resources.

NRDC strongly supports the proposed rules, and we hope that the health, environmental and quality of life benefits that will result for the residents and businesses of the region will be realized as soon as possible. Thank you.

LAW JUDGE: Thank you. Mr. Joe Tonini.

MR. TONINI: My name is Joe Tonini. I am a long-term resident of Mineola on Long Island. I have a home in Mineola and another home in Southold. First I want to thank the Department of Environmental Conservation for holding these hearings on proposed regulations for peaking plants. I also want to congratulate Commissioner Seggos and Governor Cuomo on enactment of the regulations to control emissions on New York State's coal-fired power plants. I am a volunteer with the Sierra Club's Clean Energy For All Campaign and also with the Long Island Progressive Coalition Climate

1  
2 Committee. I am here as a climate activist  
3 but I am also here as a husband of an  
4 asthmatic and a grandfather of five between  
5 the ages of one and eight. One of them,  
6 three-year-old Andrew, was also recently  
7 diagnosed as an asthmatic. I will leave it  
8 to others more conversant with the data to  
9 better describe the relationship between the  
10 toxic emissions that come from peaking plants  
11 and the health impacts they cause and the  
12 deaths they contribute to.

13 As a climate activist, a husband and a  
14 grandfather, I have three recommendations for  
15 the DEC to consider. Number one, put an ozone  
16 monitoring station in Nassau County. Queens to  
17 our west and Suffolk to the east both received  
18 F ratings for ozone pollution. Nassau doesn't  
19 have an ozone monitoring station and,  
20 therefore, receives no official grade.

21 According to the New York State Department of  
22 Health, DEC air quality measurements have  
23 "limitations. Values best represent air  
24 quality air monitors." And, by the way,  
25 Brooklyn also has no air monitoring stations

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for ozone.

Number two, speed up the proposed timeline for adoption with the regulations. The DEC is proposing to implement new regulations starting May 1, 2023, and strengthening them on May 1, 2025. The EPA estimates 13 to 22 deaths from effects of ozone pollution per year in New York State. Between now and May 1, 2025, you could have 78 to 132 deaths, as well as 20,000 exacerbated asthma incidents. And it is important to note that American Lung Association Research found that ozone poisoning at levels 16 to 80 percent, lower than those the EPA currently considers acceptable, "was associated with deaths from cardiovascular disease, strokes and respiratory causes.

And finally number three, make these regulations strong. Resist letting them be compromised by those who put profit ahead of the health of people and of the environment. Thank you.

LAW JUDGE: Thank you very much. Next speaker is Lipa Sofer.

MR. SOFER: Good morning. My name is

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Lipa Sofer from health environment in Brooklyn. I would like to thank New York State Department of Environmental Conservation for doing this great job to reduce VOCs and these strong toxic chemicals. I fully support what they are doing in reducing these strong chemicals and eliminating the exemption for these high VOCs.

We have seen for the last, I would say, 18 years what these high VOCs are doing to people. We have seen contractors come into buildings with strong paints and people and children are getting asthma attacks. Women have lost miscarriage -- unborn children. We have seen people which had cancer and they got cured. When they were exposed to these chemicals their cancer came back. So we have to fully stop the companies from making these strong chemicals. Today there are alternatives for products which don't have these strong chemicals, and as soon as these regulations go into effect, less people will get sick. And so we have to make sure these rules are strong and make them go



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into effect fast. And I thank you very much for making these rules. Thank you.

LAW JUDGE: The next speaker is Elaine O'Brien.

MS. O'BRIEN: Hi. Thank you. My name is Elaine O'Brien and I am here as a volunteer with Sierra Club. Thank you everyone for the comments and for holding this hearing today. I am a long time New York City resident -- and just to share some personal story about the effects of poor air quality in our neighborhoods -- in 2008 I developed severe allergies and asthma due to pollution in Williamsburg when there was a ton of construction, and my symptoms were exacerbated by air quality issues from living near the BQE and then later on in lower Manhattan.

At that time my job provided me with health insurance and I was able to treat my asthma and allergy with medication and steroid inhalers. Later my insurance company inflated the price of my medication, and my ten dollar inhaler now cost over \$200. So I can no longer

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afford my medication and took measures to treat my symptoms holistically, and I moved out of those neighborhoods and my health did improve. I am grateful to have limited symptoms today, but I know that that would not be the case if I still lived in those neighborhoods. And I think the families with less housing ability and many children in New York may never be able to breathe well due to the combined effect of air pollution and the high cost of medication. It's time to take action and replace and fossil fuels with renewables to protect the health of New York State residents. Thank you.

THE ARBITRATOR: Thank you very much.

Leontine Greenberg.

MS. GREENBERG: I am a mom and an

educator and I live in Queens, pretty close to both of the plants. I am here to support the proposed regulations on nitrogen oxide. I have heard rightfully a lot of focus on the respiratory effects of pollutants, but I want to take a moment and talk about the neurological impact that burning fossil fuels and other air pollutants have on kids.

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When I was pregnant in 2007, and for the first year of my daughter's life, we lived directly between the Astoria Generating Station and the Ravings Generating Station, and ironically at the time I was writing my master's thesis on the role that the natural environment plays with supporting human cognition.

Since then a large body of research has been done on the connection between prenatal and childhood exposure to air pollution and damage to the developing brain. Both epidemiological studies of children who lived in polluted areas, as well as controlled studies on animals, showed that pollutants from fossil fuels can break down the blood brain barrier and, as a result, children in areas with polluted air suffered from persistent inflammation and tissue damage throughout their brains.

These type of damages are associated with learning and behavior problems, and those problems are indeed found with greater frequency in children who are exposed to air

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pollution. They include memory problems, difficulties with auditory processing and speech, deficits of self-control and mood regulation, early hallmarks of Alzheimer's and Parkinson's disease, lower IQ, attention deficit disorder and autism.

We need to shut down these high-polluting plants, and rather than building another fossil fuel powered plant in another child's neighborhood, we need to invest in renewable energy and energy storage.

I also have about 20 letters from kids who take an environmental science class in Manhattan and I am going to read two of them. They are short.

The first one is from Nina Watson and she says, "Dear DEC, I am 11 years old and I love New York City but it's kind of disgusting. My grandfather got lung cancer from air pollution; he worked in a factory. And because the factory he worked at did not have well-regulated rules about keeping the air clean and their employees safe, he got cancer that spread to his brain. That is why I want

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more rules about air pollutions."

"Dear DEC, in this letter I am going to tell you about the problems that the planet is facing. Power plants are contributing to global warming and I strongly urge you to do something. I believe that the earth is a beautiful thing and we are giving that up for money and power. So I ask you to please try to stop this disaster." Thank you.

LAW JUDGE: Thank you very much. The next speaker is Shay O'Reilly.

MR. O'REILLY: Hi, my name is Shay O'Reilly and I am the senior organizing representative for the Sierra Club in New York City. My colleagues have already spoken in Albany and in Long Island, so I will make this very brief. We are very supportive of these regulations. We know that they are needed to clean up our air quality locally and around the state, and we have two considerations that we want to highlight in our approach to these.

First of all, we want to make sure that the options for compliance do not include

1  
2 simply combining dirty power with battery  
3 storage technology. We are concerned about  
4 some of the language in there that could bolden  
5 up that opportunity, and we know that storing  
6 dirty power doesn't make it cleaner. So we  
7 would like to make sure that that language is  
8 very clear, that these plants cannot contain  
9 compliance simply by installing battery storage  
10 for their dirty power.

11       Secondly, we want to make sure that the  
12 state is engaged in the holistic effort to  
13 replace these power plants with renewable  
14 energy combined with battery storage  
15 technology, including offshore wind,  
16 distributed solar, and other clean renewable  
17 technologies. We know that we can't replace  
18 these old, dirty fossil fuel power peaking  
19 plants with new, dirty fossil fuel peaking  
20 plants and still meet the bold goal of 100  
21 percent clean energy by 2040.

22       In accordance with these two  
23 considerations and support of this regulation I  
24 have -- from people in these districts affected  
25 by F ratings and air quality, assuming that

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Brooklyn and Nassau County are somehow not spared from that rating, I have 1,957 petition signatures in support of these comments.

LAW JUDGE: Thanks. Andrew Wassermann.

MR. WASSERMAN: Thanks for holding this hearing today and for letting everybody speak. This right here, this is my inhaler. I carry it with me almost everywhere I go because I have a mild form of asthma. I don't suffer from asthma attacks or anything else that could be life threatening, so it's a small burden. This is nothing compared to the burden carried by those who live near the power plants we are discussing today.

Environmental justice communities around the state, and particularly in the city, right here in Long Island City, have high rates of asthma, a life threatening burden they are forced to carry because of dirty fossil fuel power plants. But they don't need to carry this burden. Regulations Subpart 227-3 we are discussing today is important for protecting public health, particularly for communities living near some of the oldest, dirtiest

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fossil-fired peaking units in New York.

Addressing pollution from these outdated and highly polluting facilities is critical to promoting environmental justice in New York and in reducing our contribution to climate change.

It is crucial that this regulation does not result in the replacement of old, dirty fossil fuel peaker plants, even if the new ones are paired with energy storage. As Shay just said, storing dirty power does not make it cleaner. It still directly causes asthma.

Dirty peaker plants are not necessary. It is vital that the implementation of the regulation be paired with aggressive efforts to promote energy efficiency, renewable energy such as distributed solar, grid scale solar, offshore wind, and energy storage, to replace retiring peaker plants. These technologies are available today and they get cheaper every year.

This isn't a list of wants. Such actions are necessary to relieve communities of the burden they carry and to reduce the burden of a changing climate for all of us. Thank you.



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LAW JUDGE: Thank you. Now, Mr. Wassermann was the last card that I received. Is there anybody else who wants to speak? Why don't you go ahead, Rachel Spector.

MS. SPECTOR: Hi, my name is Rachel Spector. I am the environmental justice program director at New York Lawyers for the Public Interest. New York Lawyers for the Public Interest strongly supports these regulations. Reducing NOx emissions during ozone season is crucial for public health and should be done in an equitable manner; informed by the reality that many of the most inefficient resources are cited in environmental justice. So we applaud DEC for taking this step to reduce NOx emissions and for proposing alternative compliance pathways that incentivize investment in renewable energy and storage technologies.

We have several concerns about the regulations as written. First, it's crucial that the second compliance option not increase NOx emissions. The rule must be modified to

1  
2 ensure that the storage is not simply being  
3 used to store dirty power. Secondly, it's  
4 crucial that the process by which NYISO may  
5 designate as a reliability source, incorporate  
6 consultation with the local community,  
7 particularly environmental justice communities,  
8 and involve transparency around the decision  
9 process and mitigation of public health impacts  
10 for continued noncompliance regulations.

11 Finally, it's crucial that this rule is  
12 written as a step towards phasing out fossil  
13 fuel burning structure across the state and  
14 transitioning to renewable and resilient energy  
15 sources in a manner that achieves equitable air  
16 quality and community resilience. Thank you.

17 LAW JUDGE: Thank you very much. Anyone  
18 else who wanted to speak? All right, hearing  
19 no response, a reminder, the public comment  
20 period will close on May 20, 2019. And the  
21 comments can be mailed and can be sent via  
22 email. Once again, as Ms. Papageorgiou  
23 mentioned, the email address for comments is  
24 [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). So that's  
25 [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov). And if you could

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include comments on proposed amendment Part 205 or comments on Subpart 227-3 in the subject line, that would be a big help.

All right. Thank you to everyone for coming out today and speaking. We are adjourned.

(Time noted: 11:40 a.m.)

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C E R T I F I C A T E

I, CHRISTINA FERRARO, a shorthand reporter and Notary Public within and for the State of New York, do hereby certify:

That the within statement is a true and accurate record of the stenographic notes taken by me.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.



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CHRISTINA FERRARO

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6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings

6 NYCRR Part 200, General Provisions

Assessment of Public Comments

Comments received from March 6, 2019 through 5:00 P.M., May 20, 2019

**General Comments**

Comment 1: Commenters support the proposed rule. (Commenters: 2, 8, 39)

Response to Comment 1: The Department of Environmental Conservation (Department or DEC) thanks the commenters for their support in lowering volatile organic compound (VOC) emissions from architectural and industrial maintenance (AIM) coatings.

**Public Health Concerns**

Comment 2: Commenters raised health-related concerns from one or more AIM categories. The health-related comments were primarily focused on floor coating products. (Commenters: 1, 2, 3a-3ah, 4a, 4b, 5, 8, 39)

Response to Comment 2: New York State currently has nonattainment areas for ozone which has been shown to result in respiratory issues. The Department's intention in revising Part 205 is to lower the VOC content from AIM coatings resulting in reduced emissions of VOCs to address the creation of ozone across the state. Some commenters health concerns were focused on indoor air quality and while the intention of this regulation is to reduce ambient ozone concentrations, the Department understands that by lowering the VOCs and by eliminating some exemptions that an additional benefit from the regulation may be improved indoor air quality.

## **Two-Year Sell Through**

Comment 3: The two-year sell through period is counterproductive and inconsistent with any other AIM rule in the United States which allow for a three-year sell-through period. (Commenters: 6, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 20, 21, 26, 28, 30, 32, 33, 34, 35, 37)

Comment 4: The proposed two-year sell through period will require manufacturers to travel to stores to collect products off shelves for disposal at significant (and unnecessary) expense to stores, retailers and manufacturers. DEC has not accounted for this expense. (Commenters: 6, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 30, 32, 33, 34, 35, 37)

Comment 5: The proposed sell-through is too short to permit all parties in the supply chain to sell off their existing inventory. (Commenter: 26)

Comment 6: The inclusion of a two-year sell-through provision requires further justification. (Commenter: 35)

Comment 7: An unintended consequence of a two-year sell-through is the environmental impact of removing the product from the shelf in either having to restock the product in a different region or declaring it a waste requiring disposal in a landfill. (Commenters: 26, 36)

Comment 8: A sell-through provision should not be included in Part 205. (Commenter: 8)

Comment 9: The short sell-through period proposed appears to be two years and we believe that three years is more appropriate. (Commenter: 36)

Comment 10: A three-year sell-through provision would also minimize the environmental and economic impact of disposing usable products on the shelves. (Commenter: 37)

Comment 11: Why didn't New York adopt a three-year sell through period? (Commenter: 37)

Response to comments 3-11: Based on our consideration of the comments, the Department has determined that an extension of the sell-through period may be warranted in certain cases. Commenters state that the proposed two-year sell through may create a burden on some businesses and may lead to disposal of product. As a result, the Department has revised subdivision 205.3(h) to allow the sell-through of products through May 1, 2023. This will allow for the sell-through of product for two years and four months from the compliance date of January 1, 2021 for the revised VOC limits, which is over three years from the date of promulgation of this regulation.

### **Elimination of the Quart Exemption**

Comment 12: Some coatings, such as graphic and decorative art coatings, are not used in large quantities and if the container is open for a long "open time" then it will require the addition of solvent so that it can be used by the applicator. The current subcategory limit of 350 g/L does not give sufficient "open time" to allow this, so we rely on the Small Container Exemption to be able to provide products which work well enough for the applicator and container to be open and to achieve decent results. (Commenter: 19)

Comment 13: The small container exemption should be retained. (Commenters: 6, 9, 10, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, 33, 34, 35, 37)

Comment 14: The small container exemption should be retained in Part 205 due to the cold and wet climate of New York. (Commenters: 6, 9, 10, 11, 12, 14, 15, 16, 17, 18, 20, 21, 28, 30, 32, 33, 34, 35, 37)

Comment 15: The small container exemption provides an option of last resort allowing the use of traditional products in challenging application scenarios in the field and when VOC limits become more stringent or if a coating category is eliminated. (Commenters: 6, 9, 10, 12, 13, 14, 15, 16, 17, 18, 20, 21, 22, 23, 28, 30, 32, 33, 34, 37)

Comment 16: The NYSDEC should adopt the Ozone Transport Commissions “aggregation” language instead of eliminating the quart exemption. (Commenters: 6, 10, 12, 13, 14, 15, 25, 27, 28, 35, 37)

Comment 17: The elimination of the quart exemption will have a negative economic impact on many small businesses. (Commenter: 11)

Comment 18: DEC should address the bundling issue, which was reported as primarily a concern with floor coatings instead of abolishing the quart exemption for all coatings. (Commenter: 11)

Comment 19: Elimination of the quart exemption is excessive and over-reaching. (Commenter: 11)

Comment 20: Supports elimination of the quart exemption. (Commenters: 8, 31)

Comment 21: The small container exemption is critical for field touch-up of shop applied IM coatings.  
(Commenters: 22, 23, 28)

Comment 22: DEC should adopt an anti-bundling provision and work with manufacturers and retailers to ensure compliance. (Commenters: 25, 26, 27, 37)

Comment 23: The elimination of the small container exception, which may be feasible in the South Coast Management District, is not feasible in New York. (Commenters: 25, 27)

Comment 24: DEC's proposed elimination of the quart exemption for AIM coatings does not take into consideration the need for coatings to withstand harsh weather conditions found in New York State.  
(Commenters: 25, 27)

Comment 25: If the small container exemption is removed, DEC would need to establish additional categories with higher VOC limits. (Commenter: 28)

Comment 26: Retain the small container exemption allowing manufacturer's "kits". (Commenter: 28)

Comment 27: The elimination of the small container exemption would particularly impact two popular brands that our customers use in small containers. These products are stains that are historically sold in small containers to be used in small specialized jobs. (Commenter: 26)



Comment 28: We are concerned that depriving the public of the small container exemption eliminates choice among consumers. (Commenter: 26)

Comment 29: The scope of any alleged circumvention of the small quantity exemption was not provided. (Commenter: 26)

Comment 30: The elimination of the small container exemption should be limited to the coating category or categories (such as floor coatings) that have been subject to compliance issues. (Commenter: 26)

Comment 31: The cost of reformulation in the event the small container exemption if adopted could result in a retail price increase of 300 percent. (Commenter: 27)

Comment 32: Elimination of the small container exemption may result in a patchy appearance. There is a potential for increased corrosion of the touched-up areas. Items may need to be recoated from a life cycle perspective which may offset any emission reductions resulting from the revised rule. (Commenter: 37)

Comment 33: Higher VOC consolidation treatment products are only available in New York State via the small container exemption and are critical to restoring and protecting natural stone buildings, especially given the wet and the cold climate of New York State. (Commenter: 37)

Comment 34: Had we known DEC would propose removing the small container exemption we would have pushed for less stringent limits during the stakeholder process. (Commenter: 37)

Comment 35: If DEC does not retain the small container exemption, then several coating categories would need higher VOC limits. (Commenter: 37)

Comment 36: High gloss coatings are typically sold in small containers because users do not need a lot of product to paint a door or window. (Commenter: 37)

Comment 37: There is confusion whether the Department is proposing to remove the quart exemption. (Commenters: 36, 37, 38)

Response to comments 12-37: As stated in the Regulatory Impact Statement (RIS), the Department proposed to eliminate the exemption for coatings sold in quart containers or smaller in order to address the practice of bundling and the potential for circumvention of the VOC limits. However, many commenters were not in favor of the complete elimination of the exemption. The Department received many comments stating that there were categories which were sold in small containers and used in small quantities that needed the exemption.

While many products are, in fact, used in small quantities, floor coatings are typically used in large quantities and therefore have the greatest potential to circumvent the VOC limits by bundling quarts. As stated on page 17 of the RIS, the Department considered the elimination of the quart exemption for floor coatings only as an alternative to the proposed full elimination of the exemption. No comments received stated that floor coatings, the category which the Department has received the most complaints about, were needed in small containers.

Based on the Department's consideration of the comments, including those in favor of retaining the exemption for certain products and the reported misuse of quarts focused on floor coatings, the Department has revised the

proposed regulation to retain the quart exemption in subdivision 205.1(b) while eliminating the exemption for floor coatings only. The Department also revised the language of subdivision 205.1(b) to clarify the prohibition against the practice of bundling of quart containers intended to be combined and applied.

In the proposed rule, paragraphs 205.1(b)(3) and 205.1(b)(4) were bracketed. Brackets are used to indicate text to be deleted from an existing rule. The Department did propose to remove the quart exemption for all AIM coating categories. In the final rule, the exemption was retained except in the case of floor coatings.

### **Floor Coatings**

Comment 38: Commenters in support of lower VOC standards in moisture cure urethane. (Commenters: 1, 2, 8)

Comment 39: The sale of moisture cured urethane should be banned. (Commenters: 3a – 3ah, 4a, 4b, 5)

Response to comments 38-39: The Department thanks the commenters for their support in lowering VOC limits on floor coatings including moisture cure urethane.

### **Compliance Schedule**

Comment 40: The new VOC standards should take effect on January 1, 2020. (Commenter: 8)

Response to comment 40: The Department has determined that suppliers, sellers and manufacturers will need the time after the promulgation of this regulation to plan and prepare for the new standards. While the Department would like to see the environmental benefits of VOC reductions as soon as practicable, the effective date of January 1, 2021 is reasonable based on the comments received.

## **Stakeholder Outreach/SAPA**

Comment 41: We are dismayed that DEC refused to meet with stakeholders prior to the hearings to answer questions concerning the rule. (Commenter: 11)

Comment 42: The fact that NYSDEC cannot answer questions or meet with stakeholders until after the comment period is over and the rule is nearly finalized puts all parties at a disadvantage because there is no opportunity for open and honest dialogue between rule writers and interested stakeholders. The entire rulemaking process suffers as a result. (Commenter: 35)

Response to comments 41-42: The Department conducted public outreach and worked with stakeholders for over two years prior to the comment period. The State Administrative Procedures Act (SAPA), which includes a public notice and comment process, is specifically designed to get on the record input from all stakeholders and interested parties. In accordance with the requirements of SAPA, the Department conducted extensive stakeholder communication and allowed the public a full and fair opportunity to comment on the proposal. The Department considered stakeholder input and all public comments received during the public comment period and believes that the regulation is reflective of that process.

## **VOC limits**

Comment 43: A 10% reduction in VOC limits across the board can be met without great disruption. This level of reduction will still allow us to manufacture quality products without increasing flammability or odor. (Commenter: 24)

Response to comment 43: The lower VOC content limits are the best method for reducing VOC emissions while allowing manufacturers to develop a consistent product across regions. The VOC limits in the regulation are consistent with the Ozone Transport Commission (OTC) model rule and therefore consistent with other state regulations that have adopted that model rule to date. In addition, most limits have been in place in California since 2008

Comment 44: Alkyd based coatings. There are not adequate waterborne substitutes for fire escapes, stairwells, sidewalk bridging and dumpsters to name a few. Painting in the subway system will face its own problems, increased flammability, increased odor, inferior substitutes that will require more frequent painting.

(Commenter: 24)

Comment 45: The attempts to meet the proposed limits in industrial maintenance, specialty primers, sealers and undercoats, and rust preventative coatings will result in products that have increased flammability and odors causing increased hazards and discomforts for the product end-user. (Commenter: 24)

Comment 46: Wood stains prevent wood from absorbing water, and protect wood from decay, discoloration, and insect attack. Solvent-borne stains penetrate the surface of the wood and do not form a film that flakes off over time and can be reapplied without extensive surface preparation. (Commenter: 28)

Comment 47: The use of exempt solvents in alkyd enamels will be costly and will have unpleasant odors that will be unacceptable to our customers. (Commenter: 33)

Response to comments 44-47: The VOC content limits in the regulation are appropriate and necessary to lower VOC emissions in New York from these products. Further, the proposed VOC content limits have been in effect in California since 2008, Maryland (2016), Delaware (2017) and Utah (2019). The technology to manufacture coatings that meet the new limits is currently available and has been available for years. Furthermore, DEC has worked with stakeholders for several years to discuss the proposed limits. The new VOC limits are consistent with the OTC model rule.

Comment 48: Supports the reduction of VOC concentration in the proposed categories of AIM coatings.  
(Commenter: 31)

Response to comment 48: The Department thanks the commenter for their support.

### **Cost of Compliance**

Comment 49: DEC did not conduct an independent cost analysis in the Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFASBLG). Rather, DEC relied on an analysis conducted by CARB in 2007. The CARB analysis was conducted assuming that their small container exemption would remain in effect. Therefore, DEC must redo the RFASBLG to account for the removal of the small container exemption. (Commenter: 37)

Response to comment 49: Stakeholders have indicated that product sold in quart containers are not used often and when used, they are used sparingly. In addition, the Department has received complaints about quart containers being used in large quantities which circumvents the reasoning behind the regulation, which is improved air quality and attaining the national ambient air quality standard (NAAQS) for ozone. Since the

proposed lower standards have been effective in California since 2008, manufacturers have had the time to develop and sell compliant products. Based on the Department's consideration of the comments, including those in favor of retaining the exemption for certain products and the reported misuse of quarts focused on floor coatings, the Department has revised the regulation to retain the quart exemption in subdivision 205.1(b) while eliminating the exemption for floor coatings only. The Department also revised the language of subdivision 205.1(b) to clarify the prohibition against the practice of bundling of quart containers intended to be combined and applied.

### **Compliance**

Comment 50: What protection do we have from noncompliant products flooding over our state lines?

(Commenter: 24)

Response to comment 50: The regulation applies to any person who supplies, sells, offers for sale or manufactures any architectural coating for use within the State of New York, as well as any person who applies or solicits the application of any architectural coating within the State of New York. In addition, similar regulations are in place in California, Maryland, Delaware and Utah. The Department acknowledges that some cross-border purchases may be made but believes that the vast majority of coatings will be purchased in New York State. Additionally, the Department will enforce against the sale and use of noncompliant products as necessary and appropriate.

### **Labeling**

Comment 51: VOC limits on Rust preventive coatings. The container labeling requirements do not require that the container be labeled with the name of the category that is regulated. Instead, the consumer would have to be

familiar enough with the regulation to recognize that a container labeled “for metal substrates only” represents a rust preventative coating which requires looking up at the table in 205.3 to identify the specific VOC limit.

(Commenter: 29)

Response to comment 51: The labeling requirements in this regulation are consistent with California, Delaware, Maryland, Utah and any other states which adopt the OTC model rule. The Department chose to stay consistent in order to not create a situation where manufacturers must produce a different label for selling product within the State of New York. The Department is required to periodically review regulations and may consider this suggestion in a future revision of this regulation.

### **Exempt VOCs**

Comment 52: DEC should add 2-amino-2-methyl-1-propanol to the list of exempt VOCs in Part 200. (37)

Comment 53: Please add 2-amino-2-methyl-1propanol to the list of exempt VOCs. The coatings industry is under constant pressure to reformulate products to lower VOC content. (Commenter: 28)

Response to comments 52-53: The Department makes periodic updates to the list of exempt compounds in the definition of VOC to stay consistent with EPA’s determination. The Department may consider including this compound in the list of exempt VOCs under Part 200 in a future rulemaking.

### **Comments Beyond the Scope of the Proposed Rule**

Comment 54: The sale of moisture cured urethane should be banned. (Commenter: 3)



Comment 55: Neighbors residing in a building where moisture cured urethane is used should be legally allowed to take any measures to restrict the use of the product in their building (Commenters: 3a – 3ah)

Comment 56: Remove the recordkeeping, emission reporting, photochemical dispersion modeling and inventory requirements related to the use of TBAC as a VOC. (Commenter: 28)

List of Commenters:

- 1 Shimon
- 2 Mrs. Hus
- 3a Elfoyim Fishel Hershkowitz
- 3b Chanina Avrum Leitner
- 3c Yisroel Chaim Menashe Friedman
- 3d Shulem Kraus
- 3e Elyukim Getzil Berkowitz
- 3f Chaim Yaakov Tauber
- 3g Menachem Mendel Teitelbaum
- 3h Shlome Yida Weinberger
- 3i Ahron Grunwald
- 3j Yikesiel Yida Fulop
- 3k Yechiel Mechel Steinmetz
- 3l Moshe Menachem Weiss
- 3m Ahron Silberstein
- 3n Shlome Hacoheh Gross

3o Yaadov Zeida  
3p Yitzchok Yaadov Illowitz  
3q Burech Nusen Halberstam  
3r Yosef Tzvi Sofer  
3s Shlome Sabel  
3t Usher Gedalya Pollak  
3u Moshe Friedman  
3v Betzalel Tovia Werstein  
3w Wolf Ber Lerner  
3x Avrum Yeshia Heshil Katzburg  
3y Shmiel Duvid Kraus  
3z Ezriel Meir Chaim Kohn  
3aa Yechezkai Shraga Teitelbaum  
3ab Moshe Mordche Pollack  
3ac Yikesiel Yida Rosenberger  
3ad Moshe Meir Brief  
3ae Shimon Meir Hachohen Landau  
3af Yermia Friedman  
3ag Shimon Yoel Weinberger  
3ah Yisucher Dov Rosenberger  
4a Pinchas Yida Kaff  
4b Yehoshua Chaim Schwartz  
5 Chaya Wertzberger

- 6 Laurel Jamison
- 7 Mr. King Lam
- 8 Rachel Brody
- 9 Eric R. Finkelman
- 10 Howard Protter
- 11 Kirk W. Ives
- 12 Jennifer McArdle
- 13 Steve Hile
- 14 George A. Fischer
- 15 Stephen Nowick
- 16 Michael Butler
- 17 Gary J. Regulski
- 18 Brad Babcook
- 19 Ben Gavett
- 20 John T. McGough
- 21 Curt Rosing/ John Vanderpool
- 22 Kyle Frakes
- 23 Kyle Frakes
- 24 Leo Gorynski
- 25 Megan Gaughan
- 26 Barrett L. Cupp
- 27 Megan Gaughan
- 28 David Darling

- 29 Mary Beaton/ Ed Killeen
- 30 Dwayne Fuhlhage
- 31 Christopher D'Andrea
- 32 Ken Schlereth
- 33 Richard B. Cunningham
- 34 John Forbes
- 35 David Darling
- 36 Barrett Cupp
- 37 David Darling
- 38 Howard Berman
- 39 Lipa Sofer

# OFFICE OF THE COMMISSIONER

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## STATE OF NEW YORK

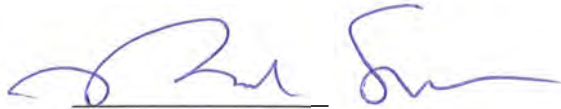
### DEPARTMENT OF ENVIRONMENTAL CONSERVATION

#### CERTIFICATE OF ADOPTION

**AGENCY ACTION:** 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings; and Part 200, General Provisions.

Pursuant to the provisions of Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law, I, Basil Seggos, Commissioner of the Department of Environmental Conservation (DEC), hereby certify that the amendments to 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings and 6 NYCRR Part 200, General Provisions be adopted to read as on the attached original, and certify that this is the original thereof, as adopted by me on December 11, 2019, to be effective 30 days after filing with the Department of State.

I further certify that prior notice, as required under the State Administrative Procedure Act, was published in the State Register on March 6, 2019 under Notice No. ENV-10-19-00003-P. I also further certify that prior notice of public hearings, scheduled for and held on May 6, 2019 in Albany, NY; May 13, 2019 in Stony Brook, NY; and on May 14, 2019 in Long Island City, NY was published in the State Register on March 6, 2019 and DEC's Environmental Notice Bulletin on March 6, 2019 and in local newspapers in the State on March 6, 2019. No other publication of prior notice was required by statute.



Basil Seggos

Commissioner  
Department of Environmental Conservation

DATED: December 11, 2019

Albany, New York

Revised Express Terms

6 NYCRR PART 205, ARCHITECTURAL AND INDUSTRIAL MAINTENANCE (AIM) COATINGS

Section 205.1 Applicability.

(a) Except as provided in subdivision (b) of this section, this rule is applicable to any person who supplies, sells, offers for sale, or manufacturers any architectural coating for use within the State of New York, as well as any person who applies or solicits the application of any architectural coating within the State of New York.

(b) This rule does not apply to:

(1) any architectural coating that is supplied, sold, offered for sale or manufactured for use outside of the State of New York or for shipment to other manufacturers for reformulation or repackaging;

(2) any aerosol coating product; and

[(3) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less; and

(4) any asphalt pavement and asphalt based surface coating regulated under Part 241 of this Title.]

(3) any architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less including kits containing containers of different colors, types or categories of coatings and two component products. This exemption includes multiple containers of one liter or less that are packaged and shipped together with no intent or requirement to ultimately sell as one unit.

This applicability exception does not include:

(i) Bundling of containers one liter or less, which are sold together as a unit, or any type of marketing which implies that multiple containers one liter or less be combined into one container;

(ii) Packaging from which the coating cannot be applied; or

(iii) Floor coatings.

## Section 205.2 Definitions.

(a) ‘Adhesive’. Any chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

(b) ‘Aerosol coating product’. A pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground traffic/marketing applications.

(c) ‘Aluminum roof coating’. A coating labeled and formulated exclusively for application to roofs and containing at least 84 grams of elemental aluminum pigment per liter of coating (at least 0.7 pounds per

gallon). Pigment content shall be determined in accordance with South Coast Air Quality Management District (SCAQMD) Method 318-95 (See Table 1, section 200.9 of this Title).

[(c)d] ‘Antenna coating’. A coating labeled and formulated exclusively for application to equipment and associated structural appurtenances [tat] that are used to receive or transmit electromagnetic signals.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

[(d)e] ‘Antifouling coating’. A coating labeled and formulated for application to submerged stationary structures and their appurtenances to prevent or reduce the attachment of marine or freshwater biological organisms. To qualify as an antifouling coating, the coating must be registered with both the EPA under the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. section 136 *et. seq.*)(see Table 1, section 200.9 of this Title) and with the department pursuant to Part 326 of this Title.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings

[(e)f] ‘Appurtenance’. Any accessory to a stationary structure coated at the site of installation, whether installed or detached, including but not limited to: bathroom and kitchen fixtures; cabinets; concrete forms; doors; elevators; fences; hand railings; heating equipment, air conditioning equipment, and other fixed mechanical equipment or stationary tools; lampposts; partitions; pipes and piping systems; rain gutters and downspouts; stairways; fixed ladders; catwalks; fire escapes; and window screens.



([f]g) ‘Architectural coating’. A coating to be applied to stationary structures and their appurtenances at the site of installation, to portable buildings at the site of installation, to pavements, or to curbs.

Coatings applied in shop applications or to nonstationary structures such as airplanes, ships, boats, railcars, and automobiles, [and] as well as adhesives, are not considered architectural coatings for the purposes of this rule.

(h) ‘Basement specialty coatings’. For products manufactured on or after January 1, 2021, a clear or opaque coating that is labeled and formulated for application to concrete and masonry surfaces to provide a hydrostatic seal for basements and other below-grade surfaces. Basement specialty coatings must meet the following criteria:

(1) Coating must be capable of withstanding at least 10 psi of hydrostatic pressure, as determined in accordance with American Society for Testing and Materials (ASTM) ASTM D7088-04 (see Table 1, section 200.9 of this Title).

(2) Coating must be resistant to mold and mildew growth and must achieve a microbial growth rating of 8 or more, as determined in accordance with ASTM D3273-16 and ASTM D3274-09 (2013) (see Table 1, section 200.9 of this Title).

([g]i) ‘Bitumens’. Black or brown materials including, but not limited to, asphalt, tar, pitch, and

asphaltite that are soluble in carbon disulfide, consist mainly of hydrocarbons, and are obtained from natural deposits or as residues from the distillation of crude petroleum or coal.

([h]j) ‘Bituminous roof coating’. A coating which incorporates bitumens that is labeled and formulated exclusively for roofing[.] with the primary purpose of preventing water penetration.

([I]k) ‘Bituminous roof primer’. A primer which incorporates bitumens that is labeled and formulated exclusively for roofing[.]and intended for the purpose of preparing a weathered or aged surface or improving the adhesion of subsequent surfacing components.

([j]l) ‘Bond breaker’. A coating labeled and formulated for application between layers of concrete to prevent a freshly poured top layer of concrete from bonding to the layer over which it is poured.

([k]m) ‘Calcimine recoaters’. Flat solvent borne coatings formulated and recommended specifically for recoating calcimine-painted ceilings and other calcimine-painted substrates.

([l]n) ‘Clear brushing lacquers’. Clear wood finishes, excluding clear lacquer sanding sealers, formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film, which are intended exclusively for application by brush and which are labeled as specified in subdivision 205.4([e]g) of this Part.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

([m]o) 'Clear wood coatings'. [clear]Clear and semi-transparent coatings, including lacquers and varnishes applied to wood substrates to provide a transparent or translucent solid film.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

([n]p) 'Coating'. A material applied onto or impregnated into a substrate for protective, decorative, or functional purposes. Such materials include, but are not limited to, paints, varnishes, sealers, and stains.

([o]q) 'Colorant'. A concentrated pigment dispersion in water, solvent, and/or binder that is added to an architectural coating after packaging in sale units to produce the desired color.

([p]r) 'Concrete curing compound'. A coating labeled and formulated for application to freshly poured concrete to [retard the evaporation of water.] perform one or more of the following functions:

(1) retard the evaporation of water; or

(2) harden or dustproof the surface of freshly poured concrete.

([s]) 'Concrete/Masonry Sealer'. A clear or opaque coating that is labeled and formulated primarily for application to concrete and masonry surfaces to perform one or more of the following functions:

(1) prevent penetration of water; or

(2) provide resistance against abrasion, alkalis, acids, mildew, staining, or ultraviolet light; or

(3) harden or dustproof the surface of aged or cured concrete.

[(q)t] ‘Concrete surface retarders’. A mixture of retarding ingredients such as extender pigments, primary pigments, resin, and solvent that interact chemically with the cement to prevent hardening on the surface where the retarder is applied, allowing the retarded mix of cement and sand at the surface to be washed away to create an exposed aggregate finish.

(u) ‘Conjugated oil varnish’. A clear or semi-transparent wood coating, labeled as such, excluding lacquers or shellacs, based on a natural occurring conjugated vegetable oil (Tung oil) and modified with other natural or synthetic resins; a minimum of fifty percent of the resin solids consisting of conjugated oil. Supplied as a single component product, conjugated oil varnishes penetrate and seal the wood. Film formation is due to polymerization of the oil. These varnishes may contain small amounts of pigment to control the final gloss or sheen.

[(r)v] ‘Conversion varnish’. A clear acid curing coating with an alkyd or other resin blended with amino resins and supplied as a single component or two-component product. Conversion varnishes produce a hard, durable, clear finish designed for professional application to wood flooring. This film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

(w) 'Driveway Sealer'. A coating labeled and formulated for application to worn asphalt driveway surfaces to perform one or more of the following functions:

(1) fill cracks; or

(2) seal the surface to provide protection; or

(3) restore or preserve the appearance.

([s]x) 'Dry fog coating'. A coating labeled and formulated only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

([t]y) 'Exempt compound'. A compound identified under the definition of volatile organic compound (VOC), section 200.1[(cf)] of this Title, as having negligible photochemical reactivity. Exempt compounds content of a coating shall be determined by U.S. EPA Method 24, methods referenced in ASTM D3960-05 (2013), or SCAQMD Method 303-91 (Revised August 1996) (see Table 1, section 200.9 of this Title).

([u]z) 'Faux finishing coating'. A coating labeled and formulated [as a stain or a glaze to create artistic effects including, but not limited to, dirt, old age, smoke damage, and simulated marble and wood grain.] to meet one or more of the following criteria:

(1) a glaze or textured coating used to create artistic effects including, but not limited to: dirt, suede, old age, smoke damage, and simulated marble and wood grain; or

(2) a decorative coating used to create a metallic, iridescent, or pearlescent appearance that contains at least 48 grams of pearlescent mica pigment or other iridescent pigment per liter of coating as applied (at least 0.4 pounds per gallon); or

(3) a decorative coating used to create a metallic appearance that contains less than 48 grams of elemental metallic pigment per liter of coating as applied (less than 0.4 pounds per gallon), when testing in accordance with SCAQMD Method 318-95. (see Table 1, section 200.9 of this Title);  
or

(4) a decorative coating used to create a metallic appearance that contains greater than 48 grams of elemental metallic pigment per liter of coating as applied (greater than 0.4 pounds per gallon) and which requires a clear topcoat to prevent the degradation of the finish under normal use conditions. The metallic pigment content shall be determined in accordance with SCAQMD Method 318-95 (see Table 1, section 200.9 of this Title); or

(5) a clear topcoat to seal and protect a faux finishing coating that meets requirements (1) - (4) above. These clear topcoats must be sold and used solely as part of a faux finishing coating system and must be labeled in accordance with subdivision 205.4(e).

([v]aa) 'Fire-resistive coating'. [An opaque] A coating labeled and formulated to protect the structural

integrity by increasing the fire endurance of interior or exterior steel and other structural materials[, that has been fire tested and rated by a testing agency and approved by building code officials for use in bringing assemblies of structural materials]. The fire-resistive category includes sprayed fire resistive materials and intumescent fire resistive coatings that are used to bring structural materials into compliance with Federal, State, and local building code requirements. [The fire-resistive coating and the testing agency must be approved by building code officials.] The fire-resistive coating and testing agency must be approved by building code officials. The fire-resistive coating shall be tested in accordance with [American Society for Testing and Materials (ASTM)] ASTM [Designation] E119-[00a]16a (see Table 1, section 200.9 of this Title).

([w]ab) ‘Fire-retardant coating’. A coating labeled and formulated to retard ignition and flame spread, that has been tested and rated by a testing agency approved by building code officials for use in bringing building and construction materials into compliance with Federal, State, and local building code requirements. The fire-retardant coating and the testing agency must be approved by building code officials. The fire-retardant coating shall be tested in accordance with ASTM [Designation] E 84-[01]16 (see Table 1, section 200.9 of this Title).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([x]ac) ‘Flat coating’. A coating that is not defined under any other definition in this rule and that registers gloss less than 15 on an 85-degree meter or less than five on a 60-degree meter according to ASTM [Designation] D523-[89 (1999)]14 (see Table 1, section 200.9 of this Title).

([y]ad) 'Floor coating'. An opaque coating that is labeled and formulated for application to flooring, including, but not limited to, decks, porches, steps, garage floors, and other horizontal surfaces which may be subjected to foot traffic.

([z]ae) 'Flow coating'. A coating labeled and formulated exclusively for use to maintain the protective coating systems present on utility transformer units.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([aa]af) 'Form-release compound'. A coating labeled and formulated for application to a concrete form to prevent the freshly poured concrete from bonding to the form. The form may consist of wood, metal or some material other than concrete.

([ab]ag) 'Graphic arts coating or sign paint'. A coating labeled and formulated for hand-application using brush, airbrush or roller techniques to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

([ac]ah) 'High temperature coating'. A high performance coating labeled and formulated for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

([ad]ai) 'Impacted immersion coating'. A high performance maintenance coating formulated and



recommended for application to steel structures subject to immersion in turbulent, debris-laden water. These coatings are specifically resistant to high-energy impact damage by floating ice or debris.

([ae]aj) ‘Industrial maintenance coating’. A high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates, including floors, exposed to one or more of the following extreme environmental conditions listed in paragraphs (1)-(5) of this subdivision and labeled as specified in [section] subdivision 205.4([d]f) of this Part:

- (1) immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposures of interior surfaces to moisture condensation; or
- (2) acute or chronic exposure to corrosive, caustic or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions; or
- (3) [repeated exposure to temperatures above 121°C (250°F);] frequent exposure to temperatures above 121°C (250°F); or
- (4) [repeated (frequent)] frequent heavy abrasion, including mechanical wear and [repeated (frequent)] frequent scrubbing with industrial solvents, cleansers, or scouring agents; or
- (5) exterior exposure of metal structures and structural components.

([af]ak) ‘Lacquer’. A clear or opaque wood coating, including clear lacquer sanding sealers, formulated with cellulosic or synthetic resins to dry by evaporation without chemical reaction and to provide a solid, protective film.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

([ag]al) ‘Low solids coating’. A coating containing 0.12 kilogram or less of solids per liter (one pound or less of solids per gallon) of coating material[.] as recommended for application by the manufacturer. The VOC content for low solids coatings shall be calculated as defined in paragraph 205.6(b)(2).

([ah]am) ‘Magnesite cement coating’. A coating labeled and formulated for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

([ai]an) ‘Manufacturer’s formulation data’. Data on a material (such as a coating) that are supplied by the materials manufacturer based on the manufacturer’s knowledge of the ingredients used to manufacture that material, rather than an EPA reference test method. Manufacturer’s formulation data may include but are not limited to information on density, VOC content, and coating solids content.

([aj] ap) ‘Manufacturer’s maximum thinning recommendation’. The maximum recommendation for thinning that is indicated on the label or lid of the coating container.

([aj] ap) ‘Mastic texture coating’. A coating labeled and formulated to cover holes and minor cracks and

conceal surface irregularities, which is applied in a single coat of at least 10 mils (at least 0.010 inch) dry film thickness.

(aq) ‘Medium density fiberboard’. A composite wood product, panel, molding, or other building material composed of cellulosic fibers (usually wood) made by dry forming and pressing of resonated fiber mat.

([ak]ar) ‘Metallic pigmented coating’. A coating that is labeled and formulated to provide a metallic appearance. Metallic pigmented coatings must contain [containing] at least 48 grams of elemental metallic pigment (excluding zinc) per liter of coating as applied (at least 0.4 pounds per gallon), when tested in accordance with [South Coast Air Quality Management District Method] SCAQMD 318-95 (see Table 1, section 200.9 of this Title).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for Industrial Maintenance Coatings or other applicable category as set forth in subdivision 205.3(a).

([al]as) ‘Multi-color coating’. A coating that is packaged in a single container and that is labeled and formulated to [exhibits]exhibit more than one color when applied in a single coat.

([am]at) ‘Nonflat coating’. A coating that is not defined under any other definition in this rule and registers a gloss of 15 or greater on an 85-degree meter and five or greater on a 60-degree meter according to ASTM [Designation] D523-[89 (1999)]14 (see Table 1, section 200.9 of this Title).

([an]au) ‘Nonflat - high gloss coating’. A nonflat coating that registers a gloss of 70 or [above] greater on a 60-degree meter according to ASTM [Designation] D523-[89 (1999)]14 (see Table 1, section 200.9 of this Title).

[(ao) ‘Nonindustrial use’. Nonindustrial use means any use of architectural coatings except in the construction or maintenance of any of the following: facilities used in the manufacturing of goods and commodities; transportation infrastructure, including highways, bridges, airports and railroads; facilities used in mining activities, including petroleum extraction; and utilities infrastructure, including power generation and distribution, and water treatment and distribution systems.]

([ap]av) ‘Nuclear coating’. A protective coating formulated and recommended to seal porous surfaces such as steel (or concrete) that otherwise would be subject to intrusion by radioactive materials. These coatings must be resistant to long-term (service life) cumulative radiation exposure (ASTM [Method] D4082-[02]10, see Table 1, section 200.9 of this Title), relatively easy to decontaminate, and resistant to various chemicals to which the coatings are likely to be exposed ASTM [Method] D3912-[95 (2001)]10 (see Table 1, section 200.9 of this Title).

(aw) ‘Particleboard’. A composite wood product panel, molding, or other building material composed of cellulosic material (usually wood) in the form of discrete particles, as distinguished from fibers, flakes, or strands, which are pressed together with resin.

(ax) ‘Pearlescent’. Exhibiting various colors depending on the angles of illumination and viewing, as

observed in mother-of-pearl.

(ay) 'Plywood'. A panel product consisting of layers of wood veneers or composite core pressed together with resin. Plywood includes panel products made by either hot or cold pressing (with resin) veneers to a platform.

([aq]az) 'Post-consumer coating'. [A finished coating that would have been disposed of in a landfill, having completed its usefulness to a consumer, and does not include manufacturing wastes.] Finished coatings generated by a business or consumer that have served their intended end uses and are recovered from or otherwise diverted from the waste stream for the purpose of recycling.

([ar]ba) 'Pre-treatment wash primer'. A primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM [Designation] D1613-[96 (1999)]06(2012) (see Table 1, section 200.9 of this Title), that is labeled and formulated for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

([as]bb) 'Primer'. A coating labeled and formulated for application to a substrate to provide a firm bond between the substrate and subsequent coats.

(bc) 'Primer, sealer, and undercoater'. A coating labeled and formulated for one or more of the following purposes:

- (1) to provide a firm bond between the substrate and the subsequent coatings; or

- (2) to prevent subsequent coatings from being absorbed by the substrate; or
- (3) to prevent harm to subsequent coatings by materials in the substrate; or
- (4) to provide a smooth surface for the subsequent application of coatings; or
- (5) to provide a clear finish coat to seal the substrate; or
- (6) to block materials from penetrating into or leaching out of a substrate.

([at]bd) ‘Quick-dry enamel’. A nonflat coating that is labeled as specified in [section]subdivision 205.4([h]k) of this Part and that is formulated to have the following characteristics:

- (1) [is]capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27°C (60 and 80°F);
- (2) when tested in accordance with ASTM[Designation] [D1640-95 (1999)]D1640/1640M-14 (see Table 1, section 200.9 of this Title), sets to touch in two hours or less, is tack free in four hours or less, and dries hard in eight hours or less by the mechanical test method; and
- (3) has a dried film gloss of 70 or above on a 60-degree meter.

(4) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for flat, nonflat or nonflat-high gloss.

([au]be) ‘Quick-dry primer sealer and undercoater’. A primer sealer or undercoater that is dry to the touch in 30 minutes and can be relocated in two hours when tested in accordance with ASTM [Designation D1640-95 (1999)] D1640/1640M-14 (see Table 1, section 200.9 of this Title).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for specialty primers, sealers and undercoaters.

(bf) ‘Reactive penetrating sealer’. A clear or pigmented coating labeled and formulated for application to above-grade concrete and masonry substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis, acids, and salts. Reactive penetrating sealers must penetrate into concrete and masonry substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate. Reactive penetrating sealers line the pores of concrete and masonry substrates with a hydrophobic coating, but do not form a surface film. Reactive penetrating sealers must meet all the following criteria:

(1) The reactive penetrating sealer must improve water repellency at least 80 percent after application on a concrete or masonry substrate. This performance must be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM

C67-14, or ASTM C97/C967M-15 or ASTM C140/C140M-16 (see Table 1, section 200.9 of this Title); and

(2) The reactive penetrating sealer must not reduce the water vapor transmission rate by more than 2 percent after application on a concrete or masonry substrate. This performance must be verified on standardized test specimens, in accordance with ASTM E96M-16 (see Table 1, section 200.9 of this Title); and

(3) Products labeled and formulated for vehicular traffic surface chloride screening applications must meet the performance criteria listed in the National Cooperative Highway Research Report 244 (1981). (see Table 1, section 200.9 of this Title).

(4) Reactive penetrating sealers must be labeled as such, in accordance with the labeling requirements in subdivision 205.4(l).

(bg) ‘Reactive penetrating carbonate stone sealer’. A clear or pigmented coating labeled and formulated for application to above-grade carbonate stone substrates to provide protection from water and waterborne contaminants, including but not limited to, alkalis, acids, and salts. Reactive penetrating carbonate stone sealers must penetrate into carbonate stone substrates and chemically react to form covalent bonds with naturally occurring minerals in the substrate. Reactive penetrating carbonate stone sealers line the pores of carbonate stone substrates with a hydrophobic coating, but do not form a surface film. Reactive penetrating carbonate stone sealers must meet all the following criteria:



- (1) The reactive penetrating carbonate stone sealer must improve water repellency at least 80 percent after application on a carbonate stone substrate. This performance must be verified on standardized test specimens, in accordance with one or more of the following standards: ASTM C67-14 or ASTM C97/C967M-15, or ASTM C140/C140M-16 (see Table 1, section 200.9 of this Title); and
- (2) The reactive penetrating carbonate stone sealer must not reduce the water vapor transmission rate by more than 10 percent after application on a carbonate stone substrate. This performance must be verified on standardized test specimens, in accordance with ASTM E96M- 16. (see Table 1, section 200.9 of this Title).
- (3) Reactive penetrating carbonate stone sealers must be labeled as such, in accordance with the labeling requirements in subdivision 205.4(m).

([av]bh) ‘Recycled coating’. An architectural coating formulated such that [not less than 50 percent of the weight consists of secondary and post-consumer coating, with not less than 10 percent of the total weight consisting of post-consumer coating.] it contains a minimum of 50% by volume post-consumer coating, with a maximum of 50% by volume secondary industrial materials or virgin materials.

([aw]bi) [‘Residence’] ‘Residential’. Areas where people reside or lodge, including, but not limited to, single- and multiple-family dwellings, condominiums, mobile homes, apartment complexes, motels and hotels.

([ax]bj) ‘Responsible official’. A president, vice president, secretary, treasurer, general partner, proprietor, principal executive officer, ranking elected official, or any other person who performs policy or decision making functions and is authorized to legally bind a corporation, partnership, sole proprietorship, or government entity which operates a facility that is subject to the provisions of this Part. Whenever the term ‘responsible official’ is used in this Part or in any other regulations implementing title V of the act, it shall be deemed to refer to the "designated representative" with regard to all matters under title IV of the act.

([ay]bk) ‘Roof coating’. A non-bituminous coating labeled and formulated [exclusively] for application to roofs for the primary purpose of preventing water penetration, [of the substrate by water or] reflecting [heat and] ultraviolet light, or reflecting solar radiation. [Metallic pigmented roof coatings which qualify as metallic pigmented coatings shall not be considered in this category, but shall be considered to be in the metallic pigmented coatings category.]

([az]bl) ‘Rust preventive coating’. A coating formulated [exclusively for nonindustrial use] to prevent the corrosion of metal surfaces for one or more of the following applications: [and labeled as specified in section 205.4(f) of this Part.]

(1) direct-to-metal coating; or

(2) coating intended for application over rusty, previously coated surfaces.

(3) The rust preventative coating category does not include the following:

(i) coatings that are required to be applied as a topcoat over a primer; or

(ii) coatings that are intended for use on wood or any other nonmetallic surface.

(4) Rust Preventative coatings are for metal substrates only and must be labeled as such, in accordance with the labeling requirements in subsection 205.4 (i).

[[ba]bm) ‘Sanding sealer’. A clear or semi-transparent wood coating labeled and formulated for application to bare wood to seal the wood and to provide a coat that can be abraded to create a smooth surface for subsequent applications of coatings. A sanding sealer that also meets the definition of a lacquer is not included in this category, but it is included in the lacquer category.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.

[[bb]bn) ‘Sealer’. A coating labeled and formulated for application to a substrate for one or more of the following purposes: to prevent subsequent coatings from being absorbed by the substrate, or to prevent harm to subsequent coatings by materials in the substrate.

[[bc]bo) ‘Secondary’ [‘coating (rework)’]‘industrial materials’. [A fragment of a finished coating or a finished coating from a manufacturing process that has converted resources into a commodity of real economic value, but does not include excess virgin resources of the manufacturing process.] Products or

by-products of the paint manufacturing process that are of known composition and have economic value but can no longer be used for their intended use.

(bp) ‘Semitransparent coating’. A coating that contains binders and colored pigments and formulated to change the color of the surface, but not conceal the grain pattern or texture.

([bd]bq) ‘Shellac’. A clear or opaque coating formulated solely with the resinous secretions of the lac beetle (*Lacifera lacca*), [thinned with alcohol] and formulated to dry by evaporation without a chemical reaction.

([be]br) ‘Shop application’. Application of a coating to a product or a component of a product in or on the premises of a factory or a shop as part of a manufacturing, production, or repairing process (*e.g.*, original equipment manufacturing coatings).

([bf]br) ‘Small AIM coatings manufacturer’. A manufacturer (including all subsidiaries of the manufacturer and any parent company of the manufacturer and all of its subsidiaries) of architectural and industrial maintenance (AIM) coatings that manufactures (regardless of location) an amount of less than 3,000,000 gallons per year of any and all of the coatings listed in section 205.3(a) of this Part regardless of whether for sale in New York State or elsewhere. This amount includes coatings produced by the manufacturer and sold under another label, but does not include coatings produced by another entity and sold under the small manufacturer’s label].

([bg]bs) ‘Solicit’. To require for use or to specify by written or oral contract.

([bh]bt) ‘Specialty primer, sealer and undercoater’.

(1) For products manufactured before January 1, 2021, [A] a coating labeled as specified in [section]subdivision 205.4([g]j) of this Part and that is formulated for application to a substrate to seal fire, smoke or water damage, to condition excessively chalky surfaces, or to block stains. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM [Designation] D4214-[98]07 (2015) (see Table 1, section 200.9 of this Title).

(2) For products manufactured on or after January 1, 2021, a coating that is formulated for application to a substrate to block water-soluble stains resulting from fire damage, smoke damage, or water damage. Specialty primers, sealers, and undercoaters must be labeled in accordance with subdivision 205.4(i).

([bi]bu) ‘Stain’. A [clear] semi-transparent or opaque coating labeled and formulated to change the color of a surface but not conceal the grain pattern or texture.

(bv) ‘Stone consolidant’. For products manufactured on or after January 1, 2021, a coating that is labeled and formulated for application to stone substrates to repair historical structures that have been damaged by weathering or other decay mechanisms. Stone consolidants must penetrate into stone substrates to create bonds between particles and consolidate deteriorated material. Stone consolidants must be specified and used in accordance with ASTM E2167-01 (2008). (see Table 1, section 200.9 of

this Title). Stone consolidants are for professional use only and must be labeled as such in accordance with the labeling requirements in subdivision 205.4(n).

[(b)(7)(C)] 'Swimming pool coating'. A coating labeled and formulated to coat the interior of swimming pools and to resist swimming pool chemicals.

(1) For products manufactured on or after January 1, 2021, swimming pool coatings include coatings used for swimming pool repair and maintenance.

[(b)(7)(C)] 'Swimming pool repair and maintenance coating'. A rubber based coating labeled and formulated to be used over existing rubber based coatings for the repair and maintenance of swimming pools.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for swimming pool coatings.

[(b)(7)(C)] 'Temperature-indicator safety coating'. A coating labeled and formulated as a color-changing indicator coating for the purpose of monitoring the temperature and safety of the substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204°C (400°F).

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for industrial maintenance coatings.

([bm]bz) ‘Thermoplastic rubber coating and mastic’. A coating or mastic formulated and recommended for application to roofing or other structural surfaces and that incorporates no less than 40 percent by weight of thermoplastic rubbers in the total resin solids and may also contain other ingredients including, but not limited to, fillers, pigments, and modifying resins.

([bn]ca) ‘Tint base’. An architectural coating to which coloring is added after packaging in sale units to produce a desired color.

([bo]cb) ‘Traffic marking coating’. A coating labeled and formulated for marking and striping streets, highways, or other traffic surfaces including, but not limited to, curbs, berms, driveways, parking lots, sidewalks and airport runways.

(cc) ‘Tub and tile refinish coating’. For products manufactured on or after January 1, 2021, a clear or opaque coating that is labeled and formulated exclusively for refinishing the surface of a bathtub, shower, sink, or countertop. Tub and tile refinish coatings must meet all of the following criteria:

(1) The coating must have a scratch hardness of 3H or harder and a gouge hardness of 4H or harder. This must be determined on bonderite 1000, in accordance with ASTM D3363-05 (2011). (see Table 1, section 200.9 of this Title);

(2) The coating must have a weight loss of 20 milligrams or less after 1000 cycles. This must be determined with CD-17 wheels on bonderite 1000, in accordance with ASTM D4060-14. (see Table 1, section 200.9 of this Title);

(3) The coating must withstand 1000 hours or more of exposure with few or no #8 blisters. This must be determined on unscribed bonderite, in accordance with ASTM D4585-13, and ASTM D714-02 (2009). (see Table 1, section 200.9 of this Title); and,

(4) The coating must have an adhesion rating of 4B or better after 24 hours of recovery. This must be determined on unscribed bonderite, in accordance with ASTM D4585-13 and ASTM D3359-09e2. (see Table 1, section 200.9 of this Title).

[(bp) ‘Undercoater’. A coating labeled and formulated to provide a smooth surface for subsequent coatings.]

[(bq)cd] ‘Varnish’. A clear or semi-transparent wood coating, excluding lacquers and shellacs, formulated to dry by chemical reaction on exposure to air. Varnishes may contain small amounts of pigment to color a surface, or to control the final sheen or gloss of the finish.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for wood coatings.



(ce) 'Veneer'. Thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

(cf) 'Virgin materials'. Materials that contain no post-consumer coatings or secondary industrial coatings.

([br]cg) 'VOC content'. The weight of VOC per volume of coating, calculated according to the procedures specified in subdivision 205.6 of this Part. VOC content is VOC regulatory, as defined in subdivision 205.2(ch) and calculated according to the procedures specified in subdivision 205.6(b), for all coatings except those in the low solids category. For coatings in the low solids category, the VOC content is VOC (ls), as calculated in paragraph 205.6(b)(2). If the coating is a multi-component product, the VOC content is VOC regulatory as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing. VOC content must include maximum amount of thinning solvent recommended by the manufacturer.

(ch) 'VOC regulatory'. VOC regulatory is the weight of VOC per volume of coating, less the volume of water and exempt compounds.

([bs]ci) 'Waterproofing sealer'. A coating labeled and formulated for application to a porous substrate for the primary purpose of preventing the penetration of water.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for concrete/masonry sealers.

([bt]cj) ‘Waterproofing concrete/masonry sealer’. A clear or pigmented film-forming coating that is labeled and formulated for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, and staining.

(1) For products manufactured on and after January 1, 2021, this coating category will be subject to the VOC limit for concrete/masonry sealers.

(ck) ‘Waterproofing membrane’. For products manufactured on or after January 1, 2021, a clear or opaque coating labeled and formulated for application to concrete and masonry surfaces to provide a seamless waterproofing membrane that prevents any penetration of liquid water into the substrate. Waterproofing membranes are intended for the following waterproofing applications: below-grade surfaces, between concrete slabs, inside tunnels, inside concrete planters, and under flooring materials. Waterproofing membranes must meet the following criteria:

(1) coating must be applied in a single coat of at least 25 mils (at least 0.025 inch) dry film thickness; and

(2) coatings must meet or exceed the requirements contained in ASTM C836M-15. (see Table 1, section 200.9 of this Title).

(3) The waterproofing membrane category does not include topcoats that are included in the concrete/masonry sealer category (e.g., parking deck topcoats, pedestrian deck topcoats, etc.).

(cl) ‘Wood coatings’. For products manufactured on or after January 1, 2021, coatings labeled and formulated for application to wood substrates only. The wood coatings category includes the following clear and semitransparent coatings: lacquers; varnishes; sanding sealers; penetrating oils; clear stains; wood conditioners used as undercoats; and wood sealers used as topcoats. The wood coatings category also includes the following opaque wood coatings; opaque lacquers; opaque sanding sealers; and opaque lacquer undercoats. The wood coatings category does not include the following: clear sealers that are labeled and formulated for use on concrete/masonry surfaces; or coatings intended for substrates other than wood. Wood coatings must be labeled “For Wood Substrates Only”, in accordance with subdivision 205.4(o).

([bu]cm) ‘Wood preservative’. A coating labeled and formulated to protect exposed wood from decay or insect attack, that is registered under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. section 136, *et. seq.*) (see Table 1, section 200.9 of this Title) and with Part 326 of this Title.

(cn) ‘Wood substrate’. A substrate made of wood, particleboard, plywood, medium density fiberboard, rattan, wicker, bamboo, or composite products with exposed wood grain. Wood products do not include items comprised of simulated wood.

(co) ‘Zinc-rich primer’. For products manufactured on or after January 1, 2021, a coating that meets all of the following specifications:

(1) coating contains at least 65 percent metallic zinc powder or zinc dust by weight of total solids;

(2) coating is formulated for application to metal substrates to provide a firm bond between the substrate and subsequent applications of coatings; and,

(3) coating is intended for professional use only and labeled as such, in accordance with the labeling requirements in subdivision 205.4 (o) of this part.

Section 205.3 Standards.

**Subdivision 205.3(a) is deleted and a new subdivision 205.3(a) is added.**

[(a) *VOC content limits.* Except as provided in subdivisions (b) and (g) of this section, no person shall manufacture, blend, or repackage for sale within the State of New York, supply, sell, or offer for sale within the State of New York or solicit for application or apply within the State of New York any architectural coating manufactured on or after January 1, 2005 which contains volatile organic compounds in excess of the limits specified in the following Table of Standards. Limits are expressed in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt compounds, or colorant added to tint bases. *Manufacturer's maximum recommendation* means the maximum recommendation for thinning that is indicated on the label or lid

of the coating container.

#### Table of Standards - VOC Content Limits For Architectural Coatings

<i>Coating category</i>	<i>VOC content limit (grams per liter)</i>
Flat coatings	100
Nonflat coatings	150
Nonflat - high gloss coatings	250
Antenna coatings	530
Antifouling coatings	400
Bituminous roof coatings	300
Bituminous roof primers	350
Bond breakers	350
Calcimine recoaters	475
Clear wood coatings	
• Clear brushing lacquers	680
• Lacquers (including lacquer sanding sealers)	550
• Sanding sealers (other than lacquer sanding sealers)	350
• Varnishes	350
• Conversion varnishes	725
Concrete curing compounds	350

Concrete surface retarders	780
Dry fog coatings	400
Faux finishing coatings	350
Fire resistive coatings	350
Fire-retardant coatings	
• Clear	650
• Opaque	350
Floor coatings	250
Flow coatings	420
Form-release compounds	250
Graphic arts coatings (sign paints)	500
High temperature coatings	420
Impacted immersion coatings	780
Industrial maintenance coatings	340
Low solids coatings	120
Magnesite cement coatings	450
Mastic texture coatings	300
Metallic pigmented coatings	500
Multi-color coatings	250
Nuclear coatings	450
Pre-treatment wash primers	420
Primers, sealers, and undercoaters	200
Quick-dry enamels	250

Quick-dry primers, sealers and undercoaters	200
Recycled coatings	250
Roof coatings	250
Rust preventive coatings	400
Shellacs:	
• Clear	730
• Opaque	550
Specialty primers, sealers, and undercoaters	350
Stains	250
Swimming pool coatings and	
swimming pool repair and maintenance coatings	340
Temperature-indicator safety coatings	550
Thermoplastic rubber coatings and mastics	550
Traffic marking coatings	150
Waterproofing sealers	250
Waterproofing concrete/masonry sealers	400
Wood preservatives	350]

(a) ‘VOC Content Limits’. Except as provided in subsections (b) through (h), no person shall:

(1) Manufacture, blend or repackage for sale within the State of New York;

(2) Supply, sell, or offer for sale within the State of New York; or

(3) Solicit for application or apply within the Department any architectural coating with a VOC content in excess of the corresponding limit specific in the Table in this subdivision, after the specified effective date. Limits are expressed as VOC content, thinned to manufacturer's maximum thinning recommendation, excluding any colorant added to tint bases.

<u>Coating Category</u>	<u>VOC Content Limit (grams per liter)</u>	<u>VOC Content Limit (grams per liter)</u>
	<u>Effective Until December 31, 2020</u>	<u>Effective January 1, 2021</u>
<u>Flat Coatings</u>	<u>100</u>	<u>50</u>
<u>Nonflat Coatings</u>	<u>150</u>	<u>100</u>
<u>Nonflat – High Gloss Coatings</u>	<u>250</u>	<u>150</u>
<u>'Specialty Coatings'</u>		
<u>Aluminum Roof Coating</u>	<u>N/A</u>	<u>450</u>
<u>Antenna Coatings</u>	<u>530</u>	<u>N/A</u>
<u>Antifouling Coatings</u>	<u>400</u>	<u>N/A</u>
<u>Basement Specialty Coatings</u>	<u>N/A</u>	<u>400</u>
<u>Bituminous Roof Coatings</u>	<u>300</u>	<u>270</u>
<u>Bituminous Roof Primers</u>	<u>350</u>	<u>350</u>



<u>Bond Breakers</u>	<u>350</u>	<u>350</u>
<u>Calcimine Recoaters</u>	<u>475</u>	<u>475</u>
<u>'Clear Wood Coatings'</u>		
• <u>Clear Brushing Lacquers</u>	<u>680</u>	<u>N/A</u>
• <u>Lacquers (including lacquer sanding sealers)</u>	<u>550</u>	<u>N/A</u>
• <u>Sanding Sealers (other than lacquer sanding sealers)</u>	<u>350</u>	<u>N/A</u>
• <u>Varnishes</u>	<u>350</u>	<u>N/A</u>
<u>Concrete Curing Compounds</u>	<u>350</u>	<u>350</u>
<u>Concrete/Masonry Sealer</u>	<u>N/A</u>	<u>100</u>
<u>Concrete Surface Retarders</u>	<u>780</u>	<u>780</u>
<u>Conjugated Oil Varnish</u>	<u>N/A</u>	<u>450</u>
<u>Conversion Varnish</u>	<u>725</u>	<u>725</u>
<u>Driveway Sealers</u>	<u>N/A</u>	<u>50</u>
<u>Dry Fog Coatings</u>	<u>400</u>	<u>150</u>
<u>Faux Finishing Coatings</u>	<u>350</u>	<u>350</u>
<u>Fire-Resistive Coatings</u>	<u>350</u>	<u>350</u>
<u>'Fire-Retardant Coatings'</u>		
• <u>Clear</u>	<u>650</u>	<u>N/A</u>
• <u>Opaque</u>	<u>350</u>	<u>N/A</u>
<u>Floor Coatings</u>	<u>250</u>	<u>100</u>

<u>Flow Coatings</u>	<u>420</u>	<u>N/A</u>
<u>Form-Release Compounds</u>	<u>250</u>	<u>250</u>
<u>Graphic Arts Coatings (Sign Paints)</u>	<u>500</u>	<u>500</u>
<u>High-Temperature Coatings</u>	<u>420</u>	<u>420</u>
<u>Impacted Immersion Coatings</u>	<u>780</u>	<u>780</u>
<u>Industrial Maintenance Coatings</u>	<u>340</u>	<u>250</u>
<u>Low-Solids Coatings</u>	<u>120</u>	<u>120</u>
<u>Magnesite Cement Coatings</u>	<u>450</u>	<u>450</u>
<u>Mastic Texture Coatings</u>	<u>300</u>	<u>100</u>
<u>Metallic Pigmented Coatings</u>	<u>500</u>	<u>500</u>
<u>Multi-Color Coatings</u>	<u>250</u>	<u>250</u>
<u>Nuclear Coatings</u>	<u>450</u>	<u>450</u>
<u>Pre-Treatment Wash Primers</u>	<u>420</u>	<u>420</u>
<u>Primers, Sealers, and Undercoaters</u>	<u>200</u>	<u>100</u>
<u>Quick-Dry Enamels</u>	<u>250</u>	<u>N/A</u>
<u>Quick-Dry Primers, Sealers and Undercoaters</u>	<u>200</u>	<u>N/A</u>
<u>Reactive Penetrating Sealer</u>	<u>N/A</u>	<u>350</u>
<u>Reactive Penetrating Carbonate Stone Sealer</u>	<u>N/A</u>	<u>500</u>
<u>Recycled Coatings</u>	<u>250</u>	<u>250</u>
<u>Roof Coatings</u>	<u>250</u>	<u>250</u>

<u>Rust Preventative Coatings</u>	<u>400</u>	<u>250</u>
<u>'Shellacs'</u>		
• <u>Clear</u>	<u>730</u>	<u>730</u>
• <u>Opaque</u>	<u>550</u>	<u>550</u>
<u>Specialty Primers, Sealers, and Undercoaters</u>	<u>350</u>	<u>100</u>
<u>Stains</u>	<u>250</u>	<u>250</u>
<u>Stone Consolidant</u>	<u>N/A</u>	<u>450</u>
<u>Swimming Pool Coatings</u>	<u>340</u>	<u>340</u>
<u>Swimming Pool Repair and Maintenance Coatings</u>	<u>340</u>	<u>N/A</u>
<u>Temperature-Indicator Safety Coatings</u>	<u>550</u>	<u>N/A</u>
<u>Thermoplastic Rubber Coatings and Mastics</u>	<u>550</u>	<u>550</u>
<u>Traffic Marking Coatings</u>	<u>150</u>	<u>100</u>
<u>Tub and Tile Refinish</u>	<u>N/A</u>	<u>420</u>
<u>Waterproofing Membranes</u>	<u>N/A</u>	<u>250</u>
<u>Waterproofing Sealers</u>	<u>250</u>	<u>N/A</u>
<u>Waterproofing Concrete/Masonry Sealers</u>	<u>400</u>	<u>N/A</u>
<u>Wood Coatings</u>	<u>N/A</u>	<u>275</u>
<u>Wood Preservatives</u>	<u>350</u>	<u>350</u>

<u>Zinc-Rich Primer</u>	<u>N/A</u>	<u>340</u>
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(b) ‘Most restrictive VOC limit for products manufactured before January 1, 2021’. If anywhere on the container of any architectural coating, or any label sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on the manufacturer’s behalf, including retailers who sell under a private label, representation is made that the coating meets the definition of or is recommended for use or may be used for more than one of the coating categories listed in subdivision (a) of this section, then the most restrictive VOC content limit shall apply. This provision does not apply to the coating categories listed below in paragraphs (1)-[(19)] (21) of this subdivision:

(1) lacquer coatings (including lacquer sanding sealers);

(2) metallic pigmented coatings;

(3) shellacs;

(4) fire-retardant coatings;

(5) pretreatment wash primers;

(6) industrial maintenance coatings;

- (7) low-solids coatings;
- (8) wood preservatives;
- (9) high temperature coatings;
- (10) temperature-indicator safety coatings;
- (11) antenna coatings;
- (12) antifouling coatings;
- (13) flow coatings;
- (14) bituminous roof primers;
- (15) thermoplastic rubber coatings and mastics;
- (16) specialty primers, sealers, and undercoaters;
- (17) calcimine recoaters;
- (18) impacted immersion coatings; [and]

(19) nuclear coatings[.];

(20) thermoplastic rubber coatings and mastic; and

(21) concrete surface retarders.

(c) ‘Most restrictive VOC limit for products manufactured on or after January 1, 2021’. If a coating is recommended for use in more than one of the specialty coating categories listed in subdivision 205.3(a), the most restrictive (or lowest) VOC content limit shall apply. This requirement applies to usage recommendations that appear anywhere on the coating container, anywhere on any label or sticker affixed to the container, or in any sales, advertising, or technical literature supplied by a manufacturer or anyone acting on their behalf. This provision does not apply to the coating categories listed below in paragraphs (1) – (17) of this subdivision.

(1) aluminum roof coatings;

(2) bituminous roof primers;

(3) high temperature coatings;

(4) industrial maintenance coatings;

(5) low-solids coatings

(6) metallic pigmented coatings

(7) pretreatment wash primers

(8) shellacs

(9) specialty primers, sealers, and undercoaters

(10) wood coatings

(11) wood preservatives

(12) zinc-rich primers

(13) calcimine recoaters

(14) impacted immersion coatings

(15) nuclear coatings

(16) thermoplastic rubber coatings and mastic

(17) concrete surface retarders

([c]d) 'Painting practices'. Any person who applies architectural coatings shall ensure that all containers used to apply the contents therein to a surface directly from the container by pouring, siphoning, brushing, or rolling, padding, ragging or other means, shall be closed when not in use. These architectural coatings containers include, but are not limited to, drums, buckets, cans, pails, trays, or other application containers. Containers of any VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

([d]e) 'Thinning'. No person who applies or solicits the application of any architectural coating shall apply a coating that is thinned to exceed the applicable VOC limit specified in subdivision (a) of this section.

([e]f) 'Rust preventive coatings'. No person shall apply or solicit the application of any rust preventive coating, manufactured before January 1, 2021, for industrial use, unless such a rust preventive coating complies with the industrial maintenance coating VOC limit specified in subdivision (a) of this section.

([f]g) 'Coatings not listed in subdivision (a) of this section'. For any coating that does not meet any of the definitions for the specialty coatings categories listed in subdivision (a) of this section, the VOC content limit shall be determined by classifying the coating as a flat coating, nonflat coating, or nonflat-high gloss coating as those terms are defined in subdivisions 205.2([x]ac), ([am]at) and ([an]au) of this



Part and the corresponding flat or nonflat coating [limit shall apply.] VOC limit in subdivision 205.3(a) shall apply.

([g]h) ‘Sell through of coatings’. A coating manufactured prior [to January 1, 2005, or previously granted an exemption pursuant to section 205.7 of this Part,] to the effective date specified for that coating in subdivision 205.3(a), may be sold, supplied, or offered for sale until [May 15, 2007] May 1, 2023, so long as the coating complied with standards in effect at the time the coating was manufactured.

#### Section 205.4 Container labeling requirements.

(a) Each manufacturer of any architectural coatings subject to this rule manufactured on or after January 1, 2005 shall display the information listed in paragraphs (1) – (3) [subdivisions (a)-(c)] of this [section] subdivision on the coating container (or label affixed there to) in which the coating is sold or distributed.

([a]1) ‘Date code’. The date the coating was manufactured, or a date code representing the date, shall be indicated on the label, lid, or bottom of the container. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code with the director, Division of Air Resources, Department of Environmental Conservation [by January 1, 2005 or] within 90 days of making the product available for sale in New York State.

([b]2) ‘Thinning recommendations’. A statement of the manufacturer’s recommendation regarding thinning of the coating shall be indicated on the label or lid of the container. This

requirement does not apply to the thinning of architectural coatings with water. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning.

([c]3) 'VOC content'.

(b) For products manufactured before January 1, 2021: Each container of any coating subject to this rule shall display either the maximum or the actual VOC content of the coating, as supplied, including the maximum thinning as recommended by the manufacturer. VOC content shall be displayed in grams of VOC per liter of coating. VOC content displayed shall be calculated using manufacturer's formulation data or shall be determined using the test methods in [section]subdivision 205.6([b]c) of this Part. The equations in [section]subdivision 205.6([a]b) of this Part shall be used to calculate VOC content.

(c) For products manufactured on or after January 1, 2021: Each container of any coating subject to this part shall display one of the following values in grams of VOC per liter coating:

(1) Maximum VOC content as determined from all potential product formulations; or

(2) VOC content as determined from actual formulation data; or

(3) VOC content as determined using the test methods in subdivision 205.6(c).

(d) If the manufacturer does not recommend thinning, the container must display the VOC content, as

supplied. If the manufacturer recommends thinning, the container must display the VOC content including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredient that general ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing. VOC content shall be determined as defined by the equations in section 205.6.

(e) ‘Faux finishing coatings’. For products manufactured on or after January 1, 2021, the labels of all clear topcoat Faux finishing coatings shall prominently display the statement “This product can only be sold or used as part of a Faux finishing coating system.”

[[d]f) ‘Industrial maintenance coatings’. [In addition to the information specified in subdivisions (a)-(c) of this section, each manufacturer of any industrial maintenance coating subject to this rule shall display on the label or the lid of the container in which the coating is sold or distributed one or more of the descriptions listed below in paragraphs (1)-(3) of this subdivision.] The labels of all industrial maintenance coatings shall prominently display at least one of the following statements:

(1) “For industrial use only.”

(2) “For professional use only.”

(3) “Not for residential use” or “Not intended for residential use.”

([e]g) ‘Clear brushing lacquers’. The labels of all clear brushing lacquers manufactured before January 1, 2021 shall prominently display the statements “For brush application only,” and “This product must not be thinned or sprayed.”

([I]h) ‘Non-flat high-gloss coatings’. The labels of all non-flat high-gloss coatings shall prominently display the words “High gloss.”

([f]i) ‘Rust preventive coatings’. The labels of all rust preventive coatings shall prominently display the statement “For metal substrates only.”

([g]j) ‘Specialty primers, sealers and undercoaters’. For products manufactured before January 1, 2021, [The]the labels of all specialty primers, sealers and undercoaters shall prominently display one or more of the descriptions listed in paragraphs [in] (1)-(5) of this subdivision.

(1) “For blocking stains.”

(2) “For fire-damaged substrates.”

(3) “For smoke-damaged substrates.”

(4) “For water-damaged substrates.”

(5) “For excessively chalky substrates.”

(6) For products manufactured on or after January 1, 2021, the labels of all specialty primers, sealers, and undercoaters shall prominently display one or more of the descriptions listed in paragraphs 205.4(j)(2) through 205.4(j)(4).

([h]k) ‘Quick-dry enamels’. The labels of all quick dry enamels manufactured before January 1, 2021, shall prominently display the words “Quick dry” and the dry hard time.

(l) ‘Reactive penetrating sealers’ For products manufactured on or after January 1, 2021, the labels of all reactive penetrating sealers shall prominently display the statement “Reactive penetrating sealer.”

(m) ‘Reactive penetrating carbonate stone sealers’. For products manufactured on or after January 1, 2021, the labels of all reactive penetrating carbonate stone sealers shall prominently display the statement “Reactive penetrating carbonate stone sealer.”

(n) ‘Stone consolidants’. For products manufactured on or after January 1, 2021, the labels of all stone consolidants shall prominently display the statement “Stone Consolidant – For Professional Use Only.”

(o) ‘Wood coatings’. For products manufactured on or after January 1, 2021, the labels of all Wood Coatings shall prominently display the statement “For Wood Substrates Only.”

(p) ‘Zinc rich primers’. For products manufactured on or after January 1, 2021, the labels of all Zinc

Rich Primers shall prominently display one or more of the following statements listed in paragraphs (1)–(3) below:

(1) “For Professional Use Only”

(2) “For Industrial Use Only”

(3) “Not for residential use” or “Not intended for residential use”

Section 205.5 Reporting requirements.

**Subdivisions 205.5 (a-d) are deleted and new subdivisions 205.5(a and b) are added.**

[(a) Each manufacturer of a product subject to a VOC content limit in section 205.3(a) of this Part shall keep records demonstrating compliance with the VOC content limits. Such records shall clearly list each product by name (and identifying number, if applicable) as shown on the product label and in applicable sales and technical literature, the VOC content as determined in section 205.6 of this Part, the name(s) and chemical abstract service (CAS) number of the VOC constituents in the product, the dates of the VOC content determinations, and the coating category and the applicable VOC content limit. These records shall be kept for a period not less than five years and shall be made available to the department within 90 days of request.

(b) A responsible official from each manufacturer shall upon request of the director, Division of Air Resources, Department of Environmental Conservation provide data concerning the distribution and sales of coatings subject to a VOC content limit in section 205.3(a) of this Part. The responsible official shall within 90

days provide information including, but not limited to:

(1) the name and mailing address of the manufacturer;

(2) the name, address and telephone number of a contact person;

(3) the name of the product as it appears on the label and the coating category in section 205.3(a) under which it is regulated;

(4) whether it is marketed for interior or exterior use or both;

(5) the number of gallons sold in New York State in containers greater than one liter and less than one liter;

(6) the actual VOC content and VOC content limit in grams per liter. If thinning is recommended, list the actual VOC content and VOC content limit after recommended thinning. If containers less than one liter have a different VOC content than containers greater than one liter, list separately;

(7) the names and CAS number of the VOC constituents in the product; and

(8) the names and CAS number of any compounds in the products specifically exempted under section 200.1(c) of this Title.

(c) 'Toxic exempt compounds'. For each architectural coating that contains perchloroethylene or methylene chloride, the manufacturer shall, on or before April 1st of each calendar year beginning with the year 2006, report to the director, Division of Air Resources, Department of Environmental Conservation the following information for products sold in the State during the preceding year:

(1) the product brand name and a copy of the product label with the legible usage instructions;

(2) the product category listed in section 205.3(a) of this Part to which the coating belongs;

(3) the total sales in the State of New York during the calendar year to the nearest gallon; and

(4) the volume percent, to the nearest 0.10 percent, of perchloroethylene and methylene chloride in the coating.

(d) 'Recycled coatings'. Manufacturers of recycled coatings must submit a letter signed by a responsible official to the director, Division of Air Resources, Department of Environmental Conservation certifying their status as a recycled paint manufacturer. The manufacturer shall, on or before April 1st of each calendar year beginning with the year 2006, submit an annual report to the director, Division of Air Resources, Department of Environmental Conservation. The report shall include for all recycled coatings the total number of gallons distributed in the State during the preceding year, and shall describe the method used by the manufacturer to calculate State distribution.]



(a) A responsible official from each manufacturer shall upon request of the director or his or her delegate, provide data concerning the distribution and sales of architectural coatings. The responsible official shall, within 180 days of written request, provide information including, but not limited to:

(1) the name and mailing address of the manufacturer;

(2) the name, address and telephone number of a contact person;

(3) the name of the coating product as it appears on the label and the coating category in 205.3(a) of this Part under which the product is regulated;

(4) whether the product is marketed for interior or exterior use or both;

(5) the number of gallons sold in New York State in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);

(6) the VOC actual content and the VOC regulatory content in grams per liter;

(7) the names and CAS numbers of the VOC constituents of the product;

(8) the names and CAS numbers of any compound in the product specifically exempted from the VOC definition;

(9) whether the product is marketed as solventborne, waterborne, or 100 percent solids;

(10) description of resin or binder in the product;

(11) whether the coating is a single-component or multi-component product;

(12) the density of the product in pounds per gallon;

(13) the percent of weight of solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition;

(14) the percent by volume of solids, water and any compounds in the product specifically exempted from the VOC definition.

(b) All data listed in paragraphs (a)(1 – 14) shall be maintained by the responsible official for a minimum of three years. Data submitted by the responsible official to the Department may be claimed as confidential in accordance with Part 616 of this Title.

#### Section 205.6 Compliance provisions and test methods.

(a) For the purpose of determining compliance with the VOC content limits in [section]subdivision 205.3(a) of this Part, the VOC content of a coating shall be determined by using the procedures

described in paragraphs ([a]b)(1) or (b)(2) of this section, as appropriate. The VOC content of a tint base shall be determined prior to the addition of the colorant. If the manufacturer does not recommend thinning, the VOC content must be calculated for the product as supplied. If the manufacturer recommends thinning, the VOC content must be calculated including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC content must include the VOCs emitted during curing.

([a]b) 'Calculation of VOC content'.

(1) With the exception of low solids coatings, determine the VOC content in grams of VOC per liter of coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water and exempt compounds. Determine the VOC content using the following equation:

$$\text{VOC content} = \frac{(W_s - W_w - W_{ec})}{(V_m - V_w - V_{ec})}$$

where:

VOC content	= grams of VOC per liter of coating
$W_s$	= weight of volatiles, in grams
$W_w$	= weight of water, in grams
$W_{ec}$	= weight of exempt compounds, in grams
$V_m$	= volume of coating, in liters

V<sub>w</sub> = volume of water, in liters  
V<sub>ec</sub> = volume of exempt compounds, in liters

(2) For low solids coatings, determine the VOC content in units of grams of VOC per liter of coating thinned to the manufacturer’s maximum recommendation, including the volume of any water and exempt compounds. Determine the VOC content using the following equation:

$$\text{VOC content (ls)} = \frac{(W_s - W_w - W_{ec})}{(V_m)}$$

where:

VOC content (ls) = the VOC content of a low solids coating in grams per liter of coating  
W<sub>s</sub> = weight of volatile, in grams  
W<sub>w</sub> = weight of water, in grams  
W<sub>ec</sub> = weight of exempt compounds, in grams  
V<sub>m</sub> = volume of coating, in liters

([b]c) ‘VOC content of coatings’. To determine the physical properties of a coating in order to perform the calculations in subdivision ([a]b) of this section, the reference method for VOC content is found at 40 CFR part 60, appendix A, method 24 (2000) (see Table 1, section 200.9 of this Title), except as provided in subdivisions ([c]d) and ([d]e) of this section. An alternate method to determine the VOC content of coatings is South Coast Air Quality Management District Method 304-91 (Revised February 1996) (see Table 1, section 200.9 of this Title). The exempt compounds content shall be determined by

methods referenced in ASTM D3960-05 (2013), South Coast Air Quality Management District Method 303-91 (Revised August 1996), or Bay Area Air Quality Management District (BAAQMD) Method 41 (Revised 2005), as applicable. (see Table 1, section 200.9 of this Title). To determine the VOC content of a coating, the manufacturer may use 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title), or an alternative method, as provided in subdivision ([c]d) of this section, manufacturer's formulation data, or any other reasonable means for predicting that the coating has been formulated as intended (*e.g.*, quality assurance checks, recordkeeping). However, if there are any inconsistencies between the results of a 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) test and any other methods for determining VOC content, the 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) results will govern, except when an alternative method is approved as specified in subdivision ([c]d) of this section. The director, Division of Air Resources, Department of Environmental Conservation may require the manufacturer to conduct a 40 CFR part 60, appendix A, method 24 (see Table 1, section 200.9 of this Title) analysis to determine the VOC content.

([c]d) 'Alternative test methods'. Other test methods demonstrated to provide results that are acceptable for purposes of determining compliance with subdivision ([b]c) of this section, after review and approval in writing by the director, Division of Air Resources, Department of Environmental Conservation and the EPA, may also be used.

([d]e) 'Methacrylate traffic coating markings'. Analysis of methacrylate multicomponent coatings used as traffic marking coatings shall be conducted according to a modification of 40 CFR part 60, appendix A, method 24 found at 40 CFR part 59, subpart D, appendix A (see Table 1, section 200.9 of this Title).

This method has not been approved for methacrylate multicomponent coatings used for other purposes than as traffic marking coatings or for other classes of multicomponent coatings.

**Section 205.7 is deleted**

[Section 205.7 Limited exemption for small AIM coatings manufacturers.

(a) Small AIM coatings manufacturers may request for an exemption to the VOC content limits in section 205.3(a) of this Part. This request shall include a demonstration acceptable to the director, Division of Air Resources, Department of Environmental Conservation on the small manufacturers' inability to produce coatings that meet the VOC content limits based on economic and/or technical feasibility.

(b) The request shall at a minimum include the following small AIM coatings manufacturers' production and product information:

(1) The total quantity (gallons) and the VOC content of each and all of the coatings listed in section 205.3(a) of this Part manufactured by the company for each of the three previous years.

(2) Documentation and analysis supporting the economic or technical infeasibility of meeting the VOC content limits for each coating listed in section 205.3(a) of this Part requesting an exemption.

(3) A statement from a responsible official in the company certifying the accuracy and completeness of the information provided in the request.

(c) The request shall be made at least one year prior to the compliance date of January 1, 2005 and be made to the director, Division of Air Resources, Department of Environmental Conservation. The department reserves the right to request additional information from the responsible official.

(d) The director, Division of Air Resources, Department of Environmental Conservation shall grant or deny the limited exemption in its discretion based on the information supplied pursuant to subdivision (b) of this section at least six months prior to the compliance date of January 1, 2005.

(e) Small AIM coatings manufacturers that have been granted a limited exemption under subdivision (d) of this section shall submit, by April 1st of each year the exemption remains in effect, a report to the director, Division of Air Resources, Department of Environmental Conservation that includes the following manufacturing information from the previous calendar year:

(1) the quantity of the individual coatings listed under section 205.3(a) of this Part produced by the company and the VOC content of the coatings which have been granted an exemption from the VOC content limits in section 205.3(a) of this Part under this section;

(2) the quantity of coatings manufactured for each of the product names of the coatings which have been granted an exemption from the VOC content limits in section 205.3(a) of this Part under this section were marketed under; and

(3) a statement from a responsible official certifying the accuracy and completeness of the information provided in the report.

(f) Any exemption granted under subdivision (d) of this section may remain in effect no later than December 31, 2006.

(g) Limited exemptions for small AIM coatings manufacturers as approved by the director, Division of Air Resources, Department of Environmental Conservation under this Part, will be submitted to the EPA as State Implementation Plan revisions for approval.]

Section 205.[8] Severability.

[Each section, or portion thereof, of this Part shall be deemed severable, and in the event that any section, or portion thereof, of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.]

Each provision of this Part shall be deemed severable, and in the event that any provision of this Part is held to be invalid, the remainder of this Part shall continue in full force and effect.



Revised Express Terms  
6 NYCRR Part 200, General Provisions

(Sections 200.1 through 200.8 remain unchanged)

Section 200.9, Table 1 is amended to read as follows:

		**
<u>205.2(c)</u>	<u>South Coast Air Quality Management District Method 318-95 (Approved July 1996)</u>	***
205.2[(d)](e)	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 <i>et. seq.</i>	
<u>205.2(h)</u>	<u>ASTM, D7088-04 (Approved 2004)</u>	****
<u>205.2(h)</u>	<u>ASTM, 3273-16 (Approved 2016)</u>	****
<u>205.2(h)</u>	<u>ASTM, 3274-09 (2013)</u>	****
[205.2(v)	ASTM, E119-00A (Approved July 10, 2000)	****]
[205.2(w)	ASTM, E84-01 (Approved July 10, 2001)	****]
[205.2(x)	ASTM, D523-89 (Reapproved 1999)	****]
<u>205.2(y)</u>	<u>ASTM, D3960-05 (2013)</u>	****
<u>205.2(y)</u>	<u>South Coast Air Quality Management District Method 303-91 (Revised August 1996)</u>	***
<u>205.2(z)</u>	<u>South Coast Air Quality Management District Method 318-95 (Approved July 1996)</u>	***
<u>205.2(aa)</u>	<u>ASTM, E119-16a (Approved 2016)</u>	****
<u>205.2(ab)</u>	<u>ASTM, E84-16 (Approved 2016)</u>	****
<u>205.2(ac)</u>	<u>ASTM, D523-14 (Approved 2014)</u>	****
[205.2(am)	ASTM, D523-89 (Reapproved 1999)	****]
[205.2(an)	ASTM, D523-89 (Reapproved 1999)	****]

[205.2(ap)]	ASTM, D4082-02 (Approved January 10, 2002)	****]
[205.2(ap)]	ASTM, D3912-95 (Reapproved 2001)	****]
[205.2(ar)]	ASTM, D1613-96 (Reapproved 1999)	****]
205.2[(ak)](ar)	South Coast Air Quality Management District Method 318-95 (Approved July 1996)	***
[205.2(at)(2)]	ASTM, D1640-95 (Reapproved 1999)	****]
<u>205.2(at)</u>	<u>ASTM, D523-14 (Approved 2014)</u>	<u>****</u>
[205.2(au)]	ASTM, D1640-95 (Reapproved 1999)	****]
<u>205.2(au)</u>	<u>ASTM, D523-14 (Approved 2014)</u>	<u>****</u>
<u>205.2(av)</u>	<u>ASTM, D4082-10 (Approved 2010)</u>	<u>****</u>
<u>205.2(av)</u>	<u>ASTM, D3912-10 (Approved 2010)</u>	<u>****</u>
<u>205.2(ba)</u>	<u>ASTM, D1613-06 (Reapproved 2012)</u>	<u>****</u>
<u>205.2(bd)</u>	<u>ASTM, D1640/1640M-14 (Approved 2014)</u>	<u>****</u>
<u>205.2(be)</u>	<u>ASTM, D1640/1640M-14 (Approved 2014)</u>	<u>****</u>
<u>205.2(bf)</u>	<u>ASTM, C67-14 (Approved 2014)</u>	<u>****</u>
<u>205.2(bf)</u>	<u>ASTM, C97/C967M-15 (Approved 2015)</u>	<u>****</u>
<u>205.2(bf)</u>	<u>ASTM, C140/C140M-16 (Approved 2016)</u>	<u>****</u>
<u>205.2(bf)</u>	<u>ASTM, E96M-16 (Approved 2016)</u>	<u>****</u>
<u>205.2(bf)</u>	<u>National Cooperative Highway Research Report 244 (1981)</u>	
<u>205.2(bg)</u>	<u>ASTM, C67-14 (Approved 2014)</u>	<u>****</u>
<u>205.2(bg)</u>	<u>ASTM, C97/C967M-15 (Approved 2015)</u>	<u>****</u>
<u>205.2(bg)</u>	<u>ASTM, C140/C140M-16 (Approved 2016)</u>	<u>****</u>
<u>205.2(bg)</u>	<u>ASTM, E96M-16 (Approved 2016)</u>	<u>****</u>
[205.2(bh)]	ASTM, D4214-98 (Approved August 10, 1998)	****]
<u>205.2(bt)</u>	<u>ASTM, D4214-07 (Reapproved 2015)</u>	<u>****</u>
<u>205.2(bv)</u>	<u>ASTM, E2167-01 (Reapproved 2008)</u>	<u>****</u>
<u>205.2(cc)</u>	<u>ASTM, D3363-05 (Reapproved 2011)</u>	<u>****</u>
<u>205.2(cc)</u>	<u>ASTM, D4060-14 (Approved 2014)</u>	<u>****</u>

<u>205.2(cc)</u>	<u>ASTM, D4585-13 (Approved 2013)</u>	<u>****</u>
<u>205.2(cc)</u>	<u>ASTM, D3359-09e2</u>	<u>****</u>
<u>205.2(cc)</u>	<u>ASTM, D714-02 (Reapproved 2009)</u>	<u>****</u>
<u>205.2(ck)</u>	<u>ASTM, C836M-15</u>	<u>****</u>
205.2[(bu)] <u>(cm)</u>	Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 <i>et. seq.</i>	**
205.6[(b)] <u>(c)</u>	40 CFR Part 60, Appendix A, method 24	*
205.6[(b)] <u>(c)</u>	South Coast Air Quality Management District Method 304-91 (Revised February 1996)	***
205.6[(b)] <u>(c)</u>	South Coast Air Quality Management District Method 303-91 (Revised August 1996)	***
205.6[(b)] <u>(c)</u>	<u>ASTM, D3960-05 (2013)</u>	<u>****</u>
<u>205.6(c)</u>	<u>Bay Area Air Quality Management District Method 41 (Revised 2005)</u>	<u>***</u>
205.6[(d)] <u>(e)</u>	40 CFR Part 59, Subpart D, Appendix A	*



## ENB - Statewide Notices 12/31/2019

### Public Notice

#### Notice of Adoption

#### 6 NYCRR Part 205, Architectural and Industrial Maintenance (AIM) Coatings

#### 6 NYCRR Part 200, General Provisions

Pursuant to Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:

NYS DEC has revised existing Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," of Title 6 of the Official Compilation of Codes, Rules and Regulation of the State of New York (6 NYCRR) and the attendant revisions to Part 200, "General Provisions".

AIM coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. The last time AIM coating VOC limits were revised was in 2004 and the industry and technology has changed and improved since then to make lower VOC options available. Because New York State has a nonattainment area for ozone, the Clean Air Act requires the state to develop strategies to reduce VOC emissions. The revisions to this rule are part of that effort. The revised rule reduces the VOC limit on 12 coating categories, creates VOC limits for 12 additional coating categories, and eliminates 15 coating categories. NYS DEC originally proposed to eliminate the quart containers exemption. During the public comment period, NYS DEC received many comments opposing the full elimination of the quart exemption. Commenters indicated, among other things, that some coatings are minimally used for touch-up or other applications that rely on the quart exemption. The primary coating which NYS DEC had received complaints about was floor coatings. As a result of public comments and review of certain product applications, NYS DEC revised the proposed rule to retain the quart exemption except for floor coatings. The adopted rule also includes language to prevent the sale and "bundling" of quart containers which was addressed in the Regulatory Impact Statement. The revised rule applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in New York State.

Documents pertaining to this [rulemaking](#) can be found on NYS DEC's website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

Part 205 will be submitted to United State Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan for New York State.

#### For further information, contact:

Ona Papageorgiou  
NYS DEC - Division of Air Resources  
625 Broadway  
Albany, NY 12233-3250  
Phone: (518) 402-8403  
E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

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#### Notice of Adoption

#### 6 NYCRR Subpart 227-3, Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines

Pursuant to Sections 1-0101, 3-0301, 19-0103, 19-0105, 19-0301, 19-0303, 19-0305, 19-0311, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:

NYS DEC has adopted new 6 NYCRR Subpart 227-3, "Ozone Season Oxides of Nitrogen (NO<sub>x</sub>) Emission Limits for Simple Cycle and Regenerative Combustion Turbines." This regulation lowers the allowable NO<sub>x</sub> emission rates from simple cycle and regenerative combustion turbines during the ozone season. The lower emissions from these sources will help address Clean Air Act requirements, ozone nonattainment and protect the health of New York State residents. This regulation only applies to simple cycle and regenerative combustion turbines during the ozone season. This is not a mandate on local governments. It applies to any entity

that owns or operates a subject source. Further, NYS DEC will submit Subpart 227-3 to the United States Environmental Protection Agency (US EPA) as a revision to the State Implementation Plan for New York State.

Documents pertaining to this [adopted rule making](#) can be found on the Department's website at <http://www.dec.ny.gov/regulations/propregulations.html#public>.

**For further information regarding this regulation, contact:**

Ona Papageorgiou  
NYS DEC - Division of Air Resources  
625 Broadway  
Albany, NY 12233-3250  
Phone: (518) 402-8403  
E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov)

Requests for information related to the SIP revision may be obtained from Robert D. Bielawa, NYS DEC - Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, Phone: (518) 402-8396, E-mail: [air.regs@dec.ny.gov](mailto:air.regs@dec.ny.gov).

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**Notice of Proposed Rulemaking**

**6 NYCRR Part 494**

**Pursuant to Sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105 of the Environmental Conservation Law (ECL), the New York State Department of Environmental Conservation (NYS DEC) hereby gives notice of the following:**

NYS DEC is proposing the addition of 6 NYCRR Part 494, "Hydrofluorocarbon Standards and Reporting." The goal of this proposed rule is to reduce greenhouse gas emissions associated with the use of hydrofluorocarbons (HFCs) as refrigerants, aerosol propellants, and foam-blowing agents, where safe alternatives are available. The proposed rule adopts prohibitions previously in place at the national level by the United State Environmental Protection Agency (US EPA). This is not a mandate on local governments. It applies to manufacturers, resellers, and commercial users of certain new or retrofitted equipment and products.

**Written comments on the proposed rule may be submitted until 5 p.m. on March 16, 2020 by mail to:** Suzanne Hagell, NYS DEC - Office of Climate Change, 625 Broadway, Albany, NY 12233-1550 or e-mailed to [climatechange@dec.ny.gov](mailto:climatechange@dec.ny.gov). Include "Comments on Part 494 HFC" in the subject line of the email.

**Hearings for the proposed rule and attendant revisions to existing rules described above will be held as follows and are scheduled in places that are reasonably accessible to persons with impaired mobility:**

**Date:** March 4, 2020  
**Time:** 12:30 p.m.  
**Location:** NYS DEC  
Public Assembly Room 129A/B  
625 Broadway  
Albany, NY 12233

**Date:** March 6, 2020  
**Time:** 12:30 p.m.  
**Location:** Henrietta Public Library  
Community Room  
625 Calkins Road  
Rochester, NY 14623

**Date:** March 9, 2020  
**Time:** 12:30 p.m.  
**Location:** NYS DEC - Region 2 Office  
8th Floor, Room 834A/834B  
47-40 21st Street  
Long Island City, NY 11101

NYS DEC will give equal weight to written and oral statements, and since a cumulative record will be compiled it is not necessary for interested parties to attend each hearing. NYS DEC will provide interpreter services for hearing impaired persons at no charge upon written request submitted no later than February 19, 2020. The written request must be addressed to Suzanne Hagell, NYS DEC - Office of Climate Change, 625 Broadway, Albany, NY 12233-1550 or e-mailed to [climatechange@dec.ny.gov](mailto:climatechange@dec.ny.gov)

**Contact:** Suzanne Hagell, NYS DEC - Office of Climate Change, 625 Broadway, Albany, NY 12233-1550, E-mail: [climatechange@dec.ny.gov](mailto:climatechange@dec.ny.gov)

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**Notice of Upcoming Public Workshops on Rulemaking Initiative to Revise the Hazardous Waste Management Regulations (6 NYCRR Part 370 Series) and Request for Feedback from Stakeholders.**

New York State Department of Environmental Conservation (NYS DEC) is holding workshops statewide on the hazardous waste rules and revisions that are being considered for adoption, including the United States Environmental Protection Agency (US EPA) regulations promulgated from 2013 to the present. This includes: the Solvent-Contaminated Wipes Rule; the Electronic Manifest Rules; the Definition of Solid Waste Rule; the Generator Improvements Rule; the Pharmaceuticals Rule; possible changes to New York State's Universal Waste Rule and other state-initiated changes. These state-initiated changes include expanding the secondary containment requirements for the storage of liquid hazardous waste and the creation of uniform large quantity generator (LQG) requirements that would apply statewide. This rulemaking is referred to as FedReg6.

To help the public understand the draft regulations and regulatory initiatives, ask questions, and provide informal comments, NYS DEC will be hosting numerous public workshops across the state. Staff will also be available for discussions after the meetings. Those who wish to attend the workshops need to register. Information about the [rulemaking and registration details for the workshops](#) are available on the NYS DEC's website at: [www.dec.ny.gov/regulations/117115.html](http://www.dec.ny.gov/regulations/117115.html) under "Outreach Information." If you do not have internet access and would like to attend a workshop, please write to the address below or call (518) 402-8651.

A formal public comment period will be provided at a later date once the regulations are officially proposed. Additional public meetings will also be announced and held in other locations around the state.

**Unofficial written comments regarding this regulatory initiative will be accepted by NYS DEC.** Comments should be submitted to: Michelle Ching, NYS DEC - Division of Materials Management, 625 Broadway, Albany, NY 12233-7256 or e-mail to [hwregs@dec.ny.gov](mailto:hwregs@dec.ny.gov). Please include "Comments on FedReg 6" in the subject line of the email.

**Contact:** Michelle Ching, NYS DEC - Division of Materials Management, 625 Broadway, Albany, NY 12233-7256, Phone: (518) 402-8651, E-mail: [hwregs@dec.ny.gov](mailto:hwregs@dec.ny.gov)

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language is adequate and will not overrule a reliability determination made by the NYISO or transmission/distribution utilities. The BSM process tests are in place to "... provide the means for the ISO to mitigate the market effects of conduct that would substantially distort competitive outcomes in the ISO Administered Markets, while avoiding unnecessary interference with competitive price signals.<sup>15</sup> Based on consultation with the NYISO it is the Department's understanding that those SCCTs that are planned for retirement will not be included in the BSM test for storage projects.

Three commenters did not believe that energy storage or renewable energy resources should be required to be directly connected to the same substation or within a half-mile radius of the SCCT with which it is being averaged. The Department worked extensively with stakeholders to develop the language in the proposal and believes it to be the best balance of the issues discussed as to where to allow renewable and storage resources to be sited under this compliance option. Please see previous Assessment of Public Comment dated August 21, 2019 for more detail.

#### Emissions Averaging

A commenter stated that data from facilities that average emissions over a 24-hour period should be made publicly available so that interested members of the public may evaluate how facilities are utilizing the renewable energy and energy storage averaging compliance option. The Department does not plan on posting average emissions on the Department's website, however the Freedom of Information Law (FOIL) request process is available to all individuals seeking information from the Department.

There were questions regarding the calculation of average emission rates under different scenarios. The Department responded with direction to the formulas for calculating average emission rates which are set forth in paragraph 227-3.5(b) and averaging options defined in 227-3.5(a).

A commenter also asked if the emission limits in 227-3.4(a) are based on a one-hour average or a daily average when using CEMS? The Department responded that emission limits set in subdivision 227-3.4(a) are based on a one-hour average consistent with previous reporting requirements under subdivision 227-2.4(e).

#### Emissions during Startup and Shut down of SCCTs

One commenter stated that the rule should be revised to clarify that compliance with the emission limits will be at steady state operations and not include startup and shutdown.

The Department responded that compliance with Subpart 227-3 is consistent with the compliance requirements in Subpart 227-2 which SCCTs are already complying with. The testing methodology for stack tests requires the measurement of emissions at normal operating conditions (steady state).

#### Compliance Plans

A commenter asked for a defined process for how compliance plans are structured and processed. The Department responded that the requirements for compliance plans are presented in Section 227-3.3. The Department will make the compliance plans available to the NYISO to inform the 2020 Reliability Needs Assessment (RNA) once they have been received and processed. It is the Department's understanding that the NYISO, transmission/distribution owners and others will use the information in the compliance plans to inform their work on the RNA.

One commenter recommended that the Department post all of the filed compliance plans on the Department's website immediately upon receipt. The Department does not plan on posting filed compliance plans on the Department's website, however, pursuant to the FOIL anyone interested in this information may file a FOIL request with the Department.

To comply with the regulation, affected source owners must submit a compliance plan by March 2, 2020. The Department expects the NYISO to use these plans as inputs to their 2020 RNA. To ensure the RNA is based on accurate information, the Department requires that compliance plans not be amended after submittal. Some stakeholders asked if they compliance plans may be changed or updated based on designations or other activity. The March 2, 2020 date for submitting compliance plans corresponds with NYISO's 2020 RNA schedule. The Department will accept compliance plans through March 2, 2020 and expects that the NYISO will use these compliance plans in the development of the 2020 RNA.

#### Reliability

The regulation offers a reliability extension to ensure that the reliability of New York's electric grid is not adversely impacted by the rule. Some commenters asked that the Department revise the regulation to give the Department the authority to override the NYISO and transmission/distribution operator determination of reliability. The Department conducted a thorough stakeholder process and as a result of that process the Department will rely on the expertise of those responsible for reliability planning to determine if a source is a reliability resource. The regulation does not provide language allowing the Department to overrule a reliability determination made by the NYISO or transmission/distribution utilities.

One commenter stressed the importance of the Department recognizing the NYISO's finding that replacement generation resources are necessary and needed within the New York City Load pockets beginning in 2023. The Department understands that reliability is of concern and as a result provided several compliance options in this rulemaking to ensure that replacement of these high emitting sources may be removed and replaced with cleaner or non-emitting sources without adversely impacting grid reliability.

A commenter stated that with the advent of the Climate Leadership and Community Protection Act (CLCPA), the reliability provision alone will be insufficient without other mechanisms within the Department's control and working with the NYISO to support a market-based response to the reliability needs. The Department disagrees and believe that sufficient mechanisms are in place to maintain reliability while reducing NOx emissions. The Department worked extensively with the NYISO, DPS and NYSEERDA to ensure that both emissions reductions are achieved and that system reliability is maintained.

#### Emission Limits

A commenter asked if the calculation for a source which would be able to meet the lb/MWh limitations using the equations provided and counting zero for MWhST and MWhRE, are the lb/MWh compliance options available for SCCTs at facilities which do not utilize electric storage or renewable energy resources? No, Subdivision 227-3.5(b) offers the lb/MWh calculation available to those sources which average with electric storage and/or renewable energy resources.

#### Beyond the Scope

One comment was received beyond the scope of the regulation where a commenter stated that because of CLCPA and other impacts on energy generation it will be necessary for the NYISO market to appropriately reflect the window in which a new peaking unit must recover its investment.

<sup>1</sup> NYISO. July 26, 2019 presentation: [https://www.nyiso.com/documents/20142/7768815/BSM%20Information%20Session%20Sliddeck%20\(final\)%2020190726.pdf/a7c1271a-ce71-2d39-c0cd-ce3c361b6d8b](https://www.nyiso.com/documents/20142/7768815/BSM%20Information%20Session%20Sliddeck%20(final)%2020190726.pdf/a7c1271a-ce71-2d39-c0cd-ce3c361b6d8b)

## NOTICE OF ADOPTION

### Regulate Volatile Organic Compounds (VOCs) in Architectural and Industrial Maintenance (AIM) Coatings

**I.D. No.** ENV-10-19-00003-A

**Filing No.** 1144

**Filing Date:** 2019-12-12

**Effective Date:** 30 days after filing

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

**Action taken:** Amendment of Parts 200 and 205 of Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** Regulate volatile organic compounds (VOCs) in architectural and industrial maintenance (AIM) coatings.

**Purpose:** To set new and lower VOC limits for certain coating categories. Update categories and methods.

**Substance of final rule:** Architectural and industrial maintenance (AIM) coatings, commonly referred to as paints, release volatile organic compounds (VOCs) into the atmosphere. VOC content is regulated in Part 205 for 52 coating categories. The major revisions to this proposal are to reduce the VOC limit on 12 coating categories, create VOC limits for 12 additional coating categories, eliminate 15 coating categories and eliminate the quart exemption. This proposal applies to any person who supplies, sells, offers for sale or manufactures architectural coatings for use in the State of New York.

Changes to Section 205.1, Applicability: The proposed revisions remove the exemption provided to coatings sold in one liter (1.057 quart) containers for floor coatings and also includes a language to prevent bundling of quart containers in a larger pail to be combined for use. This is often referred to as the "quart exemption."

Changes to Section 205.2, Definitions: Transitional language was added to all definitions which are proposed to be changed. The definitions contain language stating that categories eliminated on January 1, 2021 will be absorbed by another category.

The Department is also revising Section 205.2 by:

- The following categories were eliminated from Part 205: antenna

coatings, antifouling coatings, clear brushing lacquers, lacquers, sanding sealers, varnishes, clear fire retardant coatings, opaque fire retardant coatings, flow coatings, quick dry enamels, quick dry primers sealers and undercoaters, swimming pool repair and maintenance coatings, temperature indicator coatings, waterproofing sealers and waterproofing concrete/masonry sealers.

• The following categories were added to Part 205: aluminum roof, basement specialty coatings, concrete/masonry sealer, conjugated oil varnish, driveway sealer, reactive penetrating sealer, reactive penetrating carbonate stone sealer, stone consolidants, tub and tile refinish, waterproofing membranes, wood coatings, zinc-rich primers.

Changes to Section 205.3, Standards:

The current and proposed standards are shown in the table below.

Coating Category	VOC Content Limit (grams per liter) Effective Until December 31, 2020	VOC Content Limit (grams per liter) Effective January 1, 2021
Flat Coatings	100	50
Nonflat Coatings	150	100
Nonflat – High Gloss Coatings	250	150
‘Specialty Coatings’		
Aluminum Roof	N/A	450
Antenna Coatings	530	N/A
Antifouling Coatings	400	N/A
Basement Specialty Coatings	N/A	400
Bituminous Roof Coatings	300	270
Bituminous Roof Primers	350	350
Bond Breakers	350	350
Calcimine Recoaters	475	475
‘Clear Wood Coatings’		
• Clear Brushing Lacquers	680	N/A
• Lacquers (including lacquer sanding sealers)	550	N/A
• Sanding Sealers (other than lacquer sanding sealers)	350	N/A
• Varnishes	350	N/A
Concrete Curing Compounds	350	350
Concrete/Masonry Sealer	N/A	100
Concrete Surface Retarders	780	780
Conjugated Oil Varnish	N/A	450
Conversion Varnish	725	725
Driveway Sealers	N/A	50
Dry Fog Coatings	400	150
Faux Finishing Coatings	350	350
Fire Resistive Coatings	350	350
‘Fire Retardant Coatings’		
• Clear	650	N/A
• Opaque	350	N/A
Floor Coatings	250	100
Flow Coatings	420	N/A
Form Release Compounds	250	250

Coating Category	VOC Content Limit (grams per liter) Effective Until December 31, 2020	VOC Content Limit (grams per liter) Effective January 1, 2021
Graphic Arts Coatings (Sign Paints)	500	500
High Temperature Coatings	420	420
Impacted Immersion Coatings	780	780
Industrial Maintenance Coatings	340	250
Low Solids Coatings	120	120
Magnesite Cement Coatings	450	450
Mastic Texture Coatings	300	100
Metallic Pigmented Coatings	500	500
Multi Color Coatings	250	250
Nuclear Coatings	450	450
Pre-Treatment Wash Primers	420	420
Primers, Sealers, and Undercoaters	200	100
Quick Dry Enamels	250	N/A
Quick Dry Primers, Sealers and Undercoaters	200	N/A
Reactive Penetrating Sealer	N/A	350
Reactive Penetrating Carbonate Stone Sealer	N/A	500
Recycled Coatings	250	250
Roof Coatings	250	250
Rust Preventative Coatings	400	250
‘Shellacs’		
• Clear	730	550
• Opaque	730	550
Specialty Primers, Sealers, and Undercoaters	350	100
Stains	250	250
Stone Consolidant	N/A	450
Swimming Pool Coatings	340	340
Swimming Pool Repair and Maintenance Coatings	340	N/A
Temperature-Indicator Safety Coatings	550	N/A
Thermoplastic Rubber Coatings and Mastics	550	550
Traffic Marking Coatings	150	100
Tub and Tile Refinish	N/A	420
Waterproofing Membranes	N/A	250
Waterproofing Sealers	250	N/A
Waterproofing Concrete/Masonry Sealers	400	N/A



Coating Category	VOC Content Limit (grams per liter) Effective Until December 31, 2020	VOC Content Limit (grams per liter) Effective January 1, 2021
Wood Coatings	N/A	275
Wood Preservatives	350	350
Zinc-Rich Primer	N/A	340

The most restrictive limit subdivision 205.3(b) was updated and subdivision 205.3(c) was added to reflect the new and removed categories.

Changes to Section 205.4, Container labeling requirements: The labeling requirements were updated to reflect the new and removed categories.

Changes to Section 205.5, Reporting requirements: The existing language was removed and replaced with language requiring manufacturers to preserve and provide certain information upon the request of the Director. The information proposed for retention includes facility information and product information to be maintained by a responsible official for a minimum of three years.

Changes to Section 205.6, Compliance provisions and test methods: The Department is adding the following text to subdivision 205.6(a); "If the manufacturer does not recommend thinning, the VOC Content must be calculated for the product as supplied. If the manufacturer recommends thinning, the VOC Content must be calculated including the maximum amount of thinning solvent recommended by the manufacturer. If the coating is a multi-component product, the container must display the VOC Content as mixed or catalyzed. If the coating contains silanes, siloxanes, or other ingredients that generate ethanol or other VOCs during the curing process, the VOC Content must include the VOCs emitted during curing."

In addition, new and updated test methods have been added.

Changes to Section 205.7, Limited exemption for small AIM coatings manufacturers: This Section has been removed.

Changes to Section 200.9 Referenced Material: This Section was updated to cite the changed and updated test methods referenced throughout Part 205.

**Final rule as compared with last published rule:** Nonsubstantive changes were made in sections 200.9, 205.1(b)(1), (2), (3), (4), 205.2(o)(1), (v), (ap), (be), (bf)(1), (bg)(1), (bt)(1), (bv), (cc)(3), (4), (ck)(2), 205.3(c), (h), 205.4(a) and 205.6(a).

**Text of rule and any required statements and analyses may be obtained from:** Ona Papageorgiou, Department of Environmental Conservation, Division of Air Resources, 625 Broadway, Albany, NY 12233-3251, (518) 402-8396, email: air.regs@dec.ny.gov

**Additional matter required by statute:** Pursuant to Article 8 of the State Environmental Quality Review Act, a Short Environmental Assessment Form, a Negative Declaration and a Coastal Assessment Form have been prepared and are on file.

**Summary of Revised Regulatory Impact Statement**

**INTRODUCTION**

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to lower volatile organic compound (VOC) emissions by lowering VOC limits for some coating categories. DEC will be required to incorporate the revisions to Part 205 and the attendant revisions to Part 200 into New York's State Implementation Plan (SIP), and provide the revised SIP to the Environmental Protection Agency (EPA) for review and approval.

**STATUTORY AUTHORITY**

The statutory authority for the promulgation of 6 NYCRR Part 205 and the attendant revision to 6 NYCRR Part 200 is found in the New York State Environmental Conservation Law (ECL), Sections 1-0101, 3-0301, 3-0303, 19-0103, 19-0105, 19-0107, 19-0301, 19-0302, 19-0303, 19-0305, 71-2103, and 71-2105.

**LEGISLATIVE OBJECTIVES**

Article 19 of the ECL was enacted to safeguard the air resources of New York from pollution and ensure protection of the public health and welfare, the natural resources of the state, and physical property by integrating industrial development with sound environmental practices.

**NEEDS AND BENEFITS**

New York faces a significant public health challenge from ground-level ozone which causes health effects ranging from respiratory disease to death. In response to this public health concern, New York has enacted a series of regulations designed to control ozone and its chemical precursors,

including VOCs. In the course of establishing this regulatory framework, New York has promulgated regulations under 6 NYCRR Part 205 to limit the VOCs emitted from AIM coatings.

The Environmental Protection Agency (EPA) set the 8-hour ozone national ambient air quality standards (NAAQS) level at 0.075 parts per million (ppm) in 2008. In 2015, EPA reduced the 8-hour ozone NAAQS to a level of 0.070 ppm. Areas in New York are currently designated as nonattainment for the 2008 and 2015 ozone NAAQS.

Pursuant to the Clean Air Act, New York State is required to develop and implement enforceable strategies that will bring the entire state into attainment for the 2008 and 2015 8-hour ozone NAAQS. DEC is proposing to revise Part 205 to get further VOC reductions necessary to achieve compliance with the 2008 and 2015 ozone NAAQS.

The OTC estimated that the OTC Region's specific percent reductions in the architectural and industrial maintenance coating sector resulting from implementation of the rule are as follows<sup>1</sup>:

Coating Category	Percent VOC reduction
Flat, Non Flat	32.4
Traffic Markings	9.7
Industrial Maintenance	38
Other Specialty Coatings	34.3
Overall AIM Coating Reduction	33.7

Applying these categorical reductions to New York, DEC estimates the rule revisions will achieve VOC mass reductions of approximately 16 tons per day (TPD).

**Summary of the proposed rule**

DEC is revising Part 205 consistent with a model rule developed by the Ozone Transport Commission (OTC) in 2011. Key provisions of this proposal include:

- Eliminating 15 coating categories and sub-categories
- Adding 12 new coating categories
- Lowering VOC limits on 12 coating categories
- Broadening the scope of DEC's data collecting authority
- Adding transitional language
- Updating definitions and codes (revise section 200.9)
- Eliminating the quart exemption for floor coatings and including anti-bundling language (not included in the model rule)

Brief discussions of the DEC's proposed revisions to Part 205 are presented below.

**Eliminate 15 coating categories and sub-categories**

The coating categories proposed for elimination with the coating category it is proposed to be absorbed by:

Eliminated Category	Absorbed By
Antenna Coatings (530 grams per liter (g/l))	Industrial Maintenance (250 g/l)
Antifouling Coatings (400 g/l)	Industrial Maintenance (250 g/l)
Clear Wood Coatings	
• Clear Brushing Lacquers (680 g/l)	
• Lacquers (550 g/l)	Wood Coatings (275 g/l)
• Sanding Sealers (350 g/l)	
• Varnishes (350 g/l)	
Fire Retardant Coatings	
• Clear (650 g/l)	Industrial Maintenance (250 g/l)
• Opaque (350 g/l)	
Flow Coatings (420 g/l)	Industrial Maintenance (250 g/l)
Quick Dry Enamels (250 g/l)	Flat (50 g/l) or Nonflat (100 g/l) or Nonflat High Gloss (150 g/l)
Quick Dry Primers, Sealers & Undercoaters (200 g/l)	Specialty Primers, Sealers & Undercoaters (100 g/l)
Swimming Pool Repair & Maintenance Coatings (340 g/l)	Swimming Pool Coatings (340 g/l)
Temperature Indicator Coatings (550 g/l)	Industrial Maintenance (250 g/l)
	Concrete/Masonry Sealers (100 g/l) or

Eliminated Category	Absorbed By
Waterproofing Sealers (250 g/l)	Waterproofing Membranes (250 g/l) Basement Specialty Coatings (400 g/l) or
Waterproofing Concrete/Masonry Sealers (400 g/l)	Concrete/Masonry Sealers (100 g/l) or Waterproofing Membranes (250 g/l)

Add 12 new coating categories  
The coating categories proposed for addition are:

New Category	Limit (g/l)
Aluminum Roof	450
Basement Specialty Coatings	400
Concrete/Masonry Sealer	100
Conjugated Oil Varnish	450
Driveway Sealer	50
Reactive Penetrating Sealer	350
Reactive Penetrating Carbonate Stone Sealer	500
Stone Consolidants	450
Tub and Tile Refinish	420
Waterproofing Membranes	250
Wood Coatings	275
Zinc-Rich Primer	340

Lower VOC limits on 12 coating categories  
The coating categories proposed for lowered VOC limits are:

Category	Limit lowered (g/l)
Bituminous Roof Coatings	From 300 to 270
Dry Fog Coatings	From 400 to 150
Flat Coatings	From 100 to 50
Floor Coatings	From 250 to 100
Industrial Maintenance	From 340 to 250
Mastic Texture Coatings	From 300 to 100
Nonflat Coatings	From 150 to 100
Nonflat-High Gloss	From 250 to 150
Primers, Sealers & Undercoaters	From 200 to 100
Rust Preventative	From 400 to 250
Specialty Primers, Sealers & Undercoaters	From 350 to 100
Traffic Marking	From 150 to 100

Add transitional language

At the request of stakeholders, DEC is revising sections 205.2 and 205.3 by adding transitional language to clarify definitions, including those related to the new coating categories, and explicitly identifying when certain categories will be phased out and new ones phased in under the revised rule.

Update definitions and codes as necessary

DEC is revising Section 205.2, "Definitions", to clarify and update specific definitions that are currently unclear or require updating to reflect the other program changes.

DEC is also revising subdivision 205.3(b), which is the "most restrictive VOC limit" provision of the rule to address the new and eliminated coating categories.

Section 205.6 will be updated to reflect the most up-to-date ASTM publications. As a result of these updates, Section 200.9 will also be updated.

Eliminate the quart exemption

Currently, Part 205 does not regulate coatings sold in containers with a volume of one liter (1.057 quart) or less. Manufacturers and suppliers could circumvent Part 205 by selling the coatings in bundles of quart containers inside a larger pail; a practice informally known as "bundling". Once sold,

contractors could empty the quart containers into the larger container and then apply the high VOC product. This results in greater than anticipated VOC emissions. To address this issue, the DEC originally proposed to eliminate the language of Part 205 exempting quart containers which is not consistent with the OTC AIM Model Rule. During the public comment period, DEC received many comments opposing the full elimination of the quart exemption. Commenters indicated that some coatings are minimally used for touch-up or other applications that rely on the quart exemption. The primary coating which DEC had received complaint about was floor coatings. As a result of public comments and review of certain product applications, DEC has revised the proposed rule to allow for the quart exemption except for floor coatings. The revision also includes language to prevent the sale of "bundling" of quart containers intended to be combined and applied, called "anti-bundling" language.

Broaden the scope of DEC's data collection authority

DEC is broadening the scope of its authority to collect information pursuant to the reporting requirements in Section 205.5 of the rule. This revision allows DEC to request more information than under the existing rule and gives manufacturers additional time to respond. Currently, DEC cannot request information on products manufactured for use outside of the state (which could then be sold back into the state) or sold in the state in containers of one liter or less. In the past, some manufacturers have voluntarily provided this information when requested, but others have not. The collection of this information is important in developing emission inventories and enforcing the rule.

COSTS

In 2007, CARB implemented the VOC limits being proposed in the revisions to Part 205. CARB conducted a thorough study of affected businesses to determine control costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected.

PAPERWORK

The proposed changes to Part 205 broaden the scope of DEC's authority to collect information. Specifically, Section 205.5 requires that manufacturers keep specified data on file for three years. If DEC requests this information, the manufacturer's responsible official shall provide this information within 180 days of the written request.

LOCAL GOVERNMENT MANDATES

No recordkeeping, reporting, or other requirements will be imposed on local governments. The authority and responsibility for implementing and administering Part 205 resides solely with DEC. Requirements for record keeping, reporting, etc. are applicable only to the person(s) who manufactures, sells, supplies, or offers AIM coatings for sale.

DUPLICATION

The revisions to Part 205 regulate all of the architectural and industrial maintenance coatings regulated by the federal government under 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Architectural Coatings. The federal rule was developed in 1998 and has not been revised since. The AIM coating sector has seen many technological advancements since 1998, and as a result, manufacturers have been able to formulate quality coatings with lower VOC content.

While the definitions in Part 205 are somewhat different than that in the federal rule, the VOC limits within Part 205 are at least as stringent, and more often more stringent, than those set in the federal rule. Part 205 contains all coatings listed in the federal rule. Therefore, with the exception of coatings that contain post consumer recycled content, a manufacturer need only comply with the limits in Part 205 to be in compliance with the architectural coatings VOC content limits for the New York State and the federal rule.

ALTERNATIVES

The following alternatives have been evaluated to address the goals set forth above:

1. No action taken;
2. Revising paragraph 205.1(b)(3); and
3. Removing paragraphs 205.3(b)(1)-(19).

FEDERAL STANDARDS

Both the current version of Part 205 (2003) and this proposed rule are more stringent than the current federal AIM coatings standard, 40 CFR Part 59, National Volatile Organic Compound Emission Standards for Architectural Coatings. The federal standard became effective in 1998 and AIM

coating technology has advanced to allow for quality products formulated with lower VOCs. The New York Metropolitan Area continues to be designated non-attainment for ozone and as a result, additional VOC emission reductions need to be achieved.

#### COMPLIANCE SCHEDULE

The proposed compliance date for the sale of products is January 1, 2021. The sell-through provision allows for product manufactured before January 1, 2021 to be sold through May 1, 2023.

<sup>1</sup> “Model Regulations for Nitrogen Oxides (NOx) and Photo-reactive Volatile Organic Compounds (VOCs) Technical Support Document” (Revised August, 2016)

#### Revised Regulatory Flexibility Analysis

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, “Architectural and Industrial Maintenance (AIM) Coatings,” and Part 200, “General Provisions” (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### EFFECT OF RULE

Local governments are not expected to be directly affected by the proposed revisions to Part 205. The revisions to Part 205 may require small businesses to reformulate coatings to bring them into compliance with the new VOC limits as well as label accordingly. Small businesses may not have the level of research and development staff available as larger businesses, so this rulemaking may have a greater impact on small businesses. Since 2010, DEC staff have communicated with small businesses as well as coatings associations to prepare businesses for the proposed changes. According to the U.S. Census Bureau, County Business Patterns Report for 2015 show that New York State had 88 paint manufacturing facilities, of which, at least two were small businesses or manufacturers.

#### COMPLIANCE REQUIREMENTS

Local governments are not expected to be directly affected by the proposed revisions to Part 205. Small businesses that manufacture AIM coatings will need to comply with the proposed VOC content limits of Part 205. In addition, these small businesses will need to comply with the labeling requirements of Part 205 which requires manufactures to display specific information on the coating container or label. The label information required include:

- the date the coating was manufactured or the date code representing the date of manufacture

- the manufacturer’s recommendations for thinning of the coating
- the maximum or actual VOC content of the coating

There are additional labeling requirements or specific instructions for:

- industrial maintenance coatings
- clear brushing lacquers
- faux finishing coatings
- rust preventive coatings
- quick dry enamels
- non-flat high gloss coatings
- specialty primers, sealers, and undercoaters
- quick dry enamels
- reactive penetrating sealers
- reactive penetrating carbonate stone sealers
- stone consolidants
- wood coatings
- zinc rich primers

Small businesses which manufacture AIM coatings will be expected to comply with the reporting requirements of Part 205. The proposed changes to Part 205 broaden the scope of the DEC’s authority to collect information. Specifically, Section 205.5 requires that manufacturers keep the following data on file for three years:

- (1) name and mailing address of the manufacturer;
- (2) name, address and telephone number of a contact person;
- (3) name of the coating product as it appears on the label and the application coating category;
- (4) whether the product is marketed for interior or exterior use or both;
- (5) number of gallons sold in New York State in containers greater than one liter (1.057 quart) and equal to or less than one liter (1.057 quart);
- (6) VOC Actual content and the VOC Regulatory content in grams per liter;
- (7) names and chemical abstract service (CAS) numbers of the VOC constituents of the product;
- (8) names and CAS numbers of any compound in the product specifically exempted from the VOC definition, as listed in subdivisions 205.2 (cg) and (ch);

- (9) whether the product is marketed as solventborne, waterborne, or 100 percent solids;

- (10) description of resin or binder in the product;

- (11) whether the coating is a single-component or multi-component product;

- (12) density of the product in pounds per gallon;

- (13) percent of weight of solids, all volatile materials, water, and any compounds in the product specifically exempted from the VOC definition, as listed in subdivisions 205.2 (cg) and (ch); and

- (14) percent by volume of solids, water and any compounds in the product specifically exempted from the VOC definition, as listed in subdivisions 205.2 (cg) and (ch).

If requested, the manufacturer would be required to provide this information to the DEC within 180 days.

#### PROFESSIONAL SERVICES

The Department does not anticipate that small businesses that manufacture AIM coatings will need professional services to comply with the proposed revisions to Part 205. However, if a business does not want to reformulate in-house, they may choose to purchase a formulation outside of their business.

#### COMPLIANCE COSTS

The proposed revisions to Part 205 closely match the California Air Resources Board (CARB) 2007 Suggested Control Measure (SCM) for AIM coatings. CARB performed a cost analysis as part of the development of its SCM AIM report in 2007. Because the proposed revisions match so closely with CARB’s measures, DEC utilized CARB’s cost analysis for the purpose of estimating compliance costs for this rule making.

CARB conducted a thorough study of affected businesses to determine control costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner’s return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected. DEC staff note that these costs were estimated in 2007 and that formulations and research have improved. Staff have concluded that compliance costs should be lower as a result of these improvements. While the 2007 CARB report stated that there may be an impact on the smallest operations research and formulations experience since then should minimize this impact.

#### ECONOMIC AND TECHNOLOGICAL FEASIBILITY

Local governments are not expected to be directly affected by the proposed revisions to Part 205. The limits and requirements proposed in the revisions to Part 205 are technically feasible as they have been in effect in California since 2008. In addition, the coating categories which are not listed under the CARB rule were requested by industry stakeholders who also offered technically feasible limits associated with each category. DEC staff did not conduct independent cost analysis, rather depended on the CARB 2007 analysis to assess the economic feasibility. The CARB cost information does include information supplied by manufacturers who market AIM coatings nationally and therefore extend to New York State. In their 2007 SCM, CARB determined that most manufacturers or marketers of AIM coatings would absorb the cost of the proposed changes with no significant impacts on profitability. Nevertheless, to help minimize the potential impact on small businesses, the proposed changes to Part 205 include a sell through provision. This provision allows manufacturers to sell products compliant with the current standard (and manufactured prior to January 1, 2021) through May 1, 2023, two years and four months after the compliance date of the proposed rule and over three years after the promulgation of the rule.

#### MINIMIZING ADVERSE IMPACT

Local governments are not expected to be directly affected by the proposed revisions to Part 205. In recognition of the potential for adverse impacts on small businesses, DEC staff led a stakeholder process with manufacturers and coatings associations, including a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. DEC staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014.

The proposed VOC limits have been in effect in California since 2008 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including small businesses, have

had ample time to research, prepare and implement re-formulation strategies.

#### SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION

As stated above, local governments are not expected to be directly affected by the proposed revisions to Part 205. In recognition of the potential adverse impacts on small businesses, DEC staff met with many stakeholders, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. DEC staff also gave presentations at ACA and MNYCA meetings and provided educational outreach on the proposed rule. These outreach efforts, including meetings and communications with DEC staff, have been ongoing since 2012. This regulation was subject to public notice and comment in accordance with the State Administrative Procedures Act.

#### CURE PERIOD OR AMELIORATIVE ACTION

No additional cure period or other opportunity for ameliorative action is included in the revisions to Part 205. This proposal will not result in immediate violations or impositions of penalties for existing facilities. To help reduce impacts on affected sources, the revisions to Part 205 will not become effective immediately after promulgation and offers a sell-through provision.

#### INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

#### Revised Rural Area Flexibility Analysis

The Department of Environmental Conservation (DEC) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### TYPES AND ESTIMATED NUMBERS OF RURAL AREAS

The last survey conducted by DEC in 2005 resulted in a list of 121 manufacturers associated with coatings throughout New York State. The U.S. Census Bureau, County Business Patterns Report for 2015 shows that New York State had 88 paint manufacturing facilities. Part 205 will apply to manufacturers, sellers and advertisers statewide and, as a result, stores which sell AIM coatings in rural areas will be subject to the revised rule. The proposed revisions will not impact rural areas differently since the rule is applicable statewide.

#### REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES

On January 1, 2021, the new Part 205 VOC limits will apply to manufacturers, sellers and advertisers of AIM coatings. Manufacturers will be required to formulate and label coatings in compliance with the revisions to Part 205. Retailers and advertisers will be required to sell and advertise compliant coatings.

#### COSTS

In 2007, CARB implemented the VOC limits proposed in the revisions to Part 205 and conducted a thorough study of affected businesses to determine compliance costs that would be incurred. CARB estimated a per-limit cost-effectiveness ranging from a net savings to \$13.90 per pound of VOC reduced, with an overall cost-effectiveness of \$1.12 per pound of VOC reduced (in 2007 dollars). These values were based upon the assumption that companies will absorb all costs (i.e. none were passed down to consumers) and may therefore be slightly inflated. CARB computed an average 2.1 percent decline in return on owner's return on equity (ROE - calculated by dividing net profit by net worth), and used this to gauge economic impact. In its analysis, CARB concluded that the lower VOC limits should not significantly impact the profitability of most businesses, although it may have an impact on the smallest operations. Overall, business profitability and job opportunities would not be significantly affected. DEC staff note that these costs were estimated in 2007 and that formulations and research have improved. Staff concluded that compliance costs should be lower as a result of these improvements. Costs associated with the proposed revisions to Part 205 are not expected to be greater in rural areas.

#### MINIMIZING ADVERSE IMPACT

The revisions to Part 205 have statewide applicability and do not specifically affect rural areas. DEC conducted a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. DEC staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014. Outreach with individual manufacturers and interested parties was also conducted.

The proposed VOC limits have been in effect in California since 2008 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including those located in rural areas of the state, have had ample time to research, prepare and implement reformulation strategies.

#### RURAL AREA PARTICIPATION

The revisions to Part 205 have statewide applicability and do not specifically affect rural areas. As stated above, DEC staff met with many stakeholders, including national and local associations and manufacturers, and have given stakeholders several opportunities to participate in the development of the proposed rule. DEC staff also gave public presentations at ACA and MNYCA meetings, providing educational outreach on the proposed rule. These outreach efforts, including meetings and communications with DEC staff, have been ongoing since 2012. This regulation was subject to public notice and comment in accordance with the State Administrative Procedures Act.

#### INITIAL REVIEW

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

#### Revised Job Impact Statement

The Department of Environmental Conservation (Department) proposes to adopt revisions to 6 NYCRR Part 205, "Architectural and Industrial Maintenance (AIM) Coatings," and Part 200, "General Provisions" (collectively, Part 205). AIM coatings, such as paint, are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. The purpose of this rulemaking is to reduce emissions from AIM coatings by reducing the volatile organic compound (VOC) content limits for some coating categories.

#### NATURE OF IMPACT

Part 205 may impact jobs and employment opportunities with manufacturers producing AIM coatings in New York State. The regulation, as proposed, will require lowered VOC limits which would likely require reformulation of any products which do not meet the new limits. The time and expertise required to reformulate AIM coatings may result in increased employment for consultation and testing. However, reformulation guidance has been made available through the American Coatings Association (ACA) and through raw material chemical distributors so the increase may be limited. Additionally, some manufactures may already be producing AIM coatings that are compliant due to requirements in other states that have adopted the model rule. In those cases, there may be little to no job or employment impacts, especially where consultation and testing has already been conducted and job assignments redirected.

The impact on the Department consists of time for rulemaking development and outreach. Department enforcement staff will continue to conduct enforcement activities to ensure compliance with the current Part 205, and the revised rule is not expected to require additional staff time to implement the rule.

#### CATEGORIES AND NUMBERS AFFECTED

Changes to Part 205 may impact coating and raw material manufacturers, distributors and stores that sell coatings. This would include companies that sell or manufacture coatings for New York State sales. In the last New York State survey in 2005 it was estimated that over 75 million gallons of AIM coatings were sold in New York State.

The revisions to Part 205 may lead to increased time and expertise spent reformulating impacted coating categories. Manufacturers that sell into California, Utah, Maryland and Delaware have already reformulated their coatings, so those companies should not be impacted. Those companies which need to reformulate will either need to spend more in house resources for reformulation or will need to hire outside help to reformulate.

#### REGIONS OF ADVERSE IMPACT

The paint and coatings industry sector which is impacted by this rule are distributed throughout the state. Manufacturers may be found both upstate and in the New York City metropolitan area. Since this is a statewide rulemaking, the Department does not expect it to have any region-specific adverse impacts.

#### MINIMIZING ADVERSE IMPACT

To minimize any adverse impacts Department staff conducted a stakeholder process with national and local manufacturers and coatings associations on May 12, 2010 in association with the Ozone Transport Commission. Department staff also attended several coatings conferences and meetings with manufacturers, including the American Coatings Association (ACA) on May 14, 2013 and, the Metropolitan New York Coatings Association (MNYCA) on June 12, 2014.

The proposed VOC limits have been in effect in California since 2008 and products with these lower limits have already been available and sold in the marketplace. All manufacturers, including small businesses, have had ample time to research, prepare and implement re-formulation strategies.

#### SELF-EMPLOYMENT OPPORTUNITIES

The adoption of revised Part 205 is not expected to result in negative impacts to self-employment opportunities.

**INITIAL REVIEW**

The initial review of this rule shall occur no later than in the third calendar year after the year in which the rule is adopted.

**Initial Review of Rule**

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

**Assessment of Public Comment**

A total of 56 distinct comments were submitted by the public in response to the Department's proposed revisions to the regulation for Architectural and Industrial Maintenance (AIM) Coatings (Part 205). This summary highlights key issues raised by the public and the Department's response to those comments.

**1. General Comments**

The Department received general comments in support of the regulation and responded by thanking those commenters for their support in lowering volatile organic compound (VOC) emissions from architectural and industrial maintenance coatings.

**2. Public Health Concerns**

The Department received several comments raising health-related concerns regarding one or more AIM categories. The health-related comments were primarily focused on floor coating products. The Department responded stating that New York State currently has nonattainment areas for ozone which has been shown to result in respiratory issues. The Department's intention in revising Part 205 is to lower the VOC content from AIM coatings resulting in reduced emissions of VOCs to address the creation of ozone across the state. Some commenters health concerns were focused on indoor air quality and while the intention of this regulation is to reduce ambient ozone concentrations, the Department understands that by lowering the VOCs and by eliminating some exemptions that an additional benefit from the regulation may be improved indoor air quality.

**3. Two-Year Sell Through**

The majority of comments received by the Department were regarding the two-year sell through and the quart exemption. Commenters stated that a two-year sell through did not allow enough time to get products off the shelves. The Department also received a few comments asking for no sell-through provision. After review of the comments in this category, the Department revised subdivision 205.3(h) to allow the sell-through of products through May 1, 2023. This will allow for the sell-through of product for two years and four months from the compliance date of January 1, 2021 for the revised VOC limits, which is over three years from the date of promulgation of this regulation.

**4. Elimination of the Quart Exemption**

The majority of comments in this category were opposed to eliminating the quart exemption. Commenters stated that it was not feasible and did not take into consideration the harsh winter weather New York State experiences. Some commenters discussed specific products associated with the arts or other industries which relied on the exemption. Some commenters stated that removal of the exemption would result in patchy surfaces and increased corrosion.

In response to comments the Department explained that the proposal was intended to address the practice of bundling and the potential for circumvention of the VOC limits. While many products are, in fact, used in small quantities, floor coatings are typically used in large quantities and therefore have the greatest potential to circumvent the VOC limits by bundling quarts. As stated on page 17 of the RIS, the Department considered the elimination of the quart exemption for floor coatings only, as an alternative to the full elimination of the exemption. The Department received the most complaints about floor coatings, and no comments indicated this category was needed in small containers.

Based on the Department's consideration of the comments, including those in favor of retaining the exemption for certain products and the reported misuse of quarts focused on floor coatings, the Department revised the proposed regulation to retain the quart exemption in subdivision 205.1(b) while eliminating the exemption for floor coatings only. The Department also revised the language of subdivision 205.1(b) to clarify the prohibition against the practice of bundling of quart containers intended to be combined and applied.

**5. Compliance Schedule**

A commenter stated that the new standards should take effect on January 1, 2020. The Department responded that it has determined that suppliers, sellers and manufacturers will need the time after the promulgation of this regulation to plan and prepare for the new standards. While the Department would like to see the environmental benefits of VOC reductions as soon as practicable, the effective date of January 1, 2021 is reasonable based on the comments received.

**6. VOC Limits**

Some commenters suggested different methods in reducing VOC emissions such as an overall ten percent reduction. In addition, some comment-

ers stated that the VOC limits may be difficult to attain. The Department responded that the lower VOC content limits are the best method for reducing VOC emissions while allowing manufacturers to develop a consistent product across regions. The VOC content limits in the regulation are appropriate and necessary to lower VOC emissions in New York from these products. Further, the proposed VOC content limits have been in effect in California since 2008, Maryland (2016), Delaware (2017) and Utah (2019). The technology to manufacture coatings that meet the new limits is currently available and has been available for years. Furthermore, DEC has worked with stakeholders for several years to discuss the proposed limits. The new VOC limits are consistent with the OTC model rule.

**7. Cost of Compliance**

A commenter stated that cost was not adequately assessed for the removal of the quart exemption. The Department responded that stakeholders have anecdotally indicated that products sold in quart containers are not used often and when used, they are used sparingly. In addition, the Department has received complaints about quart containers being used in large quantities which circumvents the reasoning behind the regulation, which is improved air quality and attaining the national ambient air quality standard for ozone. Since the proposed lower standards have been effective in California since 2008, manufacturers have had the time to develop and sell compliant product. Based on the Department's consideration of the comments, including those in favor of retaining the exemption for certain products and the reported misuse of quarts focused on floor coatings, the Department has revised the regulation to retain the quart exemption in subdivision 205.1(b) while eliminating the exemption for floor coatings only. The Department also revised the language of subdivision 205.1(b) to clarify the prohibition against the practice of bundling of quart containers intended to be combined and applied.

## PROPOSED RULE MAKING HEARING(S) SCHEDULED

### Certain Substances That Contain Hydrofluorocarbons, Highly-Potent Greenhouse Gases

I.D. No. ENV-53-19-00016-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

**Proposed Action:** Addition of Part 494 to Title 6 NYCRR.

**Statutory authority:** Environmental Conservation Law, sections 1-0101, 1-0303, 3-0301, 19-0103, 19-0105, 19-0107, 19-0301, 19-0303, 19-0305, 71-2103 and 71-2105

**Subject:** Certain substances that contain hydrofluorocarbons, highly-potent greenhouse gases.

**Purpose:** Remove greenhouse gas emission sources that endanger public health and the environment.

**Public hearing(s) will be held at:** 12:30 p.m., March 4, 2020 at Department of Environmental Conservation, Public Assembly Rm. 129A/B, 625 Broadway, Albany, NY; 12:30 p.m., March 6, 2020 at Henrietta Public Library, Community Rm., 625 Calkins Rd., Rochester, NY; 12:30 p.m., March 9, 2020 at Department of Environmental Conservation, Region 2 Office, 8th Fl., Rm. 834A/834B, 47-40 21st St., Long Island City, NY.

**Interpreter Service:** Interpreter services will be made available to hearing impaired persons, at no charge, upon written request submitted within reasonable time prior to the scheduled public hearing. The written request must be addressed to the agency representative designated in the paragraph below.

**Accessibility:** All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

**Substance of proposed rule (Full text is posted at the following State website: <https://www.dec.ny.gov/regulations/propregulations.html>):** Part 494, Hydrofluorocarbon Standards And Reporting

The Department of Environmental Conservation (Department) proposes to create a new 6 NYCRR Part 494, Hydrofluorocarbon Standards and Reporting, adopting regulatory provisions previously promulgated by the United States Environmental Protection Agency (EPA), which were partially vacated in 2017. This proposal would prohibit certain hydrofluorocarbon substances in the specific end-uses identified by the EPA as having safe and available alternatives. The proposal would also require that certain manufacturers include a written disclosure statement and maintain specific records.

**Section 494.1 Purpose**

This section provides the purpose of the rulemaking, which includes mitigation of greenhouse gas pollution.

**Section 494.2 Applicability**