RULES AND REGULATIONS

Title 25—ENVIRONMENTAL PROTECTION

ENVIRONMENTAL QUALITY BOARD

[25 PA. CODE CH. 93]

Stream Redesignations (Hay Creek, et al.)

The Environmental Quality Board (Board) by this order amends §§ 93.9f and 93.9t (relating to Drainage List F; and Drainage List T) to read as set forth in Annex A.

This order was adopted by the Board at its meeting of September 21, 1999.

A. *Effective Date*

These amendments are effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Edward R. Brezina, Chief, Division of Water Quality Assessment and Standards, Bureau of Watershed Conservation, 10th Floor, Rachel Carson State Office Building, P. O. Box 8555, 400 Market Street, Harrisburg, PA 17105-8555, (717) 787-9637 or William J. Gerlach, Assistant Counsel, Bureau of Regulatory Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling (800) 654-5984 (TDD users) or (800) 654-5988 (voice users). This final rulemaking is available electronically through the Department of Environmental Protection's (Department) Web site (http://www.dep.state.pa.us).

C. *Statutory and Regulatory Authority*

This final rulemaking is being made under the authority of the following acts: sections 5(b)(1) and 402 of The Clean Streams Law (35 P. S. §§ 691.5(b)(1) and 691.402) and section 1920-A of The Administrative Code of 1929 (71 P. S. § 510-20), which grant to the Board the authority to develop and adopt rules and regulations to implement the provisions of The Clean Streams Law (35 P. S. §§ 691.1—691.1001). In addition, the Federal regulation at 40 CFR 131.32 (relating to Pennsylvania) sets forth certain requirements for portions of the Commonwealth's antidegradation program.

D. *Background of the Amendments*

The Commonwealth's water quality standards, which are set forth in part in Chapter 93 (relating to water quality standards), implement sections 5 and 402 of The Clean Streams Law and section 303 of the Federal Clean Water Act (33 U.S.C.A. § 1313). Water quality standards are in-stream water quality goals that are implemented by imposing specific regulatory requirements (such as treatment requirements and effluent limits) on individual sources of pollution.

The Department considers candidates for Special Protection status or redesignation in its ongoing review of water quality standards. In general, Special Protection waters (High Quality (HQ) and Exceptional Value (EV) waters) shall be maintained at their existing quality, and wastewater treatment requirements shall comply with § 95.1 (relating to general requirements). Candidates may be identified by the Department based on routine waterbody investigations. Requests for consideration may also be initiated by other agencies, such as the Fish and Boat Commission (FBC), and by the general public through a rulemaking petition to the Board.

The Department evaluated the following streams in response to requests from Department and FBC staff:

Sugarcamp Run, Hay Creek and South Fork Little Conemaugh River: Department of Environmental Protection

Mill and Little Mill Creeks, Sandy Run, and Bens Creek: FBC

The physical, chemical and biological characteristics and other information on these waterbodies were evaluated to determine the appropriateness of the current designations. Aquatic surveys of these streams were conducted by the Department's Bureau of Watershed Conservation. In reviewing whether waterbodies are subject to the Special Protection Waters Programs the Department utilizes applicable regulatory criteria and definitions. Based upon the data collected in these surveys and information gathered from Department records and other sources, the Board has made the designations in Annex A.

Copies of the Department's stream evaluation reports for these waterbodies are available from Edward R. Brezina whose address and telephone number are listed in Section B of this Preamble.

E. *Summary of Comments and Responses on the Proposed Rulemaking*

The Board approved the proposed rulemaking on June 17, 1997. The proposal was published at 27 Pa.B. 4094 (August 16, 1997) with provision for a 45-day public comment period.

The Board received a total of 130 comments on this proposed rulemaking. These comments were primarily concerned with the proposed redesignation of Hay Creek. In addition, some of the commentators, including the Independent Regulatory Review Commission (IRRC) provided general comments on the special protection waters program.

The following is a summary of the comments by IRRC and the public. The House and Senate Environmental Resources and Energy Committees did not provide comments on the proposed rulemaking.

A total of 124 of the 130 public comments were in support of the proposed redesignation of Hay Creek. These comments were provided by the general public, local and county governments, and environmental or sportsman's groups.

Four commentators questioned the scientific validity of the biological test used in recommending much of the Hay Creek basin for EV Waters designation and noted that some stations did not meet the 92% comparison to a reference station needed to qualify for EV. The Department believes that the recommended redesignation of Hay Creek is the result of a scientific evaluation including comparison of the aquatic community to that found in a reference stream that is designated EV Waters. Four of the five biological sampling stations on the main stem of Hay Creek scored greater than 92% of the EV reference stations used for the ecological significance evaluation, and thus qualify for EV protection. There was a short

reach of stream that did not attain a metrics score which would qualify it as EV. It appeared that although water chemistry was adequate, suboptimal habitat conditions in this short segment affected the macroinvertebrate community and prevented it from attaining the necessary metrics score. This segment is not recommended for redesignation except to add the Migratory Fishes (MF) use designation.

Two commentators stated that the proposed EV designation was based in part on the presence of a threatened species in a very limited portion of the watershed. The original report did cite the presence of bog bluegrass as meeting one of the special protection waters selection criteria and used that presence as part of the justification for recommending a portion of the Hay Creek basin for EV designation. The revisions to the Commonwealth's antidegradation regulations, adopted by the Board on May 19, 1999, and published at 29 Pa.B. 3720 (July 17, 1999) do not include the presence of threatened and endangered species as a criterion for recommending a water body for inclusion in the special protection waters program. The use of this criterion as a basis for the recommended redesignation has been removed from the evaluation report.

One commentator felt the proposed redesignation was an attempt to block the efforts of a landowner and private corporation to develop within the Hay Creek basin and that the author of this proposal was opposed to the Haines and Kibblehouse development. The Department does not inquire into the motivation of those requesting redesignation of a surface water. A stream is evaluated under the same protocols regardless of the reasons for a redesignation request. The evaluation of Hay Creek was conducted following established Department protocols.

IRRC commented that the selection criteria found in the *Special Protection Waters Implementation Handbook* are only guidance and stated that references to these criteria lack clarity because they are not in regulation and the references in the Handbook are not clearly linked to the criteria in the regulation. They also noted that the definition of EV in Chapter 93 requires the stream to be an outstanding resource and goes on to describe several examples including waters of substantial recreational or ecological significance. Further, they commented that the benthic macroinvertebrate comparisons do not appear to directly relate to the criterion of establishing the stream as an outstanding resource as required by the regulation. The Department notes that the biological tests have been specifically incorporated into the revised antidegradation regulations in § 93.4b(a)(2) and (b)(1)(v) (relating to qualifying as High Quality or Exceptional Value Waters). Candidate waters are compared to a reference stream or watershed and must attain an integrated benthic macroinvertebrate score of at least 83% of the reference stream or watershed to qualify for HQ Waters protection. To attain EV protection under the biological test, the candidate must qualify for HQ designation and achieve a score of at least 92% of the reference.

These regulatory changes allow wastewater treatment requirements for dischargers to these streams to be consistent with the water uses to be protected. These regulatory amendments do not contain standards or requirements which exceed requirements of the companion Federal regulations.

F. *Summary of Changes to the Proposed Rulemaking*

One change from the proposed rulemaking is the removal of Pine Creek (Crawford and Warren Counties) from the package. During IRRC review of the revised antidegradation regulations, concern was expressed that some special protection candidate waters were compared to reference streams that are designated HQ Waters rather than EV Waters. Pine Creek was evaluated, in part, using HQ reference stations. The Department has removed Pine Creek from this package and will reevaluate it and submit its recommendations as proposed rulemaking in a future package.

The stream evaluation reports were revised as a result of the changes to the Commonwealth's antidegradation regulations. During this process, one of the recommendations for Hay Creek (Berks County) was changed. A majority of the Hay Creek basin had been recommended for redesignation to EV in the proposed rulemaking. One segment of Hay Creek which was proposed for EV protection is now recommended to retain its CWF designation with the addition of MF because it was determined to not attain a 92% biological metric score when compared to the reference station. This change affects the portion of the basin between Unnamed Tributary 63882 and Beaver Run.

The recommended designation for Sandy Run (Somerset County) was also changed from the proposed rulemaking. At the time the Sandy Run evaluation was conducted, the Department attempted to match the watershed drainage area of candidate and reference stations to the extent possible. Recent data and metrics evaluations have shown that this practice is not necessary. These evaluations indicate that stream order, stream gradient and alkalinity are the primary factors to consider when choosing a reference station. The biological metrics in the Sandy Run evaluation report were recalculated using one reference station, Blue Hole Creek. As a result of this reevaluation, the entire basin is now recommended to retain its High Quality-Cold Water Fishes (HQ-CWF) use designation.

During the report revisions, an inadvertent error was discovered in the recommended redesignation of Bens Creek (Cambria County). An unnamed tributary to Bens Creek (Stream Code 46100) should have been included with other streams/segments recommended to be redesignated from HQ-CWF to Cold Water Fishes (CWF) because of historic degradation by acid mine drainage. This error is corrected in the final rulemaking.

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost /benefit analysis of the amendments.

1. *Benefits*—Overall, the citizens of this Commonwealth will benefit from these recommended changes because they will reflect the appropriate designated use and maintain the most appropriate degree of protection for each stream in accordance with the existing use of the stream.

2. *Compliance Costs*—Generally, the changes should have no fiscal impact on, or create additional compliance costs for the Commonwealth or its political subdivisions. The streams recommended for redesignation are already protected at their existing use, and therefore the designated use change will have no impact on treatment requirements. No costs will be imposed directly upon local government by this recommendation. Political subdivisions that add a new sewage treatment plant or expand an existing plant in the basin may experience changes in cost as noted in the discussion of impacts on the private sector.

Persons conducting or proposing activities or projects that result in discharges to streams shall comply with the regulatory requirements relating to designated and existing uses. These persons could be adversely affected if they expand the discharge or add a new discharge point since they may need to provide a higher level of treatment for the new or expanded discharge to meet the designated and existing uses of the stream. These increased costs may take the form of higher engineering, construction or operating costs for wastewater treatment facilities. Treatment costs are site-specific and may depend upon the size of the discharge in relation to the size of the stream and many other factors. It is therefore not possible to precisely predict the actual change in costs. Economic impacts would primarily involve the potential for higher treatment costs for new or expanded discharges to streams which are upgraded, and potentially lower treatment costs for discharges to streams which are downgraded.

3. *Compliance Assistance Plan*—The regulatory revisions have been developed as part of an established program that has been implemented by the Department since the early 1980s. The revisions are consistent with and based on existing Department regulations. The revisions extend additional protection to selected waterbodies that exhibit exceptional water quality and are consistent with antidegradation requirements established by the Federal Clean Water Act and Pennsylvania Clean Streams Law. All surface waters in this Commonwealth are afforded a minimum level of protection through compliance with the water quality standards, which prevent pollution and protect existing water uses.

The amendments will be implemented through the National Pollutant Discharge Elimination System (NPDES) permitting program since the stream use designation is a major basis for determining allowable stream discharge effluent limitations. These permit conditions are established to assure water quality criteria are achieved and designated and existing uses are protected. New and expanded dischargers with water quality based effluent limitations are required to provide effluent treatment according to the water quality criteria associated with existing uses and revised designated water uses.

4. *Paperwork Requirements*—The regulatory revisions should have no direct paperwork impact on the Commonwealth, local governments and political subdivisions, or the private sector. These regulatory revisions are based on existing Department regulations and simply mirror the existing use protection that is already in place for these streams. There may be some indirect paperwork requirements for new or expanding dischargers to streams upgraded to Special Protection (HQ or EV). For example, NPDES general permits are not currently available for new or expanded discharges to Special Protection streams. Thus an individual permit, and its associated additional paperwork, would be required. Additionally, paperwork associated with demonstrating social and economic justification (SEJ), and the nonfeasibility of nondischarge alternatives, may be required for new or expanded discharges to certain Special Protection waters.

H. *Pollution Prevention*

The antidegradation program is a major pollution prevention tool because its objective is to prevent degradation by maintaining and protecting existing water quality and existing uses. Although new or expanded wastewater discharges are not prohibited by the antidegradation program, nondischarge alternatives are encouraged and required, when environmentally sound and cost effective. Nondischarge alternatives, when implemented, remove impacts to surface water and reduce the overall level of pollution to the environment by remediation of the effluent through the soil.

I. *Sunset Review*

These amendments will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

J. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on August 5, 1997, the Department submitted a copy of the notice of proposed rulemaking, published at 27 Pa.B. 4094, to IRRC and to the Chairpersons of the Senate and House Environmental Resources and Energy Committees for review and comment. Under section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments received, as well as other documentation.

In preparing these final-form regulations, the Department has considered all comments received from IRRC and the public. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Committees on October 12, 1999. IRRC met on October 21, 1999, and approved the amendments in accordance with section 5.1(e) of the Regulatory Review Act.

K. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 27 Pa.B. 4094 (August 16, 1997).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this Preamble.

L. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department, 25 Pa. Code Chapter 93, are amended by amending §§ 93.9f and 93.9t to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for approval and review as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

(*Editor's Note*: The proposal to amend §§ 93.9q and 93.9v, included in the proposed rulemaking at 27 Pa.B. 4094 has been withdrawn by the Board.)

JAMES M. SEIF,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5777 (November 6, 1999).)

Fiscal Note: Fiscal Note 7-324 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE II. WATER RESOURCES

CHAPTER 93. WATER QUALITY STANDARDS

§ 93.9f. Drainage List F.

Delaware River Basin in Pennsylvania
Schuylkill River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
3—Hay Creek	Basin, Source to Unnamed Tributary (UNT) 63882 at River Mile 8.1	Berks	EV	None
4—Unnamed Tributary (63882) to Hay Creek	Basin	Berks	CWF, MF	None
3—Hay Creek	Basin, UNT 63882 to Beaver Run	Berks	CWF,MF	None
4—Beaver Run	Basin	Berks	HQ-CWF, MF	None
3—Hay Creek	Basin, Beaver Run to Birdsboro Boundary	Berks	EV	None
3—Hay Creek	Basin, Birdsboro Boundary to Mouth	Berks	CWF, MF	None
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§ 93.9t. Drainage List T.

Ohio River Basin in Pennsylvania
Kiskiminetas River

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
	* * * * *			
6—Bens Creek	Main Stem, Confluence of South and North Forks to Mouth	Cambria	CWF	None
	* * * * *			
7—Mill Creek	Basin, Source to SR 0271 Bridge	Cambria	EV	None
7—Mill Creek	Basin, SR 0271 Bridge to Mouth	Somerset	HQ-CWF	None
	* * * * *			
5—Little Conemaugh River	Main Stem, Source to North Branch Little Conemaugh River	Cambria	CWF	None

Stream	Zone	County	Water Uses Protected	Exceptions To Specific Criteria
6—Bens Creek	Basin, Source to Unnamed Tributary (UNT) 46100 at River Mile 1.20	Cambria	EV	None
7—Unnamed Tributary (46100) to Bens Creek	Basin	Cambria	CWF	None
6—Bens Creek	Basin, UNT 46100 to UNT 46099 at River Mile 0.74	Cambria	EV	None
7—Unnamed Tributary (46099) to Bens Creek	Basin	Cambria	CWF	None
6—Bens Creek	Basin, UNT 46099 to Mouth	Cambria	CWF	None
	* * * * *			
6—South Fork Little Conemaugh River	Basin, Source to Beaverdale Reservoir Dam	Cambria	EV	None
6—South Fork Little Conemaugh River	Main Stem, Beaverdale Reservoir Dam to UNT 45928	Cambria	EV	None
7—Unnamed Tributaries to South Fork Little Conemaugh River	Basins, Beaverdale Reservoir Dam to UNT 45928	Cambria	HQ-CWF	None
7—Bottle Run	Basin	Cambria	HQ-CWF	None
7—Unnamed Tributary (45928) to South Fork Little Conemaugh River	Basin	Cambria	HQ-CWF	None
6—South Fork Little Conemaugh River	Basin, UNT 45928 to SR 0869 Bridge	Cambria	HQ-CWF	None
6—South Fork Little Conemaugh River	Basin, SR 0869 Bridge to Beaverdam Run	Cambria	CWF	None
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[Pa.B. Doc. No. 99-2003. Filed for public inspection November 24, 1999, 9:00 a.m.]

ENVIRONMENTAL QUALITY BOARD
[25 PA. CODE CHS. 121 AND 129]
Mobile Equipment Repair and Refinishing

The Environmental Quality Board (Board) amends § 121.1 and adds § 129.75 (relating to definitions; and mobile equipment repair and refinishing) to read as set forth in Annex A. The changes to § 121.1 add definitions of terms used in the substantive provisions of Chapter 129 (relating to standards for sources). A new § 129.75 establishes requirements to control volatile organic compound (VOC) emissions at mobile equipment repair and refinishing facilities. This notice is given under Board order at its meeting of September 21, 1999.

A. *Effective Date*

These amendments will be effective upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. *Contact Persons*

For further information, contact Terry Black, Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality, 12th Floor, Rachel Carson State Office Building, P. O. Box 8468, Harrisburg, PA 17105-8468, (717) 787-2030, or R. A. Reiley, Assistant Counsel, Bureau of Regulatory Counsel, Office of Chief Counsel, 9th Floor, Rachel Carson State Office Building, P. O. Box 8464, Harrisburg, PA 17105-8464, (717) 787-7060.

C. *Statutory Authority*

This action is being taken under the authority of section 5(a)(1) of the Air Pollution Control Act (35 P. S. § 4005(a)(1)), which grants to the Board the authority to adopt regulations for the prevention, control, reduction and abatement of air pollution.

D. *Background of the Amendments*

This final rulemaking establishes controls on the VOC emissions from mobile equipment repair and refinishing facilities. These regulations implement the recommendations of the Southeast and Southwest Pennsylvania Ozone Stakeholder Working Groups. The Southwest Ozone Stakeholders recommended a point of sale regulation that would preclude the sale of noncompliant finishes. The Southeast Ozone Stakeholders recommended limiting the VOC content of automobile refinish material

to the levels imposed by California's South Coast Air Quality Management District (SCAQMD).

Subsequent to the recommendations of the Ozone Stakeholders, a separate stakeholder group was formed and was composed of representatives of the mobile equipment repair and refinishing community, equipment suppliers and members of the public. This stakeholder group identified a number of problems with a point of sale regulation and the SCAQMD limits and instead recommended establishing limitations on the VOC content of finishes, along with equipment specifications and work practice recommendations. The final regulations incorporate the recommendations of this stakeholder group.

The final rulemaking has deleted the proposed permitting requirement. This requirement was determined to not be a cost effective way to implement these regulations. Instead, these regulations will be implemented through an outreach education campaign and traditional enforcement methods.

The Department of Environmental Protection (Department) also consulted with the Air Quality Technical Advisory Committee (AQTAC) in the development of these final regulations. At its May 21, 1999 meeting, AQTAC recommended adoption of the final regulations.

E. *Summary of Regulatory Revisions*

The final changes to Chapter 121 add definitions of terms used in the substantive provisions in Chapter 129. The definitions include "automotive pretreatment," "automotive primer surfacer," "automobile primer-sealer," "automotive specialty coating," "automotive top coat," "antique motor vehicle," "classic motor vehicle," "mobile equipment," "automotive touch-up repair." "Airless spray" was added at final rulemaking for clarification and "automotive elastomeric coating," "automotive impact-resistant coating," "automotive jambing clearcoat," "automotive lacquer," "automotive low-gloss coating" and "automotive multicolored topcoat" were added to make the final rule consistent with the Federal regulation.

Section 129.75 establishes allowable VOC content requirements for coatings used in this source category. Section 129.75(b) establishes exceptions to the general applicability of the rules where the coating is done in an automobile assembly plant or by an individual who does not receive compensation for application of the coatings. Subsection (c) establishes the VOC content of automobile refinished coatings and subsection (d) provides the methodology for calculating VOC emissions. In the final regulations, the Board modified the formula in subsection (c) because it was incorrect since the units were not in agreement. Subsections (g) and (h), which established application techniques and time frames for existing and new facilities, were deleted and consolidated under subsection (e). Subsections (f) and (g) establish the requirements for cleaning spray guns associated with this source category and housekeeping, pollution prevention and training requirements for individuals applying mobile equipment repair and refinishing coatings. Finally, subsection (l) in the proposed rule, which required owners/operators of a facility to obtain a permit, was deleted from the final regulation.

Under these requirements, a person who applies mobile equipment repair and refinishing coatings will have to comply with applicable VOC content requirements for coatings. In addition to specifying application technique and cleaning requirements, the regulations establish training and pollution prevention requirements.

These final regulations will be submitted to the Environmental Protection Agency (EPA) as an amendment to the State Implementation Plan.

F. *Summary of Comments and Responses on the Proposed Regulations*

One commentator indicated that the equation in the proposed § 129.75(f)(1) is incorrect and suggested a correct equation for calculating the VOC content of coatings. The Board agrees, and the equation in the final regulation has been changed to be consistent with the equation published in the final EPA rule for automotive finishes.

A commentator supported requiring a permit to purchase and spray automotive finish materials. The final rulemaking will not require a permit for the purchase of automotive refinish materials or for any other component of this final rulemaking. The Board believes that a permitting program is not a cost effective way to implement these regulations. This program would be too costly and burdensome for both the Department and industry. Instead, the Department will embark on a public outreach education campaign and will enforce these regulations through traditional methods.

Another commentator indicated support for tighter requirements for paint booths and the emissions from spray booths. The final regulations do not require that spray booths be used to apply automotive refinish materials. The regulations do impose VOC limits consistent with the Federal limits on automotive refinish materials. In addition, the regulations specify paint and solvent management practices and other pollution prevention practices that will reduce emissions from automobile refinishing operations.

Another commentator suggested that no permits be issued to the facility unless the facility first passes certain VOC test limits. The final regulations specify VOC content limitations for coatings used by mobile equipment and repair facilities, and establish work practice standards related to paint and solvent use and storage. The Department does not plan to conduct emission tests at affected facilities, but will rely on coating manufactures' certification and VOC testing of coatings, as appropriate, to determine compliance.

Several commentators indicated that if the Department requires permits for automotive refinishing facilities, the requirement should apply Statewide. As previously stated, the Board has determined that permits will not be required for effective automotive repair and refinish facilities under this regulation.

One commentator opposed the broad scope of the proposed regulation that would regulate any type of mobile equipment painting Statewide. The Board believes that application technology, gun cleaning and paint and solvent management practices are appropriate pollution prevention practices and that they should be applied Statewide. The finish material VOC limits are the limits specified by the Federal government for automotive refinish manufacture and import.

The same commentator indicated that it is unduly burdensome to require small painting operations to purchase specially formulated paints, to keep records documenting those purchases and to perform training. The final regulations do not require the purchase of specially formulated paints. The paint VOC content levels specified in the regulation are consistent with the VOC content limits in the Federal mobile equipment refinish and repair finish material regulations. The final regulations do not require recordkeeping to document paint pur-

chases. In addition, the training requirements in the regulations can be met by participation in coating and equipment supplier demonstrations and meetings onsite. They do not require special classes or other training.

This same commentator recommended that the touch-up and minor repairs be exempted from all requirements in the regulations especially if those are the only surface coating activities conducted onsite. The Board disagrees. Touch-up and repair operations will be subject to the regulations because these operations can result in significant emissions if appropriate work practices and pollution prevention practices are not implemented.

Additionally, this commentator suggested that the language in the definition and the regulation related to touch-up and repair is confusing. The Board has revised the regulation to clarify the provisions related to touch-up repairs. The regulation allows the use of brush and roller application, and other application technologies listed in § 129.75(e) for any finish operations, including touch-up and repair. Any other application technologies may be used for touch-up repair if the area is equal to or less than 1 inch in diameter.

Finally, this commentator indicated that small operations and facilities in rural areas should be exempted from the requirements because they have little impact on air quality. This commentator suggested that applicability could be determined based on paint throughput or location. The Board does not believe that applicability based on throughput is appropriate. This requirement would require additional recordkeeping and monitoring for all facilities. Because applicability based on location could impose competitive inequities, the regulations will be applied Statewide. In addition, the VOC standards in the regulation for coatings and other finishing materials are consistent with Federal requirements for the materials and impose no additional requirements. Materials that do not meet the standards will not be available or used after the effective date of the regulation. The finish material and solvent management practices specified in the regulation are consistent with good operating practices and should result in cost savings to the facilities. Finally, as previously stated, permits will not be required for affected facilities under the final regulations.

One commentator strongly supported a Statewide requirement that all facilities that provide automobile refinishing services for compensation meet all permitting regulations. The Board has determined that requiring permits for affected facilities is not a cost effective manner to implement the program. Consequently, permits will not be required under the final regulations for automotive repair and refinishing facilities.

One commentator objected to the permitting of vehicle dealerships that perform refinishing because of high costs of the permits. The Board has determined that permits will not be required. The final regulations do not contain either notification or permitting requirements for refinish facilities.

This same commentator suggested that the Department establish a confidential whistle blower program through which its noncompliant facilities could be reported. Under current procedures, individuals may file complaints with the Department regarding suspected noncompliance. The identity of the complainant is maintained as confidential information by the Department. Consequently, there is no need for a separate procedure under these regulations.

In addition, this commentator suggested that the Department revise the regulations to allow the use of inventories of noncompliant finish materials. The Board disagrees. Allowing the exemption could reward operators who purchased significant stockpiles of noncompliant materials. When the quantity of material is small and it is clear that there was no intent on the part of the operator to circumvent the regulations, the Department can exercise enforcement discretion.

One commentator indicated that the Board should assure that the coating VOC limits in the regulations are consistent with the Federal rule published in the *Federal Register* on September 11, 1998. The Board has revised the Table of Allowable VOC Limits to make it consistent with the Federal rule.

The commentator indicated that the Department should clarify the actions that an operator should take to minimize spills. The Board has specified that spouts should be on larger containers of materials during transfer operations.

The commentator indicated that the Board should specify standards for the quality and content of training and validation of the training. The Board does not intend the training activities to be formalized to the extent that operators are required to attend formal training with testing and certification requirements. Training requirements are intended to assure that operators are advised of the proper finish material and equipment handling techniques and other required practices. Typically, this type of instruction is provided by finish and equipment suppliers as part of their customer service activities. Notation and employe records or other documentation of attendance at these sessions would be adequate to indicate the training. Employers may choose to send employes to formalized training programs if they desire. However, specific standards for the training have not been included in the final regulations.

One commentator indicated that the Board should clarify application technology exemptions related to brush coating and touch-up and repair by brush. The Board has revised the final regulations to clarify that all mobile equipment touch-up repair activities are exempt from the application technology requirements. In addition, refinish of larger areas by use of a brush and other listed application technology are accepted for larger areas. Additionally, the commentator indicates that the Board should consider a number of factors in establishing fees for permits including whether fees should be different based on facility size or emissions and whether the fee cost is consistent with the cost of implementing the program. The final regulations do not contain new requirements for permits for affected facilities. As previously stated, permits will not be required unless a facility is subject to other permitting requirements under Chapter 127 (relating to construction, modification, reactivation and operation of sources).

Finally, the commentator indicated that the regulation does not specify the manner of enforcement or the penalties for noncompliance. The commentator recommends that the Board reference applicable provisions in the regulations. The Board disagrees that the regulations should specify the manner of enforcement and penalties for noncompliance. Enforcement will be handled consistent with existing policies and procedures. Additionally, penalties for noncompliance are set forth in the Air Pollution Control Act (35 P. S. §§ 4001—4015).

G. *Benefits, Costs and Compliance*

Executive Order 1996-1 requires a cost-benefit analysis of the final regulations.

Benefits

Overall, the citizens of this Commonwealth will benefit from these recommended changes because they provide appropriate controls on VOC emissions and automobile equipment and repair refinishing facilities.

Compliance Costs

These regulations will increase compliance costs. Equipment costs will be slightly higher, but the increase in equipment costs will be recovered by savings and operating costs. There may be some increases in costs associated with the training requirement.

Compliance Assistance Plan

The Department plans to educate and assist the public and the regulated community with understanding the newly revised regulations. The final regulations require that persons applying mobile equipment repair and refinishing coatings receive training in proper use in handling of coatings, solvents and related products. This will be accomplished through Department-sponsored training.

Low interest funding is available through the Department's Office of Pollution Prevention and Compliance Assistance for the purchase of spray guns and spray gun cleaners.

Paperwork Requirements

The regulatory revisions will not increase the paperwork related to this class of facilities. The only required records are to demonstrate employe training. These should be maintained as a normal business practice.

H. *Sunset Review*

These final-form regulations will be reviewed in accordance with the Sunset Review schedule published by the Department to determine whether the regulations effectively fulfill the goals for which they were intended.

I. *Regulatory Review*

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on September 8, 1998, the Department submitted a copy of the proposed rulemaking to IRRC and the Chairpersons of the Senate and House Environmental Resources and Energy Committees. In compliance with section 5(c) of the Regulatory Review Act, the Department also provided IRRC and the Committees with copies of the comments as well as other documentation.

In preparing these final-form regulations, the Department has considered the comments received from IRRC and the public. These comments are addressed in the Comment and Response Document and Section E of this Preamble. The Committees did not provide comments on the proposed rulemaking.

These final-form regulations were deemed approved by the House and Senate Environmental Resources and Energy Committees on October 25, 1999. IRRC met on November 4, 1999, and approved the final-form regulations in accordance with section 5.1(e) of the Regulatory Review Act.

J. *Findings*

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and regulations promulgated thereunder in 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and all comments were considered.

(3) These final-form regulations do not enlarge the purpose of the proposal published at 28 Pa.B. 4867 (September 26, 1998).

(4) These final-form regulations are necessary and appropriate for administration and enforcement of authorizing acts defined in Section C of this Preamble and are reasonably necessary to achieve and maintain the NAAQS for ozone.

K. *Order*

The Board, acting under the authorizing statutes, orders that:

(a) The regulationsof the Department, 25 Pa. Code Chapters 121 and 129, are amended by amending § 121.1 and by adding § 129.75 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson shall submit this order and Annex A to IRRC and the Senate and House Environmental Resources and Energy Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately.

JAMES M. SEIF,
Chairperson

(*Editor's Note*: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 29 Pa.B. 5963 (November 20, 1999).)

Fiscal Note: Fiscal Note 7-334 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 25. ENVIRONMENTAL PROTECTION

PART I. DEPARTMENT OF ENVIRONMENTAL PROTECTION

Subpart C. PROTECTION OF NATURAL RESOURCES

ARTICLE III. AIR RESOURCES

CHAPTER 121. GENERAL PROVISIONS

§ 121.1. Definitions.

The definitions in section 3 of the act (35 P. S. § 4003) apply to this article. In addition, the following words and terms, when used in this article, have the following meanings, unless the context clearly indicates otherwise:

* * * * *

Airless spray—A spray coating method in which the coating is atomized by forcing it through a small nozzle opening at high pressure. The coating is not mixed with air before exiting from the nozzle opening.

* * * * *

Antique motor vehicle—A motor vehicle, but not a reproduction thereof, manufactured more than 25 years prior to the current year which has been maintained in or

restored to a condition which is substantially in conformance with manufacturer specifications.

* * * * *

Automotive elastomeric coating—A coating designed for application over surfaces of flexible mobile equipment and mobile equipment components, such as elastomeric bumpers.

Automotive impact-resistant coating—A coating designed to resist chipping caused by road debris.

Automotive jambing clearcoat—A fast-drying, ready-to-spray clearcoat applied to surfaces such as door jambs and trunk and hood edges to allow for quick closure.

Automotive lacquer—A thermoplastic coating applied directly to bare metal surfaces of mobile equipment and mobile equipment components which dries primarily by solvent evaporation, and which is resoluble in its original solvent.

Automotive low-gloss coating—A coating which exhibits a gloss reading less than or equal to 25 on a 60° glossmeter.

Automotive multicolored topcoat—A topcoat that exhibits more than one color, is packaged in a single container, and camouflages surface defects on areas of heavy use, such as cargo beds and other surfaces of trucks and other utility vehicles.

Automotive pretreatment—A primer that contains a minimum of 0.5% acid, by weight, that is applied directly to bare metal surfaces of mobile equipment and mobile equipment components to provide corrosion resistance and to promote adhesion of subsequent coatings.

Automotive primer-sealer—A coating applied to mobile equipment and mobile equipment components prior to the application of a topcoat for the purpose of providing corrosion resistance, promoting the following:

(i) Adhesion of subsequent coatings.

(ii) Color uniformity.

(iii) The ability of the undercoat to resist penetration by the topcoat.

Automotive primer-surfacer—A coating applied to mobile equipment and mobile equipment components prior to the application of topcoat for the purpose of:

(i) Filling surface imperfections in the substrate.

(ii) Providing corrosion resistance.

(iii) Promoting adhesion of subsequent coatings.

Automotive specialty coating—Coatings, including, but not limited to, elastomeric coatings, adhesion promoters, low gloss coatings, bright metal trim repair coatings, automotive jambing clearcoats, impact resistant coatings, rubberized asphaltic underbody coatings, uniform finish blenders, weld-through primers applied to automotive surfaces and lacquer topcoats applied to a classic motor vehicle or to an antique motor vehicle.

Automotive topcoat—A coating or series of coatings applied over an automotive primer-surfacer, automotive primer-sealer or existing finish on the surface of mobile equipment and mobile equipment components for the purpose of protection or beautification.

Automotive touch up repair—The application of automotive topcoat finish materials to cover minor finishing imperfections equal to or less than 1 inch in diameter.

* * * * *

Classic motor vehicle—A motor vehicle, but not a reproduction thereof, manufactured at least 15 years prior to the current year which has been maintained in or restored to a condition which is substantially in conformity with manufacturer specifications and appearance.

* * * * *

Mobile equipment—Equipment which may be driven or is capable of being driven on a roadway including, but not limited to:

(i) Automobiles.

(ii) Trucks, truck cabs, truck bodies and truck trailers.

(iii) Buses.

(iv) Motorcycles.

(v) Utility bodies.

(vi) Camper shells.

(vii) Mobile cranes.

(viii) Bulldozers.

(ix) Street cleaners.

(x) Golf carts.

(xi) Ground support vehicles, used in support of aircraft activities at airports.

(xii) Farm equipment.

* * * * *

CHAPTER 129. STANDARDS FOR SOURCES

SOURCES OF VOCs

§ 129.75. Mobile equipment repair and refinishing.

(a) Except as provided in subsection (b), this section applies to a person who applies mobile equipment repair and refinishing or color matched coatings to mobile equipment or mobile equipment components.

(b) This section does not apply to a person who applies surface coatings to mobile equipment or mobile equipment components under one of the following circumstances:

(1) The surface coating process is subject to the miscellaneous metal parts finishing requirements of § 129.52 (relating to surface coating processes).

(2) The surface coating process is at an automobile assembly plant.

(3) The person applying the coatings does not receive compensation for the application of the coatings.

(c) Beginning November 27, 2000, a person may not apply to mobile equipment or mobile equipment components any automotive pretreatment, automotive primer-surfacer, automotive primer-sealer, automotive topcoat and automotive specialty coatings including any VOC-containing materials added to the original coating supplied by the manufacturer, that contain VOC's in excess of the limits specified in Table III.

Table III

Allowable Content of VOCs in Mobile Equipment Repair and Refinishing Coatings

Allowable VOC Content (as applied)

Weight of VOC per Volume of Coating (minus water and non-VOC solvents)

Coating Type	*Limit Pounds per Gallon*	*Grams per Liter*
Automotive pretreatment primer	6.5	780
Automotive primer-surfacer	4.8	575
Automotive primer-sealer	4.6	550
Automotive topcoat		
single stage-topcoat	5.0	600
2 stage basecoat/clearcoat	5.0	600
3 or 4-stage basecoat/clearcoat	5.2	625
Automotive multicolored topcoat	5.7	680
Automotive specialty	7.0	840

(d) A person who provides mobile equipment repair and refinishing coatings subject to this section shall provide documentation concerning the VOC content of the coatings calculated in accordance with the following:

(1) The mass of VOC per combined volume of VOC and coating solids, less water and exempt compounds, shall be calculated by the following equation:

$$VOC = \frac{(W\,v - W\,w - W\,ec)}{(V - V\,w - V\,ec)}$$

where:

VOC = VOC content in grams per liter (g/l) of coating less water and non-VOC solvents,

W_v = Mass of total volatiles, in grams.

W_w = Mass of water, in grams.

W_{ec} = Mass of exempt compounds, in grams.

V = Volume of coating, in liters.

V_w = Volume of water, in liters.

V_{ec} = Volume of exempt compounds, in liters.

To convert from grams per liter to pounds per gallon (lb/gal), multiply the result (VOC content) by 8.345×10^{-3} (lb/gal/g/l).

(2) The VOC content of a multistage topcoat shall be calculated by the following equation:

$$VOCmulti = \frac{VOCbc + \sum_{i=0}^{M} VOCmci + 2(VOCcc)}{M + 3}$$

where:

VOCmulti = VOC content of multistage topcoat, g/l

VOCbc = VOC content of basecoat, g/l

VOCmci = VOC content of the midcoat(s), g/l

VOCcc = VOC content of the clear coat, g/l

M = number of midcoats

(e) Beginning November 27, 2000, a person at a facility subject to this section shall use one or more of the following application techniques to apply any finish material listed in Table III:

(1) Flow/curtain coating.

(2) Dip coating.

(3) Roller coating.

(4) Brush coating.

(5) Cotton-tipped swab application.

(6) Electrodeposition coating.

(7) High volume low pressure (HVLP) spraying.

(8) Electrostatic spray.

(9) Airless spray.

(10) Other coating application method that the person demonstrates and the Department determines achieves emission reductions equivalent to HVLP or electrostatic spray application methods.

(f) The following situations are exempt from the application equipment requirements in subsection (e):

(1) The use of airbrush application methods for stenciling, lettering and other identification markings.

(2) The application of coatings sold in nonrefillable aerosol containers.

(3) Automotive touch-up repair.

(g) Spray guns used to apply mobile equipment repair and refinishing coatings shall be cleaned by one of the following:

(1) An enclosed spray gun cleaning system that is kept closed when not in use.

(2) Unatomized discharge of solvent into a paint waste container that is kept closed when not in use.

(3) Disassembly of the spray gun and cleaning in a vat that is kept closed when not in use.

(4) Atomized spray into a paint waste container that is fitted with a device designed to capture atomized solvent emissions.

(h) The owner and operator of a facility subject to this section shall implement the following housekeeping and pollution prevention and training measures:

(1) Fresh and used coatings, solvent and cleaning solvents shall be stored in nonabsorbent, nonleaking containers. The containers shall be kept closed at all times except when filling or emptying.

(2) Cloth and paper, or other absorbent applicators, moistened with coatings, solvents or cleaning solvents, shall be stored in closed, nonabsorbent, nonleaking containers.

(3) Handling and transfer procedures shall minimize spills during the transfer of coatings, solvents and cleaning solvents through the use of devices including pumps or spouts on larger containers.

(4) Ensure that a person who applies mobile equipment repair and refinishing coatings has completed training in the proper use and handling of the mobile equipment repair and refinishing coatings, solvents and waste products to minimize the emission of air contaminants and to comply with this section.

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