

SUBCHAPTER 23. PREVENTION OF AIR POLLUTION FROM ARCHITECTURAL COATINGS

Authority

N.J.S.A. 13:1B-3 and 26:2C-1 et seq., specifically N.J.S.A. 26:2C-8.

Source and Effective Date

R.1989 d.119, effective February 21, 1989 (operative March 26, 1989).
See: 20 N.J.R. 2002(a), 21 N.J.R. 462(a).

Subchapter Historical Note

Notice of Rule Invalidation: Provisions of N.J.A.C. 7:27-23 held to require repromulgation and remanded to Commissioner, Department of Environmental Protection, for action consonant with the Administrative Procedure Act. In the Matter of the Adoption of Regulations Governing Volatile Organic Substances in Consumer Products, N.J.A.C. 7:27-23, *N.J. Super.*, *Dkt. No. A-1226-89T1 (App. Div. February 26, 1990)*. See: 22 N.J.R. 1134(b).

7:27-23.1 Applicability

(a) This subchapter prescribes the rules of the Department for limiting the VOC content of, and using, architectural coatings.

(b) As set forth at N.J.A.C. 7:27-17.4(c), this subchapter's requirements for the implementation of control measures, including, but not limited to, requirements for the installation and use of control apparatus, or the use of compliant coatings, shall apply with full force to Group II Toxic Substances (TXS).

(c) Except as provided in (d) and (e) below, this subchapter is applicable to any person who:

1. Manufactures, blends, repackages, supplies or distributes an architectural coating for sale within the State of New Jersey;
2. Sells or offers for sale an architectural coating within the State of New Jersey; and
3. Applies an architectural coating for compensation within the State of New Jersey.

(d) The provisions of this subchapter shall not apply to:

1. An architectural coating that is sold or manufactured for use outside of the State of New Jersey or for shipment to other manufacturers for reformulation or repackaging, provided that documentation indicating the final destination of such architectural coating shall be made available to representatives of the Department upon request;
2. An aerosol coating product; or
3. An architectural coating that is sold in a container with a volume of one liter (1.057 quart) or less.

(e) The provisions of N.J.A.C. 7:27-23.3(a) shall not apply to any person who applies an architectural coating for

compensation within the State of New Jersey provided that either (e)1 or 2 below is met:

1. The architectural coating was purchased from a location within the State of New Jersey or within a state, as identified at (f) below, that has an architectural coating rule with maximum allowable VOC content limits identical with or more stringent than New Jersey; or

2. The coating was purchased and delivered by the manufacturer or distributor to a location in the State of New Jersey or to a state, as identified at (f) below, that has an architectural coating rule with maximum allowable VOC content limits identical with or more stringent than New Jersey. For a coating sold in this manner, it is the responsibility of the seller to ensure compliance with these rules;

(f) The Department shall publish in the New Jersey Register a notice of administrative change revising the list of states below when any state promulgates maximum allowable VOC content limits for architectural coatings that are identical with or more stringent than the VOC content limits set forth in this subchapter. This list is for informational purposes only. The most current list of states can be obtained from the Department's Office of Air Quality Management at 401 East State Street, 7th floor, PO Box 418, Trenton, New Jersey 08625-0418.

1. Delaware;
2. Pennsylvania;
3. New York; and
4. Maryland.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

Language added specifying architectural coatings are the subject of regulations.

Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).

See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Ass'n v. Kean*, D.N.J.1994, 856 F.Supp. 903.

Rule requiring reduction in volatile organic substances (VOS) content in certain air fresheners. *Matter of Adoption of Regulations Governing Volatile Organic Substances in Consumer Products*, N.J.A.C. 7:27-23, 239 N.J.Super. 407, 571 A.2d 971 (A.D.1990).

7:27-23.2 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"All other architectural coatings" means any architectural coating which does not meet any of the other architectural coating definitions contained within this section.

"Adhesive" means a chemical substance that is applied for the purpose of bonding two surfaces together other than by mechanical means.

"Aerosol coating product" means 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.

"Antenna coating" means a coating formulated and recommended exclusively for application to equipment and associated structural appurtenances that are used to receive or transmit electromagnetic signals.

"Antifouling coating" means a coating formulated and recommended 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 as an antifouling coating under the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

"Appurtenance" means an 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 and fire escapes; and window screens.

"Architectural coating" means a coating to be applied at the site of installation to the following: stationary structures or their appurtenances, portable buildings, pavements, or curbs. This term does not include adhesives and coatings applied in shop applications or to non-stationary structures such as airplanes, ships, boats, railcars, and automobiles.

"ASTM" means the American Society for Testing and Materials.

"BAAQMD" means the Bay Area Air Quality Management District, one of 35 air pollution control agencies in California, which regulate air quality in California by jurisdiction of the district, and are overseen by the California Air Resources Board (CARB).

"Bitumens" means 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.

"Bituminous coating" or "bituminous sealer" means a coating material, consisting mainly of hydrocarbons and soluble in carbon disulfide, that is obtained from natural deposits or as residue from the distillation of crude petroleum oils or of low grades of coal.

"Bituminous roof coating" means a coating that incorporates bitumens and that is formulated and recommended exclusively for roofing.

"Bituminous roof primer" means a primer that incorporates bitumens and that is formulated and recommended exclusively for roofing.

"Bond breaker" means a coating that is formulated and recommended 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.

"CARB" means the California Air Resources Board, which oversees all air pollution control efforts in California, including the activities of 35 independent local air districts. California state law vests CARB with direct authority to regulate pollution from motor vehicles, fuels, and consumer products.

"CARB SCM" means the California Air Resources Board Suggested Control Measure for Architectural Coatings, adopted June 22, 2000.

"CARB survey" means the California Air Resources Board's 1998 Architectural Coatings Survey Results Final Report, dated September 1999, or any subsequent CARB survey, which is incorporated by reference herein. A copy of this survey can be found on the CARB website at <http://www.arb.ca.gov>.

"Calcimine recoater" means a flat solvent-borne coating formulated and recommended on its label specifically for recoating calcimine painted ceilings and other calcimine painted substrates.

"Coating" means 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.

"Colorant" means 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.

"Concrete curing compound" means a coating formulated and recommended for application to freshly poured concrete to retard the evaporation of water.

"Concrete surface retarder" means 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.

"Conversion varnish" means 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. The film formation is the result of an acid-catalyzed condensation reaction, affecting a transesterification at the reactive ethers of the amino resins.

"Department" means the New Jersey Department of Environmental Protection.

"Distributor" means a person to whom a product is sold or supplied for the purpose of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.

"Dry fog coating" means a coating formulated and recommended only for spray application such that overspray droplets dry before subsequent contact with incidental surfaces in the vicinity of the surface coating activity.

"EPA" means the United States Environmental Protection Agency.

"Exempt compound" means a compound excluded under the definition of volatile organic compound (VOC) within this subchapter.

"Faux finishing coating" means a coating formulated and recommended 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.

"Fire-resistive coating" means an opaque coating formulated and recommended 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 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 shall be tested in accordance with ASTM Designation E 119-00a, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)2.

"Fire retardant coating" means a coating labeled and formulated to retard ignition and flame spread, that has been fire tested and rated by a testing agency and 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, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)1.

"Flat coating" means a coating that is not defined under any other definition in this subchapter and that registers a gloss of 15 or less on a glossmeter held at an 85 degree angle to the coated surface or less than five on a glossmeter held at a 60 degree angle, according to ASTM Designation D 523-89 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)3.

"Floor coating" means an opaque coating that is formulated and recommended for application to flooring, including, but not limited to, decks, porches, steps, and other horizontal surfaces, that may be subjected to foot traffic.

"Flow coating" means a coating that is used by electric power companies or their subcontractors to maintain the protective coating systems present on utility transformer units.

"Form-release compound" means a coating formulated and recommended 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.

"Formulation data" means a list of the materials used to create a coating based on information from the coating manufacturer, rather than on information from a coating test method used after the product is manufactured. Manufacturer's formulation data may include, but is not limited to, information on density, VOC content, and coating solids content.

"High performance coating" means an architectural coating formulated for and exposed to harsh environmental conditions including, but not limited to: outside weather conditions all the time, or temperatures consistently above 95 degrees Centigrade or below zero degrees Centigrade; or solvents, detergents, abrasives or scouring agents; or corrosive atmospheres or fluids.

"High temperature coating" means a high performance coating formulated and recommended for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Centigrade (400 degrees Fahrenheit).

"Impacted immersion coating" means 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 re-

sistant to high energy impact damage caused by floating ice or debris.

"Industrial maintenance coating" means a high performance architectural coating, including primers, sealers, undercoaters, intermediate coats, and topcoats, formulated for application to substrates exposed to one or more of the following extreme environmental conditions and labeled as specified in N.J.A.C. 7:27-23.5(b)3:

1. Immersion in water, wastewater, or chemical solutions (aqueous and non-aqueous solutions), or chronic exposures of interior surfaces to moisture condensation;
2. Acute or chronic exposure to corrosive, caustic, or acidic agents, or to chemicals, chemical fumes, or chemical mixtures or solutions;
3. Repeated exposure to temperatures above 121 degrees Centigrade (250 degrees Fahrenheit);
4. Repeated (frequent) heavy abrasion, including mechanical wear and repeated (frequent) scrubbing with industrial solvents, cleansers, or scouring agents; and/or
5. Exterior exposure of metal structures and structural components.

"Label" means anything functioning as a means of identification, such as any paper, plastic or printed inscription, placed on the container of a product.

"Lacquer" means 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.

"Lacquer, clear brushing" means a clear wood finish, excluding clear lacquer sanding sealers, that is formulated with nitrocellulose or synthetic resins to dry by solvent evaporation without chemical reaction and to provide a solid, protective film; intended exclusively for application by brush; and labeled as specified in N.J.A.C. 7:27-23.5(b)4.

"Low solids coating" means a coating containing 0.12 kilogram or less of solids per liter (one pound or less of solids per gallon) of coating material.

"Magnesite cement coating" means a coating formulated and recommended for application to magnesite cement decking to protect the magnesite cement substrate from erosion by water.

"Manufacturer" means a person who manufactures, imports, assembles, processes, produces, packages, repackages, or relabels a product. Manufacturer also includes any person for whom the product is manufactured, or by whom the product is distributed, if that person is identified as such on the product label. Manufacturer also includes any person that hires another person to manufacture a product for compensation.

"Manufacturers maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.

"Mastic texture coating" means a coating, except waterproof mastic coatings, that is formulated and recommended to cover holes and minor cracks and to conceal surface irregularities, and is applied in a single coat of at least 10 mils (0.010 inch) dry film thickness.

"Metallic pigmented coating" means a coating containing at least 48 grams per liter (0.4 pounds per gallon) as applied of elemental metallic pigment, mica particles or any combination of metallic pigments and mica particles, when tested in accordance with SCAQMD Method 318-95, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(d)4.

"Multicolored coating" means a coating that exhibits more than one color when applied in a single coat and that is packaged in a single container.

"Non-flat coating" means a coating that is not defined under any other definition in this subchapter that registers a gloss of 15 or greater on a glossmeter held at an 85 degree angle to the coated surface or five or greater on a glossmeter held at a 60 degree angle, according to ASTM Designation D 523-89 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(d)3.

"Non-flat high gloss coating" means a non-flat coating that registers a gloss of 70 or above on a 60 degree meter according to ASTM Designation D 523-89 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-24.4(e)3.

"Non-industrial 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 systems, and water treatment and distribution systems.

"Nuclear coating" means 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 D 4082 02, Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)8); relatively easy to decontaminate; and resistant to various chemicals to which the coatings are likely to be exposed (ASTM Method D 3912 95 (2001), Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)9).

“Person” means and includes corporations, companies, associations, societies, firms, partnerships and joint stock companies, as well as individuals, and shall also include all political subdivisions of this State or any agencies or instrumentalities thereof.

“Post-consumer coating” means a finished coating that would have been disposed of, having completed its usefulness to a consumer, and does not include manufacturing wastes.

“Pre-treatment wash primer” means a primer that contains a minimum of 0.5 percent acid, by weight, when tested in accordance with ASTM Designation D 1613-02, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)5, that is formulated and recommended for application directly to bare metal surfaces to provide corrosion resistance and to promote adhesion of subsequent topcoats.

“Primer” means a coating formulated and recommended for application to a substrate to provide a firm bond between the substrate and subsequent coats.

“Quick-dry enamel” means a non-flat coating that is labeled as specified in N.J.A.C. 7:27-23.5(b)7 and that is formulated to have the following characteristics:

1. It is capable of being applied directly from the container under normal conditions with ambient temperatures between 16 and 27 degrees Centigrade (60 and 80 degrees Fahrenheit);
2. When tested in accordance with ASTM Designation D 1640-95 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)6, it 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, in accordance with ASTM Designation D 523-89(1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)3.

“Quick-dry primer, sealer, and undercoater” means a primer, sealer, or undercoater that is dry to the touch in 30 minutes and can be re-coated in two hours when tested in accordance with ASTM Designation D 1640-95 (1999), including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(e)6.

“Recommended” means, for coatings manufactured before January 1, 2005, recommended by the manufacturer either on the container label, in literature describing the product or on the manufacturer’s website, and for coatings manufactured on or after January 1, 2005, recommended by the manufacturer on the coating container’s label only.

“Recycled coating” means an architectural coating formulated such that not less than 50 percent of the total weight consists of secondary and post-consumer coating, with not

less than 10 percent of the total weight consisting of post-consumer coating.

“Residence” means an area where people reside, dwell or lodge, including, but not limited to, single and multiple family dwellings, condominiums, townhomes, mobile homes, apartment complexes, motels, and hotels.

“Retailer” means any person who owns, leases, operates, controls, or supervises a retail outlet.

“Retail outlet” means any establishment at which products are sold, supplied, or offered for sale directly to consumers.

“Roof coating” means a non-bituminous coating formulated and recommended exclusively for application to roofs for the primary purpose of preventing penetration of the substrate by water or reflecting heat and ultraviolet radiation. Metallic pigmented roof coatings, that meet the definition of metallic pigmented coatings, shall not be considered roof coatings, but shall be considered metallic pigmented coatings.

“Rust preventive coating” means a coating formulated exclusively for non-industrial use to prevent the corrosion of metal surfaces and labeled as specified in N.J.A.C. 7:27-23.5(b)5. The coating may be used for industrial use, if the coating complies with the industrial maintenance coating VOC limit specified at N.J.A.C. 7:27-23.3(i) Table 1.

“Sanding sealer” means a clear or semi-transparent wood coating formulated and recommended 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, shall not be considered a sanding sealer, but shall be considered a lacquer.

“SCAQMD” means the South Coast Air Quality Management District, one of 35 air pollution control agencies in California, which regulate air quality in California by jurisdiction of the district, and are overseen by the California Air Resources Board (CARB).

“Sealer” means a coating formulated and recommended 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.

“Secondary coating (rework)” means a finished coating or a fragment of a finished coating from a manufacturing process that cannot be sold for the intended purpose and would otherwise be disposed of as a manufacturing waste.

“Shellac” means a clear or pigmented coating formulated solely with the resinous secretions of the lac beetle (*laccifer lacca*), thinned with alcohol, and dried by evaporation without a chemical reaction.

“Shop application” means 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 (for example, original equipment manufacturing coatings).

“Sign paint or graphic arts coating” means a coating formulated and recommended for hand-application by artists, using brush or roller techniques, to indoor and outdoor signs (excluding structural components) and murals including letter enamels, poster colors, copy blockers, and bulletin enamels.

“Specialty primer, sealer and undercoater” means a coating that is formulated for application to a substrate to seal fire, smoke or water damage; to condition excessively chalky surfaces; or to block stains, and is labeled as specified in N.J.A.C. 7:27-23.5(b)6. An excessively chalky surface is one that is defined as having a chalk rating of four or less as determined by ASTM Designation D 4214-98, including any subsequent revisions, which is incorporated by reference at N.J.A.C. 7:27-23.4(d)7.

“Stain” means a clear, semi-transparent, or opaque coating formulated to change the color of a surface, but not conceal the grain pattern or texture.

“Substrate” means a material to which an architectural coating is applied.

“Swimming pool coating” means a coating formulated and recommended to coat the interior of swimming pools and to resist swimming pool chemicals.

“Swimming pool repair and maintenance coating” means a rubber-based coating formulated and recommended to be used over existing rubber-based coatings for the repair and maintenance of swimming pools.

“Temperature-indicator safety coating” means a coating formulated and recommended as a color-changing indicator coating for the purpose of monitoring the temperature and safety of a substrate, underlying piping, or underlying equipment, and for application to substrates exposed continuously or intermittently to temperatures above 204 degrees Centigrade (400 degrees Fahrenheit).

“Thermoplastic rubber coating and mastic” means 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.

“Tile-like glaze coating” means a coating that is formulated to provide a tough, extra durable coating system, applied as a continuous (seamless) high-build film, and that cures to a hard glaze finish.

“Tint base” means an architectural coating to which colorant is added after packaging in sale units to produce a desired color.

“Toxic substance” or “TXS” means a substance listed in Table 1 of N.J.A.C. 7:27-17.

“Traffic marking coating” means a coating formulated and recommended for marking and striping streets, highways, or other surfaces, including, but not limited to, curbs, berms, driveways, sidewalks, airport runways and parking lots.

“Undercoater” means a coating formulated and recommended to provide a smooth surface for subsequent coatings.

“Varnish” means 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.

“Volatile organic compound” or “VOC” means a volatile organic compound as that term is defined by the EPA at 40 CFR 51.100(s), as supplemented or amended, which is incorporated by reference herein.

“VOC content” means the weight of VOC per volume of coating, calculated according to the procedures specified in N.J.A.C. 7:27-23.4.

“Waterproof mastic coating” means a weatherproof or waterproof coating formulated to cover holes and minor cracks and to conceal surface irregularities that is applied in thicknesses of at least 15 mils.

“Waterproofing concrete/masonry sealer” means a clear or pigmented film-forming coating that is formulated and recommended for sealing concrete and masonry to provide resistance against water, alkalis, acids, ultraviolet light, and staining.

“Waterproofing sealer” means a coating formulated and recommended for application to a porous substrate for the primary purpose of preventing the penetration of water.

“Wood preservative coating” means a coating formulated and recommended to protect exposed wood from decay or insect attack, that is registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).

See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).

Definitions added for “all others”, “flat architectural coating”, “high heat resistant coating”, “opaque stain”, “quick-dry primer, sealer and undercoater”, “semitransparent stain” and “waterproofing sealer”.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Definitions for all other architectural coatings, label, shellac, volatile organic substance and wood preservative coating amended.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

Definitions for “Volatile organic substances (VOS)” replaced by “volatile organic compound (VOC)” and new definition “ASTM” added; others amended for consistency with preceding subchapters’ definitions.

Amended by R.1994 d.313, effective June 20, 1994 (operative July 26, 1994).

See: 25 N.J.R. 3339(a), 26 N.J.R. 2600(a).

Administrative Correction.

See: 27 N.J.R. 1406(a).

Administrative change.

See: 31 N.J.R. 639(b).

Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
Rewrote the section.

Amended by R.2008 d.366, effective December 1, 2008 (operative December 29, 2008).

See: 39 N.J.R. 4492(a), 40 N.J.R. 6769(a).
Rewrote definition "Volatile organic compound".

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. American Lung Association v. Kean, D.N.J.1994, 856 F.Supp. 903.

7:27-23.3 Standards

(a) Except as provided in N.J.A.C. 7:27-23.1(b) through (e) and (h) below, no person shall manufacture, blend, repackage, supply or distribute for sale within the State of New Jersey; sell or offer for sale within the State of New Jersey; or apply for compensation within the State of New Jersey, any architectural coating manufactured after the operative date in (i) Table 1 below, and containing a VOC content in excess of the corresponding limit specified in (i) Table 1 below.

(b) If anywhere on the container of an architectural coating, or 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, any representation is made that indicates that the coating meets the definition of or is recommended for use for more than one of the coating categories listed in (i) Table 1 below, then the most restrictive applicable VOC content limit shall apply. This provision does not apply to the following coating categories:

1. Antenna coating;
2. Antifouling coating;
3. Bituminous roof primer;
4. Calcimine recoater;
5. Concrete surface retarder;
6. Conversion varnish;
7. Fire-retardant coating;
8. Flow coating;
9. High-temperature coating;
10. Impacted Immersion coating;
11. Industrial maintenance coating;
12. Lacquer coating (including lacquer sanding sealer);
13. Low-solids coating;
14. Metallic pigmented coating;
15. Nuclear coating;
16. Pretreatment wash primer;

17. Shellac;

18. Specialty primer, sealer, and undercoater;

19. Temperature-indicator safety coating;

20. Thermoplastic rubber coating and mastic; and

21. Wood preservative coating.

(c) With the exception of any coating that does not display on its label the date of manufacture or date code as required by N.J.A.C. 7:27-23.5(a), any coating manufactured prior to the operative date of the VOC limit specified for that coating in (i) Table 1 below, that complied with the VOC content limits in effect at the time of its manufacture, may be:

1. Sold, supplied, or offered for sale before or after that specified operative date; or
2. Applied at any time before or after that specified operative date.

(d) All containers used in the direct application of an architectural coating by pouring, siphoning, brushing, rolling, padding, ragging, or other means, shall be closed when not in use. These containers shall include, but are not limited to, drums, buckets, cans, pails or trays. Containers of VOC-containing materials used for thinning and cleanup shall also be closed when not in use.

(e) No person, who applies an architectural coating for compensation, shall apply an architectural coating that has been thinned to the extent that it exceeds the applicable VOC limit specified in (i) Table 1 below.

(f) No person, who applies an architectural coating for compensation, shall apply a rust preventive coating for industrial use, unless such rust preventive coating complies with the industrial maintenance coating VOC limit specified in (i) Table 1 below, regardless of the date of manufacture.

(g) For any coating that cannot be classified under any of the specialty coating categories listed in (i) Table 1 below, the VOC content limit shall be determined by classifying the coating as a flat coating or a non-flat coating, based on its gloss, as defined in N.J.A.C. 7:27-23.2. The corresponding VOC content limit shall then apply.

(h) Notwithstanding the provisions of (a) above, a person may add up to 10 percent by volume of VOC to a lacquer and then apply that lacquer, to avoid blushing of the finish, provided that:

1. The relative humidity at the time of application is greater than 70 percent;
2. The temperature at the time of application is below 65 degrees Fahrenheit;
3. The coating contains acetone; and

4. The coating contains no more than 550 grams of VOC per liter of coating, less water and exempt compounds, prior to the addition of VOC.

(i) Table 1 contains the VOC content limits for architectural coatings:

TABLE 1
VOC CONTENT LIMITS FOR ARCHITECTURAL COATINGS

Coating Category	VOC Content ¹		
	State Limit Operative Date 2/28/90-12/31/04 ²		State Limit Operative Date 1/1/05
	Pounds VOC per gallon ³	Grams VOC per liter	Grams VOC per liter
Antenna coating			530
Anti-fouling coating			400
Bituminous pavement sealer	0.8	100	100
Bituminous roof coating			300
Bituminous roof primer			350
Bond breaker	5.0	600	350
Calcimine recoater			475
Concrete curing compounds	2.9	350	350
Concrete surface retarder			780
Conversion varnish			725
Dry fog coating	3.3	400	400
Faux finishing coating			350
Fire-resistive coating			350
Fire-retardant coating			
clear			650
opaque	4.2	500	350
all others	7.1	850	NA1
Flat coating	2.1	250	100
Floor coating			250

Flow coating			420
Form release compound			250
High temperature coating	5.4	650	420
Impacted immersion coating			780
Industrial maintenance coating	3.8	450	340
Lacquer, clear brushing	5.7	680	680
Lacquer (including lacquer sanding sealer)			550
Low solids coating			120
Magnesite cement coating			450
Mastic texture coatings	1.7	200	300
Metallic pigmented coatings	4.2	500	500
Multi-colored coating	5.0	600	250
Nonflat coating:	3.2	380	150
Nonflat high gloss coating			250
Nuclear coating			450
Pretreatment wash primer			420
Primer, Sealer, and Undercoater	2.9	350	200
Quick-dry enamel			250
Quick-dry Primer, Sealer, Undercoater	4.2	500	200
Recycled Coating			250
Roof coating	2.5	300	250
Rust preventative coating			400
Sanding sealer (other than lacquer sanding sealer)			350
Shellac			
clear	6.1	730	730
opaque	4.6	550	550
Sign paint (Graphic arts coating)	3.8	450	500
Specialty Primer, Sealer, and Undercoater			350
Stain			250
semitransparent	4.6	550	NA2
opaque	2.9	350	NA2
Swimming pool coating	5.0	600	340
Swimming pool repair and maintenance coating			340
Temperature-indicator safety coating			550
Thermoplastic rubber coating and mastic			550
Tile-like glaze coating	4.6	550	550
Traffic marking coating	2.1	250	150
Varnish	3.8	450	350
Waterproofing sealer	5.0	600	250
Waterproofing concrete/masonry sealer			400
Waterproof mastic coating	2.5	300	NA3
Wood preservative coating	4.6	550	350
All other architectural coatings	2.1	250	NA4

Notes:

- Limits are expressed in grams of VOC per liter or pounds of VOC per gallon of coating thinned to the manufacturer's maximum recommendation, excluding the volume of water, exempt compounds, or colorant added to tint bases. "Manufacturers maximum recommendation" means the maximum recommendation for thinning that is indicated on the label or lid of the coating container.
 - On or after January 1, 2005, the state limits operative February 28, 1990 will no longer be applicable.
 - Conversion factor: one pound VOC per gallon (U.S.) = 119.95 grams per liter.
- NA1. The fire retardant "all others" category shall be "not applicable" and is being replaced with the "clear" category.

NA2. The "semi-transparent" and "opaque" stain categories shall be "not applicable" and are being replaced with one category "Stains."
NA3. The "Waterproof mastic coating" category shall be "not applicable" and is being replaced with the "Mastic texture coating" category.
NA4. The "All other architectural coating" category shall be "not applicable" and is being replaced with N.J.A.C. 7:27-23.3(g).

(j) The provisions of (a) above shall not apply to an architectural coating if the coating and/or manufacturer has been granted a limited timeframe variance or exemption by another state or one of the California air quality management districts that has promulgated a rule substantially equivalent to, and that has product categories and VOC content limits identical to, N.J.A.C. 7:27-23. The variance or exemption shall be used in New Jersey to comply with this subchapter only if:

1. The variance or exemption is in effect (the Department shall consider a variance to be in effect if the issuing agency deems the variance to be in effect);

2. The product for which the variance or exemption is being used to comply with this subchapter meets the following:

i. The product belongs to a category that is subject to a VOC content limit set in Table 1 in (i) above; and

ii. The VOC content limit promulgated for this product by the agency that issued the variance or exemption, is equal to the most stringent applicable VOC content limit in Table 1 in (i) above;

3. Prior to relying on a variance or exemption for compliance with this subchapter, the manufacturer submits to the Department, at the address in (k) below, the following:

i. A statement that, for a specified product that it manufactures, it intends to comply with this subchapter under a variance or exemption rather than meet the applicable VOC content standards in Table 1 in (i) above;

ii. The brand name of the product, and the specific category in Table 1 in (i) above to which the product belongs;

iii. A copy of the document(s) setting forth the variance or exemption; the issuing agency's approval; the issuing agency's conditions of its approval; and any documents from the issuing agency that subsequently modify or terminate its conditions of approval; documentation demonstrating compliance with the variance or exemption;

iv. The number of gallons sold, in containers greater than 1 liter, annually, in New Jersey; and

v. The VOC content of the coating; and

4. The manufacturer includes in its electronic registration, submitted pursuant to N.J.A.C. 7:27-24.6(c), an indication that, for the specified product, it is complying with this subchapter under a variance or exemption.

(k) Information required to be submitted to the Department pursuant to (j)3 above shall be submitted to the following address:

Attn: Architectural Coating Variance
Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

Petition for Rulemaking: grandfathering of existing stock of architectural coatings.

See: 21 N.J.R. 2132(d), 21 N.J.R. 2403(c).

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).

See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).

Coatings categorized by groups and exemption for small containers at (c)2.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Subsection (b) added, effective February 28, 1993.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

"VOS" replaced by "VOC"; at Table 1, Group II, Stain: semitransparent, maximum changed to 4.6 from 4.5.

Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Ass'n v. Kean*, D.N.J.1994, 856 F.Supp. 903.

7:27-23.4 Compliance provisions and test methods

(a) For the purpose of determining compliance with the VOC content limits contained in N.J.A.C. 7:27-23.3(i) Table 1, the VOC content of a coating shall be determined by using the following procedures. The VOC content of a tint base shall be determined prior to the addition of any colorant which is added after packaging in sale units by a person other than the manufacturer.

1. For all coatings, with the exception of low solids coatings, the VOC content in grams of VOC per liter of coating, thinned to the manufacturer's maximum recommendation, excluding the volume of water and exempt compounds, shall be determined as follows:

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

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

Vm	= volume of coating, in liters
Vw	= volume of water, in liters
Vec	= volume of exempt compounds, in liters

2. For low solids (LS) coatings, the VOC content in units of grams of VOC per liter of coating, thinned to the manufacturer's maximum recommendation, including the volume of water and exempt compounds, shall be determined as follows:

$$\text{VOC Content (LS)} = (W_s - W_w - W_{ec}) / V_m$$

Where:

VOC Content (LS)	= grams of VOC per liter of low solids coating
W _s	= weight of volatile, in grams
W _w	= weight of water, in grams
W _{ec}	= weight of exempt compounds, in grams
V _m	= volume of coating, in liters

(b) Except as provided at (c) and (d) below, the test methods at (b)1 through 5 below and the information specified at (b)6 below, shall, as applicable, be used to determine the physical properties of a coating in order to perform the calculations in (a) above:

1. The VOC content shall be determined using either:

i. The EPA Method 24, as set forth in Appendix A of 40 Code of Federal Regulations (CFR) Part 60, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," including any subsequent revisions thereto, which are incorporated herein by reference; or

ii. The SCAQMD Method 304-91 (Revised February 1996), "Determination of Volatile Organic Compounds (VOC) in Various Materials," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," including any subsequent revisions thereto, which are incorporated herein by reference;

2. The exempt compounds content shall be determined using SCAQMD Method 303-91 (Revised August 1996), "Determination of Exempt Compounds," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition for volatile organic compound for a list of the exempt (excluded) compounds to be used in the test method);

3. The exempt compound content of compounds that are cyclic, branched, or linear completely methylated siloxanes shall be determined using BAAQMD Method 43, "Determination of Volatile Methylsiloxanes in Solvent-Based Coatings, Inks, and Related Materials," BAAQMD Manual of Procedures, Volume III, adopted November 6, 1996, including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition for volatile organic compound for a list of the exempt (excluded) compounds to be used in the test method);

4. The exempt compound content of parachlorobenzotrifluoride shall be determined using BAAQMD Method 41, "Determination of Volatile Organic Compounds in Solvent-Based Coatings and Related Materials Containing Parachlorobenzotrifluoride," BAAQMD Manual of Procedures, Volume III, adopted December 20, 1995, including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition for volatile organic compound for a list of the exempt compounds to be used in the test method);

5. Analysis of methacrylate multi-component coatings used as traffic marking coatings shall be conducted according to a modification of EPA Method 24, 40 CFR 59, subpart D, Appendix A "Determination of Volatile Matter Content of Methacrylate Multi component Coatings Used as Traffic Marking Coatings," (September 11, 1998), including any subsequent revisions thereto, which are incorporated herein by reference. This method shall not be used for methacrylate multi component coatings used for purposes other than as traffic marking coatings or for other classes of multi component coatings; or

6. In addition to or instead of any of the test methods at (b)1 through 5 above, formulation data or any other reasonable means for predicting that the coating has been formulated as intended (for example, quality assurance checks, recordkeeping).

(c) In addition to the test methods provided in (b) above, other test methods which have been demonstrated to the Department's satisfaction to provide results that are acceptable for purposes of determining compliance may be used upon receipt of written approval from the Department, after the Department has obtained approval from the EPA.

(d) If there are any inconsistencies between the results of an EPA Method 24 test and any other means for determining VOC content, the EPA Method 24 results will govern, except when an alternative method is approved as specified in (c) above.

(e) The following test methods shall be used to test a coating, subject to the provisions of this subchapter, to determine its applicable coating category pursuant to the definitions in N.J.A.C. 7:27-23.2:

1. The flame spread index of a fire-retardant coating shall be determined using the ASTM Designation E 84-01, "Standard Test Method for Surface Burning Characteristics of Building Materials," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of fire-retardant coating);

2. The fire-resistance rating of a fire-resistive coating shall be determined by ASTM designation E 119-00a, "Standard Test Methods for Fire Tests of Building Construction Materials," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of fire-resistive coating);

3. The gloss of a coating shall be determined using ASTM Designation D 523-89 (1999), "Standard Test Method for Specular Gloss," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of flat coating, non-flat coating, non-flat-high-gloss coating, and quick dry enamel);

4. The metallic content of a coating shall be determined using SCAQMD Method 318-95, "Determination of Weight Percent Elemental Metal in Coatings by X-Ray Diffraction," SCAQMD "Laboratory Methods of Analysis for Enforcement Samples," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of metallic pigmented coating);

5. The acid content of a coating shall be determined using ASTM Designation D 1613-02, "Standard Test Method for Acidity in Volatile Solvents and Chemical Intermediates Used in Paint, Varnish, Lacquer and Related Products," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of pre-treatment wash primer);

6. The set-to-touch, dry-hard, dry-to-touch and dry-to-recoat times of a coating shall be determined using ASTM Designation D 1640-95 (1999), "Standard Methods for Drying, Curing, or Film Formation of Organic Coatings at Room Temperature," including any subsequent revisions thereto, which are incorporated herein by reference. The tack free time of a quick-dry enamel coating shall be determined using the Mechanical Test Method of ASTM Designation D 1640-95 (1999) (see N.J.A.C. 7:27-23.2, the definition of quick dry enamel and quick-dry primer, sealer, and undercoater);

7. The chalkiness of a surface shall be determined using ASTM Designation D 4214-98, "Standard Test Methods for Evaluating the Degree of Chalking of Exterior Paint Films," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of specialty primer, sealer, and undercoater);

8. The resistance to long-term cumulative radiation exposure of a coating shall be determined using ASTM Designation D-4082-02, "Standard Test Method for Effects of Gamma Radiation on Coatings for Use in Light-Water Nuclear Power Plants," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of nuclear coating); and

9. The resistance to various chemicals to which the coatings are likely to be exposed in nuclear power plants shall be determined using ASTM Method D 3912 95 (2001), "Standard Test Method for Chemical Resistance of Coatings Used in Light-Water Nuclear Power Plants," including any subsequent revisions thereto, which are incorporated herein by reference (see N.J.A.C. 7:27-23.2, the definition of nuclear coating).

(f) Upon the request of the Department, any manufacturer of a coating that is subject to the requirements of this subchapter shall test any of its coatings that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the coating. Such testing shall be performed utilizing the methods in N.J.A.C. 7:27-23.4.

(g) Upon the request of the Department, any manufacturer of a coating that is subject to the requirements of this subchapter shall provide to the Department product samples that are duplicates of samples tested in accordance with (f) above.

(h) Test methods can be obtained as follows:

1. ASTM test methods can be purchased from American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428-2959. Telephone (610) 832-9585. Fax (610) 832-9555 or can be purchased from the ASTM website at <http://www.ASTM.org>;

2. SCAQMD test methods can be purchased from the South Coast Air Quality Management District, 21865 East Copley Drive, Diamond Bar, California 91765-0934, telephone (909) 396-2162;

3. BAAQMD test methods described can be purchased from the Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, California 94109, telephone (415) 749-4900; and

4. EPA Test Method 24, which is located in 40 CFR, Chapter I, Part 60, Appendix A-7, can be downloaded from the following website: http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Ti-tle_40/40cfr60a_00.html.

(i) A retailer who sells or offers for sale in New Jersey an architectural coating that violates the VOC content limits at N.J.A.C. 7:27-23.3(a) may provide to the Department any of the following types of documentation with respect to its purchase of the coating product in question in order to demonstrate compliance with this subchapter:

1. Written communication between the retailer and the manufacturer(s) and distributor(s) that the retailer will accept only products for sale in New Jersey that comply with N.J.A.C. 7:27-23;

2. Written agreement(s) between the retailer and the manufacturer(s) and distributor(s) in which the manufacturer(s) and distributor(s) commit to supply to the retailer only products that comply with N.J.A.C. 7:27-23; or

3. Invoices, purchase orders and/or other contractual and billing documents that specify that the retailer will accept only products that comply with N.J.A.C. 7:27-23.

New Rule, R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).
See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a) 36 N.J.R. 3078(a).

7:27-23.5 Labeling requirements

(a) The manufacturer of an architectural coating subject to this subchapter shall display on the coating container's label, bottom or lid, the date the coating was manufactured, or a date code representing the date of manufacture. If the manufacturer uses a date code for any coating, the manufacturer shall file an explanation of each code in accordance with N.J.A.C. 7:27-23.6(c).

(b) The manufacturer of an architectural coating subject to this subchapter shall display the following information on the coating container label or lid:

1. A statement of the manufacturer's recommendation regarding thinning of the coating, except that:

i. This requirement does not apply to the thinning of architectural coatings with water; and

ii. If thinning of the coating prior to use is not necessary, the recommendation must specify that the coating is to be applied without thinning;

2. The maximum or the actual VOC content of the coating in accordance with N.J.A.C. 7:27-23.4, which includes the manufacturer's maximum recommendation for thinning, shall be provided as follows:

i. For a coating manufactured prior to January 1, 2005, the VOC content shall be displayed in grams of VOC per liter of coating or pounds of VOC per gallon of coating; and

ii. For a coating manufactured on or after January 1, 2005, the VOC content shall be displayed in grams of VOC per liter of coating;

3. For an industrial maintenance coating, one or more of the following statements:

i. "For industrial use only";

ii. "For professional use only"; and/or

iii. "Not for residential use" or "Not intended for residential use";

4. For clear brushing lacquers manufactured on and after January 1, 2005, the statements "For brush application only" and "This product must not be thinned or sprayed" shall be prominently displayed;

5. For rust preventative coatings manufactured on and after January 1, 2005, the statement "For metal substrates only" shall be prominently displayed;

6. For a specialty primer, sealer, or undercoater manufactured on and after January 1, 2005, one or more of the following statements shall be prominently displayed:

i. "For blocking stains";

ii. "For fire-damaged substrates";

iii. "For smoke-damaged substrates";

iv. "For water-damaged substrates"; and/or

v. "For excessively chalky substrates";

7. For a quick dry enamel manufactured on or after January 1, 2005, the following:

i. The statement "Quick dry" shall be prominently displayed; and

ii. A statement of the time it takes for the enamel to dry hard; and

8. For a non-flat high gloss coating manufactured on or after January 1, 2005, the statement "High gloss" shall be prominently displayed.

(c) For a coating manufactured on or after January 1, 2005, the manufacturer of an architectural coating, that is "formulated and recommended" for a specific use as specified in the definition of the particular architectural coating in N.J.A.C. 7:27-23.2, shall display such recommended use on the coating container's label.

(d) Prior to January 1, 2005 only, the provisions of this subchapter shall not apply to any architectural coating registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq., provided that:

1. The manufacturer has filed an application for any registration amendment necessary for compliance with this subchapter with EPA;

2. A copy of this application was submitted by the manufacturer to the Assistant Director, Enforcement Element, Division of Environmental Quality, PO Box 027, Trenton, New Jersey 08625-0027 by August 31, 1990;

3. Within 30 calendar days of receipt of notice of EPA action on an amendment request, a copy of that notice was supplied to the Assistant Director, Enforcement Element, at the address specified above; and

4. Within 180 calendar days of the receipt of an approval of any necessary change, the manufacturer began use of the complying product or label.

Amended by R.1989 d.568, effective November 6, 1989 (operative December 12, 1989).

See: 21 N.J.R. 1055(a), 21 N.J.R. 3488(a).

New (c) added and (c) recodified to (d) with provisions for applications for amended registrations to be filed with EPA.

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Location and print size of information specified; (a)2 and (b) deleted; new (a)2, (b) and (c) added; FIFRA manufacturers required to submit data to DEP; six months between approval and use of labels allowed in (e).

Administrative Correction in (a)2 changing the date from February 28 to August 9, 1991 for the statement; and change type size from 12 to eight.

See: 23 N.J.R. 303(a).

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

"VOS" replaced by "VOC".

Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).
Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Ass'n v. Kean*, D.N.J.1994, 856 F.Supp. 903.

7:27-23.6 Administrative and reporting requirements

(a) Each manufacturer and distributor of an architectural coating subject to N.J.A.C. 7:27-23.3 shall include on the invoice, bill of lading, or other shipping document provided to the distributor or retailer receiving the product in New Jersey a statement indicating that the architectural coatings included on that shipping document and subject to N.J.A.C. 7:27-23.3, shipped by that manufacturer or distributor for sale in New Jersey, are in compliance with this subchapter. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than five years and shall be made available by the document recipient to the Department or its representatives upon request.

(b) For a coating that is sold or manufactured in New Jersey for use outside of New Jersey, or for shipment to other manufacturers for reformulation or repackaging, documentation indicating the final destination of the coating shall be made available to the Department or its representatives upon request. These documents shall be maintained by the manufacturer, distributor and/or retailer for no less than three years and shall be made available by the document recipient to the Department or its representatives upon request.

(c) A manufacturer who uses a date code on the coating container, in lieu of using the date of manufacture on the container, or a manufacturer who is complying with this subchapter with the use of a limited timeframe variance or exemption in accordance with N.J.A.C. 7:27-23.3(j), shall submit a registration with the Department as follows:

1. The information shall be submitted electronically, unless:
 - i. Electronic submission would impose hardship on the manufacturer; and
 - ii. The Department approves a request from the manufacturer to submit the information on paper pursuant to (c)7 below;
2. The registration shall be submitted to the Department in accordance with guidance on the Department's website at <http://www.state.nj.us/dep/baqp>.
3. The registration shall be submitted in accordance with the following schedule:
 - i. For a coating sold in New Jersey prior to January 1, 2005, the registration shall be submitted on or after July 20, 2004 and prior to January 1, 2005; and

ii. For a coating sold in New Jersey on or after January 1, 2005, that was not sold in New Jersey prior to January 1, 2005, the registration shall be submitted prior to selling the coating in New Jersey;

4. A manufacturer who, after the submission of its registration, begins to manufacture a coating for sale in New Jersey which changes the original registration information, or if any of the information provided in the registration changes, shall submit a revised registration including the new information within 90 days of the change;

5. The information shall include the following:

- i. The name of the manufacturer;
- ii. The full mailing address of the manufacturer;
- iii. The name, telephone number and email address of a contact person;
- iv. The date code explanation for each coating; and
- v. If the manufacturer is, for any product, complying with the requirements of this subchapter through a variance or exemption, the following:
 - (1) The product brand name;
 - (2) The category in N.J.A.C. 7:27-23.3(i) Table 1 to which the product belongs; and
 - (3) The state or California air quality management district that approved the variance or exemption and the approval date;

6. Notwithstanding (i) below, any information submitted as part of the registration pursuant to this subsection shall not be claimed to be confidential, including under the procedures set forth at N.J.A.C. 7:27-1.6 through 1.29; and

7. A manufacturer who claims that electronic submission of its registration will impose a hardship shall submit a request to the Department to submit its registration on paper, rather than electronically, as follows:

- i. The request shall include an explanation of the hardship that electronic submission would impose on the manufacturer;
- ii. The Department shall not approve a manufacturer's request to submit its registration on paper unless the Department is satisfied that electronic submission would impose hardship on the manufacturer; and
- iii. The manufacturer shall submit the request to the Department at the following address:

Attn: Architectural Coating Registration
Bureau of Air Quality Planning
Department of Environmental Protection
PO Box 418
401 East State Street
Trenton, New Jersey 08625-0418

(d) Upon request, a manufacturer of an architectural coating shall submit to the Department a report concerning the coatings it sold in New Jersey which are subject to this subchapter. Such report shall be submitted within 90 days of the request. The request may include any or all of the following:

1. The name of the manufacturer;
2. The full mailing address of the manufacturer;
3. The name and telephone number of a contact person;
4. The name of each coating as described on its label;
5. The category of each coating sold;
6. Whether the coating is marketed for interior or exterior purposes;
7. The color category of each coating (such as white, pastel, medium or deep base for flat and non-flat coatings, and clear, semi-transparent or opaque for stains and varnishes);
8. The number of gallons sold in containers greater than one liter;
9. The number of gallons sold in containers less than or equal to one liter;
10. A list of VOC's used in each coating;
11. A list of exempt compounds used in the coating; and
12. The following information (as defined in the CARB 1998 Architectural Coatings Survey Results Final Report, September 1999, or subsequent CARB surveys, which is incorporated by reference herein and which can be found by accessing the CARB website):
 - i. The actual and regulatory VOC content (as defined in the CARB survey) in grams per liter. If products less than or equal to one liter have a different VOC content, list them separately;
 - ii. The actual and regulatory VOC content in grams per liter after recommended thinning. If products sold in containers less than or equal to one liter have a different VOC content list them separately; and
 - iii. The percent by volume solids.

(e) Records sufficient to provide the information listed in (d) above shall be maintained by each manufacturer for a minimum of three years.

(f) Each manufacturer of a coating subject to a VOC content limit in this subchapter shall keep records demonstrating compliance with the applicable VOC content limit. Such records shall consist of the results of testing and/or calculations in accordance with N.J.A.C. 7:27-23.4. These records are required to be kept by the manufacturer for a period of at least five years. Such records shall be made

available by the manufacturer to the Department or its representatives within 30 days of the Department's request.

(g) If the Department requests any manufacturer of an architectural coating to test any of its coatings that are sold, offered for sale, held for sale, distributed, supplied, or manufactured for sale in New Jersey to determine the VOC content of the coating, the manufacturer shall submit the test report to the Department within 30 days of the receipt of the request from the Department.

(h) A person who holds for sale, offers for sale, or sells any coating subject to this subchapter shall, upon request, identify to the Department or its representatives, the distributor or company from whom the coating was obtained.

(i) Except as provided at (c)6 above, any person who is required to submit information to the Department pursuant to this subchapter may assert a confidentiality claim for that information in accordance with N.J.A.C. 7:27-1.6. The Department will process and evaluate confidentiality claims and treat information claimed to be confidential in accordance with N.J.A.C. 7:27-1.6 through 1.29.

(j) Variance or exemption documentation shall be submitted to the Department in accordance with N.J.A.C. 7:27-23.3(j).

Amended by R.1990 d.342, effective July 16, 1990.

See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Recordkeeping requirements revised.

Amended by R.1992 d.102, effective March 2, 1992 (operative March 28, 1992).

See: 23 N.J.R. 1858(b), 24 N.J.R. 792(a).

"VOS" replaced by "VOC".

Amended by R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

Rewrote the section.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Ass'n v. Kean*, D.N.J.1994, 856 F.Supp. 903.

7:27-23.7 Inspections

(a) The Department and its representatives shall have the right to enter and inspect any site, building or equipment, or any portion thereof, at any time, in order to ascertain compliance or non-compliance with the Air Pollution Control Act, N.J.S.A. 26:2C, this chapter, any permit, or any order or agreement issued or entered into pursuant thereto. Such right shall include, but not be limited to, the right to test or sample any materials at the facility, to sketch or photograph any portion of the site, building or equipment, to copy or photograph any document or records necessary to determine such compliance or non-compliance, and to interview any employees or representatives of the owner, operator or registrant. Such right shall be absolute and shall not be conditioned upon any action by the Department, except the presentation of appropriate credentials as requested and compliance with appropriate standard safety procedures.

(b) Owners or operators, and any employees or representatives thereof, of any manufacturing facility shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Any facility manufacturing a coating will be considered a manufacturing facility for the purpose of this section, regardless of any other functions performed at the facility. Such assistance shall include making available sampling equipment necessary to conduct sampling at the facility and providing sampling facilities for the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale at the manufacturing facility. During such testing by the Department, the equipment and all components connected, attached to, or serving the equipment shall be used and operated under normal routine operation conditions or under such other conditions as may be requested by the Department. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practice.

(c) Owners or operators, and any employees or representatives thereof, of any distribution facility, retail outlet or any person who applies coatings for compensation shall assist and shall not hinder or delay the Department and its representatives in the performance of all aspects of any inspection. Such assistance shall include providing any equipment necessary for access to all stock to allow the obtaining of samples by the Department to determine the nature and quantity of architectural coating being provided, stored, transported, exchanged in trade, sold, or offered for sale. In cases in which sampling equipment necessary to conduct sampling at the facility or sampling facilities to determine the nature and quantity of architectural coating at the facility are available on site, these equipment or facilities shall be made available for Department use.

Amended by R.1990 d.342, effective July 16, 1990.
See: 21 N.J.R. 3360(a), 22 N.J.R. 2145(b).

Requirements for manufacturing facilities separated from those for distributors and retailers.

Amended by R.2004 d.236, effective June 21, 2004 (effective July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

In (c), substituted "any person who applies coatings for compensation" for "indirect consumer" in the first sentence, deleted "by the indirect consumer or at the retail or distribution outlet" at the end of the second sentence.

Case Notes

Amendment to scheduling order or delay in implementation of state standards not justified. *American Lung Ass'n v. Kean*, D.N.J.1994, 856 F.Supp. 903.

7:27-23.8 Penalties for failure to comply

(a) Any person subject to this subchapter shall be responsible for ensuring compliance with all requirements of this subchapter. Failure to comply with any provision of this subchapter may subject the person to civil penalties in accordance with N.J.A.C. 7:27A-3 and applicable criminal penalties, including, but not limited to, those set forth at N.J.S.A. 26:2C-19(f)1 and 2.

(b) If a product that is subject to this subchapter is determined to fail to comply with the applicable VOC content requirements at N.J.A.C. 7:27-23.3, the Department may issue an order including any or all of the following:

1. Requiring the product's manufacturer to:

i. Demonstrate to the satisfaction of the Department that the product in fact complies with the applicable VOC content requirements at N.J.A.C. 7:27-23.3;

ii. Demonstrate to the satisfaction of the Department that the test results or calculations for that specific unit are not representative of the entire batch, or entire product line of that unit; and/or

iii. Within 30 days of the submission of the test report to the Department, recall its non-complying product from all retail outlets in New Jersey;

2. Requiring any distributor or supplier of the product to assist in a recall by taking back any of the product it has supplied to a retail outlet; and/or

3. Prohibiting the sale of the product in New Jersey until the manufacturer makes a demonstration, satisfactory to the Department, that the product to be sold will meet the applicable VOC content requirements at N.J.A.C. 7:27-23.3.

New Rule, R.2004 d.236, effective June 21, 2004 (operative July 20, 2004).

See: 35 N.J.R. 2983(a), 35 N.J.R. 4241(a), 36 N.J.R. 3078(a).

SUBCHAPTER 24. PREVENTION OF AIR POLLUTION FROM CONSUMER PRODUCTS

Authority

N.J.S.A. 13:1B-3 and 26:2C-1 et seq., in particular 26:2C-8.

Source and Effective Date

R.1995 d.567, effective November 6, 1995
(operative December 2, 1995).

See: 27 N.J.R. 1077(a), 27 N.J.R. 4291(a).

7:27-24.1 Definitions

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

"Adhesive" means a product that is used to bond one surface to another by attachment. This term does not include products used on humans and animals, adhesive tape, contact paper, wallpaper, shelf liners, or any other product with an adhesive incorporated onto or in an inert substrate.