



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 21 2005

OFFICE OF
ENVIRONMENTAL INFORMATION

Mr. Robert E. Fabricant, Special Counsel
Willkie, Farr & Gallagher, LLP
787 Seventh Avenue
New York, NY 10019-6099

Re: Request for Reconsideration Concerning EPA's Actions Regarding State Implementation Plan Revisions to Include State Regulations to Reduce VOCs from Architectural and Maintenance Coatings (RFR #04020A).

Dear Mr. Fabricant:

This letter is in response to your Request for Reconsideration (RFR) dated May 26, 2005, on behalf of the Sherwin-Williams Company. In your RFR, you indicated that you disagree with the U.S. Environmental Protection Agency's (EPA) conclusions in the Agency's response to your Request for Correction (RFC) dated February 25, 2005, and you requested that EPA reconsider its response.

Your RFR reiterates your position that EPA should not have approved certain State Implementation Plan (SIP) revisions that include State regulations to reduce emissions of volatile organic compounds (VOC) from architectural and maintenance coatings (AIM coatings) because the States utilized data and analysis derived from a report dated March 31, 2001, prepared by E.H. Pechan & Associates titled "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules" (Pechan Report). In support of your RFR, you resubmitted your RFC, dated June 2, 2004, however you did not provide any additional information that EPA had not already considered.

As explained in EPA's response to your RFC, EPA assesses State regulations submitted for inclusion in a SIP in accordance with the particular applicable provisions of the Clean Air Act (CAA). Under section 110(a) of the CAA and relevant case law, States have significant leeway in selecting which sources of emissions to regulate and by what method to regulate them. Under section 116 of the CAA, States may adopt more stringent emission standards than those required under federal standards. Under section 183(e) of the CAA, States may issue regulations governing VOC emissions from consumer products, including those otherwise subject to federal AIM coatings regulations. EPA has approved State AIM coatings regulations as SIP strengthening measures, due to their more stringent VOC content limits.¹ In none of the actions

¹ See, 67 FR 70,315 (Nov. 22, 2002) (Delaware); 69 FR 68,080 (Nov. 23, 2004)

approving State AIM coatings regulations did EPA address the amount of VOC emission reduction credit that should be allocated to the regulations.

EPA further explained in its response to your RFC that, under these circumstances, the Agency's actions to propose approval or take final action to approve these State AIM coatings regulations does not constitute dissemination of the Pechan Report under EPA's *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (IQGs). In approving the State AIM coatings regulations, EPA did not rely on the VOC emission reduction calculations of the Pechan Report and, by taking these actions, EPA neither adopted nor endorsed the data or conclusions of the Pechan Report. In short, the specific amount of VOC emission reduction credit attributable to the regulations was not before the Agency in those actions.

In accordance with EPA's IQGs, your RFR was considered by a three-member Executive Panel comprised of the Agency's Acting Assistant Administrator for the Office of Research and Development, the Acting Economics Advisor, and myself. The Executive Panel carefully reviewed your RFC, EPA's response to your RFC, your RFR, and other relevant materials, and concluded that EPA's response to your RFC was consistent with EPA's IQGs. The Executive Panel affirms that the Agency's actions to propose approval or take final action to approve these State AIM coatings regulations for inclusion in a SIP did not constitute dissemination of the Pechan Report under EPA's IQGs. In taking these actions, EPA did not rely on, adopt, or endorse the data or conclusions of the Pechan Report.

We note that EPA has considered the question of VOC emissions reductions credits from State AIM coatings regulations in another rulemaking context,² and that your client participated actively in that rulemaking process. EPA has already begun the process of evaluating the potential methodologies for allocating VOC emission reduction credit for AIM rules in an Advanced Notice of Proposed Rulemaking. See 70 FR 51,694 (Aug. 31, 2005). Please note, however, that EPA did not state that this process would be to conduct an assessment of the Pechan Report. The process is intended to be an opportunity for interested parties to submit comments, data, and information relevant to determining how EPA should calculate the VOC emissions reductions credits for State AIM coatings rules. We welcome your views on this issue as a part of the announced public notice and comment process.

(Pennsylvania); 69 FR 72,118 (Dec. 13, 2004) (New York); 69 FR 29674 (May 25, 2004) (Maryland); 69 FR 31,780 (June 7, 2004) (Virginia); and 69 FR 77,149 (Dec. 27, 2004) (District of Columbia).

²See, 70 FR. 25,688 (May 13, 2005).

EPA values input from the public on the quality of information it produces or utilizes and embraces opportunities for improvement. EPA is committed to promoting transparency in our process and providing the public with information that is objective and useful. If you have any questions about our decision on this RFR, please do not hesitate to contact Reggie Cheatham, Director, Quality Staff, at (202)564-6830.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kimberly T. Nelson', with a long horizontal flourish extending to the right.

Kimberly T. Nelson
Assistant Administrator and
Chief Information Officer

cc: Robert Brenner, Principal Deputy Assistant Administrator, Office of Air and Radiation
Donald Welsh, Regional Administrator, Region 3