RE: Continuation of Enforcement Discretion under Part 205 (Architectural and Industrial Maintenance Coatings) until July 1, 2022

To Whom It May Concern:

This is to advise you that, subject to the terms set forth in this letter, the New York State Department of Environmental Conservation (Department) will exercise its authority to utilize enforcement discretion with respect to certain provisions of 6 NYCRR Part 205 (Part 205) concerning the regulation of Architectural and Industrial Maintenance (AIM) Coatings. The Department will exercise this authority as set forth below in lieu of full compliance with Part 205. This continues the enforcement discretion issued on December 30, 2020, for an additional six months, until July 1, 2022.

In 2019, the Department revised Part 205 to further reduce emissions of volatile organic compounds (VOCs) from AIM coatings. Part 205 requires AIM coatings manufacturers to meet enumerated VOC content limits for AIM coating categories. The revisions reduced VOC content limits for 12 existing categories, established VOC content limits for 12 new categories, and eliminated 15 categories altogether.

In 2020, the Governor issued Executive Order 202 declaring a disaster emergency for the entire State of New York, along with several subsequent Executive Orders to address the COVID-19 emergency. AIM coatings manufacturers informed the Department that the pandemic disrupted manufacturing capacity, access to raw material suppliers, and testing laboratories. As a result, manufacturers reported that they would not be able to comply with the Department’s January 1, 2021 compliance deadline related to reduced VOC content limits for AIM coating categories.

To address the impacts caused by the COVID-19 emergency, the Department issued an enforcement discretion letter on December 30, 2020, which provided AIM coatings manufacturers an additional 12 months, until January 1, 2022, to comply with revised sections 205.3(a) and 205.4, which became effective on January 11, 2020.

Unfortunately, continuing impacts on New York businesses caused by the COVID-19 pandemic have once again necessitated the need for enforcement discretion. In particular, AIM coatings manufacturers in the state – as well as some suppliers throughout the country - informed the Department that supply chain issues due to the pandemic continue to impact the industry’s ability to obtain necessary supplies and raw materials. These supply chain issues have caused critical shortages of raw materials and ingredients necessary to reformulate products and comply with the current January 1, 2022 compliance date provided under the December 30, 2020 enforcement discretion letter.
Therefore, acknowledging the continuing impacts on New York businesses and the regulated community due to the pandemic, the Department is providing under this enforcement discretion to AIM coatings manufacturers an additional 6 months, until July 1, 2022, to: (1) comply with reduced VOC content limits for existing AIM coating categories as set forth in the Table in section 205.3(a); (2) continue to comply with the VOC content limits for categories otherwise eliminated as a result of the revisions in section 205.3(a); and (3) comply with new container labeling requirements in section 205.4, all of which became effective on January 11, 2020.

Additionally, all definitions in section 205.2 remain in effect, except that for the purpose of this enforcement discretion all references to products manufactured “on and after January 1, 2021” shall mean “on and after July 1, 2022.” All other provisions of Part 205 remain in effect and will be enforced.

Thank you for your cooperation in this matter. Questions regarding this enforcement discretion should be directed to Henry Tranes, Esq. of the Office of General Counsel at (518) 402-6887. Technical questions regarding compliance options under Part 205 should be directed to Alexandria Page of the Division of Air Resources at (518) 402-8396.

Sincerely,

Thomas S. Berkman
Deputy Commissioner
and General Counsel

cc: Regional Directors
Regional Air Pollution Control Engineers
Regional ECO Cpt.