

Tim Fox - Re: R11-23: Errors in Second Notice Version of Rule

From: Tim Fox
To: Vetterhoffer, Dana
Subject: Re: R11-23: Errors in Second Notice Version of Rule
CC: Davis, Alec; jsell@paint.org; khodge@hddattorneys.com; 'mdunn@atg.state.il.us'; mrios@hddattorneys.com; Yang, Virginia

Act # 5

Ms. Vetterhoffer:

After reviewing your e-mail message, I agree that the language of the Board's June 16, 2011 opinion is not exactly reflected in the language of the rule in the Board's order. I agree that these were inadvertent errors on my part, and I apologize for any confusion or misunderstanding.

I have also examined the separate materials already submitted by the Board to JCAR for its second-notice review. Those materials, now being reviewed by JCAR, are consistent in all respects with your 4-point summary of the apparent errors in the Board's order. The Board will certainly amend its final adoption opinion and order by correcting those.

Thanks for your message. With this response, I'll place it in the record as a public comment.

Tim Fox, IPCB
 312-814-6085

>>> "Vetterhoffer, Dana" <Dana.Vetterhoffer@Illinois.gov> 6/20/2011 3:52 PM >>>
 Mr. Fox,

In reviewing the Board's 6/16/11 Order ("Order") and rule with regard to Second Notice, I noticed that several of the revisions requested by the Agency in its post-hearing comments are not reflected in the rule. In its Order, the Board indicated that it intended to implement these specific Agency recommendations; therefore, the Agency believes that their absence is due to transcriptional errors. The Agency requests that the Board confirm that these were unintended errors, and also notify JCAR of the errors, as several concern revisions mandated by the USEPA, without which the rule is not approvable.

The Second Notice version of the rule does not remove Section 218.207(o), the emissions averaging alternative for pleasure craft surface coaters. As explained in the Agency's post-hearing comments, the USEPA advised that the rule can either contain higher VOM limitations for certain pleasure craft coatings OR the existing emissions averaging alternative, but not both. The industry group that brought this issue to the Board's attention, the ACA, indicated that it preferred higher VOM limits. The Agency therefore recommended that certain limits be raised, and that the emissions averaging alternative be deleted. In its Order, the Board indicated that it concurred with the Agency's proposed changes (p. 58), and in fact the Second Notice version of the rule contains the higher VOM limitations. The Second Notice version only eliminates the averaging option, however, in Part 219, (subsection(n)), not in Part 218 (subsection (o)). Subsection (o) should therefore be deleted. The rule as it currently reads is not approvable by the USEPA, and if not corrected, another rulemaking will be required.

Also, the last sentence in Section 218.207(a) still offers pleasure craft surface coating operations the

option of complying with the averaging alternative in subsection (o). This should have been deleted, per the Agency's recommended revision and the Board's stated support for such revision. (Order, p. 58).

Similarly, the recordkeeping/reporting requirements in Section 218.211(j) and 219.211(j) apply only to sources utilizing the emissions averaging alternative. The Agency therefore recommended in its post-hearing comments that subsection (j) be deleted. It still appears in the Second Notice version of the rule, however, despite the Board's agreement that it be removed. (Order, p. 59-60).

Finally, in its post-hearing comments, the Agency recommended that references to subsection (i) be removed from two places in Section 218.211(c)(3)(B) and two places in Section 218.211(d)(3)(B). Subsection (i) of Section 218.211 was originally a typo, and should have referenced subsection (j) concerning recordkeeping and reporting requirements for pleasure craft surface coatiers utilizing the emissions averaging alternative. As the Agency recommended deleting subsection (j), the reference to (i) [which should be (j)] must be deleted as well. One reference to subsection (i) still appears in Section 218.211(d)(3)(B) and should be removed.

In summary, the following errors appear in the Second Notice version of the rule:

1. Section 218.207(o) should be deleted.
2. The last sentence in Section 218.207(a) should be deleted.
3. Section 218.211(j) and 219.211(j) should be deleted.
4. The remaining reference to Section 218.211(i) in Section 218.211(d)(3)(B) should be deleted.

I noticed two additional transcriptional errors that, while not necessary for the rule's approvability, should be corrected for clarification purposes if possible. In Section 218.187(e)(7)(C), "serosol" should be "aerosol." In Section 218.409(a) and 219.409(a), the words "owner or operator of a printing line performed such testing prior to May 9, 1995" is repeated twice in a row.

Thank you,



Dana E. Vetterhoffer

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