Submitted Electronically

January 17, 2020

Delaware Natural Resources and Environmental Control
Division of Air Quality
State Street Commons
100 W. State Street, Suite 6A
Dover, DE 19904

Email sent to: Ajo.Rabemiarisoa@delaware.gov

Re: Public Comments on Draft Regulation: “1151 Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses” (December 2019 Version)

Dear Ms. Rabemiarisoa,

The Polyisocyanurate Insulation Manufacturers Association1 (“PIMA”) appreciates the opportunity to comment on the Delaware Natural Resources and Environmental Control’s (“DNREC”) draft Prohibitions on Use of Certain Hydrofluorocarbons in Specific End-Uses (December 2019) (hereinafter referred to as “draft regulation”). PIMA supports Delaware’s efforts to reduce harmful emissions of greenhouse gases through restrictions on hydrofluorocarbons (HFCs) with high global warming potential. As explained below, we encourage DNREC to scope its regulations narrowly to exclude polyisocyanurate insulation products, which as a category do not use the prohibitive HFC substances, from the draft regulation’s disclosure statement requirements.

I. Introduction

PIMA represents North American manufacturers of laminated polyisocyanurate insulation board products (“polyiso insulation”). Our members include Atlas Roofing Corporation, Carlisle Construction Materials, Firestone Building Products, GAF, Johns Manville,

IKO Industries, Rmax, and Soprema. These manufacturers account for the majority of polyiso insulation produced and sold in North America, including Delaware.

Manufacturers in the North American polyiso industry do not use HFC substances in their product formulations. As detailed in our letter dated October 7, 2019, the polyiso industry has used pentane (or pentane blends) as the blowing agent for more than twenty years.\(^2\) Pentane is a non-ozone depleting, low global warming potential substance.

We are concerned that the draft regulation could be interpreted to apply the Section 4.2 Disclosure Statement requirements to polyiso manufacturers, which would be unnecessary because the industry never used the prohibited substances in the manufacture of its products. Below we provide suggested modifications to the draft regulation that would address these concerns.

II. Regulatory Intent

The intent of the draft regulation is clear – establish prohibitions and requirements for the use and manufacture of HFCs (Section 1.0 Purpose). This statement implies that the State is interested in regulating existing uses of HFCs in order to reduce greenhouse gas emissions.

The limited scope of this regulatory action is further evidenced by the definition for “Manufacturer” – “Manufacturer” means any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces any product that contains or uses [HFCs] or is an importer or domestic distributor of such a product (emphasis added) (Section 3.0 Definitions). The definition implies again that the State is interested in regulating only existing uses of HFCs in order to meet GHG emissions reduction targets.

However, later sections of the draft regulation are scoped too broadly and could be interpreted as applying to any end-use category listed by name in Table 1 “End-use and Prohibited substances.” This result is clearly inconsistent with the State’s regulatory intent. Therefore, below we propose several modifications to the regulatory language that would avoid such inconsistencies.

\(^2\) Pentane offers an economical solution for polyiso insulation products and delivers exceptional thermal resistance that contributes to polyiso insulation’s high R-value – the primary physical property for thermal insulation products. Polyiso insulation manufacturers have made significant capital investments in modifying existing facilities and constructing new plants that allow for the safe use of pentane technology in the manufacturing process.
III. Proposed Modifications to Draft Regulation

First, we propose modifying Section 7.0 End-use and prohibited substances exemptions by adding a subsection to exempt the polyiso insulation end-use from the disclosure requirements. Specifically, we propose the following addition:

[New] 7.2 The requirements of Section 4.2 Disclosure Statement do not apply to any person who sells, offers for sale, installs, uses, or manufactures Polysiocyanurate Laminated Boardstock products that do not contain the substances listed in Section 6.0.

A similar exemption could also (or alternatively) be added to Section 4.2 Disclosure Statement. Specifically, we propose the following addition:

[New] 4.2.1.3.3 Any person who manufactures or sells Polysiocyanurate Laminated Boardstock products shall not be required to provide a written disclosure to the buyer.

Finally, Section 2.0 Applicability could be amended to reflect the limited scope of the proposed regulation. Specifically, we propose the following addition:

2.1 This regulation applies to any person who sells, offers for sale, installs, uses, or manufacturers in the State of Delaware, any substance used in end-uses listed in Section 6.0. The requirements of Section 4.2 Disclosure Statement are not intended to apply to any person who sells, offers for sale, installs, uses, or manufactures Polysiocyanurate Laminated Boardstock products that do not use or contain the substances listed in Section 6.0.

The options proposed above would bring Delaware’s regulatory approach into alignment with other states. For example, the California Air Resources Board (CARB) agreed with PIMA’s argument to exclude polyiso manufacturers when it eliminated a proposed labeling requirement for end-uses that categorically do not use HFC substances. CARB concluded that labeling was unnecessary for end-uses that “have already transitioned out of using HFCs . . . [where] the risk that these end-uses revert to prohibited HFCs is low.” Additionally, Washington State has limited its emergency rulemaking (HFC reporting) to only those end-uses that currently use HFCs and, based on comments at public meeting, is exploring how to implement its permanent rulemaking with a narrow scope that focuses on existing HFC uses only.

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Finally, notwithstanding our proposed modifications to exempt polyiso insulation from the Section 4.2 Disclosure Statement requirements, we encourage DNREC to permit the disclosure or label for regulated foam products to appear either on the product or product packaging. Labeling individual products may not be feasible for all manufacturers. Furthermore, allowing for product packaging labels would align the requirements with labeling requirements for the State’s building code.

IV. Conclusion

PIMA appreciates the opportunity to comment on DNREC’s draft regulation. We would be pleased to explore the viability of the proposed modifications described above with staff. Please contact me at jkoscher@pima.org or (703) 224-2289 should additional information be helpful to your deliberative regulatory process.

Respectfully submitted,

Justin Koscher
President