

# DEPARTMENT OF NATURAL RESOURCES AND ENVIRONMENTAL CONTROL

## DIVISION OF AIR AND WASTE MANAGEMENT

Statutory Authority: 7 Delaware Code, Chapter 60 (7 **Del.C.** Ch. 60)  
7 **DE Admin. Code** 1141

### PROPOSED

#### REGISTER NOTICE SAN # 2009-28

**1. Title of the Regulation:**

To amend 7 **DE Admin. Code** 1141 "Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products" by revising Section 3.0 "Portable Fuel Containers," and to revise Delaware State Implementation Plan (SIP) for attainment of ground-level ozone standard.

**2. Brief Synopsis of the Subject, Substance and Issues:**

Delaware adopted Section 3.0 of 7 **DE Admin. Code** 1141 in January 2001 in order to reduce volatile organic compound (VOC) emissions from portable fuel containers (i.e., gas cans). Effective January 1, 2009, the EPA began to regulate emissions from portable fuel containers under a federal rule (37 FR 8428). The federal rule provides for better emission control of portable fuel containers, and therefore achieving greater VOC emission reductions than the current Delaware regulation. As such, DNREC proposes that 3.0 of 7 **DE Admin. Code** 1141 not apply to portable fuel containers manufactured on and after January 1, 2009, and that Delaware rely on the federal rule to control emissions from this source.

Also, DNREC proposes to make a corresponding revision to its ozone SIP, demonstrating that the revision to Section 3.0 of 7 **DE Admin. Code** 1141 and the reliance on the new federal rule will not adversely impact Delaware's efforts for attaining the ozone air quality standard.

**3. Possible Terms Of The Agency Action:**

None.

**4. Statutory Basis or Legal Authority To Act:**

7 **Del.C.** Chapter 60, Environmental Control.

**5. Other Regulations that may be Affected by the Proposal:**

None.

**6. Notice of Public Comment:**

The revised Section 3.0 of 7 **DE Admin Code** 1141 and the proposed ozone SIP revision are available for public review at DNREC's Air Quality Management Section (AQMS) offices in both Dover and New Castle. A public hearing will be held on **January 5, 2010**, beginning at 6:00 pm, in AQMS Conference Room, 2<sup>nd</sup> Floor, Priscilla Building, 156 South State Street, Dover, DE 19901. Comments on the regulation revision and the related SIP revision can be sent to AQMS at the above address, or presented at the hearing.

**7. Prepared By:**

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**1141 Limiting Emissions of Volatile Organic Compounds from Consumer and Commercial Products**

*(Break in Continuity of Sections)*

### 3.0 Portable Fuel Containers

#### 3.1 Applicability.

- 3.1.1 The provisions of 3.0 of this regulation apply to any person who sells, supplies, offers for sale, or manufactures for sale portable fuel container (or containers) or spout (or spouts) or both portable fuel container (or containers) and spout (or spouts) for use in the State of Delaware; except:
- 3.1.1.1 Safety cans meeting the requirements of 29 CFR 1926, Subpart F.
  - 3.1.1.2 Portable fuel containers with a nominal capacity less than or equal to one quart.
  - 3.1.1.3 Rapid refueling devices with nominal capacities greater than or equal to four gallons provided such devices are designed for use in officially sanctioned off-highway motorcycle competitions, and either create a leak-proof seal against a stock target fuel tank or are designed to operate in conjunction with a receiver permanently installed on the target fuel tank.
  - 3.1.1.4 Portable fuel tanks manufactured specifically to deliver fuel through a hose attached between the portable fuel tank and an outboard engine for the purpose of operating that outboard engine.
- 3.1.2 Compliance with the requirements of 3.0 of this regulation does not exempt any spill-proof system or spill-proof spout from compliance with other applicable Federal or State requirements.
- 3.1.3 The requirements of 3.0 of this regulation apply ~~on and after January 1, 2003, to any portable fuel container or spout or both portable fuel container and spout manufactured between~~ before January 1, 2003 and December 31, 2008, inclusive, except that any portable fuel container or spout or both portable fuel container and spout manufactured before January 1, 2003 that does not meet the requirements of 3.0 of this regulation, may be sold, supplied, or offered for sale until January 1, 2004, provided that the date of manufacture or a date code, representing the date of manufacture, is clearly displayed on the portable fuel container or spout. Note: Portable fuel containers became regulated under federal regulation 37 FR 8428 effective January 1, 2009.
- 3.1.4 Any person subject to any requirement of 3.0 of this regulation may comply with an alternative control plan that has been approved by the Department and the U.S. EPA as part of Delaware's State Implementation Plan.

#### 3.2 Definitions.

For the purpose of 3.0 of this regulation, the following definitions apply:

**"Fuel"** means a hydrocarbon mixture used to power any spark ignition internal combustion engine.

**"Manufacturer"** means any person who imports, manufactures, produces, assembles, packages, repackages, or re-labels a portable fuel container or spout or both portable fuel container and spout.

**"Nominal capacity"** means the volume, indicated by the manufacturer that represents the maximum recommended filling level.

**"Outboard engine"** means a spark-ignition marine engine that, when properly mounted on a marine watercraft in the operating position, houses the engine and drive unit external to the hull of the marine watercraft.

**"Permeation"** means the process by which individual fuel molecules may penetrate the walls and various assembly components of a portable fuel container directly to the outside ambient air.

**"Person"** means any individual, public or private corporation, political subdivision, government agency, department or bureau of the State, municipality, industry, co-partnership, association, firm, estate or any legal entity whatsoever.

**"Portable fuel container"** means any container or vessel with a nominal capacity of ten gallons or less that is intended for reuse and that is designed or used primarily for receiving, transporting, storing, and dispensing fuel.

**"Spill-proof spout"** means any spout that complies with all of the performance standards specified in 3.3.2 of this regulation.

**“Spill-proof system”** means any configuration of portable fuel container and firmly attached spout that complies with all of the performance standards in 3.3.1 of this regulation.

**“Spout”** means any device that can be firmly attached to a portable fuel container, through which the contents of a portable fuel container can be dispensed.

**“Target fuel tank”** means any receptacle that receives fuel from a portable fuel container.

### 3.3 Standards.

3.3.1 No person subject to the requirements of 3.0 of this regulation shall sell, supply, offer for sale, or manufactures for sale portable fuel container (or containers) or spout (or spouts) or both portable fuel container (or containers) and spout (or spouts) for use in the State of Delaware which does not:

- 3.3.1.1 Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.
- 3.3.1.2 Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.
- 3.3.1.3 Have only one opening for both filling and pouring.
- 3.3.1.4 Provide a fuel flow rate and fill level of:
  - 3.3.1.4.1 not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:
    - 3.3.1.4.1.1 less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or
    - 3.3.1.4.1.2 greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof system clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on each spill-proof system or label affixed thereto, and on the accompanying package, if any; or
  - 3.3.1.4.2 not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,
  - 3.3.1.4.3 not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.
- 3.3.1.5 Meet a permeation rate of 0.4 grams per gallon per day or less.
- 3.3.1.6 Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.

3.3.2 No person subject to the requirements of 3.0 of this regulation shall sell, supply, offer for sale, or manufacture for sale any spout for use in the State of Delaware, which does not:

- 3.3.2.1 Have an automatic shut-off that stops the fuel flow before the target fuel tank overflows.
- 3.3.2.2 Automatically close and seal when removed from the target fuel tank, and remain completely closed when not dispensing fuel.
- 3.3.2.3 Provide a fuel flow rate and fill level of:
  - 3.3.2.3.1 not less than one-half gallon per minute for portable fuel containers with a nominal capacity of:
    - 3.3.2.3.1.1 less than or equal to 1.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening; or,
    - 3.3.2.3.1.2 greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to one inch below the top of the target fuel tank opening if the spill-proof spout clearly displays the phrase "Low Flow Rate" in type of 34 point or greater on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto; or,
  - 3.3.2.3.2 not less than one gallon per minute for portable fuel containers with a nominal capacity greater than 1.5 gallons but less than or equal to 2.5 gallons and fills to a level less than or equal to 1.25 inches below the top of the target fuel tank opening; or,

- 3.3.2.3.3 not less than two gallons per minute for portable fuel containers with a nominal capacity greater than 2.5 gallons.
    - 3.3.2.4 Have a warranty from the manufacturer for a period of not less than one year against defects in materials and workmanship.
  - 3.4 Testing Procedures.

Any manufacturer subject to the requirements of 3.3 of this regulation shall perform the following compliance tests in accordance with test methods and procedures stated, or as otherwise approved by the Department and the Administrator of the EPA. Records of compliance testing shall be maintained for as long as the product is available for sale in Delaware, and test results shall be made available to the Department within 60 days of request.

    - 3.4.1 The following tests shall be carried out to determine compliance with 3.3.2 of this regulation prior to the product being manufactured for sale in Delaware:
      - 3.4.1.1 "Test Method 510, Automatic Shut-Off Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by California Air Resources Board (CARB) on July 6, 2000. This test method is hereby adopted by reference.
      - 3.4.1.2 "Test Method 511, Automatic Closure Test Procedure for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.
      - 3.4.1.3 "Test Method 512, Determination of Fuel Flow Rate for Spill-Proof Systems and Spill-Proof Spouts" adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.
    - 3.4.2 The following tests shall be carried out to determine compliance with 3.3.1 of this regulation prior to the product being manufactured for sale:
      - 3.4.2.1 All of the test procedures stated in 3.4.1 of this regulation.
      - 3.4.2.2 "Test Method 513, Determination of Permeation Rate for Spill-Proof Systems," adopted by CARB on July 6, 2000. This test method is hereby adopted by reference.
  - 3.5 Administrative Requirements.
    - 3.5.1 Any manufacturer subject to the requirements of 3.3.1 of this regulation shall clearly display on each spill-proof system:
      - 3.5.1.1 the phrase "Spill-Proof System";
      - 3.5.1.2 a date of manufacture or representative date code; and
      - 3.5.1.3 a representative code identifying the portable fuel container or portable fuel container and spout as subject to and complying with the requirements of 3.3.1 of this regulation.
    - 3.5.2 Any person subject to the requirements of 3.3.2 of this regulation shall clearly display on the accompanying package, or for spill-proof spouts sold without packaging, on either the spill-proof spout or a label affixed thereto:
      - 3.5.2.1 the phrase "Spill-Proof Spout";
      - 3.5.2.2 a date of manufacture or representative date code; and
      - 3.5.2.3 a representative code identifying the spout as subject to and complying with the requirements of 3.3.2 of this regulation.
    - 3.5.3 Any manufacturer subject to 3.5.1 or 3.5.2 or both 3.5.1 and 3.5.2 of this regulation shall file an explanation of both the date code and representative code with the Department prior to manufacturing the product for sale in the State of Delaware.
    - 3.5.4 Any person subject to 3.5.1 or 3.5.2 or both 3.5.1 and 3.5.2 of this regulation shall clearly display a fuel flow rate on each spill-proof system or spill-proof spout, or label affixed thereto, and on any accompanying package.
    - 3.5.5 Any person subject to 3.5.2 of this regulation shall clearly display the make, model number, and size of those portable fuel containers the spout is designed to accommodate.

3.5.6 Any person not subject to or not in compliance with 3.3 of this regulation may not display the phrase "Spill-Proof System" or "Spill-Proof Spout" on the portable fuel container or spout, respectively, on any sticker or label affixed thereto, or on any accompanying package.

3.5.7 Any person subject to and complying with 3.3 of this regulation, that due to its design or other features, cannot be used to refuel on-road motor vehicles shall clearly display the phrase "Not Intended For Refueling On-Road Motor Vehicles" in type of 34 point or greater on each of the following:

3.5.7.1 For a portable fuel container or portable fuel container and spouts sold together as a spill-proof system, on the system or on a label affixed thereto, and on the accompanying package, if any; and

3.5.7.2 For a spill-proof spout sold separately from a spill-proof system, on either the spill-proof spout, or a label affixed thereto, and on the accompanying package, if any.

**5 DE Reg. 1497 (01/01/02)**

**5 DE Reg. 1759 (03/01/02)**

**5 DE Reg. 1125 (11/01/02)**

**10 DE Reg. 868 (11/01/06)**

**12 DE Reg. 347 (09/01/08)**

**13 DE Reg. 792 (12/01/09) (Prop.)**