

## *A Volatile Environment for Consumer Products?*

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On July 6, 2019, the federal government published proposed regulations establishing concentration limits for volatile organic compounds (“VOCs”) in certain consumer products. The proposed *Volatile Organic Compound Concentration Limits for Certain Products Regulations* (“proposed Regulations”), established under the *Canadian Environmental Protection Act, 1999*<sup>1</sup> (“CEPA”), will apply to Canadian manufacturers and importers.

The proposed Regulations cover a wide range of consumer products (from shaving cream to oven cleaner). Importers and manufacturers of products falling within these categories will want to take a close look at their product portfolios to determine how the proposed Regulations may affect their business.

### **VOC Concentration Limits for Manufacturers and Importers**

VOCs are a group of organic chemicals. In 2003, VOCs were added to the list of toxic substances in Schedule 1 of CEPA due to their role in the formation of ground-level ozone and particulate matter, two main components of smog.<sup>2</sup>

The proposed Regulations would prohibit the manufacture and/or import of products with VOC concentrations in excess of category-specific limits set out in a schedule to the proposed Regulations. The schedule identifies four product categories:

- 1 Personal care products – e.g. deodorant, hair spray, nail polish remover, shaving cream
- 2 Maintenance products – e.g. engine degreasers, air fresheners, bathroom and tile cleaners
- 3 Adhesives, adhesive removers, sealants, and caulks – e.g. structural waterproof adhesives, non-aerosol adhesives
- 4 Miscellaneous products – e.g. anti-static products, non-stick aerosol cooking spray

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<sup>1</sup> SC 1999, c 33.

<sup>2</sup> Canada Gazette, Part I, Volume 153, Number 27: Volatile Organic Compound Concentration Limits for Certain Products Regulations, Executive Summary, online: <http://gazette.gc.ca/rp-pr/p1/2019/2019-07-06/html/reg1-eng.html>.

The schedule also sets-out proposed maximum VOC concentrations for each specific product type. Manufacturers and importers will be required to ensure their products do not contain VOC concentrations in excess of these limits.

We note that the proposed Regulations do not apply to the sale or offering for sale of products. Sellers may continue to sell products exceeding the proposed VOC concentration limits until stock is depleted.

### **Compliance Options**

Manufacturers and importers of products that exceed the VOC concentration limits in the proposed Regulations will be required to consider reformulating their products. Reformulation strategies could include dilution of VOC contents or replacement of VOC contents with non-VOC materials.

The proposed Regulations also provide for the following alternative compliance options to provide some flexibility.

#### Permit – Compliance Not Technically or Economically Feasible

Manufacturers and importers of products that exceed the VOC concentration limits may apply for a permit authorizing them to continue manufacturing or importing the product if it is not technically or economically feasible to comply with the proposed Regulations.<sup>3</sup> An application for a permit must include a plan describing the measures that will be taken to reduce the product's VOC concentration or VOC emission potential.<sup>4</sup> These permits are valid for up to two years.<sup>5</sup>

#### Permit – Product Resulting in Lesser VOC Emissions

Manufacturers and importers of products that exceed the VOC concentration limits may also apply for a permit authorizing them to continue manufacturing or importing the product if the total VOC emissions from that product would be lower than those from a comparable compliant product when used in accordance with the manufacturer's written instructions.<sup>6</sup> A permit application must contain evidence establishing that use of the product in accordance with the manufacturer's written instructions results in VOC emissions that are less than those from a comparable compliant product.<sup>7</sup> A permit is valid for a period of four years.<sup>8</sup>

<sup>3</sup> Proposed *Volatile Organic Compound Concentration Limits for Certain Products Regulations*, s 17(1).

<sup>4</sup> *Ibid*, s 17(2)(j).

<sup>5</sup> *Ibid*, s 18(3).

<sup>6</sup> *Ibid*, s 14(1).

<sup>7</sup> *Ibid*, s 14(2)(h).

<sup>8</sup> *Ibid*, s 14(3).

## Tradeable Unit Credit Program

The proposed Regulations create a tradeable unit credit program that would allow companies to manufacture or import products that exceed the VOC concentration limits. Under this program, companies can obtain credits by reformulating products to have a VOC concentration lower than the limits.<sup>9</sup> Such credits can then be used to offset products that exceed the VOC concentration limits. Credits can also be transferred between companies. Companies participating in this credit trading program are required to submit annual reports and meet additional conditions set out in the proposed Regulations.<sup>10</sup>

## **Enforcement**

Fines for importing products in contravention of regulations under CEPA can be significant. For example, a Quebec-based company was fined \$125,000 for importing automotive refinishing products that contained VOCs in excess of the allowable limit set out in the *Volatile Organic Compound (VOC) Concentration Limits for Automotive Refinishing Products Regulations*<sup>11</sup> under CEPA.<sup>12</sup>

## **What the Proposed Regulations Mean for Manufacturers and Importers**

The proposed Regulations cover a broad range of products, spanning a number of different categories. While the cost of compliance will vary from product to product, companies dealing in products that exceed these limits will want to begin considering their compliance options well ahead of the proposed Regulations coming into force.

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<sup>9</sup> *Ibid*, s 6.

<sup>10</sup> *Ibid*, s 12.

<sup>11</sup> SOR/2009-197.

<sup>12</sup> Environment and Climate Change Canada, “Terrebonne company fined a total of \$564,000 for violations against the Canadian Environmental Protection Act, 1999”, (Ottawa: 11 October 2019), online: <https://www.canada.ca/en/environment-climate-change/news/2019/10/terrebonne-company-fined-a-total-of-564000-for-violations-against-the-canadian-environmental-protection-act-1999.html>.