

## **ENFORCEMENT POLICY STATEMENT REGARDING VOC-FREE CLAIMS FOR ARCHITECTURAL COATINGS**

The Guides for the Use of Environmental Marketing Claims (“Green Guides”), 16 C.F.R. Part 260, set forth the Commission’s current views on environmental marketing to help advertisers avoid making unfair or deceptive claims under Section 5 of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 45. Although the Green Guides do not bind the FTC or the public, the Commission can take action under the FTC Act if a marketer makes an environmental claim inconsistent with them.

With regard to free-of claims, the Green Guides, as revised in 2012, advise marketers as follows:

Depending on the context, a free-of or does-not-contain claim is appropriate even for a product, package, or service that contains or uses a trace amount of a substance if: (1) the level of the specified substance is no more than that which would be found as an acknowledged trace contaminant or background level; (2) the substance’s presence does not cause material harm that consumers typically associate with that substance; and (3) the substance has not been added intentionally to the product. 16 C.F.R. § 260.9(c) (hereinafter “trace amount test”).

This trace amount test is designed to provide general guidance to marketers without regard to product, substance, or industry. As stated in footnote 4 of § 260.9(c), however, what constitutes a trace contaminant or background level depends on the substance at issue and requires a case-by-case analysis.

The Commission recently analyzed the trace amount test in the context of zero-VOC claims for architectural coatings. In March 2013, the Commission issued final decisions and orders resolving allegations that The Sherwin-Williams Company (“Sherwin-Williams”) and PPG Architectural Finishes, Inc. (“PPG”) had deceptively advertised their paint products as “zero VOC.”<sup>1</sup> These orders prohibit the companies from representing that the VOC level of a paint is “zero” unless, after tinting, the VOC level is zero grams per liter, or they possess and rely upon competent and reliable scientific evidence that the paint contains no more than a “trace level of VOCs.” The orders include a definition of “trace level of VOCs” derived from 16 C.F.R. § 260.9(c) and adapted specifically to address VOC-free claims for architectural coatings such as paint. Namely, the orders state that “trace level of VOCs” means:

(A) VOCs have not been intentionally added to the product; (B) the presence of VOCs at that level does not cause material harm that consumers typically associate with VOCs, including but not limited to, harm to the environment or human health; and (C) the presence of VOCs at that level does not result in

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<sup>1</sup> Volatile organic compounds (“VOCs”) are carbon-containing compounds that evaporate at room temperature. Some VOCs can have detrimental effects on the environment and human health.

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<sup>2</sup> VOC-free marketing claims include, but are not limited to, “zero VOCs,” “0 VOCs,” “no VOCs,” and “fr