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From: Doug Fratz [dfraz@cspa.org] 2007 DEC 26 AM 10:34
Sent: Wednesday, December 19, 2007 4:35 PM
To: RegComments@state.pa.us INDEPENDENT REGULATORY
Cc: joeyost321@msn.com; Joe; 'Doug Fratz' REVIEW COMMISSION
Subject: CSPA Comments on Proposed Amendments to Chapter 130, Subchapter B (Consumer Products)

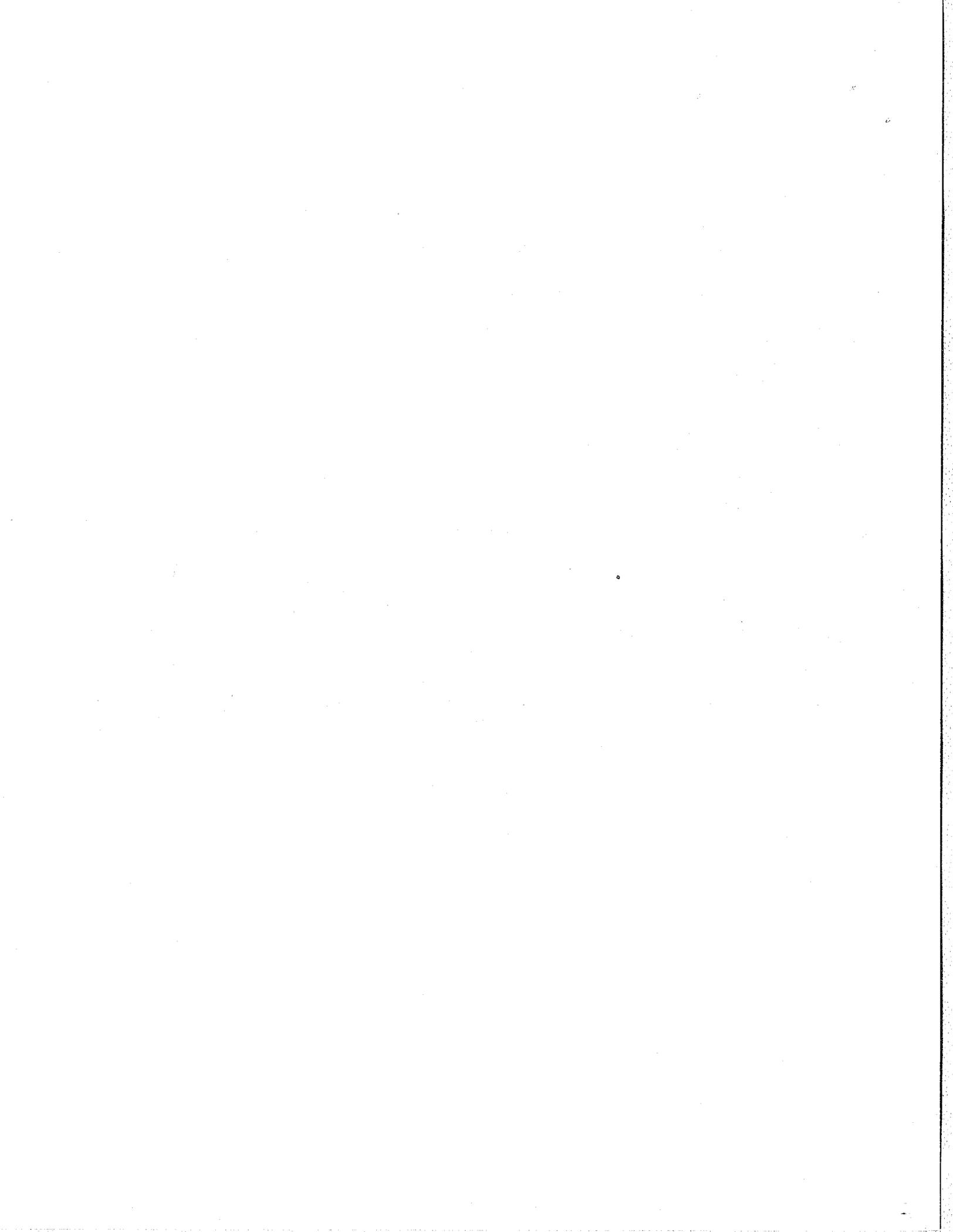
Re: Proposed Amendments to Chapter 130, Subchapter B (Consumer Products)

Our comments are attached. Thank you very much for the opportunity to comment on this proposal.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

Pennsylvania Environmental Quality Board
Rachel Carson State Office Building, 16th Floor
400 Market Street
Harrisburg, PA 17101-2301
RegComments@state.pa.us

Subject: Proposed Amendments to Chapter 130, Subchapter B (Consumer Products)¹

Dear Honorable Board Members:

The Consumer Specialty Products Association (CSPA or Association) appreciates the opportunity to submit written comments on the proposed amendments to the Commonwealth's existing consumer product regulation.² CSPA also appreciated the opportunity to present oral testimony before the Board at the public hearing on November 26, 2007, in Harrisburg.

In summary, the proposed amendments are part of the Board's comprehensive strategy to reduce ground-level ozone to demonstrate attainment of the national eight-hour ozone air quality standard. The Board proposes to incorporate provision of the recently revised Ozone Transport Commission's (OTC's) Model Consumer Products Rule,³ which is based upon the new limits on volatile organic compounds (VOCs) and other provisions promulgated as a final rule by the California Air Resources Board (CARB) in July 2005. The Board's proposed amendment will affect 12 categories of consumer products. When promulgated as a final regulation, it will be submitted to the United States Environmental Protection Agency (EPA) as a revision to Pennsylvania's State Implementation Plan (SIP).

As stated in CSPA's public testimony on November 26, the Association would like to clearly emphasize the importance of promulgating *uniform* regulations for consumer products throughout the Ozone Transport Region (OTR). CSPA is on record as supporting the recently revised OTC Model Rule because it promotes uniform state regulations in a broad and vitally important region of the country.⁴ The record for the Board's initial 2003 rulemaking to develop the current regulation will reflect that CSPA actively supported promulgation of the Commonwealth's current Consumer and Commercial Products Rule. The Association is also on

¹ The text of the proposed amendments to the Pennsylvania's current consumer product regulation is posted on the Department of Environmental Protection website at: <http://www.pabulletin.com/secure/data/vol37/37-37/1752.html>.

² The text of the Commonwealth's current regulation is posted at: <http://www.pacode.com/secure/data/025/chapter130/subchapBtoc.html>.

³ The text of OTC's recently revised Model Rule is posted at: http://www.otcair.org/projects_details.asp?FID=99&fview=stationary#.

⁴ CSPA participated actively as a stakeholder in the OTC's open and transparent process to revise the Model Consumer Products Rule in 2006.

record as supporting regulations based on the OTC Model Rule in eight other Mid-Atlantic and Northeast States. In addition, CSPA is also on record supporting adoption of the OTC Model Rule in two Midwest States.

As pertains to the current rulemaking proceeding, CSPA could support the Board's proposed revisions because these new VOC limits and related enforcement and administrative provisions are materially consistent with the recently revised OTC Model Rule. CSPA supports regionally consistent technologically and commercially feasible regulatory standards needed by Pennsylvania (and other states) to achieve and/or maintain the eight-hour ground level ozone standard mandated by the federal Clean Air Act.

STATEMENT OF INTEREST

CSPA is a voluntary, non-profit national trade association representing approximately 260 companies engaged in the manufacture, formulation, distribution, and sale of products for household, institutional, commercial and industrial use. CSPA member companies' wide range of products includes home, lawn and garden pesticides, antimicrobial products, air care products, automotive specialty products, detergents and cleaning products, polishes and floor maintenance products, and various types of aerosol products. CSPA member companies manufacture and market more than two-thirds of the broad product categories covered by both the current regulation and the proposed amendments.

Consumer products perform important functions for household and institutional consumers, and often provide significant environmental, public health and safety benefits. For example, household cleaning products, many of which contain antimicrobials (*i.e.*, disinfectants, sanitizers), can provide important public health benefits in lowering the transmission of virulent organisms on household and institutional surfaces to people. Household cleaners and polishes also can help extend the life of the durable goods on which they are used, such as floors, furniture, fixtures, carpets, and other fabrics. Household insecticides play a crucial public health role in deterring the spread of insect-borne diseases, and deterring injuries from biting or stinging insects. Many lawn and garden products, such as herbicides, control poison ivy, poison oak and other plants that have detrimental effects on people's health and well-being.

In addition, automotive products can provide significant environmental benefits by helping maintain efficient automotive performance, as well as extending the life of automotive parts. Automotive maintenance products can also provide benefits to the safety of motorists, such as in the maintenance of brakes, or minimizing the time spent in dangerous on-road emergencies (as with tire inflators and sealers). Other automotive products, such as windshield washer fluids, enhance driver safety by improving visibility.

Since the late 1980s, CSPA has worked actively and cooperatively with Pennsylvania, California, Connecticut, Delaware, Illinois, Indiana, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, Ohio, Oregon, Texas and Virginia to provide our industry's perspective on these states' consumer products regulations. In addition, CSPA is participating as an active stakeholder in efforts by the OTC and the Lake Michigan Air Directors Consortium (LADCO) efforts to develop consistent regulatory requirements for consumer and commercial products in the Northeast, Mid-Atlantic and Midwest Regions.

Finally, CSPA worked cooperatively with EPA as it developed the National Volatile Organic Compound Emission Standards for Consumer Products. CSPA participated as a joint intervenor with another national trade association in support of EPA in *Allied Local and Regional Manufacturers Caucus, et al v. U.S. Environmental Protection Agency*.⁵ In this case, CSPA and another national trade association filed joint legal briefs supporting EPA's arguments that the Agency had authority to promulgate regulations pursuant to Section 183(e) of the federal Clean Air Act.⁶

COMMENTS

I. CSPA SUPPORTS THE PROMULGATION OF UNIFORM CONSUMER PRODUCTS REGULATIONS THROUGHOUT THE OZONE TRANSPORT REGION.

Let the record clearly reflect the fact that the Board is proposing to incorporate stringent technology-forcing regulatory standards for 12 product categories that were adopted recently by CARB.⁷ These proposed VOC standards may pose a significant challenge for some CSPA members. This challenge could be particularly acute for the small- and medium-sized companies that manufacture and market their products on a regional (as opposed to a nationwide) basis.

Although some CSPA member companies may have legitimate concerns about the difficulty and expense that they may incur in complying with these new VOC limits contained in the Board's proposed amendments, CSPA's members *support* the promulgation of *uniform regulations* because it is vitally important that interstate commerce is not impaired by the promulgation of different state regulations in the OTR.

Moreover, adoption of uniform regional regulations is a practical necessity for small businesses since they generally lack the staff resources to ensure that the companies' products comply with a patchwork of different (and potentially conflicting) state-specific requirements. Therefore, CSPA strongly believes that it is critically important that Pennsylvania and other OTR States promulgate *uniform regulatory requirements* for consumer products to improve air quality without imposing unnecessary impediments to interstate commerce.

A. CSPA Supports the Board's Proposal to Set a Reasonable Effective Date for the New VOC Limits and Related Enforcement Provisions.

As currently drafted, the proposed regulation establishes an effective date of January 1, 2009, for the new VOC limits and related administrative and enforcement provisions.⁸ CSPA believes that the proposed effective date will allow sufficient time for companies to comply with the technology-forcing VOC limits. This reasonable "lead time" is particularly important for small- and medium-sized businesses that may only sell products in Pennsylvania (or in the Mid-Atlantic Region) since these companies will likely need time to ensure that their products comply with these strict new regulatory limits.

⁵ 215 F.3d 61 (D.C. Cir. 2000).

⁶ 42 USC § 7511b(e).

⁷ See Cal. Code Regs. Title 17, Subchapter 8.5, Article 4, §§ 94507-94517.

⁸ See proposed 25 Pa. Code § 130.211 Table of Standards.

B. CSPA Agrees with the Board's Proposal for Dealing with Products Manufactured Before the Applicable Effective Date for VOC Limits.

CSPA supports the Board's proposal for dealing with products manufactured before the applicable effective date for the VOC limits. See proposed § 130.217. This provision is entirely consistent with the parallel provision in the OTC Model Rule that imposes a sell-through limitation only on products that do *not* display either the date of manufacture or an appropriate date code.⁹

Marketing studies conducted several years ago concluded consistently that at least 90 percent of all consumer products are sold within one year after the date of manufacture. More than 90 percent of the remaining products are sold in the second and third year, thus exhausting any remaining stock within a three-year period. This trend is increasing as "big box" stores like Wal-Mart, Target and others focus relentlessly on product sales "velocity" (*i.e.*, the time a product remains on the store shelves). Simply stated, if a particular manufacturer's products cannot be sold quickly, the "big box" stores simply switch to a competitive manufacturer's product.

In summary, the practical realities of industry-wide competition and prevailing retailer practices result in the overwhelming number of products being sold within the 12-18 months after the date of manufacture. Consequently, CSPA believes that the provisions of § 130.211 are both reasonable and appropriate.

C. CSPA Urges the Board to Make a Reasonable and Necessary Technical Amendment to the Current Alternative Control Plan Provision.

CSPA urges the Board to consider adopting a narrowly-tailored amendment to the Commonwealth's current Alternative Control Plan (ACP) provision. 25 Pa. Code § 130.452. CSPA's recommended amendment will have the effect of producing a measurable *net environmental benefit* for Pennsylvania.

As currently drafted, the current regulation expressly recognizes an ACP agreement approved by CARB pursuant to California Code of Regulations, Title 17, Subchapter 8.5, Article 4, §§ 94540-55. As a threshold matter, CSPA strongly supports Pennsylvania's pragmatic approach for addressing this innovative and necessary regulatory provision. Given the fact that CARB expends a considerable amount of time and effort to review and approve an ACP, it makes little practical sense for Pennsylvania (or other states) to mechanically duplicate California's intricate and complicated process. Moreover, the OTC Consumer Products Workgroup, in consultation with their agency lawyers, developed model language that balanced: (1) the need to preserve state sovereignty; and (2) the recognition that it is both unrealistic and unreasonable for any state agency to attempt to duplicate CARB's comprehensive review process for approving an ACP.

1. Before granting an ACP, CARB carefully weighs the environmental benefits against the environmental deficits.

As part of CARB's very thorough review process in considering a company's request for an ACP, the agency balances the following considerations:

⁹ OTC Model Rule § 3(d)(1)(i).

- **Emission deficit** – one or more products that exceed the applicable VOC limit; and
- **Emission credit** – one or more products with a VOC content that is lower than the applicable limit (*i.e.*, produces a net environmental benefit).

In reaching its decision to approve an ACP, CARB determines whether the aggregate emission credits exceed the aggregate emission deficits. The end result is a net positive for the environment (*i.e.*, the pluses outweigh the minuses).

2. As currently written, the Commonwealth's ACP Provision may have the unintended effect of limiting the environmental benefits.

Since 1989, CARB has continuously revised the California Consumer Products Regulation.¹⁰ As part of this process, CARB has promulgated new VOC limits for previously unregulated product categories. In addition, CARB continues to set new and more restrictive VOC limits for currently regulated products (some of these product categories have been regulated as many as three times). Consequently, it is possible that there may be a very limited number of instances some products used in CARB's ACP compliance calculations may not be subject to the VOC limits set forth in the Table of Standards at § 130.211.

As currently drafted, the Commonwealth's ACP provision could have the unintended effect of denying a CARB-approved ACP simply because one (or more) products in the emission deficit side of the equation may not be subject to the VOC limits in the Table of Standards. In this situation, the overall uncontrolled emissions (*i.e.*, environmental burden) in Pennsylvania would actually be *less* than the total emission deficit used by CARB to calculate the compliance average. Consequently, the Commonwealth will receive **positive overall increase** in total emission credits (*i.e.*, a net environmental benefit).

To remedy this unintended problem, CSPA urges the Board to make the following technical revision to the current ACP provision set forth at 25 Pa. Code § 130.452.

Italicized text = text added to the Board's proposed regulation

§ 130.452. Exemption.

A manufacturer of consumer products which has been granted an ACP agreement by the CARB under the ACP provision in Subchapter 8.5, Article 4, Sections 94540-94555, of Title 17 of the CCR shall be exempt from § 130.211 (relating to

¹⁰ Since 1989, CARB has promulgated an extraordinarily complex and comprehensive sets of regulations that set a total of nearly 200 emission standards affecting over 100 broad categories of consumer products. California's current Consumer Products Regulation is a result of five separate rulemaking proceedings. The first rulemaking (*i.e.*, "Phase I") was approved in 1990. The second rulemaking (*i.e.*, "Phase II") was approved in 1997. The third and fourth rulemaking procedures (*i.e.*, "Midterm Measures I and II") were approved in 1997 and 1999. The fifth phase of CARB's ongoing rule development process was completed in 2004 (*i.e.*, the "2004 Amendments") and approved as a final regulation by the California Office of Administrative Law in July 2005. Furthermore, California's 2007 SIP will require CARB to continue to initiate subsequent rulemaking proceedings until at least until 2014 (and probably for many years thereafter).

table of standards) for the period of time that the CARB ACP agreement remains in effect provided that all ACP products used for emissions credits within the CARB ACP agreement are contained in § 130.211. A manufacturer claiming such an ACP agreement on this basis shall submit to the Department a copy of the CARB ACP decision (that is, the Executive Order), including the conditions established by CARB applicable to the exemption.

Under CSPA's proposed amendment, *all* emission credits used in CARB's compliance calculations would still be subject to applicable VOC limits in Pennsylvania. Thus, this technical amendment ensures that a manufacturer with an approved ACP in California that includes one or more products not regulated in Pennsylvania, but which is still producing a *net environmental benefit* would not inadvertently be denied an ACP in Pennsylvania. Moreover, this revision would make Pennsylvania's ACP provision consistent with the corresponding provision in the Ohio EPA's recently promulgated final regulation¹¹ and the Illinois EPA's final draft regulation.¹²

CONCLUSION

CSPA supports the Board's proposed amendments to the Commonwealth's current Consumer Product Regulation since these new provisions are consistent with the OTC Model Rule. CSPA is on record as actively supporting the OTC's efforts to revise its comprehensive Model Rule that has – and will continue to – promote the adoption of *uniform* and consistent regulations throughout the Mid-Atlantic, Northeast and Midwest Regions.

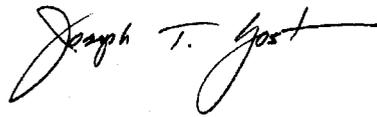
CSPA urges the Board to consider incorporating a narrowly-tailored amendment to ensure that the Commonwealth's current ACP provision can achieve future additional emission reductions.

In conclusion, CSPA appreciates the opportunity to work cooperatively with the Pennsylvania Department of Environmental Protection and other interested stakeholders in identifying regionally consistent technologically and commercially feasible regulatory standards needed by Pennsylvania (and other states) to achieve and/or maintain the eight-hour ground level ozone standard mandated by the federal Clean Air Act.

Respectfully submitted,



D. Douglas Fratz
Vice President, Scientific & Technical Affairs



Joseph T. Yost
Director, State Affairs

cc: Bruce Moore, U.S. Environmental Protection Agency Office of Air Quality Planning
and Standards, Emission Standards Division
CSPA Air Quality Special Committee and Product Task Forces
Andrew Hackman, Automotive Specialty Products Alliance

¹¹ See Ohio Admin. Code Rule 3745-112-04(M)(2)(c). The text of this regulatory provision is posted at: <http://www.epa.state.oh.us/dapc/regs/3745-112/3745-112-04f.pdf>.

¹² See proposed Ill. Admin. Code Title 35, Section 223.245(b).

**Summary of the Consumer Specialty Products Association's
Comments on the Proposed Amendments to the Commonwealth's Current
Consumer Products Regulation; 25 Pa. Code Chapter 130, Subchapter B**

The Consumer Specialty Products Association (CSPA) appreciates the opportunity to submit written comments and to offer oral testimony on the proposed amendments to the Commonwealth's existing consumer product regulation. CSPA member companies manufacture and market approximately two-thirds of the broad product categories covered by both the Board's proposed amendment and the Commonwealth's current consumer products regulation.

CSPA Supports the Adoption of Uniform Consumer Products Regulations in the Northeast and Mid-Atlantic States.

CSPA commends the Pennsylvania Department of Environmental Protection, and in particular, Mr. Terry Black (the recently retired Chief, Regulation and Policy Development Section, Division of Air Resource Management, Bureau of Air Quality), for his leadership of the Ozone Transport Commission (OTC) Consumer Products Workgroup. CSPA believes that both the initial model rule and the recently revised model produced by the OTC provides regulatory framework that will protect the environment and will allow manufacturers to produce and to sell widely-used consumer products in Pennsylvania and other states in the Mid-Atlantic and Northeast Region.

Let the record clearly reflect the fact that the Board is proposing to incorporate stringent technology-forcing regulatory standards for 12 product categories that were adopted recently by the California Air Resources Board (CARB). These proposed VOC standards may pose a significant challenge for some small- and medium-sized companies that manufacture and market their products on a regional (as opposed to a nationwide) basis. Although some CSPA member companies may have legitimate concerns about the difficulty and expense that they may incur in complying with these new volatile organic compound (VOC) limits contained in the Board's proposed amendments, CSPA supports the Board's proposed amendments since these new provisions are consistent with the revised OTC Model Rule.

CSPA Urges the Board to Make a Reasonable and Necessary Technical Amendment to the Current Alternative Control Plan Provision.

CSPA urges the Board to consider adopting a narrowly-tailored amendment to the Commonwealth's current Alternative Control Plan (ACP) provision. 25 Pa. Code § 130.452. CSPA's recommended technical amendment will ensure that all CARB-approved ACPs will be applicable in Pennsylvania. Thus, the proposed amendment will have the effect of producing a *net environmental benefit* for Pennsylvania. See CSPA's comments at pp. 4-6.

Conclusion

CSPA feels that the openness of both the Pennsylvania and the OTC processes allowed the development of technically challenging – but fair – regulations that will provide environmental protections *uniformly* in Pennsylvania and throughout the Mid-Atlantic and Northeast Region States without needlessly impairing interstate commerce. In conclusion, CSPA appreciates the opportunity to work cooperatively with the Pennsylvania Department of Environmental Protection and other interested stakeholders in identifying regionally consistent technologically and commercially feasible regulatory standards needed by Pennsylvania (and other states) to achieve and/or maintain the eight-hour ground level ozone standard mandated by the federal Clean Air Act.

