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DEPARTMENT OF ENVIRONMENTAL PROTECTION

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AGENCY

INDEPENDENT REGULATORY
REVIEW COMMISSION

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BEFORE: RICHARD FOX, Chair
Michelle Tate, Member

HEARING: Monday, November 26, 2007
12:59 p.m.

LOCATION: Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17105

WITNESSES: Joseph T. Yost

Reporter: Daniel B. Urie

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NONE OFFERED

P R O C E E D I N G S

CHAIR:

Good afternoon. I'd like to welcome you to the Environmental Quality Board's public hearing on the proposed rulemaking to amend 25 Pennsylvania Code Chapter 130, Subchapter B relating to consumer products. My name is Richard Fox. I am a member of the Environmental Quality Board representing Senator Raphael Musto. And I'll call this hearing to order at 1:00 p.m. The purpose of this hearing is to formally accept testimony on the proposed consumer product rulemaking. In addition to this hearing, two other public hearings are scheduled today in Pittsburgh and Norristown to accept public testimony on this proposed rulemaking. The objective of the proposed rulemaking is to reduce volatile organic compounds, or VOCs, emitted from consumer products.

VOCs, when in the presence of oxides and nitrogen and light and heat, create ozone through a chemical reaction process. When ground level ozone is present in concentrations in excess of the federal health based eight-hour standard, public health and welfare are adversely affected.

The Federal Environmental Protection

1 Agency has concluded that there is an association
2 between high levels of ambient ozone and increased
3 hospital admissions for respiratory ailments such as
4 asthma. While children, the elderly and those with
5 respiratory problems are most at risk, even healthy
6 individuals may experience increased respiratory
7 ailments and other symptoms when they are exposed to
8 high levels of ambient ozone while engaged in
9 activities that involve physical exertion. Though
10 such symptoms are often temporary, repeated exposure
11 could result in permanent lung damage.

12 High levels of ground level ozone also
13 cause damage to crops and vegetation, buildings and
14 synthetic fibers, including nylon, and reduce
15 visibility on roadways and in natural areas. This
16 proposed rulemaking, which is a part of the
17 Commonwealth's strategy to achieve and maintain the
18 eight-hour ozone standard through the state expands
19 upon the consumer products regulation, adopted by the
20 EQB in July 2002 by adding VOC content limits for an
21 additional 11 categories of consumer products.

22 The proposed rulemaking also amends the
23 VOC content limits for one category of consumer
24 products currently regulated. The proposed rulemaking
25 adds definitions for approximately 30 new terms,

1 including those that relate to the new product
2 categories that will be regulated, and amends
3 definitions for approximately 110 existing terms to
4 provide clarity. While there are federal VOC content
5 limits codified at 40 CFR part 59, subpart C, for
6 certain consumer products already regulated by Chapter
7 130, Subchapter B, there are no federal limits for the
8 additional products that will be regulated by this
9 proposed rulemaking.

10 If approved, the proposed regulatory
11 revisions contained in this rulemaking will be
12 submitted to the United States Environmental
13 Protection Agency as a revision to the state
14 implementation plan, or SIP. The SIP, which is a
15 requirement of the Clean Air Act, is a plan that
16 provides for the implementation, maintenance and
17 enforcement of a national ambient air quality
18 standard. As a member of the ozone transport region,
19 the Department of Environmental Protection consulted
20 with other ozone transport commission, or OTC members,
21 the District of Columbia and representatives of the
22 Major Consumer Products Trade Association in the
23 development of this proposal.

24 The proposal is consistent with
25 regulatory initiatives that will be undertaken by

1 other jurisdictions in the ozone transport region to
2 address regional transport of ozone precursor
3 emissions. In addition, the Department consulted with
4 the Air Quality Technical Advisory Committee, the
5 Citizen's Advisory Council and the Small Business
6 Compliance Advisory Committee on the proposed
7 rulemaking.

8 On September 15th, 2007, the EQB
9 published these proposed regulations for public review
10 and comment in the Pennsylvania Bulletin. In
11 addition, notices for this hearing and the hearings in
12 Pittsburgh and Norristown were published in the
13 October 6th and October 27th, 2007 editions of the
14 Pennsylvania Bulletin and in 11 newspapers across the
15 state. In order to give everyone an equal opportunity
16 to comment on this proposal, I would like to establish
17 the following ground rules.

18 I will first call upon the witnesses who
19 have pre-registered to testify at this hearing. After
20 hearing from these witnesses, I will provide any other
21 interested parties with the opportunity to testify as
22 time allows. Testimony is limited to ten minutes for
23 each witness. Organizations are requested to
24 designate one witness to present testimony on its
25 behalf. Each witness is asked to submit three written

1 copies of his or her testimony to aid in transcribing
2 the hearing.

3 And you can hand me your copies prior to
4 presenting your testimony. Please state your name,
5 address and affiliation for the record prior to
6 presenting your testimony. We would appreciate your
7 help by spelling names and terms that may not be
8 generally familiar, so that the transcript can be as
9 accurate as possible. Because the purpose of the
10 hearing is to receive comments on the proposal, EQB or
11 DEP staff may question witnesses.

12 However, the witnesses may not question
13 the EQB or DEP staff. In addition to or in place of
14 oral testimony presented at today's hearings,
15 interested parties may also submit written comments on
16 this proposal. All comments must be received by the
17 EQB on or before December 26th, 2007. Comments should
18 be addressed to the Environmental Quality Board, P.O.
19 Box 8477, Harrisburg, PA, 17105-8477. Comments may
20 also be emailed to regcomments@state.pa.us.

21 All comments received at this hearing as
22 well as written comments received by December 26th,
23 2007, will be considered by the Environmental Quality
24 Board and will become included in a comment response
25 document, which will be prepared by the Department and

1 reviewed by the EQB prior to the Board taking its
2 final action on this regulation. Anyone interested in
3 a copy of the transcript of this hearing may contact
4 the reporter here this afternoon to arrange to
5 purchase a copy. I would now like to call for the
6 first witness, which is Joseph T. Yost. He's director
7 of state affairs with the Consumer Specialty Products
8 Association.

9 MR. YOST:

10 Thank you, Mr. Fox. My name is Joseph
11 Yost and I'm director of state affairs for the
12 Consumer Specialty Products Association, or CSPA. The
13 CSPA is a national trade association representing more
14 than 260 companies engaged in the formulation,
15 manufacture, distribution and sale of consumer and
16 institutional products. CSPA member companies
17 manufacture and market approximately two-thirds of the
18 products that are covered by this proposed regulation
19 and the Commonwealth's existing consumer products
20 regulation.

21 Since the late 1980's, CSPA has worked
22 very cooperatively with Pennsylvania, California and
23 15 other states as these jurisdictions have gone
24 forward to develop a variety of consumer product
25 regulations. We've also worked with the Ozone

1 Transport Commission and the Lake Michigan Air
2 Directors Consortium, otherwise known as LADCO, L-A-D-
3 C-O, as they developed reasonable approaches.
4 Finally, CSPA worked cooperatively with the U.S.
5 Environmental Protection Agency as it developed its
6 National Organic --- National Volatile Organic
7 Compound Emission Standards for consumer products that
8 were promulgated in 1998.

9 In addition, CSPA joined with another
10 national trade association and acted as an intervener
11 in a case supporting EPA's authority to promulgate
12 regulations pursuant to Section 130 --- excuse me,
13 183E of the Federal Clean Air Act. Ascertaining to
14 the proposal that the Department has put forward and
15 the Board is considering, CSPA supports it because it
16 is consistent with the Ozone Transport Commission's
17 volatile rule and with other state regulations.

18 Let the record clearly reflect however,
19 the fact that what the Board is proposing is
20 incorporation of very stringent technology-enforcing
21 standards for 12 product categories that were recently
22 adopted by the California Air Resources Board, or
23 CARB, C-A-R-B. These new standards may pose a
24 challenge for small and medium-sized companies that
25 may only sell in either Pennsylvania or within the

1 region and may not otherwise be subject to the
2 California standards.

3 But notwithstanding the fact that this
4 may be a challenge, again CSPA supports the proposal
5 because it is consistent with the model rule and with
6 other state regulations. We believe that uniform
7 regulatory requirements for consumer products are
8 necessary to improve the air quality. And to do so
9 without imposing unnecessary pediments in our state
10 congress.

11 If I can address specific provisions of
12 this proposed rule. First, CSPA supports the Board's
13 proposal to set a reasonable effective date for the
14 new VOC limits and related enforcement provisions.

15 The January 1, 2009 date should allow
16 sufficient time for companies to reformulate their
17 products to meet these new limits. And again, this is
18 particularly important for small and medium-sized
19 companies that may only sell within the Commonwealth
20 or within the region. Second, we agree with the
21 Board's proposal for dealing with products that were
22 manufactured before the applicable effective date for
23 these new VOC limits. This provision is entirely
24 consistent with a parallel provision in the OTC model
25 rule.

1 Moreover, it is consistent with the
2 practical realities of current marketing trends. When
3 EPA was considering its national rule back in the mid
4 90's, CSPA conducted a marketing study that reflected
5 the fact that 90 percent of the products are sold
6 within the first year after manufacture. This 90
7 percent trend follows the second and third year. So
8 by the third year, effectively 100 percent of the
9 products are sold. Now, these studies are
10 approximately ten years old.

11 We believe, based on current trends with
12 big box stores, like say Target or Wal-Mart that this
13 marketing trend has been, in fact, accelerated. So
14 it's safe to say that all the products that we're
15 talking about, will certainly be out in the stream of
16 commerce well before the three-year period. And thus,
17 again what the Board is proposing we think is very
18 reasonable and is consistent with the OTC model. We
19 would like to request the Board consider a necessary
20 technical amendment to the Commonwealth's current
21 regulations, specifically to the alternative control
22 plan provision.

23 If you turn to page three of the written
24 comments, you'll see that there are two parts to the
25 alternative control thing that CARB considers. And

1 what the Commonwealth has done is very reasonable,
2 it's what other states within the Mid Atlantic and
3 Northeast have also done, and that's that they
4 recognize an ACP or alternative control plan, approved
5 by CARB. This is very pragmatic because CARB spends a
6 considerable amount of time and effort in reviewing
7 and approving an alternative control plan. And
8 there's two parts to this plan. In simplest terms,
9 there's the emission deficit, or these are products
10 that exceed the applicable VOC limits.

11 And then the emission credits, these are
12 products that are formulated to emit lower VOCs than
13 applicable regulations require. In reaching this
14 determination to approve an ACP, CARB determines
15 whether in the aggregate the emission credits exceed
16 the emission deficits. Now, the problem that we have
17 with the current regulation is that it's currently
18 drafted. The ACP provision, the Commonwealth could
19 have an unintended effect of denying a CARB-approved
20 ACP, simply because one or more products in the
21 emission deficit side of the equation may not be
22 subject to the limits in the table of standards.

23 In this situation, the overall
24 uncontrolled emissions, i.e. the environmental burden
25 in Pennsylvania would actually be less than the total

1 emission deficit used by CARB to calculate the
2 compliance average. And on page four you will see we
3 propose a very modest technical amendment that's
4 highlighted in yellow. This is necessary because CARB
5 has routinely revised its very comprehensive set of
6 consumer product regulations. In fact, since it first
7 began regulating consumer products in 1989, CARB has
8 initiated six separate rulemaking proceedings to
9 develop standards that cover approximately 200 --- 200
10 emission standards covering 100 broad categories of
11 consumer products.

12 And thus, it's entirely possible that in
13 the future CARB may regulate a product that may not be
14 subject to regulations in the Commonwealth. And
15 again, as long as it's --- this product is on the
16 environmental benefit side of the equation, we would
17 urge the Commonwealth to approve the ACP. Under
18 CSPA's proposed technical amendment, all emission
19 credits used by CARB's compliance calculations would
20 be subject to applicable VOC limits in Pennsylvania.

21 Thus, this technical amendment ensures
22 that manufacturers with an approved ACP in California,
23 that includes one or more products that are not
24 regulated in Pennsylvania, would still be able to
25 market their product in Pennsylvania. Again, there

1 would be a net benefit that's arrived with this ACP,
2 that we want to ensure that it's not inadvertently
3 excluded. Moreover, this approach is consistent with
4 the final regulation, which was just approved in Ohio
5 and a draft regulation that's in the process of being
6 approved in Illinois.

7 In conclusion, CSPA commits to work
8 cooperatively with the Pennsylvania Department of
9 Environmental Protection and other interested stake
10 holders to identify appropriate and feasible
11 regulatory provisions that are necessary to comply
12 with the requirements of the Federal Clean Air Act.
13 I'd also like to, in closing, just highlight the
14 appreciation we have for one of the Department's
15 staffers, Mr. Terry Black. Mr. Black was one of the
16 architects of the original OTC model back in 2000-
17 2001. And he is also one of the driving forces behind
18 the revisions to the OTC law that were just
19 incorporated last year. Mr. Black is a --- make no
20 mistake, he's a tough negotiator, but he certainly
21 gave us and other stake holders a very fair hearing.
22 We appreciated the opportunity to work with Mr. Black
23 and appreciate, by extension, the opportunity to work
24 with the Department as it went forth with the existing
25 regulation and with the proposed regulation. Thank

1 you, Mr. Fox. That concludes my remarks. Are there
2 any questions, please?

3 CHAIR:

4 No questions. Thank you, Mr. Yost.

5 MR. YOST:

6 Thank you, sir.

7 CHAIR:

8 I appreciate it. If no other witness is
9 present, on behalf of the Environmental Quality Board,
10 I hereby adjourn this hearing at 1:15 p.m.

11 * * * * *

12 HEARING CONCLUDED AT 1:15 P.M.

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C E R T I F I C A T E

I hereby certify that the
foregoing proceeding 11124 DEP
was reported by me, that I have read this
transcript on 12/10/07, and I attest
that this transcript is a true and
accurate record of the proceeding.

Daniel B. Hall
Court Reporter

