

PENNSYLVANIA  
CONSUMER PRODUCTS

*25 Pa. Code* Chapter 130, Subchapter B (relating to  
consumer products) and Subchapter C (relating to  
architectural and industrial maintenance coatings)

*37 Pa.B.* 5117 (September 15, 2007)

Environmental Quality Board Regulation #7-416  
(Independent Regulatory Review Commission #2636)

Comment/Response Document

## Pennsylvania Consumer Products

On September 15, 2007, the Environmental Quality Board (Board, EQB) published a notice of public hearing and comment period on a proposed rulemaking concerning revisions to *25 Pa. Code* Chapter 130, Subchapter B to implement additional control measures for the consumer products category (*37 Pa.B.* 5117). The Board subsequently amended this notice by announcing revised dates for the public comment period and public hearings for this proposed rulemaking, first on October 6, 2007, at *37 Pa.B.* 5379 and then on October 27, 2007, at *37 Pa.B.* 5799. The public comment period closed on December 26, 2007.

Three public hearings were held on the proposed rulemaking as follows:

November 26, 2007  
1 p.m. Department of Environmental Protection  
Rachel Carson State Office Building  
Room 105  
400 Market Street  
Harrisburg, PA 17105

November 26, 2007  
1 p.m. Department of Environmental Protection  
Southeast Regional Office  
Delaware River Conference Room  
2 East Main Street  
Norristown, PA 19401

November 26, 2007  
1 p.m. Department of Environmental Protection  
Southwest Regional Office  
Waterfront A & B Conference Room  
400 Waterfront Drive  
Pittsburgh, PA 15222

This document summarizes the testimony received during the public hearings and the written comments received from the public during the public comment period. Each public comment is provided with the identifying commentator number for each commentator that made that comment. A list of the commentators, including name, affiliation (if any), and location, can be found at the beginning of this document. In addition, the comments received from the Independent Regulatory Review Commission (IRRC) are summarized and responses provided.

The Board invited each commentator to prepare a one-page summary of the commentator's comments. One one-page summary was submitted for this rulemaking.

**Table of Commentators for the Environmental Quality Board**  
**Consumer Products Rulemaking #7-416**  
**(IRRC #2636)**

<b>ID</b>	<b>Name/Address</b>	<b>Submitted one page Summary for distribution to EQB</b>	<b>Provided Testimony</b>	<b>Requested Copy of Final Rulemaking following EQB Action</b>
1.	Daniel B. Pourreau, Ph.D. Technical Adviser Lyondell Chemical Company Newtown Square, PA 19073		√	√
2.	David F. Darling, P.E. Director, Environmental Affairs National Paint and Coatings Association (NPCA) Washington, DC 2005			
3.	Alison Keane, Counsel Government Affairs, NPCA Washington, DC 2005			
4.	Joseph Yost Director of State Affairs Consumer Specialty Products Association (CSPA) Washington, DC 2008		√	
5.	D. Douglas Fratz Vice President, Scientific & Technical Affairs CSPA Washington, DC 2006	√		
6.	Frances K. Wu, Esq. Associate General Counsel Personal Care Products Council Washington, DC 20036			
7.	Independent Regulatory Review Commission Harrisburg, PA 17101			

## **General Support**

1. **Comment:** The commentator supports the Department's proposed amendments to Chapter 130, Subchapter B (Consumer products). (1)

**Response:** The Department of Environmental Protection (Department) appreciates the commentator's support of this rulemaking. The proposed rulemaking is consistent with regulatory initiatives recommended by the Ozone Transport Commission (OTC) to address transport of ozone precursor emissions throughout the Ozone Transport Region (OTR). The measures recommended by the OTC are reasonably necessary to achieve and maintain the health-based 8-hour ozone National Ambient Air Quality Standard (NAAQS) in this Commonwealth. Additionally, on March 12, 2008 EPA issued a revised 8-hour ozone standard that could require additional emission reductions.

2. **Comment:** The members of the Consumer Specialty Products Association (CSPA) appreciate 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. (4, 5)

**Response:** The Department thanks the commentators for their efforts in promoting regulatory standards needed by this Commonwealth and other member jurisdictions of the OTR to achieve and maintain the 8-hour ozone NAAQS throughout the region.

## **Promulgation of Uniform Consumer Products Regulations throughout the Ozone Transport Region**

3. **Comment:**

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 volatile organic compound (VOC) standards may pose a significant challenge for some Consumer Specialty Products Association (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. (4, 5)

**Response:** The Department appreciates the commentators' efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR. The Department acknowledges that the OTC's Model Rule is based on consumer product standards recently adopted by the CARB.

4. **Comment:** 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. (4, 5)

**Response:** The Department appreciates the commentators' efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR.

5. **Comment:** Members of the Personal Care Products Council (PCPC) (formerly the Cosmetic, Toiletry and Fragrance Association) have a strong interest in maintaining the quality and safety of the products they sell throughout the United States and beyond. While the members of the PCPC have supported efforts by the U. S. Environmental Protection Agency (EPA) and environmental authorities in several states to reduce emissions from consumer products as part of their efforts to improve air quality, it is of critical importance that implementing regulations ensure the feasibility of continuing to sell such products across state lines while maintaining consistent quality and safety. In the pursuit of this goal, the members of the PCPC have worked cooperatively with the EPA, the CARB, the OTC and the growing number of jurisdictions that have taken action to adopt the OTC Model Rule to ensure the greatest degree of consistency possible among the regulations of these many jurisdictions. (6)

**Response:** The Department appreciates the commentators' efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is

consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR.

**6. Comment:** The members of the Personal Care Products Council commend DEP on substantially adhering to the revised OTC Model Rule in its development of the current proposal. The Council worked closely with the OTC on the adoption of both its original regulation and the 2006 updated version. The Council's support for these efforts stems from the critical need of Council members to have state regulations that are both technologically and commercially feasible for compliance and that permit the sale of uniform products across state lines. (6)

**Response:** The Department appreciates the Council's efforts in promoting regulatory standards for consumer products that are consistent throughout the OTR. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The proposed rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursor emissions throughout the OTR.

**7. Comment:**

In the Preamble, the EQB states:

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken in other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions.

Commentators commend the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the Ozone Transport Region. We agree that this will minimize the impact of the regulation on businesses and competition. However, the EQB is not in control of the actions taken in the other Ozone Transport Region jurisdictions. If other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged. Therefore, in the final-form submittal of this regulation, the EQB should explain the following:

- The status of the implementation in other Ozone Transport Region jurisdictions.

The EQB's response will be used in our consideration of whether the final-form regulation is in the public interest. (7)

**Response:**

As per the request of the commentator, a summary of the status of the adoption of consumer product amendments consistent with the OTC Model Rule is provided herein.

- Connecticut adopted its rule on July 26, 2007, with an effective date of January 1, 2009.
- Maine adopted its rule on December 15, 2007, with an effective date of January 1, 2009.
- Maryland adopted its rule on June 18, 2007, with an effective date of January 1, 2009.
- Massachusetts adopted its rule on October 19, 2007, with an effective date of January 1, 2009.
- New Jersey published its proposed rulemaking on November 5, 2007, and the public comment period closed January 4, 2008. New Jersey proposed an effective date of January 1, 2009.
- Delaware intends to hold a public hearing in June, 2008, and intends to publish a final rule August 1, 2008, with an effective date of January 1, 2009.
- New Hampshire, New York, Rhode Island, Virginia and the District of Columbia have rules in development.

#### **8. Comment:**

In the Preamble, the EQB states:

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken in other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions.

Commentators commend the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the Ozone Transport Region. We agree that this will minimize the impact of the regulation on businesses and competition. However, the EQB is not in control of the actions taken in the other Ozone Transport Region jurisdictions. If other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged. Therefore, in the final-form submittal of this regulation, the EQB should explain the following:

- A comparison of the content of the regulations promulgated by other Ozone Transport Region jurisdictions with Pennsylvania's final-form regulation.

The EQB's response will be used in our consideration of whether the final-form regulation is in the public interest. (7)

#### **Response:**

Each jurisdiction, with the exception of Vermont, has or intends to adopt the OTC Model Rule, some with changes based on their need, discretion or regulatory procedure and formatting conventions. However, the VOC content limits of the products and the basic provisions of the rules are consistent across the jurisdictions. The minor differences

between the rules are not sufficient to interfere with the development of a regional control strategy or regional market.

**9. Comment:**

In the Preamble, the EQB states:

This proposed rulemaking is consistent with regulatory initiatives that will be undertaken in other jurisdictions in the Ozone Transport Region to address regional transport of ozone precursor emissions.

Commentators commend the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the Ozone Transport Region. We agree that this will minimize the impact of the regulation on businesses and competition. However, the EQB is not in control of the actions taken in the other Ozone Transport Region jurisdictions. If other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged. Therefore, in the final-form submittal of this regulation, the EQB should explain the following:

- How Pennsylvania's final-form regulation minimizes the economic impact on Pennsylvania businesses and consumers.

The EQB's response will be used in our consideration of whether the final-form regulation is in the public interest. (7)

**Response:**

The final-form amendments to Chapter 130, Subchapter B, Consumer Products, are uniform and consistent with the OTC Model Rule and the consumer product regulations promulgated by the other member jurisdictions of the OTR. Manufacturers will not need to develop a Pennsylvania-specific product to comply with the final-form rulemaking.

The amendments to Chapter 130, Subchapter B, Consumer Products, may slightly increase costs to purchasers of consumer products, but the cost increase is expected to be negligible because much of the reformulation of products has been completed as manufacturers developed products to meet these limits in other areas of the country.

CARB estimated that the cost effectiveness of VOC limits with an effective date (in California) of December 31, 2006, to be about \$4000 per ton of VOC reduced. CARB further estimated that the average increase in cost per unit to the manufacturer to be about \$0.16 per unit. Assuming CARB's estimates for the OTR provides a conservative estimate, because some of the one-time research and reformulation costs incurred for products sold in California will not have to be incurred again for products sold in the OTR.



Using the OTR's conservative estimate then, it is estimated that for Pennsylvania, if none of the reformulation had yet been completed, the reduction of VOC content for the affected consumer products would cost approximately \$4000 per ton of emissions reduced. The VOC emission reduction benefit for the additional regulated consumer products is estimated to be 2.1 tons per day (tpd) and 767 tons annually. It is estimated that the reductions will be approximately 0.13 pound per resident per year. Total cost to the users is estimated to be approximately \$3.1 million. This is an average of \$0.26 per resident per year.

The production of low-VOC consumer products for these additional categories may require some new product development, but much of this work has already been done because of similar regulatory efforts in California.

### **Definitions – Reasonableness and Clarity**

#### **10. Comment:** Exemptions:

The definition of "Construction, panel and floor covering adhesive" exempts products that "weigh more than 1 pound and consist of more than 16 fluid ounces, less packaging." There are similar exemptions in the definitions of "Contact adhesive" and "General purpose adhesive." Why did the EQB place no limit on the VOC content of large containers of these products, but then place the limits in Section 130.211 on the identical product in a smaller container? The EQB should explain why these exemptions are reasonable and will not adversely affect the stated goal to reduce VOCs emitted from consumer products. (7)

**Response:** The Department anticipates that the larger containers of construction, panel and floor covering adhesives, contact adhesives and general purpose adhesives will be regulated by the Department's proposed Chapter 130, Subchapter D amendment, relating to adhesives, sealants and primers. The Subchapter D amendment will be consistent with the requirements of the OTC 2006 Adhesives, Sealants and Primers Model Rule and is scheduled to be proposed to the EQB in the summer of 2008.

#### **11. Comment:** Deodorant Body Spray:

Paragraphs (i) and (ii) of this definition refer to a "product with 20% or less fragrance." It is not clear how to apply the 20% figure. For example, the "Table of Standards" in Section 130.211 uses "percent VOC by weight." (Emphasis added.) The regulation should specify what the 20% figure is related to, such as weight or volume. (7)

**Response:** The Department agrees and has revised the definition of the term "deodorant body spray" in the final-form rulemaking to clarify that the 20% fragrance is by weight.

### **Reasonable Effective Date (§ 130.211)**

12. **Comment:** 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. 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. (4, 5)

**Response:** The Department appreciates the commentators’ support.

13. **Comment:** As of the date of these comments, the regulation requires compliance in less than a year. The EQB should explain how the effective date of January 1, 2009, is reasonable and feasible for businesses and consumers. (7)

**Response:** The staff of the OTC and member states formed a workgroup to discuss additional control measures for consumer products during a series of conference calls and workshops held from the spring of 2004 through the autumn of 2006. Representatives of the major consumer products trade associations, including the Consumer Specialty Products Association, the American Solvents Council and the Personal Care Products Council, participated in several of the conference calls with the OTC Workgroup and worked with the group to set the date of January 1, 2009, as the effective date. The members of these industry groups are familiar with the OTC 2006 final consumer products model rule, are supportive of the initiative, and are aware that this proposed regulation is under consideration for final-form rulemaking.

Additionally, the majority of currently marketed products have already been reformulated to meet the California VOC limits which were adopted in July 2005. Most of these limits were effective in California by December 31, 2006. The proposed standards are identical to the California standards, thus the manufacturers of the regulated products have had over two years to develop compliant products.

### **Sell-through of Products Manufactured Before the Applicable Effective Date (§ 130.217)**

14. **Comment:** 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.

Marketing studies conducted several years ago concluded consistently that at least 90% of all consumer products are sold within one year after the date of manufacture. More than 90% 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. (4, 5)

**Response:** The Department appreciates the commentators’ support.

**Alternative Control Plan Provision (§ 130.452)**

**15. Comment:**

CSPA urges the Board to consider adopting a narrowly-tailored amendment to the Commonwealth’s current Alternative Control Plan (ACP) provision. (§ 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:

**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. 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 a **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 = CSPA 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 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 regulation and the Illinois EPA's final draft regulation. (4, 5)

**Response:** The amendments to the Consumer Products regulation are designed to reduce VOC emissions within our borders and downwind areas in the OTR. The promulgation and implementation of the regulation in Pennsylvania will allow the Department to make progress in achieving and maintaining the NAAQS. The Alternative Control Plan approach outlined in the final-form regulation preserves this Commonwealth's right and obligation to determine on a case-by-case basis if an ACP will be environmentally beneficial, prior to granting approval of the plan. Adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold elsewhere in the OTR. Therefore, the requested exception has not been included in the final-form regulation.

16. **Comment:** The Consumer Specialty Products Association believes that, as written, the regulation may have the unintended effect of limiting the environmental benefits of the regulation. The commentator suggests adding the phrase "used for emission credits" to this section so that the first sentence of this section in the final regulation would end: "...provided that all ACP products **used for emission credits** within the CARB ACP agreement are contained in § 130.211." (Emphasis added.) The EQB should consider including this phrase in the final-form regulation. (7)

**Response:** While the Department appreciates the point that the CSPA makes in its comment, the amendments to the consumer products regulation are consistent with the OTC's Model Rule strategy, which is designed to reduce ozone precursors in the Commonwealth and downwind areas. The addition of the CSPA suggested language would create inconsistency among the member jurisdictions of the OTR. Moreover, adding the phrase "used for emission credits" would allow noncomplying product to be sold in this Commonwealth that could not be sold in the other OTC states. The Department does not see a need to create such an exception.

### **Is Proposal Needed to Meet SIP Commitments?**

17. **Comment:** We raise the threshold question of whether it is necessary to proceed with the current proposal for the state of Pennsylvania to meet its SIP commitments. On May 30, 2007, the Director of the U.S. EPA's Office of Air Quality Planning Standards issued a memorandum to U.S. EPA Regional Offices and to all states preparing ozone State Implementation Plans. The memorandum establishes the VOC Emission Reduction Credits that states can claim due to the U.S. EPA commercial and consumer product rules to be proposed imminently (proposed rule scheduled for publication in early 2008), with new limits to take effect January 1, 2009. The U.S. EPA will allow a per capita Emission Reduction Credit (i.e., percent beyond existing rule) of 0.9 pounds per capita (or 29 percent) beyond that achieved by the 1998 regulation for consumer and commercial products. In addition, the memorandum states that the U.S. EPA will provide 75 percent

partial credit for those states with areas needing reduction credits in earlier years (e.g., 2008). This credit is justified by the fact that the majority of currently marketed products have already been reformulated to meet the California VOC limits. The commentator therefore urges DEP to seriously consider suspending action on its current proposal. Avoiding an additional state rulemaking proceeding would substantially simplify compliance and enforcement, reduce the costs of regulation, and dispel any chance of unintended but significant differences between the regulations. (6)

**Response:** Emission reductions from this consumer product rulemaking are necessary as they are identified in the contingency measure plan in the Commonwealth's attainment demonstration for the 8-hour ozone NAAQS for the Philadelphia area. Additionally, emission reductions from this rulemaking will support the 8-hour ozone NAAQS attainment demonstration for the Pittsburgh-Beaver Valley Area; the original redesignation request and maintenance plan submitted to EPA for the Pittsburgh region is no longer approvable because of a violation of the standard during the 2007 ozone season. The May 30, 2007, EPA memorandum referenced by the commentator stated that EPA's consumer product rule revision would be proposed in June 2007 and finalized in December 2007, with compliance being required by January 1, 2009. The EPA now expects to propose the rule in May of 2008, with compliance required by May 1, 2009. Additionally, the EPA notes on page 4 of its May 30, 2007, memorandum that, "... if the EPA rule does not provide the reduction anticipated for a particular area, any State claiming credit from the Federal rule will be responsible for developing measures to make up the shortfall." In light of that, and the fact that on March 12, 2008, the EPA announced a revised 8-hour ozone standard of 0.075 parts per million, it is important for the Commonwealth to develop and implement emission reduction strategies to reduce ozone precursor emissions within our borders. Based on 2004-2006 data, at least 23 counties are monitoring nonattainment of the March 12, 2008, 8-hour ozone standard.

#### **Proposed Language: Use of the Term 'Designed'**

18. **Comment:** The commentator notes one deviation from the OTC Model Rule that is problematic. Throughout the proposal, the term "designed" appears to have been replaced with "formulated or labeled" — e.g., a "hair mousse" is defined as a "hairstyling foam formulated or labeled [replacing `designed'] to facilitate styling of a coiffure and provide limited holding power." The commentator believes the proposal should revert to the use of the term "designed" throughout, to promote consistency with the OTC Model Rule. "Designed" has a connotation of "intended," which is largely in alignment with the federal Food and Drug Administration's intended use doctrine. This doctrine basically holds that the intended use of the product is determined by the claims a manufacturer makes about the product, i.e., claims appearing on the label or in the labeling. By contrast, "formulated" refers to the ingredients and composition of a product, without reference to claims. As written, the current language of the proposal — "formulated or labeled" — suggests that a product can be defined solely on the basis of either 1) its claims, or 2) what may be in the product. Given the vast array of ingredients used in the personal care products industry and the fact that many ingredients are used for multiple product categories, it would be a fundamental policy shift, not to mention impracticable,

for the state to decide a product's categorization on the basis of an ingredient or ingredients. Therefore, the proposal should be revised to use the term "designed" wherever it originally appeared in the definitional sections of the rule, or, alternatively, "formulated and labeled" — but not "formulated or labeled." (6)

**Response:** The Department appreciates the commentator's concern about the change from the use of the word "designed" to the phrase "formulated or labeled." The Department has reverted to the wording used by the OTC Model Rule for all of the definitions.

### **Definition of VOC and Exempt Solvent**

19. **Comment:** Commentators are pleased to see that the proposed amendments are silent on the definition of a VOC or an Exempt Solvent, which means that the general definitions in Chapter 121.1 will apply to the amended consumer products rule. Both definitions make reference to the federal definition of a VOC, which was last amended in 2004 to exclude tertiary butyl acetate (TBAC) based on its negligible ozone-forming potential. This reference to the federal definition was a key reason why Pennsylvania was one of the first states to be able to use TBAC as a tool to reduce ozone formation from a variety of product and point source emissions. Your VOC rules are, therefore, automatically updated when the US EPA excludes a compound from the VOC definition. This saves DEP resources and allows the quick use of negligibly reactive compounds instead of reactive ones, which helps to reduce ozone levels. (1, 2, 3)

**Response:** The Department appreciates the commentators' support, and agrees that the general definitions of the terms "VOC-volatile organic compound" and "exempt solvent" found in § 121.1 (relating to definitions) apply to the consumer products subchapter. Additionally, the Department has added, at final, the term "VOC-volatile organic compound" to Chapter 130, Subchapter B, with the definition: "An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity."

20. **Comment:** Commentators state that Subchapter C (relating to architectural and industrial maintenance coatings) includes definitions for the terms VOC and Exempt Compounds that are inconsistent with the federal definitions, Pennsylvania's general definitions, Pennsylvania's consumer products definitions and those of all other OTC states. These outdated definitions were left over from the OTC model rule and should be deleted.

Commentators respectfully request that the Board approve the deletion of the VOC and Exempt compound definitions in Subchapter C as part of the final consumer products rule. This will harmonize the Pennsylvania VOC definitions and make the latest VOC exempt compounds available as tools to reduce ozone and PM formation from architectural coating emissions statewide. It will also eliminate the need to revise

Subchapter C each time the federal VOC definition is amended, thus saving DEP resources. (1, 2, 3)

**Response:** The requested revision is within the scope of this rulemaking. The Department has revised the definition of the term “VOC-volatile organic compound” in Chapter 130, Subchapter C and added this term and definition to Subchapter B as part of this final-form consumer products rulemaking; the definition will read: “An organic compound which participates in atmospheric photochemical reactions; that is, an organic compound other than those which the Administrator of the EPA designates in 40 CFR 51.100 (relating to definitions) as having negligible photochemical reactivity.” This revision will harmonize the VOC definitions in Chapters 121 and 130 and in Subchapters B and C of Chapter 130, and will make the most currently VOC exempt compounds available as tools to reduce ozone and particulate matter formation. The term “exempt compound” and its definition in Subchapter C did not need revision.