

Notice of Final Rulemaking
Department of Environmental Protection
Environmental Quality Board
(25 Pa. Code, Chapter 130, Subchapters B and C)
Consumer Products; and Architectural and Industrial Maintenance Coatings

Order

The Environmental Quality Board (Board, EQB) by this order amends 25 Pa. Code Chapter 130, Subchapter B (relating to consumer products) and Subchapter C (relating to architectural and industrial maintenance coatings), to read as set forth in Annex A. The amendments to Subchapter B will amend the Table of Standards to add volatile organic compound (VOC) content limits for an additional 11 categories of consumer products and revise the VOC content limits for one category of consumer products currently regulated. The amendments to Subchapter B also include definitions for approximately 30 new terms, including terms that relate to the new regulated product categories, and revised definitions for approximately 75 existing terms to provide clarity. The amendments add the term “VOC-volatile organic compound” to Subchapter B and revise the definition of the term in Subchapter C to mirror the definition of the term in 25 Pa. Code § 121.1 (relating to definitions). The definition of the term “VOC-volatile organic compound” in § 121.1 refers to the Federal definition of VOC.

This order was adopted by the Board at its meeting of _____ (blank)_____.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information contact Susan Hoyle, Division of Air Resource Management, P.O. Box 8468, Rachel Carson State Office Building, Harrisburg, PA 17105-8468, (717) 772-2329; or Kristen Campfield, Assistant Counsel, Bureau of Regulatory Counsel, P.O. Box 8464, Rachel Carson State Office Building, Harrisburg, PA 17105-8464, (717) 787-7060. Persons with a disability may use the AT&T Relay Service by calling 1-800-654-5984 (TDD users) or 1-800-654-5988 (voice users). This proposal is available electronically through the DEP Web site (<http://www.depweb.state.pa.us>).

C. Statutory Authority

This final rulemaking is authorized under Section 5 of the Air Pollution Control Act (APCA) (35 P.S. § 4005), which grants the Environmental Quality Board the authority to adopt rules and regulations for the prevention, control, reduction and abatement of air pollution in the Commonwealth.

D. Background of the Amendments

When ground-level ozone is present in concentrations in excess of the Federal health-based standard, public health and welfare are adversely affected. The U.S. Environmental Protection Agency (EPA) has concluded that there is an association between high levels of ambient ozone and increased hospital admissions for respiratory ailments, such as asthma. While children, the elderly and those with respiratory problems are most at risk, even healthy individuals may experience increased respiratory ailments and other symptoms when they are exposed to high levels of ambient ozone while engaged in activities that involve physical exertion. Though such symptoms are often temporary, repeated exposure could result in permanent lung damage. High levels of ground-level ozone also cause damage to crops and vegetation, buildings and synthetic fibers, including nylon, and reduce visibility on roadways and in natural areas.

On March 12, 2008, the EPA announced a revised primary and secondary 8-hour ozone standard from 0.08 ppm to 0.075 ppm. The EPA selected the new levels for the final standards after reviewing more than 1,700 peer-reviewed scientific studies about the effects of ozone on public health and welfare, and after considering advice from the agency's external scientific advisors and staff, along with extensive public comment. The EPA held five public hearings and received nearly 90,000 written comments. The EPA's projections indicate that without additional state or local controls, there will still be areas not meeting this more protective standard.

The purpose of the amendments is to reduce the VOCs emitted from consumer products. Ozone is not directly emitted by consumer products, but is created as a result of the chemical reaction of oxides of nitrogen and VOCs in the presence of light and heat. The amendments are part of the Commonwealth's strategy to achieve and maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) throughout this Commonwealth. The amendments expand upon the consumer products regulation adopted by the Board at its meeting of July 16, 2002. *See 32 Pa. B. 4824 (Oct. 5, 2002).*

The amendments also revise the definition of the term "VOC-volatile organic compound" in Subchapter C to mirror the definition of the term in *25 Pa. Code* § 121.1 (relating to definitions). The definition of the term "VOC-volatile organic compound" in § 121.1 refers to the Federal definition of VOC. 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 (PM) formation.

While there are Federal VOC content limits codified at 40 CFR Part 59, Subpart C, for certain consumer products already regulated by Chapter 130, Subchapter B, there are no Federal limits for the additional products that will be regulated by this final rulemaking.

These amendments are consistent with regulatory initiatives that are being undertaken by other jurisdictions in the Ozone Transport Region (OTR) to address regional transport of ozone precursor emissions. The Ozone Transport Commission (OTC) Member States and the District of Columbia and OTC staff 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 (CSPA), the American Solvents Council and the Cosmetic, Toiletry and Fragrance Association (now the Personal Care Products Council or PCPC), participated in several of the conference calls or meetings and are generally supportive of the initiative. The OTC workgroup collected and evaluated information regarding emission reduction benefits, cost-effectiveness and implementation issues.

Consistent with section 7.4 of the APCA (35 P.S. § 4007.4), the Department held three public meetings regarding control measures under consideration for adoption by the OTC on May 22, 23 and 25, 2006. The control measures reviewed at these meetings included the OTC Consumer Products Model Rule. Notice of these meetings was published in the Pennsylvania Bulletin on April 29, 2006 (36 *Pa.B.* 2071).

Based on the analysis performed by the OTC workgroup, the OTC Commissioners at the OTC Commissioners' meetings of June and November, 2006, made recommendations to the OTC Member Jurisdictions to consider additional emission reductions from consumer products. The resulting 2006 OTC Model Rule for Consumer Products is similar to the California Air Resources Board (CARB) consumer products regulation amended in September 2005. The Department used the OTC Model Rule and background material as a starting point and reviewed those documents, including specific emission reductions, for applicability in this Commonwealth.

Because the Commonwealth, in conjunction with other OTC Member Jurisdictions, has had discussions with representatives of the various National consumer product manufacturers in related industries, and gathered their support for the amendments at the proposed rulemaking stage, it is important that the amendments of the consumer product regulation be implemented consistently and uniformly in the OTR.

The Department consulted with the Air Quality Technical Advisory Committee (AQTAC) on the final-form rulemaking on March 27, 2008. The AQTAC concurred unanimously with the Department's recommendation to present the final-form rulemaking to the EQB for consideration as final rulemaking at the EQB's June 17, 2008, meeting. The Department discussed the final-form rulemaking with the Citizens Advisory Council on March 18, 2008, and the SBCAC on April 23, 2008. The CAC and SBCAC had no comments or concerns with the final-form rulemaking.

E. Summary of Regulatory Requirements and Major Changes to the Proposed Rulemaking

This final-form rulemaking amends the definitions in § 130.202 (relating to definitions) of the following terms, for clarity, style and format: "ACP emissions," "ACP limit," "ACP product," "ACP VOC standard," "ASTM," "adhesive," "adhesive remover," "aerosol adhesive," "aerosol product," "agricultural use," "air freshener," "all other forms," "astringent/toner," "automotive wax, polish, sealant or glaze," "bathroom and tile cleaner," "bug and tar remover," "carburetor or fuel-injection air intake cleaners," "carpet and upholstery cleaner," "compliance

period,” “construction, panel and floor covering adhesive,” “consumer product,” “contact adhesive,” “deodorant,” “device,” “dry cleaning fluid,” “dusting aid,” “electronic cleaner,” “enforceable sales record,” “fabric protectant,” “facial cleaner or soap,” “floor polish or wax,” “floor wax stripper,” “flying bug insecticide,” “fragrance,” “furniture coating,” “furniture maintenance product,” “general purpose adhesive,” “general purpose cleaner,” “general purpose degreaser,” “general-use hand or body cleaner or soap,” “hair shine,” “hair spray,” “hair styling gel,” “heavy-duty hand cleaner or soap,” “institutional product or industrial and institutional (I&I) product,” “LVP content or lower vapor pressure content,” “LVP-VOC or lower vapor pressure-VOC,” “lawn and garden insecticide,” “liquid,” “lubricant,” “medicated astringent/medicated toner,” “multipurpose lubricant,” “multipurpose solvent,” “nonresilient flooring,” “paint remover or stripper,” “penetrant,” “Pennsylvania sales,” “plasticizer,” “pre-ACP VOC content,” “principal display panel or panels,” “product category,” “sealant and caulking compound,” “shaving cream,” “shortfall,” “solid,” “special purpose spray adhesive,” “spot remover,” “structural waterproof adhesive,” “surplus reduction,” “TMHE-Total maximum historical emissions,” “type B propellant,” “type C propellant,” “undercoating,” “VOC content,” “waterproofer” and “wax.”

Thirty-five of the definitions that were revised in the proposed rulemaking have been returned to their original language in the final-form rulemaking, in response to public comment expressing concern that replacement of the term "designed" with "formulated or labeled" would be inconsistent with the OTC Model Rule. (See Section F, below). The defined terms that have been returned to their existing regulatory language are the following: “aerosol cooking spray,” “antimicrobial hand or body cleaner or soap,” “automotive brake cleaner,” “automotive hard paste wax,” “automotive instant detailer,” “automotive rubbing or polishing compound,” “automotive windshield washer fluid,” “charcoal lighter material,” “container/packaging,” “crawling bug insecticide,” “disinfectant,” “engine degreaser,” “flea and tick insecticide,” “floor seam sealer,” “glass cleaner,” “hair mousse,” “herbicide,” “household product,” “insecticide,” “insecticide fogger,” “laundry prewash,” “laundry starch product,” “metal polish/cleanser,” “multipurpose dry lubricant,” “nail polish,” “nail polish remover,” “oven cleaner,” “paint,” “pesticide,” “rubber and vinyl protectant,” “silicone-based multipurpose lubricant,” “spray buff product,” “tire sealant and inflation,” “wasp and hornet insecticide” and “wood floor wax.”

This final-form rulemaking adds definitions in § 130.202 for the following terms to improve clarity or explain new product categories: “aerosol coating product,” “antistatic product,” “certified emissions,” “certified use rate,” “contact adhesive-general purpose,” “contact adhesive-special purpose,” “deodorant body spray,” “electrical cleaner,” “energized electrical cleaner,” “existing product,” “fabric refresher,” “floor and wall covering adhesive remover,” “floor coating,” “footwear or leather care product,” “gasket adhesive or thread locking adhesive remover,” “general purpose adhesive remover,” “graffiti remover,” “hair styling product,” “high pressure laminate,” “highest sales,” “highest VOC content,” “personal fragrance product,” “pressurized gas duster,” “product form,” “shaving gel,” “specialty adhesive remover,” “toilet/urinal care product,” “vinyl/fabric/leather/polycarbonate coating” and “wood cleaner.”

This final-form rulemaking also adds a definition in § 130.202 for the term “VOC-volatile organic compound,” to mirror the definition of this term in § 121.1 (relating to definitions). This term in Subchapter C was not included in the proposed rulemaking and is

amended in the final-form rulemaking in response to public comment. (See Section F, below.) The definition of the term “VOC-volatile organic compound” in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the “VOC-volatile organic compound” definition in the Department’s rules to be updated automatically whenever the EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC.

The final-form rulemaking amends § 130.211 (relating to table of standards) by adding VOC content limits for 11 new categories of consumer products and revising the VOC content limits for one category of product currently regulated (contact adhesive). This section sets forth the percentage of VOC by weight that cannot be exceeded for consumer products that are sold, supplied, offered for sale or manufactured for sale in this Commonwealth. The 11 new categories are: adhesive remover (floor and wall covering, gasket or thread locking, general purpose and specialty); antistatic product; electrical cleaner; electronic cleaner; fabric refresher; footwear or leather care product; graffiti remover; hair styling product; shaving gel; toilet/urinal care product; and wood cleaner.

The final-form rulemaking amends §§ 130.213 - 130.215 (relating to products registered under FIFRA; requirements for charcoal lighter material products; and requirements for aerosol adhesives) for clarity and format. In addition, the final-form rulemaking amends § 130.214 to incorporate future changes in test procedures and deletes from § 130.215(a) an unnecessary reference to a California regulatory provision.

The final-form rulemaking adds § 130.217 (relating to sell-through of products) to allow for sell-through of product manufactured prior to applicable effective dates.

The final-form rulemaking amends §§ 130.331, 130.332, 130.334, 130.335 and 130.338 (relating to exemptions) for clarity and format. The proposed rulemaking had proposed deleting “air fresheners” from the exemption in § 130.335(b) for consistency with the OTC Model Rule, because these air fresheners will be regulated in the new category “toilet/urinal care product.” That left an exemption for insecticides containing at least 98% paradichlorobenzene in § 130.335(b), which in the final-form rulemaking has been moved to new § 130.334(b). Section 130.335(b) is deleted in the final-form rulemaking.

The final-form rulemaking amends § 130.371 (relating to product dating) by updating the product dating requirements and explaining the format and location for the date code. The final-form rulemaking also requires that a manufacturer submit an explanation of its modified codes to the Department before products displaying the modified code can be sold. The proposed rulemaking had required that the product date or code be displayed on each consumer product container or package, and an explanation of it filed with the Department, no later than 12 months prior to the effective date of the applicable standard. The final-form rulemaking amends this section to require that the date or date-code be displayed, and an explanation of it filed with the Department, before the consumer product is sold, supplied or offered for sale in this Commonwealth.

The final-form rulemaking amends § 130.372 (relating to most restrictive limit) to add new subsections (a) and (b). Subsection 130.372(a) establishes the lowest applicable VOC limit

requirements for products manufactured before January 1, 2009, and Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) registered insecticides manufactured before January 1, 2010. Subsection 130.372(b) establishes the lowest applicable VOC limit requirements for products manufactured on or after January 1, 2009, and FIFRA-registered insecticides manufactured on or after January 1, 2010.

The final-form rulemaking requires additional information on product containers for products in § 130.373 (relating to additional labeling requirements for aerosol adhesive, adhesive remover, electrical cleaner, electronic cleaner, energized electrical cleaner and contact adhesive products).

The final-form rulemaking amends §§ 130.411, 130.412 and 130.414 (relating to application for variance; variance orders; and modification of variance) for format.

The final-form rulemaking amends § 130.431 (relating to testing for compliance) to update the reference date for several test protocols and standards and to incorporate future amendments of test protocols and standards.

The final-form rulemaking amends §§ 130.452 - 130.455, 130.457, 130.458, 130.460, 130.462 and 130.465 (relating to ACP for consumer products) for clarity.

The final-form rulemaking amends § 130.471 (relating to public hearings) to require the applicant for a variance or alternative control plan to publish the notice for the three public hearings in newspapers of general circulation not less than 30 days prior to the hearings. The Department will publish notice in the *Pennsylvania Bulletin*.

The final-form rulemaking amends the definition of the term “VOC-volatile organic compound” in the definitions pertaining to architectural and industrial maintenance coatings in Subchapter C, to mirror the definition of this term in § 121.1 (relating to definitions). The definition of the term “VOC-volatile organic compound” in § 121.1 refers to the Federal definition of VOC. This reference to the Federal definition will allow the Department’s rules to be updated automatically whenever EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. Specifically, this will allow for the use of tertiary butyl acetate as a VOC-exempt compound in architectural and industrial maintenance coatings, providing improved ozone air pollution reduction benefits to the citizens of this Commonwealth. Amendments to Subchapter C were not included in the proposed rulemaking, but this amendment is included in the final-form rulemaking in response to public comment on the proposed rulemaking. (See Section F, below.) The requested revision is within the scope of this rulemaking. It 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 final-form rulemaking will be submitted to the EPA as an amendment to the State Implementation Plan.

F. Summary of Major Comments and Responses on the Proposed Rulemaking

The Board approved publication of the proposed rulemaking at its meeting of June 19, 2007. The proposed rulemaking was published at 37 *Pa.B.* 5117 (September 15, 2007), with a 60-day public comment period. Revised dates for the public comment period and public hearings were published in the *Pennsylvania Bulletin* on October 7 and October 27, 2007. (37 *Pa.B.* 5379 and 5799.) Three public hearings were held on November 26, 2007, in Pittsburgh, Harrisburg and Norristown, PA. The public comment period closed on December 26, 2007.

General Support; Promulgation of Uniform Consumer Products Regulations Throughout the OTR

The CSPA supports the Department's proposed amendments. Despite noting that some of the standards may pose challenges for some CSPA members, especially small businesses, CSPA commented that adoption of uniform regional regulations is a practical necessity for small businesses and that CSPA's members support the promulgation of uniform.

The members of the Personal Care Products Council (Council, PCPC) commended DEP on substantially adhering to the revised OTC Model Rule in the proposed regulation. 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 what it described as 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.

The Department thanks the CSPA, the PCPC and their members 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. The Department recognizes that promulgating consistent regulations across the OTC will assist companies in complying with these measures. The final-form rulemaking is consistent with regulatory initiatives recommended by the OTC to address transport of ozone precursors throughout the OTR. The measures recommended by the OTC are reasonably necessary to achieve and maintain the health-based 8-hour ozone NAAQS in this Commonwealth. Additionally, on March 12, 2008, EPA issued a revised 8-hour ozone standard that could require additional emission reductions.

The Independent Regulatory Review Commission (IRRC) commended the EQB for the promulgation of a regulation that is consistent with other regulations being implemented throughout the OTR, but noted that the EQB is not in control of the actions taken in the other OTR jurisdictions. The IRRC requested that the Board explain the status of the implementation in other OTR jurisdictions, saying that if other jurisdictions were to implement different regulations or do their regulations on a different timetable, Pennsylvania businesses and consumers could be disadvantaged.

In response, the Department has prepared a summary of the status of the adoption of consumer product amendments consistent with the OTC Model Rule. 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.

The IRRC also requested that the EQB provide a comparison of the content of the regulations promulgated by other OTR jurisdictions with Pennsylvania's final-form regulation.

The Department responds that each jurisdiction, with the exception of Vermont, has adopted 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.

The IRRC requested that the EQB explain how Pennsylvania's final-form regulation minimizes the economic impact on Pennsylvania businesses and consumers.

The Department responds that the final-form amendments 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 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 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 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, 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

The IRRC noted that 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." IRRC noted that there are similar exemptions in the definitions of "Contact adhesive" and "General purpose adhesive." IRRC asked why the EQB placed no limit on the VOC content of large containers of these products, but placed the limits in Section 130.211 on the identical product in a smaller container? IRRC requested that the EQB explain why these exemptions are reasonable and will not adversely affect the stated goal to reduce VOCs emitted from consumer products.

The Department responds that the Department anticipates the larger containers of construction, panel and floor covering adhesives, contact adhesives and general purpose adhesives to 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.

The IRRC noted that paragraphs (i) and (ii) of the definition of "deodorant body spray" 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.) IRRC recommended that the regulation specify what the 20% figure is related to, such as weight or volume.

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)

The CSPA commented that the proposed effective date of January 1, 2009, for the new VOC limits and related administrative and enforcement provisions would allow sufficient time for companies to comply with the technology-forcing VOC limits. IRRC requested that the EQB explain how the January 1, 2009 effective date, which requires compliance in less than a year, is reasonable and feasible for businesses and consumers.

The Department responds that 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 CSPA, the American Solvents Council and the PCPC, 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. Hence, the members of these industry groups have been familiar with the OTC

2006 final Consumer Products Model Rule, are supportive of the initiative, and are aware that rulemaking is in development with a January 1, 2009 compliance date.

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 standards in the final-form rulemaking 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)***

The CSPA supports the Board's proposal for dealing with products manufactured before the applicable effective date for the VOC limits. 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. 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.

The Department appreciates the commentators' support.

Alternative Control Plan Provision (§ 130.452)

The CSPA urged the Board to consider adopting a narrowly-tailored amendment to the Commonwealth's current Alternative Control Plan (ACP) provision, explaining that the amendment would have the effect of producing a measurable net environmental benefit for Pennsylvania. The CSPA explained that the Commonwealth's current regulation recognizes an ACP agreement approved by CARB, but that it is possible that there may be a very limited number of instances in which some products used in CARB's ACP compliance calculations may not be subject to the VOC limits set forth in the proposed rulemaking, thereby leading to the denial of a CARB-approved ACP that is still producing a net environmental benefit. The CSPA offered a technical revision, which it asserted 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.

The Department responds that the amendments to the Consumer Products regulation are designed to reduce emissions within this Commonwealth's borders and in downwind areas in the OTR. The promulgation and implementation of the regulation in this Commonwealth 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 a 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 rulemaking.

The IRRC noted that the CSPA believes that, as written, the regulation may have the unintended effect of limiting the environmental benefits of the regulation. IRRC suggested adding the phrase "used for emission credits" to section 130.452 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 IRRC recommended that the EQB consider including this phrase in the final-form regulation.

While the Department appreciates the point that the IRRC and the CSPA make, the amendments to the consumer products regulation are consistent with the OTC's Model Rule strategy, which is designed to reduce ozone precursors in this Commonwealth and in downwind areas. The addition of the CSPA suggested language would create inconsistency among the OTR member jurisdictions. 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 OTR states. The Department does not see a need to create such an exception.

Is Proposal Needed to Meet SIP Commitments?

The PCPC asked whether it is necessary to proceed with the 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, with new limits to take effect January 1, 2009. The commentator urged DEP to seriously consider suspending action on its current proposal. The commentator stated that 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.

The Department responds that 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 VOC emission reductions resulting from the adoption and implementation of the final-form regulation are reasonably necessary to achieve and maintain the 8-hour standard. The May 30, 2007, EPA memorandum 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 its

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’

The PCPC noted one deviation from the OTC Model Rule that was problematic. Throughout the proposal, the term "designed" was replaced with "formulated or labeled" and the commentator believed the proposal should revert to the use of the term "designed" to promote consistency with the OTC Model Rule. PCPC noted that the term “designed” is largely in alignment with the Federal Food and Drug Administration’s intended use doctrine. The language of the proposal — "formulated or labeled" — suggested that a product could be defined solely on the basis of either 1) its claims, or 2) what may be in the product. This would be a fundamental policy shift and would be impracticable. 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."

The Department agrees with the recommendation and has reverted to the wording used by the OTC Model Rule for all of the definitions.

Definition of VOC and Exempt Solvent in Subchapters B and C

The National Paint and Coatings Association (NPCA) and Lyondell Chemical Company (Lyondell) commented that they were pleased to see that the proposed amendments were 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 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. They note that this Commonwealth’s 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.

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.”

The NPCA and Lyondell also commented 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. The commentators noted that these outdated definitions were left over from the OTC Model Rule and recommended that they be deleted from Subchapter C as part of this rulemaking. They explained that this would 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. They stated that this would also eliminate the need to revise Subchapter C each time the Federal VOC definition is amended, thus saving DEP resources.

The Department agrees. The requested revision is within the scope of this rulemaking. It will harmonize the VOC definitions in chapters 121 and 130 and in subchapters B and C of chapter 130, and will make the most current VOC exempt compounds available as tools to reduce ozone and particulate matter formation. The Department has revised the definition of the term "VOC-volatile organic compound" in Chapter 130, Subchapter C 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." The term "exempt compound" and its definition in Subchapter C did not need revision.

G. Benefits, Costs and Compliance

Benefits

The final-form rulemaking will assure that the residents of this Commonwealth and the environment will continue to benefit from reduced emissions of VOCs and hazardous air pollutants (HAPs) in consumer products. Although the consumer product requirements are designed primarily to reduce ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The amendments will result in improved indoor and outdoor air quality for all citizens of this Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

This final-form rulemaking will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by harmonizing the definition of "VOC-Volatile organic compound" in Subchapter C with that in § 121.1 and Subchapter B. This revision will allow the Department's rules to be updated automatically when EPA revises its definition to exclude a negligibly reactive compound from the definition of VOC. This will make the most currently VOC exempt compounds, such as TBAC, available as tools to reduce ozone and particulate matter formation.

Compliance Costs

It is estimated that the reduction of VOC content for the affected consumer products will 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 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 final-form rulemaking includes compliance and averaging options that will allow manufacturers to formulate products in the most efficient and effective manner.

Additionally, the amendments to Chapter 130, Subchapter C, allow for the use of TBAC, an exempt VOC compound, which will provide additional cost-effective compliance options in the reformulation of architectural and industrial maintenance coating products.

Compliance Assistance Plan

The Department plans to educate and assist the public and regulated community in understanding the newly revised requirements and how to comply with them. This will be accomplished through the Department's ongoing Regional Compliance Assistance Program.

Paperwork Requirements

The final-form amendments revise the product dating requirements of Subchapter B to require only that the product date or date-code must be displayed on each consumer product container or package before the consumer product is sold, supplied or offered for sale in this Commonwealth. Additionally, the amendments require that a manufacturer must file an explanation of the code indicating the date of manufacture for a consumer product with the Department before the consumer product is sold, supplied or offered for sale in this Commonwealth. Prior to these revisions, the deadline for these requirements was no later than 12 months prior to the effective date of the applicable standard specified in the Table of Standards.

An applicant for an alternative control plan or variance will be required to publish notice of the time, place and purpose of the three public hearings for approval of the alternative control plan or variance in newspapers of general circulation not less than 30 days prior to the hearings.

H. Pollution Prevention (if applicable)

The Federal Pollution Prevention Act of 1990 established a National policy that promotes pollution prevention as the preferred means for achieving state environmental protection goals. The Department encourages pollution prevention, which is the reduction or elimination of pollution at its source, through the substitution of environmentally-friendly materials, more efficient use of raw materials, and the incorporation of energy efficiency strategies. Pollution prevention practices can provide greater environmental protection with greater efficiency because they can result in significant cost savings to facilities that permanently achieve or move beyond compliance.

These amendments will assure that the citizens and the environment of this Commonwealth will continue to experience the benefits of reduced emissions of VOCs and HAPs from low-VOC consumer products. Although the requirements are intended to address ozone air quality by reducing emissions of ozone precursors, the reformulation of products to meet the VOC content limits will also result in the reduction of HAP emissions. The final

regulation will result in improved indoor and outdoor air quality for all citizens of the Commonwealth by reducing ozone precursor emissions and HAP compounds. The reduced levels of HAPs will also benefit water quality through reduced loading on water treatment plants and in reduced quantities of HAP compounds in spillage on the ground.

These amendments will also improve ozone air pollution reduction benefits to the citizens of this Commonwealth by making the most currently VOC exempt compounds, such as tertiary butyl acetate, available under Subchapter C as tools to reduce ozone and particulate matter formation.

I. Sunset Review

This regulation will be reviewed in accordance with the sunset review schedule published by the Department to determine whether the regulation effectively fulfills the goals for which it was intended.

J. Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on (date) , the Department submitted a copy of the notice of proposed rulemaking, published at 37 *Pa.B.* 5117, to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House and Senate Environmental Resources and Energy Committees for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC and the Committees were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Department has considered all comments from IRRC, the House and Senate Committees and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P.S. § 745.5a(j.2)), on (blank), the final-form rulemaking was deemed approved by the House and Senate Committees. Under section 5.1(e) of the Regulatory Review Act, IRRC met on (blank) and approved the final-form rulemaking.

K. Findings of the Board

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P.L. 769, No. 240) (45 P.S. §§ 1201 and 1202) and regulations promulgated thereunder at 1 *Pennsylvania Code* §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law, and all comments were considered.

(3) These regulations do not enlarge the purpose of the proposal published at 37 *Pennsylvania Bulletin* 5117 (Sep. 15, 2007).

(4) These regulations are necessary and appropriate for administration and enforcement of the authorizing acts identified in Section C of this order.

(5) These regulations are necessary for the Commonwealth to achieve and maintain ambient air quality standards.

L. Order of the Board

The Board, acting under the authorizing statutes, orders that:

(a) The regulations of the Department of Environmental Protection, *25 Pennsylvania Code*, Chapter 130, are amended by amending §§ 130.201, 130.202, 130.211, 130.213 -- 130.215, 130.331, 130.332, 130.334, 130.335, 130.371 – 130.373, 130.411, 130.412, 130.414, 130.431, 130.452 – 130.455, 130.457, 130.458, 130.460, 130.462, 130.465, 130.471 and 130.602; and by adding §§ 130.217 and 130.338 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Chairperson of the Board shall submit this order and Annex A to the Office of General Counsel and the Office of Attorney General for review and approval as to legality and form, as required by law.

(c) The Chairperson of the Board shall submit this order and Annex A to IRRC and the Senate and House Committees as required by the Regulatory Review Act.

(d) The Chairperson of the Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau, as required by law.

(e) This order shall take effect immediately upon publication in the *Pennsylvania Bulletin*.

KATHLEEN A. MCGINTY
Chairperson