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STATE OF ILLINOIS **BEFORE THE**  
Pollution Control Board  
**ILLINOIS POLLUTION CONTROL BOARD**

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APR 14 2008

STATE OF ILLINOIS  
Pollution Control Board

IN THE MATTER OF: )

PROPOSED NEW 35 ILL. ADM. CODE )  
PART 223 STANDARDS AND )  
LIMITATIONS FOR ORGANIC )  
MATERIAL EMISSIONS FOR AREA )  
SOURCES )

**R08-17**  
**(Rulemaking - Air)**

**TESTIMONY OF THE**  
**CONSUMER SPECIALTY PRODUCTS ASSOCIATION**

Joseph T. Yost  
Director, Strategic Issues Advocacy

900 17<sup>th</sup> Street, N.W., Suite 300  
Washington, D.C. 20006  
(202) 833-7325

**Filed: April 8, 2008**

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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NOTICE

TO: Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
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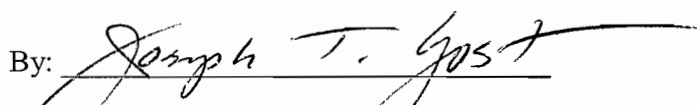
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PLEASE TAKE NOTICE that I have filed today with the office of the Pollution Control Board a copy of testimony that the Consumer Specialty Products Association will present on the REGULATORY PROPOSAL entitled "PROPOSED NEW 35 ILL. ADM. CODE PART 223 STANDARDS AND LIMITATIONS FOR ORGANIC MATERIAL EMISSIONS FOR AREA SOURCES" and APPEARANCE of the Consumer Specialty Products Association of copy of which is herewith served upon you.

DATED: April 8, 2008  
900 17<sup>th</sup> Street, N.W., Suite 300  
Washington, DC 20006  
202-833-7325

Consumer Specialty Products Association

By:   
Joseph T. Yost  
Director, Strategic Issues Advocacy

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STATE OF ILLINOIS  
Pollution Control Board

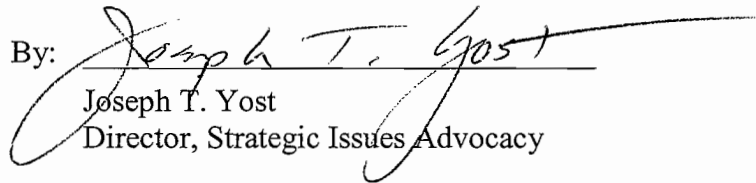
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)

R08-17  
(Rulemaking – Air)

APPEARANCE

The undersigned hereby enters an Appearance on behalf of the Consumer Specialty Products Association.

Respectfully Submitted  
CONSUMER SPECIALTY PRODUCTS ASSOCIATION

By:   
Joseph T. Yost  
Director, Strategic Issues Advocacy

DATED: April 8, 2008

900 17th Street, N.W., Suite 300  
Washington, DC 20006

202-833-7325

Handwritten text, possibly a signature or date, located in the top left corner of the page.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**SYNOPSIS OF TESTIMONY**

The Consumer Specialty Products Association (CSPA) offers general support for the Illinois EPA’s proposed regulation because it is consistent with the Ozone Transport Commission’s Model Consumer Products Rule. By taking this action, the Agency will promulgate regulatory requirements that are consistent with the final regulations promulgated by 12 other states and the District of Columbia. Uniform state regulations will improve air quality without imposing unnecessary impediments to interstate commerce.

However, CSPA urges the Board to consider several technical revisions to ensure that companies have adequate time to comply with certain administrative filing requirements contained in the Illinois EPA’s proposed regulation. The changes will make certain administrative requirements of the Agency’s proposed regulation consistent with parallel provisions in the OTC Model Rule. CSPA’s requested technical amendments will *not* change the requirement for manufacturers to comply with the applicable VOM limits on January 1, 2009.<sup>1</sup>

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<sup>1</sup> See Proposed Ill. Admin. Code Title 35, Sec. 223.025.

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

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**TESTIMONY**

**I. INTRODUCTION**

The Consumer Specialty Products Association (CSPA) appreciates the opportunity to present testimony to the Illinois Pollution Control Board (Board) on the proposed new 35 Ill. Adm. Code Part 223 Standards and Limitations for Organic Material Emissions for Area Sources. These regulations are proposed to reduce volatile organic materials (VOMs) in consumer products, architectural and industrial maintenance products, and aerosol coatings.<sup>2</sup> This proposed regulation is part of the comprehensive strategy developed by the Illinois Environmental Protection Agency (Illinois EPA or Agency) to reduce ground-level ozone to demonstrate attainment of the federal eight-hour ozone air quality standard. If adopted, the rule will take effect on January 1, 2009.

CSPA filed written comments on the Agency’s draft proposed regulation in June and October 2007. CSPA commends the Illinois EPA for their concerted efforts to ensure that all interested stakeholders had an opportunity to participate in this open and transparent rulemaking process. As the case with our previously filed documents, CSPA’s testimony is limited to the proposed regulation set forth at Part 223, Subpart B: Consumer and Commercial Products (*i.e.*, Sections 223.200-.285).

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<sup>2</sup> The text of the proposed regulation is posted on the Board’s Website at: <http://www.ipcb.state.il.us/documents/dsweb/Get/Document-59819/>.

## II. STATEMENT OF INTEREST

CSPA is a voluntary, non-profit national trade association representing approximately 260 companies engaged in the manufacture, formulation, distribution, and sale of products for household, institutional, commercial and industrial use. CSPA member companies' wide range of products includes home, lawn and garden pesticides, antimicrobial products, air care products, automotive specialty products, detergents and cleaning products, polishes and floor maintenance products, and various types of aerosol products. CSPA member companies manufacture and market more than two-thirds of the broad product categories and forms that will be subject to the stringent VOM limits contained in the Agency's proposed regulation.

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

CSPA also worked cooperatively with the U.S. EPA during the late 1990s as it developed the current National Volatile Organic Compound Emission Standards for Consumer Products.<sup>3</sup> CSPA continues to work cooperatively with the U.S. EPA as it develops revisions to the National Consumer Products Rule (the new VOC limits and related provisions are based on the OTC Model Rule). U.S. EPA expects to issue its proposed revisions in May 2008.

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<sup>3</sup> 40 C.F.R. Part 59, Subpart C (2007). EPA's National Volatile Organic Compound Emission Standards for Consumer Products (hereinafter referred to as "National Consumer Products Rule") was promulgated as a final rule in 1998. The text of EPA's regulation is posted at: [http://www.access.gpo.gov/nara/cfr/waisidx\\_05/40cfr59\\_05.html](http://www.access.gpo.gov/nara/cfr/waisidx_05/40cfr59_05.html).

In addition, CSPA participated as a joint intervenor with another national trade association in support of the U.S. EPA in *Allied Local and Regional Manufacturers Caucus, et al v. U.S. Environmental Protection Agency*.<sup>4</sup> In this case, CSPA and another national trade association filed joint legal briefs supporting EPA's arguments that the Agency had authority to promulgate regulations pursuant to Section 183(e) of the federal Clean Air Act.

### III. COMMENTS

#### A. CSPA Supports Uniform Consumer Products Regulations.

In summary, the Illinois EPA's proposed regulation incorporates provisions of the recently revised Ozone Transport Commission's (OTC's) Model Consumer Products Rule,<sup>5</sup> which incorporates the most stringent technology-forcing regulatory standards for more than 100 product categories and forms that are currently in effect in California.<sup>6</sup> Thus, the Illinois EPA's proposed VOM standards may pose a significant challenge for small- and medium-sized companies that manufacture and market their products on a regional (as opposed to a nationwide) basis and thus, are not subject to California (or other states' OTC-based) VOC limits.

Although some of CSPA member companies have legitimate concerns about the difficulty and expense that they may incur to comply with new VOM limits contained in Illinois EPA's draft proposed regulation, CSPA **supports** 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 Midwest, Northeast and Mid-Atlantic Regions. Moreover, adoption of uniform regional regulations is a practical necessity for small businesses

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<sup>4</sup> 215 F.3d 61 (D.C. Cir. 2000).

<sup>5</sup> The text of OTC's recently revised Model Rule is posted at:  
[http://www.otcair.org/projects\\_details.asp?FID=99&fview=stationary#](http://www.otcair.org/projects_details.asp?FID=99&fview=stationary#).

<sup>6</sup> See Cal. Code Regs. Title 17, Subchapter 8.5, Article 4, §§ 94507-94517.

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 supports the Illinois EPA's proposal to join other states' environmental agencies in developing *uniform regulatory requirements* for consumer products. Uniform state regulations will improve air quality without imposing unnecessary impediments to interstate commerce.

B. The Board Should Consider Several Necessary Technical Amendments to Ensure Consistency with the OTC Model Rule.

The Illinois EPA expended a considerable amount of time and effort to ensure that its proposed regulation would be consistent with the OTC Model Rule and the regulations promulgated by other states and the District of Columbia. The Agency succeeded in achieving this objective; the major provisions (*i.e.*, the stringent VOM limits and related enforcement provisions) of the proposed regulation are entirely consistent with the OTC Model Rule. However, several administrative provisions in the Agency's proposed regulation deviate from parallel provisions in the OTC Model Rule. Thus, CSPA urges the Board to consider several technical revisions to ensure that companies have adequate time to comply with certain administrative filing requirements contained in the Illinois EPA's proposed regulation.

1. The Board should ensure that companies have a reasonable amount time to file an explanation of their date-codes.

CSPA supports the Agency's authority to require companies to clearly indicate the date of manufacture (*i.e.*, the actual date or a code indicating the date) on each product container or package.<sup>7</sup> This requirement is necessary for the Agency to properly enforce its stringent VOM limits. Notwithstanding our general support of the Agency's authority, CSPA urges the Board to

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<sup>7</sup> Proposed Ill. Admin. Code Title 35, Section 223.255.

ensure that the final regulation provides manufacturers with a reasonable amount of time to provide an explanation of their company-specific date codes.

As currently drafted, Section 223.255 of the proposed regulation will require product manufacturers that use a company-specific date code (*i.e.*, a code different than the standard “Julian date” format specified in the regulation)<sup>8</sup> to file an explanation of the code no later than 12 months before the effective date of new VOM limits.<sup>9</sup> While this provision is entirely consistent with the OTC Model Rule, it will impose an impossible compliance problem since this rulemaking will not be published as a final rule until June or July 2008 at the earliest. Consequently, if this provision is not amended, companies unintentionally will violate this administrative filing requirement since they obviously could not be expected to submit the necessary information before January 1, 2008 (*i.e.*, at least six months *before* the regulation had legal effect). Therefore, CSPA urges the Board to amend the proposed regulation as follows:

<p><b><i>Italicized text</i></b> = text added to the Illinois EPA’s proposed regulation <b><del>Stricken text</del></b> = text deleted from the Illinois EPA’s proposed regulation</p>
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#### **Section 223.255 Additional Product Dating Requirements**

- a) If a manufacturer uses a code other than specified in 223.250(b) indicating the date of manufacture for any consumer product subject to Section 223.205(a), an explanation of the date portion of the code must be filed with the Agency ~~no later than 12~~ ***six*** months ~~prior to the effective date of the applicable standard specified in Section 223.205~~ ***after the date that this regulation is published as a final rule.***

This necessary technical amendment will provide a reasonable amount of time to comply with the Agency’s administrative filing requirement.

CSPA supports this request by citing the action taken by the Michigan Department of Environmental Quality (MDEQ) when it promulgated its first consumer products regulation. In summary, MDEQ’s regulation incorporates the OTC Model Rule by express reference; thus, the

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<sup>8</sup> The standard code format for citing the date of manufacture is specified in Proposed Ill. Admin. Code Title 35, Section 223.250(b).

<sup>9</sup> Proposed Ill. Admin. Code Title 35, Section 223.255(a).

Michigan regulation contained a similar 12-month advance notification requirement. However, since the state's initial consumer products regulation was not promulgated as a final rule until January 29, 2007, the MDEQ delayed the date-code filing until July 1, 2007 (*i.e.*, MDEQ granted approximately six months after the final regulation's January 2007 effective date).

In conclusion, the additional time that CSPA requests is limited only to a company's duty to provide an explanation of the date-code (*i.e.*, an administrative filing requirement). This request will **not** change the requirement for companies to comply with the applicable VOM limits on January 1, 2009.<sup>10</sup>

2. The Board should ensure that companies have a reasonable amount of time to respond to the Agency's request for product information.

As stated above, CSPA fully supports the Agency's authority to require companies to provide certain information about their products. *See* Proposed Ill. Admin. Code Title 35, Section 223.270. This provision is necessary to ensure compliance with the VOM limits. However, as currently drafted, the provision provides 30 days for companies to respond to the Agency's request for information. This proposed requirement deviates from the parallel provision in the OTC Model Rule, which provides 90 days to respond to a written request for product information.<sup>11</sup> Furthermore, regulations promulgated by 11 states and the District of Columbia also provide companies with 90 days to provide the requested product information:

- California;<sup>12</sup>
- Delaware;<sup>13</sup>
- District of Columbia;<sup>14</sup>
- Maine;<sup>15</sup>
- Maryland;<sup>16</sup>

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<sup>10</sup> *See* Proposed Ill. Admin. Code Title 35, Sec. 223.025.

<sup>11</sup> The OTC Model Rule's reporting requirements are set forth at Section 7(a).

<sup>12</sup> Cal. Code Regs. Title 17 § 94513(a).

<sup>13</sup> Del. Air Quality Mgmt. Reg. No. 41 § 2(e).

<sup>14</sup> D.C. Mun. Regs., Title 20, § 733.

<sup>15</sup> Code of Maine Rules Ch. 152 § 7A.

<sup>16</sup> MD. Regs. Code Title 26.11, § 32.14(A).

- Massachusetts;<sup>17</sup>
- Michigan;<sup>18</sup>
- New Jersey;<sup>19</sup>
- New York;<sup>20</sup>
- Ohio;<sup>21</sup>
- Pennsylvania;<sup>22</sup> and
- Virginia.<sup>23</sup>

As a practical matter, CSPA believes that the currently proposal to allow only 30 days may be an inadequate amount of time for many companies to comply with the Agency’s request for product information. This short time-frame may be particularly difficult for multi-national companies to locate and submit the required information since the required data may be stored at a facility in another country.

Therefore, CSPA urges the Board to amend the proposed regulation to provide a 90 day period for companies to respond to the Agency’s request for information by making the following technical amendment to the proposed regulation:

*Italicized text* = text added to the Illinois EPA’s proposed regulation  
~~Stricken text~~ = text deleted from the Illinois EPA’s proposed regulation

**Section 223.270 Reporting Requirements**

- a) Upon request, a responsible party must submit to the Agency any of the following information within ~~30~~ **90** days of a request by the Agency:

This technical revision will ensure that this administrative provision in the Illinois final regulation is consistent with the OTC Model and final regulations promulgated by 11 states and the District of Columbia.

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<sup>17</sup> Mass. Regs. Code Title 310, § 7.25(12)(e).

<sup>18</sup> See Mich. Admin. Code R 336.1660. Michigan recently incorporated by express reference the revised OTC Model Rule dated September 13, 2006. The Model Rule provides 90 days for companies to respond to a request for product information. See Section 7(a).

<sup>19</sup> N.J. Admin. Code Title 7 §§ 7:27-24.6(e).

<sup>20</sup> NY Comp. Codes R. & Regs. Title 6, § 235-7.1.

<sup>21</sup> Ohio Admin. Code Rule 3745-112-06(A).

<sup>22</sup> 25 Pa. Code § 130.391.

<sup>23</sup> Va. Regs. 9 VAC 5-40-7360.B.



#### **IV. CONCLUSION**

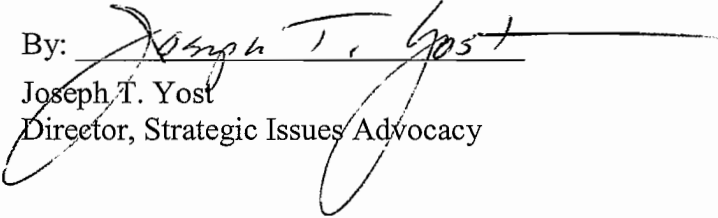
CSPA is fully aware that Illinois and many other states are confronting a difficult challenge to comply with the federal ozone standard. This challenge is particularly demanding in the heavily populated Midwest Region. While the stringent VOM limits contained in the Illinois EPA's proposed regulation may require some small- and medium-size companies to expend a considerable amount of time and money to reformulate their products, CSPA supports the proposal because it is consistent with the OTC Model Rule. Moreover, our industry is committed to working cooperatively with the Agency to improve air quality in Illinois and other Midwest Regional Planning Organization States.

CSPA commends the Illinois EPA for conducting a very open and transparent rulemaking process. We appreciate the opportunity to participate as an active stakeholder in this important process to develop a technologically challenging set of VOM limits and related enforcement provisions that are a necessary part of the Illinois EPA's comprehensive strategy to demonstrate attainment of the federal Clean Air Act's strict ozone standard.

**WHEREFORE**, for the reasons stated above, the Consumer Specialty Products Association requests that the Board consider two narrowly-tailored technical revisions to ensure that companies have adequate time to comply with certain administrative filing requirements contained in the Illinois EPA's proposed regulation. The changes will ensure that the administrative requirements of the Agency's proposed regulation are consistent with parallel provisions in the OTC Model Rule and final regulations promulgated by 11 other states and the District of Columbia. Furthermore, these two technical amendments will *not* change the

requirement that manufacturers must comply with the applicable VOM limits on  
January 1, 2009.

Respectfully submitted,  
CONSUMER SPECIALTY PRODUCTS ASSOCIATION

By:   
Joseph T. Yost  
Director, Strategic Issues Advocacy

**DATED:** April 8, 2008

900 17th Street, N.W., Suite 300  
Washington, D.C. 20006  
(202) 872-8110

DISTRICT OF COLUMBIA )

) S S

**CERTIFICATE OF SERICE**

I, the undersigned do hereby state and attest to the fact that I have served the attached copy of the testimony that the Consumer Specialty Products Association will present on the REGULATORY PROPOSAL entitled "PROPOSED NEW 35 ILL. ADM. CODE PART 223 STANDARDS AND LIMITATIONS FOR ORGANIC MATERIAL EMISSIONS FOR AREA SOURCES" and APPEARANCE upon the person to whom it is directed, by placing a copy in an envelope addressed to:

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 West Randolph Street, Suite 11-500  
Chicago, Illinois 60601-3218

Illinois Environmental Protection Agency  
Division of Legal Counsel  
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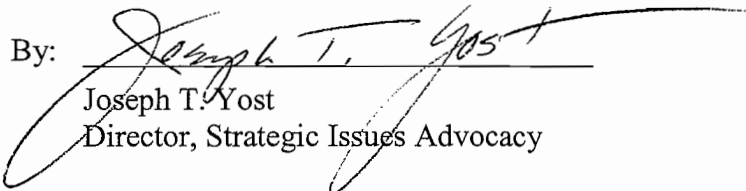
and mailing it from Washington, DC, with sufficient postage affixed, as indicated above.

DATED: April 8, 2008

900 17th Street, N.W., Suite 300  
Washington, DC 20006  
202-833-7325

CONSUMER SPECIALTY PRODUCTS  
ASSOCIATION

By: \_\_\_\_\_

  
Joseph T. Yost  
Director, Strategic Issues Advocacy

