

STATE OF ILLINOIS )  
 ) SS.  
COUNTY OF C O O K )

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JUN 10 2008  
STATE OF ILLINOIS  
Pollution Control Board

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

IN THE MATTER OF: )  
 )  
PROPOSED NEW 35 ILL, ADM. CODE ) R08-17  
PART 223 STANDARDS AND ) (Rulemaking -  
LIMITATIONS FOR ORGANIC MATERIAL ) Air)  
EMISSIONS FOR AREA SOURCES )

TRANSCRIPT OF PROCEEDINGS held in the  
above-entitled cause before Hearing Officer Timothy  
Fox, called by the Illinois Pollution Control Board,  
pursuant to notice, taken before Rebecca Graziano,  
CSR, within and for the County of Cook and State of  
Illinois, at the Thompson Center, 100 West Randolph,  
Room 2-025, Chicago, Illinois, on the 4th Day of  
June, A.D., 2008, commencing at 9:00 a.m.

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A P P E A R A N C E S

ILLINOIS POLLUTION CONTROL BOARD :

Mr. Timothy J. Fox  
Ms. Andrea Moore  
Mr. Nicholas Melas  
Mr. Anad Rao

THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

Mr. Rory Davis  
Mr. Charles Matoesian

THE CHEMICAL INDUSTRY COUNCIL OF ILLINOIS

Ms. Lisa Frede

W.R. MEADOWS, INC.

Mr. Dave Carey

THE NATIONAL PAINT AND COATINGS ASSOCIATION

Mr. David Darling

HODGE, DWYER, ZEMAN,  
3150 Roland Avenue  
Post Office Box 5776  
Springfield, IL 62705  
(217) 523-4900  
BY: MS. KATHERINE HODGE  
MS. LAUREN LURKINS

Appeared on behalf of the Illinois Environmental  
Regulatory Group.

1 MR. FOX: The time of 9:00 o'clock having  
2 come and just passed, I want to call this hearing to  
3 order. Good morning, and welcome to the Illinois  
4 Pollution Control Board hearing. My name is Tim  
5 Fox, and I am the hearing officer for this  
6 proceeding entitled Proposed New 35 Illinois  
7 Administrative Code 223, Standards and Limitations  
8 for Organic Material Emissions for Area Sources.  
9 The board docket number for this rulemaking is  
10 R-0817. The proposal was filed by the Illinois  
11 Environmental Protection Agency on January 2nd of  
12 2008, and the Board accepted it for hearing in an  
13 order dated January 24th of 2008. Also present from  
14 the board today are, at my far left, board member  
15 Andrea S. Moore, who is the lead board member for  
16 this rulemaking, and to my immediate left is Board  
17 member, Nicholas J. Melas, to my right is Anand Rao  
18 of the Board's technical staff.

19 Today we are holding the second  
20 hearing in this rulemaking. The first hearing took  
21 place Wednesday, April 30th, 2008, in Springfield.  
22 This proceeding is governed by the Board's  
23 procedural rules. All information that is relevant  
24 and not repetitious or privileged will be admitted

1 into the record. Please note that any questions  
2 that are posed today either by the Board members or  
3 the Board staff are intended solely to help develop  
4 a clear and complete record for the Board's decision  
5 and do not reflect any judgment or prejudgement or  
6 conclusion regarding the proposal.

7 The Board did not receive  
8 pre-filed testimony for this second hearing. If any  
9 participant wishes to testify today, there is a  
10 sign-up sheet and pens sitting directing in front of  
11 our court reporter. If you do wish to testify, you  
12 certainly would be sworn in and may be asked  
13 questions about your testimony as any other witness  
14 would be.

15 We will begin this hearing with  
16 the Agency. There are questions, clearly, that the  
17 participants have for them on the basis of their  
18 proposal, and after that, as time permits, any  
19 person who wishes to testify may do so. And as a  
20 housekeeping matter for the benefit of our court  
21 reporter, please speak clearly. I don't think  
22 amplification will be an issue in this room with  
23 this many people, and avoid speaking at the same  
24 time as any other person so that we can have a

1 transcript that is clear -- that is as clear as  
2 possible. Do we have any questions before we  
3 proceed to the Agency for questions at all? Very  
4 well. Mr. Matoesian, if you would like to begin.

5 MR. MATOESIAN: Okay. Thank you, sir.  
6 Good morning. My name is Charles Matoesian. I'm  
7 appearing for the Illinois Environmental Protection  
8 Agency. With me today is Mr. Rory Davis, an  
9 engineer with the Agency. Having providing  
10 testimony at the first hearing, we are here mainly  
11 to answer questions from the Board and the public.  
12 I would state for the record, however, having spoken  
13 to the USEPA, the federal aerosol rule is beyond  
14 legal challenge at this point. So with the Board's  
15 permission we will be filing an errata sheet to  
16 withdraw our portion of the rule dealing with  
17 aerosol codings, which is subpart D, starting at  
18 223.400 and going on. So that's -- just that for  
19 the record.

20 And I would note we filed a second  
21 errata sheet on Monday. I'm not -- I hope  
22 everyone's gotten it, but the Board may not have  
23 gotten it yet. This concerns a lot of the, sort of,  
24 housekeeping issues that came up with the first

1 draft of the rule. And with that I will send it --  
2 some things back over to the Board.

3 MR. FOX: Very well. For the record,  
4 Mr. Matoesian and I, in discussing procedural  
5 matters before hearing began, did mention the  
6 Agency's errata sheet No. 2 to one another. To the  
7 best of my knowledge, that mail service has not been  
8 completed on the Board. What we discussed was if  
9 there is interest in seeing it in the course of this  
10 hearing today, we could adjourn for a brief break,  
11 make copies, and have it admitted in the record so  
12 that it was in front of us at the matter of the  
13 discussion. I plainly see some indication that we  
14 would like that to happen, and that participants  
15 would like to have the errata sheet in front of them  
16 today for the purpose of the hearing. So we can  
17 break at an appropriate time so that is part of your  
18 record here this morning, Mr. Matoesian. Thank you.

19 MS. HODGE: Oh, we do have a copy of  
20 it.

21 MR. MATOESIAN: They have a copy of  
22 it.

23 MR. FOX: I apologize. It may very  
24 well be arriving in our Chicago office as we speak.

1 MR. MATOESIAN: Okay.

2 MR. FOX: And I believe the Board and  
3 its staff would be content to await that --

4 MR. MATOESIAN: Okay.

5 MR. FOX: -- based on the technical  
6 and housekeeping nature of the errata sheet. But it  
7 appears that I was mistaken that there is not at  
8 this point specific interest in having it admitted  
9 this morning as a hearing exhibit. Mr. Matoesian,  
10 thanks for letting me interrupt. Did you have  
11 anything further you wished to add?

12 MR. MATOESIAN: No. That's okay.

13 MR. FOX: We certainly can field --  
14 Mr. Matoesian, on behalf of the Agency, can field  
15 any questions. If anyone does have a question, if  
16 would they please raise their hand so that I may  
17 recognize them. And please, if they would, for your  
18 first question, indicate who you may represent and  
19 in what capacity you may do so in addition to your  
20 name. Miss Hodge, I believe you have a question.

21 MS. HODGE: My name is Katherine  
22 Hodge, H-o-d-g-e, and I'm with the law firm Hodge,  
23 Dwyer, Zeman, here today representing the Illinois  
24 Environmental Regulatory Group.

1                   MR. FOX: And Ms. Hodge, I should have  
2 done this first of all. Before the Agency does  
3 accept questions, it would be best, I think, for the  
4 court reporter to swear them both in.

5                   MR. MATOESIAN: Swear him in.

6                   MR. FOX: Swear him in.

7                                 (Witness sworn.)

8                   MS. HODGE: I have a few questions for  
9 Mr. Davis, and the first question goes to the  
10 statement in the Agency's technical support  
11 document -- and would it be better if I moved up for  
12 this? Okay. And as I said, this goes to the  
13 Agency's technical support document, and in  
14 particular, Mr. Davis, in the Section 2.7, reduction  
15 of the Illinois emissions in Illinois, it's on  
16 Page 29 of the TSD. The Agency says that the  
17 emission reduction from this proposed rule will help  
18 Illinois attain the eight hour national ambient air  
19 quality standard by 2010. The TSD further states  
20 that such emission reductions will amount to  
21 14.2 percent for the consumer and commercial  
22 products rule that's proposed here beyond those  
23 achieved by the federal rule. Has the Agency used  
24 the 14.2 percent reduction from the consumer and



1 commercial products rule in the attainment  
2 demonstration modeling as conducted and recently  
3 completed?

4 MR. DAVIS: I would have to respond to  
5 that in writing. I'm not -- I wasn't involved with  
6 attainment demonstration.

7 MR. FOX: Mr. Davis, I'm sorry. If  
8 you could give us a little more volume.

9 MR. DAVIS: I wasn't involved with the  
10 attainment demonstration. I believe we probably  
11 did, but I couldn't say for certain, and I can --

12 MR. MATOESIAN: We can answer that in  
13 writing.

14 MR. DAVIS: Yeah.

15 MS. HODGE: Okay. That's fine.

16 MR. FOX: And we can deal with the  
17 timing deadlines for filing of post hearing before  
18 we leave today.

19 MS. HODGE: The proposed rule has a  
20 compliance date of January 1, 2009. Does the Agency  
21 believe that there is sufficient time for effective  
22 parties to implement the provisions of this rule?

23 MR. DAVIS: I believe that was the  
24 assumption, yes.

1 MS. HODGE: Okay. Thank you. If  
2 compliance with the ozone standard is to be  
3 demonstrated by June 15th, 2010, as required by  
4 federal rule, is it correct that only the 2009 ozone  
5 season could potentially be influenced by the  
6 provisions of this rule?

7 MR. DAVIS: Could you repeat the  
8 question?

9 MR. FOX: And, Mr. Davis, I'm sorry to  
10 interrupt again. We really need to have you speak a  
11 little more clearly, please.

12 MR. DAVIS: She's sitting right here.

13 MS. HODGE: Yeah. If compliance with  
14 the ozone standard is to be demonstrated by  
15 June 15th, 2010 -- which is my understanding as the  
16 requirement of the federal rule, and I think you  
17 offered testimony in that regard to the first  
18 hearing -- is it correct, then, that only the 2009  
19 ozone season could potentially be influenced by the  
20 provisions of this rule? Meaning, is it true that  
21 we would only get the benefit from the 2009 season?

22 MR. DAVIS: Yes.

23 MS. HODGE: Okay. Thank you. Why has  
24 the Agency waited until this point in time to

1 propose the rule?

2 MR. DAVIS: I think we proposed the  
3 rule and tried to get it filed as soon as -- as soon  
4 as was possible with all the input we took from  
5 industry and tried to get everything consistent --

6 MR. MATOESIAN: And if I could,  
7 Mr. Rory isn't involved in the policy making -- or  
8 Mr. Davis -- in the policy making decision, so we  
9 could answer that after discussing with the  
10 management.

11 MS. HODGE: That's fine. Thank you.

12 MR. FOX: Fair enough.

13 MS. HODGE: That's fine. When does  
14 the Agency expect the USEPA to propose and  
15 promulgate its federal consumer products rule?

16 A. That we are not sure about. Last year  
17 we heard that it would be in May of last year. More  
18 recently, we heard that it would be in May of this  
19 year. I think I testified to that at the first  
20 hearing. Now I've been told it will be somewhere in  
21 July. It keeps getting pushed back. So I don't  
22 really know.

23 MS. HODGE: Okay. Thank you.

24 MR. FOX: Mr. Davis, if I may, when

1 you referred to July, is that July of this year,  
2 2008?

3 MR. DAVIS: Yes.

4 MR. FOX: Thank you.

5 MR. DAVIS: But again, we aren't  
6 really counting on seeing it in July.

7 MS. HODGE: Does the Agency have an  
8 expectation that the compliance date for the federal  
9 consumer products rule will be beyond January 1,  
10 2009, or do you -- or do you know?

11 MR. DAVIS: I couldn't speculate on  
12 that based on what they'll find in the ruling.

13 MS. HODGE: Okay. The Agency has  
14 stated in its statement of reasons, and also I think  
15 at the first hearing, that it's basing its proposed  
16 rule in this proceeding on the ozone transport  
17 commission, or the OTC model rule. Could you  
18 clarify whether the Agency's proposed rule in this  
19 proceeding and the supporting documentation that's  
20 been permitted as based upon the 2001 version of the  
21 OTC model rule, or is it based upon the 2006 version  
22 of the OTC model rule?

23 MR. DAVIS: I believe that when we  
24 started it was more based on 2001. As we went

1 through the process, we took lot of input from  
2 industry on what changes could be made to make our  
3 rule most consistent with the current OTC rules. We  
4 do write our rules in our own format, so it's not  
5 precisely the OTC model rule. We tried to make the  
6 limits and the technical aspects of the rule very  
7 consistent with the -- with the current OTC model  
8 rules. So I would say that the -- it is probably  
9 closer to the 2006 and its limits, but I think a lot  
10 of the technical support might have come from  
11 earlier, and I believe that there wasn't much  
12 updating to that technical support for the 2006  
13 ruling.

14 MS. HODGE: Okay. Thank you. So that  
15 -- you went into my next question. Why is the 2001  
16 OTC model rule cited by the Agency at reference 16  
17 in its TSD and in Attachment A documents relied upon  
18 of the initial proposal, and why is the 2006 OTC  
19 rule not included as a reference?

20 MR. DAVIS: I would have to check on  
21 each document.

22 MS. HODGE: Okay. Let's do that.  
23 Let's take a look at the -- -- here's the Agency --  
24 the Illinois EPA's TSD, and if you'll look at

1 Page 63 and then over to Page 64, Item No. 16, we  
2 have the model rule for consumer products, ozone  
3 transfer commission of November 29th, 2001.

4 MR. DAVIS: Like I said, I believe  
5 that we started before we had a 2006 final model  
6 rule from the OTC, and I believe that most of our  
7 technical support was for -- was from that time  
8 period, the -- we certainly could include 2006 rule  
9 in our references. But like I said, neither rule  
10 was the sole basis for our rule. We write our  
11 rules, you know, in our own format, and we relied a  
12 lot on the industry input to get our OTC -- or our  
13 rule to be consistent with the OTC.

14 MS. HODGE: Okay. I would just like  
15 to clarify on one of your statements. So is it your  
16 position that the Agency relied primarily upon the  
17 2001 version of the rule?

18 MR. DAVIS: No, I wouldn't say that.  
19 I -- we probably should have included that in the  
20 records to get to where many of our limits were.  
21 And like I said, we can include that now if it would  
22 be helpful for comparison.

23 MR. FOX: Mr. Davis, from the Board's  
24 perspective, that would be helpful if it's part of a

1 post-hearing comment that was asked --

2 MR. DAVIS: Sure.

3 MS. HODGE: And that's part of what  
4 I'll be addressing in a few minutes too. Thank you.  
5 Okay. Again, in the TSD, in Attachment A, the  
6 Agency states that it relied upon Mack Tech interim  
7 white paper for the course category of consumer  
8 commercial products called the Mack Tech white  
9 paper, and that's reference number three, and again,  
10 this would be on Page 63 of the TSD. In particular,  
11 the Mack Tech white paper side is the basis for the  
12 14.2 percent reduction VOM emissions that will  
13 result from implementing the OTC model rule. Do you  
14 know if the information in the Mack Tech white paper  
15 was based on the 2001 or the 2006 version of the OTC  
16 model rule?

17 MR. DAVIS: I'm not certain not having  
18 a copy in front of me. Those white papers are  
19 updated from time to time, and we get new copies and  
20 we certainly try to keep up with the latest copy.  
21 My guess would be that's probably not the most  
22 recent we have today. I could probably come up with  
23 that and submit that also if it would be helpful.

24 MR. FOX: And am I correct, Mr. Davis,

1 if I may interrupt a moment Ms. Hodge, that the  
2 reference number three refers to an interim white  
3 paper dated December 1st, 2005. Is that correct?

4 MR. DAVIS: Yeah. I would say that  
5 probably -- well, I can't speculate on it.

6 MR. FOX: Very good. Thank you.

7 Ms. Hodge, I'm sorry for interrupting.

8 MS. HODGE: Oh, that's all right.

9 MR. FOX: Please go ahead.

10 MS. HODGE: That was my next question.  
11 So would you agree that perhaps that this reference  
12 from the interim white paper that, again, as Mr. Fox  
13 said is dated January 1, 2005, don't you think that  
14 this would indicate that the 2001 OTC model rule was  
15 the basis for the Mack Tech white paper?

16 MR. DAVIS: It could, but that's not  
17 always the case. Many times they -- Mack Tech works  
18 for Labco (phonetic), who does a lot of our research  
19 for us. Many times they anticipate what kind of  
20 reductions would be achieved by different rules. I  
21 would have to check with them to see if they were  
22 basing that on 2001 or 2006.

23 MS. HODGE: Is that --

24 MR. DAVIS: But being December 2005, I



1 really couldn't say.

2 MS. HODGE: Thank you. Is that  
3 something that the Agency could also address in  
4 writing --

5 MR. DAVIS: Yeah.

6 MS. HODGE: -- as well as if there  
7 have been any updates provided that are in the  
8 record?

9 MR. FOX: And in this case, you  
10 anticipated my question, Ms. Hodge, so I thank you  
11 for doing so.

12 MS. HODGE: Okay. And we're going to  
13 go back and look at this list of references one more  
14 time, and reference number 18, which is a report  
15 prepared by EH Pechan and Associates Inc., entitled  
16 Control Measure Development Support Analysis of  
17 Ozone Transport Commission Model Rule, and I'm going  
18 to call this the Pechan document, and it's dated  
19 March 31st, 2001. Because of its date, wouldn't it  
20 make sense to assume that this document was also  
21 prepared in reference to the 2001 OTC model rule and  
22 not to the 2006 OTC model rule?

23 MR. DAVIS: Yes.

24 MS. HODGE: Okay. And -- Pechan?

1 MR. DAVIS: Yes.

2 MS. HODGE: Thank you. And would you  
3 also agree that the Mack Tech white paper sites to  
4 the EH Pechan report, in particular in support of  
5 the 14.2 percent emission reduction?

6 MR. DAVIS: Yes.

7 MS. HODGE: Okay. Thank you.

8 MR. RAO: May I ask, Mr. Davis, are  
9 you familiar with this in your version of the OTC  
10 model rule?

11 MR. DAVIS: Yes.

12 MR. RAO: Could you, just for the  
13 record, comment on how significant the changes are  
14 from the 2001 rule to the 2006 rules?

15 MR. DAVIS: I don't know what you  
16 would call significant. I know that some of the  
17 limits were changed. I know that a few categories  
18 were added. I believe we added those categories.  
19 Some of the definitions were changed to include  
20 certain products and to put certain products in  
21 different categories. There were significant  
22 changes, I guess, but not -- structurally I think  
23 it's essentially the same.

24 MR. RAO: And some of these changes

1 are reflected in your proposal?

2 MR. DAVIS: Yes, yes. But as I said,  
3 those changes -- and I apologize for not including  
4 the 2006 rule -- most of those changes were made  
5 upon comment by an industry when they submit  
6 comments to us saying "You should really change this  
7 part to reflect the new OTC rule," and our goal  
8 certainly was to stay consistent with the most  
9 current OTC model rules and California rules, and I  
10 believe Mr. Biel complimented us for taking their  
11 comments seriously and implementing those changes.

12 MR. RAO: Okay. Since you will be  
13 submitting that document later in your comment,  
14 would it be possible for you to highlight some of  
15 these significant changes and how they're reflected  
16 in your rules?

17 MR. DAVIS: Sure.

18 MR. RAO: Since it will be  
19 post-hearing, it would be helpful to see where those  
20 things are.

21 MR. DAVIS: Sure.

22 MR. RAO: Thank you.

23 MR. DAVIS: I believe there's a red  
24 line version from 2006 to 2001. I don't know that

1 that would be an official document that OTC  
2 released, but it may be helpful. I might be able to  
3 come up with that. I know that I had it personally.  
4 That could be helpful --

5 MR. RAO: Yeah.

6 MR. DAVIS: -- just to see they're  
7 highlighted in yellow and blue. So that's -- it was  
8 helpful to me certainly.

9 MR. RAO: If you could get the release  
10 for the document or something like that, that would  
11 be helpful for us. Thank you.

12 MS. HODGE: Thank you. And I do have  
13 a copy of that document that we're discussing, and I  
14 apologize it's in black and white. So if you go to  
15 the web page, you can actually see, you know, the  
16 highlighted colors. I've given a copy to counsel  
17 for the Agency, and then here's a copy for the Board  
18 that I'd like to move have this admitted as an  
19 Exhibit for today. Do you want me to describe it?

20 MR. FOX: Actually I think we've had  
21 probably a sufficient description of what it is and  
22 we can certainly rely on that, Ms. Hodge.

23 MS. HODGE: Thank you.

24 MR. FOX: Thanks for your willingness.

1 We do have a motion from Ms. Hodge on behalf of IERG  
2 to admit as what would be Exhibit No. 3, as she  
3 described the 2006 version of the OTC draft or model  
4 rule. Is there any objection to admission of that  
5 into the record of this hearing as Exhibit No. 3?  
6 Neither seeing nor hearing any, it will be so marked  
7 and admitted as hearing Exhibit No. 3. Thank you,  
8 Ms. Hodge, for the copy of that document.

9 MS. HODGE: Thank you. Mr. Davis, are  
10 you familiar with this document?

11 MR. DAVIS: Yes.

12 MS. HODGE: Did the Agency rely on  
13 this document in developing the regulatory proposal  
14 for this proceeding?

15 MR. DAVIS: I would say yes, and I  
16 would have to apologize for not including that in  
17 the reference the documents relied on. I don't  
18 think we relied on it solely for changes from 2001  
19 to 2006, but yes.

20 MS. HODGE: Okay. Thank you. I would  
21 ask you to turn to Page 1 of this document, and  
22 about mid-way down the page there's some notes, five  
23 notes, and I think I'm going to read this statement  
24 from this cover page, cover Page 1 of the document,

1 into the record. "This model rule was developed by  
2 the Ozone Transport Commission as part of a regional  
3 effort to attain and maintain the eight hour ozone  
4 standard and reduce eight hour ozone levels. This  
5 is an amendment to the November 29th, 2001, model  
6 rule, developed by the OTC states to address the one  
7 hour standard in areas." And then I would ask you  
8 to look at notes, in particular one, two, and three,  
9 and would you mind reading those into the record for  
10 us?

11 MR. DAVIS: Notes one, two, and three?

12 MS. HODGE: Mm-hmm, yes.

13 MR. DAVIS: "Certain compounds  
14 affected by this model rule may not cause or  
15 contribute to formation of ozone, but due to their  
16 hazardous nature are included in this model for  
17 convenience of the state, which may regulate such  
18 compounds are under other state authorities. Such  
19 compounds are noted with an asterisk, and is up to  
20 each state to decide whether it wishes to include  
21 regulation of said compound and its state-specific  
22 rulemaking. OTC takes no position on whether to  
23 include these pounds in such a way.

24 States opting to promulgate rules

1 based on this model rule must comply with  
2 state-specific administrative requirements and  
3 procedures, underline text, and are changes made to  
4 the original OTC model rule dated November 2nd,  
5 2001, in bold text, our references to agencies  
6 outside the OTC. OTC states, sections, titles, and  
7 for special points of interest. The term OTC state  
8 or an OTC state agency are placeholders for  
9 individual statement names.

10 MS. HODGE: Thank you very much.  
11 Could you go to Page 20 of this document now,  
12 please? And down at the bottom of the page, number  
13 three standards, and then it starts with a table of  
14 standards. And then if we go over to the next page,  
15 Page 21, is it -- is it your understanding, then,  
16 that the items that are underlined that these are  
17 the new categories that were added in the 2006  
18 version of the rule?

19 MR. DAVIS: Yes.

20 MS. HODGE: Okay. And are these --  
21 these underlined items, are they included in the  
22 Agency's proposal in this proceeding?

23 MR. DAVIS: I believe they are.

24 MS. HODGE: Okay. So we have -- on

1 Page 21, is it correct that we have new product  
2 category for adhesive removers?

3 MR. DAVIS: Yes.

4 MS. HODGE: Okay. And we have some  
5 subcategories under adhesives for contact general  
6 purpose and contact special purpose?

7 MR. DAVIS: Yes.

8 MS. HODGE: Okay. Under air  
9 fresheners, we have a new subcategory for  
10 semisolids?

11 MR. DAVIS: Right.

12 MS. HODGE: We have a brand new  
13 category for anti-static products, non-aerosol. And  
14 if you go over to Page 22, we have several --  
15 several more new categories that are in the 2006  
16 rule, but not in the 2001?

17 MR. DAVIS: Right.

18 MS. HODGE: We have electrical cleaner  
19 and electronic cleaner. Is that correct?

20 MR. DAVIS: Yup.

21 MS. HODGE: Okay. We also have -- the  
22 fabric refreshener category is new, footwear leather  
23 care products is new. Is that correct?

24 MR. DAVIS: Yes.



1 MS. HODGE: Another new category here,  
2 graffiti remover. On Page 23, similarly, we have a  
3 -- is it correct that we have a new category for  
4 hairstyling products?

5 MR. DAVIS: Yes.

6 MS. HODGE: Do we have a new category  
7 for shaving gel?

8 MR. DAVIS: Yes.

9 MS. HODGE: Do we have a new category  
10 for toilet/urinal care?

11 MR. DAVIS: Yes.

12 MS. HODGE: And then finally on this  
13 page, do we have a new category for wood cleaner?

14 MR. DAVIS: Yes.

15 MS. HODGE: On Page 24 --

16 MR. DAVIS: I believe that's --

17 MS. HODGE: I'm sorry. Those are  
18 subcategories of wood cleaner, I believe. So all of  
19 these categories that we've just identified, these  
20 are all -- these are some of the significant changes  
21 in the '06 rule versus the '01 rule. Is that  
22 correct?

23 MR. DAVIS: Yes. And I should  
24 clarify, some of these were included in the previous

1 rule, and they're more specific categories than were  
2 in the previous rule. For instance, the hairstyling  
3 products might have been under hairstyling gels  
4 before, or shaving gels might have been under  
5 shaving creams. They've got a seven percent max. I  
6 believe that was added because shaving creams had a  
7 five percent maximum percentage and shaving gels got  
8 seven percent. So some of those are -- were  
9 included in the -- the products themselves were  
10 included in the original rule, but then were given a  
11 more specific category.

12 MS. HODGE: Okay. Thank you. Could  
13 we turn to Page 29 of this document now, please?  
14 And in section No. 4 on Page 29, we have a list of  
15 exemptions, and I would turn your attention down to  
16 item No. I, and would you agree that the  
17 strikethrough in this provision changes an exception  
18 from the '01 rule to the '06 rule?

19 MR. DAVIS: Yes.

20 MS. HODGE: So is it accurate that  
21 under the 2001 rule the exemption would apply to air  
22 fresheners and insecticides containing at least  
23 98 percent paradichlorobenzene?

24 MR. DAVIS: Yes.

1 MS. HODGE: Is that true?

2 MR. DAVIS: Yes.

3 MS. HODGE: But for the 2006 rule, the  
4 exemption only applies to insecticides containing  
5 98 percent paradichlorobenzene. Is that correct?

6 MR. DAVIS: That's correct.

7 MS. HODGE: Okay. Thank you. Since  
8 it appears, at least to me here today, that the  
9 Agency based the technical support for its  
10 rulemaking on the 2001 OTC model rule, including the  
11 emission reductions achieved by the 2001 OTC model  
12 rule, and that rule did not include these new  
13 categories, and in at least one exemption was  
14 significantly modified, is it true that the Agency's  
15 goal of the Illinois emission reductions could be  
16 achieved without these categories?

17 MR. DAVIS: I would say it's possible,  
18 but the categories that are added, like I said, some  
19 of them are more specific categories than were in  
20 the original. I believe in my testimony and in the  
21 technical support document, we said that the  
22 reductions could be less than 14.2 percent because  
23 we have products that are being sold in Illinois now  
24 that are compliant because of the California and OTC

1 model rules. So 14.2 percent wouldn't be an exact  
2 figure. I believe that's in the TSD and in the --  
3 my testimony. And also to include them while -- if  
4 you wanted to take that 14.2 percent to be an exact  
5 number, then the additional categories would be  
6 additional reductions, which would also be helpful  
7 with the attainment demonstration.

8 MR. MATOESIAN: And I think beyond  
9 that, we'll get more fully into this in writing.

10 MS. HODGE: That's fine. Thank you.  
11 I'd like to turn back now to the Agency's technical  
12 support document, and could we go to Page 30 of that  
13 document, please? I'm sorry. Let's go back to  
14 Page 29 to start with. Section 2.7 here is  
15 reduction of the Illinois emissions in Illinois.  
16 There's a narrative, and then there's a table over  
17 on Page 30, table 2.7.1. estimating the Illinois  
18 emission reductions for consumer products. Is that  
19 correct?

20 MR. DAVIS: Yes.

21 MS. HODGE: Could you tell me what the  
22 number ten footnote means? Is that a reference to  
23 your reference document number ten?

24 MR. DAVIS: It could be, yes.

1 MS. HODGE: And could you tell me what  
2 that document is, please?

3 MR. DAVIS: That is a technical  
4 support document from the state of New Jersey that  
5 listed all of the categories that were in the rule  
6 at that time, and the reason that I used the  
7 document from New Jersey was it was the most concise  
8 table. It's actually taken from California data,  
9 but it was nicely put together, and that's why I  
10 used those.

11 MS. HODGE: So the Agency didn't do  
12 its own independent analysis of emission reductions  
13 for its consumer products rule?

14 MR. DAVIS: No.

15 MS. HODGE: And what's the date of  
16 this New Jersey document?

17 MR. DAVIS: 2003.

18 MS. HODGE: Do you think it's likely  
19 that this 2003 New Jersey report covered only the  
20 categories in the 2001 OTC rule?

21 MR. DAVIS: I think that's likely,  
22 yes.

23 MS. HODGE: So if I go back and look  
24 at this table, 2.7.1, does this table include these

1 new categories that we identified just a few minutes  
2 ago from the OTC 2006 rule? Does this table include  
3 those new categories?

4 MR. DAVIS: I would say some and not  
5 others.

6 MS. HODGE: Okay. Could you go  
7 through and show us, please, where it doesn't show  
8 the new categories? And if that would be something  
9 that would be easier to address in writing --

10 MR. MATOESIAN: That would probably be  
11 much easier.

12 MS. HODGE: All right. I would ask  
13 that we do that.

14 MR. DAVIS: Sure.

15 MS. HODGE: So if a category is not  
16 listed in this table, is it correct to state that  
17 the Agency really did not consider emission  
18 reductions associated with that category?

19 MR. DAVIS: As I said, some of the --  
20 some of the categories are more specific categories.  
21 So I would say perhaps and perhaps not, because some  
22 of the new categories would be included in here.

23 MS. HODGE: All right. Thank you. So  
24 is it accurate to say that the Agency did not

1 include the ozone reducing impact of reduction -- of  
2 emission reductions from at least some of these  
3 categories?

4 MR. DAVIS: Yes.

5 MS. HODGE: Does the Agency know the  
6 emission reductions to be achieved from adding these  
7 additional categories?

8 MR. DAVIS: I would say no. The  
9 Agency doesn't really have the resources to do it  
10 case by case. As a determination, we did rely on  
11 New Jersey and Mack Tech, Labco, and California.

12 MS. HODGE: Do you know whether the  
13 OTC estimated emission reductions for these  
14 additional categories for its '06 rule?

15 MR. DAVIS: That I would have to check  
16 on.

17 MS. HODGE: Okay. And that's  
18 something to be submitted, right?

19 MR. MATOESIAN: Okay.

20 MS. HODGE: We would need that too.  
21 Since it appears that the Agency, at least to me  
22 here today, based its rulemaking on the 2001 OTC  
23 model rule, and the 2001 OTC model rule does not  
24 include these additional categories, is it true that

1 the Agency did not consider the cost for compliance  
2 associated with regulating these additional  
3 categories?

4 MR. DAVIS: Could you repeat that?

5 MS. HODGE: Certainly. We've been  
6 talking about whether or not the Agency considered  
7 the emission reductions associated with the  
8 additional categories, and this question goes to  
9 whether the Agency analyzed the cost -- the  
10 compliance cost associated with adding these  
11 additional categories.

12 MR. DAVIS: Sure.

13 MS. HODGE: And so the question is:  
14 Did the Agency consider the cost associated with  
15 compliance for the cost of these additional  
16 categories?

17 MR. DAVIS: I would say as far as they  
18 were considered by the other resources that I have  
19 mentioned previously.

20 MS. HODGE: Thank you. So if the  
21 other resources did not consider the costs, then the  
22 Agency would not have considered the cost. Is that  
23 correct?

24 MR. DAVIS: Yes.



1 MS. HODGE: Okay. Thank you. Also,  
2 we had mentioned early on in this OTC document -- is  
3 that Exhibit No. 3?

4 MR. FOX: Number three, yes.

5 MS. HODGE: Thank you, Mr. Fox. We  
6 had mentioned the change to the exemption for  
7 paradichlorobenzene. So is it also true that the  
8 Agency did not consider the cost of compliance as  
9 associated with this modified exemption?

10 MR. DAVIS: That's possible. I would  
11 have to -- I would have to retrace where we were  
12 getting our cost effective numbers -- where our cost  
13 impact numbers from. If they were from a document  
14 that that did include that, then I would say it was  
15 included. If they were not, then I would say they  
16 were not.

17 MS. HODGE: Okay. Thank you.

18 MR. DAVIS: And as I stated, neither  
19 one nor the other was the sole basis. I think a few  
20 questions ago, that's why I was asking you to repeat  
21 it. I think you've said a number of times that we  
22 are basing it on 2001. But I don't think that's  
23 wholly accurate.

24 MS. HODGE: Okay. Thank you. Thanks

1 for that clarification. Do you know whether the OTC  
2 estimated the cost for compliance for adding these  
3 additional categories?

4 MR. DAVIS: I would have to check on  
5 that.

6 MS. HODGE: If you could, please.  
7 Okay. I would -- and I'm sorry for this jumping  
8 around, but I just -- I want to keep the subject  
9 category together. Could we turn back to the  
10 Exhibit 3, and in particular the note number one,  
11 and just to go back and revisit it. So is it your  
12 understanding that the newly listed categories that  
13 include an asterisk beside it in this document, that  
14 OTC is saying it's up to the state to decide whether  
15 it wishes to include regulation of those categories?

16 MR. DAVIS: That is my understanding,  
17 yes.

18 MS. HODGE: And isn't it true that the  
19 OTC also concluded that certain of these compounds  
20 may not cause or contribute to formation of ozone  
21 but are listed here only for their hazardous nature?

22 MR. DAVIS: Yes.

23 MS. HODGE: Okay. Did the Agency do  
24 any independent analysis of these compounds with the

1 asterisks beside to determine whether there was  
2 really any air quality impact from -- on ozone  
3 formation?

4 MR. DAVIS: I don't believe so.

5 MS. HODGE: Okay. And could we just  
6 take a look, for the record, and identify some of  
7 these that have the asterisks beside them, please?  
8 I would ask you to go to page --

9 MR. DAVIS: 24?

10 MS. HODGE: Thank you. I think that's  
11 where I'm going. I thought I had all of my tabs  
12 here. Please let's start on Page 24. If you could  
13 just describe some of these that are optional.

14 MR. DAVIS: If I could describe them?

15 MS. HODGE: Mm-hmm. Just identify  
16 them -- just identify them, please, for the record.

17 MR. DAVIS: Well, there's  
18 antiperspirants and deodorants that contain any  
19 compound identified in Title 17, 3 chapter 1,  
20 subchapter 7, Section 93000 as a topic air  
21 contaminant. There's also solid air fresheners and  
22 toilet/urinal products that contain  
23 paradichlorobenzene?

24 MS. HODGE: So excuse me, Mr. Davis.

1       Would you agree that those things were probably  
2       listed only because of their hazardous nature as  
3       determined by California, the state of California?

4                       MR. DAVIS:   Yes.

5                       MS. HODGE:   Could we go over to  
6       Page 27, and I would direct your attention to the  
7       subcategory I -- the age is stricken through --  
8       products containing ozone did he completing  
9       compound.  So is it your understanding that these,  
10      too, would've been something that would've been  
11      optional?

12                      MR. DAVIS:   I don't know that that  
13      would be optional, or -- yes, I guess it would be.

14                      MS. HODGE:   Okay.  And did Illinois  
15      EPA make any kind of independent analysis on that?

16                      MR. DAVIS:   I don't believe we  
17      included the table, and yes, there was some -- there  
18      was some analysis of whether we should include it or  
19      not.  I would have to check and see if I had any  
20      notes on that.  I believe that I thought that these  
21      compounds were already covered under something else,  
22      but I would have to check back and see -- and we  
23      just thought it was extraneous to include it again.

24                      MR. MATOESIAN:  We can do that in

1 writing, perform that in writing.

2 MR. FOX: Thank you.

3 MS. HODGE: That's fine. Thank you so  
4 much. On to Page 28, this subcategory L,  
5 requirements for contact adhesives, electronic  
6 cleaners, footwear, leather care products, and  
7 all-purpose degreasers. So you're understanding  
8 that the OTC, too, is indicating that this is  
9 optional for the states, these categories?

10 MR. DAVIS: Yes.

11 MS. HODGE: And down on M, middle of  
12 page on two, requirements for adhesive removers,  
13 cleaners, and graffiti removers, is it your  
14 understanding, too, that those would be optional for  
15 regulation?

16 MR. DAVIS: That's right.

17 MS. HODGE: Okay. Page 29, at the top  
18 of the page, N, subsection N, requirements for solid  
19 air fresheners and toilet/urinal care products. Is  
20 it your understanding that this category that -- I'm  
21 sorry -- the OTC had determined that this category  
22 was optional by the states as well?

23 MR. DAVIS: Yes.

24 MS. HODGE: Are you aware that the

1 Agency's proposal includes the category of nail  
2 polish removers at proposed Section 223.205?

3 MR. DAVIS: Sure, yes.

4 MS. HODGE: However, it's not in the  
5 TSD at table 2.2.1, which is proposed regulated  
6 product category and limits. Was that just an  
7 omission?

8 MR. DAVIS: That may have been an  
9 inadvertent admission.

10 MS. HODGE: So it's the Agency's  
11 intent to regulate nail polish removers?

12 MR. DAVIS: Yes.

13 MS. HODGE: Okay. Has the Agency  
14 considered amending its proposal to be consistent  
15 with the technical and economic information provided  
16 in this record to support the 2001 OTC model rule?

17 MR. DAVIS: I don't believe I  
18 understand what you're asking me. As far as --

19 MS. HODGE: Is it the Agency's intent  
20 to maintain its proposal to adopt a state version of  
21 the 2006 OTC rule?

22 MR. DAVIS: I thought you said 2001.

23 MS. HODGE: Well, I did, I did.

24 MR. DAVIS: All right.

1 MS. HODGE: And it's my understanding  
2 that -- and I know that you don't necessarily agree  
3 with me about this today -- but again, it appears to  
4 me that a lot of the support here that's in this  
5 record is in support of the 2001 OTC model rule, and  
6 yet it's also my understanding that the Agency's  
7 actual regulatory proposal is modeled after the 2006  
8 OTC model rule. So my question is really two parts.  
9 One, does the Agency -- has the Agency considered  
10 amending its proposal so that it would be consistent  
11 with the support, or in the alternative has it  
12 considered offering the additional support for the  
13 2006 version?

14 MR. DAVIS: I believe that we've  
15 stated that we would be willing to provide any of  
16 the additional support we can find for the 2006  
17 rule. And as I've stated before, obviously both  
18 rules were considered, and we worked with the  
19 industry mainly to try to get a very consistent rule  
20 for Illinois.

21 MR. MATOESIAN: We can get that back  
22 to you.

23 MS. HODGE: Thank you. And where --  
24 where the resource material -- you've stated that

1     you relied upon other entities and other states in  
2     conducting some of the analysis here, and where some  
3     of those entities and states perhaps did not address  
4     the impact either, you know, the technical support  
5     or the economic information for these newly added  
6     categories, will the Agency go forth and do it's own  
7     analysis to support those additional categories?

8                     MR. DAVIS:  I -- I couldn't promise  
9     that today.

10                    MR. MATOESIAN:  We can answer that one  
11     in writing too.

12                    MS. HODGE:  Okay.  And this is a  
13     policy question, too, Mr. Matoesian.  In the event  
14     that the Agency doesn't have the resources to go  
15     forth and do that, would it be the Agency's position  
16     that the Board should move forward with adoption of  
17     this rule without that kind of analysis?

18                    MR. MATOESIAN:  We'll respond to that.

19                    MS. HODGE:  Thank you.  That's all I  
20     have today.

21                    MR. FOX:  Very well.  Thank you,  
22     Ms. Hodge.  There were other persons, I know, who  
23     were interested in asking questions, and if I may  
24     make one quick housekeeping announcement first of



1 all, we did have some folks who arrived after the  
2 hearing began. Posted directly in front of the  
3 court reporter is a form on which you can sign up if  
4 you wish to testify. And like other witnesses,  
5 persons who wish to testify will be sworn in and may  
6 be asked questions on the part of other  
7 participants. I wanted to make sure that anyone who  
8 did arrive after we began knew that that was a  
9 possibility, although no one is required to testify  
10 if they don't wish to do so. But I believe someone  
11 indicated that they wanted to ask a question, and,  
12 sir, if you wouldn't mind before beginning, just  
13 identifying yourself by name and association so that  
14 the court reporter may know who you are.

15 MR. DARLING: Actually, I gave her a  
16 business card.

17 MR. FOX: Very good. Thank you for  
18 doing that.

19 MR. DARLING: I'm David Darling,  
20 director of environmental affairs for the National  
21 Paint and Coatings Association. If I could just ask  
22 a couple questions.

23 MR. FOX: Would you like to do so from  
24 there, or come up to the chair?

1 MR. DARLING: Okay. I'll come up.

2 MR. FOX: Whichever works for you.

3 MR. DARLING: Hopefully I'll be a  
4 little bit shorter. We appreciate all the changes  
5 that Illinois EPA has made with regards to the EOC  
6 rule. I just have a couple clarifying questions.  
7 Well, as far as appreciation, you clarified VOM and  
8 VOC that they are identical, which is a good step  
9 forward. You also clarified that instead of  
10 allowing or requiring industry to respond with a  
11 30 days of a written notice, you've now gone to  
12 90 days. Again, we appreciate -- that's consistent  
13 with our comments. I do have two other comments for  
14 your consideration. We sent in a letter on May  
15 19th. To be consistent with OTC, there is one  
16 category that we missed with all the back and forth.

17 MR. FOX: Mr. Darling, if I could  
18 interrupt you for one second, that is marked in the  
19 Board's record as public comment, or PC number two.  
20 But I apologize for interrupting. Please go on.

21 MR. DARLING: No problem. Thank you  
22 very much for the clarification. And -- yes. And  
23 so -- just that I understand the intent is to try to  
24 be like the OTC states, so we request -- we would

1 appreciate if Illinois EPA can include the category  
2 concrete surface retarder as a definition, a limit  
3 of 780 grams per liter, and include concrete surface  
4 retarder in the most restrictive limit as identified  
5 in the letter. Again, this is to be consistent with  
6 the OTC states or model rule.

7 I did have one other comment.  
8 Like the aerosol rule you spoke about earlier, will  
9 Illinois EPA -- it was our understanding that  
10 Illinois EPA, when the national aim rule is revised  
11 hopefully in a year or so, that Illinois would also  
12 rescind their rule and adopt the national rule.  
13 That was our understanding in the past. Could you  
14 clarify?

15 MR. DAVIS: That --

16 MR. MATOESIAN: We'd have to make a  
17 decision once we see the federal rule.

18 MR. DARLING: Our understanding is  
19 hopefully it's going to be very much like the OTC  
20 model rule.

21 MR. DAVIS: That's our understanding  
22 also.

23 MR. DARLING: Okay.

24 MR. MATOESIAN: We couldn't speculate

1       until we see it in writing.

2                       MR. DARLING: Is it your understanding  
3       that hopefully if it is consistent with the OTC,  
4       would that be a better or easier decision on your  
5       part, or it's hard to say?

6                       MR. MATOESIAN: Hard to say at this  
7       point.

8                       MR. DARLING: That's it for me.

9                       MR. FOX: Mr. Darling, if I may  
10       interrupt just for a moment. Your public comment  
11       had included a definition of concrete surface  
12       retarder and in the company limit. Do you know  
13       whether the agency agrees with the inclusion of the  
14       language you had proposed in that rule, or perhaps  
15       Mr. Davis could answer that question?

16                      MR. DARLING: I do not know. We  
17       submitted the comment. We would certainly hope that  
18       to be consistent with the OTC rule.

19                      MR. DAVIS: Sure. We'll have to check  
20       on that and make sure that's something that would be  
21       consistent with the OTC model rule.

22                      MR. FOX: And if that could also be  
23       addressed in a post-hearing comment, that would be  
24       certainly helpful to the Board.

1 MR. DAVIS: Sure.

2 MR. DARLING: Just to clarify, this  
3 came out of directly, I believe, New York and  
4 Pennsylvania.

5 MR. FOX: And specifically, the  
6 definition is consistent with those two states.

7 MR. DARLING: Right, correct.  
8 Actually, all three, the definition, the limit, and  
9 -- there's three parts.

10 MR. FOX: And that last categorization  
11 is under the most restrictive limit as well. Very  
12 well. Thank you, Mr. Darling. Did you have more  
13 questions for the Agency at this time?

14 MR. DARLING: No.

15 MR. FOX: Very well.

16 MR. DARLING: Thank you.

17 MR. FOX: Thank you very much. I see  
18 one more indicating that they'd like to make a  
19 question, and also if you'd like to ask for --

20 MS. FREDE: I just have one quick  
21 question. My name is Lisa Frede. I'm with the  
22 Chemical Industry Council of Illinois. In the  
23 Illinois EPA second errata sheet to its proposal for  
24 the addition of 35 Illinois Administrative Code 223

1 contained an inadvertent error on number 14 on Page  
2 7. Specifically the explanation states that the  
3 proposed amendment is intended to clarify the  
4 requirement of Section 223.320, i.e., the  
5 architectural and industrial maintenance code and  
6 regulation. This reference is not correct. The  
7 proposed amendment actually pertains to provisions  
8 of Section 223.255, i.e., the consumer products  
9 regulation. Is this something that the Agency can  
10 correct for us?

11 MR. FOX: If I may interrupt, Ms.  
12 Frede, you referred to Page 7, and my attention may  
13 have lapsed just for a second. That's Page 7 of  
14 which document?

15 MS. FREDE: Of the errata sheet that  
16 was just --

17 MR. FOX: Thank you, very much.

18 MR. DAVIS: And that was 14?

19 MS. FREDE: Yes, sir.

20 MS. HODGE: Would you like a copy of  
21 that.

22 MR. RAO: We don't have the errata  
23 sheet here. Could you please --

24 MS. HODGE: We have an extra copy.

1 MR. DAVIS: I think that's a typo in  
2 the errata. So that would be an error in the  
3 errata, and I think we can correct that easily.

4 MS. FREDE: Thank you.

5 MR. FOX: Mr. Matoesian, Ms. Hodge has  
6 kindly made available a duplicate copy of the errata  
7 sheet, of course not yet received through mail  
8 service. Would you be willing to offer a motion to  
9 admit that as Exhibit No. 4 so that was part of our  
10 hearing today?

11 MR. MATOESIAN: Sure. That's fine.

12 MR. FOX: Hearing Mr. Matoesian's  
13 motion to admit errata Sheet Number 2 dated  
14 June 2nd, 2008, as Exhibit No. 4 in this proceeding,  
15 is there any objection to its admission as that  
16 exhibit number? Neither seeing nor hearing any, it  
17 will be admitted and marked as Exhibit No. 4. And  
18 Ms. Hodge, thank you again for making a copy  
19 available. Ms. Frede, did that wrap up your  
20 questioning?

21 MS. FREDE: That was all. Thank you  
22 very much.

23 MR. FOX: Absolutely. Sir, if you  
24 would also please identify yourself and pose any

1 question for the Agency that you may have.

2 MR. CAREY: My name is Dave Carey. I  
3 work for W.R. Meadows. We're a family manufacturing  
4 company here in Illinois. We've actually been in  
5 business since 1926 in the State of Illinois. We  
6 have manufacturing facilities, kind of, scatted  
7 throughout the U.S. We're, kind of, regionally  
8 based, and we make products used in commercial  
9 contact construction, architectural codings that are  
10 used to cure concrete. We also make vapor proofing  
11 and water proofing membranes.

12 One of the things that struck me  
13 about the proposed rule is that we have this federal  
14 rule, kind of, on the back burner that's, you know,  
15 coming down the pipe. And one of the things I  
16 wanted to -- just wanted bring up is as a  
17 manufacturing company, one of the challenges we face  
18 is complying with the different rules we see around  
19 the country. There are rules in south coasts that  
20 we deal with, the OTC rules have already been  
21 mentioned, and for us as a manufacturing company,  
22 there are significant costs associated with  
23 reformulating products, retrofitting and changing  
24 equipment, and one of the things that hurts us as a



1 company is inconsistency from one region on of the  
2 country to the next.

3 MR. FOX: Sir, let me interrupt if I  
4 may. Since you're offering testimony about your  
5 work and your company, may I have the court reporter  
6 swear you in? Certainly we'll let you continue and  
7 ask whatever questions the agency would like.

8 MR. CAREY: Sure.

9 (Witness sworn.)

10 MR. FOX: Sir, thank you for letting  
11 me interrupt. Please go ahead.

12 MR. CAREY: So one of the challenges  
13 we face is just the costs associated with doing that  
14 and then complying with all these different rules.  
15 I guess the question and the comment I have is why  
16 not wait until the federal rule comes out,  
17 especially if it's going to be more restrictive than  
18 the Illinois rule and it would preempt the Illinois  
19 rule, as opposed to possibly requiring manufactures  
20 machines, you know, formulations and retrofit  
21 equipment for a one or 18-month period.

22 Also I'd like to just say that we  
23 have two drivers in the marketplace right now that  
24 are actually forcing our industry to voluntarily

1 reduce VOC content in our products. One is,  
2 obviously, the solvents. You know, a gallon of gas  
3 is \$4 a gallon. When you buy solvents in the  
4 marketplace, we've seen some of our costs go up by  
5 100 percent. So that's one driver, and the other is  
6 with the lead program and rebuildings. More and  
7 more construction activities are looking to use  
8 products that are more environmentally friendly. So  
9 that's driving us towards that end anyway.

10 So I guess one of the issues that  
11 we'd like the Agency to consider would be just  
12 waiting until the federal rule comes out so it makes  
13 that transition a little bit easier for industry.

14 MR. FOX: Sir, did you wish to pose a  
15 specific question to the Agency?

16 MR. CAREY: No.

17 MR. FOX: Okay. Very good. Thank you  
18 for your comments. Was there any other participant  
19 this morning that wished to pose questions to the  
20 Agency while they're available to do so? Very good.  
21 The Board itself does have some questions, and in  
22 discussing procedural matters briefly before the  
23 hearing, I did let Mr. Matoesian know that these  
24 were in the nature of technical or housekeeping

1 questions about the language of the rule, and I  
2 indicated to Mr. Matoesian that these are probably  
3 most suitable for responding to post-hearing  
4 comments, and that that would certainly be  
5 acceptable to the Board.

6 I apologize in advance if they are  
7 a bit tedious to listen to, and Mr. Matoesian, I'm  
8 going to try to avoid raising anything that was  
9 raised in the errata sheet, but certainly please  
10 tell me if I'm asking something that has been  
11 addressed there. Mr. Matoesian, I wanted to raise  
12 what appears to be addressed in the errata sheet --

13 MR. MATOESIAN: Okay.

14 MR. FOX: -- but perhaps not  
15 completely. There are in subparts B, C, and D,  
16 addressing the three different categories, several  
17 definitions that include the phrase "for purposes of  
18 this part," when it appeared to be the Agency's  
19 intent to have those applied for the purposes of  
20 this subpart. If I may note quickly for the  
21 record --

22 MR. MATOESIAN: Okay. Sure.

23 MR. FOX: -- what those are.

24 Certainly if they're all addressed in the errata

1 sheet, it would not be necessary to address them.

2 MR. MATOESIAN: We addressed quite a  
3 few of those, but if you want --

4 MR. FOX: I'd be delighted. In  
5 Section 223.203, which is subpart B, the definitions  
6 that appear to have the word "part" were adhesive,  
7 architectural coding, hairspray, hairstyling  
8 product, and sanding sealer. The same issue arose  
9 in section 223.307, which is part of subpart C, with  
10 the definitions of coding, concrete curing compound,  
11 primer, sanding sealer, and sealer. And in  
12 Section 223.407, which is part of subpart D, that  
13 issue appeared to arise with regard to the  
14 definitions of primer and retail outlets.

15 I also had a question about a  
16 number of questions, frankly, about Section 223.120,  
17 which is the section addressing incorporations by  
18 reference. Question number one: In subsection A  
19 through E, which incorporate materials from the code  
20 of federal regulations, may the Board ask that you  
21 make those five incorporations consistent with one  
22 another?

23 MR. MATOESIAN: Oh, okay.

24 MR. FOX: Particularly with regard to

1 the federal -- specific federal register citations  
2 as these are not -- specifically not including any  
3 later amendments or additions.

4 MR. MATOESIAN: Okay.

5 MR. FOX: And secondly, for the  
6 incorporation of the materials from the South Coast  
7 Air Quality Management District, the Bay Area Air  
8 Quality Management District, and the California Air  
9 Resources Board, can you supply an address for those  
10 entities as you have done with the incorporation --

11 MR. MATOESIAN: Okay.

12 MR. FOX: -- of the ASTM materials, to  
13 which the public can obtain copies of those  
14 materials that are incorporated by reference?

15 MR. MATOESIAN: Okay.

16 MR. FOX: Number three in subsection  
17 I, which incorporates the South Coast Air Quality  
18 Management District method, the document that was  
19 filed with the Agency's proposal indicates approval  
20 in July of 1996, but the proposed subsection refers  
21 to approval on August 10th of 1998, and we would ask  
22 that you clarify whether there is a subsequent  
23 version of this method that the Board would need to  
24 obtain as part of its record in its proceeding.

1                   And number four, similarly in  
2 subsections J and K, which incorporate the Bay Area  
3 Air Quality Management District methods, the  
4 documents filed with the proposal both indicate that  
5 they were amendments proposed on February 4th, 2004,  
6 but this proposed subsection refers to amendments of  
7 May 18th of 2005, and I would ask simply that you  
8 clarify again whether there is a subsequent version  
9 of the method that the Board would need to obtain a  
10 copy of for the record in this proceeding.

11                   MR. MATOESIAN: Okay.

12                   MR. FOX: Number five, in subsection  
13 M, incorporating South Coast Air Quality Management  
14 District Rule 1174, the documents filed indicate  
15 that it was adopted on October 5th of 1990, but the  
16 proposed subsection 120 suggested adoption on  
17 February 27th of 1991, and again, if you could  
18 clarify whether there is some subsequent version,  
19 updated version, of that document that the Board  
20 would need to obtain.

21                   And finally under this section,  
22 question number six, subsection N incorporates a  
23 provision of the California Administrative Code. In  
24 the copy filed with the Board, however, there were

1 five images which appeared to contain the VOC  
2 content limits that appear in the document as not  
3 available for printing, and we would ask that in  
4 order to complete that document, of course, if you  
5 could supply a copy of the document that does  
6 contain those images that appear to be quite  
7 relevant, of course.

8 MR. MATOESIAN: Okay.

9 MR. FOX: If I may move on to  
10 Section 223.203, which refers to specific  
11 definitions for subpart B, the definition of  
12 colorant in this section refers to the purposes of  
13 subpart C, and if you would be willing to clarify  
14 that reference, indicating whether there is an  
15 inadvertent error, or whether it should be moved to  
16 subpart C, we would be grateful if you would clear  
17 that up for us.

18 MR. MATOESIAN: Okay.

19 MR. FOX: And similarly, the  
20 definition of lacquer in 223.203 refers to the  
21 purposes of subpart C and D. So if you would  
22 similarly clarify that reference as well, we would  
23 appreciate it. And number three, the definition of  
24 VOM content also refers here in subpart B to the

1 purposes of subpart B. And if you could similarly  
2 clarify that, we would appreciate that as well.

3 Moving on to Section 223.208,  
4 subsection A refers in a list of cross references  
5 twice to Section 223.207, and I see that it does so  
6 in the errata sheet as well, and we would ask simply  
7 that you clarify whether that was an unintended  
8 duplication or whether there was intent to cross  
9 reference another section of the proposed rule.

10 MR. MATOESIAN: Okay.

11 MR. FOX: Okay. Thank you for  
12 waiting, Mr. Matoesian. In both Sections 223.250  
13 regarding product dating and Sections 223.255,  
14 additional product dating requirements, the errata  
15 that sheet does not appear to address the issue with  
16 the product dating requirements, specifically that  
17 they require display of that data no later than 12  
18 months prior to the effective date of the applicable  
19 standard.

20 MR. MATOESIAN: We're looking for that  
21 one.

22 MR. FOX: And I know I didn't phrase  
23 that as clearly as I might have. So I appreciate  
24 that. All right. And moving on to Section 223.285,



1 test methods, subsection E refers to an ASTM method  
2 incorporated by reference, although it does not  
3 appear to be listed among the ASTM methods that are  
4 incorporated by reference in Section 223.120. And  
5 if you would clarify that for us, we would  
6 appreciate it.

7                   And moving on to subpart C,  
8 specifically section 223.307, and forgive me if I'm  
9 mispronouncing some terms. It's entirely possible  
10 that I may do so. The definition is it calcabine  
11 recoaters (phonetic) refers to the phrase "flat  
12 solvent borns codings," B-o-r-n-s, which is unclear  
13 to us. And if you could clarify the meaning of that  
14 reference, we would appreciate it.

15                   Number two, the definition of  
16 nuclear coding refers to two ASTM methods, a  
17 different version of which -- different versions of  
18 which appear to be incorporated by reference in  
19 Section 223.120, and if you would clarify, please,  
20 whether the Agency intended to incorporate  
21 additional methods, we would be grateful for that as  
22 well.

23                   Number three, the definition of  
24 traffic marking coding refers to the term Berets,

1 B-e-r-e-t-s, which was unclear to us. If you could  
2 clarify the use of that term, we would appreciate  
3 that.

4 Number six, the definition of VOM  
5 content refers to, quote, "Procedures specified in  
6 sub Section 223.400A," close quote, which is the  
7 purposes section under aerosol codings, and we would  
8 appreciate any clarification of that cross  
9 referenced, please.

10 And finally, number seven, the  
11 definition of varnish in this section refers to the  
12 term fetal sheen, F-e-t-a-l, new word, S-h-e-e-n,  
13 which was not entirely clear to us. And if you  
14 could offer any clarification of technical meetings  
15 that might have eluded us, that would be great.

16 With regard to Section 223.340,  
17 compliance provisions and test methods, subsection B  
18 refers to the Agency's requirement that a  
19 manufacture conduct a, quote, "Method 24," close  
20 quote, analysis. Could you please clarify whether  
21 the Agency intended to include language regarding  
22 when it would require that analysis, any deadlines  
23 or requirements relating to it.

24 Then under Section 223.370, test

1 methods, subsection E incorporates ASTM method  
2 D 1613-96, but Section 223.120 incorporates ASTM  
3 D 1613-03 under the same title. And if you could  
4 please clarify those two incorporations, we would  
5 appreciate it.

6 Similarly, under subsection F,  
7 there's an incorporation of ASTM method D 1640-95,  
8 but it refers to two specific definitions, first  
9 quick dry enamel, and second quick dry primer,  
10 sealer, and undercoating, both of which include  
11 testing according to a different ASTM standard,  
12 1640-03. And again, if we could ask for a  
13 clarification, please.

14 Subsection H incorporates the Bay  
15 Area Air Quality Management District method 43, a  
16 different version of which is incorporated in  
17 Section 223.120. And if you would please clarify  
18 whether the agency intended to incorporate different  
19 versions, and if so, to file both versions with the  
20 Board for its record of this proceeding.

21 Section H also refers to a  
22 definition of volatile organic material in  
23 Section 223.307 where it is not defined, and if you  
24 would also please clarify that reference.

1                   Subsection I refers to compliance  
2                   with Section 223.400, which is the purposes language  
3                   under aerosol codings. And if you would clarify  
4                   that cross reference as well, please. Subsection I  
5                   also incorporates South Cost Air Quality Management  
6                   District method number 303-91, a subsequent version  
7                   of which is incorporated by reference in 223.120,  
8                   and again, if you would clarify whether the Agency  
9                   intended to incorporate different versions, and if  
10                  so, whether -- indicate whether both versions have  
11                  been filed with the Board.

12                   And under this subsection -- under  
13                  this section, finally, subsection M incorporates an  
14                  appendix in the Code of Federal Regulations, which  
15                  is incorporated under Section 223.120 with another  
16                  date in the citation. And if you would clarify the  
17                  correct version of that, we would appreciate that  
18                  very much.

19                   Moving on to Section 223.407,  
20                  these are definitions for subpart D. The definition  
21                  of aviation or marine primer refers to federal  
22                  specification TT-P-1757. And if you would please  
23                  clarify that reference and its source in the federal  
24                  authorities, please. Second under that section, the

1 definition of product weighted MIR refers to a  
2 product subject to this article. And if you could  
3 clarify whether that's meant to refer to a product  
4 subject to this subpart or part.

5 And nearing the end,  
6 Section 223.410, limits and requirements for aerosol  
7 coding products. Mr. Rao kindly reminds me that you  
8 refer to the federal rule in addressing these  
9 products as being beyond legal challenge at this  
10 point, and unless I misunderstood there was an  
11 intent to withdraw that, which would ineffectively  
12 moot these questions about the wording of the  
13 proposed rule. So I appreciate the reminder that  
14 those are not necessary to clear up.

15 Mr. Matoesian, I know that was a  
16 large number of questions, and appreciate your  
17 patience. And listening to those, as I said, if  
18 those were addressed in a post-hearing comment, I  
19 hope that the transcript made those about as clear  
20 as possible as they could for you.

21 MR. MATOESIAN: Okay. Thank you.

22 MR. FOX: Did I raise any questions  
23 in, kind of, rushing through those?

24 MR. MATOESIAN: No. We can do the

1 ones that weren't corrected already.

2 MR. FOX: Very good. I hope I didn't  
3 raise any that were addressed in the errata sheet.  
4 We certainly tried to avoid that. If there is  
5 anyone I have not at this point put to sleep that  
6 had any additional questions for the Agency, I'm  
7 sure that Mr. Davis would be happy to answer any of  
8 those. I did not want to move ahead while anyone  
9 had questions that they wanted to pose. Are there  
10 any further questions that anyone had for Mr. Davis  
11 for either the Board members, member Moore, member  
12 Melas, or the Board staff, Mr. Rao, were there any  
13 further questions? I note that the sign up sheet  
14 for persons who did not pre-file testimony but who  
15 may wish to testify today remains blank, so we do  
16 not have any further witnesses to testify here  
17 today.

18 I can move on, then, to the issue  
19 of the economic impact study. Since 1998, section  
20 27B of the Environmental Protection Act is required  
21 that the Board request that the department now known  
22 as the Department of Commerce and Economic  
23 Opportunity conduct an economic impact study of  
24 proposed rules before the Board adopts them. The

1 Board must make either of the economic impact study  
2 performed, or the department's explanation for not  
3 conducting one, available for the public at least  
4 20 days before a public hearing.

5 In this rulemaking proceeding, the  
6 Board, in a letter dated January 24th of 2008,  
7 requested that the department conduct an economic  
8 impact study on this rulemaking proposal. To date  
9 the Board has received no response from the  
10 testimony with regard to that request. Is there  
11 anyone who would like to testify or offer comment  
12 regarding that request filed by the Board with the  
13 department of commerce and economic opportunity?  
14 Seeing or hearing no indication that anyone would  
15 like to do so, what I would like to do at this point  
16 is to go off the record just for a moment or two to  
17 address some procedural issues.

18 (Whereupon, a discussion was had  
19 off the record.)

20 MR. FOX: The participants in this  
21 hearing went off the record specifically to discuss  
22 procedural issues related to the filing of  
23 post-hearing comments. Before it takes action on  
24 the Agency's proposal, the Board will hold open a

1 period specifically for post-hearing comments ending  
2 30 days after the Board receives the transcript of  
3 this hearing, which is expected on or about Tuesday,  
4 June 10th. In order to -- in addition, forgive  
5 me -- we will also hold open a period for responses  
6 to the Agency's post-hearing comment in a period for  
7 those ending 14 days after the Board receives the  
8 post hearing comment from the Agency approximately  
9 July 24th, I believe we determined.

10 In order to set those deadlines  
11 more clearly and to avoid setting deadlines on  
12 weekends or holidays, I will issue a hearing officer  
13 order very quickly after we receive the hearing  
14 transcript so that those dates are as clear as  
15 possible to all of the participants. The copies,  
16 again, are expected in approximately six days on  
17 Tuesday, June 10th. And as soon as it is filed with  
18 the Board, it will be placed electronically on the  
19 clerk's office online as soon. As it is posted  
20 there, you can view it, download it, and copy it  
21 free of charge at any time.

22 In addition, anyone may file more  
23 general public comments on this proposal that has  
24 been filed by the Agency. Those may be filed



1 electronically through the Board's clerk's office  
2 online, the COOL system that you heard reference to,  
3 and any questions about the use of the COOL system  
4 should be directed to the clerk's office. Filings  
5 with the Board, whether paper or electronic, must  
6 also be served on the hearing officer and on those  
7 persons on the service list. For filing with the  
8 clerk, please contact the clerk's office to ensure  
9 that you have the most recent version of the service  
10 list, and if anyone has questions about procedural  
11 aspects, they may certainly contact with the contact  
12 information contained on the web, and certainly on  
13 any hearing officer order.

14                   While no other hearings are not  
15 scheduling in this rulemaking, I did want to address  
16 very, very, quickly one other non-substantive issue.  
17 The Board is fortunate to have working with it this  
18 summer an intern, Katie Kindel (phonetic). She  
19 arrived with Marie Tipsord, who is the attorney  
20 assistant for acting chairman, Tanner Gerard, and I  
21 was remiss in not recognizing them earlier, and I'm  
22 sure Marie's face, that is entirely familiar to  
23 virtually everyone in the room.

24                   With that, are there any other

1 matters that need to be addressed at this time?

2 Seeing none, thank you certainly to Mr. Davis,  
3 Mr. Matoesian, Ms. Hodge, and all of the other  
4 participants who are here today. I know the Board  
5 appreciates your time, your effort, and your input,  
6 and we can adjourn. Thank you.

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1 STATE OF ILLINOIS )  
2 ) SS  
3 COUNTY OF COOK )

4  
5 REBECCA A. GRAZIANO, being first  
6 duly sworn on oath says that she is a court reporter  
7 doing business in the City of Chicago; that she  
8 reported in shorthand the proceedings given at the  
9 taking of said hearing and that the foregoing is a  
10 true and correct transcript of her shorthand notes  
11 so taken as aforesaid and contains all the  
12 proceedings given at said hearing.

13  
14

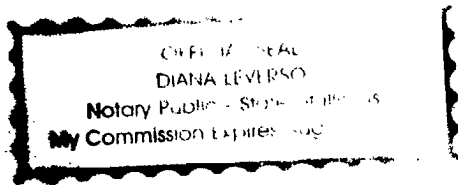
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15  
16  
17  
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SUBSCRIBED AND SWORN TO  
before me this 4th day  
of June, A.D., 2008.

*Diana Liverso*  
Notary Public

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24

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