Center For Progressive Regulation
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VIA FEDERAL EXPRESS

The Honorable Michael O. Leavitt
Administrator
U.S. EPA
Ariel Rios Building
1200 Pennsylvania Avenue N.W.
Washington, DC 20460

Dr. John Graham
Administrator,
Office of Information and Regulatory Affairs
1725 17th Street, NW
Washington, D.C. 20503

Re: Regulated Industries' Request for Correction regarding State Rules regarding Volatile Organic Compounds in Paint

Dear Administrator Leavitt and Dr. Graham:

We write today to ask that you take two actions with respect to the above-referenced document: (1) reject it outright because it is wrong in principle, wrong on the law, and wrong on the facts; and (2) issue immediate guidance barring application of the Information Quality Act to federal and, especially, state rulemakings. This controversy provides a convincing demonstration as to why the Information Quality Act (IQA) should be repealed. To avoid further waste of valuable and scarce federal and state government resources, we hope you will give these requests your immediate attention.

Overview

On June 2, 2004, the National Paint and Coatings Association (NPCA) and the Sherwin-Williams Company filed a Request for Correction (Request) under the federal Information Quality Act (IQA) regarding a Model Rule drafted by the Ozone Transport Commission (OTC) on behalf of its members, the Northeastern states. The Model Rule, which several Mid-Atlantic states are in the process of adopting with appropriate modifications, would control the air emissions of volatile organic compounds (VOCs) from thousands of paints and coatings.

The Request argues that because a single document in the voluminous records assembled by these states supposedly violates the data quality standards of the IQA, the

Environmental Protection Agency (EPA) has no choice but to disapprove any State Implementation Plan (SIP) that incorporates any version of the Model Rule. Under the CAA, the EPA has the responsibility to approve a state SIP that meets the requirements of section 110(a)(2)(A)-(M) of the Clean Air Act and, if the EPA does not grant such approval, a state is subject to possible sanctions. In essence, then, NPCA and Sherwin-Williams argue that the EPA must thrust any state that uses the Model Rule into noncompliance with the CAA, triggering a range of sanctions that would not only affect citizens and other industries, but would further delay the state's ability to achieve air quality that meets vital health-based standards.

The states of New York, New Jersey, Pennsylvania, Delaware, and Maryland are adopting rules to curb VOC emissions from paints and coatings because they are striving to achieve sufficient pollution reductions to meet the fast-approaching CAA deadlines for compliance with the National Ambient Air Quality Standard (NAAQS) for ozone. Ozone, which is the pollutant to blame for "Code Red" days, is formed by the combination of nitrogen oxides and VOCs. Code Red days involve such acutely bad air quality that children, asthmatics and the elderly are cautioned to stay indoors. All of these states include large areas that are in "severe" nonattainment for ozone, meaning that they have among the worst air quality in the country. Matters have gotten so extreme in these states that they are desperately searching for further reductions in VOCs, going so far as to regulate emissions from such consumer products as gasoline cans kept for individual consumer use. In this context, regulation of the paint and coatings industry, which has successfully fought meaningful controls for two decades, is long overdue.

As we noted at the outset and shall demonstrate below, the Request is wrong in principle, wrong on the law, and wrong on the facts. In fact, the Request is so wrong on all three fronts that it represents a major building block in the developing case that the IQA should be repealed to prevent its abuse by regulated industries. The Request represents nothing more – nor less – than an end run around exhaustive administrative proceedings and judicial review provided by federal and state statutes. Although these proceedings produced substantial evidence to support the action of the states, the industry chooses to pick on only one marginally significant piece of the considerable evidence used by the states to support their actions. Moreover, the industry supported in court the same methodology that it now attacks when it was used by EPA in calculating the emissions reduction that would be achieved by its National Rule. The industry's arrogance does not stop here. It ignores the state's reasonable explanation for alleged mathematical errors in the spreadsheet, an explanation that has been accepted by reviewing courts in all instances, and it attacks information obtained in a voluntary industry survey conducted by EPA in 1990, but fails to acknowledge that it possesses updated information which it has refused to make available to the states.

If the IQA affords relief to the paint industry, then it is nothing less than an all-encompassing, new layer of review for every pending federal and state rule. As proposed by the paint industry, this layer would trump administrative and judicial decisions,

elevating the EPA's Information Quality Office to the status of a kind of regulatory czar with preemption authority over the states. If it does not afford the relief demanded by the paint industry, and we cannot imagine that any court would find that it does, then the Request has wasted the EPA and affected states' time. Either is an unacceptable result.

We urge Administrator Leavitt to reject the Request summarily, and to modify EPA's guidance for implementing the IQA to make it clear that the Agency will not entertain any further requests that complain about supposed errors in state rulemakings and regulations. We further urge Dr. Graham, the senior official responsible for implementing the IQA within the government, to issue comparable guidance relieving agencies and departments from the obligation to consider similar requests.

The remainder of this letter explains why the Request is wrong in principle, on the law, and on the facts. We begin with the very serious public health implications of any failure to impose stringent requirements on paints and coatings in the Northeastern states, explaining why the Request represents a destructive effort to block the states' efforts to restore healthy air. We turn to an explanation of the alleged factual errors contained in the Request, demonstrating that the Request itself fails to comply with the IQA standards it invokes. We conclude with an analysis of why the Request must be dismissed outright as a matter of law.

Public Health Implications

> **Ground-level Ozone Is Among the Six Most Common and Harmful Air Pollutants Covered by a National Ambient Air Quality Standard (NAAQS), causes a series of respiratory ailments, and even death, especially among vulnerable populations including children, the elderly, and people suffering from asthma.**

Ozone is created at ground level by a chemical reaction between oxides of nitrogen (NO_x) and VOCs in the presence of heat and sunlight.[1] NO_x and VOCs are therefore commonly referred to as "ozone precursors." Ozone has the same chemical structure whether it occurs miles above the earth or at ground level.[2] However, whereas ozone that occurs naturally in the stratosphere (approximately 10 to 30 miles above the earth's surface) forms a layer that protects human health and the environment from the sun's harmful rays, where it occurs in the earth's lower atmosphere it has devastating consequences for public health.[3]

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[1] *See* <http://www.epa.gov/air/urbanair/ozone/what.html>, site visited 07/06/04.

[2] *Id*.

[3] *Id*.

Ground-level ozone causes a range of adverse health effects in humans, including shortness of breath, increased susceptibility to respiratory infection, impaired lung function, severe lung swelling, and even death.[4] About 90 percent of the ozone a person inhales remains in the lungs where it damages lung tissue.[5] Ozone exposure affects everyone, but is especially damaging to children, the elderly, asthmatics, and others who suffer from respiratory ailments.[6]

Accordingly, ozone is one of the six most common and harmful "criteria" pollutants regulated by the CAA. Originally established in 1970, the ozone NAAQS dictates the maximum level of ozone that may be present in the ambient air in order to ensure a minimum acceptable level of air quality. Federal regulations allow a jurisdiction to exceed these public health standards only once annually.[7] When an area exceeds (fails to attain) this level of air quality, the EPA designates it as being in nonattainment for ozone. A nonattainment designation, in turn, requires the state to develop a plan, or SIP, that includes enforceable emissions limitations and other control measures, which will decrease ozone pollution to safe levels.[8] States may incorporate a variety of control measures in their SIPs, which enable them to meet aim to control emissions of ozone precursors. Example control measures include requiring installation of more effective pollution control equipment and requiring that emissions from new sources be offset by even greater reductions at other facilities.

With the Deadline Just Over One Year Away, the Mid-Atlantic States Are Engaged in an Increasingly Desperate Struggle to Reduce VOC Emissions Enough to Achieve Attainment. None Are Reasonably Expected to Meet the Deadline.

Ozone levels are measured hourly and exceed the NAAQS when values rise above 0.12 parts per million (ppm).[9] To be in attainment, an area must not have more than one Code Red day per year, for three consecutive years.[10] The deadline for states' demonstrations of compliance with the ozone NAAQS depends upon the severity of the ozone pollution in their nonattainment area(s).[11] Pursuant to the most recent (1990) extension of attainment deadlines, New York, New Jersey, Pennsylvania, Maryland, and

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[4] *See* H.R. Rep. No. 101 - 490, at 199 (1990).

[5] *Id*.

[6] *Id*.

[7] 40 C.F.R. 50.9(a).

[8] 42 U.S.C. § 7410(a)(1), CAA § 110(a)(1),

[9] *See* 40 C.F.R. 50.9(a).

[10] *See* EPA Green Book, Criteria Pollutants, <http://www.epa.gov/air/oaqps/greenbk/o3co.html#Ozone>, site visited 07/07/04.

[11] 42 U.S.C. § 7511(a)(1), CAA § 181(a)(1).

Delaware, which contain nonattainment areas classified as "severe," must develop SIPs that demonstrate compliance with the ozone NAAQS no later than November 15, 2005.[12]

In 1999, the EPA evaluated SIPs submitted by each of these jurisdictions and found that even with all the control measures incorporated in the SIPs, there were still significant shortfalls in the amount of VOC emissions reductions necessary to bring the severe nonattainment areas addressed by those SIPs into compliance with the ozone NAAQS. Specifically, the states would have to implement control measures to cut an additional 13 tons of VOCs per day (tpd) in the Baltimore nonattainment area,[13] an additional 62 tpd in the Philadelphia-Wilmington-Trenton nonattainment area,[14] and an additional 85 tpd in the New York-Northern New Jersey-Long Island nonattainment area.[15] In 2003, the Metropolitan Washington, D.C. ozone nonattainment area, which originally enjoyed the lower "serious" classification, was re-classified by operation of law to "severe" by virtue of its failure to attain the NAAQS for ozone by the November 15, 1999 deadline imposed by the CAA upon serious nonattainment areas.[16]

The OTC Model Rule that is the target of the paint industry's Request for Correction represents a joint effort by the Mid-Atlantic states to develop additional control measures that individual states could modify to meet their specific circumstances and adopt as part of their SIPs.[17] New York, New Jersey, Pennsylvania, Maryland, Delaware and Washington, D.C. are all striving to implement their own versions of this rule, along with a variety of other requirements, in time to meet federal air quality requirements in their severe nonattainment areas.

Despite these efforts, with just over one year remaining until the date on which attainment is evaluated, poor air quality persists in each of the Mid-Atlantic states and no knowledgeable observer believes the states will achieve attainment by the deadline. As explained above, to be in attainment, an area must not have more than one Code Red

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[12] *Id*. Air quality in the Philadelphia-Wilmington-Trenton severe ozone nonattainment area is addressed by the SIPs adopted by Pennsylvania, Delaware, New Jersey and Maryland. Air quality in the New York-Northern New Jersey-Long Island severe ozone nonattainment area is addressed the SIPs for New York, New Jersey and Connecticut. Air quality in the Washington, D.C. severe ozone nonattainment area is addressed in the SIPS adopted by the District of Columbia, Maryland and Virginia.

[13] *See* 64 Fed. Reg. 70408 (December 16, 1999).

[14] *See*, e.g., 64 Fed. Reg. 70393 (December 16, 1999).

[15] *See*, e.g., 64 Fed. Reg. 70376 (December 16, 1999).

[16] 68 Fed. Reg. 3410 (January 24, 2003).

[17] *See, e.g., Memorandum of Understanding Among the States of the Ozone Transport Commission Regarding the Development of Specific Control Measures to Support Attainment and Maintenance of the Ozone National Ambient Air Quality Standards*, available at <http://www.otcair.org/document.asp?Fview=Formal%20Actions#>, site visited 07/13/04.

day per year, for the three consecutive years preceding the attainment deadline.[18] With the deadline for attainment just one year away, not one of the Mid-Atlantic states achieved an average of only one exceedance per year over the past three years.[19]

The states' struggle to meet the 2005 deadline for the one-hour standard is complicated by the fact that a new, more protective ozone standard will soon replace the existing one-hour standard.[20] Based on new information demonstrating that the one-hour standard is insufficient to protect public health, the EPA issued a new eight-hour standard, 0.08 ppm averaged over eight hours in July 1997.[21] Specifically, the EPA was convinced, and was upheld on appeal to the Supreme Court, that ozone can affect human health at lower levels and over longer exposure times than one hour.[22] Using the eight-hour standard, and assuming no additional exceedances of the standard from mid-summer 2004 through the November 2005 attainment deadline, only one of the six Mid-Atlantic states (Washington, D.C.) could possibly achieve compliance.[23]

References to dense and sometimes esoteric terms such as nonattainment areas, parts-per-million, and average exceedances obscure the significant real-world effects that Code Red days have on people living in areas with poor air quality. According to the EPA's Air Quality Index, on days classified as Code Red for ozone, sensitive groups, including "[a]ctive children and adults, and people with lung disease such as asthma" are warned to avoid outdoor exertion altogether.[24] Data collected by the American Lung Association demonstrate that a full 7.99% of the population of the Mid-Atlantic states suffer from asthma.[25] Even focusing on only one classification of sensitive population groups, nearly one-tenth of the people living in the Mid-Atlantic states are advised to remain indoors on Code Red days. "*Everyone else*, especially children" is advised to

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[18] *See* EPA Green Book, Criteria Pollutants, <http://www.epa.gov/air/oaqps/greenbk/o3co.html#Ozone>, site visited 07/07/04.

[19] *See* Mid-Atlantic Regional Air Management Association, Air Quality Data and Reports, available at <http://www.marama.org/air/> (site visited 07/09/04) (exceedances of the one-hour ozone standard measured over the last three years as of mid-summer 2004).

[20] *See, e.g., Fact Sheet, Clean Air Ozone Rules Of 2004: Final Rule Designating And Classifying Areas Not Meeting The National Air Quality Standard For 8-Hour Ozone*, available at <http://www.epa.gov/ozonedesignations/finrulefs.htm>, site visited 07/27/04.

[21] *Id*.

[22] *Id*.

[23] *See* Mid-Atlantic Regional Air Management Association, Air Quality Data and Reports, available at <http://www.marama.org/air/> (site visited 07/09/04) (exceedances of the eight-hour ozone standard measured over the last three years as of mid-summer 2004).

[24] *See* "Air Quality Index: A Guide to Air Quality and Your Health," at 7, <http://www.epa.gov/airnow/aqibroch/AQI_2003_9-3.pdf>, site visited 07/06/04.

[25] *See American Lung Association, State of the Air: 2004*, available at <http://lungaction.org/reports/stateoftheair2004.html> (site visited July 8, 2004).

"avoid prolonged or heavy exertion outdoors" on Code Red Days.[26] Given the EPA's illustrations of prolonged and/or heavy exertion, on Code Red days, everyone should consider activity modifications such as walking instead of jogging, and/or cutting one's usual jog in half.[27]

Wrong on the Merits

The Clean Air Act Mandates that the EPA and the States Protect Public Health and Does Not Require that the Agencies Calculate Pollution Reductions with Mathematical Precision for the Convenience of Industry.

In essence, the Request filed by the paint industry argues that the Spreadsheet used by the Mid-Atlantic states to predict the VOC reductions that will be achieved by their rules is technically flawed, with the result that it underestimates the reductions the states will achieve after their rules go into effect. The Request asserts that this outcome damages the paint industry because if these errors were corrected and the Spreadsheet re-calibrated, the state would adopt weaker rules and the manufacturers could avoid the expense of reformulating their products to reduce VOC content. The bottom line, in other words, is that the paint industry wants to be able to emit more VOCs, regardless of the long-term effects of these emissions on public health and the Mid-Atlantic states' ability to achieve attainment with the one-hour standard and – even more important – the eight-hour standard.

We explain at length below why the Request is wrong on the facts. However, we cannot over-emphasize the threshold point that, regardless of whether the Spreadsheet is flawed, the underlying logic of these arguments is that, in the immediate future, taking only the one-hour standard into account, paint manufacturers have a right to push their VOC emissions to a limit calculated with statistical precision, regardless of the fact that over the long run, even the reductions ordered by the states will not reduce VOCs to appropriate levels. Or, to put the matter another way, the paint manufacturers contend that the Clean Air Act requires states to refrain from imposing controls, even in the most dire of public health circumstances, until they have demonstrated with great statistical precision that they are not asking industry to reduce emissions any more than is absolutely necessary in the immediate future. From the point of view of the paint industry, the government is obliged to spend whatever time is necessary to produce absolutely precise calculations, even though hundreds of thousands people will be forced to breathe air dangerous to their health not only in the interim, but over the long run.

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[26] *See* "Air Quality Index: A Guide to Air Quality and Your Health," at 7, <http://www.epa.gov/airnow/aqibroch/AQI_2003_9-3.pdf>, site visited 07/06/04. (emphasis added).

[27] *See id*. at 6.

The Hardship Claimed by the Paint Manufacturers Is Illusory.

While we recognize that the accuracy of information is important for its own sake, as a practical matter, the most important argument made in the Request is that, as a direct result of the flawed Spreadsheet, manufacturers throughout the Mid-Atlantic states will suffer economic hardship because they will be compelled to reformulate their products. Although it is without legal justification, as we explain below, the Request implies that the obstinate and inexplicable refusal of the states to correct gross mathematical errors is irresponsible from the perspective of both industry and consumers.

What the paint manufacturers do not acknowledge is that New York, New Jersey, Pennsylvania, Delaware, and Maryland are promulgating rules years after the state of California issued equally stringent controls. California has one of the largest economies in the world, and virtually all of the largest manufacturers in the country have already reformulated their paints and coatings to meet those standards. Indeed, an analysis by the state of New Jersey demonstrates that reformulated products are already available for the vast majority of paints and coatings covered by its rule.[28]

The Paint Manufacturers Attack the States' Methodology Even Though the Same Methodology Was Used to Support an EPA Rule that NPCA Defended Before the Federal Court of Appeals for the D.C. Circuit.

The paint manufacturers' Request for Correction challenges the Spreadsheet on two distinct, mutually independent grounds: first, it questions the soundness of the methodology used by the Spreadsheet to predict emissions and, second, it challenges the accuracy of the data actually put into the Spreadsheet as the basis for those calculations. In other words, if the methodology of the Spreadsheet is flawed, it would not matter whether the data fed into it was accurate because the results it produced would not be correct.

The methodology used by the Mid-Atlantic states in constructing their Spreadsheet is, in fact, the same fundamental methodology that was used by EPA in calculating the emissions reductions that would be achieved by its National Rule.[29] In fact, the spreadsheet was originally developed by Industry Insights, a consulting firm, for the NPCA, one of the participants in this Request, during its regulation development

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[28] NJDEP, *Estimates VOC Emissions Reductions and Economic Impact Analysis for the Proposed Amendments to Architectural Coatings Rule*, June 12, 2003 available at <http://www.state.nj.us/dep/aqm/Sub23SuppRep.pdf>.

[29] New Jersey Register, Vol. 36, No.12, *Rule Adoption, Envtl. Protection, Office of Air Quality Management, Air Quality Regulation Program, Air Pollution Control, Prevention of Air Pollution from Architectural Coatings* (June 21, 2004), Response to Comments at 69, unofficial courtesy copy available at <http://www.state.nj.us/dep/aqm/Sub23finalrule.pdf> [hereinafter NJDEP Response to Comments].

process.[30] Not only does the NPCA ignore the inconvenient fact that EPA used the same methodology, it does not even acknowledge that the genesis of that methodology was its own consultant.

On September 15, 1999, the NPCA filed a brief with other parties before the federal Court of Appeals for the D.C. Circuit.[31] Here is what it and its fellow intervenors had to say about the EPA National Rule: "[The] rules at issue here faithfully carry out the statutory mandate conferred on EPA by Congress. . . . *[They] are amply supported by the rulemaking record*."[32] To be sure, the NPCA supported the EPA National Rule for two primary reasons. First, it was considerably weaker than the California rule and, second, the industry hoped it would forestall additional, more stringent rules at the state level. However, neither of these practical considerations is relevant to the question of whether the methodology used by the EPA, part of the ample support provided by the rulemaking record, has suddenly become so suspect that EPA has no choice but to reject SIPs that include state rules based on the same methodology. Either the NPCA misled the Court of Appeals, or it is misleading EPA today.

The States Have Provided a Perfectly Reasonable Explanation for the Alleged Mathematical Errors in the Spreadsheet.

A cornerstone of the allegations that the Spreadsheet is fatally flawed is the fact that it lists negative numbers in some of the columns containing calculations regarding different types of paints. As the state of New Jersey explained in the Response to Comments it issued in September 2003, which the industry ignored when it filed its Request for Correction in June 2004, the Spreadsheet represents a variety of scenarios, including one in which a state sets a VOC limit for a paint that is actually *higher* than the VOC content of existing products. In that event, VOC reductions would be non-existent, and therefore correctly estimated by negative numbers, because the total amount emitted into the air would increase. As New Jersey state officials pointed out, this scenario is unlikely, and is certainly one that states will try to avoid, but "it is not impossible mathematically."[33]

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[30] *Id*.

[31] *Allied Local and Regional Manufacturers Caucus, et al., v. United States Environmental Protection Agency*, No. 98-1526, Brief for Intervenors, filed Sept. 15, 1999. Professor Steinzor, one of the signatories to this letter, was on the brief on behalf of her client the State and Territorial Air Pollution Program Administrators and the Association of Local Air Pollution Control Officials [hereinafter NPCA, et al. Intervenors Brief].

[32] *Id*. at 6 (emphasis added).

[33] NJ DEP Response to Comments at 70.

The Paint Manufacturers Attack Information Obtained in a Voluntary Industry Survey the EPA Conducted in 1990, Failing to Acknowledge that They Possess Updated Information But Have Refused to Make It Available to the States.

As we mentioned above, the paint manufacturers also challenge the data used in the Spreadsheet, claiming that it is outdated and erroneous. The data concerns the VOC content of paints and coatings. It is based on a *voluntary* industry survey that the NPCA itself conducted in 1990, in collaboration with EPA. This 1990 Survey was an important component of what the NPCA called an "ample" rulemaking record in the brief filed with the D.C. Circuit Court of Appeals.[34] It is no small irony that throughout the consideration of the EPA rule, and subsequent proceedings at the state level, the NPCA never once volunteered to survey its members in order to update these allegedly erroneous data. In essence then, the NPCA is engaged in what can only be described as an effort to place the states in a "catch 22" position: it objects to outdated data from a survey it conducted without offering to update the information, and then claims that the fact that the information has not been updated means that the state rules cannot stand.

The Spreadsheet Is Not Only Sound, But Is Supplemented by Ample Information in the Rulemaking Records Developed by the States.

We believe that we have demonstrated that the alleged problems with the Spreadsheet are not, in fact, problems, as admitted by the NPCA in another context. Even if the paint industry was correct that there are minor flaws in either the Spreadsheet's methodology or underlying data, it is important to note that the Spreadsheet was neither "the sole or primary source of explanation of the emission reduction calculations" the states used in writing their rules.[35] We urge the EPA officials who review this Request to consider what would happen to the Agency's ability to conduct its business if it was compelled to comply with the standard advocated by this Request: all information in a rulemaking record must be absolutely accurate regardless of whether it is redundant of other information.

The Paint Manufacturers' Request Is a Shameless End Run Around the Elaborate Rulemaking Process Used by the States.

In each of the Mid-Atlantic states that has adopted an AIM Rule, the public had ample notice of, and opportunity to comment on, the proposed rule and the bases upon which the states relied in drafting the rule. A summary of the state-level public comment proceedings appears in Table 1 of Appendix A hereto. The chronology of the state AIM Rule processes demonstrates that while comments raised by the NPCA and Sherwin-Williams in their Request for Information (*i.e.*, comments regarding the alleged flaws in

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[34] NJ DEP Response to Comments at 71.
[35] Response to Comment 116, 36 N.J. Reg. 3078(a) (June 21, 2004).

the Spreadsheet) were raised during rulemaking procedures in Maryland and New Jersey, *no such comments were made before the Delaware, Pennsylvania or New York regulators*. In fact, as noted by the Maryland Department of the Environment in its Response to Public Comments:

> The Delaware SIP containing the Delaware AIM rule, which was developed using the OTC model rule and with limits identical to Maryland's, was approved on November 22, 2002. During the EPA's public comment period [on Delaware's SIP Revision], not a single comment was received.[36]

As explained more fully above, in the state rulemaking proceedings that took place *after* the point in time at which the NPCA and Sherwin-Williams apparently discovered the alleged flaws in the Spreadsheet (and began to raise them as a last-ditch effort to derail the AIM Rules), they received extensive replies to their comments. Relevant comments and the replies thereto by the state agencies are summarized in Tables 2-5, Appendix A.

Sherwin-Williams and the NPCA may well regret the fact that they failed to attack the alleged problems with the Spreadsheet before some states, and certainly they are not pleased with the responses to comments they received in other states. Nonetheless, they have been afforded ample opportunity to raise their concerns through established administrative procedures. Further, as discussed *infra*, additional avenues for challenge remain open to them at the federal level. Despite the extensive opportunities to correct disputed data that the NPCA and Sherwin-Williams have already had, they filed the Request in an attempt to commandeer the IQA and use it to undercut the state rulemakings. Simply stated, if the Request is granted, the entire SIP process will be thrown into chaos.

Wrong on the Law

The IQA was passed as an appropriations rider amending the Paperwork Reduction Act, without debate or the creation of any legislative history.[37] Its stated purpose is to ensure that the "quality" of information disseminated by the government is

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[36] Maryland Department of the Environment, Air and Radiation Management Administration, *Response to Comment for the Public Hearing Held on January 28, 2004 in Baltimore, MD Related to Proposed New Regulations .01—.14 Under a New Chapter, COMAR 26.11.33 Architectural Coatings*, Response to Comment 17 p. 13 (on file with the Department) (citing "*Approval and Promulgation of Air Quality Implementation Plans; Six Control Measures to Meet EPA-Identified Shortfalls in Delaware's One-Hour Ozone Attainment Demonstration*," 67 Fed. Reg. 70315 (November 22, 2002)).

[37] Sidney A. Shapiro, *The Information Quality Act and Environmental Protection: The Perils of Reform by Appropriations Rider*, 28 Wm. & Mary Envtl. L. & Pol'y Rev. 339, 345 (2004) (citing *Treasury and General Government Appropriations Act for Fiscal Year 2001*. Pub. L. No. 106-554, § 515(a), (b)(2)(A), 114 Stat. 2763A-125, 2763A-154 (2001)).

"maximized."[38] Congress instructed the Executive Branch to determine how this seemingly benign goal is to be met, requiring OMB and the agencies to establish procedures for ensuring the "objectivity, utility, and integrity of information . . . disseminated by" the federal government.[39] OMB issued its final guidelines in February 2002, directing the agencies to issue their own implementing guidelines.[40] The EPA issued its own Information Quality Guidelines (EPA Guidelines) in October 2002.[41] Section 5.3 of the EPA Guidelines provide that "information, for purposes of these Guidelines, generally includes any communication or representation of knowledge such as facts or data, in any medium or form," and that

> EPA initiates a distribution of information if EPA distributes information prepared or submitted by an outside party in a manner that reasonably suggests that EPA endorses or agrees with it . . . . Agency sponsored

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[38] *Id*. at 344.

[39] *Id*. at 339, 345. The IQA states in its entirety:

(a) In General. The Director of the Office of Management and Budget shall, by not later than September 30, 2001, and with public and Federal agency involvement, issue guidelines under sections 3504(d)(1) and 3516 of title 44, United States Code, that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies in fulfillment of the purposes and provisions of chapter 35 of title 44, United States Code, commonly referred to as the Paperwork Reduction Act.

(b) Content of Guidelines. The guidelines under subsection (a) shall

(1) apply to the sharing by Federal agencies of, and access to, information disseminated by Federal agencies; and

(2) require that each Federal agency to which the guidelines apply

(A) issue guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by the agency, by not later than 1 year after the date of issuance of the guidelines under subsection (a);

(B) establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the guidelines issued under subsection (a); and

(C) report periodically to the Director

(i) the number and nature of complaints received by the agency regarding the accuracy of information disseminated by the agency and;

(ii) how such complaints were handled by the agency.

Treasury and General Government Appropriations Act for Fiscal Year 2001. Pub. L. No. 106-554, § 515, 114 Stat. at 2763A-153 to 2763A-154 (2001).

[40] 67 Fed. Reg. 8452 (February 22, 2002).

[41] *See Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (October 2002), available at <http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf>, site visited 07/13/04.

> distribution includes instances where EPA reviews and comments on information distributed by an outside party in a manner that indicates EPA is endorsing it . . . or otherwise adopts or endorses it.[42]

In other words, consistent with a reasonable interpretation of the IQA, as well as OMB and the EPA Guidance, the trigger for application of the IQA is distribution of information in a manner that suggests the government endorses or agrees with it. The focus is on the information itself, not materials that are remotely related to the information and are not in themselves distributed.

The Request Illegally Seeks to Apply the IQA to the EPA's Proposed Approval of the AIM Rule SIP Revisions on the Basis of Information that the EPA Has Not "Disseminated."

The allegedly flawed information covered by the paint industry's Request for Correction is a Spreadsheet that was used by the states to calculate the VOC reductions they believe they will achieve as a result of their adoption of AIM rules that are based on the OTC Model Rule.[43] According to the Request, the Spreadsheet fails the standards of transparency and reproducibility of information set forth in the OMB Guidelines.[44] Therefore, so the argument goes, "the SIP revisions are based upon data that the EPA cannot accept under the [IQA] and the EPA's formally adopted Guidelines."[45] The opening sentence of the Request states that it is "a request for Correction of Information . . . ."[46] However, the relief requested in the same sentence goes far beyond "correction of information." Instead, the paint manufacturers ask that the EPA disapprove certain SIP revisions.[47] As explained further below, this relief goes far beyond the remedy provided by the IQA: namely, correction of disseminated information.

The paint industry's Request that the EPA reject the AIM Rule SIP revisions is explicitly based on the premise that, in the course of its decision whether or not to approve the revisions, the EPA will engage in "dissemination" of information.[48]

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[42] Letter from E. Donald Elliott on behalf of Sherwin-Williams and the NPCA, to EPA Information Quality Guidelines Office (the "Request") at 2-3 (June 2, 2004) (quoting EPA Information Quality Guidelines, § 5.3).

[43] *Id*. at 3-4.

[44] *Id*. at 4-5.

[45] *Id*. at 8.

[46] *Id*. at 1.

[47] *Id*. *See also* Request at 8.

[48] In addition to the arguments contained in the Request and reproduced *infra*, the NPCA and Sherwin-Williams argue that:

> pursuant to the Clean Air Act, the EPA is charged with establishing a clearinghouse of information and to "disseminate" that information. *See* [CAA] §183(e)(9). It is beyond

Specifically, the Request argues that "the SIP amendment approval process . . . involves the acceptance of data and scientific analysis, and the EPA's agreement with or endorsement of the data, its analysis and conclusions."[49] According to the logic of the paint industry, such internal agency analysis is transformed into "dissemination" of information because Section 5.3 of the EPA Guidelines provide that the EPA "distributes information," when the EPA "reviews and comments on information distributed by an outside party in a manner that indicates EPA is endorsing it . . . , or otherwise adopts or endorses it."[50] Or, in other words, when the EPA conducts its internal review of the state administrative records in support of the SIP revisions and subsequently proposes to approve the revisions, the agency "disseminates" the information in the state administrative records, *even if that information is never communicated to the public by EPA*. [51] This feat of syllogistic gymnastics would serve to apply the IQA, through the

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> cavil that such dissemination of information is precisely the type of information which is to be regulated under the [EPA] Guidelines. With the inclusion of the Model Rule in the clearinghouse of information, EPA is approving and disseminating erroneous data. This must be corrected.

Request at 3. Section 183(e)(9) of the Clean Air Act provides as follows:

> Any *State* which proposes regulations other than those adopted under this subsection shall consult with the Administrator regarding whether any other *State or local subdivision* has promulgated or is promulgating regulations on any products covered under this part. The Administrator shall establish a clearinghouse of information, studies, and regulations proposed and promulgated regarding products covered under this subsection and disseminate such information collected *as requested by State or local subdivisions*.

42 U.S.C §7511b(e)(9), CAA § 183(e)(9) (emphasis added).

The OMB Guidelines specifically exempt "distribution limited to government employees . . . ; intra- or inter-agency use or sharing of government information" from the definition of "Dissemination" under the IQA. *Office of Management and Budget, Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility and Integrity of Information Disseminated by Federal Agencies; Republication*, Guideline V.8., 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002). Therefore, assuming EPA included the Pechan Report and Spreadsheet in the clearinghouse of information referenced in CAA § 183(e)(9), it is not, contrary to the Request's contention "beyond cavil that such dissemination of information is precisely the type of information which is to be regulated under the Guidelines." Request at 3. To the contrary, the request by a State or local governmental entity to the EPA for information regarding regulations promulgated by other State or local governmental entities is specifically exempted from the IQA's provisions by the OMB Guidelines. *See OMB Guideline V.8.*, 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002).

[49] Request at 3.

[50] *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (October 2002), Section 5.3, available at <http://www.epa.gov/quality/informationguidelines/documents/EPA_InfoQualityGuidelines.pdf>, site visited 07/13/04.

[51] That NPCA's true argument is that the IQA applies to all information submitted by the States to EPA, whether or not EPA in turn communicates that information in any way to the public, is confirmed by its detour into a discussion of the requirements of the federal Administrative Procedure Act (APA). *See* Request at 6. NPCA argues that if EPA approves SIP amendments without sufficient documentation and information in the record, EPA's approval violates both the APA and the DQA. *Id*. The APA applies to

EPA Guidelines, to every regulatory action taken by the EPA with respect to any state action that involves a rulemaking record. Such an interpretation cannot be sustained.[52]

Apart from the chaos it would cause in the administrative processes of federal and state regulatory agencies, this construction of the "otherwise adopts or endorses" language of EPA Guideline 5.3 effectively writes the statutory requirement of information "dissemination" out of the IQA. Nowhere in its Notices of Proposed Rulemaking relating to the proposed approval of the AIM Rule SIP revisions does the EPA include the state administrative records, including the allegedly flawed Spreadsheet.[53] By the NPCA's construction, the term "disseminated" in the IQA becomes entirely unnecessary: all the EPA need do is internally consider information in order for the IQA to apply.

Though "disseminated" is not defined in the IQA, and though any attempt to divine its meaning through consideration of legislative history is thwarted by the complete lack of any Congressional hearings and/or debate on the Act, the term is nonetheless the express prerequisite to the statute's applicability. It is a "cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Alaska Dep't of Envtl. Conservation v. Envtl. Protection Agency*, 124 S.Ct. 983, 1002 (2004) (quoting *TRW Inc. v. Andrews,* 534 U.S. 19, 31, 122 S.Ct. 441, 151 L.Ed.2d 339 (2001)). The Request flouts this cardinal principle of statutory construction by rendering the IQA's requirement that information be "disseminated" by Federal agencies completely void.

EPA's review of the record, while the IQA applies to EPA's dissemination of information. Yet NPCA equates the two statutes, confirming its view that EPA disseminates information any time it conducts an internal review of information submitted as part of the State's administrative record, regardless of whether the record is separately communicated to the public by EPA.

[52] Although CPR vigorously contends that EPA's consideration of State administrative records in the course of its decision as to whether to approve or disapprove a SIP (or revision) *does not* constitute "dissemination" of information as required for IQA application, it is worth noting that the allegedly flawed Spreadsheet was only one of the methodologies used by the states in calculating reductions. In fact, as the state of New Jersey affirmed in its response to comments, the Spreadsheet was "not the sole or primary source of explanation of the emission reduction calculations" the State used in writing its rule. *Response to Comment 116*, 36 N.J. Reg. 3078(a) (June 21, 2004). Accordingly, if EPA finds that the States had a sufficient basis for approving the AIM Rules notwithstanding the Spreadsheet and any data flaws allegedly contained therein, EPA can approve the SIP Revisions based on the States' alternate bases for approving the emission reduction contained in the AIM Rules.

[53] *See*, *e.g.*, *Proposed Rule: Approval and Promulgation of Air Quality Implementation Plans; Maryland; Control of VOC Emissions from AIM Coatings*, 69 Fed. Reg. 29674 (May 25, 2004); *Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Control of Volatile Organic Compound Emissions from AIM Coatings*, 69 Fed. Reg. 11580 (March 11, 2004).

The IQA Applies Only to Information Disseminated by Federal, Not State, Agencies

Any "dissemination" of the allegedly flawed Spreadsheet to the public occurred at the state level, during the states' formulation and adoption of the SIP revisions. SIP revisions are submitted to the EPA only after "reasonable notice and public hearing" at the state level.[54] The EPA's role in the SIP process is limited:

> Within 60 days of the Administrator's receipt of a plan or plan revision . . . the Administrator shall determine whether the minimum criteria established pursuant to [CAA § 110(k)(1)(A)] have been met.[55]

If the SIP (or SIP revision) meets the attainment demonstration requirements of the CAA, the EPA must approve it.[56] The EPA's limited role in the SIP process is in accord with the general premise of the Clean Air Act, which leaves the specifics of attaining the federally-mandated air quality standards up to the states in recognition of the fact that "pollution control problems often require special understanding of local industries, geography, housing patterns, etc."[57]

The paint industry would use the IQA to override the distinct roles for the state and federal governments as laid out in the Clean Air Act. The crux of the Request's argument is that because the *states* adopted the AIM Rules after disseminating (and considering comments on) the information the NPCA claims is flawed, the EPA must reject the AIM Rule SIP revisions pursuant to the IQA. Stated differently, the Request contends that in order to have their SIPs approved by the EPA, the states must adhere to the IQA and the EPA's implementing Guidelines during their rulemaking procedures. Such a contention is tantamount to an assertion that that the states are bound by the IQA.

Nowhere in the few paragraphs that comprise the IQA is there any mention of its applicability to the states. Rather, the IQA directs OMB to provide guidance to "*Federal agencies* for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by *Federal agencies* . . . ."[58] It is a well-known principle of administrative law that a court charged with reviewing agency action must first "determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. [The Court's]

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[54] *See* 42 U.S.C. § 7410(l), CAA § 110(l).

[55] 42 U.S.C. § 7410(k)(1)(B), CAA § 110(k)(1)(B).

[56] *See* 42 U.S.C. § 7410(k)(3), CAA § 110(k)(3).

[57] *The Plain English Guide to the Clean Air Act,* available at <http://www.epa.gov/oar/oaqps/peg_caa/pegcaa02.html#topic2a>, site visited 07/27/2004.

[58] *Treasury and General Government Appropriations Act for Fiscal Year 2001.* Pub. L. No. 106-554, § 515(a), 114 Stat. at 2763A-153 to 2763A-154 (2001) (emphasis added).

inquiry must cease if the statutory language is unambiguous and the 'the statutory scheme is coherent and consistent.'" *Robinson v. Shell Oil Co.*, 519 U.S. 337, 340 (1997); *see also Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984) ("If the intent of Congress is clear, that is the end of the matter, for the court as well as the agency must give effect to the unambiguously expressed intent of Congress."). The IQA is unambiguous: it applies exclusively to information disseminated by Federal agencies.

The Request Asks that the EPA be Held to a Much Stricter Level of Scrutiny for its "Anticipated Approval" of the AIM Rule SIP Revisions Than Would be Applied by a Court Under Appropriate Avenues for Judicial Review of an Actual Approval.

If the EPA ultimately approves the SIP revisions incorporating AIM Rules, the NPCA's remedy lies in a petition under the Clean Air Act and/or the federal Administrative Procedure Act for judicial review of the EPA's decision to approve the SIP revisions.[59] However, the Request attempts to convert the IQA into a vehicle that would allow those disgruntled with *anticipated* regulatory approvals to bypass established remedies and stop the EPA's regulatory process before it starts.[60] The reason for the attempt is clear: if the NPCA sought judicial review of the EPA's approval of the SIP revisions pursuant to the CAA and/or the APA, the reviewing court would seek to determine only whether the EPA's actions are arbitrary and capricious.[61] Under such a standard of review, a court would review the record as a whole to ensure that the EPA's actions in approving the SIP revisions were reasonable.

By the NPCA's desired construction of the IQA, however, EPA needs to determine that a single document in the record (the Spreadsheet) is free from flaws as defined by the OMB and EPA Guidelines before it can approve the SIP revisions. Though regulated entities may well prefer such a standard to the established "arbitrary and capricious" standard of review for agency action, the IQA falls far short of supporting such a construction. Members of the public (including the NPCA and Sherwin-Williams) have ample opportunity to contest the validity of information relied upon by regulators during the rulemaking processes associated with SIP revision approvals, both at the state and federal levels, in both the administrative and judicial contexts. "Congress could not have meant IQA to apply to rulemaking because the requirement that an agency establish an

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[59] *See* 42 U.S.C. § 7607(b)(1), CAA § 307(b)(1); 5 U.S.C. § 702.

[60] Judicial review under the CAA and/or the APA would not be available until EPA had actually approved the AIM Rule SIP Revisions. The attempted use of the IQA avoids the judicial requirement that a dispute be ripe for review and seeks to cut off EPA's regulatory actions at the pass.

[61] *See* 5 U.S.C. § 706(2)(A) (stating that reviewing courts shall find unlawful and set aside agency action found to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law).

'administrative mechanism' to hear information quality complaints is entirely superfluous or redundant."[62]

Conclusion

We have met with Dr. Graham on a few occasions to discuss the IQA. Each time, he has taken the position that our concerns about the operation of the Act are overblown. After all, EPA has rejected the vast majority of requests submitted by disgruntled industries and, to evoke the colloquial term usually applied to such situations, "No harm, no foul."

With respect, we think that this tolerant view of the IQA is misguided. The Act is a superfluous and unnecessary layer of review, especially with respect to rulemakings where extensive opportunities to correct disputed data are already provided. Outlandish misuse of the Act, as illustrated by the paint manufacturers' opportunistic Request, wastes taxpayer resources far better spent on protecting the public from real and growing threats to public health. People have a right to expect more from their government. While we realize that the Executive Branch is no more qualified to repeal the Act than it is to expand it far beyond its reasonable meaning, you are in the position to discourage such irresponsible use of the law, and we urge you to do so.

Sincerely,

/s/
Rena I. Steinzor
Professor of Law
University of Maryland School of Law

/s/
Sidney Shapiro
University Distinguished Professor
Wake Forest University Chair in Law
Wake Forest Law School
Board Members

/s/
Margaret Clune
Staff Counsel

cc: E. Donald Elliott, Esq., Wilkie, Farr & Gallagher (via Federal Express)
Jane M. Kenny, Administrator, EPA Region 2

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[62] Sidney A. Shapiro, *The Information Quality Act and Environmental Protection: The Perils of Reform by Appropriations Rider*, 28 Wm. & Mary Envtl. L. & Pol'y Rev. 339, 365 (2004)

Donald S. Welsh, Administrator, EPA Region 3
Thomas Voltaggio, Deputy Administrator, Region 3
Jeffrey R. Holmstead, Administrator for Air, USEPA
Walter E. Mugdan, Regional Counsel, EPA Region 3
S. William Becker, Executive Director, STAPPA/ALAPCO
The Honorable Barbara A. Mikulski, United States Senate
The Honorable Paul Sarbanes, United States Senate
The Honorable Rick Santorum, United States Senate
The Honorable Arlen Specter, United States Senate
The Honorable Joe Biden, United States Senate
The Honorable Thomas Carper, United States Senate
The Honorable Jon Corzine, United States Senate
The Honorable Frank Lautenberg, United States Senate
The Honorable Hillary Rodham Clinton, United States Senate
The Honorable Charles Schumer, United States Senate
The Honorable Susan Collins, Chair, Committee on Governmental Affairs, United States Senate
The Honorable Joseph Lieberman, Ranking Member, Committee on Governmental Affairs, United States Senate
The Honorable James Inhofe, Chair, Committee on Environmental & Public Works, United States Senate
The Honorable James Jeffords, Ranking Member, Committee on Environmental & Public Works, United States Senate
The Honorable Joe Barton, Chair, Committee on Energy and Commerce, U.S. House of Representatives
The Honorable John Dingell, Ranking Member Committee on Energy and Commerce, U.S. House of Representatives
The Honorable Tom Davis, Chair, Committee on Government Reform, U.S. House of Representatives
The Honorable Henry Waxman, Ranking Member, Committee on Government Reform, U.S. House of Representatives
Christopher Recchia, Executive Director, Ozone Transport Commission
Kathleen McGinty, Secretary, Pennsylvania Department of Environmental Protection
Bradley Campbell, USEPA
Erin M. Crotty, Commissioner, New York State Department of Environmental Conservation
Kendl Philbrick, Secretary, Maryland Department of the Environment
Herman Holloway, Delaware State Department of Evaluation, Planning & Quality Control
John Hughes, Secretary, Delaware Department of Natural Resources & Environmental Control

APPENDIX A

Summary of State AIM Rule Comment Proceedings

Table 1

Opportunities for Comment on State AIM Regulations

State	Status	Comment Period	Period Extended?	Notice	Draft Regulation Available	Means of Commenting	Comments Regarding Spreadsheet?
DELAWARE Regulation 41, §1	Proposed 8/1/01[63] Adopted 3/1/2002[64]	8/1/2001-8/31/01	No	1. Delaware Register of Regulations 2. Delaware Register of Regulations online 3. DNREC Environmental Release Notification System 4. 2500 mailings to parties affected by the rule. Mailings included copy of legal notice of rule and a letter describing the rule, encouraging stake holders to attend public workshops about the rule and describing how the rule would affect them. 5. Similar mailings prior to public hearing	1. Delaware Register of Regulations 2. DNREC website	1. Mail 2. Public Hearing 8/22/01	No.

[63] Regulation 41, "*Limited Emissions of Volatile Organic Compounds From Consumer and Commercial Products*," Section 1 "*Architectural Industrial Maintenance Coatings*," 5 Del. Reg. Regulations 389 (August 1, 2001) available at <http://www.state.de.us/research/register/august2001/Frame.html>.

[64] Regulation 41, "*Limited Emissions of Volatile Organic Compounds From Consumer and Commercial Products*," Section 1 "*Architectural Industrial Maintenance Coatings*," 5 Del. Reg. Regulations 1759 (March 1, 2002) available at <http://www.state.de.us/research/register/march2002/Frame.html>.

State	Status	Comment Period	Period Extended?	Notice	Draft Regulation Available	Means of Commenting	Comments Regarding Spreadsheet?
PENNSYLVANIA Pa. Code § 602-611, Subpart C	Proposed 12/15/01[65] Adopted 10/25/03[66]	12/15/01-2/22/02	No	1.Environmental Quality Board Meeting October 16, 2001 2. Pennsylvania Bulletin 12/15/01 3. Pennsylvania Regulatory Review Board found notice given as required by law.	1. Pennsylvania Bulletin 12/15/01	1. Mail 2. Email 3. Public Hearings 1/15/02 1/18/02 1/23/02	No. For Comments by Sherwin-Williams, see Table 2.
NEW YORK 6 N.Y.C.R.R. §§ 200, 205	Proposed 3/19/03[67] Adopted 10/22/03[68]	3/19/03-5/12/03	Small Manufacturers Exemption Applications Only 5/14/04	1. New York State Register 3/19/03 2. Environmental Notice Bulletin 3/19/03.[69]	Discussion of/Contents in New York State Register 3/19/03	1. Written 2. Public Hearings 4/28/03 4/30/03 5/2/04	No. For comments by Sherwin-Williams, see Table 3.
NEW JERSEY N.J.A.C. 7:27A-3.10	Proposed 7/21/03[70] Adopted 06/21/04[71]	7/21/03-9/19/03	To 10/15/03[72]	New Jersey Register 7/21/03	1. Download: Air Quality Management website. 2. Request by email. 3. View at NJDEP's	1. Written Comments 2. Public Hearing 9/9/03 Trenton,	Yes. See Table 4.

[65] *Architectural and Industrial Maintenance Coatings*, 31 Pa. Bull. 6807 (proposed December 15, 2001).

[66] *Architectural and Industrial Maintenance Coatings*, 33 Pa. Bull. 5297 (adopted October 25, 2003)(codified at Pa. Code § 602-611, Subpart C).

[67] *Architectural Coatings VOC Limits*, 2003-11 N.Y. St. Reg. 2 (proposed March 11, 2003).

[68] *Architectural Coatings VOC Limits*, 2003-45 N.Y. St. Reg. 2 (adopted November 12, 2003) (codified at 6 N.Y.C.R.R. §§ 200, 205).

[69] New York Department of Environmental Conservation, *Environmental Notice Bulletin* available at <www.dec.state.ny.us/website/enb2004/20020414/not0.html>.

[70] 36 N.J. Reg. 3078(a) (June 21, 2004).

[71] 35 N.J. Reg. 2983(a) (July 1, 2003).

[72] Office of Air Quality Management, New Jersey Department of Environmental Protection, *Notice of Extension of Comment Period and Opportunity for Public Input on Mechanisms for Retailers to Demonstrate Compliance*, available at <http://www.nj.gov/dep/aqm/Sub23extendnotice.htm>.

State	Status	Comment Period	Period Extended?	Notice	Draft Regulation Available	Means of Commenting	Comments Regarding Spreadsheet?
					Public Information Center or Regional Enforcement Offices. 4. View at Public Libraries: Trenton, New Brunswick, Morrison, Perth Amboy, Toms River & Penns Grove.	NJ	
MARYLAND COMAR 26.11.33	Proposal Published 12/26/03[73] Adopted 3/9/04[74]	12/26/03-1/28/04	Until 2/2/04	1. Maryland Register 12/26/03 2. Maryland Register Online	1. Air and Radiation Management Administration 2. Regional Offices of Department of Environment 3. Local Air Quality Office 4. Local Health Departments	1. Mail 2.Email 3. Fax 4. Public Hearing 1/28/04, continued 1/30/04	Yes. See Table 5.

[73] *26.11.33 Architectural Coatings*, 30-26 Md. Reg. 1944 (December 26, 2003).

[74] *26.11.33 Architectural Coatings*, 61-6 Md. Reg. 510 (adopted March 9, 2004) (codified at COMAR 26.11.33).

Table 2

Comments Regarding Anticipated VOC Reductions from AIM Regulation Submitted to the Pennsylvania Department of Environmental Protection (PADEP) by Sherwin-Williams During the Comment Period for Pa. Code § 602-611, Subpart C, and PADEP's Responses[75]

Comment	PADEP's Response
28. Comment: The proposed regulation is unreasonably stringent and unnecessary for the protection of the public health, welfare and safety.	The Department does not agree that the regulation is unreasonably stringent or unnecessary. The emission reductions that will result from the regulation are necessary to satisfy State Implementation Plan (SIP) commitments for achievement and maintenance of the health based ozone National Ambient Air Quality Standard (NAAQS) in the Southeast Pennsylvania ozone nonattainment area and for the achievement and maintenance of the 8-hour ozone NAAQS throughout Pennsylvania.
29. Comment: The record does not support the emission reduction claims of the proposed rule and the proposed rule is arbitrary and capricious.	The Department disagrees. The emission reduction estimates for the regulation are based on an analysis conducted for the Ozone Transport Commission (OTC) by E. H. Pechan and reported in "Control Measure Development Support Analysis of Ozone Transport Commission Model Rules (March 31, 2001)." This analysis is based on the best available information regarding AIM coating use and formulation data available to the OTC member states regarding AIM coatings. The VOC content limits in the regulation are based on CARB's extensive analysis of AIM coatings and reflect coating technologies that are available.

[75] Bureau of Air Quality, Pennsylvania Department of Environmental Protection, *Architectural and Industrial Maintenance (AIM) Coatings Comment and Response Document* (February 27, 2003).

Table 3

Comments Regarding Anticipated VOC Reductions from AIM Regulation Submitted to the New York Department of Environmental Conservation (NYDEC) by Sherwin-Williams During the Comment Period for 6 NYCRR 200, 205 and NYDEC's Responses[76]

Sherwin-Williams' Comment	**NYDEC's Response**
31. Comment: The emission reductions projected for the proposed changes to Part 205 appear to have been dramatically underestimated. The Consolidated Regulatory Impact Statement claims that the rule will achieve 14 tons per day in VOC reductions. No explanation is provided for this estimate. The Pechan Study, done for the OTC, estimated that there would be 41 tons per day of VOC emission reductions in New York. Even this estimate appears to be inappropriately low. Since the entire rule development is based on California's studies and experiences, a better estimate would be to base the emissions on the data developed by California. California has performed detailed surveys of the sales of architectural coatings in the State for both the 1996 and 2000 sales years. The most recent data shows that the average per capita emissions in California were 2.56 pounds per year without thinning and clean-up solvents, and 2.97 pounds per year with thinning and clean-up solvents. These results were obtained even before the new limits went into effect. Even using the Pechan post-national rule baseline of 5.36 pounds per person per year, the expected emissions reductions in New York are more than 62 tons per day. This rule will reduce emissions from architectural coatings by more than 55 percent.	The Department disagrees with the commenter's assessment that VOC emission reductions beyond 14 tons per day can be achieved at this time from the proposed regulation. The OTC AIM Workgroup analyzed the emissions reductions and associated costs for adopting five VOC model rules and one NOx model rule throughout the OTR. The Workgroup assessed additional emissions reductions from OTC model rules taking into account the expected emissions reduction from current federal and State regulations and SIP assumptions to ensure no double counting of emission reductions occurred. Population based emission factors were used for the VOC source category model rules, including the AIM rule. The 42 tons per day cited in the Pechan Report (see reference 8) represents total VOC reductions obtainable from AIM coatings for the entire multi-state metropolitan area which includes New York, Connecticut, and New Jersey. New York's estimate of VOC emission reductions calculated from the 1990 base year inventory indicates that New York's nonattainment portion will be 14 tons per day. Like California, and as stated in the Pechan Report, the Department used 1985 AIM survey (see reference 10) data to derive a 3.1 pound per capita per year emission factor (including thinning and clean-up solvents) for the New York Metropolitan area. When projecting the 1990 base year inventory the Department used the uncontrolled emission factor of 3.1 pounds per capita per year along with the 1990 base year controlled emission factor of 2.81 pounds per capita per year which accounts for controls already in place (Part 205 adopted in 1988). The uncontrolled value is projected to 2007 to determine VOC emission reductions that will be obtained from the adoption of revised Part 205. The future year controlled emission factor used in determining the reductions was 2.14 pounds per capita per year.

[76] New York Department of Environmental Conservation, *Assessment of Public Comments on Proposed Revisions to NYCRR Part 205, Architectural and Industrial Maintenance Coatings*, available at <http://dec.state.ny.us/website/dar/adopted.htm> (site visited July 28, 2004).

Sherwin-Williams' Comment	**NYDEC's Response**
32. Comment: Proposed Part 205 is based upon a grossly inadequate record. The Department failed to conduct any New York-specific analysis. Instead, it relied uncritically upon analyses done in California and by the OTC. This approach transformed the rulemaking process into a sham: analyses that have nothing to do with the State are offered in support of a preordained result. Further, by failing to ask critical questions about the analyses done by others, the Department only compounded errors made in the earlier analyses. The Department failed to understand that the proposed rule is not technically feasible for several coating subcategories; had it reviewed information made available to it by Sherwin-Williams and others, it would have understood that issue. The Department also failed to understand that the cost and costeffectiveness information upon which it relies do not provide a valid basis for the proposed rule because they address only a small fraction of the coating categories to be regulated by the rule, and contain serious flaws.	The Department disagrees with Sherwin-William's assessment of this rule making. See responses to comments #8, #10, #11, #12, and #16 regarding the Department's views on compliant coatings, performance characteristics, and economic feasibility. Proposed Part 205 is based on an extensive administrative record. This record includes extensive studies and research by CARB (1998 and 2000 AIM surveys, performance studies by Harlan & Associates, NTS, and KTA- Tator), the OTC AIM Workgroup's E.H. Pechan & Associates, Inc. Report, and the Delaware rulemaking record (see references 1, 3, 6, 8, and 9). In addition, the Part 205 proposal and the OTC model AIM coatings rule were preceded by numerous stakeholder meetings including a meeting between NYSDEC and NPCA on July 11, 2000, an AIM Workgroup meeting at NYSDEC on September 7, 2000, an OTC SAS Committee public stakeholder meeting on November 8, 2000, an OTC Special Meeting on Control Measure Development on December 11, 2000, an AIM/Consumer Product Workgroup meeting on January 18, 2001, a Rohm & Haas Spring House meeting on June 12, 2001, and a meeting between Sherwin-Williams and NYSDEC on August 24, 2002. To the best of Staff's recollection, representatives from Sherwin-Williams attended all of these meetings (see reference 27). As a member of the OTC, New York led the OTC AIM Workgroup on the model rule development. OTC commissioned E.H. Pechan & Associates (Pechan) to provide estimates of the emissions reductions in each of the Severe Ozone Non-attainment Areas (including the New York metropolitan region) and associated costs for adopting the model OTC rules including the AIM rule. The study assessed the additional emissions reductions from the OTC model rules taking into account the expected emissions reductions from current Federal and State rules and State Implementation Planning assumptions and population based emission factors. Pechan conducted an AIM coatings market survey for the Ozone Transport Region to investigate the availability of AIM coatings in the OTC States that are compliant with VOC limits of the OTC model AIM coatings rule (see reference 8). The study concluded that compliant products existed. In carrying out the 2002 technology assessments for AIM coating limits effective on January 1, 2003, CARB utilized the 2001 AIM survey (2000 sales data), two different performance tests, and the SCAQMD's annual technology assessments (see references 13, 14, and 15). They concluded that all of the 2003 AIM coating limits are technically feasible for coatings of concern with no significant adverse effects on small business. As to technical feasibility, no question exists that compliant coatings are available in all coating categories which were raised by the commenter. The Department has discussed this issue in detail in responses to comments #10, #11, and #16. The Department

Sherwin-Williams' Comment	**NYDEC's Response**
	provided a nearly seven week public comment and held three public hearings on the rule proposal, Albany, Buffalo, and Long Island City (see reference 28). In sum, the Department disagrees with the commenter's assessment of the rulemaking process.
50. Comment: The changes proposed by Sherwin-Williams would result in a decrease in emissions of 2.3 tons per day out of the 41 tons per day proposed to be achieved by the rule. Sherwin-Williams calculations are included in Figure 6. The State would still have ample additional reduction measures available to it. The potential to achieve a far better balance through minor changes to the proposal was not explained at all.	The commenter misinterprets the amount of emission reductions that Department expects to achieve from the implementation of amended Part 205. The Department expects that amended Part 205 will achieve 14 tons of VOC emission reductions per ozone season day, not 41 tons per day as stated in the comment (see reference 8). The New York, New Jersey, Connecticut nonattainment area will realize approximately 42 tons per day of VOC reductions from implementing the OTC model AIM coatings rule. New York's share will be approximately 14 tons per day. Thus, on an overall percentage basis a difference of 2.3 tons per day in the amount of VOC reductions is more significant than the commenter suggests. The Department cannot abandon 2.3 tons of cost-effective VOC emission reductions that are readily achievable and very necessary for the one-hour ozone attainment demonstration and compliance with the new eight-hour ozone standard. This is not a reasonable alternative. Moreover, the Department has fully explained its motivation for adopting the six OTC model rules in the RIS. See also response to comments #31 and #49.

Table 4

Comments Regarding the Spreadsheet Submitted to New Jersey Department of Environmental Protection (NJDEP) by Sherwin-Williams During the Comment Period for N.J.A.C. 7:27A-3.10 and NJDEP's Responses[77]

Sherwin Williams/NPCA Comment	**NJDEP's Response**
Comment 114: The spreadsheet used by the Department, has errors and flaws in it and is incomplete based on the VOC emissions shown in the spreadsheet. Emissions from more frequent re-applications have not been accounted for**.**	As discussed in the Response to Comment 5, more frequent reapplication will not necessarily occur as a result of the adopted rules; therefore, emission reductions would not be impacted . The Department does not agree that the estimated emission reductions are significantly underestimated, however, even if they were, additional emission reductions will be needed beyond those needed for attainment of the one-hour ozone standard . . . emission reductions resulting from these rules will also aid the State in meeting meet the eight-hour ozone standard.
Comment 115: There is a problem with the column H of the spreadsheet in the database used by Pechan to determine the emission reductions, because it produces negative emission reductions in some of the columns which is not possible.	The spreadsheet, which was developed by Industry Insights for NPCA and the USEPA, shows potential VOC reductions based on VOC content limit ranges, in columns F, G, H and I, based on the survey results. It shows potential emission reductions if the limit chosen is below the VOC content limit of the currently available products and it shows potential emission increases, if the VOC content limit chosen is above the currently available products. This assumes a case where the regulatory limit chosen is higher than the currently available products, so industry increases the VOC content of their coatings. While the Department agrees this is unlikely, it is not impossible mathematically**.** Columns K, L, M and N, show the estimated VOC reductions based on the adopted limits entered into the spreadsheet . . .the calculations are based on a constant solids basis, assuming the coatings will be manufactured at the new limits. This corresponds to column M in the spreadsheet. As shown in cell M422, any potential emission increases (negative numbers) from columns F, G, H and I are shown as zero in columns K, L, M and N, which agrees with the commenter's inference that it is unlikely that the VOC content will be raised.
Comment 116: The Pechan data and analysis do not meet the USEPA standards for data quality . . . The data cannot meet quality guidelines because they are not reproducible in part because the source data (Insights Survey data) are not available and	The emission reduction calculations are documented in the Department's proposal under Environmental Impact (35 N.J.R. 2990) and in the Department's technical report, titled "Estimated VOC Emission Reductions and Economic Impact Analysis for Proposed

[77] Summary of Public Comments and Agency Responses, 36 N.J.R. 3078(a), (July 21, 2004) available at <http://www.state.nj.us/dep/aqm/Sub23adoptpublic.doc>.

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persons knowledgeable with regard to the details of the survey data cannot be found. In addition, the Pechan analysis lacks transparency because the methods used to estimate emission reductions from the survey data are not fully documented, if documented at all.	Amendments to Architectural Coatings . . . The Pechan Report is not the sole or primary source of explanation of the emission reduction calculations. It is meant to be used in conjunction with the rule proposal, which was prepared by the Department. The analysis does meet the USEPA standards for data quality because it is the same methodology used by the USEPA for its rulemaking and was approved by the USEPA in the February 4, 2002 SIP approval. The survey data are available from the USEPA in a report entitled Final Draft Consolidated Report, Architectural and Industrial Maintenance Surface Coatings VOC Emissions Inventory Survey dated February 6, 1995, conducted by Industry Insights for the NPCA in Cooperation with the AIM Reg-Neg Industry Caucus. The 1990 survey is also referenced in the USEPA EIIP, Volume III, Chapter 3, page 5-1.

Table 5

Comments Relevant to the Contentions Made by the NPCA and Sherwin-Williams in Their Request for Correction of Information Made Before the Maryland Department of the Environment (MDE) at the Public Hearing Related to COMAR 26.11.33 and MDE's Responses[78]

Comment	MDE's Response
17. Comment: Maryland's blind acceptance of the OTC model rule, its use of the California record and conclusions to justify its proposal and, its citing of certain low VOC coatings in a broad coatings category to bolster its conclusions that the proposed limits are technologically feasible and cost effective for all coatings in that category, is arbitrary and capricious and will be subject to challenge in court. It also will be subject to challenge during US EPA's review of any Maryland SIP containing the regulation.	The Department has performed a thorough evaluation of the technical feasibility of the regulation and its impacts. The Department was a member of the OTC workgroup that developed the OTC model rule. Considerable effort was spent researching and evaluating the data on which the federal, CARB, SCAQMD rules and the STAPPA/ALAPCO rules were based. Stakeholders, including the National Painting and Coating Association and other representatives of paint manufacturers, were active participants in this process. There was much interaction with stakeholders in many OTC-led day-long meetings and attendance at stakeholder-led meetings (at Rohm & Haas for example) to receive manufacturer's concerns regarding compliant coating technology. The Department devoted several years to developing, reviewing and discussing the various aspects of the OTC model and Maryland AIM rules. The Maryland-specific analysis is reflected in the proposed rule's provisions that clarify retailers' obligations and provide flexibility for alternative standards. See Response to Comments 1, 2, 9, 10, 24, and 26. We foresee no reason for issues to arise during any US EPA review of a Maryland SIP amendment containing an AIM rule. The Delaware SIP containing the Delaware AIM rule, which was developed using the OTC model rule and with limits identical to Maryland's, was approved on November 22, 2002. During the EPA's public comment period, not a single comment was received.
21. Comment: One commenter requests the Department to increase the proposed VOC content standards for 5 specific product categories to the existing higher federal limits.	The Department disagrees with the commenter's assessment that the emission reductions resulting from implementation of this rule were underestimated or that

[78] Maryland Department of the Environment, Air and Radiation Management Administration, *Response to Comment for the Public Hearing Held on January 28, 2004 in Baltimore, MD Related to Proposed New Regulations .01—.14 Under a New Chapter, COMAR 26.11.33 Architectural Coatings* (on file with the Department) (internal footnotes omitted).

Comment	**MDE's Response**
The commenter states that increasing the standards will not reduce projected emission reductions from implementation of this rule because the OTC and Maryland mistakenly relied on a 1992 industry survey to derive emission factors, and as a result, grossly underestimated the emission reductions achieved by the rule. The commenter further asserts that emission reductions in Maryland and the other OTC states should have been projected based on data from surveys of product sales in California performed by the California Air Resources Board (CARB).	reliance on the 1992 industry survey was in error. In projecting emission reductions from implementation of the OTC Model Rule, the OTC consultant relied on the same published emission factors used by the United States Environmental Protection Agency to project emission reductions from implementation of the National AIM rule in 1999. These factors were based on an extensive 1992 industry survey sponsored by the National Paint and Coatings Association, which was then working cooperatively with EPA to develop the National AIM rule. Based on data from the industry survey, EPA projected a 20% reduction in the annual per capita VOC emission factor for architectural and industrial maintenance coatings of 6.7 pounds following implementation of the National AIM rule in 1999, resulting in an annual per capita emission factor of 5.36 pounds per capita. The OTC's consultant projected a further 31% reduction in VOC emissions from implementation of the more stringent OTC Model Rule, which would result in a new per capita emission factor of 3.7 pounds. The commenter asserts that the 1992 industry survey was not reliable, and therefore, does not accurately estimate VOC emissions prior to implementation of the National AIM rule, or reductions resulting from implementation of the National rule. The commenter states that reductions from implementation of the OTC Model rule should be projected based upon California survey data, which it contends is more reliable and which projects a much lower resulting emission factor and a 53% overall reduction in emissions. The commenter asserts that the SCM and OTC Model rules are comparable and that both rules should produce equivalent VOC emission reductions of approximately 20% from pre-rule levels. The commenter urges application of a post SCM Model Rule emissions factor of 2.48, but at another point in its comments, argues for application of a 2.05 emission factor. No explanation is offered for this apparent conflict. According to the commenter, application of a 2.48 post-OTC Model Rule emission factor, after adjustments for minor differences in the rules, would yield a 53% emission reduction from the pre-rule rate of 5.36, instead of the 31% reduction Maryland projects. First, for the reasons explained in the **Response to Comment No. 23,** the OTC workgroup's reliance on the 1992 national industry survey is reasonable. Second, the commenter's logic appears to be seriously flawed in several aspects. The commenter asserts repeatedly that "it is reasonable to assume that the results of [the CARB SCM

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	and OTC model rules] should be comparable and that the per capita emissions after the rules are in effect should be comparable." The Department has considered and rejected this assumption, however, because as the commenter itself notes, California has had more restrictive VOC limits for architectural coatings for over a decade. Therefore, VOC emissions for architectural and industrial maintenance coatings in California were already significantly lower than Maryland's pre-rule emissions. The lower emission factors derived from the California surveys are, thus, not appropriate for use in Maryland's emissions reductions.
22. Comment: The commenter states that the OTC consultant's report on emissions reductions projected from the Model Rule is based upon data and methods that are not reproducible or transparent, and thus does not meet criteria under the federal Data Quality Objectives Act and guidelines specified by the federal Office of Management and Budget.	The data that the OTC report cites as the basis for emission reductions was taken from a survey conducted by a consulting firm, Industry Insights, on behalf of the National Paint and Coating Association (NPCA). The NPCA urged the paint and coatings industry to participate in this 1992 survey, knowing it would be the basis for the U.S. EPA's regulatory negotiation process for developing a national coating rule. As stated by the NPCA, the goal of the survey "is to have an initial tabulation and analysis of the result available for the first formal reg-neg committee meeting . . ." The EPA's reliance upon this tabulation and analysis of the data in developing the national rule as well as NPCA's extraordinary efforts to collect this information from manufacturers, was sufficient assurance for the OTC to proceed with that information in developing its emission estimates. In addition, while the OTC consultant's report contained a marketing survey useful for determining the existence and number of compliant coatings in the OTR, contrary to the commenter's suggestion, that survey was not the basis for the emission reduction estimates. While acknowledging that the federal Data Quality Objectives Act does not apply to state regulations, the commenter nevertheless claims that the EPA would scrutinize the State regulations for compliance with the Act. The commenter states that following the adoption of that law, "the EPA, in turn, promulgated regulations entitled 'Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency.'" As emphasized in that document, however, the guidelines . . . are not a regulation and do not change or substitute for any legal requirements. They provide non-binding policy and procedural guidance, and are therefore not intended to create legal rights, impose legally binding

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	requirements or obligations on EPA or the public when applied in particular situation or change or impact the status of information we disseminate, nor to contravene any other legal requirements that may apply to particular agency determinations or other actions. Moreover, U.S. EPA Region III's approval of Delaware's AIM Rule into its State Implementation Plans stated "Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a `significant regulatory action' and therefore is not subject to review by the Office of Management and Budget.
23. Comment: A commenter stated that the data upon which the OTC and its consultant relied to project emission reductions are not transparent since a spreadsheet used for the projection appears to indicate negative emission reductions and maximum emission reductions that do not equal cumulative totals. In addition, because of the confidentiality conditions under which the data were collected, they are not reproducible.	The commenter acknowledges that the spreadsheet data under discussion was collected through an NPCA-sponsored survey conducted by an independent contractor in 1992 and 1993. That confidential survey was conducted to support the regulatory negotiation process for the development of the U.S. EPA's architectural coating rule, which was eventually adopted in 1998. The comprehensive nature of that survey is evident in exhortations by the NPCA to the paint and coatings industry to participate in the survey: 'The data collected in the survey will play a crucial role during the regulatory negotiations (reg-neg) concerning the development of a national regulatory program by the U.S. Environmental Protection Agency to control VOC emissions from AIM coatings. . . The goal is to have an initial tabulation and analysis of the results available for the first formal reg-neg committee meeting scheduled for October 15-16 in Chicago." The importance of the data collected for this survey was underscored by the NPCA Executive Director J. Andrew Doyle, who, noting the impact of the national AIM rule, stated "It is therefore crucial that any regulation be based upon a sound database." Both NPCA and the State of New York were participants in reg-neg process and thus had access to the spreadsheet data used in the development of EPA's National AIM Rule. Because the NPCA survey data and the spreadsheet were the basis for projecting emission reductions anticipated from implementation of the National Rule, and because any new reductions would be measured from the national baseline emission rate, the OTC and the NPCA proceeded to use that spreadsheet data in projecting emission reductions from the OTC Model Rule limits. In fact, to support its counterproposal for an alternative set of emission limits for certain categories, the NPCA, in its current

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	comments regarding the Maryland proposed coating rule, applies the same NPCA survey data spreadsheet and methodology to calculate potential emission reductions (70%). Although the NPCA surmises that emissions reductions could actually be greater, it tacitly acknowledges that "a cooperative survey of AIM product sales in the OTC region" would be needed to justify that assumption. While the Department cannot explain with certainty the presence of some negative values in the spreadsheet, it is important to note that the negative values were not included in the calculations which projected emission reductions as part of the rule. First, for the reasons explained in the Response to Comment No. 23, the OTC workgroup's reliance on the 1992 national industry survey is reasonable. Second, the commenter's logic appears to be seriously flawed in several aspects. The commenter asserts repeatedly that "it is reasonable to assume that the results of [the CARB SCM and OTC model rules] should be comparable and that the per capita emissions after the rules are in effect should be comparable." The Department has considered and rejected this assumption, however, because as the commenter itself notes, California has had more restrictive VOC limits for architectural coatings for over a decade. Therefore, VOC emissions for architectural and industrial maintenance coatings in California were already significantly lower than Maryland's pre-rule emissions. The lower emission factors derived from the California surveys are, thus, not appropriate for use in calculating Maryland's emission reductions. Finally, the commenter argues that based upon a pre-Model Rule emission factor of 5.36, a reduction to a post-Model Rule factor of 2.48 (or 2.05) actually yields a 53% overall reduction of VOC emissions in the OTC states. The commenter's reliance on the 5.36 baseline emission factor for this purpose is particularly surprising, following as it does on the commenter's criticism of the 1992 survey from which the post National AIM rule emission factor of 5.36 was derived as being inherently flawed. For these reasons, the commenter has failed to demonstrate that the OTC consultant erred in its projection of the emission reductions implementation of the OTC Model Rule will produce. Moreover, even assuming that an alternative calculation could demonstrate additional reductions beyond those currently estimated, the commenter has not presented data adequate to quantify the reductions that would be lost under the proposed relaxation of

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	the standards for the 5 categories that it requests.