

State of California
AIR RESOURCES BOARD

Resolution 04-18

June 24, 2004

Agenda Item No.: 04-6-5

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, section 41712 of the Health and Safety Code requires the Board to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds (VOCs) emitted by consumer products, if the Board determines that adequate data exists for it to adopt the regulations, and if the regulations are technologically and commercially feasible and necessary;

WHEREAS, pursuant to Health and Safety Code section 41712, the Board has adopted the Regulation for Reducing VOC Emissions from Consumer Products (the consumer products regulation; title 17, California Code of Regulations (CCR), sections 94507-94517), the Regulation for Reducing VOC Emissions from Antiperspirants and Deodorants (title 17, CCR, sections 94500-94506.5), and the Regulation for Reducing the Ozone Formed from Aerosol Coating Product Emissions (title 17, CCR, sections 94520-94528);

WHEREAS, the Board has also adopted Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products;

WHEREAS, on November 15, 1994, the Board adopted the California State Implementation Plan for Ozone (1994 SIP), which committed the ARB to achieve significant reductions in VOC emissions from consumer products;

WHEREAS, on October 23, 2003, the ARB adopted the Proposed 2003 State and Federal Strategy for the California State Implementation Plan (2003 Statewide Strategy) which includes updates to all elements of the 1994 SIP and includes additional consumer products measures;

WHEREAS, the 2003 Statewide Strategy contains two specific measures to reduce VOC emissions from consumer products: Measure CONS-1, in which the ARB commits to develop a measure to be proposed to the Board between 2003 and 2004, and implemented in 2006, that would achieve VOC emission reductions from consumer products of at least 2.3 tons per day in the South Coast Air Basin in 2010; and CONS-2, in which the ARB commits to develop new consumer product category limits to be proposed

to the Board between 2006 and 2008, with implementation in 2008 and 2010, that would achieve VOC emission reductions from consumer products of between 8.5 and 15 tons per day in the South Coast Air Basin in 2010;

WHEREAS, on January 9, 2004, the ARB submitted to the U.S. EPA the 2003 Statewide Strategy as a revision to the California SIP; upon approval by the U.S. EPA, the 2003 Statewide Strategy will replace the State's commitments in the 1994 SIP;

WHEREAS, in September 1997 three environmental groups (Communities for a Better Environment, the Coalition for Clean Air, and the Natural Resources Defense Council) filed a lawsuit in federal District Court regarding California's progress in achieving the 1994 SIP commitments (1994 SIP lawsuit);

WHEREAS, on January 28, 1999, the ARB reached a settlement agreement with the plaintiffs in the 1994 SIP lawsuit, and the settlement agreement was thereafter amended in December 1999 and June 2003;

WHEREAS, the amended settlement agreement includes a number of commitments, including a commitment that by June 30, 2004, ARB staff will submit to the Board and propose for adoption a consumer products control measure to achieve at least two tons per day of VOC emission reductions in the South Coast Air Basin in 2010, with a proposed implementation period of 2006;

WHEREAS, the amended settlement agreement also commits the ARB to adopt measures by December 31, 2004, that will achieve at least two tons per day of VOC emission reductions in the South Coast Air Basin in 2010;

WHEREAS, although the 2003 Statewide Strategy is intended to replace the State's original commitments under the 1994 SIP for the South Coast, the settlement agreement will remain in place until the ARB fulfills its obligations under the agreement;

WHEREAS, to fulfill the terms of the settlement agreement and to help meet the 2003 SIP commitments, staff has proposed amendments that will achieve at least 5 tons per day statewide of VOC emission reductions from consumer products, and 2.3 tons per day of emission reductions in the South Coast Air Basin by 2010;

WHEREAS, the proposed amendments would set VOC limits for 15 categories of consumer products to become effective on December 31, 2006, except the limit for "Anti-static Aerosol" products, which would become effective on December 31, 2008, and a two-tier limit for the "Shaving Gel" category with effective dates of December 31, 2006 for tier I and December 31, 2009 for tier II;

WHEREAS, the proposed amendments also include various other modifications and clarifications to existing regulatory language, including modifications to product category definitions, code-dating requirements, "sell-through" provisions, the "most restrictive limit

provision,” reporting requirements and additional labeling requirements for certain categories, and a number of minor changes to correct errors and improve clarity;

WHEREAS, staff has also proposed various amendments to modify and update Method 310, including updates to test method citations and dates, and modifications to the propellant collection procedures and equations specified for the calculation of VOC content;

WHEREAS, sections 39658 and 39666 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCMs) for substances identified as toxic air contaminants in accordance with specified criteria;

WHEREAS, for toxic air contaminants for which the Board has not specified a threshold exposure level, section 39666 of the Health and Safety Code requires ATCMs to be designed to reduce emissions to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, considering factors specified in section 39665, unless the Board determines, based on an assessment of risk, that an alternative level of emissions reduction is adequate or necessary to prevent an endangerment of public health;

WHEREAS, on July 13, 1989, October 12, 1990, October 10, 1991, and April 8, 1993, the Board identified methylene chloride (MeCl), trichloroethylene (TCE), perchloroethylene (Perc), and para-dichlorobenzene (PDCB) respectively as toxic air contaminants, pursuant to article 3 (commencing with section 39660), chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, the Board did not specify threshold exposure levels for MeCl, TCE, Perc, and PDCB below which no significant adverse health effects are anticipated (see title 17, California Code of Regulations, sections 93000 and 93001);

WHEREAS, staff has worked with the air pollution control districts and air quality management districts, the affected sources, and the public, as required by Health and Safety Code section 39665, to prepare a report identifying the need for, and appropriate degree of control of these toxic air contaminants;

WHEREAS, the *Initial Statement of Reasons for the Proposed Amendments to the California Aerosol Coating Products, Antiperspirants and Deodorants, and Consumer Products Regulations, Test Method 310, and Airborne Toxic Control Measure for Para-Dichlorobenzene Solid Air Fresheners and Toilet/Urinal Care Products* (Initial Statement of Reasons), which was released to the public on May 7, 2004, constitutes the report on the need and appropriate degree of regulation required under Health and Safety Code section 39665;

WHEREAS, in accordance with Health and Safety Code section 39665(c), the Initial Statement of Reasons and any relevant comments received during public consultation with the districts, affected sources, and the public have been included in the administrative

record and were made available for public review and comment upon request 45 days prior to the public hearing to consider the proposed ATCM;

WHEREAS, the Initial Statement of Reasons discusses, to the extent data could reasonably be made available, the factors specified in Health and Safety Code section 39665(b);

WHEREAS, the proposed amendments include a proposed ATCM for para-dichlorobenzene solid air fresheners and toilet/urinal care products (PDCB ATCM);

WHEREAS, the proposed amendments would also prohibit the use of MeCl, Perc, and TCE in seven product categories: Adhesive Removers, Contact Adhesives, General Purpose Degreasers, Electrical Cleaners, Electronic Cleaners, Footware or Leather Care Products, and General Purpose Degreasers;

WHEREAS, the staff estimates that the proposed amendments will achieve statewide over five tons per day in emission reductions of toxic air contaminants by 2010;

WHEREAS, the Board has considered the impact of the proposed amendments on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, the Board staff has consulted with the U.S. EPA regarding consumer product regulations promulgated by other state and local governments as provided in section 183(e) of the federal Clean Air Act.

WHEREAS, the Board finds that:

The proposed VOC limits will reduce VOC emissions by about six tons per day statewide by the year 2006, which equates to over 2.3 tons per day reduction in the South Coast Air Basin by 2010;

The proposed amendments are authorized by California law and satisfy the requirements of section 41712 of the Health and Safety Code;

There exists adequate data to support the adoption of the proposed amendments and to establish that the amendments are necessary, and are commercially and technologically feasible;

The proposed amendments are necessary to attain and maintain the state and federal ambient air quality standards, and to help fulfill California's SIP commitments to achieve emission reductions from consumer products;

The proposed amendments are necessary to meet a portion of the commitments in the settlement agreement, as amended in June 2003, with Communities for a Better Environment, the Coalition for Clean Air, and the Natural Resources Defense Council;

The proposed standards are technologically and commercially feasible for each of the regulated consumer product categories;

The proposed amendments will not result in the elimination of a product form for any product category;

The economic impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

The proposed amendments significantly reduce human health, safety, or environmental risks;

The cost-effectiveness of the regulatory amendments was considered, and the amendments as adopted are cost-effective;

The benefits to human health, public safety, public welfare, or the environment justify the costs of the regulatory amendments;

The reporting requirements of the proposed amendments which apply to businesses are necessary for the health, safety, and welfare of the people of the State; and

No reasonable alternative considered or that has otherwise been identified and brought to the attention of the ARB would be more effective in carrying out the purpose for which the amendments are proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed amendments.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

With the mitigation measures described below, the proposed amendments will not result in any significant adverse impacts on the environment, although there may be a slight, but not significant, increase in emissions of global warming compounds;

In order to meet the proposed VOC standards manufacturers could increase their use of MeCl, Perc, and TCE in reformulated Adhesive Removers, Contact Adhesives, General Purpose Degreasers, Electrical Cleaners, Electronic Cleaners, Footware or Leather Care Products, and General Purpose Degreasers;

Adverse health and environmental impacts can occur from the use of MeCl, Perc, and TCE in these products, as described in the Initial Statement of Reasons, and mitigation measures are necessary and appropriate to reduce emissions of these toxic air contaminants;

The proposed amendments will eliminate emissions of MeCl, Perc, and TCE by prohibiting their use in Adhesive Removers, Contact Adhesives, General Purpose Degreasers, Electrical Cleaners, Electronic Cleaners, Footware or Leather Care Products, and General Purpose Degreasers;

A complete prohibition on the use of MeCl, Perc, and TCE, as opposed to a “no new or increased use” provision, is appropriate in order fully mitigate the adverse health impacts of these toxic air contaminants and to level the playing field for all manufacturers;

No other feasible alternatives or mitigation measures would reduce the potential adverse environmental impacts from MeCl, Perc, and TCE use while at the same time providing the health benefits described in the Initial Statement of Reasons;

While the prohibition on the use of MeCl, Perc, and TCE is necessary and appropriate as a mitigation measure under CEQA, the prohibition is also within the authority granted to the ARB for control of toxic air contaminants under Health and Safety Code section 39665 et seq;

Further, staff has fulfilled the requirements for ATCM adoption specified in these sections and the prohibition has been designed, in consideration of the factors specified in Health and Safety Code section 39665(b), to reduce emissions of MeCl, Perc, and TCE to the lowest level achievable through the application of best available control technology (BACT) in Adhesive Removers, Contact Adhesives, General Purpose Degreasers, Electrical Cleaners, Electronic Cleaners, Footware or Leather Care Products, and General Purpose Degreasers; and

Suitable and effective alternative formulations that do not contain MeCl, Perc, and TCE are available for Adhesive Removers, Contact Adhesives, General Purpose Degreasers, Electrical Cleaners, Electronic Cleaners, Footware or Leather Care Products, and General Purpose Degreasers.

WHEREAS, regarding the PDCB ATCM, and in consideration of the Initial Statement of Reasons and the written comments and public testimony it has received, the Board further finds that:

In accordance with Health and Safety Code section 39666(c), the PDCB ATCM has been designed, in consideration of the factors specified in Health and Safety Code section 39665(b), to reduce emissions to the lowest level achievable through the application of BACT;

The PDCB ATCM will reduce PDCB emissions in California from solid air fresheners and toilet/urinal care products by approximately 3.3 tons per day in 2006 and will reduce ambient levels of PDCB, which will achieve near-source risk reduction benefits;

Emission reductions resulting from the PDCB ATCM will also reduce adverse environmental impacts on wastewater treatment plants;

The PDCB ATCM will reduce emissions of VOCs, since PDCB is a VOC; and

Alternative solid air fresheners and toilet/urinal care products that comply with the PDCB ATCM are currently available and in use, and are suitable and effective.

NOW, THEREFORE, BE IT RESOLVED that the Board is initiating steps toward the final adoption of the proposed amendments to sections 94501, 94506-94510, 94512, 94513, 94515, and 94526, title 17, California Code of Regulations, and the proposed amendments to ARB Method 310, as set forth Attachment A, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the amendments set forth in Attachment A, with the modifications set forth in Attachment B and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if she determines that this is warranted after review of the comments.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to evaluate whether, for some product categories, it is appropriate to specify an effective date of December 31, 2006, instead of December 31, 2005, for the prohibition of MeCl, Perc, and TCE in Adhesive Removers, Contact Adhesives, General Purpose Degreasers, Electrical Cleaners, Electronic Cleaners, Footwear or Leather Care Products, and Graffiti Removers; for product categories where the Executive Officer determines that an effective date of December 31, 2006, is appropriate, the Executive Officer shall reflect this modification in the regulatory language

made available to the public for the 15-day comment period described above.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take the following actions: (1) monitor the progress of manufacturers in meeting the VOC limits, (2) conduct technical assessments prior to the effective dates for each of the VOC limits, and (3) identify any significant problems in achieving the limits and propose any future regulatory modifications that may be appropriate.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to perform a detailed technical and cost assessment of manufacturers' progress towards meeting the four percent VOC limit for Shaving Gel at least one year before the December 31, 2009, effective date of the limit.

BE IT FURTHER RESOLVED that, following approval of the amendments by the Office of Administrative Law, the Board directs the Executive Officer to submit the amendments to the U.S. EPA for inclusion in the SIP.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to include in the SIP revision any additional documentation identified as necessary for approval under the federal Clean Air Act and U.S. EPA regulations, and to work with the U.S. EPA to ensure that the amendments are approved as a SIP revision.

BE IT FURTHER RESOLVED that regarding the PDCB ATCM and the prohibition of MeCl, Perc, and TCE, the Board directs the Executive Officer to undertake a public outreach program to inform all sectors of affected industry and the public about the regulatory requirements and effective dates, and to urge the affected industry to accelerate as much as possible the timeframes for eliminating these toxic air contaminants from consumer products.

I hereby certify that the above is a true
And correct copy of Resolution 04-18, as
Adopted by the Air Resources Board.

Lori Andreoni, Clerk of the Board

Resolution 04-18

June 24, 2004

Identification of Attachments to the Board Resolution

Attachment A: Proposed amendments to the Consumer Products Regulation, the Antiperspirants and Deodorants Regulation, the Aerosol Coating Products Regulation, and Revisions to Test Method 310, as set forth in Appendix A to the Initial Statement of Reasons, released May 7, 2004.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the Board hearing on June 24, 2004).