

State of California
AIR RESOURCES BOARD

Resolution 96-58

November 21, 1996

Agenda Item No.: 96-9-5

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (the "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 directs the Board to adopt regulations to achieve the maximum feasible reduction in reactive organic compounds (referred to as "volatile organic compounds" or "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 section 41712 of the Health and Safety Code, the Board has adopted regulations to reduce VOC emissions from antiperspirants and deodorants (Title 17, California Code of Regulations (CCR), sections 94500-94506.5, the "antiperspirant and deodorant regulation"), consumer products (Title 17, CCR, sections 94507-94517; the "consumer products regulation"), and aerosol coatings (Title 17, CCR, sections 94520-94528, the "aerosol coatings regulation");

WHEREAS, the Board has also adopted an alternative control plan regulation allowing the use of an aggregate emissions cap for consumer products and aerosol coatings (Title 17, CCR, sections 94540-94555; the "alternative control plan");

WHEREAS, on November 15, 1994 the Board adopted the California State Implementation Plan for Ozone (SIP) to satisfy the requirements of the federal Clean Air Act;

WHEREAS, on February 14, 1995, the antiperspirant and deodorant regulation and the consumer products regulation were approved by the United States Environmental Protection Agency (U.S. EPA) as components of the SIP;

WHEREAS, on September 25, 1995, the U.S. EPA approved California's SIP in its entirety;

WHEREAS, staff has proposed amendments to: (1) postpone the effective date of the 25 percent VOC standard for aerosol adhesives from January 1, 1997, until January 1, 2002; (2) establish that the test method contained in the consumer products regulation shall take precedence over manufacturers' records in situations where a conflict exists; and (3) amend several definitions and make other changes to enhance clarity, correct typographical errors, and improve enforcement;

WHEREAS, staff has also proposed amendments to the VOC definitions in the consumer

products regulation and the aerosol coatings regulation, in order to achieve consistency between the VOC definitions in these two regulations and the U.S. EPA's VOC definition, and to increase formulation flexibility for manufacturers;

WHEREAS, in 1996 the Legislature enacted Assembly Bill 1849 ("AB 1849"; Stats. 1996, Chapter 766) which made a number of revisions to Health and Safety Code section 41712;

WHEREAS, to implement AB 1849, staff has also proposed amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations to extend the sell-through period from eighteen months to three years; and amendments to the consumer products regulation to reflect the change in authority to regulate aerosol adhesives;

WHEREAS, the California Environmental Quality Act (CEQA) 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 amendments to the regulations will provide additional flexibility and lower compliance cost for manufacturers subject to the regulations;

It is appropriate to amend the VOC definitions in the consumer products regulation and the aerosol coatings regulation, in order to achieve consistency between the VOC definitions in these two regulations and the U.S. EPA's VOC definition, and to increase formulation flexibility for manufacturers;

The amendments to the “Test Methods” section of the consumer products regulation are necessary to ensure that the regulation can be effectively and consistently enforced, and to ensure that a mechanism exists to resolve potential conflicts between formulation data and actual testing results;

The amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations 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 amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations, and to establish that the amendments are both necessary and commercially and technologically feasible;

The amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations are necessary to attain and maintain the State and federal ambient air quality standards and fulfill California’s SIP commitments with maximum fairness and flexibility;

The amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations are technologically and commercially feasible;

The amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations will not result in the elimination of a product form for any product category;

The economic and cost impacts of the amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations 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 for this regulatory action;

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

WHEREAS, pursuant to the requirements of the California Environmental Quality Act (CEQA) and the Board’s regulations, the Board further finds that:

The amendments to the VOC definition in the aerosol coatings regulation will not have any significant adverse impacts on the environment;

Adverse environmental impacts may potentially result from two amendments to the consumer products regulation, in that the exemption of perchloroethylene from the VOC definition in the consumer products regulation and the postponement of the 25 percent VOC standard for aerosol adhesives to January 1, 2002, may result in the increased emission of perchloroethylene and volatile organic compounds, respectively;

Although it is possible that an increase in perchloroethylene emissions may result from the exemption of perchloroethylene from the VOC definition in the consumer products regulation, adverse environmental impacts are not likely to occur for the reasons identified in the Initial Statement of Reasons;

To the extent that some adverse environmental impacts occur as a result of exempting perchloroethylene, the need to provide increased fairness, flexibility, and more equitable treatment to consumer product manufacturers overrides any adverse environmental impacts that might potentially occur;

Postponement of the 25 percent VOC standard for aerosol adhesives is necessary to preserve the feasibility of the standard, achieve fairer and more equitable treatment for those manufacturers not wishing to use methylene chloride in their products, and help ensure that manufacturers do not increase their use of methylene chloride to comply with the standard; these considerations override any adverse environmental impacts that may occur as a result of achieving fewer VOC reductions from aerosol adhesives between 1997 and 2002;

There are no other feasible alternatives or mitigation measures that would reduce the potential environmental impacts described above while at the same time providing increased fairness, flexibility, more equitable treatment, and other benefits realized by the amendments;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to sections 94508-94515 and 94517, Title 17, CCR (in the consumer products regulation); the amendments to sections 94521(a)(62) and 94522(b), Title 17, CCR (in the aerosol coatings regulation); and 94502(e), Title 17, CCR (in the antiperspirant and deodorant regulation); as set forth in Attachments A and B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer 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 them 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 amendments to the Board for further consideration if he determines that this is warranted after review of the comments.

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 January 1, 2002 VOC limit for aerosol adhesives, (2) identify any significant problems in the achievement of the limit and propose any future regulatory modifications that may be appropriate, (3) schedule a Board hearing no later than June 1, 2000, for the Board to review and consider any appropriate modifications to the January 1, 2002 VOC limit for aerosol adhesives, and (4) to promote the policy of integrated pollution control, to monitor perchloroethylene emissions from consumer products and provide mitigation, if necessary.

BE IT FURTHER RESOLVED that, following approval of the amendments by the Office of Administrative Law, the Executive Officer is directed to submit the amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations 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 approvability under the federal Clean Air Act and U.S. EPA regulations, and to work with the U.S. EPA to ensure that the amendments to the consumer products, antiperspirant and deodorant, and aerosol coatings regulations are approved as a SIP revision.

BE IT FURTHER RESOLVED that to promote the policy of integrated pollution control, the Board directs staff to conduct an assessment under the State toxic air contaminant program (Health and Safety Code section 39665 *et seq.*) of the need for control of perchloroethylene used in consumer products, and to report on the status of this assessment to the Board no later than June 1997.

I hereby certify that the above is a true and correct copy of Resolution 96-58, as adopted by the Air Resources Board.

Pat Hutchens, Clerk of the Board

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November 21, 1996

Identification of Attachments to the Board Resolution

Attachment A: Proposed amendments to the Consumer Products and Aerosol Coatings Regulations, sections 94508 to 94515, 94517, and 94521, Title 17, California Code of Regulations, as set forth in Appendices A and B to the Initial Statement of Reasons.

Attachment B: Staff's Suggested Modifications to the Proposed Amendments (distributed at the Board hearing on November 21, 1996).