

State of California
AIR RESOURCES BOARD

Resolution 97-42

November 13, 1997

Agenda Item No.: 97-9-2

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 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 section 41712 of the Health and Safety Code, the Board has adopted the following regulations, which are collectively known as "the California Consumer Products Regulations": (1) the Regulation for Reducing VOC Emissions from Antiperspirants and Deodorants (Title 17, California Code of Regulations (CCR), sections 94500-94506.5); (2) the Regulation for Reducing VOC Emissions from Consumer Products (Title 17, CCR, sections 94507-94517); (3) the Regulation for Reducing VOC Emissions from Aerosol Coating Products (Title 17, CCR, sections 94520-94528); and (4) the Alternative Control Plan Regulation for Consumer Products and Aerosol Coating Products (Title 17, CCR, sections 94540-94555);

WHEREAS, on November 15, 1994, the Board adopted the California State Implementation Plan for Ozone (SIP), which incorporates the California Consumer Products Regulations as a component of the SIP;

WHEREAS, the SIP includes a commitment for an 85 percent reduction in consumer products VOC emissions from the 1990 baseline by the year 2010;

WHEREAS, on February 14, 1995, the Regulation for Reducing VOC Emissions from Consumer Products was approved by United States Environmental Protection Agency (U.S. EPA) as part of the SIP;

WHEREAS, a two-tiered standard for hairspray is included in the Regulation for Reducing VOC Emissions from Consumer Products; the first-tier standard of 80 percent VOC became effective on January 1, 1993, and the second-tier standard of 55 percent VOC was originally

set to become effective on January 1, 1998;

WHEREAS, on March 27, 1997 the Board approved a delay in the 55 percent VOC standard for hairspray until June 1, 1999, in order to preserve the commercial feasibility of the standard, to ensure that the basic market demand for hairsprays can be met, and to avoid disruption and adverse economic impacts in the hairspray market;

WHEREAS, at the time the 55 percent VOC hairspray standard was postponed, the Board directed ARB staff to work with all interested parties to develop an early reduction credit program designed to provide an incentive for manufacturers to come into early compliance with the 55 percent VOC standard;

WHEREAS, in response to the Board's direction, staff has proposed a regulation and related amendments to the existing California Consumer Products Regulations establishing an early reduction Hairspray Credit Program including the option to reward those manufacturers that make the effort to develop hairspray products with lower VOC levels than required;

WHEREAS, the proposed Hairspray Credit Program will establish a voluntary, market-based program providing for both the generation and use of VOC emission reduction credits, which are called Hairspray Emission Reduction Credits (HERCs);

WHEREAS, under the proposed voluntary program, hairspray manufacturers have the option of applying for HERCs if they comply with the 55 percent VOC hairspray before the June 1, 1999 effective date, or if they make hairsprays with lower levels of VOC than required;

WHEREAS, the proposed Hairspray Credit Program allows HERCs to be used to obtain additional time to comply (i.e., a delayed compliance period) with upcoming VOC standards for consumer products; HERCs may also be used to mitigate excess emissions that result from the granting of a variance from the hairspray standard after June 1, 1999, to provide an environmental benefit by retiring credits, or to reconcile any shortfalls occurring in a compliance period under the Alternative Control Plan Regulation;

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:

It is appropriate to approve the Hairspray Credit Program to provide an incentive for manufacturers to come into early compliance with the 55 percent VOC standard, and to reward those manufacturers that make the effort to develop hairspray products with lower VOC levels than required;

The Hairspray Credit Program will provide additional flexibility and lower compliance costs for manufacturers and marketers subject to the California Consumer Products Regulations;

The use of HERCs will not jeopardize the commitments in the SIP for emission reductions from consumer products, because the Hairspray Credit Program specifies that all HERCs shall expire no later than January 1, 2010;

The Hairspray Credit Program will have beneficial overall economic impacts; the economic impacts of the program 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;

This regulatory action is authorized by California law and satisfies the requirements of section 41712 of the Health and Safety Code;

There exists adequate data to support the adoption of this regulatory action;

The Hairspray Credit Program is necessary to attain and maintain the state and federal ambient air quality standards with maximum flexibility and less cost;

The Hairspray Credit Program is technologically and commercially feasible;

The Hairspray Credit Program will not result in the elimination of a product form for any product category; and

The reporting requirements of Hairspray Credit Program which apply to businesses that voluntarily participate in the program 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 and the Board's regulations, the Board further finds that:

The Board has determined that this regulatory action will not result in any significant adverse impacts on the environment.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the new sections 94560-94574, Title 17, CCR, and approves the amendments to sections 94502, 94509, 94522, and 94548, Title 17, CCR, as set forth in Attachment A hereto, with the modifications described in Attachment B hereto;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the new sections and 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 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 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 implementation of the Hairspray Credit Program; (2) conduct an annual analysis of credit generation and use activities in the Hairspray Credit Program; (3) identify any significant problems in the implementation of the Hairspray Credit Program and propose any future regulatory modifications that may be appropriate, and (4) report to the U.S. EPA as part of ARB's milestone compliance demonstration for the SIP, at least once every three years, a summary of annual credit generation and use activities for the previous three years, and a description of any significant problems.

BE IT FURTHER RESOLVED that, following approval of this regulatory action by the Office of Administrative Law, the Board directs the Executive Officer to submit the 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 regulations are approved as a SIP revision.

I hereby certify that the above is a true and correct copy of Resolution 97-42 as adopted by the Air Resources Board.

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Pat Hutchens, Clerk of the Board

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Identification of Attachments to the Board Resolution

Attachment A: Proposed new sections 94560-94574, Title 17, California Code of Regulations (CCR) and proposed amendments to sections 94502, 94509, 94522, and 94548, Title 17, CCR, as set forth in Appendix A to the Initial Statement of Reasons.

Attachment B: Staff's Suggested Changes to the Original Proposal (distributed at the Board hearing on November 13, 1997).