

September 21, 2009

via e-mail

California Air Resources Board
1001 I Street, 23rd Floor
Sacramento, California 95814

Attn: Ms. Lori Andreoni
Manager Board Administration and Regulations Coordination Unit
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Subject: Proposed Amendments to the California Consumer Products Regulations;
Board Agenda Item # 09-8-4

Dear Honorable Board Members:

The Consumer Specialty Products Association (CSPA) appreciates the opportunity to submit comments on the Air Resources Board (ARB) Staff Proposed Amendments to the existing California Consumer Products Regulations.¹ The ARB staff proposal would establish new or more restrictive volatile organic compound (VOC) limits for three broad product categories. These limits are more restrictive than any similar federal or state regulatory standards. In addition, the ARB staff proposal also includes new restrictions on the use of compounds with high global warming potential (GWP) in all three product categories. There is no comparable federal or state regulation reducing greenhouse gas (GHG) emissions.

CSPA participated as an active member of the ARB's Consumer Products Regulation Workgroup (CPRWG). We commend ARB staff's efforts to ensure that all interested parties had an opportunity to participate in this open and transparent public effort to develop the proposed amendments that are presented to the Board for your consideration. Throughout the course of this rulemaking process, CSPA worked cooperatively with ARB staff, environmental groups, air districts and various other stakeholders to identify potential opportunities for reductions in the VOC content of consumer products in the hope that these challenging new regulatory limits will prove to be technologically and commercially feasible.

CSPA member companies take seriously the environmental health and safety benefits of our products, and continuously seek to improve them. Therefore, CSPA member companies commit to expend the time and money to develop the new technologies necessary to reformulate their products to meet the aggressive and technology-forcing VOC limits such as those that will be established by this proposed regulation.

CSPA's commitment to meet this new challenge is consistent with our member companies' long-standing efforts to work constructively and cooperatively with ARB staff, environmental groups

¹ The full text of the ARB Staff's proposed amendments to California's comprehensive Consumer Products Regulation and other related documents are posted at:
<http://www.arb.ca.gov/regact/2009/cpmthd310/cpmthd310.htm>.

and other stakeholders. During the past 20 years, CSPA member companies spent hundreds of millions of dollars to lower VOC content in consumer products to help improve air quality in California while maintaining our industry's ability to supply effective products that consumers can rely upon to contribute positively to their health, safety, and quality of life.

STATEMENT OF INTEREST

CSPA is national trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of consumer and commercial products that help household and institutional customers create cleaner and healthier environments. CSPA member companies' products include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; and a host of other products used every day. These products are formulated and packaged in many forms and are generally marketed nationally. Through its product stewardship program Product Care[®] and scientific endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products.

COMMENTS

CSPA submitted initial comments on April 10, 2009, as part of the CPRWG's open, transparent and interactive process. This document is hereby incorporated by reference into the comments that CSPA is filing with the Board today.

The current document presents CSPA's specific recommendations for the reasonable and necessary revisions to the ARB staff's proposed rule amendment that was issued to the public in August 2009.

A. CSPA Member Companies Will Initiate Action Necessary to Comply with ARB Staff's Technology-forcing VOC Limit for Air Fresheners.

ARB's proposed 20 percent VOC limit for Air Fresheners: Double Phase Aerosol presents very significant technological challenges for product manufacturers. This will be the third time that ARB has established a regulatory standard for this broad category of products; the current limit took effect less than five years ago.² CSPA presented ARB staff with scientific and technical evidence demonstrating the complexity of reformulating products in this category.³ Completing the necessary manufacturing "stage-gates" for researching, developing and engineering new product formulations will require two to three years before a new technology can be introduced as a viable product in the marketplace. Moreover, this is not a monolithic group of products, the large number of different scents and product sizes adds to the difficulty of reformulation products in this category.

² ARB first approved a VOC limit for Double Phase Aerosol Air Fresheners in 1990 as part of the "Phase I" rulemaking for consumer products; the 30 percent standard took effect on January 1, 1993. ARB approved a second VOC limit for this product category in 1999 as part of the "Midterm Measures II" rulemaking; the current 25 percent standard took effect December 31, 2004.

³ CSPA Product Technology Seminar for ARB Staff (January 2009).

Although the proposed VOC limit presents very significant technological challenges, CSPA member companies commit to initiate actions necessary to reformulate a broad range of products to meet the new limit by the December 31, 2012, effective date.

B. CSPA Is Concerned that ARB Staff's Cost Analysis Fails to Adequately Calculate the Actual Costs of Complying with the Revised VOC Limit for Double Phase Aerosol Air Fresheners.

ARB staff appears to have chosen assumptions in their cost assessment that fail to adequately account for the actual costs that manufacturers will incur in reformulating their products to meet the stringent and technologically challenging 20 percent VOC limit for the Double Phase Aerosol Air Freshener product category. CSPA believes that the ARB staff's cost analyses⁴ are at variance with technical data documenting the difficulties manufacturers will likely encounter in reformulating the wide range of products in this broad category. Specifically, the very low currently compliant market share (*i.e.*, less than 1 percent) for this proposed VOC limit underscores the fact that almost all the products in this broad category will need to be reformulated.⁵ The Staff Report quite correctly recognizes the "complex and lengthy product development process necessary for reformulating approximately 200 non-complying products and fragrance variants."⁶ However, CSPA believes that ARB staff significantly underestimates "low estimate" research and development (R&D) costs as just \$1,800 per company (not per product), or \$43,200 for the entire industry, resulting in an "average-estimate" for the total industry costs of just \$915,400.⁷

This estimated total cost more closely approximates the costs per company, not the total for the entire major industry. There are 24 companies who must reformulate a total of 218 products. In the consumer products industry, typical product reformulations costs generally are in the order of \$10,000 to \$100,000 per product. Thus, 218 product reformulations would generally require total R&D costs in the range of \$2.18 million to \$21.8 million, not the \$43,000 to \$1,787,600 estimated here. In addition, ARB staff also estimates "no increase" at all in the price that consumers will pay for the reformulated products,⁸ a situation that is unlikely to occur across a broad range of products and markets.

Therefore, CSPA respectfully requests the Board to direct staff to conduct another analysis applying more reasonable assumptions and better taking into account the information provided by manufacturers that substantiates the significant difficulties they will encounter in reformulating their products to meet this stringent revised VOC limit.

C. CSPA Supports the Proposed Clarifications Affecting the Automotive Windshield Washer Product Category.

ARB staff proposes to amend the current label requirements for automotive windshield washer fluid products that are diluted prior to use. *See* Sec. 94509(b)(3). In summary, the proposed

⁴ Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulation," ARB (Aug. 7, 2009) (hereinafter referred to as "ISOR"), Appendix D at D-2; and Appendix E at E-1 to -E-7.

⁵ ISOR, Table VI-2 at VI-54..

⁶ ISOR at VI-53.

⁷ ISOR at VII-80 and VII-81.

⁸ ISOR at VII-90.

revision will require manufacturers to clearly identify on the product label whether the product is “ready to use” or whether it must be diluted with water prior to use (*e.g.*, identified as a “concentrate”). CSPA believes that this proposed change is both reasonable and necessary to: (1) ensure that the product complies with the applicable VOC limit; and (2) convey instructions about proper product use to customers.

ARB staff also proposes to revise the text in the Table of Standards to clarify that the applicable VOC limits for this product category applies to either Type “A” areas (*i.e.*, specified geographic areas of Northern California) or “All other areas.”⁹ This proposed revision removes any potential ambiguity about the applicability of the two stringent VOC limits for this product category. CSPA supports ARB staff’s ongoing efforts make necessary revisions to ensure better understanding of the requirements of (and hence, enhance compliance with) California’s comprehensive Consumer Products Regulations.

D. ARB’s Proposed Statewide Regulatory Limits Are Generally More Stringent than the District Rule.

The VOC limits being proposed by ARB for Multi-purpose Solvents and Paint Thinners (30% and 3%) are similar but not equivalent to VOC standards established earlier this year by South Coast Air Quality Management District (SCAQMD) Rule 1143 (300 grams per liter and 25 grams per liter).¹⁰ In the Initial Statement of Reasons (ISOR) for this rule, ARB states that the ARB percent-VOC and SCAQMD weight-per-volume limits for the thinners and solvents are “virtually equivalent” except for the CARB 30% limit being effective one year later and the 3% limit three years later than the respective South Coast limits.¹¹

To be precise, however, the two limits are not “virtually equivalent,” due to the relative low density (specific gravity) of acetone and other types of solvents used in these products. In most cases the ARB proposal will impose a more stringent standard. For example, if the most common exempt compound used for formulating 30% and 3% VOC products is acetone (density 790g/l), then the 300 g/l SCAQMD standard equals 38% VOC, and the 25 g/l equals 3.2%. So the 30% by 2010 is a significantly more stringent standard than the SCAQMD 300 g/l standard, and the 3% by 2012 is somewhat more stringent than the SCAQMD 25 g/l standard.

E. ARB Should Remove Any Possible Ambiguity about the Statewide Applicability of the New VOC Limits for Multi-purpose Solvents and Paint Thinners.

CARB states in the Executive Summary and elsewhere in the ISOR that that Multi-Purpose Solvents and Paint Thinners will be subject to the SCAQMD regulation VOC limits in that District, and subject to the CARB “statewide limits only for products sold to all areas of California outside the South Coast Air Basin.”¹² The Staff Report specifically states only that the aromatics, toxics and GWP limits apply in South Coast.¹³ However, the proposed rule language clearly makes the VOC limits also apply in all parts of the state, including the South

⁹ See Table of Standards set forth at 17 CCR § 94509(a).

¹⁰ The text of SCAQMD Rule 1143 is posted at: <http://aqmd.gov/rules/reg/reg11/r1143.pdf>.

¹¹ ISOR at ES-7.

¹² ISOR at ES-7 and VI-62.

¹³ ISOR at VI-62 and VI-63.

Coast, with the only provisions that apply only outside of South Coast being the labeling requirements. *See* proposed Sec. 94512(e)(1).

The proposed amendments in Appendix B of the ISOR would actually therefore result in these products sold in South Coast being subject to four successive standards according to the following effective dates:

- 300 grams per liter (effective January 1, 2010)
- 30 % weight/weight (effective December 31, 2010)
- 25 grams/liter (effective January 1, 2013)
- 3 % weight-weight (effective December 31, 2013)

In terms of percent VOC equivalents, most of these products will be forced to meet successive limits of 38%, 30%, 3.2% and 3.0%. In addition, the ARB rules have various exemptions not included in the District rule, further complicating any requirements to comply with two different regulations. There could be many products that comply with the District limit but not the ARB limit, and other products that would comply with the ARB limit but not the District limit, at various time in this period. We believe that this is an unprecedented and unjustifiable burden to force these products to meet four successively different VOC standards over a four year period.

CSPA strongly believes that, as a matter of sound public policy, consumer product should not be simultaneously subject to both statewide and district rules since this would often result in conflicting regulatory requirements. In addition, this issue should not be allowed to remain ambiguous, with the introductory language to the regulation apparently stating that the ARB VOC limits apply only outside of South Coast while the express language of the regulation states that the limits apply statewide.

CSPA believes that the best way for ARB to resolve this issue would be for this statewide ARB regulation to supersede the District regulation for these product categories. CSPA believes that this is an option supported as a matter of good public policy and by ARB's legal authority under the California Clean Air Act.

The California Legislature understood the importance of distinguishing between regulations governing stationary facilities, which by their nature are firmly fixed to a specific geographic location and consumer products, which are purchased and used by California residents who may freely move throughout the state. Section 41712(f) of the Health & Safety Code clearly states, "A district shall adopt no regulation pertaining to disinfectants, nor any regulation pertaining to a consumer product that is different than any regulation adopted by the state board for that purpose." The plain language of the statute makes no distinction as to whether ARB promulgated a statewide regulation before (or after) a district adopted its local regulation. Thus, based on unambiguous language of the ARB's statutory mandate to promote public health by establishing a statewide regulation for consumer products, CSPA urges the Board to remove any potential ambiguity about the fact that the new VOC limits for Multi-purpose Solvent and Paint Thinner product categories are intended to supersede any district rules.¹⁴

¹⁴ It is well-settled law that when statutory language contains no ambiguity it is presumed that the Legislature meant what is said, and thus, the plain meaning of the statute governs. *People v. Robles*, 23 Cal.4th 1106, 1111 (2000).

If, however, ARB is unwilling at this time to use its authority to supersede existing district rules for consumer products, we urge that ARB modify the language of its regulation to have the ARB VOC limits for these products apply in all areas of the state except within the geographic boundaries of the South Coast Air Basin. This clarification would at least allow product technologies that meet one but not both of the applicable limits to be sold in some parts of the state, and would to some degree avoid subjecting all products to four new standards, each different or more restrictive than the last, over a four year period.

F. CSPA Believes that ARB Should Proceed Immediately Toward Developing a Statewide Reactivity-Based Limit for Multi-Purpose Solvents and Paint Thinners.

In addition to resolving the dual jurisdiction issues noted above, CSPA urges ARB to begin work immediately in cooperation with SCAQMD to develop reactivity-based limits to replace all other VOC limits for these products statewide. We believe that the schedule for this process in the ISOR represents an unreasonable and unnecessary delay for this important process.

ARB proposes in the ISOR to allow both SCAQMD limits to become effective (on January 1, 2010 and January 1, 2011) as well as its own initial 30% limit (on December 31, 2010) prior to conducting a technology review in mid-to-late 2012 to determine whether an alternative reactivity-based standard should be adopted.¹⁵ We would expect that such reactivity-based limit would be based on Product-Weighted Maximum Incremental Reactivity (PW-MIR) concept used in the Aerosol Coatings Regulation. This timing would mean that a statewide PW-MIR limit would likely become effective three years or more after the SCAQMD 25-g/l is in effect. This would not seem to be a reasonable plan for manufacturers of these products. The stated intent is to base any new limit on the specific products being sold in mid-2012, assessing fire hazards and ozone impacts.¹⁶ But resolving this issue earlier could serve to avoid any potential fire hazards, while assuring that the appropriate reductions in ozone impacts actually occur.

We strongly urge that ARB move these plans ahead and start investigating this option immediately. It should be feasible to develop a reactivity-based standard that provides equivalent ozone reductions as the mass-based limits adopted by SCAQMD and proposed by ARB, while providing the flexibility for manufacturers to supply safer and more effective products to consumers. This process cannot be delayed until after the mass-based limits have already taken effect. They can and should be addressed by sometime next year.

G. CSPA Urges ARB to Eliminate the Limitation on Aromatic Compounds, or to Restrict the Definition.

ARB staff is also proposing to establish for Multi-purpose Solvents and Paint Thinners a one percent (1%) limit on the aromatic compounds, with the definition given for “aromatic compound” that is extremely broad.¹⁷ The stated purpose for this proposal is, “To ensure the ozone forming potential of Multi-purpose Solvent and Paint Thinner products does not increase as a result of the implementation of the proposed VOC limits...”¹⁸

¹⁵ ISOR at ES-11 to ES-12, V-47, VI-66, and VI-67.

¹⁶ ISOR at ES-18.

¹⁷ ISOR at IV-62.

¹⁸ *Id.*

CSPA believes that this further limitation is both unnecessary and inappropriate, as well as unenforceable, given the broad definition that includes any VOC that contains “one or more benzene or equivalent heterocyclic rings.” *See* proposed Sec. 94508(a)(13). Since the definition of VOC includes any compound with one or more carbon atoms, this definition would include many thousands of compounds, most of which have no volatility, and no ability to contribute to ozone formation. We know of no analytical methodology that could accurately determine the aromatic content of these products using this definition of “aromatic compound.”

We therefore urge that ARB eliminate this proposed requirement, and work with SCAQMD and industry to develop a reactivity-based limit to replace the mass-based limits adopted by the District and ARB, and thereby directly avoid any possibility that any product could be required to be reformulated to increase its ozone impact. If ARB is not willing to eliminate this provision, then the definition should at least be amended so that “aromatic compound” includes only those compounds that are volatile and capable of involvement in ozone formation.

H. CSPA Urges ARB to Provide a More Reasonable Amount of Time for Manufactures to Comply With a Demand for Information about Product Formulation.

CSPA fully recognizes and supports ARB’s authority to demand that manufacturers (or other responsible parties) provide accurate and complete information about the formulation of products that are selected for compliance testing. Moreover, CSPA understands that implementing an efficient (and fair) enforcement program requires that ARB receive this type of information in a timely manner.

However, CSPA is concerned that, as currently drafted, proposed Sec. 94515(h)(2)(A) and Sec. 94515(h)(2)(B)(2) provide only 10 working days to provide detailed technical information about one or more products, with failure to comply within that time specified to be a violation subject to fines. CSPA believes that this proposed new provision is unreasonable for two reasons. First, the 10-day period is at variance with timeframes provided by other sections of the California Consumer Products Regulations. Currently, the shortest timeframe for action is 30-days. This more reasonable timeframe is provided by the following sections of the current regulation:

- Sec. 94509(h)(2)(D)
- Sec. 94509(h)(3)
- Sec. 94510(h)(2)
- Sec. 94511(d)
- Sec. 94511(g)
- Sec. 94514(b)
- Sec. 94517

Second, a 10-day period would likely impose a significant burden on small businesses, which have limited staff capabilities. As a practical matter, ARB’s written demand for product information may arrive when a person is out of the office due to sickness or vacation. This provides an especially undue hardship on small businesses who often cannot afford to have multiple staff handling this function. In addition, many companies could need to obtain information from or confirm information with suppliers or contract manufacturers outside their company, and this process can result in unavoidable delays in responding.

Therefore, CSPA urges ARB to establish a more reasonable timeframe of 30-days for manufacturers to provide the requested information.

I. CSPA Commits to Work with ARB Staff, Environmental Groups and Other Stakeholder to Identify Innovative New Strategies for Future Emission Reductions.

ARB staff asserts that the State Strategy for California's 2007 State Implementation Plan (*i.e.*, 2007 Strategy) acknowledges that:

...VOC reductions from consumer products are becoming more difficult to achieve. In light of this, the [2007] Strategy includes a commitment to explore innovative reduction strategies in the longer term. These measures would include investigating emission reduction opportunities through reactivity-based standards and alternative market-based mechanisms. If these mechanisms cannot produce meaningful emission reductions from the consumer products source category, then other approaches would be evaluated.¹⁹

CSPA agrees with this assessment and strongly believes that future "command and control" regulation of consumer products does *not* provide a viable path forward towards achieving further improvements in air quality. This position does not reflect any diminution in CSPA member companies' commitment to continue our efforts to improve the environmental attributes of our products. Rather, it is a pragmatic recognition that the serious challenge of improving California's air quality requires the application of new and innovative thinking. Accordingly, CSPA commits to continue to work cooperatively with ARB staff, environmental groups and other stakeholders to identify new approaches to continue ARB's successful efforts to protect and improve the health of all California residents.

J. CSPA Supports the Consensus Positions Articulated by Other National Trade Associations on Their Member Companies' Products.

CSPA supports the positions articulated by the National Paint and Coatings Association (NPCA) and the American Chemistry Council (ACC) on the ARB staff's proposed new VOC limits for the Multi-purpose Solvent and Paint Thinner product categories.

SUMMARY AND CONCLUSIONS

During this rulemaking process, CSPA worked closely and cooperatively with ARB staff, environmental groups, air districts and various other stakeholders as part of the CPRWG. As a result of this open and transparent process, ARB Staff developed and proposed challenging new VOC and GWP limits that will provide significant emission reductions. The ARB Staff should be commended for efforts to conduct a fair and thorough rulemaking process to develop this major regulation.

Although the proposed revised VOC limit for Air Fresheners presents very significant technological challenges, CSPA member companies commit to initiate actions necessary to reformulate a broad range of products to meet the new limit by the December 31, 2012, effective

¹⁹ ISOR at ES-6.

date. In addition, these comments raise some concerns regarding some specific aspects of these proposed 2009 Amendments to the California Consumer Products Regulations, and asked for some modifications. In particular, we have asked the Board to:

- Revise its economic impact assessment to more accurately reflect the reformulation costs for Air Fresheners that our industry is agreeing to undertake.
- Make the VOC limits for the Multi-purpose Solvent and Paint Thinner product categories supersede District limits, or make the State limits apply only outside the District.
- Proceed without delay toward the development of reactivity-based limits for the solvents products in cooperation with the District with the goal of replacing both State and District mass-based limits.
- Eliminate the provision on aromatic compounds, or adjust the definition to include only volatile compounds.
- Provide 30 days instead of 10 days to supply information to allow a reasonable time period for small companies and those needing to obtain the information elsewhere.

The proposed new and revised VOC limits and related enforcement provisions present very serious and costly reformulating and marketing challenges. CSPA hopes that the proposed VOC limits will prove feasible in the time frames allowed for compliance. However, CSPA member companies have yet to identify feasible product technologies to meet these new VOC standards. Therefore, CSPA request that ARB staff commit to work with us to reevaluate these limits in the future if they prove to be technologically and commercially infeasible.

Once again, CSPA expresses our appreciation for the opportunity to comment on the ARB staff's proposed amendments to California's very stringent and comprehensive Consumer Products Regulations. Please contact us any time if you have questions regarding any of the issues raised in these comments.

Respectfully submitted,



D. Douglas Fratz
Vice President, Scientific
& Technical Affairs



Joseph T. Yost
Director, Strategic Issues Advocacy

cc: Robert Fletcher, P.E., Division Chief, Stationary Source Division
Janette Brooks, Chief, Air Quality Measures Branch, Stationary Source Division
David Mallory, P.E., Manager, Measures Development Section, Stationary Source Division
Carla Takemoto, Manager, Technical Evaluation Section, Stationary Source Division
Judy Yee, Manager, Implementation Section, Stationary Source Division
Trish Johnson, Air Quality Measures Branch Staff Lead, 2009 Regulatory Amendments
CSPA Air Quality Committee and Task Forces
Laurie Nelson, Randlett•Nelson•Madden Associates