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California Consumers for Freedom of Choice
Written Comments to the California Air Resources Board
September 27, 2007 Hearing To Consider Adoption of A Regulation
To Limit Ozone Emissions From Indoor Air Cleaning Devices

EXECUTIVE SUMMARY

1. **Who is California Consumers for Freedom of Choice (CCFC)?**

We are an advocate for protecting a consumer's right to choose the air cleaner/purifier solutions that best meet individual and family needs in all indoor environments (personal, home, business, employment, school, healthcare, recreational, travel, other) from known and unknown forms of indoor pollution & contamination: airborne, surface, or other sources for microbial contamination. Thousands of satisfied California consumers who are concerned over this regulation have contacted us.

2. **CCFC Proposals for Modest Solutions** - Strong supporter for "responsible regulation" and participant in all ARB Staff proceedings, formal and informal; offered concrete suggestions for reasonable regulation and made "modest solution" alternatives that preserve reasonable consumer choices; BUT consistently rejected by Staff, and in some instances Staff proposed even more stringent or restrictive language negatively impacting consumer choices.

a. CCFC urges the Board to STOP the Rush to Judgment, and have Staff slow down as the "risk of making mistakes are too great" for consumers and society, and could be irreparable and irreversible affecting thousands upon thousands of satisfied consumers with serious indoor air quality problems (See sample testimonials attached – we have received thousands of similar testimonials). AB 2276 deadline December 2008 and Board still maintains oversight.

b. CCFC urges the Board to consider CCFC alternative proposals to Staff restricting consumer choices:

(i) Adopt adequate warning labels and instructions on use of ozone emitting purifiers in English or alternative languages, especially where no medical or scientific evidence to support actual user harm – Staff treating air cleaners as being more dangerous than products where proven evidence of consumer harm, e.g., ETS/second hand smoke from tobacco products, pesticides, alcohol, chlorine, etc. Why the double standard?

(ii) Allow "all consumers" some higher than Federal 0.05 ppm use in "non-occupied" areas to more quickly clean up and sanitize dangerous indoor pollutants such as mold, mildew, bacteria, viruses, odors, etc., as opposed to having an industrial monopoly only;

(iii) Adopt 2007 based testing standards based on current usage, current technology and scientific realities, and not outdated UL 867 testing protocols designed for different usage, different technology and outdated science. Testing protocols originally designed for incidental ozone emissions where ozone had nothing to do with the purpose or functioning of the appliance – cannot revise the UL 867 decades old "duck model" into a 2007 "elephant model"; and

(iv) Allow Consumer rights relating to repair and replacement of current products that may not meet Staff Regulation after implementation date so that repaired devices shipped out of State not banned from being shipped back into the State; and if device cannot be repaired, manufacturer not banned from shipping warranty or replacement product with the same features and operational controls.

c. CCFC urges the Board to instruct Staff to modify current proposed regulation and to work with "ALL" stakeholders, especially those with consumer interests.

3. **Staff Proposed Regulation** - Instills unnecessary Consumer Fear and threatens to undermine Consumer Protection from known and unknown forms of indoor pollution & contamination (airborne, surface, or other sources for microbial contamination) in all indoor environments (personal, home, business, employment, school, healthcare, recreational, travel, government, other). Scientifically undisputed that indoor air pollution can be worse than outdoor and greater source of risk for contracting and exacerbating medical and health related problems, including respiratory and breathing related problems.

a. Staff Proposed Regulation will eliminate safe, viable product and technology options to treat and protect against known natural and health & safety related disasters where the risk of viral, bacteria or other microbial infection or contamination, or smoke related pollution (for example, SARS, drug resistant Staph and other healthcare acquired infections, mold and smoke from wild fires and flooding, e-coli or salmonella on vegetables/food or other surfaces, etc.), and actual evidence of illness, permanent health damage, even death!

b. Staff Proposed Regulation will eliminate safe, viable product and technology options to protect against Healthcare Associated Infections (Senate Bill 739 - 2006).

c. Staff Proposed Regulation will eliminate safe, viable product and technology options to protect against Pandemic Influenza (State legislation adopting CA preparedness plan).

d. Staff Proposed Regulation will expand AB 2276 Scope to further restrict consumer choices:

(i) Staff expands definition of "occupied space" to include all but industrial space and industrial/commercial uses (any "enclosed space intended to be occupied by people for extended periods of time, e.g., houses, apartments, hospitals and offices").

(ii) Consumer use in any non-occupied or unoccupied space (that is, "no people are physically present" during the use of an indoor air cleaning device) of any air cleaner product that could exceed the Federal 0.05 ppm standard taken away – De facto business and usage monopoly given exclusively to industrial and commercial providers only.

4. **Staff Proposed Regulation – A Rush to Judgment! Regulation in a Vacuum!**

a. Staff stuck on decades old science, old technologies, old products, old problems, old & non-relevant testing protocols, and old rhetoric on air cleaners and ozone emissions; AND relying on this to get regulation done quickly. Misplaced reliance by Staff on UL Standard 867 a major contributing factor to poor public policy making. AB 2276 has a December 2008 deadline for regulations, and Board will maintain continuing oversight over rules.

b. Staff ignores current science including peer reviewed and published science, and alternative "viable" testing protocols more suited for real world indoor environments that all stakeholders can work on, versus delegating out the development of UL "secret private testing rules and standards."

c. Staff reliance on questionable studies and statistical samplings, and drawing conclusions from them to justify taking away consumer rights, as opposed to relying on actual medical or epidemiologic based evidence.

d. Staff rejects consumer intelligence and English language literacy by California consumers as factors to reject product labeling and operational warning alternatives.

5. **Staff Proposed Regulation – Private Rulemaking & Other Competitive Concerns**

a. Vested older technology and product manufacturers tend to resist the introduction of newer and competitive technology and product manufacturers. History is full of examples, such as AT&T and the Bell System, IBM, and Microsoft.

b. Private standard setting organizations developing standards capable of excluding certain products or manufacturers; oftentimes, these organizations operate in private with participating members who have potential or actual conflicts of interest with those directly impacted by the Standards (e.g., FCC Part 68 used by all telephone service companies to exclude telephone equipment competition for decades).

c. Who gains by Staff Proposed Regulation? _____

d. **Who loses the most by Staff Proposed Regulation?** We submit real consumers, with serious indoor air quality problems and concerns, whose rights to choose the best product solutions for them and their families will be impaired.

6. **Conclusion**: Our goal is to work with the ARB to find a way to meet the AB 2276 requirement for regulating ozone emissions from air cleaners in occupied areas in compliance with the Federal 0.05 ppm standard; and also find a way to preserve as many safe, viable consumer options for air cleaners that meet consumer individual and family needs to protect them against both known and unknown forms of indoor pollution & contamination (airborne, surface, or other sources for microbial contamination) in all indoor environments. Under any public policy risk/benefits analysis, the current Staff proposal needs to be modified and we respectfully urge the ARB to provide guidance to Staff and direct them to work with CCFC and other affected interested parties.

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1. **Who is California Consumers for Freedom of Choice (CCFC)?**

We are an advocate for protecting a consumer's right to choose the air cleaner/purifier solutions that best meet individual and family needs in all indoor environments (personal, home, business, employment, school, healthcare, recreational, travel, other) from known and unknown forms of indoor pollution & contamination: airborne, surface, or other sources for microbial contamination. As a result of our grass roots activities associated with AB 2276 at the Legislature and Governor's Office, thousands of satisfied and concerned California consumers who supported our efforts there to protect their consumer rights joined us in this ARB Rulemaking proceeding. Thousands more have contacted us during the course of these proceedings. What we share in common is having indoor air quality problems or experiences addressed by one or more air cleaner solutions that under the current Staff proposal likely will be banned as a future solutions option.

2. **CCFC Proposals for Modest Solutions** – Given the mandate of AB 2276 to develop regulations for the emission of ozone from air cleaners in occupied areas in compliance with the Federal 0.05 ppm standard, CCFC has been a strong supporter for "responsible regulation" and participant in all ARB Staff proceedings. We have participated at three formal workshops at ARB, providing oral testimony as well as submitting written comments at each (attached to this filing); and we have participated at an informal staff meeting/workshop at ARB. Throughout these opportunities to participate, we have attempted to correct some of the misinformation in the record, offered concrete suggestions for reasonable regulation and made "modest solution" alternatives that preserve reasonable consumer choices while still providing for effective regulation. However, CCFC's input has been consistently rejected by Staff; and in some instances where CCFC has pointed out plausible areas for protecting consumer options, Staff has responded by proposing even more stringent or restrictive language negatively impacting consumer choices to the point of eliminating practically any viable choice other than older electrostatic precipitator and HEPA filter product technologies.

Our goal is to work with the ARB to find a way to meet the AB 2276 requirement for regulating ozone emissions from air cleaners in occupied areas in compliance with the Federal 0.05 ppm standard; and also find a way to preserve as many consumer options for air cleaners that meet consumer individual and family needs to protect them against both known and unknown forms of indoor pollution & contamination (airborne, surface, or other sources for microbial contamination) in all indoor environments. Under any public policy risk/benefits analysis, the current Staff proposal needs to be modified and we

respectfully urge the ARB to provide guidance to Staff and direct them to work with CCFC and other affected interested parties.

Specifically, we request the Board to:

a. CCFC urges the Board to STOP the Rush to Judgment, and have Staff slow down as the "risk of making mistakes are too great" for consumers and society, and could be irreparable and irreversible affecting thousands upon thousands of satisfied consumers with serious indoor air quality problems (See sample testimonials attached – we have received thousands of similar testimonials, and will be submitting additional testimonials). This additional time will also allow the Board the opportunity to revisit the factual, medical and scientific basis underlying appropriate regulation here; and allow the Board the opportunity to assess the weight and credibility of all the evidence submitted as part of this decade-long proceeding. AB 2276 establishes a deadline of December 2008, and it is our understanding that the Board will continue to maintain oversight on any rules adopted, and will be able to revisit, reevaluate, and make appropriate adjustments at future times, again with the input of interested stakeholders.

b. CCFC urges the Board to consider CCFC alternative proposals to Staff's restricting legitimate consumer choices:

(i) Adopt adequate warning labels and instructions on the indoor use of ozone emitting purifiers in English or alternative languages, especially where there is no medical/epidemiologic or scientific evidence to support actual user harm in indoor environments. In fact, the entire record of medical and public health concerns submitted to the Board here is part of a misinformation campaign designed to apply outdoor ozone level concerns and associated evidence to indoor air environments! Staff and other parties have even accused manufacturers of air cleaners that intentionally emit ozone as "deceiving" consumers that ozone is intentionally produced and have labeled these air cleaners as "ozone generators" even where the use of ozone may only be a small part of the air cleaner solutions in the device (e.g., those that include significant ionization technologies). Staff also accuses these manufacturers of knowingly introducing "unhealthful ozone exposures" into indoor occupied spaces. Yet for those older, more traditional air cleaner technologies coincidentally manufactured by California Lung Association corporate partners, such as electronic precipitators that also emit ozone, Staff characterizes the ozone emissions as "a by-product of their functioning" and therefore they are always referred to favorably as "air cleaners" and not "ozone generators." Further, despite this lack of evidence on actual harm in indoor environments, Staff continues to treat air cleaners capable of intentionally emitting any level of ozone as part of their air cleaning process as being <u>more dangerous</u> than products where there is proven medical/epidemiologic or scientific evidence to support actual consumer harm, e.g., ETS/second hand smoke from tobacco products, pesticides, alcohol, chlorine, etc. Why the double

standard? (See some of the specific label recommendations submitted by CCFC in its 2007, Comments).

(ii) Allow "all consumers" the optional use of some higher than the Federal 0.05 ppm use in "non-occupied" areas of premises and any area not then being occupied during the use of the air cleaning device to more quickly clean up and sanitize dangerous indoor pollutants such as mold, mildew, bacteria, viruses, odors, etc., as opposed to having an industrial monopoly only. The industrial use/industrial application exemption includes odor and smoke control, mold remediation, and fire and smoke remediation "provided no people are physically present." Again, why the double standard? Why force a consumer to pay industrial providers fees to bring in an air cleaner that will be used while the consumer is not physically present in the room or area to be cleaned of odors, smoke, mold or other contaminant? And what makes the Board think that industrial providers will use other than hourly paid employees, who may have little if any training, and they too will not be physically present while the air cleaner is in use? (See some of the specific language recommendations submitted by CCFC in its April 20, 2007, Comments)

(iii) Adopt 2007 based testing standards for ozone emission based on current usage, current technology and scientific realities, and not outdated UL 867 testing protocols designed for different usage, different technology and outdated science – CCFC submits one cannot revise the UL 867 decades old "duck model" into a 2007 "elephant model." A review of the available historical records that we have access to strongly suggests that Staff reached out to the UL 867 type standard years ago as a surrogate or stand-in to test air purifier products and any level of ozone emitted.

Unfortunately, that type of testing was originally developed for the purely incidental emission of ozone involving electronic precipitators (indeed, most of the recent UL 867 history refers to the scope of that rule relating specifically to "electrostatic precipitators or electrostatic air cleaners" or ESPs), and perhaps the incidental emission of ozone from other electrical appliances. That means that the emission of ozone had absolutely nothing to do with the appliance's functioning or purpose! A blender bends; a mixer mixes, a hair dryer dries hair, a copier makes copies, an ESP traps particles. When one sees drawings of the testing parameters, or you visualize placing any electrical kitchen or office appliance 2 inches away from a testing device measuring output from the front of the device, it is fairly clear the purpose of the measurement is to determine whether incidental or inadvertent low levels of ozone are being emitted from the device into the air. It is unclear, however, how others in the manufacturing, business, scientific or medical community could transform this decades' old test clearly intended for incidental and unnecessary ozone into the "defining test protocol" for different products and different technologies that intentionally produced otherwise safe low levels of ozone for cleaning purposes. Safe levels that are now scientifically

proven to kill dangerous indoor air and surface contaminants such as staph, mold, mildew, odors, etc., during occupied use and higher levels to more quickly rid these contaminants when the space is unoccupied. As we speculate elsewhere, this may likely have been part of the ongoing misinformation campaign originated by other vested interest groups. Regardless, we submit the Board needs to stop once and for all this misplaced reliance for the purpose of this rule making. (See the recommended parameters submitted by CCFC in its July 2, 2007, Comments)

(iv) Fix the repair and warranty void situation created by Staff's proposal. Under the current Staff proposal, literally thousands and thousands of air cleaner users whose products could well be outlawed from future purchase will be caught in a void for repair and warranty purposes. We submit as part of any transitional implementation of any final rule, that the ARB allow Consumer rights relating to repair and replacement of current products that may not meet Staff Regulation after implementation date. Specifically, any devices needing to be repaired and shipped out of State for repair should not be banned from being shipped back into the State; and if a device is still under a replacement warranty or cannot be repaired, the manufacturer should not be banned from shipping a warranty or replacement product with the same features and operational controls. (See some of the specific drafting changes submitted by CCFC in its July 2, 2007, Comments)

c. CCFC urges the Board to instruct Staff to modify the current proposed regulation and to work with "ALL" stakeholders, especially those with consumer interests.

3. **Staff Proposed Regulation – Threatens to undermine Consumer Protection**

The current Staff proposal instills unnecessary Consumer Fear and threatens to undermine California Consumer Protection from known and unknown forms of indoor pollution & contamination (airborne, surface, or other sources for microbial contamination) in all indoor environments (personal, home, business, employment, school, healthcare, recreational, travel, government, other). We submit it is scientifically undisputed that indoor air pollution can be worse than outdoor and a greater source of risk for contracting and exacerbating medical and health related problems, including respiratory and breathing related problems. Adoption of Staff proposal without modification will leave all consumers, including ARB members, unnecessarily at risk. For example,

a. Staff Proposed Regulation will eliminate safe, viable product and technology options to treat and protect against known natural and health & safety related disasters where there is a proven risk of viral, bacteria or other microbial infection or contamination, or smoke related pollution (for example, SARS, drug resistant Staph and other healthcare acquired infections, mold and smoke from wild fires and flooding, e-coli or salmonella on vegetables/food or other surfaces, etc.), and actual evidence of illness,

permanent health damage, and in many instances, even death! (See references throughout prior CCFC submitted Comments to potential consumer harm). A "secret" known by hospitals for years yet never publicly disclosed until recently in several States now mandating yearly disclosure, is the incident of hospital acquired infections or healthcare associated infections (HAI) that account for over 200,000 deaths a year, and thousands more in additional illness and billions of dollars in costs. Staph is one of the main culprits, especially new stronger strains of Staph that are resistant to current antibiotics. One of our consumer member's receptionist went in for elective surgery and attempted to bring in her air cleaner for her private room. Based on the aggressive anti-ozone device campaigns from the Lung Associations and their corporate partners, the admitting hospital refused to allow her to plug in her air purifier with twin ionization technologies and a single ozone technology, even on the lowest setting, nor even with the ozone emitting function turned off! They claimed the device had already been banned by the ARB according to the information they had received from the local lung association. Donna White contracted drug resistant staph in her private hospital room and died ten days later. At no time did the hospital disclose they even had a staph problem on this particular floor. The multi-million dollar settlement paid by the hospital was little consolation to Ms. White's surviving family. There are scores of other examples involving serious injury, illness and death now being reported in the media. Imagine all the future Donna Whites the ARB potentially could save just by taking a stand now and further, by dispelling the misinformation that has been purposefully disseminated by others to the proven detriment of consumers.

b. Staff Proposed Regulation will eliminate safe, viable product and technology options to protect against Healthcare Associated Infections (See Senate Bill 739 – 2006 that recognized that approximately 5 to 10 % of hospitalized patients in California develop one or more Healthcare Associated Infections every year! That's equivalent to 240,000 patients, at a cost of approximately $3.1 billion dollars, and resulting in not only long-term sickness but in death, too! One of the goals of the legislation was to prevent "prolonged and unnecessary hospitalizations and decreasing mortality rates resulting from HAI."). As noted above more and more States are finally doing something about the HAI problems. Last session the Legislature passed and the Governor signed a comprehensive California HAI law. CCFC submits that the current Staff proposal will violate both the spirit and intent of that law, to the detriment of consumers and healthcare staff. Under the circumstances, CCFC urges the ARB to adopt CCFC modifications that will bring the ARB into compliance here.

c. Staff Proposed Regulation will eliminate safe, viable product and technology options to protect against Pandemic Influenza. At a time when both the Federal Government and States are working to prepare the United States for the arrival of a pandemic influenza sometime in the unknown future that if not prepared for could potentially result in millions and millions of deaths and billions of dollars in losses, Staff proposes to restrict consumer choices that could provide additional protection for themselves and their families. Around the same time as AB 2276 was passed, the Legislature approved legislation adopting a Statewide Preparedness Plan with funding to

help all citizens be as prepared as possible should the worst happen. (See http://www.pandemicflu.gov/plan/states/california.html for California preparedness planning and funding related documents; also see 2006 enacted legislation relating to the State's policies on pandemic influenza preparedness and funding.) It is ironic that many of the newer technologies that could be used in the event of a pandemic influenza would fail the Staff proposal (unrealistic 2 inch sterile stainless steel chamber testing protocol) and be branded as unlawful ozone generators not available for sale in California. Interesting too, there have been approximately 15-20 million purifiers sold over the last 20 years that use low levels of ozone as part of the purifying process, yet not one case has ever been directly linked to anyone being permanently injured. Instead, many of these newer technologies and products have been hailed in other States and internationally because of their medical peer review acceptance. CCFC submits that the current Staff proposal will violate both the spirit and intent of California's Statewide Preparedness Pandemic Influenza law, to the detriment of consumers who would be denied access to these proven products and technologies for use not only in California, but when traveling outside of California (see CCFC prior comments on air line travel concerns and being exposed to viruses and bacteria, including drug resistant TB). Under the circumstances, CCFC urges the ARB to adopt CCFC modifications that will bring the ARB into compliance here.

d. Staff Proposed Regulation we submit, goes beyond what is literally called for in AB 2276, and would be totally inappropriate for a new set of first time regulations affecting hundreds of thousands (if not more) current air cleaner consumers as well as millions of future ones. Moreover, Staff's expansion of the definitions of permitted areas for using air cleaners will actually further restrict consumer choices, creates a government sanctioned for-profit industrial clean-up application service to replace consumer application choices, and provides an ARB guarantee of no testing deviations from mandatory UL 867 testing protocols.

(i) Staff has expanded the definition of "occupied space" to include all but industrial space and industrial/commercial uses (any "enclosed space intended to be occupied by people for extended periods of time, e.g., houses, apartments, hospitals and offices"). CCFC submits that Staff has overreached here, especially when the benefits far outweigh risks, if any, from potential misuse of an air purifier. Whatever option had remained under Staff's earlier proposals to permit consumers the option to select and use air cleaners that for whatever reason did not pass the UL 867 testing protocol, BUT use these air cleaners when the physical space being treated remained unoccupied was foreclosed by Staff in altering the definition of occupied space to essentially include: "all non-occupied space" in any house, apartment, hospital, office, car, plane, church, school, day care facility, movie theater, and anything other than one of the exempt industrial categories. As we have referenced elsewhere this could produce a series of unintended consequences that we do not believe even the ARB would knowingly condone. For example, a commercial/industrial lettuce grower could choose to use any air cleaner system to reduce or eliminate e-coli and other bacteria and

microorganisms from lettuce or spinach prior to shipping to grocery stores for consumer purchase, but individual consumer purchasers of that lettuce or spinach product would not have the option or right to use the exact same technology in a residential air purifier version that would enable them to reduce or eliminate any remaining e-coli and other bacteria and microorganisms from purchased lettuce or spinach prior to serving it to their families, especially if they lacked confidence in the grower to properly use similar technologies!

(ii) Consumer use in any non-occupied or unoccupied space (that is, "no people are physically present" during the use of an indoor air cleaning device) of any air cleaner product that could exceed the Federal 0.05 ppm standard is taken away by Staff. In its place, Staff creates a government sanctioned for-profit industrial clean-up application service. No where in AB 2276 do we see the establishment or grant of any such monopoly to industrial and commercial providers. To accept this would convert Staff's proposal into an ARB created de facto business and usage monopoly given exclusively to replace consumer application choices. Not only will this result in higher costs to consumers in controlling their indoor environments as now they will have to repeatedly pay for mold, bacteria, odor control and other services they are or could provide on their own, but they will lose personal flexibility and control over scheduling in these business services as well as how best to handle emergency-type situations.

A few illustrations: First, a consumer's toilet backs up and overflows bacterial laden materials in a bathroom and extended area, and noxious odors circulate throughout the home. In the past, a consumer had the choice after cleaning up the physical materials to use an air cleaner option that could quickly address both the odors and the biological contamination issues, as well as any spreading throughout the home ventilation system while the affected areas were not being occupied. In the future, that consumer would have to contract with an industrial/commercial clean-up service, and wait until they could arrive, and still have to vacate the home areas affected while the clean-up service placed similar air cleaners in the home.

Second, what about the consumer who goes to Costco, Lowes or a garden & lawn center and purchases pesticides to spray the outside and inside of his home against ants, roaches, and other pests. He can purchase that instead of contracting with a pest control service, or perhaps he supplements his spraying in between visits, and there are very detailed warning labels with instructions on how to use the pesticide including the potential harm from misuse or mishandling of the pesticides. In the past, a consumer had the choice after he sprayed or even after the pest control service sprayed to use an air cleaner option that could quickly address both the pesticide odors and the chemical/microbial contamination issues, as well as any spreading throughout the home ventilation system while the affected areas were not being occupied. In the future, that consumer would have to contract with an industrial/commercial clean-up service, and wait until they

could arrive to take care of any pesticide spraying, and still have to vacate the home areas affected while the clean-up service placed similar air cleaners in the home.

Third, what about the consumer who lives in a home with her young children and a chain-smoking spouse who refuses to stop smoking indoors at home (since he can no longer smoke at work, in public buildings, or bars & restaurants where he use to smoke), who currently has the option to use an air cleaner solution during the day when her kids are at school and husband is away at work to quickly treat the second hand smoke and odors before they return. Under Staff's proposal she will have no viable options if that air cleaner needs repair or replacement as her spouse does not recognize the problem and she does not have the money to contract out daily with an industrial/commercial clean-up service that would perform the same service she was doing successfully on her own. (See other illustrations in CCFC prior comments, attached.)

These are just a few of the many applications where consumers would be impacted by being restricted in their future purchases, as well as repair and replacement situations involving current options. Under the circumstances, we do not believe the ARB intends to create these opportunities for potential consumer *harm*, higher consumer costs, and creating a new source of consumer frustration over heavy handed government regulation. CCFC therefore urges the ARB to adopt CCFC modifications that will eliminate these unforeseen circumstances and consequences here.

4. **Staff Proposed Regulation – A Rush to Judgment! Regulation in a Vacuum!**

As discussed elsewhere, CCFC submits that perhaps Staff has been as misinformed as many others have over the past decade. Further, AB 2276 has a December 2008 deadline for regulations, and the Board will maintain continuing oversight and can reevaluate the rules at any time. Under the circumstances, this is not the time for rushed regulations!

a. As the Background section at Page 2 of the Notice of Public Hearing demonstrates, Staff is relying on decades old science, old technologies, old products, old problems, old & non-relevant testing protocols, and old rhetoric on air cleaners and ozone emissions; AND they are relying on all of this to get regulation done quickly! Indeed some of the text from that Background section appears strikingly similar to long-standing position statements from the California and American Lung Associations and various corporate partners involved in the manufacturing and sales of more traditional types of air cleaner systems. For example, you see the standard indoor air reference that "Exposure to ozone is a public health concern" (yet they never mention at what level, nor do they recognize the latest science that proves that low safe levels of ozone are highly effective in purifying indoor environments), as well as the reference to the cleverly created, two-tiered definitions of good and bad air cleaner products: "good air cleaner" products that generate ozone as a byproduct or inadvertently to other air cleaning technologies, and

"bad air cleaner that are really ozone generator" products that intentionally generate ozone along with other air cleaning technologies – although they usually do not include the latter reference that most intentionally generating ozone products do in fact contain other air cleaning technologies that do the significant percentage of the actual air cleaning. CCFC submits that such a definitional dichotomy "splits hairs" and would not likely be approved even by professional lexicographers who write and edit dictionaries.

b. Staff ignores current science, including peer reviewed and published science, and alternative "viable" testing protocols more suited for real world indoor environments that all stakeholders can work on, versus delegating out the development of UL "secret private testing rules and standards." In fact, Staff's misplaced reliance on UL Standard 867 will be a major contributing factor to poor public policy making if accepted by the ARB. Again, we believe Staff has been misinformed here, or why else would Staff propose to give UL and UL 867 a government "seal of approval" that could lead to scores of unintended consequences and a potential "Pandora's Box"? UL is a private standards setting organization possibly comprised of select air cleaner manufacturers and their trade associations who elected to formulate testing to embrace all air cleaners capable of producing ozone for future sale in California (with certain exceptions, though), not openly in prior Staff sessions or in the context of these public hearings. Why else would all interested stakeholders who have been participating in this rulemaking process not be invited to participate in the critical testing process that without question will restrict a consumer's air cleaner options in the future, and as Staff has pointed out in its report will cause some manufacturers to no longer offer their air cleaners for sale in California and may force some California-based manufacturers out of business entirely?

c. Staff has misplaced reliance on questionable scientific studies and statistical samplings, and drawing conclusions from them to justify <u>taking away consumer rights</u>, as opposed to relying on actual medical or epidemiologic based evidence. While the California Lung Association and its "corporate partners" may have been able to use consumer fear-based tactics to mislead and convince the Legislature that low levels of ozone is not an effective cleaner for any indoor air solution, and that low levels do not destroy microbes or reduce indoor air pollutants effectively enough to provide any measurable health benefits, that will not happen here! There are indeed recognized science based studies that strongly establish the benefits to low levels of ozone in combating indoor air pollutants in both occupied and non-occupied space. CCFC is uncertain why the Legislature did not consider all of the available science at the time of its deliberations, but it is clear that the ARB should not be precluded from having the most complete record available for their review and consideration. (See CCFC April 20, 2007 Comments)

Instead, Staff has submitted references to studies <u>not based on medical or epidemiologic based evidence</u>, but more of laboratory controlled studies that we submit <u>do not resemble real environmental situations to justify the Staff proposal</u>. Further, Staff appears now to place a great deal of weight on the January 2007 release of the UC Berkeley "Survey of the Use of Ozone-Generating Air Cleaners by the California Public"

prepared by Thomas Piazza, principal investigator, and Robert Lee and Jacqueline Hayes, primary authors. What is most significant about this Survey is that it is not based on any scientific or medical based evidence, or based on the many positive experiences of actual reported users of air cleaners. Rather, it is based on telephone surveys of 2,019 California adults to determine the extent to which all California consumers purchased and used indoor air cleaners that produced ozone! CCFC submits that this is a most unlikely justification for radically taking away a consumer's right to choose the best air cleaner solution for their individual and family needs, stripping away consumer rights, deciding which products and manufacturers will stay in business, and putting an entire generation of California consumers and their families at high risk to very real indoor air contamination problems. Yet notwithstanding, there is some interesting data from both the Survey and Robert Lee's power point slide presentation that Staff failed to mention. For example, of interest to us was (a) among the reasons given for purchasing an air cleaner by respondents were removal of particulate as well as microbial, bacteria, mold and chemical contaminants, and protecting children; (b) 73% of owners of air cleaners that emitted ozone by design were aware of this; (c) Owners of ozone-generating air cleaners by design intended to use their air cleaners on a regular basis, year-round; and (d) 81% of owners of ozone-generating air cleaners by design and 71% of owners of by-product air cleaners believe indoor air quality has improved, and many were so happy they even purchased a second purifier!

d. Staff rejects consumer intelligence and English language literacy by California consumers as factors to reject product labeling and operational warning alternatives. CCFC was concerned how to address Staff's concerns over the use of labeling and language as an alternative to taking away all consumers' freedom of choice when Staff first proposed this. It was apparent that Staff had rejected, at least in part, offering consumers choices in equipment (those that meet the 0.05 ppm verses those that can exceed under any circumstance, even including products with built in shut off timers and loud beepers when on high in unoccupied spaces) as well as where they can use equipment (those that can be used in a residential, business, recreational, religious, educational, automotive vehicle, or any other indoor settings while the space is occupied or unoccupied, as opposed to treating all of these referenced settings where any individual "could" ever be present as "occupied") out of concern that a small percentage of California consumers cannot read or comprehend the English language. Staff mentioned Vietnamese to us in particular. On the basis of that concern, Staff stated that they believed this "class of consumers" is not capable enough to figure out how to (a) read or follow any instructions either on machine labels or in machine operating manuals/directions on adjusting the operational settings to allow for a higher than 0.05 ppm of ozone when the space is non-occupied, or (b) comprehend the difference between using the machine while an area or room was occupied verses unoccupied, or (c) comprehend the circumstances under which they could optionally set a timer that is built into the unit or manually adjust the operational settings to allow for a higher than 0.05 ppm of ozone in unoccupied spaces, and then to revert the settings back to 0.05 ppm or less of ozone when the space is occupied.

One of our members commented upon seeing this provision that this ran contrary not only to her understanding of our national policy on English, but directly contradicted the State of California policy on English in repeated statements by the current Governor (as recently at June 15, 2007, and reported by CBS News before the National Association of Hispanic Journalists). The founders of our country came from different cultures and even languages, but agreed to assimilate into one language: **English**. A prerequisite to becoming an American Citizen under current law is learning to read and understand English, and even taking a test in English! If a current citizen sponsors a family member from another country who is not yet proficient in English, then the sponsor is responsible for being their surrogate in navigating the English language. If a person purchases an air purification system or air cleaner, then more likely than not someone in the distribution or sales chain has explained in a language the consumer can understand what the product is as well as the operational use and warnings instructions. Consumers, regardless of their level of literacy are not unintelligent and will not pay up to hundreds of dollars (which is average for air purifiers) for a product that they are not sure what it is, how it works, or whether or not it is safe! To suggest otherwise is to insinuate that people who do not comprehend English are stupid. To ban safe and effective products when used as directed or impose tough restrictions on a consumer's right to choose the type of safe, scientifically proven indoor air protection for themselves and their families because of a very small percentage of residents or citizens who have failed in their obligation to read and comprehend English, serves only to penalize the overwhelming numbers of consumers who are faithful US Citizens and have fulfilled their obligations to learn English and assist family members with any language barriers.

Here, we resubmit the same "Modest Proposal" made to Staff as a possible solution for non-occupied space and for optional higher than 0.05 ppm ozone functioning: Because of computer and printing technologies, manufacturers now can provide labels in any foreign language approved by the ARB; and either that label can be the original label from the manufacturer, or the local distributor can download a file from the manufacturer and print it out on an Avery-type label and place it on the air purifier or air cleaner; and if dual language disclosure is an issue, then we do not know of any consumer who would object to helpful disclosures even on an oversized label in order to have the right to choose the products and operational features they determine best to meet their individualized and family needs.

5. **Staff Proposed Regulation – Private Rulemaking & Other Competitive Concerns**

Inherent in any governmental rule making process are concerns over the impact of regulations on the manufacturers of affected current products, the impact on the development and offering of newer technologies and the introduction of improved better product options for consumer use, the impact on manufacturers of the older or traditional products, the impact on manufacturers utilizing newer technologies, and the development of fair and impartial standards that will not discriminate between different manufacturers or their respective products and technologies. Based on past historical experiences, CCFC submits that no one really wants to create a regulation that raises immediate

antitrust and deceptive practice concerns (State and Federal), and the ARB should analyze Staff's proposal in detail to ensure this does not happen, and make modifications such as those submitted by CCFC that will minimize any such concerns. We offer the discussion below to assist the ARB in this process.

a. CCFC points out to ARB that vested older technology and product manufacturers tend to resist the introduction of newer and competitive technology and their product manufacturers. In view of the decade plus involvement of select parties in this anti-ozone cleaner campaign, *and the perceived relationships they have with select vested older technology and product manufacturers who have independently attempted to drive newer product manufacturers out of business*, it becomes a greater challenge to the ARB to be most diligent in this public hearing and deliberations process to approve air cleaner ozone regulations that also serve to protect consumer interests. For that reason, we submit that the ARB should recess after the public hearing without taking a vote, and deliberate on what further procedures may be appropriate here before any final rulemaking is voted on.

b. Private standard setting organizations oftentimes by design or inadvertently through voting members, develop standards capable of excluding certain products or manufacturers. This generally happens where these organizations operate in private with participating members who have potential or actual conflicts of interest with those directly impacted by the standards; and the standards relate less to electrical or operation safety features, and instead more to exclude either particular products, technologies or manufacturers not represented on the panel. The end result is that the standard setting organization ends up substituting the panel's private policy for what should be public policy set by an actual government entity with public policy responsibility. There is a litany of private lawsuits against such private standard setting organizations, and in some cases the Federal and State law enforcement agencies have found it necessary to intervene (e.g., FCC Part 68 used by all telephone service companies to unreasonably exclude telephone equipment competition for decades until private and then governmental monopolization lawsuits filed).

c. Who really gains by the Staff Proposed Regulation? _____. We leave this open ended to the ARB in this section, but recommend they give this thought. Our discussion that follows in Section 6 provides one plausible scenario.

d. **Who loses the most by Staff Proposed Regulation?** We submit real consumers, with serious indoor air quality problems and concerns, whose rights to choose the best product solutions for them and their families against known and unknown forms of indoor pollution & contamination will be the most significantly impaired.

6. Conclusion: How did this all happen? How did we get here? What Next?

Our original goal and our continuing goal is to help safeguard a consumer's freedom of choice and right to choose the products that best serves the consumer without

unreasonably compromising other competing public interests. We have endeavored to accomplish that goal here by working with the ARB to find a reasonable way to meet the AB 2276 requirement for regulating ozone emissions from air cleaners in "occupied areas" in compliance with the Federal 0.05 ppm standard; and also find a way to preserve as many safe, viable consumer options for air cleaners that meet consumer individual and family needs to protect them against both known and unknown forms of indoor pollution & contamination (airborne, surface, or other sources for microbial contamination) in all indoor environments. Under any public policy risk/benefits analysis, the current Staff proposal needs to be modified and we respectfully urge the ARB to provide guidance to Staff and direct them to work with CCFC and other affected interested parties.

So how did we get to this point where all affected parties are not unanimously supporting Staff's proposal? Put another way, how did Staff's proposal develop in such a way that we believe a consumer's right to select from among as many safe product and technology choices that are currently available are no longer there?

Based on all of the information we have found and all of the circumstances surrounding the campaign to regulate the use of ozone in occupied space, when we analyzed the foundation supporting Staff's proposal to determine if it is structurally sound or flawed, we found it to be flawed, and on that basis, the proposal must be rejected to prevent likely consumer and societal *harm* to California. As we go through this process in summary fashion below, we want to make it clear that we do not believe staff is directly responsible for deliberately creating a flawed foundation. We believe they were instead misinformed by the real architects of this plan, the ones who had the most to gain, and the ones who by clever design and a little luck were able to use the legislative and regulatory process to manipulate us all.

The foundation to Staff's proposal is premised on the conclusion, which we submit is false, that *any* indoor emission of ozone is a public health and medical concern, and therefore needs to be regulated in all consumer environments.

We believe the structure supporting this primarily consists of six pieces:

1 - Scientific and medical studies showing consumer harm from exposure to ozone in indoor environments;

2 - Ozone exposure studies, tests, reports, medical and health professional documented studies and materials showing widespread respiratory harm concerns from indoor ozone exposure;

3 - Ozone emission testing using a nationally recognized test standard on ozone emitted from select air cleaning devices showing failure;

4 - Complaints and testimonials from school boards and other school, teacher and parent-teacher organizations warning of public health concerns over air cleaners that were

actually dangerous ozone generators and to use air cleaners that did not produce ozone, such as those meeting American Lung Association guidelines;

5 - Complaints and testimonials from physicians, hospitals, physician organizations, healthcare provider and hospital associations warning of public health concerns over air cleaners that were actually dangerous ozone generators and to use air cleaners that did not produce ozone, such as those meeting American Lung Association guidelines; and

6 - California Lung Association and American Lung Association regulatory and legislative participation at all State, Federal and International levels promoting regulation of ozone emitting devices being sold as air cleaners but really were ozone generators, and their success stories.

Let's look closely at these 6 structural pieces to see how solid or flawed they are, based on what we now know from the record here, and based on some reasonable inferences:

1 – Scientific and medical studies showing consumer harm from exposure to ozone in indoor environments: FLAWED

Even staff has now admitted there are no indoor based medical or epidemiologic studies showing actual consumer or public health harm from LOW indoor emission of ozone. Everything originally utilized when this grand campaign began was based on HIGH outdoor ozone levels. Any additional studies were limited to controlled indoor situations and UL 867 type testing, or surveys conducted by consultants that contained mixed results based on extremely limited statistical samplings. Over time, perhaps as planned, the parties behind this scheme conveniently dropped all the qualifying information and just reported that scientific and medical studies supported no public benefits from indoor ozone at any levels.

2 – Ozone exposure studies, tests, reports, medical and health professional documented studies and materials showing widespread respiratory harm concerns from indoor ozone exposure: FLAWED

None of these studies were indoor based medical or epidemiologic studies showing actual consumer or public health harm from LOW indoor emission of ozone. All information provided was based on HIGH outdoor ozone levels, controlled indoor situations and UL 867 type testing, or surveys conducted by consultants that contained mixed results based on extremely limited statistical samplings. We also believe that at least a portion of this information was funded in whole or in part, or encouraged by the California Lung Association, the American Lung Association and a variety of their “corporate partners”.

3 – Ozone emission testing using a nationally recognized test standard on ozone emitted from select air cleaning devices showing failure: FLAWED

Bear in mind that the testing here using a nationally recognized test standard on ozone emitted from select air cleaning devices was conducted we believe by California Lung Association influenced organizations and regulatory staff who would listen to California Lung Association and California Lung Association influenced persons and organizations. This was a major accomplishment to transform the UL 867 Standard from testing inadvertent, limited ozone emissions designed for older air cleaner technology, electrostatic precipitators and perhaps other electrical motor appliances where ozone emissions again were not specifically designed (for example, kitchen appliances, office equipment, etc.), into THE testing standard for ANY OZONE EMISSION from any air cleaner device regardless of technology and regardless if the ozone emission was intended for air cleaning purposes in occupied or non-occupied spaces; and creating the definitional stigma of "ozone generator" to any device that intentionally emitted any ozone, even if the ozone emissions technology was only a small part of other non-ozone cleaning technologies in the device, for example ionization, etc. Because no one with comparable influence questioned this expansion of UL 867, nor were there any legitimately public proceedings to review this (in stark contrast to the typical private, non-public UL and similar private standards setting organization process), a perceived Nationally Recognized Testing Laboratory standard was created to facilitate the branding assassination of an entirely new generation of air cleaner products and technologies. This also served to legitimize the misinformation part of this scheme.

4 – Complaints and testimonials from school boards and other school, teacher and parent-teacher organizations warning of public health concerns over air cleaners that were actually dangerous ozone generators and to use air cleaners that did not produce ozone, such as those meeting American Lung Association guidelines: FLAWED

These complaints and testimonials all came about from orchestrated media campaigns directed by the various lung associations and their corporate partners at school boards and other school, teacher and parent-teacher organizations. As noted in paragraphs 1, 2 and 3 above, these campaigns packaged up the misinformation that had already been developed. Now it was time to start aggressively targeting this misinforming campaign. The California and American Lung Associations, together with their corporate partners, most noticeably Honeywell at first, created and disseminated consumer fear-based press releases, website links, and other literature distributed to these entities (as well as the media - newspapers, television, etc.). As should be expected, many of these entities in turn, distributed them to their memberships and oftentimes with grade school students taking home flyers to their parents containing warnings to turn off any air cleaner that emitted ozone because they were actually "ozone generators" that were dangerous to their health and the health of their children. The complaints and testimonials that found their way to ARB likely were form letters encouraged by these organizations. We suspect that there may also have been helpful incentives for some of those in this category to lend assistance to the lung associations and some of their corporate partners.

5 – Complaints and testimonials from physicians, hospitals, physician organizations, health care provider and hospital associations warning of public health concerns over air

cleaners that were actually dangerous ozone generators and to use air cleaners that did not produce ozone, such as those meeting American Lung Association guidelines: FLAWED

These complaints and testimonials all came about from well orchestrated, consumer fear-based media campaigns directed by the various lung associations and their corporate partners at physicians, hospitals, physician organizations, healthcare provider and hospital associations. American Lung Association guidelines were based on the traditional products and technologies offered by their corporate partners, and not any products offered by companies with competitive products or technologies. This part of the misinformation scheme continued to package up the misinformation that had already been developed. This lung association "seal of approval" was marketed as being equivalent to "safe" air cleaners, as opposed to "unsafe" ozone generators. This campaign influenced not only physicians and hospitals in local communities, but they in turn passed it onto their consumer patients, reinforcing what they may have already heard or seen from the other targeted campaigns and media. In many cases, consumers who had previously been satisfied with their choice in air cleaners were turned into disgruntled fear-based consumers who complained to regulators and in some cases the authorities about being intentionally deceived into purchasing ozone generators that raised public health exposure concerns. Again, the complaints and testimonials that found their way to ARB likely were materials encouraged by these organizations; and we suspect that there may also have been helpful incentives for some of those in this category to lend assistance to the lung associations and some of their corporate partners.

6 – California Lung Association and American Lung Association regulatory and legislative participation at all State, Federal and International levels promoting regulation of ozone emitting devices being sold as air cleaners but really were ozone generators: FLAWED

As noted in all the paragraphs above, this part of the campaign is equally flawed as it used the packaged up the misinformation that had already been developed. Having already created (a) the perception of sound medical evidence on actual indoor ozone user harm, (b) a series of tests and studies and reports claiming public health harm in indoor environments at any level, (c) a fictitious nationally recognized testing standard that even ARB Staff accepted, (d) the acceptance by the media, school, hospital & physician, and school and parent communities of the health risks associated with air cleaners posing as "ozone generators", and (e) the Lung Association seal of approval on a select class of air cleaners, the next logical step was to get government and regulatory agency buy-in to "legalize & legitimize" what had already been developed and done, with a goal to ban any air cleaner that intentionally emitted ozone, essentially driving out any *competitive technologies and products* using them, and elevating the influence of the various lung associations and their corporate partners. Instrumental here, unfortunately for consumers we submit, was the decision by ARB to allow Staff to create their own testing laboratory procedures for air cleaners they believed to be ozone generators and modeled their test protocol after UL 867, and publish their results that were utilized by the lung associations to help convince others to ban or regulate ozone emitting air cleaners.

Our conclusion is that the six structural pieces underlying Staff's proposal foundation each are flawed and must be rejected to prevent likely consumer and societal harm to California.

Now even if things didn't happen exactly this way, Staff's proposal is still flawed based on the analysis above. We do submit that it appears that such a campaign would be a way to drive out competition, acquire credibility in the regulatory community, garner additional funding and grants if you are a trade association, and demonstrate influence in the political community. And whether this was an organized campaign to deliberately mislead or misinform, or a cleverly designed campaign perhaps aided by some degree of luck in slipping under the radar and not being discovered earlier and by successfully attracting followers who would not question their facts nor their motives that benefited select parties or participants at the expense of consumers, is totally irrelevant here. The bottom line is that the ARB should not succumb to any such political maneuvering here based on an imperfect factual record to support Staff's proposal. While these types of behavior may be more tolerated in the legislative and political arenas, they have no place here, we submit!

Now if you may be thinking this could not possibly be plausible, and this reads more like a Hollywood screenplay, history is full of examples of grand schemes deserving Hollywood treatment that did not get discovered for years that also cost consumers heavily. For example, such famous monopoly and price-fixing schemes as the Standard Oil Industry Trusts, AT&T and the Bell System, IBM, Microsoft, Pfizer and Tetracycline Antibiotics, Milk Price Fixing, Gypsum Wood Price Fixing, and Enron's California Electricity Contract Price Manipulations. However, what we submit may have happened here could potentially qualify as the most clever of schemes, if true, as it also integrated lawful avenues of regulation and public policy making to spread this campaign of misinformation throughout all levels of society. Whether the actions and conduct of select parties rise to the level of unlawful civil or criminal behavior, we will defer to others to investigate at the appropriate time.

So based on the very real possibilities that what we have described may have taken place, what do we as consumers want? What do we as taxpayers deserve from our government officials? What should the ARB as an appointed government panel deserve to know from Staff, and what actions should the ARB take here?

At a bare minimum, there should be no more false or misleading statements about science, medical evidence, the alleged lack of any public health benefits from ozone, and unsound testing methods and prior results from them; we need to throw out the events of the last decade and stop all the biased campaigns that emerged from it; there should be a legitimate, reasoned discussion of risk/benefit analysis of the use of ozone in both occupied space and the conditions under which consumers can use ozone in non-occupied spaces; we need to preserve consumer options to access all product and technologies that have and can continue to provide individuals and their families with the protection that

best suits their choices and needs, especially when both the State of California and the Federal government are calling upon them to protect themselves in case of pandemics and other natural disasters & emergencies; we need to develop *common sense* testing to measure actual indoor "ambient air" environmental conditions so we do not restrict consumer choice to just traditional products and technologies; and we need "starting regulations" that we can gain experience from that provide warning, labeling and usage instructions comparable to, but no more onerous than other products currently allowed for consumer use where there is a *proven* medical evidence record of consumer harm, and that the ARB can reevaluate over time.

We strongly urge and request the Board to consider all of the CCFC positions stated here and in earlier submitted written comments (attached). We are deeply concerned that Staff has overreached in its current proposal, and that they are making decisions and judgments that we perceive to benefit certain corporate and business interests over the most important of all, *consumer interests!*

Just as the political process is characterized by corporate & business influence, lobbying, compromise, and even wheeling & dealing political trade-offs, the Board process is suppose to be "not a Political Process" but the "Peoples' Process," characterized more by protecting broad consumer interests, options, decisions, and freedom of choice.

As we have done in prior Comments, we remind the ARB that what should remain in everyone's mindset in this rulemaking is that *indoor air quality is all about consumers' freedom of choice* over the products that best meet their individualized needs and those of their families today and in the future. The success or failure of this rulemaking process will be judged by how well it helps to legitimately take away consumers' fears of what is in the indoor air they breathe, and what *viable* resources they have to protect themselves and their families from both known and unknown forms of indoor air pollution now and in the future.

Sincerely,

Greg Montoya

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Robert I. Brickman, General Counsel
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SAMPLE TESTIMONIALS

SHARON GOLD, *Past President*
National Federation of the Blind of California
10911 River Road
Hood, California 95639

September 13, 2007

Air Resources Board
State of California
Sacramento, California

To Whom It May Concern:

About twelve years ago, I was introduced to an air purifier that used a minimal amount of ozone to clean the air. When I received this air purifier, I was miserable. I only had 80 percent functioning in my lungs. I was taking two to six allergy shots per week. I had a cabinet full of prescription and non-prescription drugs that I was taking and I was carrying a bottle of nose spray to which I had become addicted. I had bought a number of filters and other devices that purported to clean the air and I had thrown them all away. So you can imagine my skepticism when I first heard about yet one more air purifier.

I decided to try it anyway. Wow, what a difference it made! Within a short time, I threw away my prescription drugs and almost all of the non-prescriptions drugs. I was gradually weaned away from the nose spray. Because I was having fewer and fewer allergic reactions, I began taking fewer and fewer shots and finally stopped taking the shots altogether. When I went to my allergist for my annual physical, I learned that my breathing capacity had increased from the 80 percent that I had known for years and years to 100 percent!

Throughout the past 12 years, I have continued to use an air purifier that uses minimal amounts of ozone in air purifying process in both my home and office. So long as I remain in an environment where the air purifier is located, I have no problems with my allergies. My general health has dramatically improved and as long as I have my air purifier I do not become ill. At no time have I ever had an adverse reaction to the minimal amounts ozone produced by the air purifier neither while I'm home nor when I use it on higher ozone settings to more quickly clean up my environment when I'm away.

When I leave home, I wear a small personal air purifier around my neck while I am in public. If I will be away from home overnight, I always carry an air purifier in my suitcase to plug in when I get to my destination. If I do not have my air purifier, my allergies begin to return and ultimately I become ill.

It is hard to believe that the California Air Resources Board is attempting to enforce unrealistic testing protocols that will make it unlawful to use safe minimal amounts of ozone in the air purification process. It seems unnecessary and irresponsible for a Board to assert such a heavy hand on the citizens in California. I am a responsible citizen and I have definitely benefited from using an air purifier which produces ozone to help purifier the air. If the Board takes away my right to use my purifier in my home, what will they provide for me to use in its place? What will happen to my health and the health of others who have found similar relief from using such an air purifier?

I urge the California Air Resources Board to reconsider its position on the use of minimal amounts of ozone in the air purification process and make it a matter of personal choice for and a decision of each California citizen.

Personally, I thank God every day that I was introduced to my air purifier that uses minimal amounts of ozone in the air purification process. It totally changed my life and my health for the good!

Respectfully submitted,

Sharon Gold

Sharon Gold, Past President
National Federation of the Blind
of California

Brandi Kowalczyk
6965 El Camino Real, #105
La Costa, CA 92009

September 24, 2007

Dear California Air Resource Board Members,

My name is Brandi Kowalczyk. I have been an asthma sufferer all my life; spending most of my childhood on breathing machines and getting many doses of steroids to open up my air ways. Living life as an asthmatic is very difficult especially when air ways close up and you are struggling to breathe. I personally have had many of these experiences and at times I felt like I was going to die. I remember a scary moment when I was 13 years old. I was watching TV and all of a sudden I was having a severe asthma attack. I could not breathe and fainted. I woke up in an ambulance with a mask on my face. This was one of the scariest feelings I have ever faced.

One day my dad gave me an air purifier that uses ozone as part of the process to purify the air. I decided to try it because I was desperate to find something to help with my asthma problem. Shortly after running the purifier in my home I noticed a big difference in my breathing. I was finally able to take a deep breath and enjoy the air I was breathing. I was able to sleep through the night and no longer needed to use my inhaler while in my home. I immediately started feeling better and no longer had to be put on breathing machines or receive steroid shots at the hospital. This air purifier truly changed my life and makes me feel healthier!

I cannot understand why you would want to take away a product that has helped me in such a positive way. My breathing is 100% better and yet you want to stop the sale of these purifiers? I can tell you from my own experience that this would be the worst decision you could make. This type of air purifier is amazing and should be in every home in America. It is remarkable and really does make a difference. I know that with out this air purifier in my home I would be in and out of the hospital again, struggling to breathe. I would never want to live life like that again and neither should anyone else!

Please don't take away my option to use this purifier to help me breathe better.

Thank you,

Brandi Kowalczyk

July 2, 2007 CCFC Written Comments

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California Consumers for Freedom of Choice
Written Comments to the California Air Resources Board
Air Cleaner Regulation 6-05-07 Staff Revised Draft

Introduction

Thank you again for the opportunity to participate in this workshop on the development of a regulation to limit the use and emission of ozone from indoor air cleaners. The California Consumers for Freedom of Choice (CCFC) is a diverse group of California consumers from throughout the State. We are concerned over the California Air Resource's Board (CARB) rulemaking process as it affects the rights of consumers to select highly effective indoor air cleaning devices that emit ozone and are safe when used as directed. Our comments today focus on the 6-05-07 Draft Proposed Regulation Order for the Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices.

It has been over a year since we first heard about AB 2276 and started our involvement in the legislative, political and rulemaking process in California. Our wide range coalition of California Consumers for Freedom of Choice is dedicated to one principal: *preserving one of the most fundamental roles of government in regulating business and products, and that is protecting a consumer's right to choose!*

At the suggestion of key members of the legislature, as well as the Governor's staff and the Governor himself, we have participated in this rulemaking in the spirit of cooperation to achieve a rule that would preserve to the maximum extent possible, a consumer's freedom of choice in selecting the equipment and technologies that *they believe* can best meet their "individual" needs and the needs of their families in various indoor environments, including residential, business, recreational, educational, religious, health, and travel, against both known and unknown forms of indoor air pollution. We have also participated to ensure that individual consumers can maximize their options as part of their obligations to be prepared during an influenza pandemic. As the Governor of California stated as he convened the State's summit to prepare for influenza pandemic, "We can't predict what will happen, but what we can do is plan. State government is taking action to prepare for a flu pandemic, but every Californian plays a role in preparedness. Every community, business, school and family must have their own emergency plan." (3/30/06 Governor's Press Release). The US Secretary of Health and Human Services has echoed the Governor's comments here on the role of individuals,

noting that in the final analysis, it will fall upon individuals, and NOT the government, to protect themselves and their families against all forms of indoor air pollution.

Towards this purpose, in prior comments and at prior work shops and even staff meetings, we have expressed our policy points of view, offered recommendations on standards and even on specific draft language changes. But, unfortunately, our voices have not yet been heard, to the point of the current Staff Draft not reflecting any of our *most basic* recommendations or positions. Perhaps it is our inexperience before the ARB; or our misinterpretation of who the primary beneficiaries of this process are intended to be?

Nonetheless, we are here again restating our positions and offering another round of recommended changes.

"We will not go away until we truly believe fair and reasonable consumer rights to freedom of choice protections, are adopted. We will continue participation each and every round, before Staff, the Full Air Resources Board, the Office of Administrative Law, the State Courts, the Governor's Office, the Media, and even back to the legislature. Justice will not be served unless the consumers' right to choose is protected!"

Our written comments focus on 5 areas raised by the latest draft:

1. Who are the intended beneficiaries of AB 2276 and Occupied Space Standards?
2. The rights of pre-existing customers prior to the regulation effective date for compliant air purifiers.
3. How will the labeling and language dilemma be solved?
4. How to inject *common sense* into the "termination by testing" provision.
5. Inconsistencies with federal and state laws.

1. Who are the intended beneficiaries of AB 2276 and Occupied Space Standards?

We submit that the intended beneficiaries of AB 2276 apply to the broadest reach or group of consumers in the State of California, and only apply to reasonable testing and limiting ozone levels in occupied spaces while they are physically being occupied at the time.

Interpreting the reach of AB 2276 to include the broadest group of consumers and restricting occupied space to its literal definition would result in the preservation of broadest consumer choices and options. It would also protect those who have and are still benefiting from their personal choices in the past; would protect those who CAN benefit from the broadest array of choices in the future; and result in maximizing for the broadest group of California Consumers on their permissible choices with reasonable safeguards.

Interpreting occupied space to reflect any and all indoor space ever capable of being occupied at any time significantly narrows and restricts the reach of consumers who can benefit from AB 2276. Such an interpretation, we submit, not only has no basis from the language or intent of AB 2276, but it would turn public policy upside down by severely restricting choices of the many, both past users and future users; reward select interest groups, technologies and products, and potentially penalizing others; require consumers to select higher priced but permitted alternatives, such as commercial and industrial air cleaner services where specifically allowed by the Rule; create an elite class of consumers who will purchase out of state or find ways to exercise their freedom of choice, ESPECIALLY where there is little if any impact on outside 3rd parties; and create disincentives for new products and technologies (utilizing the latest science) to be introduced in California.

Here are just a few of the most recent stories from our members that illustrate how the current Staff Draft could affect tens of thousands of them; and how a narrow interpretation of the class of intended beneficiaries will result in a denial of the consumer's right to choose and likely produce unfavorable consequences:

Mary – Mary is a mother of 3 children with an abusive husband – abusive not in a physical sense, but by constantly endangering her and her young children. Mary's husband is a chain cigarette smoker who refuses to smoke outside. From the time he returns home each day after work, until he sleeps, and before leaving each morning he is a chain smoker in his home. And since the state's banning of smoking in public buildings where he works and in bars & restaurants, his smoking has increased inside his home. Several times a week friends who smoke come over, too. Each morning, like clock-work after her kids are off to school, Mary takes her air purifier and places it in each room where her husband has smoked and sets it on the highest levels to expedite the removal of smoke and its residual chemicals from the air and surfaces of her home. Mary's particular purifier has a timer built in that controls the amount of time the unit is set on high mode. She then comes back after the set time and ventilates the treated rooms before her kids return home from school. This is how Mary *chooses* to address and reduce primary and second hand smoke, odors and residual surface contamination from her family's home environment. How will Mary and others in her situation be impacted by Staff's Draft. Especially since it's not against the law to smoke in homes, even if occupied by minor children. Mary may be using a purifier that when used as directed with a set timer in unoccupied spaces on the highest setting might exceed 0.05 ppm of ozone, or might not meet the 2 inch tail pipe test when set as directed for occupied spaces, but overall meets the ambient level through the room of no more than 0.05 ppm. She is using her purifier in her personal residence, while her children are not physically present, and she is not physically present in the rooms where the purifier is on the highest operational timed settings, and she ventilates before her children return. Under the Staff Draft, Mary could not purchase an air purifier that does what her current purifier is capable of doing; and if her current purifier ever needed repair or replacement from an out of state manufacturer/distributor, she would be denied service as the manufacture

would not be able to ship the same type of purifier back to her due to restrictions from the ARB's ruling.

Tom – Tom runs a small executive suite rental office complex for small businesses. In the past, he used his air purifiers on the highest levels of ozone, or small ozone generators to quickly clean offices vacated in his rentals while not occupied to rid them of odors, chemicals and smoke related to tenant cigarette smoking as well as facilitate faster odor removal of fresh paint. He also uses them when there is a fire causing smoke in his rental complex either on his premises or from nearby wild fires. Before he invested in his personal equipment, he used Service Masters for smoke related problems, who had charged him and his insurance company $18,000 for a similar cleanup. Under the Staff Draft, Tom would no longer be able to use his purifier equipment in this manner, even though his use is in occupied space during unoccupied times.

Elaine – Elaine's son is a very well known TV sports writer and commentator and during playoff seasons she helps to take care of her grandchildren. She uses air purifiers that allow her to quickly deodorize and surface clean against germs and bacteria in the house, and even in the garage where skunks oftentimes crawl in; and when the kids are at school and she is away she sanitizes her home and duct system with a purifier that has *optional* and *timed ozone settings* when at the highest levels. On those occasions where wild fires have created smoke and chemicals that have swept into the neighborhood and into the house, she has used the purifiers in the highest settings to more quickly clean the indoor air, again on a room-to-room basis while each room is unoccupied at the time. Under the Staff Draft, Elaine would no longer be able to do these types of clean-ups with her current purifiers, and she would not be able to repair or replace it with the same effective features if it breaks.

Trace – Trace lives with his 80 year old father along the beach and uses his purifiers to constantly reduce mold odor, mold spores and surface mold caused by reoccurring outdoor moisture and ocean mist. He even uses his purifier on the highest levels when indoor mold appears on wall surfaces after bad storms where often times roof water leakage occurs - *again when no one is home*, *or not in the actual room being treated*. Trace nor his father can afford any other solutions, either roof repairs or thousands of dollars a year to commercial or industrial cleanup companies. His greatest fear is that his purifiers break down and the manufacturer cannot fix and return it because they are out of state and the product will not meet the Final ARB Rule; and if a machine cannot be fixed and he orders a new one the manufacturer cannot ship it into the state; and if he goes out of state to purchase and transport a purifier that meets his needs but may not be compliant with the Final ARB Rule, then he could be stopped at the border and be arrested and his purifier seized. Under the current Staff Draft, Trace's concerns are very real!

Phoebe – Phoebe commutes for a company both within and outside of California; she also does missionary work in poorer areas. Currently, she uses a personal purifier to breathe better in stuffy planes and terminals while on travel, and in poorer neighborhoods of Los Angeles where the air quality is stagnant and riddled with bacteria and germs. To

help protect her in both indoor environments against germs and microbial pollution including TB, Avian Flu and SARS which years earlier affected her family's village in China, she uses the same Wein Industries air personal purifier (that has several peer reviewed studies proving its effectiveness!) that failed the 2 inch ozone test during the initial Staff Workshop, even though the ozone production is a byproduct of ionization; even though it passed when tested 2 inches below the nose. Under the current Staff Draft, Phoebe will not have this purifier option in the future; and even if her current purifier is exempted, she fears that when it needs repair or replacement, she will no longer have this highly effective personal option to choose. Her concerns were recently heightened when she returned from overseas around the same time Andrew Speaker (the Atlanta attorney diagnosed with drug resistant TB) was flying home. She would like to ask staff and the Board Members what she should do if someone like an Andrew Speaker was on her plane and was continuously coughing and sneezing over an eight hour flight in her breathable air space, or they sat next to each other in the Airport for 2 hours waiting for a connecting flight. If her personal air purifier is banned under the current Staff proposal, what options will the ARB offer to protect her personal breathing space?

Boris – Boris works part-time with members of his church and local real estate companies helping to clean up the polluted air in residential homes from odors, mold, mildew, pet dander, and surface and airborne bacteria. In some cases the residences are completely unoccupied during a 3 or 4 day period as the owners or tenants are away; in other cases the residence's owners or tenants are there, but either not in the rooms or areas being treated at the time, or they leave the residence for a few hours every day when the purifiers are on the highest settings to speed up the cleaning process. Although Boris does charge for private residences, he does not charge for Church related properties or in those situations referred to him by the Church where the owners or tenants do not have the ability to pay. Boris is concerned that he might not be able to continue to provide these quality services under the final Board Rule, or be able to repair, replace or even purchase new equipment capable of handling the problems mentioned. Under the current Staff Draft, Boris' concerns are very legitimate!

2. The rights of pre-existing customers prior to the regulation effective date for compliant air purifiers.

Another concern we have with the current Staff Draft is that tens of thousands of pre-existing consumer customers who are extremely satisfied with their current air purification equipment and usage choices/options would be negatively impacted in repair and replacement situations. For example, a purifier under warranty is shipped back to an out-of-state manufacturer who then discovers they cannot re-ship the repaired unit back into California because it may not meet the final ARB rule due to the unreasonable 2 inch tail pipe test, certification or other operational issues. Consumers would be "hung out to dry" whether their purifier is in or out of warranty coverage. If it breaks they cannot get it fixed or replaced with the same flexible features and operational controls that they desired when they initially purchased their purifier. What options will ARB offer to consumers here?

Now instead of extinguishing consumer rights altogether here, and without conceding our earlier submitted arguments and positions, what about the following "Modest Solution" that easily can be implemented and enforced: Set up a simple waiver process where all a consumer or the manufacturer has to do is provide a copy of proof of purchase prior to the effective date of any Final Rule, and any repairs or comparable replacements where repairs are not possible for pre-Final Rule purchases are permissible. There is no language comprehension or other issue present here that should compromise a pre-existing consumer's right to choose.

3. How will the labeling and language dilemma be solved?

It is apparent that Staff has rejected, at least in part, offering consumers choices in equipment (those that meet the 0.05 ppm verses those that can exceed under any circumstance, even including products with built in timers when on high in unoccupied spaces) as well as where they can use equipment (those that can be used in a residential, business, recreational, religious, educational, automotive vehicle, or any other indoor settings while the space is occupied or unoccupied, as opposed to treating all of these referenced settings where any individual "could" ever be present as "occupied") out of concern that a percentage of California consumers cannot read or comprehend the English language. On the basis of that concern, ARB staff has stated that they believe this "class of consumers" is not capable enough to figure out how to (a) read or follow any instructions either on machine labels or in machine operating manuals/directions on adjusting the operational settings to allow for a higher than 0.05 ppm of ozone when the space is non-occupied, or (b) comprehend the difference between using the machine while an area or room was occupied verses unoccupied, or (c) comprehend the circumstances under which they could optionally set a timer that is built into the unit or manually adjust the operational settings to allow for a higher than 0.05 ppm of ozone in unoccupied spaces, and then to revert the settings back to 0.05 ppm or less of ozone when the space is occupied.

One of our members commented upon seeing this provision that this ran contrary not only to her understanding of our national policy on English, but directly contradicted the State of California policy on English in repeated statements by the current Governor (as recently at June 15, 2007, and reported by CBS News before the National Association of Hispanic Journalists). The founders of our country came from different cultures and even languages, but agreed to assimilate into one language: **English**. A prerequisite to becoming an American Citizen under current law is learning to read and understand English, and even taking a test in English! If a current citizen sponsor's a family member from another country who is not yet proficient in English, then the sponsor is responsible for being their surrogate in navigating the English language. If a person purchases an air purification system or air cleaner, then more likely than not someone in the distribution or sales chain has explained in a language the consumer can understand what the product is as well as the operational use and warnings instructions. Consumers, regardless of their level of literacy are not unintelligent and will not pay up to hundreds of dollars (which is

average for air purifiers) for a product that they are not sure what it is, how it works, or whether or not it is safe! To suggest otherwise is to insinuate that people who do not comprehend English are stupid. To ban safe and effective products when used as directed or impose tough restrictions on a consumer's right to choose the type of indoor air protection for themselves and their families because of a very small percentage of residents or citizens who have failed in their obligation to read and comprehend English, serves only to penalize the overwhelming numbers of consumers who are faithful US Citizens and have fulfilled their obligations to learn English and assist family members with any language barriers.

Here, we submit another "Modest Proposal" as a possible solution for non-occupied space and for optional higher than 0.05 ppm ozone functioning: Because of computer and printing technologies, manufacturers now can provide labels in any foreign language approved by the ARB; and either that label can be the original label from the manufacturer, or the local distributor can download a file from the manufacturer and print it out on an Avery-type label and place it on the air purifier or air cleaner; and if dual language disclosure is an issue, then we do not know of any consumer who would object to helpful disclosures even on an oversized label in order to have the right to choose the products and operational features they determine best to meet their individualized and family needs.

4. How to inject *common sense* into the "termination by testing" provision.

As we have consistently submitted, the testing provisions in AB 2276 do not mandate any particular standard or testing protocol. Rather, it merely requires that the Board "*shall consider existing and proposed testing methods, including, but not limited to, those developed by the American National Standards Institute and Underwriters Laboratory.*" Further, Section 41985.5.(a) defines the Federal ozone emissions limits for the Board to follow:

(a) "Federal ozone emissions limit for air cleaning devices" means the level of generation of ozone above which the device would be considered adulterated or misbranded pursuant to Section 801.415 of Title 21 of the Code of Federal Regulations, specifically the generation of ozone at a level in excess of 0.05 part per million by volume of air circulating through the device ***or*** *causing an accumulation of ozone in excess of 0.05 part per million by volume of air when measured under standard conditions at 25 degrees Celsius (77 degrees Fahrenheit) and 760 millimeters of mercury in the atmosphere of enclosed space intended to be occupied by people for extended periods of time. (underlining & bolding added)*

We have also submitted our concerns that testing procedures not exclude current beneficial products on the market *that are scientifically proven* to address microbial, bacterial and other airborne and surface contaminants. For example, the Wein Mini-Mate personal purifier worn around Mr. Montoya's neck that Mr. Paul Overbeck, the Executive Director for the International Ozone Association tested at the December 9,

2006 Staff Work Shop, demonstrating that approximately 2 inches above the purifier, the ozone emissions exceeded the 0.05 ppmv; however, when tested 2 inches below Mr. Montoya's nose, the ozone emissions were below 0.05 ppmv. Under the current Staff Draft, this product would fail to comply with testing and would be banned from sale, even though there was not an accumulation of ozone in excess of 0.05 ppmv in the atmosphere of breathable space occupied by the wearer or bystander of this device. New beneficial products that otherwise comply with the Federal guidelines but not the Board Rule similarly would be banned from sale in California, depriving consumers of the *freedom to choose* among these safe and highly effective products which they deem best for their individual and family use.

Again, we offer a "Modest Solution" to help resolve this matter: CCFC along with other parties have expressed concerns over the staff proposed testing and the UL protocol. Chief among those concerns is the use of the 2 inch rule, the lack of *common sense* understanding of how ozone works in real world settings, and how outdoor ozone exposure for employees is treated by governmental agencies.

While we are unable to ascertain the origin of the 2 inch rule, or understand the rationale for creating ozone in a sealed environment devoid of anything capable of reacting with it over time, we submit it is time for a *common sense* alternative testing mode that recognizes the indoor environmental challenges facing consumers today and in the future.

Under the proposed room and placement configuration, the unit is arguably placed in its worst case scenario (maximum output with lowest air flow setting) and the measurement is performed for 24 hours and during this time the percentage of ozone in the room cannot exceed 0.05ppm (nor at the unit output). This would be equivalent to measuring the temperature output of a "stack type" heater stating that the room cannot exceed 70° and making the measurement 2 inches from the stack. Bottom line, meeting the specifications would render the heater virtually useless. As noted by the International Ozone Association, creating ozone in a sealed environment, without having anything in that environment for it to react with will over time allows the concentration levels to build to levels that will exceed the 0.05ppm limit since the output from the device would be greater than the time it takes for the ozone to "naturally dissipate".

Why not devise a more realistic test in a real world environment? One that assesses ozone creation as well as ozone dissipation in a typical, or representative residential environment (as opposed to a 2 inch placement environment), furnished with commonly accepted items such as furniture, carpet, curtains, fans, etc. And why not use multiple measurement points with the room over a 24 hour basis. In addition, why not measure not only the average concentration, but also measure the ozone exposure, just as the federal government and State of California do for outdoor workers. We are confident that staff and participating manufacturers could develop such an alternative, optional test that is more representative of actual livable environments. To date, we have not been able to find any representative consumers who actually place their air purifier 2 inches

away from their face; nor can we find anyone that would remain in direct contact with their air purifier at a 2 inch distance for 24 hrs.

We are not advocating at this time the elimination of the current test, only permitting an additional, alternative test that from our perspective is more representative of real world residential environments that the Board should be concerned about.

Amending the Staff Draft to allow for this *common sense* alternative testing compliance will prevent inadvertently precluding beneficial products currently on the market or newer technologies to come to market based on the *latest science*.

5. Inconsistencies with federal and state laws.

The Staff Draft must be consistent with all applicable federal and state laws, not only those governing or relating to ozone levels and testing, but also those intended to provide *all* classes of consumers with *all* reasonably available choices to prepare and protect themselves against (a) prolonged and unnecessary hospitalizations and even death resulting from Healthcare Associated Infections (See Senate Bill 739 enacted in 2006), (b) pandemic influenza (See California preparedness planning and funding related documents at http://www.pandemicflu.gov/plan/states/california.html, and 2006 enacted legislation relating to the State's policies on pandemic influenza preparedness and funding), as well as (c) other natural disasters.

We submit that the current Staff Draft not only fails here, but would actually eliminate *viable* alternative choices and options for consumers to meet their individual and family preparedness and protection.

Conclusion

We strongly urge and request Staff to consider the positions stated here, our Modest Solutions, as well as reconsider our recommended draft changes from our prior written comments. We are deeply concerned that Staff has overreached in its current draft from the guidelines and language set forth in AB 2276, and that they are making decisions and judgments that we perceive to benefit certain corporate and business interests over the most important of all, *consumer interests!*

Just as the political process is characterized by corporate & business influence, lobbying, compromise, and even wheeling & dealing political trade-offs, the Board process is suppose to be "not a Political Process" but the "Peoples' Process," characterized more by protecting broad consumer interests, options, decisions, and freedom of choice.

We remind Staff once again that what should remain in everyone's mindset in this rulemaking is that indoor *air quality is all about consumers' freedom of choice* over the products that best meet their individualized needs and those of their families today and in the future. The success or failure of this rulemaking process will be judged by how well it helps to legitimately take away consumers' fears of what is in the indoor air they breath,

and what *viable* resources they have to protect themselves and their families from both known and unknown forms of indoor air pollution now and in the future.

Sincerely,

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April 20, 2007 CCFC Written Comments

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California Consumers for Freedom of Choice
Written Comments to the California Air Resources Board
Air Cleaner Regulation REVISED Draft

April 20, 2007

Introduction

Thank you again for the opportunity to participate in this workshop on the development of a regulation to limit the use and emission of ozone from indoor air cleaners. The California Consumers for Freedom of Choice (CCFC) is a diverse group of California consumers from throughout the State concerned over the California Air Resource's Board (CARB) rulemaking process as it affects the rights of consumers to select products emitting ozone from indoor air cleaners.

Our written comments today focus on the 3-21-07 Draft Proposed Regulation Order for the Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices, and supplements the oral testimony provided at the March 29th Staff Workshop.

In our January 2007 comments, we offered just a few illustrations of the concerns of many of our members, who come from all walks of life, both residential and business environments, and with different experiences involving indoor air cleaners and the use of ozone:

- Unbreathable and non-livable environments due to smoke, odors and chemicals from wild fires and other disasters.
- Maintenance of indoor environments.
- Day Care for Children and Elderly.
- Schools with reported mold and bacteria problems.
- Portable air cleaners.

We also shared our guiding recommendations to the Board and Staff, including:

(1) That you take a fresh look at ozone and ozone technologies and the *latest science* substantiating its reasonably safe use,

(2) That your regulations be flexible enough to permit usage against both known and unknown contaminants impacting indoor environments for years to come,
(3) That your regulations allow for varying ozone usage amounts subject to perceived consumer needs even in indoor residential environments, provided there are reasonable warnings, disclosures or other safeguards in place, and
(4) That your regulations provide consumers with the broadest number of choices, as opposed to the least restrictive choices, for the protection of themselves and their families in their individual indoor environments.

More specifically, we submitted 12 RULES for you to use as a benchmark on your regulations, including the following:

- Rules must not be geared to selectively benefit the agendas of any interest group and their membership to the detriment of consumers.
- Rules on testing must be reasonable and not exclusionary.
- Rules must provide consumers with legitimate safeguards, but in an appropriate measure using the "least restrictive means" (usage warnings, labeling requirements, etc.) so as not to limit the exercise of reasonable consumer choices.
- Rules must allow for the broadest array of consumer product choices and encourage research and development for new product choices.
- Rules must allow for the broadest consumer use of safe and proven ozone technologies, and at various levels based on the consumer's determination of indoor air quality needs with appropriate and reasonable disclosure and warnings.
- Rules should err on the side of ***Consumer Choice.***
- Rules should weigh the benefits of choice over lesser risks involved, so as not to restrict individual consumer options.
- Rules must take into account the lack of any government control over pollutants and contaminants entering residential indoor air environments, and government's relative inability to alert consumers in a timely manner to potentially dangerous contaminants entering residential indoor air environments.

We also commented on testing standards vs. less restrictive means of safeguarding consumer interests, for example with warning labels, based on our discovery that many known airborne and surface contaminants that are considered extremely dangerous by the State are still permitted, including tobacco products and chlorine, that are openly sold and used, often times in extremely high concentrations or dosages subject only to warning labels and disclosure requirements relating to their use, despite the fact that they are responsible for more deaths (thousands a year) and sickness in California than from any reported use or misuse of ozone emissions from indoor air cleaners or purifiers. We also commented that unreasonable testing standards could eliminate the use of some ozone based technologies to address hospital or medical facility acquired infections that according to press accounts affect millions of consumers nationwide, and over 200,000 reported deaths a year.

Therefore, we strongly urged that in lieu of rules to exclude safe indoor ozone technologies in occupied spaces where people are present, or higher levels where people are not present at the time the device is in use, the same level of warnings and label disclosures used for these other products should be more than acceptable!

So since January, what has happened that relates to this ongoing proceeding?

- More forest fires & destruction in California.
- More media reports on hospital and medical acquired infections in local hospitals and doctors' offices; and the State of California now officially recognizes that approximately 5 to 10 % of hospitalized patients develop one or more Healthcare Associated Infections (HAI) EVERY YEAR! That's equivalent to 240,000 patients, at a cost of approximately $3.1 billion dollars, and resulting in not only long-term sickness but in death, too! Indeed, Senate Bill 739 enacted last session establishes an advisory committee to study this alarming problem with a goal to prevent "prolonged and unnecessary hospitalizations and decreasing mortality rates resulting from HAI."
- Reports on sub-standard conditions in VA hospitals and facilities in California and elsewhere, including indoor environmental challenges, such as mold, bacteria and viruses.
- Updated reports on Avian Bird Flu viruses and projected # of deaths and people getting sick. A new report last week projected that a pandemic would make 30% of the population ill, and would kill 2.5% of those who got sick, translating into about 90 million people getting sick and 2.25 million dying. According to this report, "health experts say another flu epidemic is inevitable."
- Release of the UC Berkeley Survey of the use of Ozone-Generating Air Cleaners by the California Public. Some interesting data there, but of interest to us was: (a) among the reasons given for purchasing an air cleaner by respondents were removal of particulate as well as microbial, bacteria, mold and chemical contaminants, and protecting children; (b) 73% of owners of air cleaners that emitted ozone by design were aware of this; (c) Owners of ozone-generating air cleaners by design tended to use their air cleaners on a regular basis, year-round; and (d) 81% of owners of ozone-generating air cleaners by design and 71% of owners of by-product air cleaners believe indoor air quality has improved.
- And of course, on January 9th we had the publicly filed written comments on the December, 2006 Staff draft.

REVISED STAFF REGULATION

We applaud Staff on the progress they have made with this new draft, as Staff has a difficult mission here. And in the spirit of producing additional insight and assistance for Staff and the ARB Members, we offer the following comments.

Public Policy

From a public policy perspective, the current draft still unduly restricts a consumer's right to choose the technologies and products to provide for and protect their indoor air quality environments! Also, the draft unduly restricts a consumer's right to choose operational features and benefits for them and their family's indoor environment. You can purchase a car capable of being driven at deadly speeds that could cause injuries and death to the driver, passengers and others; you can choose to buy a gun and keep it in your home without a mandatory gun lock to prevent misuse by others; you can buy and use ovens that operate using gas and electricity designed to be set at dangerous temperatures for users and possibly others in the home; you can freely emit Environmental Tobacco Smoke (ETS), a proven source of carcinogens and respiratory toxicants into any public or private premise from persons recently smoking outside of these premises on their clothing, hair and skin; you can purchase without any restriction on the use of chlorine intended for "super-chlorination" in swimming pools, despite the known medical and health implications involved; and any employer can buy or lease copiers and printers equipped with ozone generators that have no independent controls for regulating either the amount or concentration of ozone. BUT you want to deny consumers the right to select air cleaner options that carry a de minimis impact compared to these other products!

The new staff draft also fails to address these critical areas from the consumers' perspective:

- The optional use of greater than 0.05 ppmv of ozone technologies in circumstances where the residential or commercial premises, or specific rooms or areas therein, are non-occupied or unoccupied while the technologies are in use, with appropriate warnings, labeling, or other reasonable advisories to ventilate the areas following use and before re-occupancy or access.

- Consumers access to any air purification cleaners/devices capable of quickly addressing microbial, bacteria, and odor contaminations airborne, surfaces, or both. There appears to be no logical reason why consumers should not be permitted the right to knowingly select equipment with flexible options.

- Consumers Right To Choose, or Freedom Of Choice, in selecting technologies and the equipment with these technologies to give them the power to decide how best to address microbial, bacteria, and odor contaminations, both airborne and surfaces in their homes or businesses in responsible ways.

- On testing and testing policy, the staff draft still contains a possible bias that could result in the exclusion of reasonable and beneficial consumer choices. While possibly unintended, the draft appears to favor certain air cleaning technologies to the exclusion of others. As we have said in our prior written comments and publicly at the December workshop, this law was created, crafted, drafted, and in large part its enactment was facilitated by many of the special interests participating in these proceedings. As sometimes happens in the legislative process, the consumers' right to choose or freedom to make personal

choices affecting their welfare and the welfare of their families, is reduced in importance and relegated in favor of special interests. The rule making process, in contrast, should be guided by the right to choose, and conflicts between special interests and consumer interests should be resolved in favor of the consumers' broader interests.

AB 2276 Statutory Guidance & Recommended Drafting Changes

Since Staff at this stage of the proceedings is being guided by the specific language of AB 2276 as well as reasonable interpretations thereof, we believe it is important to point out in our Comments those statutory provisions that we believe form the basis for our recommendations.

As a general statement, we remind staff of Legislative Counsel's Digest, that AB 2276: "*would require the state board, on or before December 31, 2008, to develop and adopt regulations, consistent with federal law and including specified elements, to protect public health from ozone emitted by indoor air cleaning devices, including both medical and nonmedical devices, used in occupied spaces." (underlining added)*

1. SCIENCE: One of keys to the Legislature's enactment of AB 2276, we submit, was concerns over the science then available to the Legislature on ozone related issues. For example:

Section 41985. The Legislature finds and declares all of the following:

(e) Ozone is not an effective cleaner for indoor air when operated at levels that are safe for human occupation. Independent studies cited by the United States Environmental Protection Agency and the Consumers Union have shown that ozone-generating air cleaning devices do not destroy microbes or reduce indoor air pollutants effectively enough to provide any measurable health benefits. (underlining added)

Based on the number of newer studies we have found on the benefits of ozone and oxidation technologies, it is clear that there is in fact more science to at least question these statutory findings that there is no proof of any benefits to the use of ozone in the indoor air cleaning process that can produce measurable health benefits. For example, we direct staff's attention to the following that we have found through simple Internet searches: Wien Products, Inc. studies (including Peer Review Studies) on substantially lowering the concentration of many airborne viral and bacteria sized particles; Kansas State University Studies on (a) reducing common bacteria and fungi on surfaces, and (b) reducing microbial populations on surfaces, including but not limited to Avian H5N8 Virus; International Ozone Association studies and publications; and the University of Cincinnati Peer Review Study on "Control of Aerosol Contaminants in Indoor Air." These studies alone would appear to support that ozone may in fact be an effective technology that can be used in addressing certain types of indoor air contaminants in both occupied and non-occupied or unoccupied space, as well as being able to significantly

destroy or inactivate microbes or reduce indoor air pollutants effectively enough to provide some measurable health benefits.

2. OCCUPIED SPACE: Another legislative concern, we submit, involved the generation or use of ozone solely in "occupied spaces" as opposed to "non-occupied or unoccupied spaces." For example:

Section 41985.5. For purposes of this article, the following terms have the following meanings:

(a) "Federal ozone emissions limit for air cleaning devices" means the level of generation of ozone above which the device would be considered adulterated or misbranded pursuant to Section 801.415 of Title 21 of the Code of Federal Regulations, specifically the generation of ozone at a level in excess of 0.05 part per million by volume of air circulating through the device or causing an accumulation of ozone in excess of 0.05 part per million by volume of air when measured under standard conditions at 25 degrees Celsius (77 degrees Fahrenheit) and 760 millimeters of mercury in the atmosphere of enclosed space intended to be occupied by people for extended periods of time. (underlining added)

Section 41986

(a) On or before December 31, 2008, the state board shall develop and adopt regulations, consistent with federal law, to protect public health from ozone emitted by indoor air cleaning devices, including both medical and nonmedical devices, used in occupied spaces. (underlining added)

(c) The regulations may include any or all of the following elements:

(4) Any other element the state board determines to be necessary to protect the public health from emissions of ozone from indoor air cleaning devices that exceed the emission concentration standard for ozone emissions from air cleaning devices and are used in occupied spaces. (underlining added)

(e) It is the intent of the Legislature that this section be interpreted and applied in a manner that is consistent with federal law. The regulations adopted by the state board pursuant to this section shall be consistent with federal law. The state board may, to the extent a waiver is required, seek a preemption waiver from the federal government to authorize the state board to adopt regulations that are more stringent than federal law.

Given what we submit is clear guidance above, then from both a legal and public policy basis, we recommend staff consider the following definitional changes on the application of any ozone limiting regulations in occupied space, as opposed to non-occupied or unoccupied space.

For example:

Adding to the definition sections (94801. Definitions) of "occupied space" and then adding a new definition for "non-occupied or unoccupied space" with the underscored and bolded language below:

- Section 94801. (19) "Occupied space" means area within a building that is physically occupied by human beings **during the use of any indoor air cleaning device**.

- Section 94801. **(19 B) "Non-occupied or Unoccupied space" means area within a building that is not physically occupied by human beings during the use of any indoor air cleaning device.**

Adding into Section 94802. Standards for Indoor Air Cleaning Devices the underscored and bolded language below:

- Section 94802 (a) Except as provided in Section 94803 (Exemptions), Title 17, California Code of Regulations, no person or business shall manufacture for use in California, sell, supply, offer for sale, or introduce into commerce in California after September 30, 2008 any indoor air cleaning device unless the device is certified by ARB to produce an emission concentration not exceeding 0.050 ppmv, as specified in Section 94804, **except for those indoor air cleaning devices capable of producing an emission concentration exceeding 0.050 ppmv for use in non-occupied or unoccupied space as defined in Section 94801, and meeting the label requirements below;** is labeled as required in Section 94806; meets all requirements of this article; and continues to meet the ozone emissions limit as determined by the test procedure in Section 94805.

Clarifying in Section 94803. Exemptions to make more clear when even industrial or commercial type equipment can be used in spaces not then physically occupied by human beings during the use of any indoor air cleaning device, with the underscored and bolded language below:

- Section 94803 (a) Industrial use: The provisions of this article do not apply to indoor air cleaning devices manufactured, advertised, marketed, labeled, and used solely for industrial use **or for use in non-occupied or unoccupied space as defined in Section 94801**, provided that they are marketed solely through industrial supply outlets or businesses and prominently labeled as "solely for industrial use", or alternatively, "not for residential **occupied space** use".

- Section 94803 (b) Commercial use in unoccupied spaces: The provisions of this article do not apply to indoor air cleaning devices manufactured, advertised, marketed, labeled, and used solely for commercial use in unoccupied spaces **or for residential use in non-occupied or unoccupied space as defined in Section 94801**, provided they are prominently labeled as "solely for commercial use in

unoccupied spaces", or alternatively, "not for use in occupied spaces" and "not for residential **occupied space** use".

3. TESTING: On the important issue of testing devices capable of emitting ozone, we submit that AB 2276 is most concerned over "occupied space" where people will be present, and that it is the ARB that will decide upon testing procedures and not Underwriters Laboratory. For example:

Section 41985.5. For purposes of this article, the following terms have the following meanings:

(a) "Federal ozone emissions limit for air cleaning devices" means the level of generation of ozone above which the device would be considered adulterated or misbranded pursuant to Section 801.415 of Title 21 of the Code of Federal Regulations, specifically the generation of ozone at a level in excess of 0.05 part per million by volume of air circulating through the device ***or*** *causing an accumulation of ozone in excess of 0.05 part per million by volume of air when measured under standard conditions at 25 degrees Celsius (77 degrees Fahrenheit) and 760 millimeters of mercury in the atmosphere of enclosed space intended to be occupied by people for extended periods of time. (underlining & bolding added)*

Section 41986

(b) The regulations shall include all of the following elements:

(2) Testing procedures for manufacturers to utilize to determine ozone emissions from devices. In developing the procedures, the state board ***shall consider*** *existing and proposed testing methods, including, but not limited to, those developed by the American National Standards Institute and Underwriters Laboratory. (underlining & bolding added)*

(3) Certification procedures that enable the state board to verify that an indoor air cleaning device meets the emission concentration standard for ozone emissions using the testing procedures adopted by the state board. (underlining added)

Based on our reading of Staff Draft Section 94804 on Certification Requirements and Section 94805 on Test Method, there appears to be some inconsistency in following the statutory guidance above. For example, Staff appears to be delegating the entire testing protocols and methods to Underwriters Laboratories. We submit that the Board is not required to delegate, but only to "consider" existing and proposed testing methods of Underwriters Laboratory as well as others. Further, we submit that the Board has the complete discretion to selectively adopt those portions of any "existing" or "proposed testing methods" they believe to be the appropriate or pertinent under all the circumstances here, including the changes in technology, product manufacturing, the latest science, and the ever growing threats of microbial, bacterial and other airborne and

surface contaminants to California consumers in their homes, businesses, schools, recreational facilities, air planes, hospitals, etc.

We are concerned over testing that will likely exclude beneficial products capable of addressing microbial, bacterial and other airborne and surface contaminants. For example, Mr. Paul Overbeck, the Executive Director for the International Ozone Association at the December 9, 2006 Staff Work Shop illustrated our collective concerns over the UL "2 inch" or "tail pipe" test. In this test, the ozone emission is measured 2 inches away from the device as a means to exclude those devices that are capable of exceeding 0.05 ppmv. When a personal purifier device worn around Mr. Montoya's neck manufactured by Wien Products, Inc. was tested by Mr. Overbeck using a measuring device placed approximately 2 inches above the purifier, the ozone emissions exceeded the 0.05 ppmv; however, when Mr. Overbeck placed the measuring device 2 inches below Mr. Montoya's nose, the ozone emissions were below 0.05 ppmv. It is our understanding that this particular UL test was developed approximately thirty years ago. Even if we knew the circumstances under which UL adopted this test, we submit that this test has outlived its usefulness and importance for the purposes of these proceedings and should be excluded.

We are equally concerned over the inclusion of testing for ozone emissions for devices intended for use in non-occupied or unoccupied residential space when people are not present, including purifier devices offering operational features for either manual or programmable use of ozone for use in occupied space when people are present, as well as for use in non-occupied or unoccupied space when people are not present at the time. We submit that adequate labeling and warnings should suffice to protect the public interest here so that a consumer can optionally choose devices capable of being used in occupied space and meeting the Federal 0.05 ppmv standard, and also capable of being used in non-occupied space where ozone emissions may exceed 0.05 ppmv.

There are other technical concerns that we have, such as making sure that the test chamber reflects "real world" conditions on air flow, contamination, ozone decay and dilution. We would also align ourselves with the earlier filed comments from the International Ozone Association relating to testing from December 13, 2006 as well as their supplemental comments on the Current Ozone Test filed in January, 2007. At a minimum, Staff should conform Sections 94804 and Section 94805 to remove mandatory compliance with UL Standard 867 "in its entirety" as currently drafted.

4. LABELING: We submit that adequate labeling covering the use of ozone both in occupied and non-occupied spaces is a key measure to protect the public interest that the Legislature addressed here, as it has done in countless other cases involving products where operational parameters are recommended. For example:

Section 41986.

(b) The regulations shall include all of the following elements:

(4) (A) Package labeling requirements that indicate that an indoor air cleaning device is certified as meeting the emission concentration standard for ozone emissions.

(B) The state board shall consider recommendations of affected industries and the public in developing the labeling requirements. (underlining added)
(C) The label for an indoor air cleaning device that is not a medical device shall include the following statement: "This air cleaner complies with the federal ozone emissions limit."
(D) The label for an indoor air cleaning device that is a medical device shall be labeled in compliance with federal law, including Section 801.415 of Title 21 of the Code of Federal Regulations.

As discussed more fully below, we submit that conforming Staff's Draft Labeling Requirements here can fulfill the legislative guidance and traditional legislative policy to use labeling as a lesser restrictive means of regulation where appropriate to protect the public interests of consumers. These recommended changes can meet the legislative elements above, and provide a means for all California consumers to be fully apprised of usage of devices with ozone emissions that meet the federal ozone emissions limit, as well as any optional usage that would exceed the federal ozone emissions limit in non-occupied spaces.

For example, conforming Section 94806. Labeling Requirements for "non-occupied or unoccupied space use" by inserting new paragraphs (a)(1) and (a)(2) after (a) below, with the underscored and bolded language below:

- (a) All indoor air cleaning devices for use in occupied spaces are required to display a certification label on the product packaging after completion of requirements of Section 95804 prior to sale in California, unless satisfying the requirements for exemption as specified in Section 94803.

- **(a)(1) All indoor air cleaning devices for use or optional use in non-occupied or unoccupied spaces as defined in Section 94801 shall display a certification label on the product packaging . . . . .**

- **(a)(2) All indoor air cleaning devices for use in non-occupied or unoccupied spaces as defined in Section 94801 shall include as part of the labeling requirement: CAARB has determined that ozone emissions of 0.050ppmv or less pose no risks to human health in occupied spaces; ozone emissions greater than 0.050ppmv may pose a risk in occupied spaces depending on various factors including the level and type of indoor contaminants and air circulation and ventilation, and should be restricted to use in non-occupied or unoccupied spaces during operation of the device when emissions are greater than 0.050ppmv.**

Having more flexible definitions, testing protocol that recognizes the realities of everyday indoor air quality conditions, and using disclosure and warning labels on par with speeding cars, tobacco use, improper gun safety, chlorine use, oven use, etc., then we are on more of a level playing field, and these LESS restrictive means of regulation, we

submit, still meet the public policy issues intended by AB 2276. Otherwise, we submit the ARB final rule will ultimately fail under judicial scrutiny!

Additional Comments

So we ask the CAARB, through its Staff at this point in these proceedings, these most crucial and potentially life-saving questions:

Who will decide how quickly a consumer can remove odors from their homes?
Who will decide how quickly a consumer can remove smoke from their homes?
Who will decide how quickly a consumer can remove surface bacteria, germs, mold and other contamination from their homes?
Who will decide how quickly a consumer can inactivate or remove microbial agents, such as bacteria, mold and viruses, from the breathable air in their homes?
Who will decide how quickly a consumer can reduce the threat of Avian Influenzas, such as the Bird Flu, from the breathable air in their homes?
Who will decide how quickly a consumer can control what is in their breathable air for themselves, their families, while at home, in their cars, at work, or in any indoor environment?
Who will decide whether a consumer can choose these activities affecting their indoor air quality in their residences or businesses while they are occupied by them while an air cleaner is in use, or are unoccupied by them while an air cleaner is in use?

Now ask these same questions but preface each with:

- What technologies will be available for consumers to choose?
- And then, what products will be available for consumers to choose?
- And finally, what operational options will be available for consumers to choose, provided there are adequate usage disclosures and labeling?

Based on the oral and written comments from some of the other participants to these proceedings, they state that since they drafted and crafted AB 2276, they believe their positions should be controlling here in this proceeding; namely that they want to clear the decks of any consumer choices that conflict with their policies, their testing methods, the products and technologies they manufacture or recommend. In some cases, we have seen media stories and even written advisories circulating through public schools and teacher associations representing final Board positions already taken that are in line with those of select interest groups, including an outright "ban" on all devices emitting any ozone whatsoever.

It boils down simply to this: Will the CAARB tell the millions and millions of California Consumers that they are deferring the decisions of how quickly and even how thoroughly consumers can address legitimate concerns over protecting themselves and their families, and even their employees, from the very real threats posed by microbial, bacteria, and

odor contaminations, including possible Bird Flu viruses, pandemic or otherwise, TO THE:

- American Lung Association, whose business and financial contributors include manufacturers of the HEPA Filter air cleaner technology products they exclusively recommend, which apparently do not produce ozone and appear to be exempt from these regulations; or

- Underwriters Laboratory, whose testing protocol appears to be streamlined against newer technologies by virtue of the 2 inch tailpipe requirement, and fails to address the natural reduction of ozone that takes place when exposed to microbial, bacteria, and odor contaminations in the air and on surfaces; or

- The Appliance Manufactures Association, whose membership apparently wants to make sure the State of California DOES NOT impose similar ozone producing regulations on their members' equipment, such as photocopies, printers, and all electric motor kitchen and other home appliances, many of which may well exceed the proposed standards adopted here.

We think the answer is **NO**, and that Staff and ultimately the Board will approve a reasoned set of regulations that truly are in the California consumers' best interests. Part of that equation will be to ensure that the testing and other requirements impose no greater restrictions than those on other comparable or even more dangerous activities; and that means not imposing greater controls on, or restrictions on, consumer choice than the State presently does over the following types of activities. For example:

(a) Cars capable of going up to 40 to 60 miles per hour OVER ANY POSTED SPEED LIMITS where speed related car accidents account for countless deaths and thousands of injuries every year to drivers, passengers, and innocent bystanders; or

(b) Ovens or stoves capable of going up to 100 degrees or more above ANY recommended recipe or cooking instructions; or

(c) High use office or home copiers and printers and facsimile machines that generate ozone during each and every use regardless of the concentration or amount generated in occupied areas; or

(d) The permitted use as well as the amount in any hour or over any daily period of time, of "Tobacco smoking" in homes, especially those where MINOR CHILDREN and INFANTS are present; or

(e) The permissible amount and level of Environmental Tobacco Smoke (ETS), also known as "second hand smoke contamination," a proven source of carcinogens and respiratory toxicants and recently determined to be a "Toxic Air

Contaminant" according to the Air Resources Board, taken into any public or private premise from persons recently smoking outside of these premises on their clothing, hair and skin; or

(f) Chlorine used in outdoor and indoor swimming pools, both public and private, a known carcinogen and toxic chemical, yet the State permits the sale and use of chlorine with just labeling requirements and usage disclosures. We even permit the "excessive concentrations" use or "super-chlorination" in swimming pools, again solely with warning labels disclosing NOT TO SWIM or even come into contact with the water during the "super-chlorination" process that can last from hours to several days. We are sure Staff and the Board are aware of how dangerous chlorine can be in comparison with ozone at greater than 0.05 ppmv, but still the State considers labeling with disclosures sufficient to protect the public and consumer's interests! And if for a moment anyone forgets how potentially dangerous chlorine can be, look no further than the news of several weeks ago in the Iraq conflict when Chlorine gas explosions were intentionally set off in moving trucks causing horrific casualties among innocent Iraqis.

<u>And what is the downside to making the recommended changes in definitions, testing parameters, and labeling & disclosure requirements in order to address these legitimate consumer concerns and options</u>?

We submit there is no downside at all, as providing all California consumers with legitimate choices on controlling their own indoor air and surface environments, and that of their families correctly meets the public interest standards for these rulemaking proceedings. We further submit that the overriding guidance for you to rely upon as you continue with this rulemaking is one of protecting the broad interests of all consumers in dealing with known and predictable indoor air quality problems today, as well as those that may be less predictable now, <u>but inevitable sometime in the future</u>. Preparedness is critical, and the rules and regulations ultimately adopted here must be flexible enough to foster the future technological options that consumers can choose from, too. Any rule or regulation that would directly or indirectly inhibit, cloud or create uncertainty about ***freedom of choice*** involving the protection of one's personal indoor air quality or that of one's family, subject to certain broadly accepted and reasoned standards, must be rejected!

<u>Conclusion</u>

Again, we want to thank and commend CAARB Staff for their approach to these proceedings, where we get a chance to review their latest materials, then share our preliminary thoughts with Staff and other interested parties and listen to theirs as well, and then we have time to prepare more in-depth comments, all geared to help the process and staff present what we hope is a more informed and reasonable proposed regulation from a California consumers' perspective to the formal Board.

At the end of this important and historical process, what should remain in everyone's mindset is that indoor air quality is all about consumers' freedom of choice over the products that best meet their individualized needs today and in the future, and the success or failure of this rulemaking process will be judged by how well it helps to legitimately take away consumers' fears of what is in the indoor air they breath, and what resources they have to protect themselves and their families in what could be the coming indoor air pollution and pandemic flu wars.

Sincerely,

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January 9, 2007 CCFC Comments

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California Consumers for Freedom of Choice
Written Comments to the California Air Resources Board
Air Cleaner Regulation Draft Concept

January 9, 2007

Introduction

Thank you for the opportunity to participate in this workshop on the development of a regulation to limit the use and emission of ozone from indoor air cleaners. The California Consumers for Freedom of Choice (CCFC) is a diverse group of California consumers from throughout the state concerned over the California Air Resource's Board (CARB) rulemaking process as it affects the rights of consumers to select products emitting ozone from indoor air cleaners. The comments below supplement the oral comments provided at the December 13, 2006 Staff Workshop.

During the past legislative session, we were the California Consumers In Opposition To AB 2276. We became aware of this bill very late in the legislative process; we had been unaware of the bill and its potential impact on consumers. Our fast growing group of thousands upon thousands of the estimated 500,000 or more consumers of a variety of indoor air cleaners/air purification products in the state were concerned over their personal choices in taking care of their Indoor Air Quality for themselves, their families, and in many cases their customers and employees. Through their last minute expressions of opposition to what they believed was "fixing an indoor air problem they did not think existed", they sent in thousands of letters to the Governor, signed petitions containing thousands of names, and flooded the phone lines at the Governor's office urging a veto of AB 2276.

Across the state our members come from all walks of life, both residential and business environments, and with different experiences and concerns. Here are a few illustrations of the concerns of many of our members:

Unbreathable and unlivable environments due to smoke, odors and chemicals from wild fires and other disasters – Many consumers, including the American Red Cross, have successfully used indoor residential air cleaners equipped with optional and scalable ozonation at higher levels to more quickly rid residential and business environments of the odors, chemicals, bacteria and mold related to wild fires, forest fires, as well as other disasters, without any substantiated incident directly related to ozone. In many instances,

had it not been for the optional indoor use of ozone, both residences and businesses would not have been accessible by consumers.

One consumer experienced a inhabitable potential disaster involving his 2 million dollar yacht. He reported that the refrigerator on the yacht malfunctioned, causing several poultry and other meat products to thaw and leak their blood and juices out of the refrigerator down into the walls, cracks and crevices of the boat. The owner was traveling and not aware of this for over two weeks, until a fellow boat owner in the next slip complained of the extreme foul smell. When the owner returned and opened the door to the yacht he found that the smell was so strong that the slip area where his boat was parked had to be evacuated. The owner tried every possible method he could think of to remedy the odor with no success. He had determined that the entire inside of the boat would have to be gutted and rebuilt. As a last option he decided to try an indoor residential air cleaner using an optional ozone feature on high. Within 24 hours the entire smell was gone. Had it not been for the air cleaner equipped with scalable levels of ozone, the consumer may have incurred a financial loss of 1 million dollars!

Maintenance of indoor environments - Consumers have used residential indoor air cleaners equipped with optional and scalable ozonation at lower levels to maintain better indoor air quality by continuously reducing levels of odors, chemicals, bacteria, and mold in their indoor residential and business environments. Many have increased the amount of scalable ozone as needed to more quickly remove and reduce such contaminants.

Day Care for Children and Elderly – Consumers running day care operations as well as assisted living operations have used residential indoor air cleaners equipped with optional and scalable ozonation at low levels during the day, and at higher levels after-hours or in specific non-occupied rooms to sanitize surface germs and bacteria so in the morning attendees could return to a safer and healthier indoor air quality environment. Without this flexibility, these consumers would have to pay to contract out to commercial clean-up/restoration services to constantly bring in commercial grade equipment to accomplish the same results at a higher cost than having a choice of purchasing their own equipment for daily, controllable usage.

Schools with reported mold and bacteria problems – For years consumers, predominantly teachers and concerned parents (in classrooms where school budgets are limited in providing indoor air quality solutions) have used residential indoor air cleaners equipped with optional and scalable ozonation at low levels during the day, and occasionally at higher levels after-hours when the space is non-occupied to sanitize surface germs, mold and bacteria so in the morning, students can return to a safer and healthier indoor air quality environment.

Portable air cleaners – Many of our consumers have been literally freed from being homebound because of sensitivities to chemicals, odors and mold (e.g., multiple chemical sensitivities) found in other indoor environments, such as stores, businesses, doctor's offices, schools, movie theaters, cars, planes, hotels, homes of friends and families, etc.,

through the use of indoor portable purifiers that they wear around their necks, or installed in their cars, or take with them when they travel or stay in hotels. There is significant concern here that these "lifelines" will be seriously impacted because the cleaning technologies use or have ozone as a byproduct. This was dramatically demonstrated at the December 13th Staff Work Shop when the representative from the International Ozone Association used a testing device on one of the portable air purifiers we were wearing around and below our necks because of our personal chemical sensitivities. When the device was placed approximately two inches away from the purifier it registered over 0.05ppm, but when the device was placed approximately 6 to 8 inches away from the purifier and right below the nose, it registered less than 0.05/ppm. As we understand the Staff's Concept Rule, under the 2 inch test this purifier would have "flunked" and prohibited from sales in California, and likely replacement or warranty sales and service, too! And from what we know about this particular product from Wein Products, Inc. of California, there are over a dozen Peer Review Studies substantiating this product's claims. Any rule that would result in denying consumers the right and freedom to choose this product or similar portable products for their personal indoor air quality needs is a significant concern to our members.

Recommendations

Despite our concerns over AB 2276, it was signed, and its future is in your hands. And unlike that process where we were late in participation, now we hope our timing is better and we are here to work with the Board to ensure that the Rules that get drafted and submitted for final approval are truly in the best interests of ALL California consumers concerned with their indoor air quality and their indoor air quality product choices.

Given the Board's broad experience in environmental and air quality issues, clearly you are aware of the significant shortcomings of the current legislative mandate conferred upon you. Of the many legislative proposals from past sessions covering indoor air quality issues, AB 2276 is one of the most narrowly drawn in terms of addressing the myriad of indoor air quality issues confronting policy makers and consumers in the state. The Board and Staff's mission here is made even more difficult because of the inability to address in these proceedings the make-up of indoor air quality and permissible levels of known airborne and surface contaminants impacting our indoor environments (in residential, business, commercial, school, transportation, entertainment, recreational, governmental and mobile or temporary environments), regardless of the originating sources (indoor, outdoor, local, state, country, international, etc.). Instead, your mission is limited to one single source for purifying indoor airborne and surface contaminants (ozone) in a single type of consumer product (residential, non-filter air cleaners), a proven cleaning source created by nature, and develop a regulation that must serve the best interests of California consumers seeking to protect their indoor air environments from known and unknown contaminants entering their indoor air from all potential sources for decades to come.

This will be another formidable task that the Governor and Legislature on behalf of the people of California have empowered the Board and Staff to resolve. Based on our prior participation in the legislative process surrounding AB 2276 as well as the December 13th, 2006 Staff Workshop, this will not be an easy task as there are competing interest groups as stakeholders here, many with *very narrow agendas* that may not serve the best interests of California consumers in their optional choices for individualized indoor air purification product solutions.

As we comment more fully below, our guiding recommendations to the Board and Staff at this phase of these proceedings is that (1) you take a fresh look at ozone and ozone technologies and the *latest science* substantiating its reasonably safe use; (2) your regulations be flexible enough to permit usage against both known and unknown contaminants impacting indoor environments for years to come, (3) your regulations allow for varying ozone usage amounts subject to perceived consumer needs even in indoor residential environments, provided there are reasonable warnings, disclosures or other safeguards in place, and (4) your regulations provide consumers with the broadest number of choices, as opposed to the least restrictive choices, for the protection of themselves and their families in their individual indoor environments.

More specifically, we submit that:

- Rules must make common sense
- Rules must be *free of politics*
- Rules must not be geared to selectively benefit the agendas of any interest group and their membership to the detriment of consumers
- Rules must be based on *real evidence*
- Rules must be based on *current science* and the *latest research*
- Rules on testing must be reasonable and not exclusionary
- Rules must provide consumers with legitimate safeguards, but in an appropriate measure using the "least restrictive means" (usage warnings, labeling requirements, etc.) so as not to limit the exercise of reasonable consumer choices
- Rules must allow for the broadest array of consumer product choices and encourage research and development for new product choices
- Rules must allow for the broadest consumer use of safe and proven ozone technologies, and at various levels based on the consumer's determination of indoor air quality needs with appropriate and reasonable disclosure and warnings
- Rules should err on the side of *Consumer Choice*
- Rules should weigh the benefits of choice over lesser risks involved, so as not to restrict individual consumer options
- Rules must take into account the lack of any government control over pollutants and contaminants entering residential indoor air environments, and government's relative inability to alert consumers in a timely manner to potentially dangerous contaminants entering residential indoor air environments

A brief comment on testing standards vs. less restrictive means of safeguarding consumer interests: During the legislative process we discovered that many known airborne contaminants that are considered extremely dangerous by the State are still permitted, including tobacco products, pesticides, chlorine, paint and paint thinner, acetone, bleach, fabric softener, certain candles, certain chemical air fresheners, oven cleaners and many other common household cleaners, etc. These products are openly sold and used, subject only to warning labels and disclosure requirements relating to indoor use in occupied spaces. Some of these products alone are responsible for more deaths (thousands a year) and sickness in California than from any reported use or misuse of ozone emissions from indoor air cleaners or purifiers, which to our knowledge has been zero. In fact, there are even more reported cases of airborne infection and deaths from hospital or health facility acquired infections that perhaps could have been reduced through the proper use of safe indoor air cleaners using optional ozonation, than from any reported use or misuse of ozone emissions from indoor air cleaners or purifiers. To suggest, as some *stakeholders* have, that consumers are *incapable* of reading or following warnings, if adopted, regarding ozone is absurd as this state sanctions serious known forms of contaminants to impact consumers, and even sanctions driving cars capable of exceeding lawful speed limits, using gas stoves capable of burning food and setting fires, and drinking alcohol levels capable of impairing ones ability to operate a motor vehicle.

The state also sanctions parents smoking in their homes, thereby exposing babies, toddlers, small children and other adults to toxic levels of second-hand tobacco smoke which has been scientifically proven to cause many breathing related problems including death from cancer and emphysema! Finally, the state sanctions pregnant mothers to smoke and drink alcohol knowing very well the potential of birth defects.

In lieu of rules to exclude safe indoor ozone technologies, the same level of warnings and label disclosures used for these other products should be more than acceptable! And these same procedures should be imposed on *all* indoor ozone emitting appliances and equipment, especially those whose emissions clearly would exceed the rules adopted by the Board (for example, photocopiers, office equipment and kitchen appliances), not just proven indoor air cleaners that are safe when used as directed!

Conclusion

The Board and Staff are at an historical precedent of laying what may be the only piece of California's Indoor Air Quality (IAQ) foundation for years to come. With no legislative precedents to date on addressing the entire IAQ picture, you have the challenge to implement a narrow charter in a way that can provide for the continuing needs of all California consumers; do not succumb to the pressures from narrow interest groups whose members and supporters may well have conflicting business agendas.

This is especially important since no governmental agency or scientific body can predict with any degree of certainty the nature, type and extent of potential indoor air contaminants that may be carried or transmitted through the air and into California indoor

environments, potentially from every single State in the United States, from every country in the World, regardless of distance, whether viral, bacteria, gaseous, chemical, biological, particulate or other form, whether natural or man-made, whether harmless or deadly, whether contagious or infectious, and whether treatable or not.

Even if the government could control and contain our borders, it is powerless to control or contain potentially harmful pollutants carried in the air that can freely enter our indoor environments. Indoor air pollution, which has been quoted by your own agency (EPA) as being many times worse than outdoor air, is just as much of a global problem as "global warming" and California consumers deserve the freedom to personally choose from all the viable technologies and products they believe will maximize their indoor air quality protection, now and in the years to come, at home, at work, at school, or any indoor environment they are inhabiting.

We submit that the overriding guidance for you to adopt in this rulemaking is one of protecting the broad interests of all consumers in dealing with known and predictable indoor air quality problems today, as well as those that may become problems in the future. Preparedness is critical, and rules must be flexible enough to foster the technological options that consumers can choose from. Any rule that would directly or indirectly inhibit, cloud or create uncertainty about *freedom of choice* involving the protection of one's personal indoor air quality or that of one's family, subject to certain broadly accepted and reasoned standards, must be rejected!

At the end of this important and historical process, what should remain in everyone's mindset is that indoor air quality is all about consumers' freedom of choice over the products that best meet their individualized needs, and the success or failure of this rulemaking process will be judged by how well it helps to legitimately take away consumers' fears of what is in the indoor air they breath, and what resources they have to protect themselves and their families in what could be the coming indoor air pollution wars.

Sincerely,

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