NATURAL RESOURCES DEFENSE COUNCIL

May 24, 2006

Clerk of the Board
Air Resources Board
1001 I Street, 23rd Floor
Sacramento, CA 95814

Re: Perchloroethylene Airborne Toxic Control Measure

Dear Chairman Sawyer and Members of the Board:

We write on behalf of the Natural Resources Defense Council and our more than 250,000 members and activists in California. We appreciate the efforts of the California Air Resources Board (CARB) to amend the perchloroethylene (perc) Airborne Toxic Control Measure (ATCM). However, we are concerned that CARB is violating California law in not executing a complete phase-out of perc in existing dry cleaning operations and enacting a prohibition on the use of perc in future dry cleaning facilities. Instead, CARB is recommending a minor phase out for 2% of current dry cleaners that use perc and future dry cleaners identified as "coresidential." In addition, the proposed ATCM amendments create other requirements that are not stringent enough to address perc pollution. As outlined below, the information contained in the Initial Statement of Reasons (ISOR) does not support the proposed amendments to the ATCM, which violates California law. Instead, the Board should adopt a regulation that phases out perc and new VOC-containing systems.

The Dangers of Perc

Numerous scientific studies have provided information about how perc is a harmful chemical that causes severe health impacts to residents living near dry cleaners, workers at dry cleaners, people who work near dry cleaners, and consumers of dry cleaners. The severe health impacts include both cancer and noncancer risks.[1] Short term exposure to perc has been linked to skin, eye, mouth, nose, and throat irritation; nausea; fatigue; vomiting; and fainting.[2] Chronic exposure to perc can cause respiratory disease, damage to the kidneys and liver, reproductive toxicity, and neurotixcity.[3] Also of great importance are the severe cancer risks associated with perc.

These public health consequences of using this chemical have motivated, local, state, national, and international entities to identify and reduce harms from perc. The U.S. Environmental Protection Agency has listed perc on the continuum between "possible"

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[1] *See* Coalition for Clean Air, *Hung Out to Dry* at 8.
[2] *Id.*
[3] *Id.*

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and "probable" human carcinogen.[4] The International Agency for Research on Cancer has declared perc a Group 2A carcinogen.[5] The California Office of Environmental Health Hazard Assessment classifies perc as a carcinogen. In fact the severe toxicity of perc made the South Coast Air Quality Management District (SCAQMD) implement a regulation that will result in a complete phase-out of perc.[6]

California Law Requires CARB To Completely Phase Out Perc in All Operations. The Tanner Act outlines CARB's authority as the agency primarily responsible for identification of toxic air contaminants (TAC) and implementation of measures to control TACs.[7] Perc has been listed as a TAC in California for more than a decade.[8] During the process of listing perc as a TAC, the Board found that this chemical has no safe level of exposure for human health.[9] California law requires several actions by CARB in the event it lists a toxic air contaminant with no allowable threshold. First, staff must prepare an ISOR.[10] This report must assess the need for regulation and the appropriate degree of regulation for this TAC.[11] Second, if there is no specified threshold exposure level, CARB must develop an ATCM that "reduce[s] emissions to the lowest level achievable through application of best available control technology or a more effective control method, unless the state board or a district board determines, based on an assessment of risk, that an alternative level of emission reductions is adequate or necessary to prevent and endangerment of public health."[12] In the case of perc, CARB is revising the dry cleaning ATCM, but California law imposes the same requirements on an amendment to an ATCM as the initial adoption of an ATCM.

The contents of the ISOR play a crucial role in determining the legality of CARB's actions relating to an ATCM. "[T]he validity of the ISOR is measured by its sufficiency to support the ATCM which is adopted."[13] As the Board is well aware from its litigation over the asbestos ATCM, California law "directs, the Board to design an ATCM to reduce the emissions of [a toxic air contaminant] to zero if, considering the factors in section 39665, subdivision (b), it is achievable given the technology and costs of enforcement and the availability of substitute compounds of a less hazardous nature."[14]

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[4] *Id.* at 9.
[5] *Id.*
[6] *See* SCAQMD Rule 1421.
[7] Cal. Health and Safety Code § 39650 et. seq.
[8] Cal. Code Regs., tit. 17, § 93000.
[9] *Id.*
[10] Cal. Health & Safety Code § 39666(c). The Health and Safety Code contains eight requirements for the ISOR. These requirements include addressing "(1) The rate and extent of present and anticipated future emissions, the estimated levels of human exposure, and the risks associated with those levels…(4) The availability and technological feasibility of airborne toxic control measures to reduce or eliminate emissions…(6) The availability, suitability, and relative efficacy of substitute compounds of a less hazardous nature." Cal. Health & Safety Code § 39665(b).
[11] Cal. Health & Safety Code § 39665.
[12] Cal. Health & Safety Code § 39666.
[13] *Coalition for Reasonable Regulation of Naturally Occuring Substances v. California Air Resources Board*, 122 Cal.App.4th 1249, 1260 (Cal. Ct. App. 2004).
[14] *Id.* at 1261.

Based on our preliminary assessment of the legal issues surrounding this ATCM, there are at least two ways that the ISOR does not support the actions proposed by ARB staff. In fact, the factors weigh heavily in favor of taking an approach of expeditiously phasing out perc and new VOC-containing systems.

The Harms Associated with the Dry Cleaning Industry in California Requires Aggressive Pollution Control Regulations.

A crucial factor that the ISOR must address is "the rate and extent of present and anticipated future emissions…and the risks associated with those levels."[15] The ISOR provides clear evidence of severe harms associated with the use of perc not only in coresidential facilities, but also in commercially zoned areas. For example, CARB finds that even with full implementation of the control measures under the proposed amendments, risk to those living close to dry cleaning facilities will be 25 in million.[16] This is an unacceptable level of risk. Also, the risk for workers in dry cleaning facilities [illegible] that viable alternatives exists. CARB clearly found that "[n]o adverse emission-related health impacts are expected with the use of wet cleaning or CO_2."[18] In fact, CARB seems to be basing its continued allowance of perc based on a fear that there will be a switch to hydrocarbon solutions or Green Earth.[19] However, the ISOR does not present a solid case that the continued use of perc, which has a proven track record of severe health impacts, is outweighed by the use of hydrocarbon solutions and Green Earth, which *may* have toxic effects.[20] Essentially, CARB is focusing on two of the alternatives to perc and ignoring the fact that there are two other viable options available, wet cleaning and CO_2. Without this analysis, the ISOR fails to support the ATCM amendments proposed by CARB staff.

Conclusion

Since CARB staff is not proposing to enact a regulation achieving emissions anywhere near the lowest level achievable, the Board must find that the proposed ATCM amendments achieve "an alternative level of emission reductions…adequate or necessary to prevent an endangerment of public health."[21] The overall dangers of this

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[15] Cal. Health & Safety Code § 39665(b)(1).
[16] *See* ISOR at V-1. This is problematical because even assuming the best case scenario about compliance, there still is a high cancer risk associated with living near a dry cleaning facility.
[17] Cal. Health & Safety Code § 39665(b)(6).
[18] ISOR at ES-11.
[19] *See* ISOR at 11-10.
[20] OEHHA is currently examining whether Green Earth, a silicone based solvent, has toxic effects.
[21] *See* Cal. Health & Safety Code § 39666(c).

chemical (even with the proposed control measures in place) combined with the prevalence of nontoxic alternatives prevent this Board from legally making this finding. Thus, we urge the Board to phase out perc and new VOC-containing systems.

We look forward to working with you on this important issue, and we hope you will choose to phase out perc and hydrocarbon solvents. Perc is a dangerous chemical for Californians, and now is the time to prevent its use. Thank you for considering our comments on this important public health matter.

Sincerely,

Adrian Martinez
Project Attorney
Natural Resources Defense Council