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#24

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VIA FEDERAL EXPRESS

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Re: Architectural Coatings Suggested Control Measure

Dear ARB Board Members:

Introduction

We are counsel for the Environmental, Legislative, and Regulatory Advocacy Program of the California Paint and Coatings Industry Alliance (the "California Paint Alliance"), a leading California paint industry trade association on regulatory matters, the Allied Local and Regional Manufacturers Caucus (the "ALARM Caucus"), a national paint industry trade association

concerned with such matters, and various individual paint manufacturers, retail paint dealers, and painting contractors who are headquartered or do substantial business in California.

Our clients received a letter, dated May 5, 1999 from your staff inviting them to a public workshop on June 3, 1999 to discuss draft proposed changes to ARB's suggested control measure (last amended in 1989) on architectural coatings. On May 6, 1999 your staff wrote a letter to South Coast AQMD expressing "support" for amendments to its Rule 1113 which would outlaw virtually all architectural coatings on the market. On May 14, 1999 your staff personally appeared before the South Coast AQMD board at a public hearing and, again, expressed "support" for adoption thereof.<sup>1</sup> Our clients have also received the staff's May 19, 1999 letter enclosing "the draft proposed SCM," which is very similar to the South Cost AQMD's amendments. That letter discusses both (a) the approach of "more closely aligning" the proposed SCM with recent amendments, adopted November 8, 1996 and May 14, 1999, to South Coast AQMD's Rule 1113 and, alternatively, (b) the staff's supposed collaboration with districts "to harmonize the SCM's provisions as much as possible" with EPA's architectural coatings regulation imposed nationwide, including in California, on September 11, 1998. We appeared at the June 3 workshop, and your staff appears determined to continue in its effort to follow South Coast AQMD.

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LEDA  
A quick look reveals to anyone that it is impossible to "harmonize" the SCM with EPA's new national rule and also to "closely align[]" it with South Coast AQMD's recent amendments. EPA's and South Cost AQMD's actions are based on fundamentally conflicting rationales. The limits in South Coast AQMD's radical and unprecedented new amendments are many times lower than those in EPA's rule.

The ARB staff's recent statements to South Coast AQMD, its draft proposed SCM, and its posture at the workshop make quite clear that the staff has concluded that (1) ARB should amend its SCM at this time, (2) ARB should not "harmonize" those amendments with the new EPA rule, (3) ARB should, instead, "closely align[]" those amendments with the new South Coast AQMD amendments, and

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<sup>1</sup> One of the few board members to express his reasons for voting for the bans cited the ARB staff's "very clear statement."

(4) no prior independent economic nor environmental review by ARB was needed to support those conclusions.

In this letter, our clients make and defend four basic points:

*Issues*  
*not*  
*rule*  
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**ARB SHOULD NO LONGER REGULATE ARCHITECTURAL COATINGS.**

As a result of EPA's new nationwide regulation of architectural coatings, promulgated September 11, 1998, California regulations, including the SCM and the proposed amendments thereto, are no longer consistent with federal law and, therefore, now violate state law. Indeed, California regulations covering the manufacture and sale of paint are now unconstitutional, because they have been preempted by EPA's new rule under the Supremacy Clause of the U.S. Constitution.

*Issues*  
*limits*  
3

**ANY ARB REGULATION OF ARCHITECTURAL COATINGS SHOULD SET REASONABLE LIMITS AND DEADLINES.**

Most state and local jurisdictions in America have elected not to regulate architectural coatings at all. The few agencies which have done so have, in the overwhelming number of cases, set reasonable limits and deadlines aimed at reducing excess organic compounds, not outlawing products. ARB set limits in 1981 and again in 1984, as did EPA in 1998, which refrained from counter-productive and anti-competitive bans. Most limits set by most districts in California have also avoided such extreme consequences. Even most of the rulemaking actions taken by South Coast AQMD, itself, during the past 22 years have been supported or unopposed by industry. If ARB continues to be active in this unique field at all, it should follow this well-established consensus in the regulatory community.

*Issues*  
*Co-4*  
4

**ARB SHOULD AVOID THE CATASTROPHIC ERROR OF OUTLAWING VIRTUALLY ALL PAINTS.**

South Coast AQMD, alone among all agencies in the nation, has recently lost its senses and banned most architectural coatings. This irrational step, and the growing public outcry it is exciting, will discredit South Coast AQMD in particular and all clean air regulation in general. The ARB staff should rethink the irresponsible position it prematurely took in May. The ARB board should not follow this approach and, indeed, should exercise

4 leadership to restore reason to the statewide clean air program. It should rebuke South Coast AQMD's ill-considered and, we believe, ill-fated action, and it should decline to endorse any similar recommendation from the ARB staff.<sup>2</sup>

CCOA  
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• ARB MAY NOT PROCEED FURTHER WITHOUT THE REQUIRED ECONOMIC AND ENVIRONMENTAL ANALYSES. Proposing and adopting SCM amendments, especially amendments as revolutionary as those favored by your staff, presuppose careful analyses of the economic and environmental consequences thereof and of viable alternatives thereto. Indeed, such analyses are mandated under the Administrative Procedure Act and the California Environmental Quality Act. ARB's staff has jumped to its absurd conclusions without having performed these analyses. The board must insist that such analyses be performed promptly, if ARB is determined to proceed further at all.

The factual and legal support for the above four points is detailed in part II below. But, first, because the ARB board members are new to this subject, which has not been considered by ARB since 1989, we set out certain key background information in part I.

I. FACTUAL BACKGROUND

A. OZONE POLLUTION AND ARCHITECTURAL COATINGS

As you know, excessive amounts of ozone, although both natural and invisible, cause transient irritation to the lungs of active or sensitive persons during summer afternoons. Ozone is the type of air pollution to which federal, state, and local regulators devote most of their regulatory attention.

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RY  
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The primary precursors of ozone are oxides of nitrogen, emitted mainly by motor vehicles, but also other industrial combustion sources. National Research Council, *Rethinking The*

<sup>2</sup> Our clients intend to petition ARB to revoke its prior adoption of the South Coast AQMD's 1996 amendments as SIP revisions, and not to adopt its 1999 amendments.

*Ozone Problem In Urban and Regional Air Pollution* (National Academy Press, Washington, D.C., 1992) at 7, 11.

Organic compounds may also play some role in ozone nonattainment in some areas at some times. Hundreds of such compounds are emitted into the air, primarily by vegetation and motor vehicles, but also by various other evaporative sources, including thousands of commercial processes and consumer products. To be an ozone precursor, even in Los Angeles, an organic compound must be sufficiently volatile to rise into the ambient air and also sufficiently reactive to chemically react there with NO<sub>x</sub> to contribute to excessive ozone concentrations. Some emissions of some organic compounds contribute negligibly or not at all to, or even reduce, ozone pollution. *Id.* at 153-54, 170.

The predominant organic compounds in water-borne architectural coatings are a class of resins and additives (co-solvents) which include ethylene glycol and propylene glycol. The best scientific evidence is that these glycol compounds are low in volatility. Harley et al., "Respeciation of Organic Gas Emissions," *Environ. Sci. Technol.* (1992) 2395 at 2400. Indeed, as you know, as used in some products, glycol compounds are deemed by EPA and ARB to be insufficiently volatile to be problematic. For example, ARB's consumer product regulations exempt organic compounds with vapor pressures less than 0.1 mm Hg at 20° C. EPA's national consumer product regulation also exempts organic compounds with such low vapor pressures. Our clients believe that it is probable that the glycol compounds in water-borne coatings are similarly non-problematic.

The predominant organic compounds in solvent-borne architectural coatings are a class of petroleum distillate carriers referred to as mineral spirits. The best scientific evidence is that mineral spirit compounds are low in reactivity. Harley at 2401. Congress has mandated, 42 U.S.C. § 7511b(e), and ARB and South Coast AQMD have often recognized, as you know, that organic compound regulations must take relative reactivity into account. ARB's low emission vehicle regulations implement such a strategy with the use of reactivity adjustment factors. Our clients deem it very likely that the mineral spirit compounds in solvent-borne coating are similarly non-problematic insofar as ozone pollution is concerned.

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ISSUE  
✓  
EPA, ARB, and South Coast AQMD have never shown that the organic compounds in paints contribute materially or at all to ozone nonattainment.<sup>3</sup> California Paint Alliance and ALARM Caucus, based on the best scientific evidence and hypotheses, assert that paints do not pollute. In short, outlawing architectural coatings does not help one Californian breathe one easier breath. Please think about this basic point as you consider whether or not to outlaw virtually all paint products and, thereby, to destroy a major California industry.

B. HISTORY OF PAINT REGULATION

ISSUE  
12  
Notwithstanding the absence of a solid scientific foundation, for 22 years EPA, ARB, and South Coast AQMD have led a very determined effort to regulate architectural coatings formulas in the name of clean air. Certain aspects of the effort have constituted what amounts to nothing short of a brutal war on paint manufacturers, dealers, and contractors, their employees, and the paint-consuming public.

ISSUE  
13  
Given the extreme and radical nature of the South Coast AQMD's recent amendments, and your staff's public support thereof and current proposal based thereon, we submit that ARB must become familiar with the history of such regulation at all three levels of government, including the dark spots as well as the bright.

(1) ARB Regulation

ARB has made substantive policy choices for Californians about paint regulation on four major occasions during the past 22 years.<sup>4</sup>

In 1977 ARB took the lead in establishing California's so-called "model rule" on architectural coatings. Unregulated

ISSUE  
10  
3 EPA estimates that organic compound emissions from architectural coatings (even assuming they were both highly volatile and highly reactive) constitute about 1% of such emissions from all sources.

ISSUE  
11  
at  
Paint  
4 State implementation plans containing architectural coatings rules, we understand, have typically been approved and transmitted to EPA by the staff, not the board. The board occasionally considers district plans, containing numerous possible control measures, including some relating to architectural coatings, but rarely the specifics of such measures.

solvent-borne coatings generally exceeded 400 g/L of organic compounds (predominantly mineral spirits), and unregulated water-borne coatings generally fell below 250 g/L of organic compounds (predominantly glycols). The initial model rule would have subjected all coatings to a 250 g/L limit over a period of five years. The basic theory was to outlaw the remaining solvent-borne coatings, thereby forcing makers, sellers, and users to switch to water-borne coatings. This led to litigation under the APA brought by the Ad Hoc Committee of Small California Paint Manufacturers against ARB. Within two years of its adoption, a widespread consensus arose among most regulators and regulated parties alike that ARB's adoption and district implementation of the model rule had been, and would be, an economic and environmental disaster. For example, in 1981 South Coast AQMD effectively repealed the model rule's drastic 250 g/L limit for non-flats.

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In 1981 ARB, then chaired by Mary Nichols (recently appointed as Secretary of the California Resources Agency), reviewed that limit. Health & Safety Code § 41500(b). After extensive public hearings, ARB established in South Coast AQMD the restrictive, but not unreasonable, limit of 380 g/L for non-flats. *Id.* at § 41504. The principle behind ARB's limit was to remove all excess or unnecessary organic compounds from solvent-borne non-flats without banning the products. Other districts followed ARB's lead, and this has been the non-flat limit in most areas ever since.

In 1984 ARB extensively reviewed the model rule limits for all specialty coatings based on technological assessments by outside experts. These limits were thereupon raised by ARB to the 350-420 g/L range. Again, these reasonable reformulation limits have been widely implemented and enforced at the district level for many years and, we believe, have stood the test of time.

In 1989 ARB revisited the issue and, as in 1977, once again became more venturesome. It adopted, over the vigorous opposition of our clients, the current SCM. The SCM fixed limits which would have effectively banned most formulas used to make solvent-borne paints. The theory of the SCM was, as in 1977, to compel the marketplace to substitute water-borne for solvent-borne coatings. Again, as in 1977, the SCM was a flop. A majority of California districts — San Diego APCD, for example — declined to adopt the SCM. Others were ambivalent, such as

Colusa APCD, which adopted the SCM and, then, promptly repealed it. A few districts which did attempt to implement the SCM, were sued, along with ARB, by our manufacturer, contractor, and dealer clients. *Colusa APCD v. Superior Court*, 226 Cal.App.3d 880 (1991). One court invalidated Bay Area AQMD's amendments under CEQA. *Dunn-Edwards Corp. v. Bay Area AQMD*, 9 Cal.App.4th 644 (1992). Ventura APCD's amendments were also invalidated on the same grounds after a second trial before a second judge. Furthermore, most of South Coast AQMD's amendments were invalidated in a third proceeding. *Dunn-Edwards Corp. v. South Coast AQMD*, 19 Cal.App.4th 519, 522 (1993).

ISSUES  
2/19/99  
In short, ARB's record during the last two decades has been mixed. When it sets limits designed to remove excess compounds from paint products, but not to ban those products, it succeeds. Local districts follow, and industry does not challenge the action. But when ARB has attempted to outlaw coatings (even only solvent-borne coatings) it has failed. Local districts and regulated parties rebel and prevail.

(2) EPA Regulation

ISSUES  
Legal  
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Initially, EPA regulated architectural coatings indirectly through the states. Sections 110, 172, and 182 of the Clean Air Act, 42 U.S.C. §§ 7410, 7502, 7511, mandate that states in ozone nonattainment areas prepare state implementation plans to be approved by EPA. In particular, Section 182(b)(1)(A)(i) mandates that California shall provide for organic compound emissions reductions by 1996 of 15%. Sections 110(k)(5) and 172(d) provide that EPA shall require states to correct plan deficiencies. Federal courts occasionally order districts to implement federally-approved plans. *E.g.*, *CBE v. Deukmejian*, 731 F.Supp. 1448 (N.D. Cal. 1990); *CBE v. Deukmejian*, 746 F.Supp. 976 (N.D. Cal. 1990); *CBE v. Wilson*, 775 F.Supp. 1291 (N.D. Cal. 1991). However, the CAA does not require any state or local regulator to forego his or her usual quasi-legislative discretion not to adopt, or to repeal, an unwise rule. *Trustees For Alaska v. Fink*, 17 F.3d 1209, 1211-13 (9th Cir. 1994); *Coalition Against Columbus Center v. New York*, 967 F.2d 764, 773-75 (2nd Cir. 1992).<sup>5</sup>

16  
Legal  
<sup>5</sup> If the CAA were treated as a federal mandate "commandeering" local and state regulators, it would violate the Tenth Amendment of the U.S. Constitution. *Printz v. U.S.*, 117 S.Ct. 2365, 2379, 2384 (1997); *Brown v.*

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More recently, EPA has begun to regulate architectural coatings and other products directly. In 1990 Congress enacted Section 183(e) which authorized EPA to (a) study, (b) list, and (c) regulate, under a highly specific regulatory process, products emitting organic compounds. 42 U.S.C. § 7511b(e). In 1995 (preliminarily) and 1998 (finally) EPA listed architectural coatings for immediate regulation. Section 183(e)(1)(A) and (3)(A) mandate that such regulations shall require "best available controls," or the degree of emissions reduction determined, on the basis of "technological and economic feasibility" and "environmental . . . impacts," is achievable through application of "the most effective" measures.

17  
Issues  
Paint Rule  
On September 3, 1996 EPA proposed and on September 11, 1998 it adopted a final national rule on architectural coatings. Again, Ms. Nichols, then as the head of EPA's air program, was in charge of these determinations. EPA's limits are in line with the California consensus, as generally reflected in ARB's 1981 and 1984 actions and virtually all actions of all districts. For example, the limit for nonflat coatings is 380 g/L, the limit for flat coatings is 250 g/L, the limit for industrial maintenance coatings is 450 g/L and the limit for primers is 350 g/L. The theory behind EPA's rule was to extend regulation to water-borne, as well as solvent-borne, coatings, but to remove excess compounds through reformulation only, not to ban any products and force substitution of low- or no- OC paints on non-paint substrate protection products.

(3) South Coast AQMD and Other District Regulations

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Issues  
AQMD  
Some California air districts have never regulated architectural coatings. Others have done so infrequently and moderately. As discussed above, only a few have attempted to embrace ARB's 1989 SCM.

Even South Coast AQMD, itself, has generally acted reasonably. It has amended its paint rule 22 times in 22 years. With several exceptions, most of those actions were widely seen as fair and sensible, as they aimed at removing unnecessary organic compounds from paints, not banning products.

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Issues  
EPA, 521 F.2d 827 (9th Cir. 1975), vacated and remanded EPA v. Brown, 431 U.S. 99, 103 (1977), on remand Brown v. EPA, 566 F.2d 665 (9th Cir. 1977).

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South Coast AQMD, however, has recently gone off the deep end. It has in 1996 and 1999 adopted limits, not to remove excess compounds, nor even to ban only solvent-borne coatings, but to ban virtually all architectural coatings, water-borne included.<sup>6</sup> Its rule amendments will in the early part of the next decade, by imposing limits as low as 100 g/L, outlaw all solvent-borne paints and the best water-borne paints. They will later in the decade, by imposing limits as low as 50 g/L, ban virtually all the rest of the coatings used today.

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This is not the time or place to detail the sorry performance of the South Coast AQMD staff, certain outside interest groups, or the decision-making process of the South Coast AQMD board majority. Suffice it to say that our clients contend that the 1996 and 1999 actions were not taken on the merits. South Coast AQMD has made a grave mistake which, we believe, will not stand.

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These draconian actions were taken without widespread public support. The 1999 South Coast AQMD amendments were critiqued extensively by local and national news media. For example, the *Los Angeles Daily News* editorialized that its new rules were "radical" and "drastic." The *Long Beach Press-Telegram* opined that South Coast AQMD regulators are "leaning toward make-believe when it comes to paints" and trading "an all but impossible price to pay" for "improvements in air quality [which] could be next to nothing."

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<sup>6</sup> These bans cannot be excused on the basis of the widely-held (but highly dubious) theory of "technology-forcing." See, e.g., *International Harvester Co. v. Ruckelshaus*, 478 F.2d 615, 623, 629, 634, 636, 641, 642, 649, 650 (D.C. Cir. 1973) (use by clean air regulators of technology-forcing theory is "drastic medicine," a "dangerous game of economic roulette," and "shock treatment," and rulemakers, therefore, must avoid "crystal ball" gazing or "prophecy" at the time of adoption and, if necessary, allow an "escape hatch" or "safety valve" at the time of effectiveness). Here, low-OC and no-OC products have been manufactured and marketed by most companies as low-odor products (and by a few national companies more aggressively) for a number of years, and two-component systems with low-OC or no-OC have also been used in industrial settings for many years. However, virtually no professional nor do-it-yourself painters freely elect to buy and use these either unsuitable or expensive and difficult-to-use products. In short, these new limits do not force the development of new technology; instead, they force the use of existing, but wholly inadequate, technology.

22 The Daily News conducted this poll: "Do you favor tougher standards for the paint industry?" There were about 500 responses, 94% of which were "no." The Orange County Register asked its readers this question: "Do you think new paint formula regulations will force smaller manufacturers out of business?" Of 184 responses, 91% answered "yes."

The board member who spearheaded the 1996 ban of flats gave this pathetic rationale in his summation: ". . . [W]e're at a serious turning point in the history of this District and in our effectiveness as an organization. If we can't pass this we are, in effect, saying that we are failing in our ability to move forward."

Another board member, an elected official whose constituency is larger than those of all other elected official board members combined, voted "no" in 1996 and again in 1999. He cited the amendments' massive costs and nominal benefits, stating in 1996 that his colleagues were taking "a step backward," as well as "a sharp turn to the left."

23 Issues  
AQMD  
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Whether South Coast AQMD's recent steps are forward or backward, right or left, one thing is certain: its steps are huge and unlike any others taken before. South Coast AQMD is now alone, isolated from the mainstream, and, we perceive, the object of widespread and growing public ridicule. Unfortunately, ARB's staff has now stepped out into the same untenable and exposed position.

## II. OUR CLIENTS' FOUR MAIN POINTS

### A. THE NEW NEED TO ABSTAIN

#### (1) Policy Reasons

24 Issues  
Reg  
Paints  
For 22 years EPA, ARB, and South Coast AQMD have "triple-teamed" paint manufacturers, dealers, and contractors, their workers, and the paint-using public. Now, due to federal action last year, there is absolutely no reason why this wasteful and unfair triplication should continue.

Even if paints pollute, which we deny, it is unconscionable that more than one level of government should continue to regulate. All three agencies are powerful, well-financed, and aggressive. Any one of the three has certainly

proven itself ready, willing, and able to handle the task. The assaults by the other two, at this point, are wholly gratuitous.

Accordingly, at least two of the three levels of government currently regulating architectural coatings should immediately stop doing so. Taxpayers will thereby save two totally wasteful sets of regulatory costs. More significant, the public will save the even larger costs inherent in complying with, not one, but three, sets of rules — which usually conflict.

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ARB is the most obvious candidate of the three to abstain. EPA is the only agency with explicit rulemaking authority over architectural coatings, 42 U.S.C. § 7511b(e), and it has now definitively exercised that authority. Districts also claim the power to regulate all "sources" of "air pollution".<sup>7</sup> On the other hand, the Legislature has explicitly denied ARB authority to regulate architectural coatings. Health and Safety Code § 41712.

In short, the fact the ARB has been involved in the regulation of architectural coatings in the past has been an anomaly, and now it is also an anachronism. ARB should gracefully retire from the field.

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Of course, rulemaking at the district level is "[s]ubject to the powers and duties" of ARB. Health and Safety Code § 40001(a); *People v. A-1 Roofing Service, Inc.*, 87 Cal. App. 3d Supp. 1, 10 (1978). To coordinate district activity and ensure compliance with state standards, ARB shall review district rules to determine whether they are sufficiently effective to achieve and maintain such standards. Health and Safety Code § 41500(b). If ARB finds that district rules will not likely do so, it may establish for a district rules it deems necessary to do so. *Id.* at § 41504(a). This statutory scheme empowers ARB to "oversee" the effectiveness of district regulations with "ultimate authority" to establish them. *Stauffer Chemical Co. v. ARB*, 128 Cal. App. 3d 789, 793 (1992). Furthermore, ARB is authorized to "coordinate" district efforts. Health and Safety Code §§ 39003, 39500. It may also provide "assistance" to any district. *Id.* at § 39605(a). Finally, ARB has the

<sup>7</sup> *Cf.*, *WOGA v. Orange County APCD*, 14 Cal.3d 411, 417 (1975) (districts lack statutory authority to regulate contents of fuel in motor vehicles).

25 responsibility to conduct "research" into the causes of and solution to air pollution.

Issues  
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27 After 22 years of painful experience in the field of architectural coatings regulation, it is doubtful whether districts any longer need ARB's assistance, and whether there is any longer a need for ARB to exercise its oversight powers by adopting model rules. If any ARB oversight actions are deemed appropriate, they would best be limited to two types. First, ARB could coordinate district efforts to harmonize California rules with the EPA rule. Second, ARB could research the volatility of glycols and the reactivity of mineral spirits to determine whether any paints and, if so, which ones are the proper targets of clean air regulation.

(2) Federal Inconsistency

Issues  
Legal  
27 Indeed, continued ARB involvement in this issue is now problematic on legal as well as policy grounds. Because EPA has now adopted nationwide limits on paint contents, state law prohibits inconsistent ARB standard-setting.

27 ARB is required under the APA to prepare and publish an initial statement of reasons describing its efforts to avoid "conflicts with federal regulations . . . addressing the same issues." Government Code § 11346.2(b)(6). It is also bound to include in a notice of rulemaking an informative digest containing a concise and clear summary of "existing laws and regulations . . . related directly to the proposed action" and, if the action "differs substantially from an existing comparable federal regulation or statute," the digest shall include a "description of the significant differences." *Id.* at § 11346.5(a)(3). An ARB regulation is approvable only if it complies with the standard of "[c]onsistency." *Id.* at § 11349.1(a). That means it must be "in harmony with, and not in conflict with or contradictory to," existing law. *Id.* at § 11349(d). These provisions ensure that ARB's regulations are consistent with CAA Section 183(e) and EPA's national paint rule thereunder. *Engelmann v. State Board of Education*, 2 Cal.App.4th 47, 62 (1991).<sup>8</sup>

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Issues  
Legal  
<sup>8</sup> Proposal and any adoption of the draft proposed SCM are subject to APA. The APA is applicable to the exercise of "any quasi-legislative power" conferred upon a state agency by statute. Government Code § 11346. "No state

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Where, as in the matter now before you, a state law on a particular subject forbids what a federal law on the same subject permits, the two are inconsistent. *California v. FERC*, 495 U.S. 490 (1990) (state law imposing 30-60 cfs minimum on dam operator conflicts with federal law permitting 11-15 cfs minimum); *National Broiler Council v. Voss*, 44 F.3d 740, 747 (9th Cir. 1994) (state law imposing poultry label standards inconsistent with federal law); *California v. FCC*, 39 F.3d 919, 933 (9th Cir. 1994) (state's more stringent requirements on telephone company internet services conflict with more permissive federal law); *Vietnamese Fishermen v. California Department of Fish & Game*, 816 F.Supp. 1468, 1474-5 (N.D. Cal. 1993) (state prohibition of gill nets below 38° north latitude inconsistent with federal rule allowing such use); *Southern Fisheries Assn. v. Martinez*, 772 F.Supp. 1263, 1267-68 (S.D. Fla. 1991) (state law restricting fishermen to 2.99 million pounds per year in conflict

Issue  
Legal  
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agency shall issue, utilize, enforce, or attempt to enforce any . . . standard of general application . . . which is a regulation as defined in subdivision (g) of Section 11342, unless the standard of general application . . . has been adopted as a regulation . . . pursuant to this chapter." *Id.* at § 11340.5. Section 11342(g) defines a regulation as follows: "Regulation means every . . . standard of general application . . . adopted by any state agency to implement the law enforced or administered by it . . ." *Id.* at § 11342(g). The definition is interpreted broadly. *Tidewater Marino Western v. Bradshaw*, 14 Cal.4th 557, 569-71 (1996). In particular, ARB shall adopt standards and regulations in accordance with the provisions of the APA. Health & Safety Code § 39601(a). ARB normally follows the APA in carrying out its quasi-legislative activities. *E.g.*, *Western Oil & Gas Assn. v. ARB*, 37 C.3d 502, 524-29 (1984) (ARB adoption of state air quality standards); *Western States Petroleum Assn. v. Superior Court*, 9 C.4th 559, 565 (1995) (ARB adoption of vehicular source regulation); *Clean Air Constituency v. ARB*, 11 C.3d 801, 815-16, 818-19 (1974) (ARB postponement of effective dates of previously adopted vehicular source regulations); *Stauffer Chemical*, 128 C.A. 3d at 793 n.4, 794, 796 n.5 (ARB review of district rule and establishment of stricter district rule). Where, as here, a state agency adopts standards to be followed by local or other state agencies, their proposal and adoption are subject to APA. *Engelmann*, 2 Cal.App.4th at 55-56; *San Marcos v. California Highway Comm.*, 60 Cal.App.3d 383, 403-10 (1976); *Ligon v. State Personnel Board*, 123 Cal.App.3rd 583, 587, 588 (1981); *Armistead v. State Personnel Board*, 22 Cal. 3d. 198, 202-04 (1978). The Office of Administrative Law has determined that a model law adopted by a state environmental agency for consideration and potential adoption by local environmental agencies is, itself, a regulation subject to APA. *In re Ventura County*, 199 OAL Determination No. 19 at 608 (the definition of regulation "does not require that [general] applicability of the challenged rule stem from the adopting agency").

with federal law allowing up to 3.14 million pounds). Significantly, this type of inconsistency has been found in a similar case in the clean air context. In *American Motors Corp. v. Blum*, 603 F.2d 978, 981 (D.C. Cir. 1979) the court compared a California air pollution control regulation with a corresponding federal regulation under the CAA,, saying:

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". . . Congress . . . mandates that with respect to small manufacturers a lead period of two years is necessary . . . We conclude . . . that the California regulation, which denies to AMC a lead time of two years, is inconsistent with [the CAA]."

Thus, under state law, ARB may not adopt nor enforce SCM provisions more restrictive than the EPA regulation adopted on September 11, 1998.

(3) Federal Preemption

Furthermore, any SCM provisions more strict than federal law are also now unconstitutional. Article VI, Clause 2 of the U.S. Constitution provides that ". . . the laws of the United States . . . shall be the supreme law of the land." Under this clause, state laws which interfere with federal laws on the same subject are invalid. See, generally, *McCulloch v. Maryland*, 4 Wheat 316 (1819); *Gibbons v. Ogden*, 9 Wheat. 1, 211 (1824); *Cooley v. Board of Wardens*, 12 How. 299, 319 (1851). Two lines of implied preemption cases are especially pertinent to the matter at hand.

First, where a state law on a particular subject forbids what a federal law on the same subject permits, the two are in conflict, as discussed above, and the state law is, therefore, unconstitutional. *American Motors*, 603 F.2d at 981; *FERC*, 495 U.S. at 490; *National Broiler*, 44 F.3d at 747; *FCC*, 39 F.3d at 933; *Vietnamese Fishermen*, 816 F.Supp. at 1474-5; *Southern Fisheries*, 772 F.Supp. at 1267-68.

Here, it is clear that each of the proposed limits (among other provisions) would prohibit manufacture, sale, and use of coatings which the corresponding EPA provision permits. Therefore, each would be conflicting and, for that reason, invalid under the Supremacy Clause.

ISSUES-  
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Under a second line of implied preemption cases, where Congress intends to establish uniform standards governing products which move in interstate commerce, state laws frustrating such national uniformity are preempted. *Ray v. ARCO*, 435 U.S. 151, 166 (1978) (oil tanker design); *International Assn. of Independent Tanker Owners v. Locke*, 148 F.3d 1053 (9th Cir. 1998) (same); *Independent Energy Procedures v. California PUC*, 36 F.3d 848, 854 (9th Cir. 1994) (co-generation facilities).

29 A district court in California and the Ninth Circuit have explicated the above principles in the context of regulating mobile goods to reduce air pollution. In *California v. Navy*, 431 F.Supp. 1271 (N.D. Cal. 1977) ARB and a California air district sued the U.S. Navy alleging violation of California rules regulating pollution emitted from the immobile concrete structures in which moveable jet engines were tested. The court held that the structures could be regulated, but not the engines. The court explained that the general scheme of the CAA is that EPA regulates "moving" sources, but states retain residual authority over "stationary" sources. *Id.* at 1275. It noted the need for national "uniformity" for moveable products. *Id.* at 1284, 1288 n. 14. It stated that CAA preemption protects engine manufacturers "against the 'chaos' of multiplex standards for entities which readily traverse state lines." *Id.* at 1285. The court found that the federal interest was to protect against varying state regulation of the "performance, design, manufacture, operation, etc." of moving products. *Id.* at 1285, 1287. On appeal, *California v. Navy*, 624 F.2d 885 (9th Cir. 1980), the Ninth Circuit agreed, finding that the district court had "extensively and excellently" analyzed implied preemption principles in the context of air pollution regulation of moveable goods. *Id.* at 888, 889. It stated that a purpose of federal preemption of aircraft engine regulation was national "uniformity" of standards. *Id.* at 889. It stated that "federal interests . . . would be impaired" if the engines, themselves, "must be altered to accommodate state law." *Id.* at 889.

*California v. Navy* was followed by a California appellate court in a state air pollution case. *Harbor Fumigation, Inc. v. San Diego APCD*, 43 Cal.App.4th 854, 867 (1996) (district regulation of methyl bromide as a pesticide would be preempted).

In the matter now before ARB, it is clear that Congress intended to promote national uniformity of standards governing

mobile products by enacting CAA Section 183(e). The legislative history so demonstrates. The Report of the House Committee on Energy and Commerce specifically expressed concern about "the potential burden which different States['] standards might impose on manufacturers of products sold nationwide." H.R. Rep. No. 101-490 (May 17, 1990) at 254. Section 183(e)(9) was intended to encourage cooperation in "developing uniform regulation" of such products. *Id.* "Where national regulation and uniformity is necessary, the legislation so indicates." *Id.* at 163. Products ". . . can be more effectively controlled at a national level . . ." *Id.* at 248. Indeed, the House Report specifically contemplated that architectural coatings ". . . will be covered by a national rule . . ." *Id.* at 251. The statement of the Senate managers similarly noted that Section 183(e)(9) is intended to "encourage national uniformity."

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Furthermore, EPA's own statement supporting its promulgation of a national regulation of architectural coatings provides further support for this proposition:

"A Federal rule is expected to provide some degree of consistency, predictability, and administrative ease for the industry . . . [A] national rule helps reduce compliance problems associated with noncompliant coatings being transported into nonattainment areas from neighboring areas and neighboring States . . ." 61 Fed.Reg. at 32731.<sup>9</sup>

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<sup>9</sup> Section 183(e)(a) alludes to, but does not explicitly authorize, state regulations of products. This may allow states to regulate the intrastate use of paint. But it does not negate preemption of the regulation of interstate manufacture and sale thereof. *Wisconsin Public Intervener v. Martier*, 501 U.S. 597, 613-14, 615 (1991); *Washington State Building and Construction Trades Council v. Spellman*, 684 F. 2d 627, 630 (9th Cir. 1982); *Casper v. E.I. Dupont de Nemours & Co.*, 806 F. Supp. 903, 905-07 (E.D. Wash. 1992). In addition, certain general provisions of the CAA, which were originally enacted in 1970, state that air pollution control at its source is the primary responsibility of the states and that nothing in the CAA precludes the right of any state to adopt any standard, limit, or requirement respecting control of air pollution. 42 U.S.C. §§ 7401(a)(3); 7416. However, such ancient and general provisions do not prevent preemption. *FERC*, 495 U.S. at 496-507; *Independent Energy Producers*, 36 F.3d at 857 n.14. The U.S. Supreme Court was unable to find in a similar CAA provision "any clear and unambiguous declaration" of residual state power. *Hancock v. Train*, 426 U.S. 167, 180-81 (1976). Indeed, the court was "not able to draw . . . any support" from Section 116, itself, for the state's argument against preemption. *Id.* at 186

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Thus, the federal mandate that mobile products, including paints, be regulated uniformly on a national basis impliedly preempts all state and local limits, including the proposed SCM amendments, which frustrate the federal limits.

B. REASONABLE CONSENSUS LIMITS

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If, for some reason, ARB determines that it will stay in the paint game, despite EPA's 1998 rulemaking, it should follow the example of EPA (and most districts, as well as its own examples in 1981 and 1984) and adopt limits which are reasonable, that is, which remove unnecessary organic compounds, but do not actually ban socially valuable paint products.

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EPA's 1998 national rule adopted limits which most California manufacturers have found reasonable. These limits require reformulation to remove excess organic compounds for both solvent-borne and water-borne coatings, but they generally do not outlaw product lines. They are now operative in all states, including California.

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All knowledgeable and candid observers acknowledge that paint bans have massive economic costs. They also acknowledge that any ozone reduction benefits of paint bans are dubious at best, due to low volatility of glycol compounds in water-borne coatings, low reactivity of mineral spirit compounds in solvent-borne coatings, and increased paint usage of low-quality coatings (and, therefore, increased emissions). *Dunn-Edwards v. Bay Area AQMD*, 9 Cal.App.4th at 657-58. Indeed, paint bans will produce still other adverse environmental impacts (aesthetic, health, safety) in either a badly-painted or an unpainted California. Given these facts, precipitous action of the type your staff proposes is wholly unwarranted.

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Issues  
Most California air districts, on almost all occasions they have addressed the issue, have regulated architectural coatings — if they have done so at all — by imposing limits and deadlines which required reformulation to remove excess organic compounds, but they did not cross the line and ban products to force substitution of low-quality paints or non-paint products. The consensus at the local level has been so strong that ARB's

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n.47. Section 116 is not "the kind of clear and unambiguous authorization necessary" to avoid preemption. *Id.*

1989 SCM, which attempted to outlaw certain solvent-borne coatings, has had no real effect in most local areas.

32 ARB, itself, has on key occasions honored this consensus of reason. In 1981, ARB established the 380 g/L limit for non-flats in South Coast AQMD, after which the entire state followed. In 1984, ARB amended its model rule to raise limits for specialty coatings and, again, all districts did the same.

33 Finally, on September 11, 1998, after years of reporting and scheduling activity purporting to comply with the detailed study and listing mandates and the stringent, but sensible, rulemaking standard of CAA Section 183(e), EPA promulgated limits applicable in every state of the union, including California. These limits, too, force California manufactures to remove excess compounds from all their products. But they do not force them to stop making, or their customers to stop using, such products.

Issue Article 34 If ARB believes (we contend erroneously) that it must continue to act, then it should, indeed, "harmonize" the SCM with the new EPA rule and also with the vast majority of all district rules, as well its own rulemaking actions of 1981 and 1984. The regulatory consensus was at least reasonable and is the only defensible type of continued activity.

### C. SOUTH COAST AQMD MISTAKE

35 In stark contrast, South Coast AQMD's recent actions are no example for ARB or any other agency to follow.

To any astute observer, it was obvious that the South Coast AQMD staff members who recommended the new amendments, the interest groups which supported them, and the South Coast AQMD board members who voted for them, did not act on the basis of the environmental and economic merits, but on the basis of extraneous factors. These radical and extreme actions were driven not by reason but by power and emotion.

What will be the consequences of South Coast AQMD's irresponsible actions? Of course, no one can predict the future with any certainty. But here is our best speculation at this time: South Coast AQMD's recent proposal mobilized public opposition as never before, and its adoption will surely intensify that mobilization. The fight against unreasonable

rules during the past 22 years has been led primarily by a few Southern California paint manufacturers. South Coast AQMD's actions are sure to motivate manufacturers across the nation to become much more actively involved in the crusade. Indeed, large multi-national manufacturers which have in the past not opposed, or even supported, regulation may well join the fight. Contractors and dealers, most of which have to this point been only moderately active, are expected to come forward in the thousands. The same is true of the hundreds of thousands of workers who make, sell, or apply paint for a living. Finally, architects, decorators, and industrial, commercial, and residential users of paint products, who are outraged at the senseless bans, we predict, will become active in a new nationwide campaign to reverse them.

35 How will that new and indignant force of opposition go about attempting to reverse the product bans? Again, please allow us to risk some predictions: Heretofore, Southern California manufacturers have relied primarily upon courteous presentations to regulators of the scientific and economic merits and on occasional law suits to prevent or invalidate rule adoptions. These basic methods of social action will continue. But, in addition, regulators in the future should expect to encounter new responses. Any future litigation will have to consider seeking monetary relief in addition to rule invalidation.<sup>10</sup> Manufacturers, dealers, contractors, workers, and consumers can also be expected to take their just grievances to the Legislature and the Congress. The issue could also well become a major subject of press attention and, indeed, a prime example of regulatory failure in the mind of the public. For

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<sup>10</sup> For example, trade secrets, including product formulas, are protected property interests. *Formulabs, Inc. v. Hartly Pen Co.*, 275 F.2d 52, 56 (9th Cir. 1960); *Clark v. Bunker*, 453 F.2d 1006, 1009 (9th Cir. 1972); *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470, 474-75 (1974); *Pachmayr Gun Works, Inc. v. Olin Mathieson Chemical Corp.*, 502 F.2d 802, 807 (9th Cir. 1974). A taking by the government of intangible property for public use requires the payment of just compensation. *Oakland v. Oakland Raiders*, 32 C.3d 60, 66-69 (1982). This principle embraces trade secrets, such as chemical product formulas. *ITT Telecom Products Corp. v. Dooley*, 214 C.A.3d 307, 318 (1989); *Anchem Products, Inc. v. Costle*, 481 F.Supp 195, 199 (S.D.N.Y. 1979); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000-14 (1984). Paint manufacturers use thousands of formulas to make and sell their products in California. The amendments in question will render useless and valueless and, thereby, "take" those formulas overnight. The fair market value of the formulas in question is about \$400 million.

35 example, imagine millions of paint cans and pails on retail shelves and delivery trucks and at job sites bearing stickers crying "Save Paint" and thousands of signs in paint stores, home centers, lumber yards, and hardware stores bearing the same message. Imagine also millions of shoppers and homeowners being handed brochures telling the story of what paints have been outlawed, by whom, for what reason, and with what effect. In short, holding appointed and elected officials accountable for unjust and irrational regulatory actions will likely be the new paradigm.

D. ARB STUDY DUTIES

CEQA 36 Before taking any form of quasi-legislative action, ARB must first analyze the environmental and economic effects of the major alternative approaches. This the staff did not do, but the board must insist that it do, before any further public statements.

(1) Environmental Impacts

37 CEQA ARB is bound under CEQA to submit written documentation, containing environmental information, as to any project which may have a significant effect on the environment. Pub. Res. Code § 21080.5(a). Such documentation is required to include a description of the proposed activity with alternatives thereto and measures to minimize any significant adverse environmental impact thereof. *Id.* at § 21080.5(d)(3)(i); 14 Cal. Code Regs. § 15252. Under Section 21080.5 an agency must prepare documentation which is the "functional equivalent" of a full environmental impact report. *City of Coronado v. California Coastal Zone Conservation Commission*, 69 C.A.3d 570, 581 (1977); *Gallegos v. State Board of Forestry*, 76 C.A.3d 945, 953 (1978). Indeed, the information required in such a document is "essentially duplicative" of that which would be included in a full EIR. *Citizens For Non-Toxic Pest Control v. Department of Food & Agriculture*, 187 C.A.3d 1575, 1584 (1986). An agency subject to Section 21080.5 must adhere to CEQA's "substantive criteria" and "broad policy goals." *Environmental Protection Information Center, Inc. v. Johnson*, 170 C.A.3d 604, 618, 620 (1985). ARB is "responsible" for complying with CEQA, has to "meet its own responsibilities," and "shall not rely" on other

agencies. 14 Cal. Code Regs. § 15020; *Dunn-Edwards v. Bay Area AQMD*, 9 Cal.App.4th at 656.<sup>11</sup>

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AQMD

Prior to offering "support" for South Coast AQMD's amendments and floating the draft proposed SCM, ARB's staff failed to prepare an EIR-equivalent analyzing the following adverse environmental impacts of the proposed amendments: (1) aesthetic impacts of first and second set of limits, (2) health and safety impacts thereof, (3) increased volatility of emissions after first set, (4) increased reactivity thereof thereafter, (5) increased emissions thereafter, and (6) adverse ozone impacts of substitutes for paint products. Alternatives must also be assessed. These adverse environmental impacts and alternatives are discussed extensively in our April 21, 1999 letter to SCAQMD. A copy of this letter will be sent to you under separate cover.

ARB's staff took a shot in the dark by taking extremely important, and harmful, regulatory positions in public before analyzing the adverse environmental effects of those positions. At the June 3 workshop, ARB's staff promised to prepare a draft EIR-equivalent by the end of June. Unfortunately, that will come two months after the staff's damaging actions.

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CEQA

<sup>11</sup> The term "project" is broadly defined in CEQA Section 21065(a), as follows: "[Project] means an activity which may cause . . . a reasonably foreseeable indirect physical change in the environment, and which is . . . [a]n activity directly undertaken by any public agency. . . ." Pub. Res. Code § 21065(a); see also 14 Cal. Code Regs. § 15378(a). The term "project," as used in CEQA, is given a "broad" interpretation by the courts. *Friends of Mammoth v. Board of Supervisors*, 8 C.3d 247, 259-62 (1972). Indeed, such broad interpretation is "[t]he foremost principle under CEQA." *Laurel Heights Improvement Assn. v. Regents*, 47 C.3d 376, 390-91 (1988). The projects to which the mandate of CEQA Section 21080.5 applies involve the "adoption or approval of standards . . . or plans for use in the regulatory program." Pub. Res. Code § 21080.5(b)(2). ARB's program has been so certified to involve "the adoption, approval, amendment or repeal of standards . . . or plans to be used in the regulatory program." 14 Cal. Code Regs. § 15251(d). The first of several governmental approvals of a project requires CEQA compliance. *Citizens Assn. For Sensible Development of Bishop Area v. County of Inyo*, 172 C.A.3d 151, 164-68 (1985). The first step of a multi-step project must be the subject of appropriate environmental review under CEQA. *City of Carmel-By-The-Sea v. Board of Supervisors*, 183 C.A.3d 229, 240-49 (1986). Environmental review documentation meeting CEQA requirements must be prepared at the earliest possible stage. *Id.* at 249-52.

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We note that on June 11, 1999 ARB published an initial study and a notice of preparation of an EIR-equivalent. It appears that ARB does not intend to address certain impacts, including (1), (2), and (6) above, nor certain alternatives, including manufacturer disclosures.

(2) Economic Impacts

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The APA requires that any state agency think very carefully and in specific ways about the economic and other effects of a proposed quasi-legislative standard before adopting it. In particular, the agency shall assess whether and to what extent the proposed standard will affect the elimination of existing businesses or jobs within California. Government Code §§ 11346.3(b); 11346.54. It shall also assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary or unreasonable regulations. *Id.* at § 11346.3(a). Agency action shall be based on adequate information concerning the need for, and consequences of, the action. *Id.* at § 11346.3(a)(1). The agency shall consider the impact on business, including the ability of California business to compete with out-of-state business. *Id.* at § 11346.3(a)(2).

To ensure that such assessments and considerations are performed, an agency shall prepare, submit to the Office of Administrative Law, and make available to the public an initial statement of reasons for proposing the adoption or amendment of a regulation. *Id.* at § 11346.2(b). The initial statement shall include: (1) a description of the problem, requirement, condition, or circumstance the regulation is intended to address; (2) a statement of the specific purpose thereof, the rationale for determining that it is reasonably necessary, and the reasons why any prescriptive standards are required;<sup>12</sup> (3) an identification of each study or report upon which the agency relies; (4) a description of any alternatives considered, including performance standards and alternatives that would lessen the adverse impact on small business, and the reasons for

<sup>12</sup> A prescriptive standard is a regulation that specifies the sole means of compliance with a performance standard by specific actions, measurements, or other quantifiable means. *Id.* at § 11342(f). A performance standard, on the other hand, is one that describes an objective with the criteria stated for achieving the objective. *Id.* at § 11342(d).

rejecting them;<sup>13</sup> and (5) evidence relied upon to support a finding that the action will not have a significant adverse economic impact on business.

Furthermore, the public notice mandated by APA shall include various information, including an informative digest containing a concise and clear summary of the effect of the proposed action. *Id.* at § 11346.5(a)(3). If the proposed action affects small business, it shall also include a policy statement overview explaining the objectives. *Id.* at § 11346.5(a)(3)(B). An agency shall determine whether the action may have a significant adverse economic impact on business. *Id.* at §§ 11346.5(a)(7), (8). If it may, the notice shall so state, identify types of businesses affected, and solicit proposals for alternatives, including exemptions, differing timetables, and performance standards, that would lessen the impact. *Id.* at § 11346.5(a)(7). If not, it shall so declare and provide evidence to support the declaration. *Id.* at § 11346.5(a)(8). The notice shall also include a statement of potential cost impact, *i.e.*, the reasonable range of costs, or a description of the type and extent of direct or indirect costs. *Id.* at § 11346.5(a)(9). It shall further include a statement as to any significant effect on housing costs. *Id.* at § 11346.5(a)(11). Finally, the notice shall include a statement that the agency must determine that no alternative considered would be more effective or as effective and less burdensome. *Id.* at § 11346.5(a)(12).

Upon adoption of a regulation, an agency shall prepare and submit to OAL a final statement of reasons. *Id.* at § 11346.9(a). The final statement shall update the information in the initial statement. *Id.* at § 11346.9(a)(1), (b). It shall include a determination, with supporting information, that no alternative would be more effective or as effective and less burdensome. *Id.* at § 11346.9(a)(4). It shall also include an explanation setting forth the reasons for rejecting any proposed alternatives that would lessen the adverse economic impact on small business. *Id.* at § 11346.9(a)(5).

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<sup>13</sup> A small business is one which is independently owned and operated and not dominant in its field of operation. *Id.* at § 11342(h)(1). The term does not include a manufacturer with more than 250 employees, a contractor with more the \$5,000,000 in annual gross receipts, or a retail dealer with more than \$2,000,000 in such receipts. *Id.* at § 11342(h)(2)(I)(iii), (iv), (J).

OAL shall review regulations and make certain determinations. *Id.* at §§ 11349; 11349.1(a). It shall approve the regulation if it complies with APA. *Id.* at § 11349.1(a). OAL shall return any regulation failing to comply with certain provisions of APA. *Id.* at §§ 11349.1(d), (f); 11349.3.

Again, ARB's staff has supported, and proposed, draconian regulation without having performed any of these economic analyses, including: (1) manufacturers' formulas taken, (2) costs of successful reformulation, (3) costs of unsuccessful efforts to reformulate, (4) costs to retailers, (5) costs to contractors, (6) effects on small business (7) anti-competitive impacts, (8) job losses, and (9) losses suffered by consumers. The staff has also failed to identify alternatives (such as directions for use, seasonal use restrictions, and harmonization with EPA's rule) and analyze the various alternatives for cost-effectiveness. A comprehensive discussion of these economic impacts is contained in our May 7, 1999 letter to SCAQMD. A copy of the letter will be sent to you under separate cover.

ARB's staff clearly jumped the gun. It has taken an extreme public position — that the California paint industry should do without virtually all of its existing products — without having even thought about the economic consequences of that unprecedented approach. Indeed, the staff indicated at the June 3 workshop that it intended to press forward without performing an economic analysis under APA. The ARB board must correct this serious (and already disastrous) failure at once.

Conclusion

In 1763 Parliament thoughtlessly and arrogantly imposed on the American Colonies the so-called Townshend Duties, under which various products imported from England to America — including paints — were subjected to severe burdens. The Colonists were outraged and, even though Parliament repealed the statute in 1765, the short-lived legislation was a major cause of our glorious American Revolution.

South Coast AQMD has similarly made a blunder of cosmic proportions. ARB's staff has aided and abetted that blunder and is now proposing that the ARB board follow suit. No.

Our clients submit that ARB should get out of the business of triple-teaming the paint industry, now that EPA has

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taken over. If it insists on staying in the business, ARB should harmonize its SCM with EPA's national rule, most districts rules, and ARB's own 1981 and 1984 actions. ARB should avoid making the grievous mistake made by South Coast AQMD. Finally, ARB must not take any further action without first conducting its own environmental review under CEQA and its own economic review under APA.

Very truly yours,

*William M. Smiland/mme*  
William M. Smiland

WMS/mme

cc: Michael P. Kenny (Duplicate By Fax)  
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