State of California
AIR RESOURCES BOARD

Resolution 07-5

January 25, 2007

Agenda Item No: 07-1-5

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to, and imposed upon, the Board by law;

WHEREAS, under section 39650 of the Health and Safety Code, the Legislature finds and declares that it is the public policy of the State that emissions of toxic air contaminants should be controlled to levels that prevent harm to public health;

WHEREAS, on October 10, 1991, the Board identified perchloroethylene (Perc) as a toxic air contaminant (TAC) pursuant to article 3 (commencing with section 39660) of chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, in identifying Perc as a toxic air contaminant, the Board determined that there is not sufficient scientific evidence to support identification of a threshold level below which no significant adverse health effects are anticipated (see title 17, California Code of Regulations (CCR), section 93000);

WHEREAS, sections 39658, 39665, 39666, and 39667 of the Health and Safety Code authorize the Board to establish airborne toxic control measures (ATCM) for substances identified as TACs in accordance with specified criteria;

WHEREAS, on October 14, 1993, pursuant to section 39666 of the Health and Safety Code, the Board approved the Airborne Toxic Control Measure for Emissions Of Perchloroethylene from Dry Cleaning Operations, title 17, CCR, section 93109 (Dry Cleaning ATCM), which sets forth the equipment, operations and maintenance, recordkeeping, and reporting requirements for dry cleaning operations using Perc;

WHEREAS, for TACs for which the Board has not specified a threshold exposure level pursuant to section 39662, the Health and Safety Code requires ATCMs to be designed to reduce emissions to the lowest level achievable through the application of best available control technology (BACT) or a more effective control method, considering factors specified in sections 39665 and 39666, unless the Board determines, based on assessment of risk, that an alternative level of emissions reduction is adequate or necessary to prevent an endangerment of public health;

WHEREAS, beginning in 2003, staff performed an evaluation of the effectiveness of the Dry Cleaning ATCM which showed that, since 1991, Perc emissions from dry cleaning operations have been reduced by about 70 percent;

WHEREAS, the evaluation also showed that there continue to be residual health risks to the public associated with Perc emissions from dry cleaning operations, that the BACT for Perc dry cleaning operations has improved, and that alternative technologies are available and viable;

WHEREAS, as a result of this evaluation, the staff determined that the existing Dry Cleaning ATCM could be strengthened to provide additional reductions in emissions and risk and, therefore, staff developed proposed amendments to the Dry Cleaning ATCM, which were presented to the Board for consideration on May 25, 2006;

WHEREAS, after hearing the public comments and considering the staff's initial proposal, the Board made a decision not to proceed with the proposed rulemaking and directed staff to return to the Board with a revised proposal that would phase out the use of Perc in dry cleaning operations;

WHEREAS, to further protect public health and in accord with the Board's direction, staff has proposed amendments to the Dry Cleaning ATCM that prohibit new installation of Perc machines, strengthen operating and maintenance practices, phase out the use of Perc machines for dry cleaning at the end of their useful life, and require all Perc machines to be removed from service by January 1, 2023; these amendments are set forth in Attachment A hereto;

WHEREAS, to facilitate the implementation of Assembly Bill 998 (AB 998), which was enacted by the California State Legislature in October 2003 (chapter 821, statutes of 2003), staff has proposed recordkeeping and reporting requirements for Perc distributors and manufacturers which are detailed in staff's proposed new sections 93109.1 and 93109.2 of the proposed Dry Cleaning ATCM;

WHEREAS, staff has worked closely with the local air pollution control districts and air quality management districts (districts), the affected industry, and the public to identify the need for, and appropriate degree of control for Perc;

WHEREAS, with the information and comments received from the districts, affected industry, and the public, the staff has prepared a staff report entitled "Initial Statement of Reasons for the Proposed Amendments to the Control Measure for Perchloroethylene Dry Cleaning Operations and Adoption of Requirements for Manufacturers and Distributors of Perchloroethylene" (Initial Statement of Reasons), as required by Health and Safety Code section 39665;

WHEREAS, the Initial Statement of Reasons further discusses, to the extent data are reasonably available, the factors specified in Health and Safety Code section 39665(b) and includes: estimates of Perc emissions, public exposure, and potential cancer risk; a

discussion of the technical feasibility of control; information about dry cleaning equipment; an estimate of the cost to comply with the Dry Cleaning ATCM; a discussion of the anticipated effect of the proposed regulations on public exposure to Perc and the associated potential risk; a discussion of alternatives to the Dry Cleaning ATCM; and identification of any potential adverse environmental or economic effects of the Dry Cleaning ATCM and possible mitigation measures;

WHEREAS, the proposed amendments to the Dry Cleaning ATCM were developed through discussions of draft versions made available to the public for review and comment at 17 workgroup meetings, three evening meetings with the Northern California Korean Dry Cleaners-Laundry Association, and five public workshops;

WHEREAS, in accordance with Health and Safety Code Section 39665(c), the Initial Statement of Reasons, the proposed amendments to the Dry Cleaning ATCM, and the requirements for Perc manufacturers and distributors were made available for public review and comment 45 days prior to the public hearing to consider the proposed regulations;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, in consideration of the Initial Statement of Reasons, written comments, and public testimony received, the Board finds that:

> Existing federal and State regulations for new and existing operations do not sufficiently protect the public health from Perc emissions associated with dry cleaning operations;
>
> The proposed amendments to the Dry Cleaning ATCM are designed to further protect public health by reducing Perc emissions from dry cleaning operations in California through requirements to strengthen the operation and maintenance of Perc machines and a schedule to remove from service all existing Perc machines;
>
> The proposed amendments to the Dry Cleaning ATCM are expected to reduce Perc emissions from affected dry cleaners by nearly 100 percent;
>
> The proposed amendments to the Dry Cleaning ATCM are expected to virtually reduce all potential Perc cancer risks from dry cleaning operations;
>
> The new sections 93109.1 and 93109.2, title 17, California Code of Regulations will be used to facilitate implementation of the requirements under AB 998;

The economic impacts of the amendments to the Dry Cleaning ATCM have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

The benefits of the proposed regulation to public health, public welfare, or the environment justify the cost of the regulatory requirements;

The amendments to the Dry Cleaning ATCM are expected to result in increased usage of alternative technologies and solvents; and no adverse health impacts are expected with the use of non-toxic and non-smog forming technologies such as wet cleaning and carbon dioxide (CO_2) cleaning;

No reasonable alternative considered, or that has otherwise been identified and brought to the attention of ARB, would be more effective in carrying out the purpose for which the amendments are proposed, or be as effective to affected private persons and businesses than the proposed amendments; and

The regulations adopted herein are necessary in order to protect public health by reducing Perc emissions from dry cleaning operations;

WHEREAS, the Board further finds, in accordance with the Health and Safety Code section 39650(e), that while absolute and undisputed scientific evidence may not be available to determine the exact extent of risk from emissions of Perc from dry cleaning operations, it is necessary to take action to protect public health;

WHEREAS, pursuant to Health and Safety Code sections 39665 and 39666, the Board further finds that the amendments to the Dry Cleaning ATCM adopted herein are designed to reduce emissions to the lowest level achievable through the application of BACT or a more effective control method identified within the time provided for compliance;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to substantially reduce or eliminate such identified impacts, if any;

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

No significant adverse environmental impacts should occur from the amendments, with the exception that there may be increases in hydrocarbon emissions from those operations that select alternative dry cleaning technologies that use hydrocarbon solvents;

At full implementation of the proposed amendments to the Dry Cleaning ATCM, if in a worse-case scenario where all of the Perc dry cleaning machines convert to

hydrocarbon solvents, there would be a total increase of about 1.2 tons per day of volatile organic compounds statewide which may cause an adverse environmental impact; this shortfall would be addressed in the next comprehensive revisions of the California State Implementation Plan;

The proposed amendments are necessary in order to protect public health from Perc emissions, and the reductions in Perc emissions from dry cleaning operations override any adverse environmental impacts that may occur from an increase in hydrocarbon emissions;

No feasible mitigation measure or alternative has been identified that would further reduce the potential adverse impacts of the amendments, while at the same time ensuring that the positive environmental impacts would be achieved (i.e., a reduction of Perc emissions from dry cleaning operations to nearly zero); and

Having found that the Dry Cleaning ATCM will not have a significant environment impact, but rather provide environmental benefits both statewide and locally, the amended regulation should not adversely impact any community in the State, including low-income or minority communities.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the amendments to section 93109 and the adoption of new sections 93109.1 and 93109.2, title 17, California Code of Regulations, as set forth in Attachment A hereto, with the modifications described in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the above regulations as set forth in Attachment A hereto, with the modifications set forth in Attachment B hereto, and with such other conforming modifications and technical amendments as may be appropriate, after making the modified regulatory language and additional supporting documents and information available for public comment for a period of at least 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if she determines that this is warranted.

BE IT FURTHER RESOLVED that the Board directs the staff to ensure to consider the full useful life of equipment in any future rulemakings for this source category.

BE IT FURTHER RESOLVED that the Board directs the staff to make information available to the industry on alternatives to the use of perchloroethylene dry cleaning machines.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer, in consultation with affected governmental agencies, the regulated public, and the California Air Pollution Control Officers Association, to develop appropriate implementation guidance that will allow for expeditious permitting of affected activities.

FILED
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Resources Agency of California

I hereby certify that the above is a true and correct copy of Resolution 07-5, as adopted by the Air Resources Board.

Lori Andreoni

Lori Andreoni, Clerk of the Board

January 25, 2007

Identification of Attachments to the Resolution

Attachment A: Proposed amendments to section 93109 and adoption of sections 93109.1 and 93109.2, title 17, California Code of Regulations, as set forth in Appendix A of the Initial Statement of Reasons, released December 8, 2006.

Attachment B: Staff's Suggested Modifications to the Original Proposal, distributed at the Board Hearing on January 25, 2007.

PUBLIC HEARING TO CONSIDER AMENDMENTS TO THE CONTROL MEASURE FOR PERCHLOROETHYLENE DRY CLEANING OPERATIONS AND ADOPTION OF REQUIREMENTS FOR MANUFACTURERS AND DISTRIBUTORS OF PERCHLOROETHYLENE

Staff's Suggested Modifications to the Original Proposal

Shown below are the staff's suggested modifications to the originally proposed amendments and adoptions set forth in Appendix A to the Staff Report: Initial Statement of Reasons released December 8, 2006. Only those portions containing the suggested modifications are included. The suggested modifications are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions. All proposed substantive modifications will be made available to the public for a fifteen-day comment period prior to final adoption.

The currently adopted regulations do not contain specific provisions related to enforcement. Commenters have raised a concern that the violation provisions might be read as limiting enforcement options available to ARB or the local air districts. Since the deletion the provisions will not limit the enforceability of the regulations under state law and regulations, staff proposes the following modifications to the original proposal.

1. Delete the specific penalty provision in section 93109:

~~**(m) Violations.**~~

~~Any violation of this section may carry civil or administrative penalties as specified in state law and regulation, including, but not limited to, a penalty of up to $10,000 for each day in which the violation occurs under Health and Safety Code section 39674.~~

2. Delete the specific penalty provision in section 93109.1:

~~**(c) Violations.**~~

~~Any violation of this section may carry civil or administrative penalties as specified in state law and regulation, including, but not limited to, a penalty of not more than $35,000 under Health and Safety Code section 42402.4.~~

3. Delete the specific penalty provision in section 93109.2:

~~**(d) Violations.**~~

~~Any violation of this section may carry civil or administrative penalties as specified in state law and regulation, including, but not limited to, a penalty of not more than $35,000 under Health and Safety Code section 42402.4.~~