

MEMORANDUM

TO: Peter D. Venturini  
Chief, Stationary Source Division

FROM: Michael P. Kenny  
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DATE: August 23, 1995

SUBJECT: ARB AUTHORITY TO REGULATE CONSUMER PRODUCTS

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ISSUES

You have requested a legal opinion on three issues relating to the authority of the Air Resources Board (ARB) to regulate consumer products. These three issues are:

(1) Health and Safety Code § 41712 gives the Air Resources Board (ARB) the authority to regulate consumer products, and defines a "consumer product" as ". . . a chemically formulated product used by household and institutional consumers. . . ." How does one distinguish between products that are "used by household and institutional consumers," and thus can be regulated by the ARB, and products which are not used by household and institutional consumers, and therefore cannot be regulated by the ARB?

(2) Now that the ARB has adopted VOC standards for many categories of consumer products under Health and Safety Code § 41712, what are the limits on the authority of local air pollution control districts (districts) to adopt and enforce consumer products regulations?

(3) What is the authority of the ARB to regulate consumer products that are pesticides? How does the ARB's authority interact with the authority of the Department of Pesticide Regulation to regulate pesticides under California law, and the authority of the United States Environmental Protection Agency (U.S. EPA) to regulate pesticides under federal law?

CONCLUSIONS

(1) To clarify the definition of "consumer product" in Health and Safety Code § 41712(c), the ARB has adopted regulatory definitions of "Household Product" and "Institutional Product or Industrial and Institutional (I&I) Product." These definitions are set forth in the ARB consumer products regulation, and generally delineate the scope of the ARB's authority over consumer products. However, the determination of whether a particular product category meets these definitions (and is therefore a "consumer product" which can be regulated by the ARB)

is a very fact-specific inquiry that must be made on a case-by-case basis.

(2) For those consumer product categories for which the ARB has previously adopted VOC standards, Health and Safety Code § 41712(e) prohibits a district from adopting any standards for these categories (unless the District regulation is identical to the ARB regulation). However, districts retain the authority to adopt standards for any consumer product category for which the ARB has not adopted VOC standards. The boundaries of the districts' authority are determined by the definitions of each product category specified in the ARB consumer products regulations. If a product (or class of products) does not fall within the definitions specified for any of the product categories regulated by the ARB, then the product may be regulated by the districts.

(3) The ARB has the authority to regulate any pesticide product which meets the definition of "consumer product." Since the Department of Pesticide Regulation (DPR) also has broad authority to regulate pesticides under California law, the ARB and DPR have concurrent jurisdiction to regulate pesticide products. This means that persons subject to DPR and ARB regulations must comply with the regulations of both agencies. The U.S. EPA also has the authority to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the federal Clean Air Act. These federal laws do not preempt the authority of the ARB or DPR to establish VOC standards for pesticides under California law.

#### ANALYSIS

(1) Issue: Health and Safety Code § 41712 gives the Air Resources Board (ARB) the authority to regulate consumer products, and defines a "consumer product" as ". . . a chemically formulated product used by household and institutional consumers. . . ." How does one distinguish between products that are "used by household and institutional consumers," and thus can be regulated by the ARB, and products which are not used by household and institutional consumers, and therefore cannot be regulated by the ARB?

Conclusion: To clarify the definition of "consumer product" in Health and Safety Code § 41712(c), the ARB has adopted regulatory definitions of "Household Product" and "Institutional Product or Industrial and Institutional (I&I) Product." These definitions are set forth in the ARB consumer products regulation, and generally delineate the scope of the ARB's authority over consumer products. However, the determination of whether a particular product category meets these definitions (and is therefore a "consumer product" which can be regulated by the ARB) is a very fact-specific inquiry that must be made on a case-by-case basis.

Analysis: In 1988, the Legislature enacted the California Clean Air Act (Stats. 1988, Ch. 1568), which added a number of new provisions to the Health and Safety Code. One of

these new provisions was Health and Safety Code § 41712, which granted the ARB new authority to regulate volatile organic compound (VOC) emissions from consumer products. Health and Safety Code § 41712(c) defines a "consumer product" as follows:

(c) For purposes of this section, a "consumer product" means a chemically formulated product used by household and institutional consumers, including, but not limited to, detergents; cleaning compounds; polishes; floor finishes; cosmetics; personal care products; home, lawn, and garden products; disinfectants; sanitizers; aerosol paints; and automotive specialty products; but does not include other paint products, furniture coatings, or architectural coatings.

For the ARB to have the authority to regulate a product under § 41712, it follows that this product must be a "consumer product," as the Legislature has defined that term in § 41712(c). For the purposes of analysis this definition can be conveniently divided into three parts: (1) the first part of the definition states that a consumer product is ". . . a chemically formulated product used by household and institutional consumers . . . "; (2) the second parts of the definition lists several examples of consumer product categories, and states that "consumer product" includes, but are not limited to, these examples; and (3) the last part of the definition lists several categories that are not "consumer products" (i.e., all paint products except for aerosol paints, furniture coatings, and architectural coatings.) It is apparent that Part (1) of the definition is the most critical part. Part (1) fundamentally defines what a consumer product is. Parts (2) and (3) simply provide examples and limitations which relate back to the basic definition of "consumer product" in Part (1). Therefore, this analysis will focus primarily on the language of the definition which states that a consumer product is ". . . a chemically formulated product used by household and institutional consumers. . . ."

ARB staff considered the meaning of these terms early in the development of the consumer products regulations. Whether a product is "chemically formulated" is usually fairly obvious. ARB staff felt that this portion of the definition did not need clarification. However, it is sometimes less obvious whether a product is "used by household or institutional consumers." ARB staff therefore felt that it was important to include definitions in the consumer products regulation which would interpret and clarify the meaning of these terms, and thus more clearly describe the boundaries of the ARB's authority to regulate consumer products under Health and Safety Code § 41712.[1] In the Phase II consumer products rulemaking (Phase II), ARB staff therefore proposed definitions of the terms "Household Product" and "Institutional Product or Industrial and Institutional (I&I) Product." These definitions were adopted by the Board in 1992 as part of Phase II. [2] The definitions are set forth in Title 17, California Code of Regulations (CCR), § 94508(a)(47) and (a)(52), and read as follows:[3]

(47) "Household Product" means any consumer product that is primarily designed to be used inside or outside of living quarters or residences that are occupied or intended for occupation by individuals, including the immediate surroundings.

(52) "Institutional Product" or "Industrial and Institutional (I&I) Product" means a consumer product that is designed for use in the maintenance or operation of an establishment that (A) manufactures, transports, or sells goods or commodities, or provides services for profit; or (B) is engaged in the nonprofit promotion of a particular public, educational, or charitable cause. "Establishments" include, but are not limited to, government agencies, factories, schools, hospitals, sanitariums, prisons, restaurants, hotels, stores, automobile service and parts centers, health clubs, theaters, or transportation companies. "Institutional Product" does not include household products and products that are incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment.

The ARB believes that these definitions accurately reflect the intent of the Legislature in enacting Health and Safety Code § 41712. The definitions clarify the boundaries of the ARB's authority to regulate consumer products. If a product category falls within the definitions of "Household Product" or "Institutional Product or Industrial and Institutional (I&I) Product," then the ARB has the authority to establish VOC standards for that category. If a product category does not fall within the boundaries of these definitions, then it cannot be regulated by the ARB under Health and Safety Code § 41712. Although these definitions are generally self-explanatory, a few additional observations should be mentioned. [4]

In the vast majority of cases, it is quite clear whether a particular product is a "consumer product." To put the issue very simply, consumer products include the many chemically formulated products commonly available in such outlets as supermarkets, hardware stores, catalog sale companies, etc., that consumers purchase for use in and around their homes (i.e., household products). It is also fairly clear that certain products are not consumer products (i.e., products used by industrial facilities, where the products are ". . . incorporated into or used exclusively in the manufacture or construction of the goods or commodities at the site of the establishment . . ."). For example, "consumer products" do not include such products as fabric protectants and adhesives that are applied to furniture at a factory, as part of the manufacturing process. The definitions set forth above are intended to make this basic distinction.

Consumer products also include "institutional products" (i.e., chemically formulated products used by institutional consumers). These products include, among other things, products

such as air fresheners, general purpose cleaners, insecticides, etc., that are often similar to commonly available household products, and are typically used by establishments to perform tasks (e.g., cleaning, air freshening, etc. ) similar to those performed by household consumers. However, institutional products are sometimes sold in special stores or specialized distribution channels catering to particular market niches (such as janitorial services), and may or may not be available in retail stores frequented by household consumers. These products are referred to in the regulation as "Institutional Products" or "Industrial and Institutional (I&I) Product, since "I&I" is a term commonly used to describe such products within the consumer products industry.

Finally, the determination of whether a particular product category meets these general definitions (and is therefore a "consumer product" which can be regulated by the ARB) is a very fact-specific inquiry that must be made on a case-by-case basis. The ARB has made such a particularized determination in drafting the specific regulatory definitions for each of the product categories regulated by the ARB. The regulatory definitions for each product category were developed after extensive consultation with industry during the workshop and public comment process for each of the consumer product regulations. In drafting these specific product category definitions, the ARB has been mindful of the fact that the districts have historically regulated a number of stationary source categories. The ARB has generally attempted to define each consumer product category in such a way that the category does not cover sources that are already being controlled by existing district regulations. Further discussion of district regulations is set forth below.

(2) Issue: Now that the ARB has adopted VOC standards for many categories of consumer products under Health and Safety Code § 41712, what are the limits on the authority of local air pollution control districts (districts) to adopt and enforce consumer products regulations?

Conclusion: For those consumer product categories for which the ARB has previously adopted VOC standards, Health and Safety Code § 41712(e) prohibits a district from adopting any standards for these categories (unless the District regulation is identical to the ARB regulation). However, districts retain the authority to adopt standards for any consumer product category for which the ARB has not adopted VOC standards. The boundaries of the districts' authority are determined by the definitions of each product category specified in the ARB consumer products regulations. If a product (or class of products) does not fall within the definitions specified for any of the product categories regulated by the ARB, then the product may be regulated by the districts.

Analysis: Prior to the enactment of Health and Safety Code § 41712, the authority to regulate VOC emissions from consumer products was vested in the local air pollution control and air quality management districts (districts). This authority existed under the legislative scheme established in Division 26

of the Health and Safety Code, under which local and regional authorities have primary authority to control sources of pollution other than vehicular sources (Health and Safety Code §§ 39002, 40000, 41508). The California Clean Air Act (Stats. 1988, Chapter 1568, § 26) added § 41712 to the Health and Safety Code, which gave the ARB authority for the first time to regulate VOC emissions from consumer products. Health and Safety Code § 41712(e) also included a limitation on the authority of the districts to regulate consumer products. Section 41712(e) states as follows:

"(e) A district will adopt no regulation relating to a consumer product which is different from any regulation adopted by the state board for that purpose." [5]

By its terms, the language in § 41712(e) does not restrict district authority unless the ARB has already adopted a regulation "for that purpose." The ARB Office of Legal Affairs has long taken the position that the qualifying phrases ". . . regulation relating to a consumer product . . ." (e.g., not a regulation relating to consumer products in general) and ". . . for that purpose . . ." indicates that the restriction on district action applies only to the regulation of those specific consumer product categories (e.g., hair sprays, glass cleaners, etc.) for which VOC standards have already been specified in an ARB regulation. The language does not restrict district authority to regulate a particular consumer product category unless VOC standards for that category have already been established by the ARB. However, once the ARB has adopted a VOC regulation for a particular category of consumer products (e.g., hair sprays), Health and Safety Code § 41712(e) clearly prohibits local districts from subsequently adopting any VOC regulation that is different from the ARB regulation for that category.

For the vast majority of consumer products, it is fairly clear in which category they should be placed. It is therefore equally clear whether or not a district can regulate such products. Occasionally, however, questions are raised about whether a particular class of products has or has not been regulated by the ARB. How does one determine the exact boundaries of the ARB's regulatory authority over a particular class of products? The ARB Office of Legal Affairs believes that there is a common sense answer to this question, which is that the boundaries of the districts' authority are determined by the definitions for each product category that is set forth in the ARB consumer products regulations. If a particular product (or class of product) meets the definition specified for a particular product category, as set forth in ARB regulations, then a district cannot regulate this product. If, on the other hand, a product or class of products does not fall within the definition specified for a product category in ARB regulations, then the product may be regulated by the districts.

For example, questions have recently been raised about the proper division between ARB and district authority to regulate the broad category of "adhesives." Applying the principles discussed above, one must examine the ARB's regulatory

definitions to determine the scope of ARB and district authority. The ARB has established VOC standards for the category of "Household Adhesive" (Title 17, CCR, § 94509(a)). "Household Adhesive" is defined in ARB regulations as:

"Household Adhesive" means any household product that is used to bond one surface to another by attachment. . . . "Household Adhesive" also does not include units of the product, less packaging, which weigh more than one pound or consist of more than 16 fluid ounces." (Title 17, CCR, § 94508(a)(46))

By its terms, ARB regulation for this product category has been limited to products which weigh one pound or less, or consist of 16 fluid ounces or less. This definition determines the boundaries of the category of "Household Adhesives" that the ARB has regulated. Therefore, adhesive products that fall outside of this defined category (i.e., products weighing more than one pound, or consisting of more than 16 fluid ounces) may be regulated by the districts. [6]

(3) Issue: What is the authority of the ARB to regulate consumer products that are pesticides? How does the ARB's authority interact with the authority of the Department of Pesticide Regulation to regulate pesticides under California law, and the authority of the U.S. EPA to regulate pesticides under federal law?

Conclusion: The ARB clearly has the authority to regulate any pesticide product which meets the definition of a "consumer product." Since the Department of Pesticide Regulation (DPR) also has broad authority to regulate pesticides under California law, the ARB and DPR have concurrent jurisdiction to regulate pesticide products. This means that persons subject to DPR and ARB regulations must comply with the regulations of both agencies. The U.S. EPA also has the authority to regulate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the federal Clean Air Act. These federal laws do not preempt the authority of the ARB or DPR to establish VOC standards for pesticides under California law.

Analysis:

Regulation of Pesticides by the U.S. EPA

The U.S. EPA has authority to regulate consumer products that are pesticides under both the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA; 7 U.S.C. §§ 136-136(y)) and § 183(e) of the federal Clean Air Act (CAA) Amendments of 1990 (42 U.S.C. § 7511b(e)(3)). Section 183(e) of the CAA requires the U.S. EPA (among other things) to promulgate regulations or control techniques guidelines (CTGs) for consumer products. The language of § 183(e) is clear and does not preempt the authority of States to adopt their own consumer products regulations. [7]

FIFRA requires that "pesticides" be registered with the U.S.

EPA as a precondition to their sale and distribution. "Pesticide" is broadly defined by FIFRA to include any substance or mixture intended to prevent, destroy, repel, or mitigate any insect, fungus, virus, bacteria, or microorganism (other than microorganisms found in living man or living animals) 7 U.S.C. § 36(t) and (u). This definition includes certain dual-purpose air fresheners, bathroom and tile cleaners, insect repellents, and other consumer products that have been registered under FIFRA because they are intended by their manufacturers to prevent, destroy, repel, or mitigate pests.

FIFRA does not preempt the ARB from adopting VOC standards for FIFRA-registered products. In fact, § 24(a) of FIFRA expressly allows States to regulate the sale or use of pesticides as long as the State regulations do not permit any sale or use prohibited by the U.S. EPA (7 U.S.C. § 136v(a); National Agricultural Chemical Ass'n v. Rominger (E.D.Cal. 1980) 500 F. Supp. 465, 15 ERC 1039; Chemical Specialities Manufacturers Association v. Allenby (9th Cir. 1992) 958 F. 2d 941, 34 ERC 2000, cert denied (1992) 113 S.Ct 80, 35 ERC 1688). [8]

#### Regulation of Pesticides by the State: ARB and DPR authority

Given that the State of California is not preempted by the CAA or FIFRA from regulating the VOC content of pesticides, which public agencies have the authority under California law to do so? The California Department of Food and Agriculture (now the Cal/EPA Department of Pesticide Regulation (DPR)) has been regulating pesticides since 1901 and extensively regulates the sale and use of pesticides in California. During the Phase I consumer products rulemaking, some individuals argued that the regulation of pesticides impermissibly intruded upon the pesticide registration scheme established in the California Food and Agriculture Code and administered by the DPR. The ARB Office of Legal Affairs did not agree with this view, and advised the ARB that it had full authority under state law to regulate consumer products that are pesticides registered with the U.S. EPA and DPR. Following is the reasoning supporting this conclusion.

Prior to the enactment of the Bronzan bill in 1984 (AB 2635; Stats. 1984, ch. 1386; Food and Agricultural Code §§ 11501.1 and 14007), local and regional air pollution control districts were free to regulate the use of economic poisons (e.g., pesticides) concurrently with DPR and other state agencies (People ex rel. George Deukmejian v. County of Mendocino et al. (1984) 36 Cal.3d 476; 21 ERC 1595). However, in response to this court decision the Legislature enacted a bill by Assemblyman Bronzan which explicitly overturned this decision and prohibited the districts (and other nonstate entities) from regulating the use of pesticides. Food and Agriculture Code § 11501.1(a) now states that the provisions of the Food and Agriculture Code relating to pest control operations and agricultural chemicals are of statewide concern and occupy the entire field of regulation:

" Except as otherwise specifically provided in this

code, no ordinance or regulation of local government, including, but not limited to, an action by a local governmental agency or department . . . , may prohibit or in any way attempt to regulate any matter relating to the regulation, sale, transportation, or use of economic poisons . . ."

(Food and Ag. Code § 11501.1)

The legislation further declares that:

"It is the intent of the Legislature by this act to overturn the holding of [People v. County of Mendocino] and to reassert the Legislature's intention that matters relating to the economic poisons are of a statewide interest and concern and are to be administered on a statewide basis by the state unless specific exceptions are made in state legislation for local administration." (Stats. 1984, ch. 386, sec. 3)

It is clear that the ARB has not been preempted by the Bronzan bill. Food and Agricultural Code § 11501(b) states: "Neither this division nor Division 7 . . . is a limitation on the authority of a state agency or department to enforce or administer any law that the agency or department is authorized or required to enforce or administer."

The ARB is authorized to regulate consumer products by Health and Safety Code § 41712, which defines "consumer product" to include many types of consumer product categories that contain pesticides registered under FIFRA and the California Food and Agriculture Code (i.e., cleaning compounds; home, lawn, and garden products; disinfectants; sanitizers). Based on this very clear and explicit reference to many product categories which include pesticide products, we believe that § 41712 contains an unambiguous expression of legislative intent that pesticide products are subject to ARB regulation. If the Legislature had intended to preclude regulation of these products by the ARB, it could very easily have said so. Under this authority, the ARB has already established VOC standards for numerous consumer product categories that include pesticide products (e.g., insecticides, insect repellents, bathroom and tile cleaners, etc.).

Since the ARB is authorized by Health and Safety Code § 41712 to regulate the VOC content of pesticide products, and the DPR is also authorized by the Food and Agriculture Code to regulate pesticide products, it follows that the ARB has concurrent jurisdiction with the DPR to regulate these products for air quality purposes. "Concurrent jurisdiction" is a well-established legal principle under which two or more governmental agencies exercise jurisdiction over the same subject area or activity, and affected persons must comply with the regulations of both agencies. [9] The Legislature can establish one statutory scheme for the general regulation of pesticides and another for the general regulation of air pollution, and both implementing agencies share jurisdiction where there is an overlap. (see Orange County APCD v. Public Utilities Comm.

(1971), 4 Cal.3d 945, 2 ERC 1602); see also 54 Ops. Cal. Atty. Gen. 189 (concurrent authority of the State Forester and the Tahoe Regional Planning Agency to regulate the harvesting of commercial timber); and 37 Ops. Cal. Atty. Gen. 31, 33 (the Public Utilities Commission, Industrial Welfare Commission, and the Division of Industrial Safety have concurrent jurisdiction to regulate the health of common carrier employees). Concurrent jurisdiction is the only reasonable way to harmonize the separate regulatory schemes established by the Legislature in the Health and Safety Code and the Food and Agriculture Code.

The citations listed above describe only a few of the numerous instances where various public agencies exercise concurrent jurisdiction in regulatory situations, where each agency is empowered to regulate a particular aspect of a given activity. In the case of consumer products that are registered pesticides, pesticide manufacturers are subject to DPR regulations and orders regarding registered pesticide products, while also being subject to any applicable ARB regulations regarding the VOC content of products manufactured for sale or use in California. Manufacturers must also comply with any applicable DPR regulations that are adopted in the future to limit the VOC content of pesticides that are not consumer products (i.e., pesticide products used in agricultural and commercial structural pesticide applications), as described in DPR's commitment in the State Implementation Plan for Ozone (SIP).

**\*\*FOOTNOTES\*\***

[1]: Such clarification of the meaning of legislative terms is a common practice in administrative regulations and is clearly authorized by California law. (see *Western States Petroleum Assn. V. Superior Court* (1995), 9 Cal.4th 559, 572; 38 Cal.Rptr.2d 139)

[2]: The definitions of these terms were developed in close cooperation with the consumer products industry during the public workshops and other meetings that were held as part of the development of Phase II. As a result of these discussions, general consensus was reached with industry representatives on the proper language for these definitions. ARB staff included these consensus definitions in the regulations formally proposed in the Phase II rulemaking. The definitions were subsequently adopted by the Board with no changes from the originally proposed language. No oral or written comments relating to these definitions were received by the ARB during the Phase II public comment periods, or at the Phase II Board hearing.

[3]: ARB regulations also contain a definition of the term "consumer product" (Title 17, CCR, § 94508(a)(18)). This regulatory definition is essentially identical to the definition set forth by the Legislature in Health and Safety Code § 41712(c). The scope of both definitions thus depends to a large extent on the meaning of the phrase ". . . household and institutional consumers . . .", which is in turn clarified by the

ARB's definitions of the terms "Household Product" and "Institutional Product or Industrial and Institutional (I&I) Product."

[4]: These observations are intended to provide some simplified descriptions of how the ARB definitions would apply to some very general situations. These observations are not intended to modify or add additional qualifications to the actual language of these definitions, as set forth in ARB regulations.

[5]: As originally enacted in 1988, Health and Safety Code § 41712(e) restricted the authority of local districts to adopt consumer product regulations only until January 1, 1994. After January 1, 1994, the original language provided no limitation on the authority of the districts to adopt consumer products regulations. This language was modified in 1992 to eliminate the reference to January 1, 1994, and thereby create a permanent restriction on district authority. The new, currently effective language is set forth above.

[6]: Some additional explanation of the "Household Adhesives" category may be useful in understanding the scope of the ARB's definition. At the time the definition for this category was developed during the 1992 Phase II rulemaking, several districts had either adopted or were developing regulatory standards for adhesives. The primary focus of the district regulations was to establish standards for adhesives used by stationary sources in commercial or industrial applications. The ARB "Household Adhesives" category was developed in consultation with industry, and was intended to include only the smaller containers of adhesives that were used primarily by consumers, and to exclude the larger containers of adhesives that were typically used in commercial and industrial applications. It has been suggested that the ARB's definition draws the line between these two types of applications in an inappropriate place, and that quart and gallon sizes of adhesives should be regulated by the ARB as "Household Adhesives" instead of by the districts. The ARB staff is continuing to evaluate this category. At the present time, however, the boundaries of ARB and district authority over adhesives are delineated by the boundaries of the category of "Household Adhesives", as that term has been defined in ARB regulations.

[7]: The only requirement imposed on States by CAA § 183(e) is the requirement in § 183(e)(9) that any State which proposes consumer product regulations (other than those regulations adopted by the U.S. EPA under § 183(e)) must consult with the U.S. EPA Administrator regarding whether any State or local subdivision has promulgated consumer products regulations, or is in the process of promulgating such regulations.

[8]: FIFRA does contain a limited preemption that prohibits States from imposing any additional labeling or packaging requirements that are different than FIFRA requirements. Section 24(b) of FIFRA provides that States:

" . . . shall not impose or continue in effect any

requirements for labeling or packaging in addition to or different than those required under this subchapter."

(7 U.S.C. § 136v(b))

By its terms, this limited FIFRA preemption applies only to "requirements for labeling or packaging" ARB regulations recognize this preemption by providing that the code-dating (i.e., labeling) requirements of the consumer products regulation do not apply to FIFRA-registered products (see 17, CCR, §§ 94510(e) and 94512(b)). Except for labeling and packaging requirements, FIFRA gives States the freedom to impose whatever pesticide regulations they may wish, including regulatory limits on the VOC content of pesticides. (see *Chemical Specialities Manufacturers Association v. Allenby*, (9th Cir. 1992) 958 F. 2d 941, 34 ERC 2000, cert denied (1992) 113 S.Ct 80, 35 ERC 1688).

[9]: As discussed above, the practical effect of concurrent jurisdiction is that persons subject to DPR and ARB regulations must comply with the regulations of both agencies. In developing consumer products regulations the ARB has been careful to coordinate with the DPR to ensure that ARB and DPR regulations do not impose inconsistent requirements on pesticide manufacturers, distributors, or retailers. Furthermore, DPR has made a commitment in California State Implementation Plan for Ozone (SIP) to reduce VOC emissions from agricultural and commercial structural pesticide applications. DPR's SIP commitment should also not result in any inconsistent requirements, since DPR explicitly states in the SIP that it does not intend to develop control measures that apply to pesticides regulated as consumer products by the ARB.