

August 4, 2011

via e-mail

California Air Resources Board
1001 I Street
Sacramento, California 95814
<http://www.arb.ca.gov/lispub/comm/bclist.php>

Attn: Ms. Lori Andreoni
Manager, Board Administration and Regulations Coordination Unit

Subject: 15-Day Notice of Modifications to the Original Proposed 2010 Amendments to the California Consumer Products Regulation¹

Dear Board Members:

The Consumer Specialty Products Association (CSPA or the Association)² appreciates the opportunity to provide comments on the California Air Resources Board's (ARB's) 15-Day Notice of Public Availability of Modified Text for the Public Hearing to Consider Adoption of Proposed Amendments to the California Consumer Products Regulation. This document was released on July 20, 2011, pursuant to Board Resolution 10-40 approved at the public hearing held on November 18, 2010.

CSPA commends the ARB staff's efforts to ensure that all interested parties had an opportunity to participate in an open and transparent public effort to develop the current amendments to California's comprehensive Consumer Products Regulation. CSPA's comments today relate solely to the Modified Text and make reference to the Association's comprehensive written comments submitted on November 16, 2010, as well as the oral testimony presented by CSPA representatives at the ARB's public hearing that was held on November 18, 2010.

¹ The full text of the modifications to the originally proposed 2010 Amendments that were approved by the Board is posted on ARB's website at: <http://www.arb.ca.gov/regact/2010/cp2010/cp2010.htm> (hereinafter referred to as the "Modified Text").

² CSPA is national trade association representing the interests of approximately 250 companies engaged in the manufacture, formulation, distribution and sale of consumer and commercial products that help household and institutional customers create cleaner and healthier environments. CSPA member companies' products include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; and a host of other products used every day. These products are formulated and packaged in many forms and are generally marketed nationally. Through its product stewardship program Product Care[®] and scientific endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products.

A. CSPA Supports the Modifications to Sections 94508(a) and 94509(a).

Recently, ARB achieved significant improvements to the clarity of the various sections of this complex regulation by grouping together similar definitions and regulatory provisions that have been added over the past 22 years and multiple rulemakings can be more clearly identified.³ Therefore, CSPA supports ARB's action to reorganize the definition of the term "Lubricant" to add the definitions of subcategories of lubricant products that had been defined elsewhere in Section 94508(a). This reorganization helps to provide greater clarity that will assist manufacturers in ensuring that their products comply with applicable limits on volatile organic compounds (VOCs).

1. CSPA supports ARB's action to create four specifically defined lubricant subcategories.

The proposed regulation issued in September 2010 sought to regulate "Special-purpose Lubricant," a category that included a diverse variety of 277 non-aerosol products and 201 aerosol products. This broad category of specialty (*i.e.*, niche) products included, among other things, lithium greases, moly greases, Teflon-based, cutting oils, food-grade, anti-seize, chain and cable, gear and gun oil. All of these products have different uses for different consumers and different formulation requirements that could not fit into a single "one size fits all" category with one regulatory limit. Thus, CSPA supports ARB's action to delete the proposed definition and VOC limit for the "Special-purpose Lubricant" and to develop new definitions and separate VOC limits for the following four lubricant subcategories:

- Anti-Seize Lubricant;
- Cutting or Tapping Oil;
- Gear, Chair, or Wire Lubricant; and
- Rust Preventative or Rust Control Lubricant.

The new definitions now included provide needed clarity for both manufacturers and ARB's Enforcement Division to more accurately determine which lubricant products are subject to the proposed new VOC limits set forth at 17 CCR § 94509(a). The modified definition for Dry Lubricant is especially important to avoiding deterring innovative new technologies.

CSPA believes that this approach will result in emission reductions equal or greater than those estimates for the limits proposed by ARB, while providing clearer definitions and less uncertainty regarding what products are subject to what limits. The revised definitions clarify that the following subcategories of lubricants are not regulated: Industrial-Use Only (not Consumer Products), Special-Purpose Silicone Lubricant, Gun Oil, and Special-Purpose Dry Lubricants. It also clarifies that Food Grade products from the 2006 Survey are subject to regulation in these categories only if they are used in food service as opposed to solely being used in food manufacturing operations.

³ See *e.g.*, the definition of Adhesive Remover" at 17 CCR §94508(a)(2), the definition of "Automotive Wax, Polish, Sealant or Glaze" at 17 CCR §94508(a)(19) and the tables set forth at 17 CCR §§ 94509(m)(1)-(2) and 17 CCR § 94509(n)(1).

2. The stringent new 25% VOC limits for the aerosol product forms of Cutting or Tapping Oil, Gear, Chair, or Wire Lubricant and Rust Preventative or Rust Control Lubricant present significant reformulation challenges.

The large numbers of products in these three categories of specialty lubricants will require manufacturers to commit a significant amount of resources to reformulate to meet this stringent 25% VOC limit. Nevertheless, CSPA members accept this challenge and will commit the resources necessary to meet the new 25% limits for these products by the December 31, 2013, effective date.

3. The new 40% VOC limit for aerosol form of Anti-Seize Lubricant presents a significant reformulation challenge.

Aerosol anti-seize lubricant compounds generally consist of five major components: grease, graphite flakes, soft metal particles such as copper and aluminum, solvents and propellant. To produce a properly functioning aerosol version of Anti-Seize Lubricants, these compounds must be miscible with and thinned with an appropriate solvent that allows for proper packaging. The compound is dispensed from the aerosol by the action of an appropriate amount of propellant that provides additional viscosity reduction and proper delivery characteristics.

In order for the anti-seize lubricant compound to function properly after delivery, the dispensed product must return to its original grease state as rapidly as possible. This requires the use of a fast evaporating thinning solvent. Although acetone is a fast evaporating VOC-exempt solvent, it cannot be used in large amounts because it is not miscible with the petroleum-based greases that are used, causing them to coagulate and come out of solution. Slower evaporating solvents prevent the recovery of the grease by maintaining the diluted form. Therefore, LVP-VOC solvents are not suitable for dilution for this reason.

Thus, it will be difficult for manufacturers to reformulate their products to meet the new 40% VOC limit for this Lubricant subcategory. Nonetheless, CSPA members accept this challenge and will commit the necessary resources to resolve these technological challenges and to produce compliant products by the December, 31, 2013, effective date.

4. Manufacturers need a reasonable amount of time to reformulate the newly regulated Lubricant subcategories to comply with the stringent new VOC limits.

As explained in the previous paragraphs, reformulating products to comply with the VOC limits for the aerosol forms of the newly regulated Lubricant subcategories presents difficult technological challenges. Manufacturers need a reasonable amount of time to conduct the necessary research, development and engineering (RD&E) efforts needed to create new product formulations and to conduct stability testing for producing the reformulated products. It generally requires 30 months for companies to complete the three primary RD&E “stage-gates” to produce new technology can be introduced as a viable product in the marketplace.

During the first phase – “project ideation” – which typically requires 3 – 6 months, manufacturers: develop and test various product formulations, design and make test product prototypes, conduct legal (*e.g.*, patent) reviews and financial assessments, and conduct and evaluate consumer testing.

During the second phase – product development – which typically requires 6 – 12 months, manufacturers conduct the following actions, which may be an iterative process to ensure proper development and execution: conduct technical testing to assess the stability, compatibility and efficacy of the new formulation, conduct consumer testing to assess the commercial feasibility of the new formulation, and define the manufacturing process.

During the final phase – commercialization and product launch – which generally requires as much as 12 -15 months, manufacturers: finalize the manufacturing process design and new product formulation “recipe,” build required tooling for the manufacturing production lines, complete all regulatory and legal reviews, confirm product claims, complete quality control plan and approve the final new formulation for production.

It will be a difficult challenge for manufacturers to complete all the steps necessary for the successful development and commercialization of a new product formulation to comply with the proposed technology-forcing VOC limit by December 2013 – especially since this final regulation will not be published (and thus, have the force of law) until the end of 2011. Thus, manufacturers will have roughly two years to complete the complex reformulation process.⁴ While manufacturers have realistic concerns that they can accomplish all that is needed to done within this timeframe, CSPA members will initiate expedited action to reformulate their products that comply with the aggressive new VOC limits by the December 31, 2013, deadline.

- B. CSPA reiterates our members’ concerns that there are legitimate needs to formulate low-flammable Gear, Chain and Wire Lubricants and Cutting and Tapping Oil products.

In general, product formulators continue to make a concerted effort to eliminate the use of chlorinated solvents (*i.e.*, methylene chloride, perchloroethylene, and trichloroethylene) from their products. However, as a practical matter, there are limited situations where the use of perchloroethylene should not be eliminated. CSPA member companies’ customers have a legitimate need for low-flammability Gear, Chain and Wire Lubricants and Cutting and Tapping Oil products. Therefore, CSPA continues to urge the ARB to withdraw the proposed ban on the use of perchloroethylene for these two narrowly-defined lubricant product subcategories. See proposed 17 CCR § 94509(m)(1).

- C. CSPA supports the clarifications made to the Most Restrictive Limits requirements in Section 94512.

CSPA fully supports the new language included in Section 94512(a)(3), which applies this provision only to categories whose definitions mutually exclude each other, and in Section 94512(a)(4), which clarifies that the Most Restrictive Limit does not subject various regulated products with antimicrobial claims to the limits for Disinfectant or Sanitizer. These changes to the language originally proposed are fully necessary to assure that these products remain technologically and commercially feasible under this regulation.

⁴ The practical reality is that companies generally do *not* expend monetary or staff resources to comply with proposed regulatory requirements until the new provisions impose legally binding and enforceable requirements.

D. CSPA continues to believe that restrictions on APE Surfactants are not warranted.

As we noted in our comments on the proposal last year, CSPA questions the need for Section 94509(m)(3), which will prohibit the use of alkylphenol ethoxylate (APE) surfactants in five categories of products for which revised VOC limits are proposed. Since these and other surfactants were reported in the 2006 Survey as grouped organics, adequate data do not exist to determine to what degree these surfactants are used in these categories of products. Although we continue to believe that this prohibition is not justified based on the environmental impacts of the low levels of use of APEs in these products, since we have no reason to believe that any additional APEs would be needed in reformulating these products to meet the lower VOC limits, CSPA will not oppose the addition of this prohibition.

Conclusion and Summary

CSPA participated as an active member of ARB's Consumer Products Regulation Workgroup and worked cooperatively with ARB staff, environmental groups, air management districts and other stakeholders in this very challenging rulemaking process. CSPA commends ARB staff's concerted efforts to ensure that all interested parties had an opportunity to participate in an open and transparent public effort to develop the 2010 Amendments to California's comprehensive Consumer Products Regulation.

While the new VOC limits set forth in the Modified Text will impose very costly and technologically difficult reformulation challenges, CSPA supports these changes made to the rule as originally proposed. Therefore, CSPA member companies will initiate expedited research, development and engineering efforts necessary to reformulate products to comply with these aggressive new VOC limits by the December 31, 2013, deadline.

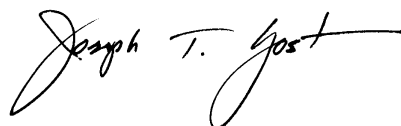
Finally, CSPA strongly believes that customers have legitimate worker safety reasons for using low-flammability Gear, Chain and Wire Lubricants and Cutting and Tapping Oil products. Therefore, CSPA continues to urge the ARB to withdraw the proposed ban on the use of perchloroethylene for these two narrowly-defined lubricant product subcategories.

CSPA appreciates the opportunity to file comments the Modified Text. Please contact us if you have any questions about issues or concerns raised in this document.

Respectfully submitted,



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