



Chet Thompson
09-854

**Statement of Chet Thompson,
on behalf of the
American Chemistry Council's Solvents Industry Group
at the
California Air Resources Board on Proposed Amendments to the California Consumer
Products Regulations; Board Agenda Item # 09-8-4
On
September 24, 2009**

Good morning. My name is Chet Thompson legal counsel from Crowell Moring. I am here today representing the Solvents Industry Group ("SIG") of the American Chemistry Council. SIG¹ represents leading companies in the business of chemistry, specifically hydrocarbon and oxygenated solvent manufacturing, and was formed to address health, safety, and environmental issues affecting both the producers and users of those materials. SIG's member companies would be significantly and negatively impacted by the proposed amendments.

My statement this morning summarizes the written comments SIG submitted on the proposal. We would like to stress that SIG supports the California Air Resources Board's ("CARB") goal of continued improvement in air quality through effective and efficient regulation of ozone-forming compounds in consumer products, and we stand ready to help. However, for the following reasons, SIG cannot support the proposed amendments in its current form and requests that CARB suspend consideration of the proposed amendments, particularly Tier 2, until these concerns are addressed:

- SIG strongly supports the adoption of reactivity-based standards either as the sole compliance option or at least as an alternative compliance option for paint thinners and multipurpose solvents. Research shows definitively that reactivity-based standards more effectively reduce the ozone-forming potential of solvent-based products while providing formulators with greater flexibility to produce products that meet performance and safety specifications.² The proposed mass-based approach, in stark contrast, is outdated, inefficient, needlessly rigid, and potentially counterproductive to the overall goal of ozone reduction. By not adopting a reactivity-based standards or, at least, a reactivity-based alternative compliance control plan CARB is missing a real opportunity to secure greater and more cost-effective ozone reductions.
- CARB's proposed aromatics prohibition is arbitrary and capricious. The proposed aromatic prohibition is essentially a reactivity-based provision grafted onto a conventional mass-based approach. If CARB is going to rely on reactivity-based concepts, then it ought to adopt the concept in its entirety. CARB selective use of reactivity unfairly serves only to make the mass-based approach more onerous and denies formulators any of the benefits of reactivity-based standards. CARB has also not

¹ SIG Member companies include The Dow Chemical Company, ExxonMobil Chemical Company, Shell Chemical LP and Eastman Chemical Company.

² See William P. L. Carter, *Development of Ozone Reactivity Scales for Volatile Organic Compounds*, 44 J. Air & Waste Mgmt. Ass'n 881 (1994); A. Russell et al., *Urban Ozone Control and Atmospheric Reactivity of Organic Gases*, 269 Science 491 (1995).



adequately explained and justified the need for and scope of the aromatics prohibition. Nor has CARB provided any justification for the specific aromatic limit of one percent. How did CARB arrive at that number? What would be the implications of a prohibition set at some higher percentage, such as 2 or 5 percent? SIG requests that CARB provide this analysis and allow stakeholders to comment on it before finalizing the prohibition.

- Importantly, CARB has not met its legal burden of demonstrating that its proposed regulations are commercially and technologically feasible and necessary. For example, CARB is proposing to adopt a 3 percent tier 2 standard that it acknowledges “has not been demonstrated,” at least for thinners, and the impacts of which cannot be “fully assess[ed]” until more information is obtained. At the very least, CARB has not provided interested stakeholders with sufficient information to weigh in meaningfully on its feasibility determinations. SIG further requests that CARB postpone consideration of its Tier 2 standards until at least 2012 when additional feasibility and safety data will be available.
- SIG cannot fully assess the feasibility of the proposal in part because CARB has not released the full detailed results of its 2008 survey update, which according to the staff report serve as the primary bases of this proposal. Before adopting a final amendment, CARB must afford SIG and other stakeholders with an opportunity to evaluate and comment on this critical information.
- The current proposal would likely result in the formulation of consumer products that pose a higher fire risk to consumers and the public than existing products. CARB itself was sufficiently concerned with this issue that it solicited the input of the Office of the State Fire Marshall on the nearly identical rule recently passed by SCAQMD, Rule 1143, and submitted comments on this specific issue to SCAQMD in December 2008. Despite its expressed concerns, CARB has nevertheless proposed a state-wide rule that would create the same public health risk as Rule 1143. And although SIG supports the rule’s proposed notification and marking requirements, CARB has not explained or provided support for how such requirements would significantly abate the acknowledged public hazards that will undoubtedly result from the proposal.

Conclusion

SIG urges the Board to table its mass-based proposal and to instead pursue a reactivity-based approach. At the very least, we urge the Board not to adopt the proposed Tier 2 standard that is slated to take effect in 2013. That standard has not been shown to be feasible or safe. And since there is no reason that it must be adopted now, it would be more prudent for the Board to complete a more thorough assessment before moving forward with the 3 percent standard.

SIG appreciates the opportunity to share its concerns with the Board. We remain committed to working with CARB to implement of reactivity-based standards in California, and look forward to continued dialogue in this area. Thank you for considering these comments.

