Consumer Specialty Products Association

January 29, 2010 *via* e-mail

California Air Resources Board
1001 I Street
Sacramento, California 95814
Attn: Lori Andreoni, Clerk of the Board
http://www.arb.ca.gov/lispub/comm/bclist.php

Subject: 15-Day Notice of Public Availability of Modified Text for the Public Hearing to Consider Proposed Amendments to the California Consumer Products Regulation[1]

Dear Ms. Andreoni:

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 Proposed Amendments to the California Consumer Products Regulation. This document was released on January 14, 2010, pursuant to Board Resolution 09-51 approved at the public hearing held on September 24, 2009. 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 very 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 September 21, 2009, as well as the testimony of CSPA representatives at the ARB's September 24th Public Hearing.

1. CSPA urges ARB to use a definition of "Aromatic Compound" that is consistent with the current regulatory definition of "VOC Content."

In CSPA's comments on the proposed 2009 Amendments, we urged ARB to eliminate the proposed limitation on aromatic content, and instead develop reactivity-based limits for these solvent products, and also urged that if any aromatic content limitations were maintained, that ARB refine the overly broad definition proposed for "aromatic content" to include only volatile

[1] The full text of the modifications approved by the Board is posted on ARB's website at: http://www.arb.ca.gov/regact/2009/cpmthd310/15daytext.pdf. Hereinafter referred to as the "Modified Text."

[2] The Consumer Specialty Products Association (CSPA) is a voluntary non-profit trade association representing the interests of approximately 240 companies engaged in the manufacture, formulation, distribution and sale of hundreds of familiar consumer products that help household, institutional and industrial customers create cleaner and healthier environments. Our 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 for use throughout the home; products used to protect and improve the performance and appearance of automobiles; and a host of other products used every day. Through its product stewardship program Product Care®, scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety, sustainability and environmental impacts of their products.

aromatic compounds.[3] In the Modified Text, the aromatic content limitation is maintained, and the following revised definition is proposed:

> "Aromatic Compound" means a carbon containing compound that contains one or more benzene or equivalent heterocyclic rings and has an initial boiling point less than or equal to 280°C. "Aromatic Compound" does not include compounds excluded from the definition of Volatile Organic Compound (VOC) in this Section 94508(a).

While this revised definition is clearly a step in the right direction, it creates a definition of this subset of VOCs that is inconsistent with the definition used in the Consumer Products Regulation to define what compounds are considered VOCs subject to the limits in the Table of Standards. Section 94510(d) states that, "The VOC limits specified in Section 94509(a) shall not apply to any LVP-VOC." LVP-VOC is defined in Section 94508 as follows:

> "LVP-VOC" means a chemical "compound" or "mixture" that contains at least one carbon atom and meets one of the following:
>
> (A) has a vapor pressure less than 0.1 mm Hg at 20°C, as determined by ARB Method 310; or
>
> (B) is a chemical "compound" with more than 12 carbon atoms, or a chemical "mixture" comprised solely of "compounds" with more than 12 carbon atoms, as verified by formulation data, and the vapor pressure and boiling point are unknown; or
>
> (C) is a chemical "compound" with a **boiling point greater than 216°C**, as determined by ARB Method 310; or
>
> (D) is the weight percent of a chemical "mixture" **that boils above 216°C**, as determined by ARB Method 310.
>
> For the purposes of the definition of LVP-VOC, chemical "compound" means a molecule of definite chemical formula and isomeric structure, and chemical "mixture" means a substance comprised of two or more chemical "compounds." [4]

Elsewhere in Section 94508, "VOC Content" is defined to similarly exclude "LVP-VOCs" among other ingredients excluded from consideration.

CSPA believes that it is essential that any limitation on "Aromatic Content" in this regulation be consistent with the definition of "VOC Content" in this regulation. The volatility criterion should therefore be a boiling point of 216°C and not 280°C. We therefore urge that ARB further modify the proposed language as follows:

> "Aromatic Compound" means a carbon containing compound that contains one or more benzene or equivalent heterocyclic rings and has an initial boiling point less

[3] *See* CSPA Comments on Board Agenda Item # 09-8-4 (Sept. 21, 2009) at pages 6-7.
[4] 17 CCR § 94508(a)(94) [Emphasis Added].

than or equal to 216°C. "Aromatic Compound" does not include compounds excluded from the definitions of "Volatile Organic Compound (VOC)" or "VOC Content" in this Section 94508(a).

One reason for ARB's proposal to use a higher boiling point criterion instead of 216°C would appear to be the standard ASTM D5443, which would be used to confirm the Aromatic Content of products. (That method provides determinations of paraffins, naphthenes and aromatics by carbon number for compounds with boiling points below 200 °C, and as a single group for compounds boiling between 200°C and 270°C, and is not designed to determine higher-boiling constituents.) However, we believe that this ASTM method or others could easily be modified to determine Aromatic Content with a boiling point below 216°C. We therefore urge ARB to do so, and use a definition of "Aromatic Compound" that is consistent with the regulation's definition of "VOC Content."

2. CSPA supports the ARB's decision to withdraw proposed additional labeling requirements for the Multi-purpose Solvent and Paint Thinner product categories.

CSPA supports the ARB's decision to withdraw the labeling requirements for Multi-purpose Solvent and Paint Thinner product categories. *See* proposed 17 CCR 94512(e). CSPA strongly believes that focusing solely on the VOC content of a consumer product does not accurately reflect the environmental impact of that product.

a. Only listing the VOC content on a product label fails to account for other important environmental factors that may impact potential ozone formation.

ARB staff working in close cooperation with Dr. William Carter of the University of California at Riverside has produced voluminous ground-breaking scientific studies and data establishing the fact that all VOCs are not equal in their potential to form ozone. In summary, ARB's data conclude that potential contribution of each VOC to ozone formation depends on its photochemical reactivity. Individual VOCs can vary over nearly two orders of magnitude in their ability to contribute to ground-level ozone formation. This difference in photochemical reactivity is the basis for the ARB reactivity-based regulation on aerosol coatings.[5]

Thus, for example, a product that contains half as much VOCs (in terms of percent by weight) but has VOCs that are two times as reactive would not be environmentally superior in terms of ozone formation potential. This is an environmental impact that cannot be conveyed by merely requiring that the VOC content to be listed on the product label.

Other factors can also affect a product's relative impact on ozone formation. Product efficacy, among other factors, has a significant effect on the rate of product usage, and therefore the potential for VOC emissions and air quality impact. For example, a product that contains half as much VOCs (in terms of percent by weight) but requires twice the usage would not be environmentally superior, even if only ground-level ozone formation is considered. This factor indeed provides the basis for the Innovative Products Provision in Section 94511 of the Consumer Products Regulation.

[5] 17 CCR §§ 94520-701.

b. Only listing the VOC content fails to account for other environmental health and safety factors.

The VOC content of a product also does not correlate with other environmental health and safety factors. In addition to broadly differing ozone formation potentials, various VOCs have wide variability in their potential for other environmental health and safety impacts. If the VOC content were required to be placed on a product label, consumers could be misled in thinking that products with lower VOC percentages are safer or more environmentally compatible; such a conclusion is very often false.

c. Simply listing the VOC content on a product label without accounting for other factors that may contribute to ozone formation may mislead consumers.

The Federal Trade Commission's (FTC's) "Guides for the Use of Environmental Marketing Claims"[6] considers not only the explicit words of claims, but also the implied messages conveyed by that claim, in deciding whether those claims are misleading. A state-mandated VOC content labeling requirement that fails to account for other relative factors related to ozone formation could mislead consumers into believing incorrectly that products with a lower VOC content are environmentally superior to those with a higher VOC content.[7] CSPA believes that developing a statement on a label to correctly convey a products' ozone formation potential would be so complex that it would be of questionable value to the vast majority of California consumers.

During the past 20 years, the ARB has developed the Nation's most stringent VOC standards. While California's comprehensive Consumer Products Regulation is strict, it allows companies to compete fairly on a "level playing filed." Imposing a one-dimensional environmental labeling requirement could have had the unintended effect of misleading the California citizens that the ARB has an obligation to protect. Therefore, CSPA supports the ARB's decision to withdraw the proposed VOC content label requirement.

Conclusion

CSPA urges ARB to direct staff to make further revisions to the definition of the term "Aromatic Compound" to ensure that it is consistent with the current regulatory definition of the term "VOC Content." CSPA strongly believes that internal consistency is of paramount importance – particularly in a rule as complex as the California Consumer Products Regulation.

CSPA generally supports the other modifications to the proposed 2009 Amendments as approved by the Board. In particular, CSPA supports the ARB's decision to withdraw proposed additional labeling requirements for the Multi-purpose Solvent and Paint Thinner product categories.

[6] Codified at 16 C.F.R. Part 260 (2009).

[7] *See* 16 C.F.R. § 260.7 (2009) advising that "broad environmental claims should either be avoided or qualified, as necessary, to prevent deception about the specific nature of the environmental benefit being asserted."

We hope that these comments are helpful. Please contact us any time if you have questions regarding issues raised in these comments.

Respectfully submitted,

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