

1st Draft

Bob

DRAFT-FOR EPA/CARB DISCUSSION ONLY

September 14, 1994

James D. Boyd
 Executive Officer
 California Air Resources Board
 P.O. Box 2815
 Sacramento, CA 95814-2815

OPTIONAL FORM NO. 7-00

FAX TRANSMITTAL

of pages > 4

To Flourd Vergara	From Ken Israels
Dept./Agency CARB	Phone # 415 744 1194
Fax # 916 445 5023	Fax # 415 744 1076
NSN 7540-01-317-7388	5099-101 GENERAL SERVICES ADMINISTRATION

Dear Mr. Boyd:

This letter contains the Environmental Protection Agency's (EPA) comments on the proposed Alternative Compliance Plan Regulation for Consumer Products (ACP) dated August, 1994. In this correspondence, EPA provides the California Air Resources Board (ARB) with comments on both the ACP regulation and some specific issues concerning the ARB's Consumer Products regulation. These comments address the primary issues that EPA believes are essential to the approvability and success of the Consumer Products regulation. EPA supports the adoption and submittal of the current version of the regulation as a SIP revision provided that our comments are addressed.

EPA commends the ARB for its efforts in developing economic incentive regulations to control volatile organic compound (VOC) emissions from consumer products.

Based upon our review we have the following comments.

EPA's ACP comments:

We wish to thank ARB for making extensive revisions to the Alternate Compliance Plan (ACP) for Consumer Products in response to our comments. These revisions have alleviated EPA's concerns about the applicability and enforceability of the regulation. However, these revisions have not addressed other concerns that we have communicated to your agency in previous letters, meetings, and phone calls. These concerns regard inadequate fulfillment of the administrative requirements established by the Federal Economic Incentive Program rules (EIP). We believe that these deficiencies can be remedied prior to the Board hearing by making some additions to the staff report. Alternatively, the deficiencies could be addressed by including an administrative procedures document with the formal submittal to EPA. The needed information is noted below:

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- Revisions to the Sample ACP Application:

A discussion of what would comprise a satisfactory statistical determination of "Enforceable California Sales" should be presented. Such a discussion should include guidance on the volume of data to be collected, establish requirements for a sampling plan, and establish a minimum level of statistical certainty required for approval of an ACP.

A prediction of the availability of surplus credits for purchase by small business should be provided. ARB should provide some rough estimate of the projected availability of surplus credits for small businesses. This projection should include both price and volume estimates.

Req. Req.

16699
section
36

- Information Regarding SIP Credit:

A discussion of how SIP credit will be taken must be addressed. ARB must explain how credit for VOC reductions will be taken, both by the local air districts and by the State of California. The impact of uncertainty factors on rule effectiveness and SIP credit must also be discussed.

If the ARB chooses not to claim full SIP credit for the ACP or the Consumer Products rule in general, then ARB should document exactly which provisions of the rule that they are not anticipating crediting in the SIP. This documentation must be included in the SIP submittal package so that EPA may determine the size and causes of any shortfall attributed to this rule. In addition, this information must also demonstrate that no nonattainment area in the State is relying on full emission reduction credit for this regulation as a means of demonstrating attainment or reasonable further progress (see section 110(i) of the Clean Air Act). Finally, it should be noted that if the entire rule is submitted to EPA for review and inclusion in the SIP, regardless of the amount of credit for emission reductions taken in the SIP, EPA will consider all of the provisions reviewed and included in the SIP as federally enforceable.

- Tracking of Trades

Further development of the tracking procedures are needed. ARB must explain how the sale, expiration, use, and possession of valid surplus reduction certificates will be tracked.

- Audit Procedures

DRAFT-FOR EPA/CARB DISCUSSION ONLY

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Economic Incentive Program rule (EIP) requires that procedures be established to audit the effectiveness and cost efficiency of the program. A discussion of how the ACP program will be audited by ARB is required.

Penalty Provisions

With respect to the ACP's penalty provisions, EPA supports the ARB's design of an appropriate penalty provision in section 94546 which should present an adequate deterrent to non-compliance and which is consistent with the EIP rules. This section is an improvement over previous versions in terms of its federal approvability.

EPA's Comments on the Innovative Products Provisions in the Consumer Products Regulation:

Finally, regarding the use of a generic process for evaluating individual (or unique) innovative products in the ARB's Consumer Products rule, EPA has been unable to find an appropriate, universal process which could substitute for the traditional SIP revision mechanism. Given the nature of the innovative products provision in Section 94511 and conversations with the ARB regarding the potentially unique qualities of these products, EPA does not at this time find that a generic process in which the approval of subjective general standards would be used to SIP approve innovative products would be appropriate in light of Section 110(i) of the Clean Air Act.

In examining the potential for a generic process for the innovative products provision of the Consumer Products rule, EPA considered the option of a "two-step" process as described in the EIP rules at 59 FR 16694 (section III.D. second paragraph). However, this discussion is clearly limited to EIP's allowing trading to meet existing source requirements. Given that the innovative products provision is not integral to the ACP or its trading requirements, this option is not appropriate.

Therefore, at this time, EPA is suggesting the use of the SIP-approval mechanism as a means of including innovative products in the SIP. Information provided by your staff indicates that there are only a limited number of these applications per year and given the ARB's own approval process, EPA believes that these SIP revisions may be expedited as compared to the normal SIP review process. In the future, however, EPA and ARB may be able to devise some alternative approach which can be used as a generic process once both agencies have gained experience with the review and approval of these applications.

This is one possibility

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We look forward to working with your staff to address our remaining concerns. If you have any questions, please contact Dan Meer of my staff at (415) 744-1185.

Sincerely,

David P. Howekamp
Director
Air and Toxics Division

DRAFT-FOR EPA/CARB DISCUSSION ONLY

- Put comments as attachment
 - Conf. call with EPA

DRAFT - FOR EPA/CARB DISCUSSION ONLY

September 14, 1994

James D. Boyd
 Executive Officer
 California Air Resources Board
 P.O. Box 2815
 Sacramento, CA 95814-2815

OPTIONAL FORM NO. 7-80		# of pages 2
FAX TRANSMITTAL		
To Elvud Vergara	From Ken Israels	
Dept./Agency CARB	Phone # 415 744 1194	
Fax # 916 445 5023	Fax # 415 744 1076	
NEN 7540-01-017-7368		GENERAL SERVICES ADMINISTRATION

Dear Mr. Boyd:

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ARB and EPA staff are to be commended for their efforts in developing economic incentive regulations to control volatile organic compound (VOC) emissions from consumer products over the past two years.

Based upon our review we have the following comments.

EPA's ACP comments:

We wish to thank ARB for making extensive revisions to the Alternate Compliance Plan (ACP) for Consumer Products in response to our comments. These revisions have alleviated EPA's concerns about the applicability and enforceability of the regulation. However, these revisions have not addressed some of our concerns relating to administrative requirements which were established in the Federal Economic Incentive Program rules (EIP). We believe that these issues can be remedied prior to the Board hearing by making some additions to the staff report. Alternatively, the issues could be addressed by including an administrative procedures document with the formal submittal to EPA. EPA does not believe that these issues warrant a rule revision. Recent discussions with ARB staff have indicated a willingness to address these issues. The needed information is noted below:

- Revisions to the Sample ACP Application:

DRAFT - FOR EPA/CARB DISCUSSION ONLY

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A discussion of what would comprise a satisfactory statistical determination of "Enforceable California Sales" should be presented. Such a discussion should include guidance on the volume of data to be collected, establish requirements for a sampling plan, and establish a minimum level of statistical certainty required for approval of an ACP. EPA does not believe a rule revision is necessary to provide this guidance. This discussion will be helpful in demonstrating that the ACP program has met the requirements of the EIP's audit and tracking provisions (see the EIP rule at 59 FR 16999 - Section III.D.6.).

Audit Procedures (see the EIP rule at 59 FR 16999 - Section III.D.6.)

The EIP rule requires that procedures be established to audit the effectiveness and cost efficiency of the program. A discussion of how the ACP program will be audited by ARB is required. The audit should include a determination of the availability of surplus credits for purchase by small business. This determination should include both price and volume data.

A discussion of how SIP credit will be taken (or has been taken) must be addressed. ARB must explain how credit for VOC reductions will be taken, both by the local air districts and by the State of California. The impact of uncertainty factors on rule effectiveness and SIP credit must also be discussed.

Further development of the tracking procedures for trading are needed. ARB must explain how the sale, expiration, use, and possession of valid surplus reduction certificates will be tracked.

Penalty Provisions

With respect to the ACP's penalty provisions, EPA supports the ARB's design of an appropriate penalty provision in section 94546 which should present an adequate deterrent to non-compliance, is federally approvable, and is consistent with the EIP rules.

We look forward to working with your staff to address our remaining concerns. If you have any questions, please contact Dan Meer of my staff at (415) 744-1185.

Sincerely,

David P. Howekamp

DRAFT - FOR EPA/CARB DISCUSSION ONLY



September 22, 1994

Mr. James D. Boyd
Executive Officer
California Air Resources Board
2020 L Street
P.O. Box 2815
Sacramento, CA 95814-2815

Dear Mr. Boyd,

We do not plan to participate in either session of the Consumer Products Workshop announced in your August 26 letter. However we do have a position on the Alternative Control Plan (ACP) that we feel is important.

We believe that the credit trading idea in the ACP favors large suppliers of goods like Aerosols. When a producer sells different lines of products, some that conform and others that do not, both may be sold. Those organizations that only supply one quality product will be forced to try to develop and supply products that are inferior or are not price competitive. Their competitors can sell the original product under the ACP. This will eliminate small business and support larger corporations and will not effect reducing VOC emissions. Therefore, we believe that a regulation that states a defined goal for all manufacturers is desirable. A credit trading concept, we feel, provides some organizations with unfair advantages in the marketplace.

If you wish to discuss this approach further, please contact me at The Flecto Company, 1000 45th Street, Oakland, California 94608. Our phone is (510) 655-2470 and fax is (510) 652-0969.

Sincerely,

Kendall E. Trautwein
Technical Director



September 19, 1994

94-9-2
9/22/94

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 9/20/94
BY BOARD SECRETARY

X.C. Board Member
JOS MHS
AS Legal
JTB SSD

Ms. Peggy Tarrico
Manager, Solvents Section
The California Air Resources Board
2020 L Street
Sacramento, CA 95812

RE: CARB PROPOSED ALTERNATIVE CONTROL PLAN REGULATION FOR CONSUMER PRODUCTS

Dear Ms. Tarrico:

DowBrands is a manufacturer of household cleaning, laundry, disinfectant, personal care and food care products. Our headquarters are located in Indianapolis, Indiana. As a manufacturer of household products currently subject to the Regulation For Reducing Volatile Organic Compounds Emissions From Consumer Products (Subchapter 8.5), DowBrands is providing comment prior to the Public Hearing (September 22-23, 1994 in Sacramento, California) to consider the above referenced, proposed Alternative Control Plan.

DowBrands supports the concept and process of the proposed Alternative Control Plan for Consumer Products. However, DowBrands concurs with the areas of concern needing further revision in the draft plan which have been previously addressed at workshops by the Chemical Specialties Manufacturers Association (CSMA) Alternative Control Plan Task Force. These areas of concern are as follows:

1. Violations
2. Short Falls
3. The ACP must be a voluntary program and will not be forced on manufacturers for future effective dates in the consumer products regulation.
4. Early credits will be allowed for up to one year prior to the current consumer product VOC regulation in the event of a manufacturer short fall.

DowBrands believes these issues must be resolved in order for this program to be a viable compliance option for this industry.

Thank you for your attention to our comments on this issue. Please call me if you have any questions.

Sincerely,

John G. Wood
Manager, Regulatory Affairs

cc: Michael J. Thompson (CSMA)

94-9-2
9/22/94
Macfee Manufacturing Company

323 EAST GALENA

708

897-1106

FAX 708 897-6250

AURORA, ILLINOIS 60505

Peggy
STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 9/20/94
BY BOARD SECRETARY

XC Board member
JIS MHS
HS Legal
JB SSA

September 13, 1994

State of California
Air Resources Board
P. O. Box 2815
Sacramento, Calif. 95812

RE: MACFEE MFG.CO.
Request for Variance-
automotive liquid Air
freshener.

Attn: James D. Boyd
Executive Officer

Dear Mr. Boyd:

I would like to take this opportunity to make several comments on your proposed ACP program.

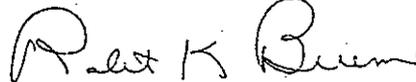
1) The 250 employee limitation for small business classification is much too high. Companies that sell products falling under your various categories of consumer goods typically contract out the filling and packaging operations and use sales representatives. A company comprised of 250 office personnel could very easily generate of \$ 250,000,000 or more - hardly a small company. This program would encourage some large companies to contract out more of their productions than they ordinarily would in order to get below 250 employees and be eligible to buy credits. It would be much more fair to set a sales limit of \$ 15,000,000 to designate a small company.

2) In your liquid air freshener category, 90% of the products are institutional and janitorial products. These products historically have been formulated at a 10-15% VOC level. It would not be fair for a manufacturer in this industry to reformulate from 18% to 12% and expect to be able to profit from selling excess credits. There may be other categories that I am not familiar with that are similar.

3) The cost of compliance pertaining to paints and coatings should not be applied to consumers products in general. In many of your categories costs are either -0- or infinite since packaging changes can produce the required VOC emissions. This modified packaging is unavailable to small business in many cases because of its prohibitive cost. Large companies with high volume product lines can always buy packaging at a fraction of the cost charge to small business. It is not the product, but the sales volume that matters.

Sincerely,

MACFEE MFG. COMPANY



Robert K. Bereman

RKB:pg



PENNZOIL PLACE • P.O. BOX 2967 • HOUSTON, TEXAS 77252-2967 • (713) 546-8516

94-9-2
9/22/94

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 9/23/94
BY BOARD SECRETARY

JB
MK
SSD

SAROSH J. H. MANEKSHAW
Director
Environmental, Safety
and Health Affairs

September 20, 1994

Board Secretary
Air Resources Board
P.O. Box 2815
Sacramento, CA 95814

RE: Proposed Rulemaking -- Alternative Control Plan (ACP) for
Consumer Products
94 Cal. Reg. 1255
August 5, 1994

Dear Madam or Sir:

Pennzoil Company is a natural resources company engaged in the exploration, production, refining, and marketing of petroleum products; the operation of automotive lube facilities; and the mining and sales of sulphur. Pennzoil also markets a number of consumer products in California and nationwide. Regulation of consumer products containing volatile organic compounds (VOCs) will affect our activities.

Pennzoil appreciates the opportunity to provide comments on the proposed Alternative Control Plan (ACP) for consumer products. Pennzoil generally supports the concept of market-based environmental regulation and believes that California has developed a proposal that adds flexibility and potentially reduces the compliance cost for manufacturers of regulated VOC-containing consumer products. However, as noted below, we do have several specific concerns regarding the economic advantage such a proposal may give companies which decide not to meet California's VOC limits; recordkeeping and the administrative burden created by this rule; and the proposed scope of this rule.

The proposal would establish a voluntary program which allows manufacturers to selectively overcontrol certain products in lieu of controlling VOCs from products which cannot meet VOC content restrictions in order to make compliance more cost-effective. The proposed ACP regulation supplements California's existing regulations on consumer products containing VOCs and the Innovative Product provision. Manufacturers who can meet VOC control restrictions may also elect to overcontrol a product in compliance with VOC content limitations, generating credits that can be sold in the marketplace. Under the proposed ACP program, small businesses with limited product lines and other responsible parties may purchase the surplus credits as part of an approved shortfall reconciliation plan.

Pennzoil's products are currently in compliance with California's restrictions on VOC content in consumer products. Consequently, Pennzoil believes that this rule, if finalized as proposed, may put Pennzoil and others who have already spent research and development money at a competitive disadvantage with others who will continue to sell products with VOC content

PENNZOIL COMPANY

Proposed ACP for Consumer Products

Page 2

September 20, 1994

exceeding the regulatory limit. While Pennzoil agrees with the goal of the ACP, which is to provide regulatory flexibility, we also believe we should not be penalized for the efforts we have already made. Consequently, we urge the Board to ensure that the rule as finalized in no way penalizes those companies which have already made the adjustments to their products at tremendous cost in time and resources.

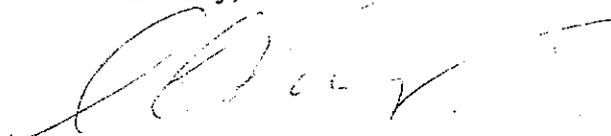
In reviewing the proposed ACP requirements, Pennzoil is also concerned about the necessity of developing shortfall reconciliation plans for 5,10,15, 25, 75, and 100 percent of the established ACP limit. These plans are to be implemented within 30 days of a shortfall and the shortfall eliminated within 90 days. While development of these plans does serve to notify an ACP applicant of the repercussions of failing to meet its ACP goals, we believe that the focus of the ACP process should be on meeting goals, rather than preparing plans to be implemented if goals are not reached. For the most part, shortfall reconciliation plans will prescribe the purchase of surplus credits; other approaches, such as product formulation, will be difficult or impossible to accomplish within the specified timeframes. Consequently, we suggest that, in lieu of preparing complex shortfall plans, the regulatory focus be on compliance with the terms of the ACP.

Pennzoil is also concerned about the administrative burden associated with the ACP. While participation in the program is voluntary, participation in an ACP may not achieve reduced compliance costs if the costs of ongoing plan preparation and recordkeeping exceed the cost of complying with VOC content limitations. Only actual experience with ACPs will reveal whether the requirement to have an accounting system covering at least three-quarters of gross California sales is realistic or excessively burdensome. We therefore urge that administrative requirements associated with the ACP be minimized as much as possible.

As proposed, only products currently subject to VOC content limitations, excluding antiperspirants and deodorants, are eligible for inclusion in an ACP plan. We urge that the rule as finalized include additional VOC-containing consumer products that may become subject to VOC content restrictions in the future be eligible for participation in an ACP.

Pennzoil appreciates the opportunity to comment on this proposal. We hope our input will promote the development of a flexible and effective regulation. Please contact me if you have any questions concerning our comments.

Sincerely,



J. H. Mansel

RECKITT & COLMAN



September 16, 1994

Ms. Peggy Taricco
Solvents Control Section
ACP Comments
Stationary Source Division
Air Resources Board
P.O. Box 2815
Sacramento, CA. 95812-2815

94-9-2
9/22/94

STATE OF CALIFORNIA
AIR RESOURCES BOARD
RECEIVED 9/20/94
BY BOARD SECRETARY
XC Board members
JAS MHS
AS Legal
JB SSD

RE: ALTERNATIVE CONTROL PLAN

Dear Ms. Taricco:

Reckitt & Colman Inc. is a national marketer of consumer air freshening, cleaning and insecticide products. Many of these products are subject to the regulations found in CCR, Title 17, Subchapter 8.5, Article 2 Consumer Products. We are providing comments on the proposed adoption of and alternative control plan. Reckitt & Colman Inc. has been an active participant in the development of the alternative control plan (ACP). We continue to support the development and adoption of options that provide regulated companies flexibility for compliance with adopted regulations. We wish to commend the staff for the efforts they have made in working cooperatively with industry to develop the ACP proposal. The following comments are identified by the section number they are addressing.

Section 94543. Requirements and Process for Approval

Subsection (a) (4) (A)

The requirements to provide the names, telephone numbers and addresses of all persons from which enforceable sales information will be obtained is overly cumbersome and unnecessary. Providing the name, address and telephone number of the business contact person should be sufficient. It is really irrelevant to CARB as to who the clerical person who retrieves computer files is and where they are located. The contact person should be the person that Executive Officer and Enforcement will work with during the term of the ACP. It is fair to request that a company notify the Executive Officer should the contact person change.

Subsection (a) (7) (I)

Requiring the applicant of an ACP to provide a date by which participating products must meet the limits in the Table of Standards defeats the purpose of an ACP. One of the purposes of an ACP is to allow a company to continue to sell a product that cannot be reformulated to meet the established VOC limit. Forcing a company defeats this purpose and explicitly disqualifies a company from using this method of compliance. Persons who simply need more time to reformulate a product, should be encouraged to use the variance procedure in order to eliminate duplicative procedures.

Subsection (a) (7) (J) 1

The requirement to reconcile shortfalls within 90 working days is too restrictive, particularly for larger shortfalls of 50% or more. Shortfalls should be given a minimum of 120 working days to reconcile.

Section 94546. Violations

The addition of a new violations section is unwarranted. Violations of an ACP should be dealt with in accordance with existing statutory language and penalties.

Section 94547. Surplus Reductions and Surplus Trading

Subsection (b) (2)

Surpluses gained by parties that do not have an ACP should also be allowed to be traded. This could expand the availability of credits for small businesses.

Section 94548. Reconciliation of Shortfalls

Subsection (c)

The amount of time given to reconciliation of shortfalls is too restrictive. This time period should be lengthened to a minimum of 120 days.

Section 94551. Cancellation of an ACP

Subsection (d) (2)

It is unreasonable to expect a product to immediately be in compliance with VOC standards immediately upon cancellation of an ACP. If a responsible party entered into an ACP because reformulation was not feasible, this action will actually be a ban on the product that cannot meet the standards. There should be a mechanism for appeal to the Executive Officer.

Reckitt & Colman Inc. supports the comments submitted by the Chemical Specialties Manufacturers Association. Again we would like to commend the staff for their efforts and cooperation.

If there are any questions regarding these comments, please feel free to contact me at (201) 633-2778.

Sincerely,



Eileen J. Moyer
Director of Regulatory Affairs

SEP 22 1994



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street
San Francisco, CA 94105-3901

SEP 20 1994

James D. Boyd
Executive Officer
California Air Resources Board
P.O. Box 2815
Sacramento, CA 95814-2815

Dear Mr. Boyd:

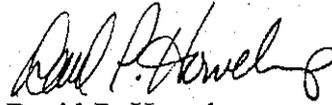
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We wish to thank ARB for making extensive revisions to the Alternate Compliance Plan (ACP) for Consumer Products in response to our comments. These revisions have alleviated EPA's concerns about the applicability and enforceability of the regulation. However, these revisions have not addressed some of our concerns relating to administrative requirements which were established in the Federal Economic Incentive Program rules (EIP). We believe that these issues can be remedied prior to the Board hearing by making some additions to the staff report. Alternatively, the issues could be addressed by including an administrative procedures document with the formal submittal to EPA. EPA does not believe that these issues warrant a rule revision. Recent discussions with ARB staff have indicated a willingness to address these issues.

ARB and EPA staff are to be commended for their efforts over the past two years in developing economic incentive regulations to control volatile organic compound (VOC) emissions from consumer products.

We look forward to working with your staff to address our remaining concerns. If you have any questions, please contact Dan Meer of my staff at (415) 744-1185.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Howekamp". The signature is fluid and cursive, with a large initial "D" and "H".

David P. Howekamp
Director
Air and Toxics Division

Enclosure

EPA's Comments on the August 1994 Version of the CARB's ACP

EPA believes that the following issues can be remedied prior to the Board hearing by making some additions to the staff report. Alternatively, the issues could be addressed by including an administrative procedures document with the formal submittal to EPA. EPA does not believe that these issues warrant a rule revision. Recent discussions with ARB staff have indicated a willingness to address these issues. The needed information is noted below:

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- Audit Procedures (see the EIP rule at 59 FR 16999 - Section III.D.6.)

The EIP rule requires that procedures be established to audit the effectiveness and cost efficiency of the program. A discussion of how the ACP program will be audited by ARB is required. The audit should include a determination of the availability of surplus credits for purchase by small business. This determination should include both price and volume data.

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O T F A 3

THE COSMETIC, TOILETRY, AND FRAGRANCE ASSOCIATION

September 21, 1994

Board Secretary
California Air Resources Board
2020 L Street
5th Floor
Sacramento, California 95814

E. EDWARD KAVANAUGH
P R E S I D E N T

Re: Proposed Adoption of Article 4, Alternative Control Plan,
Sections 94540-94555, Title 17, California Code of Regulations

Dear Sir or Madam:

I am submitting these comments on behalf of The Cosmetic, Toiletry, and Fragrance Association (CTFA) on the ARB's proposed Alternate Control Plan. CTFA is the 100 year old national trade association representing the personal care products industry. CTFA has over 500 members. Approximately 250 of those members are active members engaged in the manufacture or distribution of cosmetics, toiletries and fragrances nationally and internationally. These include manufacturers of personal care products already subject to regulation by the ARB - antiperspirants and deodorants, hair care products, nail polish remover, shaving cream, and personal fragrance products.

The remaining CTFA members, associate members, are suppliers of goods and services to those manufacturers and distributors. These companies supply ingredients and packaging and will be directly affected by many of the regulations concerning the VOC content of consumer products both on the books and under consideration by the ARB.

CTFA appreciates the intent of the Board and staff to provide flexibility to manufacturers in the ways that they can comply with the consumer product VOC regulations. Provisions like the innovative product exemption, adopted as part of two previous regulations, have worked well in practice to encourage innovation while giving manufacturers some flexibility in complying with very stringent VOC content limits. We think the ARB should continue to look at ways to build flexibility into its regulations.

However, despite that view, after three years of study and consideration, we regret that CTFA is unable to support the Alternate Control Plan. After serious consideration by a committee of our members, they have come to the conclusion that the present plan offers no discernable benefits to manufacturers or distributors of personal care products. There are three reasons for our position:

1. The world of VOC regulations has changed since the ARB staff first started its consideration of the ACP. At that time, the ARB was the de facto national regulatory agency for VOCs in consumer products. Only one other state - New York - had regulated consumer products, and U. S. EPA was at the very beginning stages of its national regulatory effort. In the last few years, many other states have regulated or are in the process of regulating consumer products. They include Texas, Oregon, Rhode Island, Massachusetts, Connecticut, and New Jersey. Others may soon join them. More significantly, EPA is on the verge of making decisions about the regulation of consumer and commercial products and is likely to have its own national regulation in the near future. Even EPA is not consistent within itself. Region IX of EPA is busy trying to implement a proposed California Federal Implementation Plan that would make the California regulations federally enforceable. However, even that FIP, as proposed, could be inconsistent in practice with the California regulations, and, possibly, the national regulations under development by EPA's Office of Air Quality Management and Planning. The key fact here is that a products that comply with California regulations as part of an ACP would not comply with the regulations of any other states or those of EPA. An ACP that permits sale of products only in California is of no value to our members.

2. We have a serious concern about misunderstandings caused by the availability of an ACP. We are concerned about a perception, already voiced to us by one federal air quality official, that we should no longer be concerned about future VOC limits that are not technologically or commercially feasible (in this case, the discussion focused on the 55% VOC content limit for hairspray in 1998) because participation in the ACP would be available to manufacturers who could not make a product at that limit. That perception is totally incorrect. The ACP offers nothing to that manufacturer. The ACP is so complex, and its utility is so dependent on a company's mix of products, that the chances are virtually non-existent that the ACP would enable a manufacturer to survive under a 55% hairspray standard. Although you will hear that there are manufacturers in other industries who do support and believe they can use the ACP, this plan will not protect a personal care product manufacturer who cannot meet a VOC standard that is otherwise not technologically and commercially feasible to meet.

3. We have a continuing concern that availability of this plan will discriminate against small or single product line manufacturers. There can be little doubt that this proposal gives the greatest chance of competitive advantage to a large manufacturer - the company with the greatest array of regulated products from which to choose. We believe this is a dangerous precedent. Government regulations should be designed to preserve an level playing field to the fullest extent possible. Although the ARB staff has tried very hard to address this concern, we do not believe the emissions trading option provided for small and single product line companies to purchase excess emissions is a realistic solution in a practical and extremely competitive world.

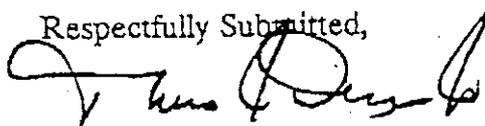
In conclusion, CTFA cannot support this regulation. If, however, it is to be adopted, it is absolutely essential that certain language be included in the Board Resolution or in the regulation itself to make the following points:

1. Participation in an ACP is a totally voluntary alternative to compliance with the VOC content limits in the Table of Standards.
2. Availability of the ACP for any specific product category does not, in any way, affect the rigorous standards to be applied in ensuring that compliance with the VOC content limit for that product category is technologically and commercially feasible.
3. The ARB recognizes that participation in an ACP is not a viable option for many companies subject to the ARB consumer product regulations.

We have submitted proposed regulatory or Board Resolution language to the staff, and a copy of that language is attached to this comment. Without inclusion of such language, we must oppose adoption of the ACP.

Thank you for your attention. We look forward to continuing to work with the ARB on future efforts affecting consumer products. We want to stress that we appreciate the consideration, patience and highly professional efforts of your staff - in particular, Floyd Vergara and Peggy Tarrico - in working with industry during the consideration of this proposed regulation. Our position on the ACP does not, in any way, diminish our desire to work with the ARB to find ways to improve California air quality while maintaining a steady supply of the safe and effective personal care products that California consumers have come to expect.

Respectfully Submitted,



Thomas J. Donegan, Jr.
Vice President & General Counsel

Enclosure

BOARD RESOLUTION LANGUAGE

The Board is enacting the Alternate Control Plan (ACP) for the benefit of companies that are able to use this as an alternative means to comply with the ARB consumer product regulations. It is a totally voluntary option, and the Board recognizes that many companies will not be able to use the ACP. The ARB therefore recognizes the continuing need to ensure that both present and future VOC content limits for consumer products are technologically and commercially feasible. The ARB confirms its intent that the availability of the ACP for any regulated product category is not to be considered in determining whether present or future VOC limits for that product category are technologically and commercially feasible.