State of California
AIR RESOURCES BOARD

Resolution 08-30

June 26, 2008

Agenda Item No.: 08-6-5

WHEREAS, Health and Safety Code sections 39600 and 39601 authorize the Air Resources Board (ARB or the Board) to adopt standards, rules, and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, Health and Safety Code section 41712 requires the Board to adopt regulations to achieve the maximum feasible reduction in volatile organic compounds (VOC) emitted by consumer products, if the Board determines that adequate data exist for it to adopt the regulations, and if the regulations are technologically and commercially feasible and necessary;

WHEREAS, pursuant to Health and Safety Code section 41712, the Board has adopted the Regulation for Reducing Emissions from Consumer Products (consumer products regulation), title 17, California Code of Regulations (CCR), sections 94507-94517;

WHEREAS, in 2006, the Legislature enacted the California Global Warming Solutions Act of 2006 (AB 32) Health and Safety Code section 38500 et seq.

WHEREAS, Health and Safety Code section 38510 designates ARB as the State agency charged with monitoring and regulating sources of greenhouse gases (GHG) that cause global warming in order to reduce emissions of GHG;

WHEREAS, Health and Safety Code section 38560.5 requires ARB to adopt Discrete Early Action GHG emission reduction measures to be enforceable no later than January 1, 2010;

WHEREAS, at its June 21, 2007, hearing, the Board approved a list of Early Actions, with additions to the list that were approved at its October 25, 2007, hearing, and a subset of these Early Actions has been designated as Discrete Early Action Measures;

WHEREAS, the reduction of GHG from consumer products using high global warming compounds is one of the Discrete Early Action Measures;

WHEREAS, Health and Safety Code section 38562 requires ARB to adopt GHG emission limits and emission reduction measures to achieve the maximum technologically feasible and cost-effective reductions in GHG emissions;

WHEREAS, Health and Safety Code section 38562 sets forth criteria that, to the extent feasible, and in furtherance of achieving the statewide GHG emissions limit, are to be followed in adopting regulations to reduce GHG emissions;

WHEREAS, on April 15, 2004, the United States Environmental Protection Agency (U.S. EPA) designated 15 areas of California as nonattainment for the federal ambient air quality standard for ozone of 0.08 parts per million (ppm) averaged over eight hours;

WHEREAS, on September 25, 2007, ARB adopted the State Strategy for California's State Implementation Plan (SIP), which sets forth ARB's plan to attain the federal ozone standard;

WHEREAS, achieving additional VOC reductions from consumer products is an important element of the SIP and is necessary to attain State and federal air quality standards;

WHEREAS, staff has proposed amendments that, when fully implemented, will achieve about 5.8 tons per day of VOC emission reductions and a GHG emission reduction equivalent to reducing about 0.20 million metric tons of carbon dioxide (MMT CO_2E) per year from consumer products;

WHEREAS, the proposed amendments would set 25 VOC limits affecting 19 product categories of consumer products and a global warming potential (GWP) limit for Pressurized Gas Duster products;

WHEREAS, the proposed limits would become effective on December 31, 2010, except that: (1) the limits for aerosol Glass Cleaner and Chemically Curing Sealant or Caulking Compound would become effective on December 31, 2012; (2) the limit for Penetrant would become effective on December 31, 2013; (3) the limit for Personal Fragrance Product (20 percent or less fragrance) would become effective on December 31, 2014; (4) the limit for Multi-purpose Lubricant would become effective on December 31, 2013; and (5) a lower VOC limit for Multi-purpose Lubricant would become effective on December 31, 2015;

WHEREAS, U.S. EPA has exempted hydrofluoroether 7200 (HFE 7200) from the federal VOC definition (Federal Register 62, 164, 44900, August 25, 1997);

WHEREAS, on October 20, 1997, the 3M Company petitioned the Board to exempt HFE 7200 from the VOC definition in the Board's consumer products regulation;

WHEREAS, in a report entitled "Environmental Impact Assessment of Selected Halogenated Chemicals (March 2008)," ARB staff determined that HFE 7200 is negligibly reactive with respect to ground-level ozone formation, it has a low GWP, it could be substituted for compounds with higher GWP, and its use would result in no adverse environmental impacts;

WHEREAS, the proposed amendments also include various modifications and clarifications to existing regulatory language, including amendments to several definitions and various minor changes to correct errors or improve clarity;

WHEREAS, on July 13, 1989, October 12, 1990, and October 10, 1991, the Board identified methylene chloride (MeCl), trichloroethylene (TCE), and perchloroethylene (Perc), respectively, as toxic air contaminants, pursuant to article 3 (commencing with section 39660), chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, the proposed amendments would reduce toxic air contaminant emissions by 0.2 tons per day by prohibiting the use of MeCl, Perc, and TCE in six product categories (Carpet/Upholstery Cleaner; Fabric Protectant; Multi-purpose Lubricant, Penetrant, Sealant or Caulking Compound; and Spot Remover), and would prohibit the use of MeCl and Perc in Pressurized Gas Duster products;

WHEREAS, staff has proposed a "grams of VOC per use" limit for Fabric Softener - Single Use Dryer Product to insure that the limit results in no adverse impacts on the solid waste stream;

WHEREAS, the Board has considered the impact of the proposed amendments on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, the Board is committed to evaluating the community impacts of proposed regulations, including environmental justice concerns;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project that may have significant adverse environmental impacts be adopted as originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code;

WHEREAS, ARB staff has consulted with U.S. EPA regarding consumer product regulations promulgated by other state and local governments, as provided in section 183(e) of the federal Clean Air Act;

WHEREAS, the Board finds that:

The proposed amendments to reduce VOC emissions are authorized by California law and satisfy the requirements of Health and Safety Code section 41712;

The proposed amendment to reduce the global warming potential of compounds used in Pressurized Gas Duster products is authorized by AB 32 and satisfies, to the extent feasible, the criteria set forth in Health and Safety Code section 38562;

There exist adequate data to support the adoption of the proposed amendments and to establish that the amendments are necessary and are commercially and technologically feasible for each of the regulated consumer product categories;

The proposed amendments will not result in the elimination of a product form for any product category;

The proposed amendments are necessary to attain and maintain the State and federal ambient air quality standards, and to help fulfill California's SIP commitments to achieve emission reductions from consumer products;

The proposed limits will reduce VOC emissions by approximately 5.8 tons per day by 2015, and will reduce GHG emissions by 0.2 MMT CO_2 E per year by 2010;

The proposed amendments will reduce toxic air contaminant emissions by 0.2 tons per day by 2010;

It is appropriate to exclude HFE 7200 from the definition of VOC in the consumer products regulation because of its negligible reactivity with respect to ground-level ozone formation, and because no adverse environmental impacts have been identified;

The economic impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement of Reasons;

The cost-effectiveness of the regulatory amendments has been considered;

The proposed amendments reduce human health, safety, or environmental risks;

The benefits to human health, public safety, public welfare, or the environment justify the costs of the regulatory amendments;

The proposed amendments are consistent with ARB's environmental justice policies and will equally benefit residents of any race, culture, or income level;

The reporting requirements of the proposed amendments, which apply to businesses, are necessary for the health, safety, and welfare of the people of the State; and

No reasonable alternative considered, or that has otherwise been identified and brought to the attention of the ARB, would be more effective in carrying out the purpose for which the amendments are proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed amendments.

WHEREAS, pursuant to the requirements of the California Environmental Quality Act and the Board's regulations, the Board further finds that:

With the mitigation measures described below, the proposed amendments will not result in any significant adverse impacts on the environment;

Prohibiting MeCl, Perc, and TCE in Carpet/Upholstery Cleaner; Fabric Protectant; Multi-purpose Lubricant, Penetrant, Sealant, or Caulking Compound; and Spot Remover will ensure that manufacturers do not begin using these compounds in new formulations in order to meet the proposed VOC standards for these product categories;

Prohibiting MeCl and Perc and setting a one percent VOC limit for Pressurized Gas Duster products will ensure that toxic air contaminant and VOC emissions do not increase as products are reformulated to meet the proposed GWP limit;

Adverse health and environmental impacts can occur from the use of MeCl, Perc, and TCE in these products, as described in the Initial Statement of Reasons, and mitigation measures are necessary and appropriate to prevent a potential increase in emissions of these toxic air contaminants;

No other feasible alternatives or mitigation measures would reduce the potential adverse environmental impacts from MeCl, Perc, and TCE use, while at the same time providing the health benefits described in the Initial Statement of Reasons;

Suitable and effective alternative formulations that do not contain MeCl, Perc, and TCE are available for the following product categories: Carpet/Upholstery Cleaner; Fabric Protectant; Multi-purpose Lubricant, Penetrant, Sealant, or Caulking Compound; Spot Remover; and Pressurized Gas Duster;

Proposing a grams per use limit rather than a percent by weight VOC limit for Fabric Softener - Single Use Dryer Product will ensure that individual sheet size does not increase and does not adversely impact the solid waste stream;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of the proposed amendments to sections 94508, 94509, 94510, 94512, 94513, and 94515, title 17, CCR, as set forth in Attachment A, with the modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the amendments set forth in Attachment A, with the modifications set forth in Attachment B, and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available to the public for a period of 15 days, provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make modifications as appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if the Executive Officer determines that this is warranted after review of the comments.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take the following actions: (1) monitor the progress of manufacturers in meeting the VOC limits, and (2) identify any significant problems in achieving the limits and propose any future regulatory modifications that may be appropriate.

BE IT FURTHER RESOLVED that, following approval of the amendments by the Office of Administrative Law, the Board directs the Executive Officer to submit the amendments to U.S. EPA for inclusion in the SIP.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to include in the SIP revision any additional documentation that is necessary for approval under the federal Clean Air Act and U.S. EPA regulations, and to work with the U.S. EPA to ensure that the amendments are approved as a SIP revision.

I hereby certify that the above is a true and correct copy of Resolution 08-30, as adopted by the Air Resources Board.

Monica Vejar

Monica Vejar, Clerk of the Board

Resolution 08-30

June 26, 2008

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the Consumer Products Regulation, as set forth in Appendix B to the Initial Statement of Reasons, released May 9, 2008.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the Board hearing on June 26, 2008).