State of California
AIR RESOURCES BOARD

Resolution 95-41

September 28, 1995

Agenda Item No.: 95-9-3

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (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, section 41712 of the Health and Safety Code directs the Board to adopt regulations to achieve the maximum feasible reduction in reactive organic compounds (referred to as "volatile organic compounds" or "VOCs") emitted by consumer products, if the Board determines that adequate data exists for it to adopt the regulations, and if the regulations are technologically and commercially feasible and necessary;

WHEREAS, following a November 8, 1989, public hearing, the Board approved a regulation to reduce VOC emissions from antiperspirants and deodorants (Title 17, California Code of Regulations (CCR), sections 94500-94506.5, the "antiperspirant and deodorant regulation");

WHEREAS, following an October 11, 1990, public hearing, the Board approved a regulation to reduce VOC emissions from consumer products in California (Title 17, CCR, sections 94507-94517; the "consumer products regulation"), and also approved amendments to the antiperspirant and deodorant regulation to achieve consistency with the provisions of the consumer products regulation;

WHEREAS, following a January 9, 1992, public hearing, the Board approved amendments to the consumer products regulation, and also approved further amendments to the antiperspirant and deodorant regulation to achieve consistency with the amended portions of the consumer products regulation;

WHEREAS, on November 15, 1994, the Board adopted the California State Implementation Plan for Ozone (SIP) to satisfy the requirements of the federal Clean Air Act;

WHEREAS, following a March 23, 1995, public hearing, the Board approved a regulation to reduce VOC emissions from aerosol coatings (Title 17, CCR, sections 94520-94528; the "aerosol coatings regulation");

WHEREAS, on February 14, 1995, the antiperspirant and deodorant regulation and the consumer products regulation were approved by the United States Environmental Protection Agency (U.S. EPA) as components of the SIP;

WHEREAS, staff has proposed amendments to the antiperspirant and deodorant regulation to respond to manufacturers' concerns that the "ethanol exemption" in the regulation may result in a competitive advantage to companies that were selling ethanol-containing products prior to January 1, 1990; to make the "compliance plan" in the regulation available to all manufacturers; to clarify administrative and test method requirements in the regulation; and to improve consistency between the antiperspirant and deodorant regulation and the consumer products regulation;

WHEREAS, staff has also proposed amendments to the VOC definitions in the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation, in order to make consistent the VOC definitions in these three regulations and the U.S. EPA's VOC definition, and to increase formulation flexibility for manufacturers;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which 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, the Board staff has consulted with the 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 the antiperspirant and deodorant regulation will provide additional flexibility and lower compliance cost for manufacturers subject to the antiperspirant and deodorant regulation;

It is appropriate to amend the VOC definitions in the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation, in order to make consistent the VOC definitions in these three regulations and the U.S. EPA's VOC definition, and to increase formulation flexibility for manufacturers;

The amendments to the antiperspirant and deodorant regulation, the consumer product regulation, and the aerosol coatings regulation are authorized by California law and satisfy the requirements of section 41712 of the Health and Safety Code;

There exists adequate data to support the adoption of the amendments to the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation;

The amendments to the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation are technologically and commercially feasible;

The amendments to the antiperspirant and deodorant regulation, the consumer product regulation, and the aerosol coatings regulation are necessary to attain and maintain the state and national ambient air quality standards and fulfill California's SIP commitments with maximum fairness and flexibility, and with less cost;

The economic and cost impacts of the amendments to the antiperspirant and deodorant regulation, the consumer product regulation, and the aerosol coatings regulation 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 for this regulatory action;

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

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

The amendments to the VOC definitions in the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation will not have any significant adverse impacts on the environment;

Adverse environmental impacts may potentially result from two amendments to the antiperspirant and deodorant regulation, in that the modifications to the ethanol exemption and the Special Requirements for Aerosol Manufacturers may result in possible increased emissions of ethanol and high volatility organic compounds (HVOCs);

Although it is possible that an increase in ethanol and HVOC emissions may result from these amendments, such adverse environmental impacts are not likely to occur for the reasons identified in the Initial Statement of Reasons;

To the extent that some increase in ethanol and HVOC emissions does occur as a result of these amendments, the need to provide increased fairness, flexibility, and more equitable treatment to antiperspirant and deodorant manufacturers overrides any adverse environmental impacts that might potentially occur;

There are no other feasible mitigation measures that would reduce the potential environmental impacts while at the same time providing the benefits of increased fairness, flexibility, and more equitable treatment realized by the amendments to the antiperspirant and deodorant regulation;

NOW, THEREFORE, BE IT RESOLVED that the Board hereby adopts the amendments to sections 94500-94506, Title 17, CCR; the amendments to section 94508(a)(90), Title 17, CCR; the amendments to section 94521(a)(62), Title 17, CCR; as set forth in Attachment A hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to adopt the amendments set forth in Attachment A after making them available to the public for a period of 15 days, provided 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 regulation to the Board for further consideration if he determines that this is warranted.

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 January 1, 1999 HVOC limit for aerosol antiperspirants and deodorants, (2) identify any significant problems in the achievement of the limit and propose any future regulatory modifications that may be appropriate, and (3) schedule a Board hearing no later than July 1, 1997, for the Board to review and consider any appropriate modifications to the January 1, 1999 HVOC limit for aerosol antiperspirants and deodorants;

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to submit the amendments to the antiperspirant and deodorant regulation, the consumer products regulation, and the aerosol coatings regulation to the 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 identified as necessary for approvability under the federal Clean Air Act and U.S. EPA regulations, and to work with the U.S. EPA to ensure that the amendments to the antiperspirant and deodorant regulation, the consumer product regulation, and the aerosol coatings regulation are approved as a SIP revision.

I hereby certify that the above is a true and correct copy of Resolution 95-41, as adopted by the Air Resources Board.

Pat Hutchens

Pat Hutchens, Board Secretary