State of California
AIR RESOURCES BOARD

Resolution 10-40

November 18, 2010

Agenda Item No.: 10-10-7

WHEREAS, Health and Safety Code sections 39600 and 39601 authorize the Air Resources Board (ARB or 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 exists for it to adopt the regulations, and if the regulations are technologically and commercially feasible and necessary;

WHEREAS, Health and Safety Code section 41712(e) further requires the Board to consider any recommendations received from public health agencies and medical experts in the field of public health prior to adopting regulations governing health benefit products;

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

WHEREAS, the Board has also adopted test Method 310, "Determination of Volatile Organic Compounds in Consumer Products and Reactive Organic Compounds in Aerosol Coating Products;"

WHEREAS, on April 15, 2004, the United States Environmental Protection Agency (U.S. EPA) designated 15 areas of California nonattainment for the federal ambient air quality standard for ozone of 0.08 parts per million 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, the Board has identified methylene chloride, perchloroethylene, and trichloroethylene as toxic air contaminants (TAC), pursuant to article 3 (commencing with section 39660), chapter 3.5, part 2, division 26 of the Health and Safety Code;

WHEREAS, the Consumer Products Regulation provides an additional year for antimicrobial and pesticidal products to comply with VOC limits in order to complete registration under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);

WHEREAS, staff has proposed amendments that, when fully implemented, will achieve about 6.9 tons per day of VOC emission reductions from consumer products;

WHEREAS, the proposed amendments would set a new VOC limit for Special-purpose Lubricant products, which would become effective on December 31, 2012, and would establish lower VOC limits that would become effective on December 31, 2012, for General Purpose Cleaner (nonaerosol), General Purpose Degreaser (nonaerosol), Glass Cleaner (nonaerosol), and Metal Polish or Cleanser, and would establish lower VOC limits that would become effective on December 31, 2013, for Flying Bug Insecticide (aerosol), Furniture Maintenance Product (aerosol), Heavy-duty Hand Cleaner or Soap (nonaerosol), and Wasp or Hornet Insecticide;

WHEREAS, the proposed amendments would add spot remover products used for dry clean only fabrics into the existing category of Spot Remover, and delay implementing the December 31, 2010, VOC limits and prohibition on use of the TACs methylene chloride, perchloroethylene, and trichloroethylene, until December 31, 2012, to allow these newly added products the necessary time to reformulate;

WHEREAS, the proposed amendments would add grill cleaner products into the existing Oven Cleaner category and, when the amendments become legally effective, would raise the VOC limit for nonaerosol Oven or Grill Cleaner products from 1 to 4 percent by weight to accommodate noncaustic technologies; the VOC limit for the newly added aerosol grill cleaner products would not become effective until December 31, 2012;

WHEREAS, the proposed amendments would prohibit the use of the TACs methylene chloride, perchloroethylene, and trichloroethylene in the categories of Metal Polish or Cleanser, Silicone-based Multi-purpose Lubricant, and Special-purpose Lubricant effective December 31, 2012;

WHEREAS, the proposed amendments would prohibit the use of compounds with a global warming potential (GWP) value at or above 150 in the categories of Flying Bug Insecticide, Furniture Maintenance Product, Metal Polish or Cleanser, Spot Remover, Special-purpose Lubricant, and Wasp or Hornet Insecticide;

WHEREAS, staff has consulted with the California Department of Public Health (CDPH) to determine whether the proposed amendments for General Purpose Cleaner products would affect the efficacy of health benefit products in killing or inactivating agents of infectious diseases, and the impact the regulations will have on the availability of health benefit products to California consumers;

WHEREAS, CDPH staff has determined that reducing the VOC content of General Purpose Cleaner products should not affect the ability of manufacturers to sell efficacious antimicrobial general purpose cleaning products in California;

WHEREAS, the California Environmental Quality Act (CEQA) 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, the proposed new VOC limits for the categories of General Purpose Cleaner (nonaerosol), General Purpose Degreaser (nonaerosol), Glass Cleaner (nonaerosol), Heavy-duty Hand Cleaner or Soap (nonaerosol), and Oven or Grill Cleaner products may provide an incentive for manufacturers to reformulate these products using alkylphenol ethoxylate surfactants as one of the product ingredients;

WHEREAS, staff has consulted with the State Water Resources Control Board (SWRCB) to determine whether mitigation measures are necessary to prohibit use of alkylphenol ethoxylate surfactants to ensure that these surfactants are prevented from entering California's waterways;

WHEREAS, SWRCB staff has data indicating that alkylphenol ethoxylate surfactants are hormone disruptors, with the primary concern being the estrogenic effects of their degradation products, and that these compounds are found in the State's waterways in concentrations of concern;

WHEREAS, SWRCB staff has further determined that when alkylphenol ethoxylate surfactants enter aquatic environments they are toxic to aquatic species, and mitigation measures are appropriate to limit their use;

WHEREAS, the proposed amendments would prohibit the use of alkylphenol ethoxylate surfactants in the categories of General Purpose Cleaner (nonaerosol), General Purpose Degreaser (nonaerosol), Glass Cleaner (nonaerosol), Heavy-duty Hand Cleaner or Soap (nonaerosol), and Oven or Grill Cleaner products on the same date that the VOC limits for these categories will become effective;

WHEREAS, the proposed amendments also include various modifications and clarifications to the existing regulatory language, including modifications to various definitions, consolidations of existing provisions prohibiting the use of certain toxic compounds and compounds with higher GWP values, and minor changes to improve clarity;

WHEREAS, staff has also proposed various amendments to Method 310 to set forth procedures to analyze the VOC content of Fabric Softener Single-use Dryer Product and the aromatic compound content of Paint Thinner and Multi-purpose Solvent products;

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 community impacts of proposed regulations, including environmental justice concerns;

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

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, when fully effective, will result in a VOC emission reduction of about 6.9 tons per day, of which 6.7 tons per day will occur by January 1, 2014, and be creditable toward the 2007 SIP commitment; a VOC reduction of 0.2 tons per day will be delayed until December 31, 2014, to allow Flying Bug Insecticide (aerosol) and Wasp or Hornet Insecticide (aerosol) products the necessary time to complete FIFRA registration;

The proposed amendments to change the December 31, 2010, effective date for currently regulated Spot Remover products to December 31, 2012, will result in

delaying a VOC reduction of about 0.25 tons per day; the delay is necessary to allow the spot remover products used on dry clean only fabrics, that are being added to this category, the necessary time to reformulate;

The proposed amendments to increase the VOC limit for nonaerosol Oven or Grill Cleaner products will result in about a 0.1 ton per day VOC emission reduction shortfall; this increase is necessary to allow for noncaustic technologies to be used in these products;

The 0.1 ton per day VOC emission reduction shortfall from Oven or Grill Cleaner products will be offset by emission reductions obtained from other categories;

The proposed new and modified definitions and various other clarifications and consolidations are necessary to implement the Consumer Products Regulation and make it easier to use;

The proposed amendments to Method 310 are necessary to effectively enforce the Consumer Products Regulation;

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 proposed 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 proposed amendments;

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

No reasonable alternative considered or that has otherwise been identified and brought to the attention of 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 CEQA and the Board's regulations, the Board further finds that:

With the mitigation measures described below (which are part of the proposed amendments), the proposed amendments will not result in any significant adverse impacts on the environment;

Adverse environmental impacts could occur from the use of the TACs methylene chloride, perchloroethylene, and trichloroethylene; compounds with GWP values at or above 150, and alkylphenol ethoxylate surfactants, such that mitigation measures are necessary and appropriate to prevent their use;

Prohibiting the use of methylene chloride, perchloroethylene, and trichloroethylene in the categories of Metal Polish or Cleanser, Silicone-based Multi-purpose Lubricant, Special-purpose Lubricant, and the newly added Spot Remover products will ensure that exposure to these TACs will not occur from use of products that are reformulated to meet the proposed VOC limits for these product categories;

Suitable alternative formulations that do not contain methylene chloride, perchloroethylene, and trichloroethylene in the categories of Metal Polish or Cleanser, Silicone-based Multi-purpose Lubricant, Special-purpose Lubricant, and the newly added Spot Remover products are available;

Prohibiting compounds with a GWP value at or above 150 in the categories of Flying Bug Insecticide, Furniture Maintenance Product, Metal Polish or Cleanser, Spot Remover, Special-purpose Lubricant, and Wasp or Hornet Insecticide will ensure that climate change impacts are minimized as manufacturers reformulate products to meet the proposed VOC standards;

Suitable alternative formulations that do not contain compounds with a GWP value at or above 150 in the categories of Flying Bug Insecticide, Furniture Maintenance Product, Metal Polish or Cleanser, Spot Remover, Special-purpose Lubricant, and Wasp or Hornet Insecticide are available;

Prohibiting the use of alkylphenol ethoxylate surfactants in the categories of General Purpose Cleaner (nonaerosol), General Purpose Degreaser (nonaerosol), Glass Cleaner (nonaerosol), Heavy-duty Hand Cleaner or Soap (nonaerosol), and Oven or Grill Cleaner products will reduce aquatic species' exposure to these compounds; and

Suitable alternative formulations that do not contain alkylphenol ethoxylate surfactants in the categories of General Purpose Cleaner (nonaerosol), General Purpose Degreaser (nonaerosol), Glass Cleaner (nonaerosol), Heavy-duty Hand Cleaner or Soap (nonaerosol), and Oven or Grill Cleaner are available.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby approves the adoption of the proposed amendments to sections 94508, 94509, 94510, 94512, and 94515, title 17, CCR, and the proposed amendments to ARB Method 310, 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 regarding the modifications as may be submitted during this period, shall make modifications as may be 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.

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 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 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 10-40, as adopted by the Air Resources Board.

Mary Alice Morency, Clerk of the Board

Resolution 10-40

November 18, 2010

Identification of Attachments to the Board Resolution

Attachment A: Proposed Amendments to the Regulation for Reducing Emissions from Consumer Products and Proposed Amendments to Test Method 310, as set forth in Appendices A and B, to the Initial Statement of Reasons, released September 29, 2010.

Attachment B: Staff's Suggested Modifications to the Original Proposal (distributed at the Board hearing on November 18, 2010).