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# Regulatory Issues

## California & Canada Consumer Product Rules

### California

On June 26, 2008 in Sacramento, the California Air Resources Board (CARB) adopted amendments to the Consumer Products regulation. In last month's issue, the CARB staff's proposed limits were reported and effective dates were shown. Also, some of the issues with the rule were detailed. Hopefully, everyone has reviewed this document and was prepared for the June 26 Board hearing. This has been a long, tough rule development. Results of the board hearing will be in next month's column.

Mary Nichols, CARB Chairwoman, was confirmed on June 4, 2008 by the Rules Committee. The committee vote is the final say on the matter and does not require full Senate ratification. The rules panel had one year to confirm the nomination following Gov. Schwarzenegger's appointment of Nichols last July. Nichols was appointed by the Governor and serves for as long as he wants her to. She has worked with the industry over the years and we continue to look forward to working with her. Nichols is overseeing the influential Air Board at a crucial time in California, given the agency's prominent role in implementing the state's sweeping climate change law, A.B. 32. The Board is still in the process of developing its scoping plan for the law, a draft of which was expected later in June. The chairwoman is the only full-time member of the 11 member board. Five are experts in fields such as medicine, chemistry, physics, meteorology, engineering, business and law. The remaining five are elected officials who represent the regional air pollution control agencies. Nichols will have pressure from numerous sources. It will be a tough job to be able to satisfy the majority.

### Canada

Environmental Canada (EC) has proposed the Volatile Organic Compound (VOC) Concentration Limits for Certain Product Regulations (the proposed Regulations), to be made pursuant to subsection 93 (1) of the Canadian Environmental Protection Act, 1999 (CEPA 1999). The proposed regulation sets concentration limits for VOCs in 98 categories of certain products. The proposed VOC concentration limits are aligned with the provisions of the CARB Cons-1 rule. However, even though the limits are aligned with CARB's Cons-1, there are significant issues with the proposed regulation.

The definitions, which we have spent numerous hours perfecting with CARB, are not all included, or are modified. These definitions are needed to ensure consistent regulation with current rules. EC should copy the CARB definitions verbatim and not omit or modify any current definitions. This is a serious issue that needs to be corrected.

Next, recording requirements are vague except for the fact that EC wants the records maintained for five years in Canada. As currently drafted, the records must be physically maintained at a company's "principal place of business in Canada or at any other place in Canada where the information, results and supporting documents can be inspected." If kept anywhere but the principal place, then the company must "provide the Minister with the civic address of the place where it is kept." Also, EC does not specifically detail what information is required. This section should be aligned with CARB or Ozone Transport Commission (OTC) or the Environmental Protection Agency (EPA) to allow industry a specific amount of time to respond and keep documents anywhere.

Sell-throughs were a topic when industry met with EC at the consultation meeting held Sept. 27, 2006. EC has proposed a sell-through, which is a change from 2006 when no sell-through was considered. However, EC states in the preamble that a two year sell-through is proposed. In reviewing the regulation, a two year sell-through is provided from the date of adoption. This is not typical for U.S. regulation. The sell-through is normally from the effective date. The effective date is one year after the regulation is "registered," thus only a one year sell-through from the effective date. This is simply silly; there is no need for any type of sell-through. According to an EC study, more than 60% of the product in 2003 was compliant. Therefore, EC should adopt the EPA approach and implement an unlimited sell-through period. Any form of sell-through requirement will most likely burden small companies.

Another significant issue is that the EC version of the "most restrictive limit" provision extends to any documentation, not just the label.

There are many more issues such as the confusion with Method 310, the omission of the Alternate Control Plan and the Innovative Product exemptions. Again, these are crucial elements of the regulations. Industry will need to work with EC to modify this proposed rule. It is imperative that the EC regulation be consistent with U.S. regulation. Cost to industry and consumers will go up significantly if different products are needed in Canada.

One positive point in the regulation preamble is the EC does not want to deal with technology forcing regulations. Also, EC wants to align with the CARB Cons-1 rule. This is good; we just need to make sure it happens.

I encourage you to read the entire regulation at: <http://canadagazette.gc.ca/part/2008/20080426/html/regle3-e.html#top>.