

ERRATA FOR AGENDA ITEM #40
Amend Rule 1143 – Consumer Paint Thinners and Multi-Purpose Solvents
July 9, 2010

1. Appendix E – Additional proposed rule language
2. Appendix F – Insert pages 63-66 response to an additional comment letter from W.M. Barr, dated June 29, 2010. This letter is designated as Letter #10.
3. Appendix G
 - a. Replace the PREFACE and TABLE OF CONTENTS in the Final Supplemental EA with the attached (pages i-ii).
 - b. Insert pages G-5 through G-14 in Appendix G of the Final Supplemental EA with the attached.

ERRATA SHEET FOR APPENDIX E

Amend Rule 1143 – Consumer Paint Thinners and Multi-Purpose Solvents

Modify subdivision (d) by adding subparagraph (B) to paragraph (2) to provide a sell-through provision for thinners manufactured prior to date of adoption and labeled for more than one use including industrial maintenance coating thinning.

Modify paragraph (d)(2) by adding the ~~**bold strikeout underlined**~~ language in the proposed amended rule, as follows:

- (2) Sell-Through Provision
- (A)** Any consumer paint thinner or multi-purpose solvent that is manufactured prior to the implementation date, may be sold, supplied, offered for sale, or used for up to one year after the specified effective date.
- (B)** Consumer paint thinners and consumer multi-purpose solvents manufactured prior to (date of adoption) and labeled for more than one use including industrial maintenance coating thinning, may be sold, supplied, offered for sale, or used up to April 1, 2011.

Modify subdivision (e) by adding clause (G) to subparagraph (e)(2) to clarify that the labeling provisions of the proposed amendment become effective for products manufactured after the date of adoption.

Modify subparagraph (e)(2) by adding the ~~**bold strikeout underlined**~~ language in the proposed amended rule, as follows:

- (G)** Products that are manufactured on or before (date of adoption).
- ~~**(G)**~~ None of the above labeling or notice requirements preclude the use of any additional labeling or notice for consumer education.



June 29, 2010

Don Hopps
 Planning, Rule Development & Area Sources
 South Coast AQMD
 21865 E. Copley Drive
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 Email: dhopps@aqmd.gov

Subject: SCAQMD Proposed Rule 1143 amendments for July 9, 2010

Dear Mr. Hopps

W.M. Barr & Company, Inc. (“Barr”) is the largest national manufacturer of solvents and thinners for consumer use. As such we are very concerned with the potential impact Rule 1143 could have as currently proposed. Barr still maintains that it should not be adopted, and reiterates the objections made during the prior rulemaking and litigation. However, if adopted, Barr strongly urges that the following changes be made to Rule 1143.

10-1

I. Clear Division Between Existing CARB Categories and Rule 1143 are Needed

The California Air Resources Board (“CARB”) currently regulates over 100 consumer product categories. Requiring companies to meet regulations in the District for products already regulated by the state is an unreasonable and unnecessary burden, and possibly a violation of the state’s preemption provision in Section 41712(f). Barr has the following recommended changes to Rule 1143 that would provide much needed clarity between Rule 1143 and CARB’s existing consumer product categories, while still permitting the District to claim significant reductions from VOC emissions.

10-2

Wording should be added to clarify that the District does not intend to regulate products that are in existing CARB consumer product categories at the time of the adoption of Rule 1143. This would provide industry with a “bright line” between Rule 1143 and existing CARB consumer product categories.

Barr is requesting that Section (c) (2) be changed to read as follows:

(2) CONSUMER PAINT THINNERS are any liquid products used for reducing the viscosity of coating compositions or components for personal, family, household, or institutional use, including, but not limited to, products that prominently display the term “Paint Thinner.” “Lacquer Thinner,” “Thinner,” or “Reducer” on the front panel of its packaging. “Consumer Paint Thinners” do not include any products making any representation that the product may be used as, or is suitable for use as a consumer product which qualifies under another definition in California Code of Regulations Title 17, § 94508 in effect as of the date of adoption of Rule 1143.

10-3

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This additional wording is consistent with the Rule 1143's Consumer Multi-Purpose Solvent definition and provides the "bright line" clarity currently lacking in the Consumer Paint Thinner definition. It would also help cure potential preemption issues that may be present.

II. A Reasonable Sell-Through Period and Delayed Effective Date are Needed

As currently written, Proposed Amended Rule 1143 would go into effect immediately upon adoption. This would result in a significant amount of product that had been in compliance with the original Rule 1143 being immediately out of compliance. Manufacturers, distributors, and retailers need time to come into compliance with the changes being made to Rule 1143, and for existing product on store shelves to be sold and used. Otherwise a significant amount of hazardous waste would be generated from product being disposed. Companies will unnecessarily incur significant expense in paying for disposal and suffering loss revenues. A 3-month time period to make the needed changes to affected products, and a reasonable sell-through period will address these issues.

Barr is requesting that Section (d)(2) be changed to read as follows:

(2) Sell-Through Provision

(A) Any paint thinner or multi-purpose solvent that is manufactured prior to the implementation date, may be sold, supplied, offered for sale, or used for up to one year after the specified effective date.

(B) Any Consumer Paint Thinner or Consumer Multi-Purpose Solvent that is manufactured prior to October 9, 2010 is not subject to this rule until April 9, 2010.

These changes will ease the burden of the District's Rule 1143 changes on manufacturers, distributors and retailers in the District, and also eliminate a significant amount of hazardous waste from being unnecessarily generated.

Conclusion

Barr continues to maintain that the regulation of Multi-Purpose Solvents and Paint Thinners, if it is done at all, should be done at the state level. If the District does move forward with Rule 1143, Barr urges it to make the above-requested modifications to clarify that the District is not intending to regulate products in existing CARB consumer product categories. A sell-through provision and delayed effective date are also needed. The changes requested will still permit the District to claim significant VOC reductions.

We look forward to continue working with the District on this rulemaking and thank you for the opportunity to submit these comments.

With Regards,

Michael S. Cooley
Associate General Counsel

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10-4

10-5

Response to Comment #10-1:

Staff believes there is a need for Rule 1143 – Consumer Paint Thinners and Multi-Purpose Solvents. When fully implemented, this rule will reduce VOC emissions by an additional 3.81 tpd by 2012 in the South Coast Air Basin, which equates to 1,391 tpy and 6,953 tons by the time CARB’s final limit is fully implemented. The 2007 AQMP was implemented to protect the health of 16.5 million residents of the South Coast Basin by setting forth a comprehensive program that will lead the region into compliance with federal 8-hour ozone and PM2.5 air quality standards. In addition, Control Measure CTS-04 of the 2007 AQMP specifically calls for emission reductions from consumer paint thinners and multi-purpose solvents that, at the time of the March 6, 2009 adoption of Rule 1143, were not regulated by CARB. Further, Rule 1143 will help achieve the 1-hour ozone standard, which will mean that the fees imposed by section 185 of the Clean Air Act will no longer be applicable. Lastly, with the addition of labeling and public education requirements in PAR 1143, the fire safety concern has been addressed by informing the consumer of reformulation changes, as supported by the local fire authorities.

Response to Comment #10-2: [I would suggest combining comments 10-2 and 10-3 and respond as if one comment]

PAR 1143 has been revised to make it as consistent as possible with the CARB approved Consumer Product Regulation and the “15-Day Notice” changes with considerations for overall clarity and enforceability.

Response to Comment #10-3:

Staff has revised the definitions of Multi-purpose Solvent and Paint Thinners for consistency with CARB’s Consumer Product Regulation, as well as to provide clarity for compliance purposes. However, staff does not support adding the recommended language to the definition of “paint thinner” as it could create a loophole that would allow paint thinners to escape the rule limits by representing that it could also be used for another less stringently regulated purpose. Furthermore, any loss of emission reductions would be further aggravated by the low vapor exemption (LVP) included in CARB’s Consumer Products Regulation. As a result of AQMD’s recent evaluation of semi-volatile materials, most notably the recent development of PAR1144 – Vanishing Oil and Rust Inhibitors, it is clear that these “LVP” VOC solvents do evaporate and therefore are available to react with oxides of nitrogen to form ozone. Staff does not believe a LVP exemption is necessary for implementation of the 25 g/L VOC limit, since compliant products that use soy or exempt solvents are already available and in use today. Moreover, CARB does not list any specific LVP solvents that can be used for reformulation of paint thinners; CARB’s LVP exemption was a pre-existing exemption in CARB’s regulation and was not specifically intended to address the paint thinners or multi-purpose solvents categories. .

Finally, the commentator does not currently represent that their paint thinners have uses other than for thinning paints. Thus, staff reviewed the current label for “Paint Thinner” manufactured by W.M. Barr which only lists as its use the thinning of paints, stains, and varnishes, and no additional uses such as a cleaner or degreaser that could place them in another category of the Consumer Products Regulation. Staff also reviewed current labels for cleaners and degreasers manufactured by W. M. Barr and did not note any identified use for thinning of paints, stains and varnishes. Therefore, staff concludes that there is no additional division needed, since under current practices, manufacturers can separate paint thinning uses from other uses. Staff believes that addition of the

requested language would only encourage manufacturers to list additional uses that are not on their label to circumvent the requirements of PAR 1143.

Response to Comment #10-4:

The purpose for the Rule's current sell-through period is to allow manufacturers that exceed the Rule's limits prior to the effective date of those limits to sell out those products. Staff believes that based on its prior experience with sell-through periods, a one-year time frame is adequate given the relatively quick turn-over of these products in stores. The proposed amendment by W.M. Barr intends to extend the sell-through period for the interim limit to include products manufactured after its effective date of January 1, 2010 to October 9, 2010, and further to extend the one year sell-through period beyond January 1, 2011 to presumably April 9, 2011 [mistakenly stated by the commentator as April 9, 2010]. We understand the purpose of this amendment is to solely benefit W.M. Barr, who has recently re-labeled its paint thinners to include as a new use, the thinning of industrial maintenance coatings to exploit an exemption in both the District's and CARB's rule originally crafted for thinners intended only for industrial maintenance coatings. Both the District and CARB intend to close this unintended loophole, which no manufacturer other than Barr has exploited. As a result, to allow Barr to continue manufacturing non-compliant products for an additional 10-plus months would not only be a detriment to air quality but be unfair to other manufacturers, who have already complied with the interim limit. However, extending the sell-through period for thinners manufactured prior to the date of adoption and labeled for more than one use including industrial maintenance coating thinning may be sold, used, supplied, offered for sale or used up to April 9, 2011 will be allowed under PAR1143 to minimize the immediate removal of existing inventory already placed on store shelves. The interim period of 300 g/L became effective on January 1, 2010 and has a sell-through provision for one full year. That means products that contain more than 300 g/L VOC that were manufactured prior to January 1, 2010 would be allowed to be sold until January 1, 2011.

Response to Comment #10-5:

See responses to Comments #1, 2, 3, and 4.

PREFACE

This document constitutes the Final Supplemental Environmental Assessment (EA) for Proposed Amended Rule (PAR) 1143 – Consumer Paint Thinners and Multi-Purpose Solvents. The Draft Supplemental EA was released for a 30-day public review and comment period from May 6, 2010, to June 4, 2010. Three comment letters were received from the public on the Draft Supplemental EA before the close of the comment period. All of these comment letters along with the responses to comments are included in Appendix D of this document.

In addition, ~~one~~ two late comment letters were ~~was~~ received from the public relative to both the proposed amended rule and the Draft Supplemental EA on June 23, 2010 and June 29, 2010, respectively. ~~These~~ is late comment letters and the responses to comments are included in Appendix G of this document.

Subsequent to release of the Draft Supplemental EA, minor modifications were made to PAR 1143. To facilitate identification, modifications to the document are included as underlined text and text removed from the document is indicated by ~~striketrough~~. Staff has reviewed the clarifying language in modifications ~~to~~ PAR 1143 and concluded that none of the modifications alter any conclusions reached in the Draft Supplemental EA, nor provide new information of substantial importance relative to the draft document. As a result, these minor revisions do not require recirculation of the document pursuant to CEQA Guidelines §15073.5. Therefore, this document now constitutes the Final Supplemental EA for PAR 1143.

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Responses to Comment Letter #4
(American Coatings Association, June 23, 2010)

- 4-1 SCAQMD staff believes there is a need for Rule 1143 – Consumer Paint Thinners and Multi-Purpose Solvents. When fully implemented, this rule will reduce VOC emissions by an additional 3.81 tons per day by 2012 in the South Coast Air Basin as compared to the California Air Resources Board’s rule, which equates to 1,391 tons per year and 6,953 tons by the time CARB’s final limit is fully implemented. Given the extreme non-attainment status of the South Coast Air Basin in respect to the 8-hour ozone standards and the fact that its 16.5 million residents experience the highest ozone and PM2.5 exposure rates in the nation, the emission reductions mentioned are needed to protect public health and help the region make early progress toward compliance with federal 8-hour ozone and PM2.5 air quality standards. In addition, Control Measure CTS-04 of the 2007 AQMP specifically calls for emission reductions from consumer paint thinners and multi-purpose solvents that, at the time of the March 6, 2009 adoption of Rule 1143, were not regulated by CARB. Further, Rule 1143 will help achieve the 1-hour ozone standard, which will mean that the fees imposed by §185 of the Clean Air Act will no longer be applicable. The residents living in the South Coast jurisdiction will benefit from the reduction of an additional 3.81 tons per day of VOC emissions by 2012, which is part of a key strategy included in the 2007 AQMP.

SCAQMD staff believes that the 25 g/L VOC standard, effective January 1, 2011, is “technologically feasible.” SCAQMD staff has determined that the 25 g/L VOC limit is technologically feasible, as referenced by both Table 1 in the Staff Report and Table 3 of the Supplemental EA for PAR 1143, which identifies several soy and exempt-solvent technologies that are commercially available and feasible, several that are formulated with PCBTF that has a similar flashpoint as mineral spirits and several that rely on acetone as the primary solvent. These products can be used as multi-purpose solvents and paint thinners. A more comprehensive list of clean air solvents, as well as other compliant products, was also included in the March 2009 Final Staff Report and these products have been available and in use for more than ten years. SCAQMD staff agrees that CARB included a technology review for paint thinners in the September 2009 amendment to the Consumer Products Rule, but also clarified in a recent letter that “we [CARB] recognize that, based on previous SCAQMD regulations, many coatings sold within the District are waterborne.” SCAQMD staff has worked closely with CARB staff and has held numerous meetings to draft language for PAR 1143 that is consistent with CARB’s regulation. As a result of these meetings with CARB and fire authorities, new language has been added to PAR 1143 to make it more consistent with CARB’s Consumer Product Regulation on labeling, while also addressing fire risks better by informing consumers of possible formulation changes.

- 4-2 With regard to evaporation rates and the viability of a reactivity-based ozone control strategy, see response to Comment 2-1. Regarding the adequacy of the CEQA document to address the fire and explosion risks associated generally with increased usage of acetone, see also the response to Comment 3-9. Moreover, since the SCAQMD exempted acetone as a VOC in November 1995, based on similar prior actions from CARB and USEPA, many products such as lacquers have increasingly used acetone to meet air quality limits. SCAQMD staff is unaware of any increased incidents of fire resulting from that increased usage. CARB staff, likewise, did not find the general increased usage of acetone to raise a significant fire concern; but instead, was concerned about those consumers accustomed to purchasing mineral spirit-based paint thinners switching to paint thinners reformulated with more flammable solvents such as acetone.

SCAQMD staff agrees with the comment that more acetone may be used to reformulate PAR 1143-compliant products; however, compliance with the rule does not require the use of acetone. Rather, there are a number of alternative solvents other than acetone that may be used. The commenter's assumption that the "[S]ubstitution of alternative low-VOC products with lower evaporation rates than acetone would be very unlikely, because those alternatives (e.g., aqueous cleaners, soy-based cleaners, PCBTF) are all two to four times as expensive as acetone, and less effective" is unsubstantiated and incorrect. In fact, several manufacturers have already formulated cleaning solvents and thinners using aqueous formulations and bio-based technology such as using methyl esters (e.g., soy-, coconut- and rapeseed-based formulations). Several of these products have been certified by the SCAQMD pursuant to the CAS program and are currently available to the consumer. Specifically, there are 171 certified CAS solvents to date and 102 of these products can be used in the consumer market for compliance with PAR 1143. The CAS product list is frequently reviewed and updated to reflect any new findings, especially those that may be directly applicable to the products that would be subject to PAR 1143 requirements. In addition, 62 other products have been identified that meet the proposed final VOC limits, but are currently not certified under the CAS program. Thus, acetone is not the only viable substitute for mineral spirits.

Lastly, as the commenter notes, "Acetone is already available, labeled as such, in the same retail outlets that sell mineral spirits." As noted in the prior Final EA for the March 2009 Rule 1143 adoption, the SCAQMD found that generally any increased usage of acetone would raise insignificant fire risks. In its ruling, the Superior Court found the Final EA¹ inadequate only as to the potential fire risk associated with consumers who are accustomed to using paint thinners with mineral spirits switching to a reformulated paint thinner with more flammable acetone. This was the risk that concerned the local fire officials. As also noted by the commenter, CARB addressed this specific risk by either disallowing the sale

¹ Final Environmental Assessment for: Proposed Rule 1143 – Consumer Paint Thinners and Multi-Purpose Solvents, SCAQMD No. 11112008BAR, State Clearinghouse No: 2008111052, February 2009.

of acetone-based paint thinner labeled as “paint thinner,” or if still sold labeled as “paint thinner,” requiring additional labeling to alert the consumer of a product change. CARB worked with both local and state fire officials to arrive at this solution to avoid significant fire risks. SCAQMD staff is pleased to learn that the commenter believes that paint thinner manufacturers, a number of which are part of the American Coatings Association, intend to comply with both CARB and the SCAQMD’s proposed warning requirement by not labeling acetone-based paint thinner as “paint thinner.” Fire officials agree with CARB that this will appropriately alert consumers. However, both CARB and the SCAQMD’s rules provide equally viable options for those manufacturers who choose to sell acetone-based paint thinners labeled as “paint thinners.” Thus, they may incorporate appropriate language on hang-tags or their labeling to alert consumers that the product has been changed.

- 4-3 SCAQMD supports a reactivity-based approach to control ozone and in fact has committed staff to study the effects of a reactivity based approach by actively participating in the North American Research Strategy for Tropospheric Ozone (NARSTO) work related to reactivity. SCAQMD staff also continues to participate in the following committees: Applications Benefits, Near Term Science, Toxics, Atmospheric Chemistry and the PM. One of the main concerns SCAQMD staff has is the potential constituents that may have toxicity associated with some VOC containing compounds that have a low MIR value. SCAQMD staff also recognizes that the three percent limit is feasible for Consumer Paint Thinners and Multi-Purpose Solvents. The manufacturers of compliant thinners have been able to match the evaporation rate of conventional high-VOC paint and lacquer thinners by using soy-based methyl ester technology or by using exempt solvents such as PCBTF and acetone. Furthermore, Table 1 of the Final Staff Report for PAR 1143 identifies currently available products that use soy, acetone, and PCBTF technology.
- 4-4 PAR 1143 has been revised for consistency with the CARB approved Consumer Product Regulation and the “15-Day Notice” changes with considerations for overall clarity and enforceability. SCAQMD staff recognizes that PAR 1143 does not currently take into consideration the artist materials industry. SCAQMD staff has been working with art and craft associations such as the Art and Creative Materials Institute (ACMI) and the National Art Materials Trade Association (NAMTA) to better understand their concern and their request regarding a possible exemption for artist solvents. SCAQMD staff will continue to work with both trade associations to understand the technical concerns and develop a proposed amendment addressing artist solvents, with a potential public hearing for late 2010. SCAQMD staff recognizes that products used by artists are labeled pursuant to ASTM D4236-95, and require review by a toxicologist, and also recognizes that artist solvents are substantially higher in cost compared to regular solvents regulated by PAR 1143.

SCAQMD staff is uncertain how a branded solvent which is an essential component of a coating would be classified as a consumer multi-purpose solvent or consumer paint thinner. Assuming that a branded solvent is one of the components of a multi-component coating, then that product would be regulated by the applicable coating rule. For example, the isocyanate used to catalyze a two-component polyurethane coating would not be considered a paint thinner or multi-purpose solvent. Furthermore, PAR 1143 includes exemptions for thinners exclusively labeled for industrial maintenance coatings and clean-up solvents exclusively labeled for polyurea and polyaspartic coatings. Therefore, SCAQMD staff does not believe an additional exemption for “branded solvents” is necessary.

- 4-5 PAR 1143 will continue to identify the mass-based concentration limits but has also been revised to allow VOC labeling requirements to include percent by weight. Additionally, PAR 1143 will allow the percent by weight as an option for VOC determination and labeling but will maintain the mass-based concentration method for VOC determination and labeling. The mass-based concentration limit will have a final VOC limit of 25 g/L, effective January 1, 2011.

SCAQMD staff has added a definition for “VOC Content” that includes a percent by weight method for VOC determination. However, SCAQMD staff has also retained “grams of VOC per liter of material” for mass-based concentration method of VOC determination.

- 4-6 SCAQMD staff has revised subdivision (e) in PAR1143 for consistency with CARB’s Consumer Product Regulation, and to further enhance clarity. Subdivision (e) provides labeling options to inform consumers of possible reformulations with flammable or extremely flammable solvents.
- 4-7 In response to the comment, paragraph (e)(11) and clause (f)(2)(A)(i) have been revised to replace the term “coating” with the term “product” instead.
- 4-8 PAR 1143 subdivision (h) has been revised. The reason for this change is to clarify that the SCAQMD processes Public Records Act (PRA) requests pursuant to SCAQMD Guidelines, which like the PRA, does not create a separate exempt category for confidential business information. In the past, those claiming an exemption for confidential business information have been able to justify non-disclosure as a trade secret pursuant to SCAQMD Guidelines. The proposed change to PAR 1143 does not change this practice; if confidential business information is justified to be exempt as a trade secret, SCAQMD will not disclose this information unless ordered to by a court. SCAQMD’s legal counsel had proposed this revision to minimize any perceived ambiguity that the SCAQMD was creating a new category of exempt records. In addition, the SCAQMD may also be able to withhold confidential information pursuant to the balancing test provided for under both the PRA and the SCAQMD’s Guidelines. As a result, the SCAQMD may be able to withhold disclosure of non-trade secret but confidential

information if adequate justification is provided by the submitting party to enable non-disclosure under the balancing test.

- 4-9 The definition for “Distributor” has been revised for clarity and now reads: “DISTRIBUTOR means any person to whom consumer products are sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers and consumers are not distributors.”

SCAQMD staff does not believe that a definition for “Retailer” is necessary. However, for further clarification, SCAQMD staff has revised PAR1143 by removing the definition of “Consumer” and adding new definitions for “Manufacturer” and “Responsible Party.” SCAQMD staff believes that the current version of these definitions in PAR 1143 is clear.

SCAQMD staff does not believe that a definition of “Institutional Use” is necessary. SCAQMD staff does not intend to limit the rule to residential settings, but would include institutions such as general cleaning at hospitals and government agencies that is not already subject to Regulation XI rules.

SCAQMD staff has revised the definitions to be as consistent as possible with CARB’s Consumer Product Regulation, as well as provide clarity for compliance purposes. However, staff does not support adding the recommended language to the definition of “Consumer Paint Thinners” as it could create a loophole that would allow any paint thinner to escape the rule limits by representing that it could also be used for another less stringently regulated purpose.

Comment Letter #5
(American Chemistry Council, June 29, 2010)



June 29, 2010

Via E-mail

Governing Board Members
c/o Sandra McDaniel, Clerk of the Board
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

Re: Comments on Proposed Amended Rule 1143 – Consumer Paint Thinner and Multi-purpose Solvents

Dear Governing Board Members:

The Solvents Industry Group (“SIG”)¹ of the American Chemistry Council is pleased to submit the following comments on South Coast Air Quality Management District’s (“South Coast” or “District”) Proposed Amended Rule 1143 (“PAR 1143”), Consumer Paint Thinner and Multi-Purpose Solvents (“MPS”).² The proposal would re-establish, ultra-low, mass-based volatile organic compound (“VOC”) standards for multi-purpose solvents and paint thinners. As solvent manufacturers that conduct business in the District, SIG members would be significantly and negatively affected by this unbalanced proposed regulation. As discussed in previous comments, SIG requests that the District suspend consideration of the proposed amendments based on the following concerns:

- California Air Resources Board (“CARB”) has already adopted VOC standards for consumer paint thinners and multi-purpose solvents, and thus South Coast does not have the legal authority to promulgate its Tier 2 standards for this category;
- Duplicating CARB’s efforts in this regard has been and continues to be a costly and unnecessary expenditure of resources.

5-1

¹ SIG members include The Dow Chemical Company, ExxonMobil Chemical Corporation, Shell Chemical LP, and Eastman Chemical Company.

² Notice of Public Workshop, Proposed Amended Rule 1143 – Consumer Paint Thinner and Multi-purpose Solvents (Apr. 2010), available at http://www.aqmd.gov/pub_edu/notice_1143_Apr_28_10.html; Draft Proposed Amended Rule 1143 – Consumer Paint Thinner and Multi-purpose Solvents (June 2010), available at http://www.aqmd.gov/rules/proposed/1143/PAR1143_6-4-10_PW.pdf; Draft Proposed Amended Rule 1143 – Consumer Paint Thinner and Multi-purpose Solvents (July 2010), available at http://www.aqmd.gov/rules/proposed/1143/PAR1143_7-9-10_PW.pdf.

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- Reactivity-based standards more effectively reduce the ozone-forming potential of solvent-based products while providing formulators with greater flexibility to produce products that meet performance and safety specifications.³
- The District has not met its legal burden of demonstrating that its proposed regulations are commercially and technologically feasible.
- South Coast's proposed Tier 2 standards likely will lead to the formulation of products that pose higher fire risks for consumers than would a reactivity-based approach. Nor does the District's proposal adequately mitigate these potential public safety risks through an implementation schedule that affords time for public education.
- SIG urges the District, if it cannot be convinced to abandon the re-establishment of the Tier 2 standard, to at least adopt the same implementation schedule as CARB since it would provide consumers with meaningful advance educational materials.

5-1
(cont'd)

General Position

SIG's research and investigations, as well as many other independent studies, including those undertaken by CARB, Dr. William Carter, the University of North Carolina, and Georgia Tech, have consistently concluded that the most efficient and cost effective means of regulating consumer products emissions and obtaining meaningful ozone reductions is through reactivity-based regulations. Mass-based approaches, in stark contrast, are outdated, inefficient, needlessly rigid, and potentially counterproductive to the overall goal of ozone reduction. SIG strongly supports the adoption of reactivity-based standards either as the sole compliance option or at least as an alternative compliance option for product categories, including paint thinners and multipurpose solvents. SIG appreciates the willingness of the District to work with us and leave open the door to future reactivity-based standards. However, we believe that the time to act on reactivity is now, not down the road after products have already been reformulated in response to the Tier 2 standards.

5-2

SIG disagrees with South Coast's view that it has the legal authority to "re-establish" the Tier 2 standards that the Los Angeles County Superior Court recently vacated. *See W.M. Barr & Co. v. South Coast Air Quality Management District*, Case No.: BS1198969. CARB has already adopted regulations governing the same source categories that PAR 1143 proposes to regulate.⁴ CARB's recent adoption of those regulations precludes South Coast from "re-establishing" the 25 g/L VOC standard. Specifically, CAL. HEALTH & SAFETY CODE § 41712(f) unambiguously prohibits a district from adopting a "regulation pertaining to . . . a consumer product that is different than any regulation adopted by [CARB] for that purpose" (emphasis added). Yet, that

5-3

³ See William P. L. Carter, *Development of Ozone Reactivity Scales for Volatile Organic Compounds*, 44 J. Air & Waste Mgmt. Ass'n 881 (1994); A. Russell et al., *Urban Ozone Control and Atmospheric Reactivity of Organic Gases*, 269 Science 491 (1995).

⁴ CARB amended its Regulation for Reducing Emissions from Consumer Products on September 24, 2009 to impose VOC standards for multi-purpose solvents and thinners.



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is precisely what South Coast seeks to do in promulgating PAR 1143.⁵ Once the Los Angeles County Superior Court vacated and severed the Tier 2 standard, that provision was void *ab initio*. It is of no consequence that other provisions of Rule 1143 that pre-date CARB's regulations governing multi-purpose solvents and thinners remain in effect. Those portions were severed by the Los Angeles County Superior Court and thus would not exempt PAR 1143 from preemption. At bottom, there can be no doubt that the District's re-establishment of PAR 1143 would be the adoption of a consumer product regulation that differs from one already adopted by CARB—again, something expressly prohibited by § 41712(f).

5-3
(cont'd)

South Coast also has failed to demonstrate that its 25 g/L VOC standard, effective January 1, 2011, constitutes "best available control technology" and is "technically feasible" as required by CAL. HEALTH & SAFETY CODE §§ 40440 and 41712(b)(2). Availability and feasibility must be determined as of the date of adoption of a regulation, not in the future when a standard becomes effective. *Cf. Nat'l Paint & Coatings Ass'n v. S. Coast Air Quality Mgmt. Dist.*, 100 Cal. Rptr. 3d 35, 50-51 (Cal. Ct. App. 2009) (interpreting terms "best available" and "achievable" within a statute to allow the district "to require the best of what exists, not what might conceivably come on the market"). SIG has repeatedly raised concerns that the Tier 2 standards are not currently feasible and would compromise product performance, particularly for thinners. CARB too has recognized this concern, and as a result has agreed to "reassess the feasibility" of its own 3 percent by weight VOC limit in 2012 before the standard takes effect.⁶ This acknowledgement by CARB alone demonstrates that the Tier 2 standard (which is more stringent than CARB's 3 percent standard) is not currently feasible and hence barred by § 41712(b)(2). In its Preliminary Draft Staff Report, South Coast attempts to summarily demonstrate feasibility by listing Clean Air Solvent products that purportedly are in the marketplace now and meet the 25 g/L VOC standard. However, the mere listing of products, without a more robust analysis, does not establish feasibility, particularly in light of the feasibility concerns raised by both SIG and CARB.

5-4

SIG is also concerned that the PAR 1143 Environmental Assessment (EA) continues to be deficient. For instance, the EA does not address the potential benefits associated with a reactivity-based program. Such an analysis will show that a reactivity-based approach would result in a greater reduction of ozone forming potential without the increased fire risk associated with the mass-based Tier 2 limit. This comparative analysis would provide the Governing Board with meaningful information about the alternative approaches for achieving its ozone reduction goals and whether it should readopt the Tier 2 standards.

5-5

Lastly, the increased public safety risk associated with the Tier 2 standard is not properly being addressed, and poses an unnecessary risk to public safety. The District's current proposal mandates that the Tier 2 limit take effect just months after its adoption. Such an approach is not likely to sufficiently address the increased public fire hazards created by PAR 1143, and poses an

5-6

⁵ The "Non-Duplication" finding on page 10 of South Coast's Preliminary Draft Staff Report indicates that PAR 1143 "does not impose the same requirement as any existing state or federal regulation." But that is precisely what section 41712(f) prohibits, *i.e.*, the District's adoption of a regulation pertaining to consumer products that is "different than any regulation adopted by" CARB.

⁶ See CARB Initial Statement of Reasons for Proposed Amendments to the California Consumer Products Regulations, Technical Support Document at 62, 103.

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unnecessary risk to public safety. If SCAQMD moves forward with the re-establishment of the mass based Tier 2 limits, SCAQMD should adopt a three-year phase in period that builds in sufficient time for a public education outreach program to alert the public to the additional safety hazards of using more flammable products that will result from the adoption of the tier 2 limits, as well as to allow sufficient time for alternatives to be developed. For these reasons, SIG urges the District, if it cannot be convinced to abandon the re-establishment of the Tier 2 standard, to at least adopt the same implementation schedule as CARB.

5-6
(cont'd)

SIG remains committed to working with South Coast on these issues and looks forward to continued dialogue in this area. If you have any questions, please contact me at (703) 741-5612 or Leslie_Berry@americanchemistry.com.

Sincerely,

Leslie Berry

Leslie Berry
Solvents Industry Group Manager,
Chemical Products and Technology

Responses to Comment Letter #5
(American Chemistry Council, June 29, 2010)

- 5-1 Regarding whether SCAQMD has the authority to re-adopt the 25 g/L VOC limit, see response to Comment 3-4. With regard to duplicating CARB efforts and the necessity of PAR 1143, see response to Comment 1-1. Regarding reactivity-based standards as they relate to ozone-forming potential and fire hazards, see responses to Comments 2-1 and 2-3. Regarding the feasibility demonstration of PAR 1143, implementation timing of the public education and outreach program, and adoption of the same implementation schedule as CARB, see response to Comment 2-2.
- 5-2 Regarding the adoption of reactivity-based standards, see responses to Comments 2-1 and 2-3.
- 5-3 Regarding whether SCAQMD has the authority to re-adopt the 25 g/L VOC limit, see response to Comment 3-4
- 5-4 The commenter misreads the requirements of California Health and Safety Code §§40440 and 41712(b). First, §41712(b) applies to CARB and not the SCAQMD. Second, §40440 does not require the SCAQMD to demonstrate that its 25 g/L VOC limit constitutes best available control technology (BACT). The case cited by commenter, *NPCA v. SCAQMD*, has been accepted for review by the California Supreme Court and therefore, may not be cited as precedent. Moreover, even under the appellate court's decision, evidence that the 25 g/L VOC limit has been achieved by at least one source is sufficient to support the limit. Thus, evidence that the marketplace already has products meeting the 25 g/L VOC limit is relevant under the appellate court decision. As stated earlier, §41712(b) applies to CARB's consumer product rulemaking and it requires that CARB determine prior to adopting its limits that the adopted limits are "commercially and technologically feasible and necessary." CARB must make that finding irrespective of any future technology assessment. Thus, CARB has found its three percent limit to be both technologically and commercially feasible. Contrary to the commenter's assertion, the SCAQMD's proposed 25 g/L VOC limit is virtually identical to CARB's three percent limit.
- 5-5 See responses to Comments 2-1 and 2-3.
- 5-6 See response to Comment 2-2.