

Final Regulation Order

AIRBORNE TOXIC CONTROL MEASURE FOR EMISSIONS OF CHLORINATED TOXIC AIR CONTAMINANTS FROM AUTOMOTIVE MAINTENANCE AND REPAIR ACTIVITIES

Adopt new section 93111, title 17, California Code of Regulations, to read as follows:

[Note: All of the following text is new language to be added to the California Code of Regulations.]

93111. Chlorinated Toxic Air Contaminants Airborne Toxic Control Measure--Automotive Maintenance and Repair Activities.

(a) **Applicability**

- (1) Except as provided in subdivision (b), this section applies to any person who sells, supplies, offers for sale, or manufactures automotive consumer products for use in automotive maintenance or repair activities in California.
- (2) This section also applies to the owner or operator of any automotive maintenance facility or automotive repair facility that uses automotive consumer products in California.

(b) **Exemptions**

- (1) This section does not apply to any automotive consumer product manufactured in California for shipment and use outside of California.
- (2) This section does not apply to a manufacturer or distributor who sells, supplies or offers for sale in California an automotive consumer product that does not comply with the standards specified in subdivision (d) if the manufacturer or distributor can demonstrate to the satisfaction of the Executive Officer both of the following: (A) the automotive consumer product is intended for shipment and use outside of California, and (B) the manufacturer or distributor has taken reasonable prudent precautions to assure that the automotive consumer product is not sold, offered for sale, or distributed in California. This subdivision (2) does not apply to manufacturers or distributors of automotive consumer products if the products are sold, supplied, or offered for sale by any person to retail outlets in California.
- (3) This section does not apply to solvent cleaning machines or to liquid products as defined in subsection (c)(17) that are designed, labeled, promoted and advertised (expressed or implied) solely for use in a solvent cleaning machine.

(c) **Definitions.** For the purposes of this section, the following definitions apply:

- (1) "Aerosol Product" means a pressurized spray system that dispenses product ingredients by means of a propellant or mechanically induced force. Any user-pressurized system that uses compressed air as a propellant is considered to be an "Aerosol Product". "Aerosol Product" does not include pump sprayers.
- (2) "ASTM" means the American Society for Testing and Materials.
- (3) "Automotive Consumer Product" for the purposes of this section, means any of the following chemically formulated aerosol products or liquid products used in automotive maintenance or repair activities: (A) brake cleaners, (B) carburetor or fuel-injection air intake cleaners, (C) engine degreasers, and (D) general purpose degreasers intended for use in automotive maintenance or repair activities.
- (4) "Automotive Maintenance Facility or Automotive Repair Facility (Facility)" means any establishment at which a person repairs, rebuilds, reconditions, services, or maintains in any way, motor vehicles. "Facility" includes entities required to be registered by the California Department of Consumer Affairs, Bureau of Automotive Repair, and entities that service or repair a fleet of ten or more motor vehicles. "Facility" does not include private residences or entities that are involved only in motor vehicle body work or painting.
- (5) "Automotive Maintenance or Repair Activities" means any service, repair, restoration, or modification activity to a motor vehicle in which cleaning or degreasing products could be used including, but not limited to, brake work, engine work, machining operations, and general degreasing of engines, motor vehicles, parts, or tools.
- (6) "Brake Cleaner" means a cleaning product designed, labeled, promoted or advertised (expressed or implied) to remove oil, grease, brake fluid, brake pad material or dirt from motor vehicle brake mechanisms and parts.
- (7) "Carburetor or Fuel-Injection Air Intake Cleaner" means a product designed, labeled, promoted or advertised (expressed or implied) to remove fuel deposits, dirt, or other contaminants from a carburetor, choke, throttle body of a fuel-injection system, or associated linkages. "Carburetor or fuel-injection air intake cleaner" does not include products designed exclusively to be introduced directly into the fuel lines or fuel storage tank prior to introduction into the carburetor or fuel injectors.
- (8) "CAS Registry Number" is a unique accession number assigned by the Chemical Abstracts Service, a division of the American Chemical Society.
- (9) "Chlorinated Toxic Air Contaminant" for the purposes of this section, means methylene chloride, perchloroethylene, or trichloroethylene.
- (10) "Consumer" means any person who seeks, purchases, or acquires any automotive consumer product for use in automotive maintenance and repair activities. Persons acquiring an automotive consumer product for resale are not "consumers" for that product.

- (11) "Distributor" means any person to whom an automotive consumer product is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.
- (12) "Engine Degreaser" means a cleaning product designed, labeled, promoted or advertised (expressed or implied) to remove grease, grime, oil or other contaminants from the external surfaces of engines and other mechanical parts.
- (13) "Executive Officer" means the Executive Officer of the California Air Resources Board, or his or her delegate.
- (14) "General Purpose Cleaner" means a product designed for general all-purpose cleaning, in contrast to cleaning products designed to clean specific substrates in certain situations. "General Purpose Cleaner" includes products designed for general floor cleaning, kitchen or counter top cleaning, and cleaners designed to be used on a variety of hard surfaces.
- (15) "General Purpose Degreaser" means any product designed, labeled, promoted or advertised (expressed or implied) to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of motor vehicle substrates or surfaces or miscellaneous metallic parts. "General Purpose Degreaser" does not include "Engine Degreaser" or "General Purpose Cleaner".
- (16) "Liquid" means a substance or mixture of substances which is capable of a visually detectable flow as determined under ASTM D-4359-90 which is incorporated by reference. "Liquid" does not include powders or other materials that are composed entirely of solid particles.
- (17) "Liquid Product" means any product that is packaged and sold as a bulk liquid including liquid delivered by pump sprayers.
- (18) "Manufacturer" means any person who imports, manufactures, assembles, produces, packages, repackages, or relabels an automotive consumer product.
- (19) "Methylene Chloride" (CAS Registry Number 75-09-2) means the compound with the chemical formula ' CH_2Cl_2 ', also known by the name 'dichloromethane', which has been identified by the Air Resources Board and listed as a toxic air contaminant in section 93000, and which is a hazardous air pollutant designated as a toxic air contaminant in section 93001.
- (20) "Motor Vehicle" means a self-propelled device by which any person or property may be propelled, moved, or drawn upon a highway, excepting a device moved exclusively by human power or used exclusively upon stationary rails or tracks. "Motor vehicle" does not include a self-propelled wheelchair, invalid tricycle, or motorized quadricycle when operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

- (21) "Owner or Operator" means a person who is the owner or the operator of an automotive maintenance facility or an automotive repair facility.
- (22) "Perchloroethylene (Perc)" (CAS Registry Number 127-18-4) means the compound with the chemical formula 'C₂Cl₄', also known by the name 'tetrachloroethylene', which has been identified by the Air Resources Board and listed as a toxic air contaminant in section 93000, and which is a hazardous air pollutant designated as a toxic air contaminant in section 93001.
- (23) "Person" means "person" as defined in Health and Safety Code section 39047.
- (24) "Pump Sprayer" means a packaging system in which the product ingredients within the container are not under pressure and in which the product is expelled only while a pumping action is applied to a button, trigger or other actuator.
- (25) "Retailer" means any person who sells, supplies, or offers for sale automotive consumer products directly to consumers.
- (26) "Retail Outlet" means any establishment at which automotive consumer products are sold, supplied, or offered for sale directly to consumers.
- (27) "Solvent Cleaning Machine" means any device or piece of equipment with a capacity greater than 7.6 liters (2 gallons) that uses methylene chloride, perchloroethylene, or trichloroethylene to remove or dissolve grease, grime, oil and other oil-based contaminants from a variety of motor vehicle substrates or surfaces or miscellaneous metallic parts.
- (28) "Trichloroethylene" (CAS Registry Number 79-01-6) means the compound with the chemical formula 'C₂HCl₃', also known by the name 'TCE', which has been identified by the Air Resources Board and listed as a toxic air contaminant in section 93000, and which is a hazardous air pollutant designated as a toxic air contaminant in section 93001.

(d) **Standards for Automotive Consumer Products**

- (1) Except as provided in subdivision (b), subdivision (e) and subdivision (g), after the effective dates specified in the following Table of Standards no person shall sell, supply, offer for sale, or manufacture for sale in California any automotive consumer product that, at the time of sale or manufacture, contains methylene chloride, perchloroethylene or trichloroethylene.

Table of Standards

| Product Category | Effective Date |
|---|----------------|
| Brake Cleaner | June 30, 2001 |
| Carburetor or Fuel-injection Air Intake Cleaners | June 30, 2001 |
| Engine Degreaser | June 30, 2001 |
| General Purpose Degreaser | June 30, 2001 |

- (2) For the purposes of subdivision (d)(1), a product “contains methylene chloride, perchloroethylene or trichloroethylene” if the product contains 1.0 percent or more by weight (exclusive of the container or packaging) of any one of the compounds methylene chloride, perchloroethylene, or trichloroethylene as determined by the test method specified in subdivision (h).
- (3) No owner or operator of an automotive maintenance facility or automotive repair facility shall use an automotive consumer product prohibited under subdivision (d)(1) after December 31, 2002.
- (e) **Sell-through of products**
- (1) Notwithstanding the provisions of subdivisions (d)(1) and (d)(2), an automotive consumer product manufactured prior to the effective date specified for that product category in the Table of Standards may be sold, supplied, or offered for sale for up to 12 months after the specified effective date.
- (2) This subdivision (e) does not apply to any automotive consumer product if that product does not display, on the product container or package, the date on which the product was manufactured or a code indicating such date.
- (f) **Administrative Requirements - Code-Dating**
- (1) Each manufacturer of an automotive consumer product subject to this section shall clearly display on each automotive consumer product container or package, the day, month, and year on which the product was manufactured, or a code indicating the day, month, and year of manufacture. This date or code-date shall be displayed on each automotive consumer product container or package manufactured on or after [insert 30 days after the effective date of this section]. No person shall erase, alter, deface or otherwise remove or make illegible any date or code-date from any regulated product container or package without the express authorization of the manufacturer.
- (2) If a manufacturer uses a code indicating the date of manufacture for any automotive consumer product subject to this section, the manufacturer shall file an explanation of the

code with the Executive Officer of the ARB no later than [insert 30 days after the effective date of this section].

(g) **Variances**

- (1) *Applications for variances.* Any person who cannot comply with the requirements set forth in subdivision (d) because of extraordinary reasons beyond the person's reasonable control may apply in writing to the Executive Officer for a variance. The variance application shall set forth:
 - (A) the specific grounds upon which the variance is sought;
 - (B) the proposed date(s) by which compliance with the provisions of subdivision (d) will be achieved; and
 - (C) a compliance report reasonably detailing the method(s) by which compliance will be achieved.
- (2) *Notices and public hearings for variances.* Upon receipt of a variance application containing the information required in subdivision (g)(1), the Executive Officer will hold a public hearing to determine whether, under what conditions, and to what extent, a variance from the requirements in subdivision (d) is necessary and will be permitted. The Executive Officer will initiate a hearing no later than 75 days after receipt of a variance application. The Executive Officer will send notice of the time and place of the hearing to the applicant by certified mail not less than 30 days prior to the hearing. The Executive Officer will submit notice of the hearing for publication in the California Regulatory Notice Register, and not less than 30 days prior to the hearing, the Executive Officer will send a notice to every person who requests such notice. The notice will state that the parties may, but need not, be represented by counsel at the hearing. At least 30 days prior to the hearing, the Executive Officer will make the variance application available to the public for inspection. The Executive Officer will allow interested members of the public a reasonable opportunity to testify at the hearing and will consider their testimony.
- (3) *Treatment of confidential information.* Information submitted to the Executive Officer by a variance applicant may be claimed as confidential, and such information will be handled in accordance with the procedures specified in sections 91000-91022. The Executive Officer may consider such confidential information in reaching a decision on a variance application.

- (4) *Necessary findings for granting variances.* The Executive Officer will not grant a variance unless the Executive Officer finds that:
- (A) because of reasons beyond the reasonable control of the applicant, requiring compliance with subdivision (d) would result in extraordinary economic hardship to the applicant; and
 - (B) the public interest in mitigating the extraordinary hardship to the applicant by issuing the variance outweighs the public interest in avoiding any increased emissions of toxic air contaminants that would result from issuing the variance; and
 - (C) the compliance report proposed by the applicant can reasonably be implemented and will achieve compliance as expeditiously as possible.
- (5) *Variance orders.* Any variance order will specify a final compliance date by which the requirements of subdivision (d) will be achieved. Any variance order will contain a condition that specifies increments of progress necessary to assure timely compliance, and such other conditions that the Executive Officer, in consideration of the testimony received at the hearing, finds necessary to carry out the purposes of Division 26 of the Health and Safety Code.
- (6) *Situations in which variances will cease to be effective.* A variance will cease to be effective upon failure of the party to whom the variance was granted to comply with any term or condition of the variance.
- (7) *Modification and revocation of variances* Upon the application of any person, the Executive Officer may review, and for good cause, modify or revoke a variance from requirements of subdivision (d) after holding a public hearing in accordance with the provisions of subdivision (g)(2).
- (h) **Test Methods**
- (1) Air Resources Board Method 310, Determination of Volatile Organic Compounds (VOC) in Consumer Products, adopted September 25, 1997, and as last amended on September 3, 1999, is incorporated herein by reference. Sections 3.5 and 3.7 will be used to perform the testing to determine compliance with the requirements of this section.
 - (2) For the purposes of determining compliance with this section, "VOC" in Method 310 mean "chlorinated toxic air contaminant" as defined in this section.
 - (3) Alternative methods which are shown to accurately determine the concentration of methylene chloride, perchloroethylene, or trichloroethylene in a subject product or its emissions may be used upon written approval of the Executive Officer.

NOTE: Authority cited: Sections 39600, 39601, 39658, 39659, and 39666, Health and Safety Code. Reference: Sections 39002, 39600, 39650, 39655, 39656, 39658, 39659, 39665, and 39666, Health and Safety Code.