A U.S. Regulatory Update:

Tracking Developments from SCAQMD,

By Heidi McAuliffe,
ACA Vice President of Government Affairs

As the American Coatings Association (ACA) works to advance the needs of the paint and coatings industry, it closely monitors the development of legislation and regulations that impact the coatings industry at federal, state, and local levels. ACA's goal is to educate decision-makers and advocate for reasonable requirements.

Many states and local air districts have implemented increasingly more stringent volatile organic compound (VOC) regulations over the past few decades, and this trend will continue as states and districts attempt to comply with the national ozone standards. More states and local districts are also developing programs and regulations to encourage chemical substitution and phasing out raw materials used in coatings that are deemed hazardous.

Some of the regulations ACA is tracking are from the South Coast Air Quality Management District (SCAQMD), Washington Department of Ecology (DOE), and the U.S. Environmental Protection Agency (EPA). The following are overviews of the regulations and ACA's efforts to advocate on behalf of the paint and coatings industry.

SCAQMD 2022 AIR QUALITY MANAGEMENT PLAN

The South Coast Air Quality Management District is working on its 2022 Air Quality Management Plan that provides a blueprint for SCAQMD achieving air-quality standards. Of concern, SCAQMD included a proposed coatings-control measure that will impact the coatings industry: CTS-01 Further Emission Reduction from Coatings, Adhesives, and Sealants. CTS-01 mentions removing the PCBTF VOC exemption and incentivizing the use of UV light, electron beam, and light-emitting diode technologies.

Elimination of PCBTF VOC Exemption

PCBTF is the most widely used solvent in the coatings and adhesives industry. It is used in field-applied architectural and industrial maintenance coatings; marine coatings; auto-refinish coatings; factory-applied metal, plastic, and wood coatings; and in adhesives and consumer products, including paint thinners.

In June 2018, the National Toxicology Program, or NTP, released its final carcinogen report on PCBTF—also known as Oxsol 100, Parachlorobenzotrifluoride, and p-Chloro-a,a,a-trifluorotoluene. The NTP report prompted SCAQMD to ask the state of California to review the health data related to PCBTF, and in June 2019, California added PCBTF to its listing of chemicals that require warning under Proposition 65. Proposition 65 requires businesses to provide warnings to Californians about significant exposures to chemicals that cause cancer, birth defects or other reproductive harm.

The extensive use of PCBTF in industry products is largely because EPA exempted PCBTF from its list of VOCs in 1994. In addition, PCBTF has more favorable characteristics than other exempt compounds. For example, it evaporates slower and has a higher flash point, which make it less flammable than

Washington DOE, and EPA

other exempt VOCs, including acetone. However, California's addition of PCBTF to the Proposition 65 chemical list jeopardizes the PCTF VOC exemption.

As part of its review of PCBTF-containing products subject to varied district air regulations, SCAQMD will survey the industry to determine whether PCBTF alternative coatings exist in sufficient quantities. If alternatives exist, SCAQMD will remove the VOC exemption. However, if SCAQMD does not find PCBTF alternatives in sufficient quantities, SCAQMD could raise the VOC limits to accommodate the continued use of PCBTF or other solvents. SCAQMD would have to offset any VOC emissions via lower VOC limits for other coatings categories, resulting in possible significant VOC limit reductions in the various SCAQMD coatings rules.

A raw material supplier company would typically coordinate advocacy efforts to maintain PCBTF's exempt VOC status, including filing comments. Because there are no domestic manufacturers of PCBTF—all production occurs in China—ACA has been leading industry advocacy efforts. ACA has developed a PCBTF coalition consisting of industry associations and end-users, and it has held several PCBTF coalition meetings with SCAQMD. ACA will continue to advocate on this issue.

Additional Developments at SCAQMD

In February 2022, SCAQMD began its review of Rule 1168 governing VOC emission limits for adhesive and sealants. This effort will likely be followed by a review of Rule 1151 (auto refinish), and Rule 1107 (metal parts). In total, SCAQMD will review 15 coatings rules. ACA requested SCAQMD address one rule at a time, and it appears that SCAQMD is willing to do that.

In each of the various coatings rules, SCAQMD will also incentivize the use of low- or zero-VOC technologies, including requiring the use of UV light, electron beam, and light-emitting diode technologies. Although these technologies may work in certain applications, they may not be feasible on a wide scale or may have too many limitations or technical issues.

WASHINGTON STATE 'SAFER PRODUCTS' PROGRAM

The "Safer Products for Washington" program implements the Pollution Prevention for Healthy People and Puget Sound Act, signed into law in May 2019. The Safer Product program requires the Washington Department of Ecology to reduce the use of toxic chemicals in products by restricting or eliminating toxic chemicals when safer alternatives are available.

DOE must complete four phases:

- Phase 1 identifies key priority chemicals.
- Phase 2 designates "priority consumer products" containing these chemicals.
- Phase 3 identifies safer alternatives.
- Phase 4 restricts or prohibits chemicals in products as needed.

In January 2020, DOE released a list of priority chemicals that included PFAS, phthalates, flame retardants,

polychlorinated biphenyls (PCBs), and phenolic compounds, including bisphenols. A few months later, in May 2020, DOE added paint and printing inks as priority consumer products, citing polychlorinated biphenyls. Several organic pigments used in the coatings industry (including azo oriange and reds, diarylide yellows, and phthalocyanine blues and greens) may have low concentrations of inadvertent PCBs, or iPCBs.

In November 2021, DOE released for public comment its proposed decision to restrict iPCBs in paints and inks. DOE has suggested a 10 ppb or 25 ppb PCB level for interior/exterior building paint, spray paint, road paint, and children's paint. DOE says it will finalize the decision on June 1, 2022, and will complete any regulations for iPCBs in paint and ink by June 1, 2023.

ACA submitted comments to DOE on January 28, 2022. In its comments, ACA urged DOE to conduct further exposure-based assessment to identify significant sources of PCB contamination, and in the interim asked that DOE take no further regulatory action due to a lack of information establishing paint as a significant source of PCB contamination.

In the alternative, if DOE must take additional action, ACA recommended that DOE adopt a regulatory level of 5 parts per million (ppm) in pigments, adjusted for paints, in effect building on EPA's risk-based evaluation of PCBs in products. Further background on this issue is in the article, "ACA Submits Comments to Washington DOE on Draft Report for Safer Products," which appears in the ACA Issues In-Depth section on page 32.

EPA PROPOSED AMENDMENTS TO THE NATIONAL AEROSOL COATINGS RULE

Unlike consumer products and architectural coatings, the regulatory landscape for aerosol coatings has historically been simple as there are two primary regulating agencies that govern aerosol coatings: EPA and the California Air Resources Board (CARB).

CARB regulation for aerosol coatings was adopted in the late 1990s and has been amended several times. In early 2005, the ACA Consumer Products Committee petitioned EPA to adopt a nationwide regulation for aerosol coatings based upon the California model. As a result, EPA finalized a national rule in 2008 that largely mirrored the California rule.

In 2013, amendments to CARB's aerosol coatings regulation significantly changed this landscape, however. There were no longer consistent, uniform categories or standards for aerosol coatings throughout the country. The EPA standards were outdated and no longer aligned with the CARB limits—creating a significant compliance challenge for aerosol coatings manufacturers.

One of the major issues is that the two rules contained two different Maximum Incremental Reactivity (MIR) values for a single compound: one that needs to be employed for compliance calculations in California and a different one that applied to comply with the EPA national rule. Consequently, classification of aerosol coatings products and the required labeling was impossible to determine for a national market.

ACA pressed EPA to address these compliance issues. In 2017, ACA developed and submitted two petitions for rulemaking regarding EPA's aerosol coatings rule. The first petition requested that EPA update its table of

MIR values, adjust the default value, modify the regulatory language to allow for changing the value of existing compounds, and add several aerosol coatings compounds to EPA's tables.

Since 2017, ACA has worked diligently to persuade EPA to focus on these petitions and provide some response regarding the process moving forward. Multiple meetings were conducted with senior officials at EPA in the Office of Policy, Office of Small Business Ombudsman, and the Office of Air and Radiation.

On September 17, 2021, EPA formally issued proposed amendments to the national aerosol coatings rule, including the following changes:

- Update the product-weighted reactivity limits by coatings category
- Update the MIR values for several aerosol coatings compounds
- Add new compounds and reactivity factors
- Revise the default reactivity value (18.50)
- Amend the thresholds for compounds regulated by the rule
- Add electronic reporting provisions

The proposed amendments are largely consistent with CARB's Aerosol Coatings Rule and Table of MIR Values. The agency proposed the amendments, in part, to promote consistency and uniformity between the California aerosol coatings rule and the national aerosol coatings regulation.

ACA continues to work with the EPA to finalize this rule. In comments submitted in November 2021, ACA supported many of the proposed changes to the aerosol coatings regulation, including updated product-weighted reactivity limits by coatings category, updated reactivity values in Tables 2A, 2B, and 2C as well as the addition of several new compounds. ACA also argues for a reasonable compliance date and the ability to use the new and updated MIR values immediately upon publication in the *Federal Register* to assist with compliance.

Remaining issues include the default reactivity value. ACA had requested that this default value be aligned with the default value employed by the CARB regulation. The EPA proposal, however, establishes a default value of 18.50 g O_3/g VOC. The default value in the CARB regulation is 11.97 g O_3/g VOC. A high default value operates as a barrier to innovation as the development of new and environmentally friendly compounds are assigned this artificially high reactivity value—resulting in better, safer, and environmentally friendly formulas that may still not meet regulatory requirements.

ACA continues to press the case that this default value is too high. In addition, ACA has requested that several definitions be modified and that several new terms be defined to align with the California rule and thereby enhance compliance by the industry.

The comment deadline on the proposed rule was in November 2021; ACA anticipates that a final rule will be issued in 2022.

CONCLUSION

As the paint and coatings industry faces the challenges wrought by the COVID-19 pandemic, ACA will remain a consistent voice of the industry, serving as an effective advocate and keeping its members apprised on legislative, regulatory, and judicial issues at the federal state and local levels. Visit *paint.org* for regular updates on ongoing ACA advocacy efforts. ❊