

(Draft Board Letter)

BOARD MEETING DATE: January 9, 2009

AGENDA NO.

PROPOSAL: Amend Rule 314 – Fees for Architectural Coatings

SYNOPSIS: Rule 314 - Fees for Architectural Coatings was adopted in June 2008. The proposed amendment clarifies the applicability and reporting requirement sections of the rule to include architectural coatings sold through big box retailers, as well as adding a fee exemption for recycled coatings.

COMMITTEE: Administrative, November 14, 2008 and Stationary Source, November 21, 2008, Reviewed

RECOMMENDED ACTIONS:

Adopt the attached resolutions:

1. Certifying the Notice of Exemption for Proposed Amended Rule 314 – Fees for Architectural Coatings; and
2. Amending Rule 314 – Fees for Architectural Coatings.

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Executive Officer

EC:LT:LB:NB:RC

Background

Rule 314 – Fees for Architectural Coatings, adopted by the Governing Board on June 6, 2008, sets fees for manufacturers of architectural coatings to recover the AQMD cost of regulating architectural coatings. Architectural coatings represent one of the largest VOC emission source categories regulated by the AQMD. After control, the emissions are estimated to be 23 tons per day.

The rule affects about 200 architectural coatings manufacturers. Beginning in 2009 and

each subsequent calendar year, Rule 314 requires architectural coatings manufacturers to report to AQMD the total annual quantity (in gallons) and emissions of each of their architectural products distributed or sold into or within the AQMD for use in the AQMD, during the previous calendar year. Fees are assessed on the manufacturers' reported annual quantity of architectural coatings as well as the cumulative VOC emissions from the reported annual quantity of coatings. Data collected from the manufacturers will also provide AQMD with an annual emissions inventory that will be used for planning purposes.

There is a three-year phase-in period for Rule 314 implementation, with the fee rate set in 2009 to recover approximately one-half the cost of the architectural coatings program, three-fourths of the cost in 2010, and the full cost of the program recovered in subsequent years. When fully implemented, it is expected that revenues from Rule 314 would provide AQMD the resources needed to recover the cost of the current program and for implementing an enhanced compliance program necessary to ensure a high level of compliance. Given an estimated 15,000 sources, staff anticipates approximately 3,000 inspections yearly and about 750 to 800 samples of architectural coatings collected for laboratory VOC compliance analysis, in order to ensure a high compliance rate for the program.

Rule 314 also requires coatings manufacturers to submit to AQMD on an annual basis a list of all of their U.S. distributors in order for AQMD to determine the extent of architectural coatings not accounted for in the Annual Quantity and Emissions report. Staff has committed to return to the Board at a later date with recommendations to incorporate distributors in the rule to the extent appropriate.

In addition, Rule 314 contains a fee exemption for architectural coatings containing 5 or less grams of VOC per liter of material to further encourage the development, marketing and use of lower-VOC coatings.

Near the conclusion of the Rule 314 rulemaking last June, industry representatives contended there are significant sales of architectural coatings through big box retailers that may not be reported. As a result, the Board directed staff to investigate the issue and report back with recommended rule amendments if appropriate. In addition, after the public hearing was noticed, an issue arose regarding the fees for post-consumer coatings in recycled coatings. Staff did not intend that fees apply to these post-consumer coatings generated in the AQMD; however, this was not explicitly stated in Rule 314. This rule amendment addresses the Board directives for big box retailers and fees on recycled coatings.

Proposal

Proposed Amended Rule 314 will add language to clarify that the rule applies to products sold through big box retailers with distribution centers located within or outside the AQMD. A definition for big box retailer is also proposed for rule clarity.

At the public hearing of Rule 314, industry representatives pointed out that the rule applies only to coating manufacturers who distribute or sell their manufactured coatings into or within the AQMD, and excludes big box retailers that ship coatings into the AQMD from warehouses located outside the AQMD and alleged that the coatings sold by big box retailers represented a significant percentage of market share. Some manufacturers also stated it would be difficult to track their products released to second or third party distributors.

Several major manufacturers of architectural coatings have indicated to AQMD that they are able to track specific volume of products sold into the AQMD through big box retailers for compliance purposes, considering AQMD's more stringent VOC limits than other parts of California and the United States. Staff also discovered that most manufacturers ship coatings directly to big box retail stores in the AQMD. In addition, representatives of big box retailers indicated to AQMD and industry that their database for product inventory and ordering are available to their suppliers; thus providing information that would allow manufacturers to report all sales to big box retailers. As a result, staff's proposal revises the Applicability and Reporting section of Rule 314 to explicitly stipulate that all volume of coatings sold through big box retailers with distribution centers located within or outside the AQMD are to be included in the Annual Quality and Emissions Report submitted by the coating manufacturers.

During the public workshop for PAR 314 held on October 30, 2008, several manufacturers pointed out that Rule 314 currently does not require big box retailers to accurately report their volume of architectural coatings sold into or within the AQMD, and yet, the rule requires architectural coatings manufacturers to certify the Annual Quantity and Emissions Report they submit to AQMD, which includes products sold through big box retailers, to be true and correct. Manufacturers indicated that they could not validate the information submitted to them by big box retailers and, therefore, should not be held liable for any inaccuracy of data received. In addition, industry representatives raised an issue regarding the definition of a big box retailer in the rule and suggested that AQMD identify specific retail outlets that fall under the definition of a big box retailer to clarify rule intent.

Based on industry's concerns, staff is now proposing rule language requiring big box retailers to report to the architectural coatings manufacturers the total annual quantity of each coating product sold in the AQMD through its distribution centers located outside the AQMD for the previous calendar year (January 1 through December 31).

Furthermore, PAR 314 requires that the report submitted by a big box retailer to each architectural coating manufacturer be signed by a responsible party certifying that the information reported is true and correct. Language is also being proposed requiring AQMD to maintain a list of big box retailers within the meaning of the rule, and make such list available to industry upon request. As a result of the new reporting requirements for big box retailers, staff is also proposing to modify the rule's applicability to include big box retailers.

Regarding post-consumer coatings used in recycled coatings, it was suggested by industry during the June 2008 public hearing that such coatings be exempt from fees since the recycled portion of the coating would have already been subject to fees in its initial sale. However, at the October 2008 public workshop for PAR 314, industry requested that AQMD completely exempt recycled coatings in order to encourage recycling of post consumer coatings. Staff agrees that a complete fee exemption may provide incentive for further development and use of recycled coatings leading to greater environmental benefits; hence, staff is proposing to exempt from fees recycled coatings distributed or sold into or within the AQMD for use in the AQMD by a certified recycled paint manufacturer.

Staff held a public consultation meeting on November 19, 2008 to discuss the revisions summarized above and did not receive any additional concerns.

Key Issues

Staff resolved several issues presented by industry during the rulemaking process. Industry's key concerns, including staff's response, are summarized below.

Issue: There is no legal obligation for big box retailers to submit complete and accurate product sales to coating manufacturers, and manufacturers have to certify that all information is true and cannot rely on unsubstantiated third-party data.

Response: Staff has added rule language requiring a big box retailer to report to the architectural coating manufacturer of that product the total annual quantity of each coating product distributed or sold in the AQMD through its distribution centers located outside the AQMD. The proposed language also requires the report to be submitted by January 31st to each manufacturer and be signed by a responsible party certifying the information reported to be true and accurate.

Issue: The definition of big box retailer is vague. The AQMD needs to identify who is covered by the big box retailer definition.

Response: Staff has modified the definition for big box retailer. Further, rule language is added stating that the AQMD will maintain a list of big box retailers within the meaning of the rule and make such list available upon request.

Issue: The environmental benefits associated with recycling unwanted leftover latex paints justify an exemption from the rule. A rule exemption similar to near-zero VOC paint will incentivize further development, marketing, and use of recycled paint.

Response: Staff has modified its earlier proposal and is now proposing to completely exempt from fees all recycled coatings.

California Environmental Quality Act (CEQA)

Pursuant to CEQA, the SCAQMD is the Lead Agency and has reviewed proposed amended Rule 314 pursuant to CEQA Guidelines §§15002 (k)(1) and 15061. The proposed project clarifies the applicability of those facilities subject to the rule, imposes new reporting requirements, and provides a new exemption from assessing fees from recycled coatings manufacturers. Because the proposed project does not affect emissions or change the current environmental setting, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, therefore, the activity is not subject to CEQA pursuant to CEQA Guidelines §15061(b)(3). In addition, as a modification to a fee rule with the primary purpose of imposing fees to recover the program costs for implementing Rule 1113 – Architectural Coatings, it is statutorily exempt from CEQA pursuant to CEQA Guidelines §15273 - Rates, Tolls, Fares and Charges. A Notice of Exemption has been prepared pursuant to CEQA Guidelines §15062 - Notice of Exemption. The Notice of Exemption will be filed with the county clerks of Los Angeles, Orange, Riverside and San Bernardino counties immediately following the adoption of the proposed project.

Socioeconomic Analysis

The proposed amendments do not directly affect air quality or emissions limitations. Therefore, a formal socioeconomic assessment is not required.

Authority to Assess Fees

California Health and Safety Code Section 40522.5 establishes the AQMD's authority to adopt a schedule of fees to be assessed on areawide or indirect sources of emissions which are regulated, but for which permits are not issued, to recover the costs of programs related to these sources. Under California law, the primary authority for controlling emissions from architectural coatings is vested in the air pollution control districts (APCDs).

Draft Findings

Health and Safety Code section 40727 requires that prior to adopting, amending or

repealing a rule or regulation, the AQMD Governing Board shall make findings of necessity, authority, clarity, consistency, non-duplication, and reference based on relevant information presented at the hearing. The draft findings are as follows:

Necessity - The AQMD Governing Board has determined that a need exists to amend Rule 314 – Fees for Architectural Coatings to clarify the scope of reporting requirements for products sold through big box retailers, and to exempt recycled coatings.

Authority - The AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Health and Safety Code Sections 39002, 40000, 40001, 40440, 40522.5, 40702, and 41508.

Clarity - The AQMD Governing Board has determined that Proposed Amended Rule 314 – Fees for Architectural Coatings is written and displayed so that the meaning can be easily understood by persons directly affected.

Consistency - The AQMD Governing Board has determined that Proposed Amended Rule 314 – Fees for Architectural Coatings is in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, federal or state regulations.

Non-Duplication - The AQMD Governing Board has determined that the amendment of Rule 314 – Fees for Architectural Coatings do not impose the same requirement as any existing state or federal regulation, and the proposed amendments are necessary and proper to execute the powers and duties granted to, and imposed upon, the AQMD.

Reference - In adopting this regulation, the AQMD Governing Board references the following statutes which the AQMD hereby implements, interprets or makes specific: Health and Safety Code Sections 40001 (rules to achieve ambient air quality standards), 40440(a) (rules to carry out the Air Quality Management Plan), and 40522.5 (fees for area sources).

Conclusions and Recommendations

Staff has concluded that manufacturers of architectural coatings are capable of tracking specific volume of products sold into the AQMD through big box retailers. In addition, big box retailers need to have reporting responsibilities to ensure that coating products sold through big box retailers are reported to architectural coating manufacturers. Exempting recycled coatings from fees may provide greater environmental benefits and encourage further development and use of such coatings. As a result, staff recommends that Rule 314 be amended to clarify the applicability and reporting requirement sections of the rule to include architectural coatings sold through big box retailers, add new reporting requirements for big box retailers, and exempt from fees recycled coatings sold or distributed within the AQMD.

Attachment

A. Rule Language