

BOARD MEETING DATE: January 9, 2009

AGENDA NO. 20

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 resolution:

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

Barry R. Wallerstein, D.Env.
Executive Officer

EC:LT:LB:NB:RC

Background

Rule 314 – Fees for Architectural Coatings, adopted by the 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 full implementation of VOC limits under Rule 1113 – Architectural Coatings, 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. In August 2008, with the help of six inspectors, staff conducted a two-week focused enforcement effort that included inspecting mass merchants, manufacturer-owned stores, small retailers, and construction sites located throughout the AQMD, including outlying areas. This limited effort indicated a non-compliance rate of 34 percent, mostly at retail outlets.

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 used 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 databases 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. Recycled paint manufacturers remain subject to all other requirements of Rule 314, including the requirement to submit an Annual Quantity and Emissions Report, although VOC content data and other compositional data submitted in the report shall be based on quarterly VOC tests already conducted by the recycled coatings manufacturers for other groups such as Green Seal.

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 AQMD 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).

Conclusions and Recommendations

Staff has concluded that manufacturers of architectural coatings are capable of tracking the 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 will ensure that such products are not double charged and the environmental benefits of recycling coatings are not inadvertently negated. 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. Summary of Proposal
- B. Rule Development Process
- C. Key Contacts List
- D. Resolution
- E. Proposed Rule Language
- F. Notice of Exemption

ATTACHMENT A

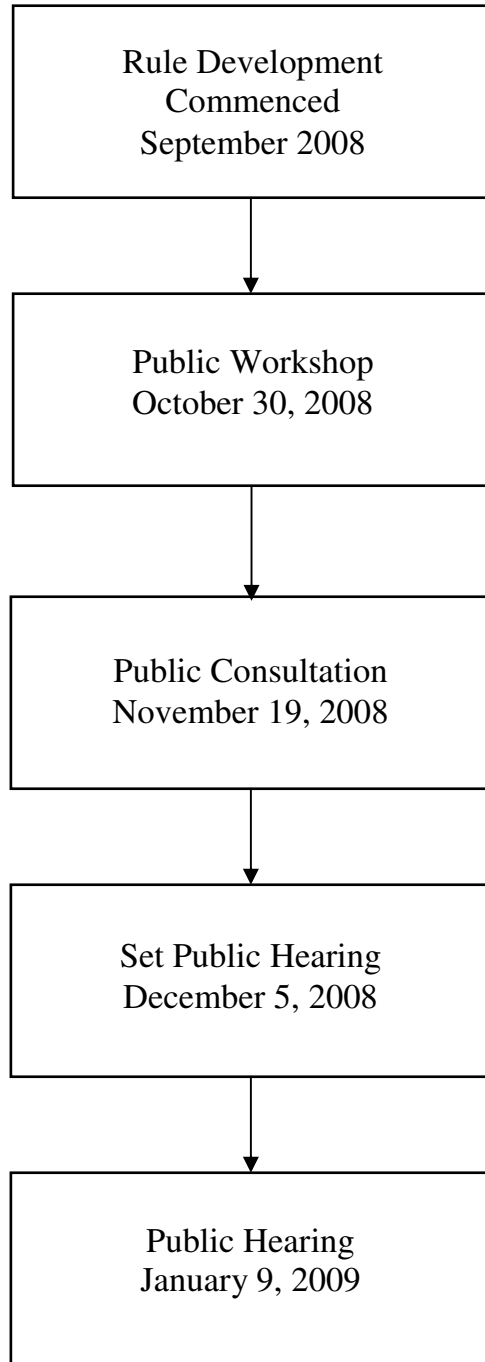
SUMMARY OF PROPOSAL

PROPOSED AMENDED RULE 314 – FEES FOR ARCHITECTURAL COATINGS

- 1.** Clarify the rule’s applicability and reporting requirement sections to include architectural coatings sold through big box retailers;
- 2.** Add rule provision requiring big box retailers to report to architectural coating manufacturers products distributed or sold in the District through its distribution centers located outside the District;
- 3.** Add definition for big box retailers; and
- 4.** Exempt recycled coatings from fees.

ATTACHMENT B
RULE DEVELOPMENT PROCESS

Proposed Amended Rule 314 – Fees for Architectural Coatings



Total Time Spent In Rule Development Pre-Board Hearing: 4 Months

ATTACHMENT C
KEY CONTACTS LIST

Amazon Paint
Behr Process
California Integrated Waste Management Board
California Retailers Association
DEFT
Dunn-Edwards Paints
Dutko Worldwide
Frazee Paint
Hill Brothers
Home Depot, Inc.
Kelly-Moore Paint Company
Law Offices of Curt Coleman
Lowe's
National Paint & Coatings Association
NTS Corporation
Pacific Polymers
PPG Industries
R.J. McGlennon Co., Inc.
Sears Holdings Corporation
Sherwin-Williams Company
Vista Paint Corporation
Wal-Mart
W.R. Meadows, Inc.

RESOLUTION NO. _____

A Resolution of the Governing Board of the South Coast Air Quality Management District (AQMD) certifying that Proposed Amended Rule 314 – Fees for Architectural Coatings is exempt from the requirements of the California Environmental Quality Act (CEQA).

A Resolution of the AQMD Governing Board amending Rule 314 – Fees for Architectural Coatings.

WHEREAS, the AQMD Governing Board finds and determines that Proposed Amended Rule 314 – Fees for Architectural Coatings is considered a "project" pursuant to the CEQA; however, the AQMD Governing Board hereby determines that the proposal is statutorily exempt from the requirements of CEQA pursuant to CEQA Guidelines §15273 – Statutory Exemption for Rates, Tolls, Fares and Charges, §15061(b)(3) – General Rule Exemption, and Public Resources Code §21080(b)(8); and

WHEREAS, the AQMD Governing Board finds that Proposed Amended Rule 314 qualifies for a statutory exemption pursuant to CEQA Guidelines §15273 because the amendments involve a modification to a fee rule with the primary purpose of meeting operating expenses, and purchasing or leasing supplies, equipment or materials, specifically imposing fees to recover the program costs for implementing Rule 1113 – Architectural Coatings; and

WHEREAS, the AQMD has had its regulatory program certified pursuant to Public Resources Code Section 21080.5 and has conducted CEQA review and analysis pursuant to such program (Rule 110); and

WHEREAS, AQMD staff has prepared a Notice of Exemption (NOE) for Proposed Amended Rule 314 that is completed in compliance with CEQA Guidelines §15002(k)(1) – Three Step Process, §15061(b)(1) – Review for Exemption (By Statute), §15061(b)(3) – Review for Exemption (General Rule), and §15273 - Statutory Exemption for Rates, Tolls, Fares and Charges; and

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

WHEREAS, the AQMD Governing Board obtains its authority to adopt, amend, or repeal rules and regulations from Sections 39002, 40000, 40001, 40440, 40522.5, 40702, and 41508 of the California Health and Safety Code; and

WHEREAS, 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; and

WHEREAS, 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, state or federal regulations; and

WHEREAS, the AQMD Governing Board has determined that the amendment of Rule 314 – Fees for Architectural Coatings does not impose the same requirements 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; and

WHEREAS, 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); and

WHEREAS, the AQMD Governing Board has determined that Proposed Amended Rule 314 – Fees for Architectural Coatings does not directly affect air quality or emission limitations; therefore, a formal socioeconomic assessment under California Health and Safety Code Section 40440.8 is not required; and

WHEREAS, the AQMD Governing Board has determined that a comparative analysis under California Health and Safety Code Section 40727.2 is not required because there is not an air pollution control requirement in the rule; and

WHEREAS, a public hearing has been properly noticed in accordance with all provisions of Health and Safety Code, Section 40725; and

WHEREAS, the AQMD Governing Board has held a public hearing in accordance with all provisions of law; and

WHEREAS, the CEQA NOE, this January 9, 2009 Board letter, and other supporting documentation were presented to the AQMD Governing Board and the Board has reviewed and considered the entirety of this information prior to approving the project; and

WHEREAS, the AQMD specifies the manager of Rule 314 as the custodian of the documents or other materials which constitute the record of proceedings upon which the adoption of this proposed amendment is based, which are located at the South Coast Air Quality Management District, 21865 Copley Drive, Diamond Bar, California.

NOW, THEREFORE, BE IT RESOLVED, that the AQMD Governing Board does hereby certify the Notice of Exemption for Proposed Amended Rule 314 – Fees for Architectural Coatings, as proposed to be amended, completed in compliance with CEQA Guidelines §15002(k)(1) - Three Step Process, §15061(b)(1) – Review for Exemption (By Statute), §15061(b)(3) – Review for Exemption (General Rule), and

§15273 – Rates, Tolls, Fares and Charges. This information was presented to the Governing Board, whose members reviewed, considered, and approved the information therein prior to acting on Proposed Amended Rule 314; and

BE IT FURTHER RESOLVED, that the AQMD Governing Board does hereby amend, pursuant to the authority granted by law, Rule 314 – Fees for Architectural Coatings, as set forth in the attached, and incorporated herein by this reference.

Attachment

DATE: _____

CLERK OF THE BOARD

PROPOSED AMENDED RULE 314. FEES FOR ARCHITECTURAL COATINGS

(a) Purpose

The purpose of this rule is to recover the District's cost of implementing the architectural coatings program and programs related to architectural coatings, and the revenues shall only be used for such purposes. California Health and Safety Code Section 40522.5 provides authority for the District to adopt a fee schedule on areawide or indirect sources of emissions which are regulated, but for which permits are not issued by the District, to recover the costs of programs related to these sources.

(b) Applicability

This rule applies to architectural coatings manufacturers that distribute or sell their manufactured architectural coatings into or within the District for use in the District and are subject to Rule 1113 - Architectural Coatings. [This rule also applies to big box retailers that distribute or sell architectural coatings into or within the District for use in the District and are subject to Rule 1113 – Architectural Coatings. This includes products sold through big box retailers with distribution centers located within or outside the District.](#) This rule does not apply to architectural coatings sold in this District for shipment and application outside of this District or to aerosol coating products.

(c) Definitions

For the purpose of this rule, the following definitions shall apply:

- (1) AEROSOL COATING PRODUCT means a pressurized coating product containing pigments or resins that dispenses product ingredients by means of a propellant, and is packaged in a disposable can for hand-held application, or for use in specialized equipment for ground marking and traffic marking applications.
- (2) ANNUAL QUANTITY AND EMISSIONS REPORT includes the quantity of each architectural coating distributed or sold into or within the District for use in the District during each calendar year, reported as gallons and their associated VOC content, as supplied, reported in grams per liter, for each product in all container sizes.
- (3) APPURTENANCES are accessories to a stationary structure, including, but not limited to: hand railings, cabinets, bathroom and kitchen fixtures, fences, rain-

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

gutters and down-spouts, window screens, lamp-posts, heating and air conditioning equipment, other mechanical equipment, large fixed stationary tools, signs, motion picture and television production sets, and concrete forms.

(4) ARCHITECTURAL COATINGS are any coatings applied to stationary structures and their appurtenances, to mobile homes, to pavements, or to curbs.

(5) ARCHITECTURAL COATINGS MANUFACTURER is any company or person that imports, manufactures, produces, packages, or repackages architectural coatings for sale or distribution for use in the District.

~~(6)~~ **BIG BOX RETAILER is a physically large-chain retail outlet that is classified by the U.S. Department of Labor under Standard Industrial Classification code 5211: Lumber and Other Building Materials Dealers, and listed by the Executive Officer as such prior to end of each calendar year.**

~~(6)(7)~~ COATING is a material which is applied to a surface in order to beautify, protect, or provide a barrier to such surface.

~~(7)(8)~~ EXEMPT COMPOUNDS are as defined in Rule 102 - Definition of Terms.

~~(8)(9)~~ FORMULATION DATA is the actual product recipe which itemizes all the ingredients contained in a product including VOCs and the quantities thereof used by the manufacturer to create the product. Material Safety Data Sheets (MSDS) are not considered formulation data.

~~(9)(10)~~ GRAMS OF VOC PER LITER OF COATING, LESS WATER AND LESS EXEMPT COMPOUNDS, is the weight of VOC per combined volume of VOC and coating solids and can be calculated by the following equation:

$$\begin{array}{l} \text{Grams of VOC per Liter of Coating, Less} \\ \text{Water and Less Exempt Compounds} \end{array} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

Where:

W_s	=	weight of volatile compounds in grams
W_w	=	weight of water in grams
W_{es}	=	weight of exempt compounds in grams
V_m	=	volume of material in liters
V_w	=	volume of water in liters
V_{es}	=	volume of exempt compounds in liters

For coatings that contain reactive diluents, the Grams of VOC per Liter of Coating, Less Water and Less Exempt Compounds, shall be calculated by the following equation:

$$\begin{array}{l} \text{Grams of VOC per Liter of Coating, Less} \\ \text{Water and Less Exempt Compounds} \end{array} = \frac{W_s - W_w - W_{es}}{V_m - V_w - V_{es}}$$

Proposed Rule Amended Rule 314 (cont.)(~~Adopted June 6~~Amended January 9, 20089)

Where:

W_s	=	weight of volatile compounds emitted during curing, in grams
W_w	=	weight of water emitted during curing, in grams
W_{es}	=	weight of exempt compounds emitted during curing, in grams
V_m	=	volume of the material prior to reaction, in liters
V_w	=	volume of water emitted during curing, in liters
V_{es}	=	volume of exempt compounds emitted during curing, in liters

~~(10)~~(11) GRAMS OF VOC PER LITER OF MATERIAL is the weight of VOC per volume of material and can be calculated by the following equation:

$$\text{Grams of VOC per Liter of Material} = \frac{W_s - W_w - W_{es}}{V_m}$$

Where:

W_s	=	weight of volatile compounds in grams
W_w	=	weight of water in grams
W_{es}	=	weight of exempt compounds in grams
V_m	=	volume of the material in liters

~~(11)~~(12) PRODUCT is an architectural coating which is identified by means of a unique product code and product name or product line (if applicable), as written on the container label and that is subject to one of the coating category VOC limits specified in Rule 1113 paragraphs (c)(1) or (c)(2) Table of Standards.

~~(12)~~(13) PRODUCT LINE is a group of coatings that:

- (A) Belong to the same coating category in Rule 1113 Table of Standards,
- (B) Have the same vehicle technology (solvent or water),
- (C) Are of the same resin type,
- (D) Are recommended for the same use (either interior, exterior or dual use),
- (E) Have the same form (either single - or multiple - component form),
- (F) Do not exceed a coating (regulatory) VOC range of 25 grams per liter between the highest and lowest coating in the group, and
- (G) If included in the Averaging Compliance Option Program, meet subparagraphs (A) to (G) of this definition and have all grouped products either above a limit or below a limit.

~~(13)~~(14) RESPONSIBLE PARTY for a corporation is a corporate officer or an authorized representative so delegated by a corporate officer. Delegation of an authorized representative must be made in writing to the Executive Officer. A

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

responsible party for a partnership or sole proprietorship is the general partner or proprietor, respectively.

~~(14)~~**(15)** VOLATILE ORGANIC COMPOUND (VOC) is as defined in Rule 1113 – Architectural Coatings.

(d) Requirement to Obtain a Manufacturer Identification (ID) Number

(1) An architectural coatings manufacturer subject to this rule at any time during the calendar year 2008 shall apply to the District for a manufacturer ID number on or before December 31, 2008. An architectural coatings manufacturer that becomes subject to this rule in any year subsequent to calendar year 2008 shall apply to the District for a manufacturer ID number on or before December 31 of that year.

(2) Change or Acquisition of an Architectural Coatings Manufacturer

(A) When there is a change or acquisition of an architectural coatings manufacturer with a District issued manufacturer ID number, the successor architectural coatings manufacturer shall apply for a manufacturer ID number on or before December 31 of the calendar year of the change or acquisition, unless the successor architectural coatings manufacturer already has a District issued manufacturer ID number. The successor manufacturer shall include the previous architectural coatings manufacturer ID number in their Annual Quantity and Emissions Report for the first year after the change or acquisition.

(B) Acquisition of an architectural coatings manufacturer shall not be considered a change in ownership if the architectural coatings manufacturer who is acquired continues to file Annual Quantity and Emissions Reports and pay fees under its District issued ID number.

(e) Requirement to Submit an Annual Quantity and Emissions Report

(1) For each calendar year (January 1 through December 31) beginning with 2008 and continuing with each subsequent calendar year, an architectural coatings manufacturer shall, in a format determined by the Executive Officer, submit to the District by April 1 of the following calendar year (the official reporting due date) an Annual Quantity and Emissions Report signed by a responsible party certifying that all information submitted (including electronic submittal) is true and correct. Information included in the Annual Quantity and Emission Report that was obtained from a company not owned or controlled by the reporting architectural coatings manufacturer shall be certified as true and correct to the

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

best knowledge of the responsible party signing the certification. The Annual Quantity and Emissions Report shall include, but not be limited to, the following:

- (A) Manufacturer information including the manufacturer ID number issued by the District;
 - (B) Each architectural coating product code and product name or product line (if applicable);
 - (C) Whether the coatings are waterborne or solventborne;
 - (D) Whether the coatings are for interior, exterior, or dual use;
 - (E) The applicable coating category listed in the Table of Standards in Rule 1113 – Architectural Coatings;
 - (F) The grams of VOC per liter of coating, less water and less exempt compounds for each product as supplied for use by the manufacturer;
 - (G) The grams of VOC per liter of material for each product as supplied or for multi-component coatings as recommended for use by the manufacturer. Additionally, for solvent-based coatings, grams of VOC per liter of material with maximum thinning allowed with a VOC, as listed in the Technical Data Sheet, shall also be included.
 - (H) Total annual quantity of each product distributed or sold into or within the District for use in the District, as supplied, and reported in gallons for all container sizes. The annual quantity of each product shall include products sold through big box retailers with distribution centers located within or outside the District. Architectural coatings manufacturers shall use the list of big box retailers maintained by the Executive Officer as of the end of the calendar year for purposes of reporting quantities of products distributed or sold in the District through big box retailers; and
 - (I) For any product with VOC content higher than the applicable limit in Rule 1113, an indication whether the product has been sold under any of the following provisions of Rule 1113 – Architectural Coatings:
 - (i) Sell-through provisions
 - (ii) Averaging Compliance Option
 - (iii) Small container exemption
 - (iv) Other (with explanation).
- (2) An architectural coatings manufacturer that acquires another architectural coatings manufacturer shall provide the information specified in subparagraph (e)(1)(A) through (e)(1)(I) for the acquired architectural coatings manufacturer for the entire calendar year.

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

(3) By January 30, 2009, and every year thereafter, a big box retailer shall report to the architectural coatings manufacturer of that product the total annual quantity of each coating product distributed through its distribution centers for sale or sold in the District for the previous calendar year (January 1 through December 31), as supplied, in a format determined by the Executive Officer. Big box retailers shall use the list maintained by the Executive Officer as of the end of the calendar year of big box retailers for purposes of reporting to the appropriate architectural coatings manufacturer the quantities of products distributed or sold in the District. The report submitted to each architectural coatings manufacturer shall be signed by a responsible party certifying that all information reported is true and correct. The report shall also be submitted to each architectural coatings manufacturer in an electronic spreadsheet format.

(f) Recordkeeping

Architectural Coatings Manufacturers shall:

- (1) Maintain a copy of the signed application form submitted to the District to obtain the manufacturers ID number, and the written response from the District issuing a manufacturer ID number. The copies shall be maintained for five (5) years beyond the date on each document, and made available upon request by the Executive Officer.
- (2) Maintain records to verify data used to prepare the Annual Quantity and Emissions Report from architectural coatings distributed or sold into or within the District for use in the District and compliance with applicable rules and regulations. The records shall be maintained for five (5) years and made available upon request by the Executive Officer. Such records shall include but not be limited to:
 - (A) Product formulation records (including both grams of VOC per liter of coating and grams of VOC per liter of material):
 - (i) Laboratory reports [including percent weight of non-volatiles, water, and exempts (if applicable); density of the coating; and raw laboratory data] of test methods conducted as specified in paragraph (m)(1) or
 - (ii) Product formulation data or physical properties analyses, as applicable, with a VOC calculation demonstration; and
 - (B) Production records including, if applicable, batch tickets with the date of manufacture, batch weight and volume; and

Proposed Rule Amended Rule 314 (cont.)(~~Adopted June 6~~Amended January 9, 20089)

- (C) Distribution records:
 - (i) Customer lists or store distribution lists or both (as applicable) and
 - (ii) Shipping manifests or bills of lading or both (as applicable); and
- (D) Sales records consisting of point of sale receipts or invoices to distributors or both, as applicable.

(g) Fees

(1) Manufacturer ID Number Fee

An architectural coatings manufacturer applying for a manufacturer ID number with the District as specified in paragraphs (d)(1) and (d)(2) shall pay a non-refundable application fee of \$168.62 at the time of submitting the application.

(2) Annual Quantity and Emissions Fees

(A) An architectural coatings manufacturer shall begin paying fees at the rates specified below, on or before April 1, 2009 and each subsequent April 1 (the official due date). Fees are based on the annual quantity and emissions of architectural coatings distributed or sold into or within the District for use in the District for the previous calendar year.

Phased-in Fee Rate

- (i) April 1, 2009 pay an annual quantity fee of \$0.018 per gallon of paint and an annual emission fee of \$123 per ton of VOC emissions.
 - (ii) April 1, 2010 pay an annual quantity fee of \$0.027 per gallon of paint and an annual emission fee of \$185 per ton of VOC emissions.
 - (iii) April 1, 2011 and each subsequent April 1, pay an annual quantity fee of \$0.036 per gallon of paint and an annual emission fee of \$246 per ton of VOC emissions.
- (B) If an architectural coatings manufacturer submits the Annual Quantity and Emissions Report in such a manner that District staff has to manually enter the data into the District database, then the architectural coatings manufacturer shall pay at the time of submittal a non-refundable fee of \$276.20 for the first two hours of District time. The architectural coatings manufacturer shall be assessed additional fees at the rate of \$138.12 per hour for any additional time beyond the first two hours.

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

- (h) Request to Amend the Annual Quantity and Emissions Report and Refund Request of Emission Fees
 - (1) An architectural coatings manufacturer shall submit a written request (referred to as an “Amendment Request”) for any proposed revisions to previously submitted Annual Quantity and Emissions Reports. Amendment requests submitted after one (1) year from the official due date of the subject Annual Quantity and Emissions Report shall include a non-refundable standard evaluation fee of \$276.20. In addition, evaluation time beyond two hours shall be assessed at the rate of \$138.12 per hour not to exceed 10 hours. Amendment requests received within one year (1) from the official due date of a previously submitted Annual Quantity and Emissions Report shall not incur any such evaluation fees. The Amendment Request shall include all supporting documentation and revised applicable reports.
 - (2) An architectural coatings manufacturer shall submit a written request (referred to as a “Refund Request”) to correct the previously submitted Annual Quantity and Emissions Report and request a refund of overpaid fees. Refund Requests must be submitted within one (1) year from the official due date of the subject Annual Quantity and Emissions Report to be considered valid. The Refund Request shall include a revised Annual Quantity and Emissions Report and all applicable supporting documentation. If the Refund Request submitted results in a refund, then the architectural coatings manufacturer shall incur no evaluation fee. If the refund request results in no refund, then the architectural coatings manufacturer shall pay the standard evaluation fee and the hourly evaluation fees, as appropriate, specified in paragraph (h)(1).
- (i) Fee Payments and Late Surcharge
 - (1) Fee payments are the responsibility of the architectural coatings manufacturer.
 - (2) If both the fee payments and the Annual Quantity and Emissions Report for the previous calendar year are not received by May 30, they shall be considered late; and a surcharge for late payment shall be imposed for fees past due as set forth in paragraph (i)(3). Architectural coatings manufacturers subject to paragraph (d)(2) on or after July 1 of the reporting year shall have an additional 6 months, or any additional time approved by the Executive Officer, to submit the fee payments and the Annual Quantity and Emissions Report for the acquired architectural coatings manufacturer. For the purpose of this paragraph, the fee payments and the Annual Quantity and Emissions Report shall be considered to be timely received by the District if it is postmarked on or before May 30. If May 30 falls

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

on a Saturday, Sunday, or a state holiday, the fee payments and Annual Quantity and Emissions Report may be postmarked on the next business day following the Saturday, Sunday, or the state holiday with the same effect as if they had been postmarked on May 30.

- (3) If fee payments for the Annual Quantity and Emissions Report (including any unreported quantity and emissions) are not received within the time prescribed by paragraph (i)(2), a late payment surcharge shall be assessed on the fees past due and added to the fee rate in paragraph (g)(2)(A), according to the following schedule:

Less than 30 days	5% of past due amount
30 to 90 days	15% of past due amount
91 days to one year	25% of past due amount
More than one year	50% of past due amount

- (4) Fee Payment Subject to Validation

Acceptance of a fee payment does not constitute validation of the emission data.

- (j) Service Charge for Returned Checks

Any person who submits a check to the District on insufficient funds or on instructions to stop payment, absent an overcharge or other legal entitlement to withhold payment, shall be subject to a \$25.00 service charge.

- (k) Confidentiality of Information

Subject to the provisions of the California Public Records Act (Govt. Code § 6250-6276.48) information submitted to the Executive Officer may be designated as confidential. The designation must be clearly indicated on the reporting form, identifying exactly which information is deemed confidential. District guidelines require a detailed and complete basis for such claim in the event of a public records request.

- (l) Violation

It shall be a violation of this rule for any architectural coatings manufacturer to distribute or sell their manufactured architectural coatings into or within the District for use in the District, without having a manufacturer ID number issued by the District, within the time specified in subdivision (d).

- (m) Test Methods

Proposed Rule Amended Rule 314 (cont.)~~(Adopted June 6~~**Amended January 9, 20089)**

For the purpose of this rule, test methods are as specified in Rule 1113.

(n) Severability

If any provision of this rule is held by judicial order to be invalid, or invalid or inapplicable to any person or circumstance, such order shall not affect the validity of the remainder of this rule, or the validity or applicability of such provision to other persons or circumstances. In the event any of the exceptions to this rule are held by judicial order to be invalid, the persons or circumstances covered by the exception shall instead be required to comply with the remainder of this rule.

(o) Distributor(s) List

On or before January 1, 2009, and each subsequent January 1, all architectural coatings manufacturers subject to this rule shall provide to the District a list of all U.S. distributors to whom they supply architectural coatings, including but not limited to private label coatings and toll manufactured coatings. The list shall be in a format determined by the Executive Officer and shall include the distributors name, address, contact person and phone number.

(p) Exemption

(1) Notwithstanding the provisions of subparagraph (g)(2), fees shall not be assessed on coatings with 5 or less grams of VOC per liter of material.

(2) Fees shall not be assessed on recycled coatings distributed or sold into or within the District by a certified recycled paint manufacturer. Recycled Coating is as defined in Rule 1113, and certified recycled paint manufacturer shall be as certified pursuant to Rule 1113.



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

SUBJECT: NOTICE OF EXEMPTION FROM THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

PROJECT TITLE: PROPOSED RULE 314 – FEES FOR ARCHITECTURAL COATING MANUFACTURERS

Pursuant to the California Environmental Quality Act (CEQA) Guidelines, the South Coast Air Quality Management District (SCAQMD) is the Lead Agency and will prepare a Notice of Exemption for the project identified above.

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.

Any questions regarding this Notice of Exemption should be sent to Michael Krause (c/o Planning, Rule Development & Area Sources) at the above address. Mr. Krause can also be reached at (909) 396-2706.

Date: January 9, 2009

Signature: *Steve Smith*

Steve Smith, Ph.D.
Program Supervisor
Planning, Rule Development & Area Sources

