

California VOCs – again?

Those of us who were around in the early 1990s remember the discourse (read: bloodshed) around the initial California Volatile Organic Compounds (VOC) Consumer Products regulations, primarily focused initially on Hairsprays. As everyone suspected, the new VOC regulations changed our hairspray formulas in the US forever. Hairsprays were calculated to contribute a significant amount to air pollution by use of traditional propellants and alcohol, which all fit the definition of a VOC. Other categories affected initially included Air Fresheners, Adhesives, Automotive Fluids, Bathroom cleaners, among others.

The next generation brought more regulations on Antiperspirants/Deodorants and Hair Styling products in our niche of the Consumer Products industry. Other industries were once again included.

California is now preparing to restrict VOCs in other product categories, and increase requirements on existing categories. At this point they are readying to issue a mandatory “survey”. Completing this survey is a legal obligation for companies selling products in California in any of the survey categories. The categories required by this new survey are:

- 1> **Antiperspirants and deodorants:** traditional products as well as foot deodorant, feminine Hygiene and “other” APs and deos;
- 2> **Body, hand and face cleaners:** antimicrobial hand wash, antimicrobial hand/body cleaner/soap, Aromatherapy Bath or shower products, Medicated and non-medicated astringents and toners, Bath oils/beads/capsules, Body wash/mouse/gel/soap/foam/scrub, Body wipes/hand wipes/towelettes, chemical peels, Exfoliants/peels/polishes, Eye makeup remover, Face wipes/towelettes, Facial cleansers/soaps, Facial Masque/Masks, General use hand or body cleaners or soaps, Hand wipes/Towelettes, Heavy-Duty Hand Cleaners or soaps (all forms), Other face soaps/cleaners/scrubs/hand cleaners, sanitizers and soaps;
- 3> **Facial and Body Treatments:** Aromatherapy/Mist products, body or baby powder, Depilatory, Hand and Body Conditioners/Creams/Lotions, Moisturizers, Self -tanners, Skin Colorants (including body paint), Skin Lighteners, Skin Protectants/Lubricants/Humectants, Spray-on Stocking, Sunless Tanning Products (aerosol), Sunscreens (hair or body), Suntan Oils and Lotions, Other facial and body treatments;
- 4> **Fragrance Products:** Deodorant Body Sprays, Personal Fragrance Products (separated into 20% or less fragrance, and more than 20% fragrance categories), and other fragrance products;
- 5> **Hair Care Products-** Bleach and Lightener, Conditioner without styling claims, Hair Dyes (permanent, semi-permanent, temporary), Hair Finishing Spray, Hair Mousse, Hair Shine (aerosol and non-aerosol), Hair Styling Product (aerosol and pump spray, and other forms), Hair Tonic/Hair restorer, No Rinse Shampoo, Permanent Wave Treatment, Shampoo, Temporary Hair Color (aerosol), Thermal Protectant, and other hair care products;

- 6> **Make-up Cosmetics** (we usually call them color cosmetics): Eyebrow Pencil/Powder, Eyeliner, Eye Shadow, Lipstick/Lip Gloss, Makeup Base, Foundation or Fixative, Mascara, Rouge or Blush, “other” make-up cosmetics;
- 7> **Nail Care Products**: Artificial Nail Extension/Elongation Product, Artificial Nail, Wrap, or Nail Glue Remover, Base Coat/Unde5rcoat, Cuticle Treatment Product, Nail Glue or Adhesive, Nail Polish/Lacquer/paint, Nail Polish Remover, Nail Polish Thinner, Nail Product Drying Enhancer, Nail Treatment product, Top Coat, Other nail care products;
- 8> **Oral Care Products**: Canker Sore/Oral Irritation Products, Denture Adhesive, Fluoride Rinse, Gum Rejuvenator, Liquid Breath Freshener/Spray, Mouthwash/Rinse, Plaque and Tartar Removal Products, Toothpaste/Gel/Polish and Powder, Tooth Sensitivity Product;
- 9> **Shaving Products**: After Shave Products, Electric Shaver Cleaning or Lubricating Product, Pre-shave Products, Shaving Cream (Aerosol/Non-aerosol), Shaving Gel (Aerosol/Non-aerosol), Shaving Soap, Other Shaving Products.

...and not to worry, Automobile emissions are continually subject to new restrictions. They are handled outside of the Consumer Product category.

It is important to note that **any company selling products in California** in these categories will be required to complete the survey. **Products manufactured outside of California are not exempt.**

The last comprehensive survey such as this was done in 2003. This new survey is unique in several ways.

- 1) The information requirements are much more detailed, and **in most cases require almost the entire formula to be divulged.**
- 2) Companies must specifically note not just “fragrance” as an ingredient, but the **fragrance supplier and the item number and fragrance name must be listed.**
- 3) **There is no minimum level of sales per product,** so technically if only 5 bottles of product were sold, that is still reportable.
- 4) Every individual SKU must be submitted, including for example, sample sizes, gift with purchase items, and multiple sizes of the same formula.
- 5) Each product and each size registered must be identified by a number as shown as a UPC on the package. If the product does not have a UPC for some reason, other readily available identifying information must be used, per product, per size.
- 6) It is now clear that **the brand owner is responsible** for the survey for their products. The **Contract Manufacturer or downstream distributor is not responsible** for the filings. As a general rule, the name of the company on the product indicates the responsible party.

As we all know, some of what is now required is highly sensitive information. However, completing the survey is required by law for any/all of the above categories of products. It can be labeled as confidential business information (CBI) however the information that is required will have to be

available within the supply chain (for instance, a contract manufacturer will have to make the formula available for submission).

If past history repeats itself, the California Air Resources Board (CARB) will be very diligent in their follow up with companies obligated to complete the survey. My advice follows.

- 1) If you receive notification of the survey, complete it as required. If you do not, CARB will continue to follow up with you, sending out new surveys if necessary.
- 2) If you know you have products in any of these categories and don't receive notification of the survey from CARB, contact them. You are still under obligation to fulfill this responsibility, and fines can result from non-compliance.
- 3) If you do not have any products in these categories, you must be in another industry!

But don't feel too badly- there are a number of other industries that have products on the draft Survey. A sampling:

Flying and Crawling bug insecticides
Caulking compounds
Disinfectants
Air Fresheners
All manner of cleaners
Dish Detergents
Spot removers
Aerosol cooking Sprays

CARB also performs random testing on products off the retail shelves, as some companies in our industry already know. Between the testing and results of the surveys, new VOC limits will be created for at least some of the categories listed above.

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