



California Environmental Protection Agency



State of California
ENVIRONMENTAL POLICY COUNCIL
Resolution
August 15, 2011

WHEREAS, California Health and Safety Code section 43830.8 provides that the Air Resources Board (ARB) may not adopt any regulation that establishes a specification for motor vehicle fuel unless that regulation, and a multimedia evaluation conducted by affected agencies and coordinated by ARB, are reviewed by the California Environmental Policy Council (Council);

WHEREAS, Public Resources Code section 71017 established the California Environmental Policy Council, consisting of the Secretary of Environmental Protection; the Chairpersons of ARB and State Water Resources Control Board (SWRCB); and the Directors of Office Environmental Health Hazard Assessment (OEHHA), Department of Toxic Substances Control (DTSC), Department of Pesticide Regulation (DPR), and Department of Resources Recycling and Recovery (CalRecycle);

WHEREAS, Health and Safety Code section 43830.8(b) specifies that a multimedia evaluation shall include the identification of any significant adverse impact on public health or the environment including air, water, soil, that may result for the production, use, disposal of the motor vehicle fuel that may be used to meet the ARB motor vehicle fuel specification;

WHEREAS, Health and Safety Code section 43830.8(c) specifies that the multimedia evaluation shall be based on the best available scientific data and include, at a minimum, an evaluation of the following:

- Emissions of air pollutants, including ozone forming compounds, particulate matter, toxic air contaminants, and greenhouse gases.
- Contamination of surface water, groundwater, and soil.
- Disposal or use of the byproducts and waste materials from the production of the fuel.

WHEREAS, Health and Safety Code section 43830.8(d) requires ARB to prepare a written summary of the multimedia evaluation, and submit the summary for external scientific peer review in accordance with Health and Safety Code section 57004;

WHEREAS, Health and Safety Code section 43830.8(e) specifies that if the Council determines that the proposed regulation will cause a significant adverse impact on public health or the environment, or that alternatives exist that would be less adverse, then the Council shall recommend alternative measures that the ARB or other State agencies may take to reduce the adverse impact on public health or the environment;

California Environmental Protection Agency

WHEREAS, Health and Safety Code section 43830.8(f) requires ARB, within 60 days of receiving notification from the Council of a determination of adverse impact, to adopt revisions to the proposed regulation to avoid or reduce the adverse impact, or the affected agencies are required to take appropriate action that will, to the extent feasible, mitigate the adverse impact so that, on balance, there is no adverse impact on public health or the environment.

WHEREAS, to address the ambient air toxic risk associated with diesel particulate matter (PM), ARB has adopted the Diesel Risk Reduction Plan, which incorporates emission control strategies to reduce diesel PM from new and existing diesel vehicles and equipment in on-road, off-road, and stationary applications;

WHEREAS, ARB adopted the Diesel Emission Control Strategy Verification Procedure ("Procedure") as set forth in title 13, California Code of Regulations, sections 2700 to 2711, to verify the efficacy of diesel emission control technologies;

WHEREAS, section 2710(f) of the Procedure requires a multimedia evaluation to be conducted pursuant to Health and Safety Code section 43830.8 for diesel control strategies which rely on fuel changes either through use of additives or alternative diesel fuels;

WHEREAS, Viscon California, LLC (Viscon CA) submitted an application for Viscon fuel additive as an emission control strategy pursuant to the Procedure;

WHEREAS, as part of the interagency collaboration through the Multimedia Working Group (MMWG), the ARB, SWRCB, OEHHA, and DTSC staff conducted a multimedia evaluation of diesel fuel treated with Viscon additive and submitted it for peer review.

WHEREAS, the Council conducted a meeting on August 15, 2011, to consider the June 2011 report entitled "Staff Report: Multimedia Evaluation of Viscon-Treated Diesel Fuel" (Staff Report);

WHEREAS, the Council has received and considered presentations from members of the MMWG from ARB, SWRCB, OEHHA, and DTSC summarizing the benefits and effects of using Viscon in California diesel and the findings in the Staff Report;

WHEREAS, the Council has received and considered written and oral comments from interested parties on the Staff Report and the environmental impacts expected to result from the use of Viscon additive;

WHEREAS, the Council finds that:

- The ARB, SWRCB, OEHHA and DTSC chapters of the Staff Report have received public comment and have been adequately peer reviewed;

California Environmental Protection Agency

- The ARB air quality assessment found that the limited and controlled use of Viscon additive, and the resulting air emissions, do not pose a significant adverse impact on air quality relative to diesel fuel meeting ARB regulations (CARB diesel) without the Viscon additive;
- The SWRCB evaluation found that, given the relatively non-toxic nature of the additive polyisobutylene (PIB), its low dose rate of about five parts per million, and the insolubility of PIB in water, there are no more significant risks to beneficial uses of California waters posed by Viscon-treated diesel than that posed by CARB diesel alone, particularly because Viscon-treated diesel is not expected to be stored in underground storage tanks (USTs) based on its limited target market of off-road vehicles and engines;
- The OEHHA health assessment shows that the use of Viscon additive may reduce morbidity and mortality due to pulmonary diseases caused by substances in the particles contained in diesel exhaust. It is proposed that the sale of Viscon-treated diesel, subject to this multimedia evaluation, be limited to 450,000 gallons per day to assure that the lifetime cancer risk attributable to replacing CARB diesel with Viscon-treated diesel will be less than one in a million; and
- The DTSC analysis of hazardous waste finds that PIB is not likely a hazardous material. The DTSC analysis of the fate and transport of the fuel in soil if a spill were to occur includes biodegradation and fate and transport testing. The analysis of the tests finds that there are no significant differences between Viscon-treated diesel and CARB diesel.

WHEREAS, the Council further finds that:

- The Department of Pesticide Regulation (DPR) has reviewed the Staff Report and found that PIB is not registered as a pesticidal active ingredient in California and is unlikely to be a major inert ingredient in pesticide products. Therefore, DPR is unaware of any adverse public health or environmental impacts that may occur due to this fuel additive.
- While CalRecycle did not participate in the MMWG for this evaluation, CalRecycle is unaware of any significant adverse impacts on public health or the environment from the use of Viscon-additized CARB diesel relative to CARB diesel alone.

WHEREAS, the Council further finds that the Staff Report, the risk assessments contained therein, and the MMWG's recommendations contained in the Staff Report are based on a number of assumptions and operational, use, or sales volume boundaries suggested by Viscon CA's verification application. Based on these assumptions and boundaries, the Council finds that it is appropriate to place terms and conditions reflecting such assumptions and boundaries on its approval of the multimedia evaluation so that the MWWG's analysis and recommendations and the Council's

California Environmental Protection Agency

findings remain valid while the Viscon additive is sold as a verified diesel fuel additive in California.

NOW, THEREFORE BE IT RESOLVED, that the Council approves the Staff Report; the individual elements prepared by the ARB, DTSC, SWRCB, and OEHHA; and the summary of comments received from the external peer review process required under Health and Safety Code section 43830.8(d).

BE IT FURTHER RESOLVED that, based on the Staff Report and comments received, the Council determines that there will not be a significant adverse impact on public health or the environment, including air, water, or soil, that is likely to result from above-ground storage and the limited use of Viscon additive in California diesel fuel;

BE IT FURTHER RESOLVED that, based on the assumptions and boundaries contained in the Viscon verification application and in the Staff Report, it is appropriate to require Viscon CA to submit quarterly reports to the MMWG for the first year after receiving verification and annual reports thereafter. The reports must provide the following information:

- California and national sales of Viscon additive;
- California and national sales of total Viscon-treated diesel fuel;
- Identification of end users in California; and

BE IT FURTHER RESOLVED that it is appropriate to limit the sale of Viscon-treated diesel, subject to this multimedia evaluation, to 450,000 gallons per day to assure that the lifetime cancer risk attributable to replacing CARB diesel with Viscon-treated diesel will be less than one in a million.

BE IT FURTHER RESOLVED that, based, in part, on the MMWG's understanding that Viscon-treated diesel is not currently stored in USTs, in the event that Viscon-treated diesel may be stored in USTs, it is appropriate for the use of Viscon additive to be reviewed by the MMWG.

BE IT FURTHER RESOLVED that in the event that the requested information, studies, or any other relevant available information indicate the potential for significant risks to public health or the environment, it is appropriate for the use of Viscon additive to be reviewed by the Council for consideration of appropriate action.

DATED: August 17, 2011

Originally Signed by: _____

Matthew Rodriguez
Secretary for Environmental Protection