

## **Enforcement an Integral Part of California's Composite Wood Regulation**

In the September issue of Western Reporter, we featured an article examining the new composite wood product regulation in California. Basic elements of the regulation were described focusing on retailer responsibilities. This article will explain the California Air Resources Board's enforcement program. California is implementing a regulation that will limit formaldehyde emissions from three types of composite wood products — hardwood plywood, particleboard and medium density fiberboard. Formaldehyde is a known carcinogen and California is required by law to reduce public exposure.

Beginning in 2009, businesses that manufacture, sell, use or supply composite wood products to California must comply with the state's new regulations. These businesses include panel manufacturers, importers, distributors, retailers and fabricators of finished goods. The regulation requires that compliant composite wood products be used in the fabrication of finished goods, such as furniture, cabinets, etc. Responsibility for compliance is borne at each level of commercial distribution. The Air Resources Board's enforcement division and personnel from the 35 local air districts will be monitoring and enforcing compliance.

There are several key components to California's enforcement strategy. First, composite wood product manufacturers are required to enlist the services of an Air Resources Board-approved independent third party certifier. These certifiers will verify that a company's panels intended for California's market meet the state's formaldehyde emission standards and that the manufacturing mill is capable of producing products of consistent quality. Third party certification is fundamental to assuring fair competition and low-emitting products for the California public.

Second, to inform and provide assurance to California's public, manufacturers of composite wood panels and fabricators of finished goods using composite wood products are required to label their goods as containing only certified products. Along with labeling, chain of custody documentation is required and can be established through invoices and bill of ladings. This documentation links the possession of goods back to the origin and provides evidence that the composite wood products or finished goods contain only compliant wood product. A chain of custody mechanism has been added to the regulation to require businesses to include a statement of compliance on invoices and bill of ladings

as a confirmation of compliance for downstream customers. In the course of an investigation, Air Resources Board enforcement personnel will use the chain of custody information as an auditing trail to verify the emission characteristics of the products and to identify the commercial distribution pathway for the inspected goods.

Third, retailers, distributors, importers and fabricators must document the “reasonable prudent precautions” they take, which not only affects their supply chain management, but provides additional assurance that the composite wood products purchased and destined for sale in California comply with applicable emission standards. Reasonable prudent precautions include communicating and instructing suppliers that they must supply goods that comply with California emission standards and documenting this exchange. Recordkeeping is yet another important aspect of the regulation, which links all composite wood products and finished goods in commerce to qualifying emission tests. Some retailers may need to update their recordkeeping systems to ensure that the required information is maintained. These records must be kept in electronic or hard copy form for a minimum of two years.

The first set of emission standards become effective January 1, 2009, and the Air Resources Board’s enforcement team will then commence its operations. While it is anticipated that most companies will comply, violations may still occur. In these cases, notices of violation will be filed and fines levied according to the California Health and Safety Code.

Typical investigations will cover the spectrum of distribution in California and include facility inspections, examinations of records and securing samples for compliance testing. In the course of an inspection, staff would first seek appropriate labels and then ask to see chain of custody documentation and verification of the emission characteristics of the products. Enforcement officials will purchase panels and finished goods for laboratory testing from: retail outlets; institutional, industrial and commercial market suppliers; regional chains; small scale and close-out stores; strip malls and Internet sites.

Enforcement staff may secure samples for emission testing, which will be carried out by the Air Resources Board’s laboratory. In cases where a violation is uncovered, an investigation will be initiated to identify the party or parties responsible for the noncompliant products. The chain of custody documents will be followed back from the retailer to the panel manufacturer to verify that proper procedures were followed at each link in the distribution chain. The responsible party, extent of the violation, and possible penalties will be determined on a case-by-case basis.

To facilitate compliance with the new emission standards, the regulation provides a sell-through period allowing businesses an opportunity to clear inventories of noncompliant panels and finished goods. Under the sell-through provisions, panels manufactured before respective effective compliance dates (Phase 1 or Phase 2) may be legally sold in California for limited periods of time after the effective date. These periods vary by each sector of the distribution chain. Finished good retailers, fabricators, distributors and importers have 18 months beyond the applicable effective date to sell products made with noncompliant materials. Sell-through periods are not additive; in other words, a retailer may not purchase non-compliant finished goods during the 18 month sell-through period and legally sell these goods in California beyond the end of the 18 month period. Noncompliant composite wood products or finished goods may not be sold after the 18 month window.

It has long been Air Resources Board's practice to consider all relevant factors when deliberating violations. The extent to which an entity has taken "reasonable, prudent precautions" and used good faith efforts to avoid violations is always strongly considered. The Air Resources Board has decades of enforcement experience on a wide variety of clean air regulations and a long track record of treating the regulated community fairly. This practice will continue when enforcing the composite wood products regulations.

*For additional regulatory information, please visit the composite wood products website at: <http://www.arb.ca.gov/toxics/compwood/compwood.htm>, or contact Ms. Angela Csondes at [acsondes@arb.ca.gov](mailto:acsondes@arb.ca.gov). For enforcement questions, please contact Mr. Darrell Hawkins of CARB's Enforcement Division at [dhawkins@arb.ca.gov](mailto:dhawkins@arb.ca.gov).*