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July 13, 2009

Ms. Cynthia Oshita
Office of Environmental Health Hazard Assessment
P.O. Box 4010, MS-19B
Sacramento, California 95812-4010
coshita@oehha.ca.gov

RE: Comments on Chemicals Proposed for Listing by the Labor Code Mechanism (Carcinogens)

Dear Ms. Oshita:

On behalf of Millennium Petrochemicals, Inc. (Millennium), a subsidiary of Lyondell Chemical Company (Lyondell), these comments are being submitted in response to the Request for Comments on Chemicals Proposed for Listing by the Labor Code Mechanism (Carcinogens) dated 06/12/09 ("Request").

Millennium is a leading manufacturer and global supplier of vinyl acetate monomer. Approximately 80% of all VAM produced in the world is used to make polyvinyl acetate (PVAc) and polyvinyl alcohol (PVA) (CEH 2004) and as such performs as a key chemical building block in the manufacture of commercially important polymers. With a combination of manufacturing facilities in the United States along with an international storage and distribution network, Millennium serves VAM customers globally. Millennium's distribution arm for its manufactured vinyl acetate as well as distribution of vinyl acetate produced by partnering companies, makes Millennium the world's second-largest marketer of merchant vinyl acetate monomer.

Vinyl Acetate is an Important Chemical in Our Business and Has Environmental Benefits

Vinyl acetate monomer is an industrial liquid that used to manufacture downstream reaction products including polyvinyl acetate (PVAc) and polyvinyl alcohol (PVA). Approximately 80% of all VAM produced in the world is used in this industrial application. PVAc and PVA then serve as key chemical building blocks in the manufacture of commercially important polymers. These polymers include ethylene vinyl acetate copolymers used to produce flexible films, coatings, adhesives, moldings and insulation and ethylene vinyl alcohol used to produce gas barrier layers in co-extruded packaging. PVAc is then used to produce emulsion (latex) paints, adhesives and coatings for flexible substrates and PVA is used to produce adhesives, coatings and water soluble packaging films.

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In addition to the beneficial products and uses of these polymers, there is an environmental benefit to the use of vinyl acetate. The only substitutes we are aware of for vinyl acetate involve greater environmental impacts. For instance, replacing vinyl acetate likely would result in an increase in VOCs for adhesives, paints and coatings products (from the replacement chemicals), an increase in CO2 emissions, and an increase in the disposal of solid waste due to an increase in the use of PVC and the environmental issues associated therewith.

OEHHA Should Not List Vinyl Acetate Based On The Labor Code Reference

Vinyl acetate has only been identified as a 2B chemical by IARC, on the basis of extremely limited animal testing results. The 2B category generally, and vinyl acetate in particular, does not have the level of scientific information developed to support any finding of “known” to cause cancer without substantial additional review. To the contrary, the monograph for vinyl acetate says: “

There is *inadequate evidence* in humans for the carcinogenicity of vinyl acetate.

There is *limited evidence* in experimental animals for the carcinogenicity of vinyl acetate.

Thus, OEHHA would be abrogating its responsibility to undertake a rigorous science based review of vinyl acetate if it followed through on the proposed listing.

We do not read the Labor Code or the Superior Court decision in *Sierra Club v. Schwarzenegger* as mandating the listing of chemicals that IARC has classified as 2B. Rather, the proposed listing reflects an exercise of discretion that should be the subject of review and comment. Moreover, to the extent we can discern any criteria that may have been used to identify 2B chemicals, including vinyl acetate, for listing such criteria are inconsistent with Proposition 65.

Vinyl acetate in particular is a chemical that should not be listed without a more rigorous scientific review. This was implicitly recognized by OEHHA in an earlier review of vinyl acetate by the Carcinogen Identification Committee (CIC). The CIC reviewed vinyl acetate in the mid-1990s and decided it was not a high priority chemical for listing consideration.

OEHHA Should Not Rush A Decision that Will Have Such Dramatic and Immediate Impact

At a minimum, OEHHA should defer listing any of the 2B chemicals as part of the Labor Code listing mechanism until the appeals of *Sierra Club v. Schwarzenegger* have been resolved. A notice of appeal has been filed in the case, and the underlying legal issues associated with the scope of the Labor Code listing under Health & Safety Code § 25249.8 (a) will impact how the chemicals proposed for listing will ultimately be considered under Proposition 65.

There is particular concern with the timing of this type of action where, as here, there are a number of unintended negative impacts associated with the listing of vinyl acetate. Beyond the environmental and public health impacts associated with the use of substitute chemicals that are

more harmful and ultimately create greater emissions and wastes, our business would be significantly impacted during the most severe economic recession in our company's history.

Vinyl acetate is core to Millennium and many downstream customer businesses as an alternative to higher VOC raw materials. As such, an adverse determination by OEHHA resulting in inclusion of vinyl acetate on the California Proposition 65 State list as a carcinogen would result in unintended deselection consequences by customers. The stigma associated with the Prop. 65 listing is that of "automatic" elimination for use as a raw material by many downstream manufacturers due to the negativity associated with the listing (whether justified or not). This decision impacts not just Californians, but manufacturers globally as they look to California leadership decisions as a directional benchmark for chemical hazards and control.

Conclusion

We appreciate the opportunity to submit these comments and encourage OEHHA to remove vinyl acetate from the proposed chemicals to be listed using the Labor Code mechanism. Vinyl acetate is an important raw material in our business and provides an environmental and economic benefit to our products. It is our understanding that there is insufficient evidence to consider it a chemical known to cause cancer. At a minimum, we would expect OEHHA to undertake a real review of the science before making such an important pronouncement.

If you have any questions, please feel free to contact Betsy Duncan, Product Safety Department – Global Chemical Control, at 713-309-7791 or by email at betsy.duncan@lyondellbasell.com.

Sincerely,

A handwritten signature in black ink that reads "Jennifer D. Jewson". The signature is fluid and cursive, with the first name being the most prominent.

Jennifer D. Jewson
Marketing Manager Acetyls

s/s