



January 9, 2009

Fran Kammerer
Staff Counsel
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812

Submitted via e-mail at fkammerer@oehha.ca.gov

Dear Ms. Kammerer:

On behalf of the Agricultural Council of California (Ag Council), representing agricultural cooperatives and farmer-owned businesses, we appreciate the opportunity to comment on the proposed regulatory action for human and plant nutrients. The Ag Council's member cooperatives represent approximately 30,000 farmers, who account for over one-third of California's \$27 billion agricultural industry.

Ag Council appreciates OEHHA's attempt to avoid the potential consequences of future decisions to list human or plant nutrients under Prop 65; however, we must reluctantly oppose the regulatory proposal. Proposition 65 was not intended to create warnings for essential nutrients. Human and plant nutrients are indistinguishable from chemicals that occur naturally, and which must be replenished when depleted from the soil by normal plant growth.

The pending regulation exempts listing boron and manganese as "naturally occurring" nutrients from Prop 65 labels. While this pending regulation seems to exempt these elements as "naturally occurring" nutrients, it does not exempt them from being listed as "chemicals" when added as fertilizers. This potential listing is problematic. Borate fertilizers are very commonly used throughout agriculture as a safe and efficient tool, and boron is a nutritionally important element that is present in all foods. The addition of these fertilizers would thus require healthy foods to come with warning labels because the addition of these fertilizers by human activity would trigger the requirement for labeling.

There is no apparent way to determine whether or not these nutrients came from a fertilizer, or are naturally occurring in fruits, nuts and vegetables. While this proposed exemption aims to protect California's farmers from the effects of Prop 65, it actually restricts the use of essential nutrients that are utilized from the soil every growing season. Furthermore, to establish a defense, it puts the burden of proof on farmers that molecules

are naturally occurring in their food products as opposed to being added. Instead of experiencing expensive litigation, it is likely that warning labels would have to be applied to foods that can reduce cancer, heart disease and diabetes. The listing of these essential nutrients would undermine the public health and farm economy in this state, and as such, we oppose this proposed regulatory action.

I appreciate your time and consideration of these matters. Should you have any questions, please do not hesitate to contact me at (916) 443-4887.

Sincerely,

A handwritten signature in cursive script that reads "Emily Robidart". The signature is fluid and connected, with a prominent loop at the end of the last name.

Emily Robidart
Vice President