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April 6, 2012

Via e-mail to: P65Public.Comments@oehha.ca.gov

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

Subject: Opposition to Notice Of Intent To List Chemicals By The Labor Code Mechanism: 4
Chemicals

Dear Ms. Oshita:

The Consumer Specialty Products Association (CSPA¹) urges OEHHA and the State of California to refrain from inappropriately listing benzophenone, coconut oil diethanolamine condensate (cocamide diethanolamine), diethanolamine, and 2-methylimidazole as Proposition 65 carcinogens pursuant to the “Labor Code mechanism” based on the erroneous belief that a chemical classified by IARC as a 2B “possible carcinogen”² should be listed as a carcinogen. Each of these chemicals are used in a wide range of consumer products and their listing and the associated stigma of being **incorrectly** designated as “known to the state to cause cancer” would have real world consequences for the products our members make and for our industry as a whole.

First and foremost, the proposed listing is premature in that it relies upon a [two-page summary news article](#) rather than the actual, as of yet, unpublished Volume 101 of the IARC Monographs on the Evaluation of Carcinogenic Risks to Humans. Therefore, OEHHA should wait until the IARC volume 101 monographs addressing these chemicals are published before making a listing decision, so that OEHHA and the impacted stakeholders can properly evaluate the full released IARC assessment in a transparent and scientific manner.

¹ The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$80 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care[®], and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products.

² Notice Of Intent To List Chemicals By The Labor Code Mechanism: 4 Chemicals, 01/20/12, http://www.oehha.ca.gov/prop65/CRNR_notices/admin_listing/intent_to_list/noil012012.html

In addition, while OEHHA states that the Labor Code listing is ministerial and will not consider any scientific arguments concerning the weight or quality of the evidence considered by IARC, CSPA urges OEHHA to consider the IARC monograph and conclusions, as well as other toxicological and mechanistic data in applying scientific judgment to each specific chemical. As a specific example, it should also be noted that on March 7, 2003, OEHHA published a public notice with its decision *not* to proceed with the listing of diethanolamine under the Authoritative Bodies mechanism. In making such a decision, OEHHA noted that it had reviewed public comments, as well as a considerable amount of scientific information. In that notice, OEHHA concluded the following:

Because it is not clear that the scientific criteria for listing under the authoritative bodies mechanism have been met, OEHHA has decided not to proceed with the administrative listing of diethanolamine under Proposition 65.³

By now considering this automatic Labor Code listing mechanism, OEHHA is eschewing its own completed review of diethanolamine and decision not to list the chemical under Proposition 65. In addition, CSPA supports the comments of the Alkanolamines Panel of the American Chemistry Council (ACC) which present a review the pertinent studies in the context of criteria for listing under Proposition 65.⁴

Proceeding to list a chemical as a carcinogen under the Labor Code mechanism based on a mere two-page summary news article is a misreading of the statute and its subsequent interpretation in case law. In *AFL-CIO v. Deukmajian* (1990), 212 Cal.App.3d 425, 436-437, these provisions were examined and the court concluded that “only those chemicals that are known, and not merely suspected, of causing cancer or reproductive toxicity must be on the [Proposition 65] list.” OSHA’s classification system for carcinogens and IARC’s evaluation scheme are similar.⁵ An IARC 2B category appears to correspond to the OSHA proposed HazCom Category 2, which is “Suspected Carcinogens.” From this, it can be reasonably extrapolated that OSHA would view the IARC 2B chemicals as merely “suspected” carcinogens. Given the elucidation of the Prop 65 regulations in the *AFL-CIO v. Deukmajian* case, “suspected” carcinogens should not be listed pursuant to Labor Code Sec. 6382(d).

In addition, litigation is underway in which a significant legal question has been raised regarding application of the Labor Code mechanism to chemicals classified by the International Agency for Research on Cancer (IARC) as “possible carcinogens” (Group 2B).⁶ Specifically, it is clear from the court ruling that IARC 2B chemicals lack sufficient scientific evidence to justify a Proposition 65 listing pursuant to this mechanism. It is instructive to consider the IARC

³ Decision Not to Proceed With the Listing of Diethanolamine Via the Authoritative Bodies Listing Mechanism, 3/7/03, http://oehha.ca.gov/prop65/CRNR_notices/admin_listing/process_procedures/DEAnog.html

⁴ American Chemistry Council, Letter to Cynthia Oshita, California Environmental Protection Agency, April 6, 2012.

⁵ “The IARC criteria were one of the primary sources used for development of the GHS criteria, so it does not appear that there is a significant difference in approach.” 74 Fed. Reg. at 50399 (2009)

⁶ *Styrene Information Research Center v. Office of Environmental Health Hazard Assessment*, Case No. 34-2009-00053089-CU-JR-GDS

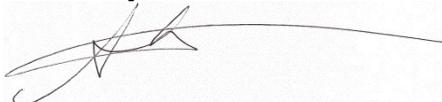
listing categories⁷ of 1 (*carcinogenic* to humans), 2A (*probably carcinogenic* to humans), 2B (*possibly carcinogenic* to humans), 3 (*not classifiable as to its carcinogenicity* to humans), and 4 (*probably not carcinogenic* to humans). When placed in this context, it becomes clear that the classification “possible carcinogen” is more properly characterized as having *insufficient evidence* to rise to the level of “known” carcinogen to humans.

Given these considerations and the real-world consequences, including, but not limited to, the high cost of evaluating compliance requirements, the potential for market de-selection of formulated products, exposure to citizen suits and unintended environmental impacts that would inevitably increase our members’ operating costs and the final cost of their products to the consumer, that would result from an inappropriate listing of these chemicals, CSPA respectfully requests that OEHHA delay any consideration of the proposed listing of these chemicals until the IARC monographs are published.

In addition, CSPA also requests that OEHHA consider delaying this proposed action until the IARC 2B/Labor Code legal issue has been resolved in the ongoing *Styrene Information and Research Center* litigation. Finally, while the ministerial Labor Code mechanism specifically precludes any consideration of the underlying scientific evidence, CSPA also encourages OEHHA to consider any available scientific data as it did in 2003 and to conclude, for analogous reasons, that it is not clear that the criteria for listing under the Labor Code mechanism have not been met. Therefore, these chemicals should not be listed.

Thank you for considering our views and requested action.

Sincerely,



Steven D. Bennett, Ph.D.
Director, Scientific Affairs



Beth L. Law
Assistant General Counsel &
Vice President for International Affairs

cc: Matt Rodriguez, Secretary, California Environmental Protection Agency

⁷ IARC Monographs on the Evaluation of Carcinogenic Risks to Humans Preamble,
<http://monographs.iarc.fr/ENG/Preamble/CurrentPreamble.pdf>