



VIA E-MAIL

April 18, 2016

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

Re: "Clear and Reasonable Warnings Regulation" – Comments from the North American Insulation Manufacturers Association ("NAIMA")

Dear Ms. Vela:

INTRODUCTION

The North American Insulation Manufacturers Association ("NAIMA") appreciates the opportunity to submit comments on the Office of Environmental Health Hazard Assessment's ("OEHHA") Amendments to "Article 6, Proposition 65, Clear and Reasonable Warnings."

NAIMA is the trade association for North American manufacturers of fiber glass and mineral wool insulation products. NAIMA's members have manufacturing plants in California, and insulation products manufactured by NAIMA's members throughout the United States are sold in California and are subject to Proposition 65 requirements.

NAIMA commends OEHHA for any effort to improve the meaningfulness of warning labels for the public and to provide greater clarity for the businesses that are required to warn under Proposition 65. NAIMA's comments set forth herein urge OEHHA to take into consideration the burdens placed on businesses to comply with Proposition 65's requirements that deliver questionable benefit to consumers. NAIMA makes specific requests for further amendments, urges OEHHA to conduct consumer research, and supports specific amendments proposed by OEHHA.

NAIMA URGES OEHHA TO MAKE FURTHER AMENDMENTS BEFORE FINALIZING THE AMENDMENTS TO ARTICLE 6

Yellow Pictogram

NAIMA strongly objects to the inclusion of the yellow ANSI pictogram, which would cause consumer confusion and create technical challenges for companies to include the color yellow on the packaging. Specifically, NAIMA's member companies have expressed concern over the cost and burden of requiring yellow on packaging labels. There is significant cost to reconfigure the printing apparatus and add the color yellow. This cost is quadrupled because it is not just the California plants that must comply, but all the plants throughout the United States whose

products may end up on the California market. Such cost and burden might be palatable if there was a demonstration that the presence of this yellow pictogram would increase safety or awareness of a hazard. NAIMA has seen no consumer research to support the need for such an expensive and burdensome undertaking. NAIMA urges OEHHA to reverse itself and allow for the ANSI pictogram to be printed in black and white in all circumstances.

Chemical Specific Warning

NAIMA objects to OEHHA's requirements that the warning contain a chemical specific warning. OEHHA's proposal requires that at least one chemical or more, that is present in a product at a level that requires a warning, must be listed on the warning statement. NAIMA bases its objection on the simple fact that such warning gives the consumer no perspective as to risk. Just listing the presence of a chemical is meaningless if the risk or exposure is minimal or non-existent. Given that the objective of this amendment process is to bring greater meaningfulness to the consumer, OEHHA has failed to accomplish that goal. Unless manufacturers or producers can provide consumers with meaningful risk information – potential exposure being the most important – the warning creates confusion and fear. NAIMA strongly urges OEHHA to remove this requirement of identifying a single chemical.

Having said this, NAIMA appreciates the improvement achieved by OEHHA that allows that a person may provide information to the exposed individual that is supplemental to the warning required by Article 6 so long as the supplemental information does not contradict the warning. The amendment states: "The warning may contain information that is supplemental to the warning content required by this article only to the extent that it explains the source of the exposure or provides information on how to avoid or reduce exposure to the identified chemical or chemicals." While this is a vast improvement, NAIMA urges OEHHA to allow the transmission of full and complete – meaningful – risk information.

Foreign Language Requirement

OEHHA did not eliminate the foreign language requirement. OEHHA requires that if any label provides consumer information about a product in a language or languages other than or in addition to English, the warning for that product must also be in the foreign language. NAIMA requests that this requirement be eliminated in recognition of the simple fact that there is only so much room on a package label. The mandatory pictograms are intended to communicate warnings in a universal language, so the warning is not being lost. The presence of the pictograms alleviates the necessity for foreign language warnings being written out, too.

Occupational Exposures

OEHHA did not clarify that under "occupational exposures" the requirements apply to not only occupational exposure area warnings, but also industrial product exposure warnings provided by a manufacturer to downstream users. NAIMA requests that clarification be added to the

“occupational exposures” section to state what warnings are required for non-consumer products and employees.

NAIMA URGES OEHHA TO CONDUCT CONSUMER RESEARCH ON PROPOSED AMENDMENTS BEFORE CREATING FURTHER CONFUSION

In the advertising world, an advertiser challenging a competing product’s advertisement as false and misleading typically must conduct consumer perception research to document and substantiate that the challenged advertisement is indeed false and misleading. OEHHA is engaged in consumer messaging and mandating that producers of products engage in messaging – advertising – dictated by OEHHA. OEHHA believes that this messaging is helping and protecting consumers. Yet OEHHA has never conducted any consumer research to determine if these new “safe harbor” warning label language and graphics will deliver a significant benefit to consumers. Moreover, there is not consumer perception research that substantiates that the consumer understands these warnings in a meaningful way.

There is on the other hand evidence that the unintended consequence of warning labels is misperception and confusion. See http://oehha.ca.gov/prop65/public_meetings/pdf/MacInnis_Dart2.pdf. NAIMA urges OEHHA to document through consumer research that the current or amended system of warnings does not in fact create confusion among consumers.

NAIMA SUPPORTS SPECIFIC AMENDMENTS ENACTED BY OEHHA

NAIMA appreciates that OEHHA has changed the very specific font size requirements to a broader and more feasible requirement that the warning language be “conspicuous” compared with the other words and designs on the package.

NAIMA appreciates that OEHHA has amended Article 6 to allow the warning on the internet and in catalog sales to be the same as the on-product warning.

Sincerely,



Angus E. Crane
Executive Vice President, General Counsel