



February 4, 2015

Dr. George Alexeeff
Director, OEHHA
1001 I Street
Sacramento, CA 95814

SUBJECT: MATEEL ENVIRONMENTAL JUSTICE FOUNDATION LEAD CASE

Dear Dr. Alexeeff:

The California Chamber of Commerce and the below-listed organizations (“Coalition”) write to express our concerns regarding the serious economic, legal, and policy consequences that will result if the Office of Environmental Health Hazard Assessment (“OEHHA”) does not vigorously defend itself against Mateel Environmental Justice Foundation’s (“Mateel”) recent lawsuit in which Mateel asks the court to order OEHHA to rescind the current 0.5 microgram/day safe harbor for lead. Specifically, in reliance on controversial and inconclusive science and without first exhausting its administrative remedies, Mateel argues that the 0.5 microgram/day warning threshold for lead should be declared illegal and inoperative despite having been published as a final rule nearly 25 years ago.

The current safe harbor for lead—established by OEHHA in 1992—is the most stringent in the world, particularly due to Proposition 65’s conservative 1,000-fold uncertainty factor requirement for reproductive toxicants. It is primarily based on a federal standard and was considered carefully by the lead agency for Proposition 65 when it was adopted. Mateel’s lawsuit -- more than two decades later -- asks a court to overturn the lead agency’s considered decision, thus placing California even more out-of-step with standards set by the federal government and other jurisdictions around the world.

The economic and legal impact of declaring the current lead safe harbor illegal and inoperative cannot be understated. If this were to occur, longstanding compliance determinations and prior court-approved settlements based on the existing lead warning threshold could be called into question. Some private enforcers would likely use any detectable amount of lead, no matter how small, to support a notice letter and a lawsuit against a company. Given Proposition 65’s unique shifting of the burden of proof to the defendant, the relief Mateel seeks could open the doors to more unnecessary litigation, more burden on our overtaxed court system, more shifting of wealth to the coffers of the “citizen enforcers” and their counsel, and more incentives for businesses to provide unwarranted warnings, creating more consumer confusion as Proposition 65 warnings proliferate and indiscriminately cover products with trace concentrations of lead in the same manner as products containing concentrations that may actually present a meaningful health hazard. From a policy standpoint, these results—which are virtually certain to occur if Mateel gets its way or if OEHHA accommodates Mateel in the litigation by not defending itself vigorously—go directly contrary to the Governor’s calls to reduce Proposition 65 litigation and OEHHA’s calls to reduce the amount of warnings in California’s stream of commerce.

Mateel, like any other interested party, has the right to ask OEHHA to re-examine the lead safe harbor or any other regulation it has previously promulgated under Proposition 65. Instead of playing by the rules and petitioning OEHHA to reexamine the safe harbor in a properly documented petition that could initiate a regulatory process if OEHHA agrees one is warranted, Mateel seeks to bypass this potential for review by the agency and instead has gone straight to the judicial system. Indeed, Mateel is no stranger to using the judicial system; it has filed nearly 800 notice letters and hundreds of Proposition 65 claims in its history. To establish proper incentives and ground rules, OEHHA should demand that Mateel abandon its lawsuit without receiving consideration of any form in exchange. Unless and until Mateel agrees to abandon its suit without a *quid pro quo*, the Coalition respectfully requests that OEHHA vigorously defend itself to avoid setting an unfortunate institutional precedent that may have broader long term repercussions that could go far beyond the lead safe harbor. Absent a vigorous defense, Mateel’s

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request for relief, if granted or resolved through a settlement, would have profound adverse economic, legal, and policy implications, including many that the Governor and OEHHA have repeatedly stated they would like to avoid relative to Proposition 65 in the interest of all Californians.

Thank you for your consideration. The Coalition welcomes the opportunity to discuss this issue in person at OEHHA's convenience.

Sincerely,



Anthony Samson
Policy Advocate
California Chamber of Commerce

On behalf of the following organizations:

Advanced Medical Technology Association
Air-Conditioning, Heating and Refrigeration Institute
American Apparel & Footwear Association
American Chemistry Council
American Composites Manufacturers Association
American Forest & Paper Association
American Herbal Products Association
American Wood Council
Apartment Association, Southern California Cities
Associated Roofing Contractors of the Bay Area Counties, Inc.
Association of Home Appliance Manufacturers
Automotive Specialty Products Alliance
Biocom
Breen Color Concentrates
California Association of Boutique and Breakfast Inns
California Attractions and Parks Association
California Building Industry Association
California Citizens Against Lawsuit Abuse
California Fresh Fruit Association
California Furniture Manufacturers Association
California Hotel and Lodging Association
California Independent Oil Marketers Association
California League of Food Processors
California Manufacturers and Technology Association
California Restaurant Association
California Retailers Association
Consumer Healthcare Products Association
Consumer Specialty Products Association
Council for Responsible Nutrition
East Bay Rental Housing Association
Family Winemakers of California
Fashion Accessories Shippers Association
Fullerton Chamber of Commerce
Gojo Industries, Inc.
Grocery Manufacturers Association
Industrial Environmental Association
IPC Association Connecting Electronics Industries

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ISSA, the Worldwide Cleaning Industry Association
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
National Electrical Manufacturers Association
National Shooting Sports Foundation
Nor Cal Rental Property Association
OCZ Storage Solutions – A Toshiba Group Company
Personal Care Products Council
Plumbing Manufacturers International
Resilient Floor Covering Institute
Simi Valley Chamber of Commerce
Southwest California Legislative Council
SPI, the Plastic Industry Trade Association
Sporting Arms and Ammunition Manufacturers' Institute
Styrene Information & Research Center
Toy Industry Association
Travel Goods Association
Western Plant Health Association
Universal City North Hollywood Chamber of Commerce

cc: The Honorable Luis Alejo, Chair, Assembly ESTM Committee
 The Honorable Bob Wiekowski, Chair, Senate Environmental Quality Committee
 Gina Solomon, Deputy Secretary for Science and Health, CalEPA
 Allan Hirsch, Chief Deputy Director, OEHHA
 Carol Monahan-Cummings, Chief Counsel, OEHHA
 Mario Fernandez, Counsel, OEHHA
 Dana Williamson, Cabinet Secretary, Office of the Governor
 Cliff Rechtschaffen, Senior Advisor, Office of the Governor
 Sue Fiering, California Attorney General's Office
 Laura Zuckerman, California Attorney General's Office
 Kish Rajan, Director, Governor's Office of Business and Economic Development
 Poonum Patel, Permit Specialist, Governor's Office of Business and Economic Development