

July 2, 2014

Via Electronic Mail

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
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Sacramento, CA 95812-4010
P65PublicComments@oehha.ca.gov

Re: Comments to 15-Day Notice of Revisions to the Proposed Labor Code Regulation

Dear Ms. Vela:

The Styrene Information and Research Center (SIRC)¹ previously submitted comments to the proposal by the Office of Environmental Health Hazard Assessment (OEHHA) to adopt a regulation setting out the standards and procedures for listing Proposition 65 chemicals by reference to the California Labor Code. These comments are submitted in response to revisions OEHHA made to the proposed regulation as set out in its 60-day notice. SIRC supports the changes that OEHHA made to the body of the regulation, and it supports even more the changes made to the Initial Statement of Reasons (ISOR).

In its comments to the initially proposed regulation, SIRC raised concerns about OEHHA's interpretation of one of the proposed regulatory provisions. The specific provision is section 25904, subdivision (a), paragraph (2), "A chemical shall be included on the list if it is within the scope of the Federal Hazard Communication Standard and is identified in the most recent version of Title 29 of the Code of Federal Regulations, part 1910.1200... as causing cancer..." This provision essentially repeats the language of Labor Code section 6382(d). Accordingly, SIRC had no basis for objecting to that language.

However, OEHHA, in its ISOR, stated that "New Mandatory Appendix D of the 2012 version of the federal Hazard Communication Standard provides that a "safety data sheet (SDS) shall include the information specified in Table D.1..." Item 11 of that Table calls for toxicological information, including whether a chemical has been included by the National Toxicology Program (NTP) in the Report on Carcinogens or been found to be a potential carcinogen by the International Agency for Research on Cancer (IARC) in its Monographs.

¹ SIRC was formed in 1987 as the principal focal point for public information and research on styrene. SIRC is a non-profit organization consisting of voting member companies involved in the manufacturing or processing of styrene, and associate member companies that fabricate styrene-based products. Collectively, SIRC's membership represents approximately 95% of the North American styrene industry. SIRC has gained recognition as a reliable source of information and scientific research on styrene that supports reasoned regulatory decisions. For more information, visit <http://www.styrene.org>.

OEHHA then concluded that the requirement in Table D.1 and specifically Item 11 made chemicals listed in the NTP Report on Carcinogens or in an IARC Monograph to “clearly fall ‘within the scope’ of the federal Hazard Communication Standard for purposes of Labor Code section 6382(d)...”

OEHHA has now struck all references in the ISOR to Appendix D, Table D.1, Item 11 and specifically to the requirement to include in the SDS information on NTP and IARC classifications of chemicals. The clear implication of the changes to the ISOR is that the provisions in Appendix D, Table D.1, Item 11 are not within the scope of the HCS for purposes of Labor Code section 6382(d). As a result, OEHHA states in the ISOR that the agency will not propose to add a chemical to the Proposition 65 list under section 6382(d) based on the fact that NTP has included it in its ROC or because IARC has identified it as a carcinogen in a monograph.² This approach should be retained in the express language of the Final Statement of Reasons. If SIRC’s understanding of the implication of the changes to the ISOR and the result of the changes is not correct, please state how OEHHA interprets section 25904(a)(2) of the regulation.

SIRC, in its comments to the initially noticed regulation, urged OEHHA to amend the regulation to make explicit that the only portion of the federal HCS that is incorporated by Proposition 65 is the listed chemicals classified as carcinogens under 29 CFR part 1910, subpart Z. OEHHA obviously concluded that it would not make that revision, choosing instead to copy the language of the statute. It did so, apparently to insure that OEHHA would not have to amend this regulation if federal OSHA amended the federal HCS in the future to incorporate other lists. That choice by OEHHA creates an ambiguity that can be resolved with an answer to the following question. Does OEHHA agree that the only chemicals that are identified as causing cancer in the federal HCS as it is currently written are those listed in subpart Z?

SIRC thanks OEHHA for considering and responding to these comments to address the ambiguity of the regulatory language.

Respectively submitted,



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² As OEHHA states on page 6 of the ISOR: “Further, these changes to the OSHA regulations have resulted in elimination of the express provisions identifying the National Toxicology Program’s Report on Carcinogens and the IARC monographs as mandatory bases for classifying chemicals as carcinogens under the HSC.” SIRC recognizes that section 6382(b)(1) provides a separate basis for proposing to add to the Proposition 65 list chemicals classified as carcinogens by IARC.

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