



VIA E-MAIL

February 19, 2016

Ms. Trish Gerken  
Senior Legal Analyst  
Office of the Attorney General  
Department of Justice  
2550 Mariposa Mall, Room 5090  
Fresno, CA 93721

RE: NAIMA's Comments on California Department of Justice's Notice of Modification of Text Proposed Regulation – Amendment to Title 11, Division 4 of the California Code of Regulations Concerning Proposition 65 Enforcement Actions Brought by Private Parties

Dear Ms. Gerken:

The North American Insulation Manufacturers Association (“NAIMA”) appreciates the opportunity to submit comments supporting California’s Office of the Attorney General (“OAG”) efforts to reform Proposition 65’s enforcement system.

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 subject to Proposition 65 requirements.

NAIMA commends the OAG for its incremental efforts to reduce the financial incentives for private plaintiffs to bring Prop. 65 actions that do not actually result in noteworthy public benefits.

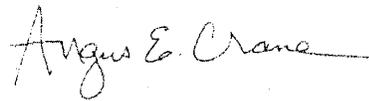
As stated in its earlier comments, NAIMA urges the OAG to continue its efforts to bring boundaries around irresponsible bounty hunters. Specifically, NAIMA notes that reformulations of consumer products that substitute a chemical that appears on the Proposition 65 “List” with a non-listed chemical or substance does not and should not translate into the realization of a significant public health benefit. The fact that a substitute chemical does not appear on the Proposition 65 list may reflect the simple fact that the chemical substance has never been evaluated by the Office of Environmental Health Hazard Assessment (“OEHHHA”). It may reflect the more disturbing fact that the substance has never been subjected to testing or scientific review. Untested does not mean the chemical or substance is safe. It only means that the chemical is untested. Untested is unsafe until proven otherwise. In fact, it would seem prudent to show preference for substances that have been thoroughly tested and evaluated and guidelines established on proper handling of that chemical to avoid risk.

Public benefit can only be demonstrated when the reformulated product is superior to its former version. That improvement should be both in the performance of the product for its intended purpose and better for human health and the environment. Such a conclusion would necessitate a full and complete understanding of the substitution. If that substitution is untested, there should be no finding of a public health benefit.

NAIMA notes that private enforcement actions under Proposition 65 have created a "Bounty Hunter" class in California that sues and seeks enforcement of Proposition 65 as a money-making venture. This is the dynamic that must be eradicated. While the OAG's efforts and changes are commendable, additional revisions and reforms are needed in order to eliminate the "Bounty Hunter" culture. The OAG should seriously consider eliminating the right for citizens to sue for damages or to receive a share of the fines and penalties that are imposed on the defendants.

Again, NAIMA appreciates the efforts of the OAG to make improvements. NAIMA will continue to support the efforts by the OAG to reduce and modify the incentives that result in frivolous lawsuits and allow "Bounty Hunters" to gather cash rewards that too frequently do not result in significant public health benefits.

Sincerely,

A handwritten signature in cursive script that reads "Angus E. Crane". The signature is written in dark ink and is positioned above the typed name.

Angus E. Crane  
Executive Vice President, General Counsel