



September 3, 2010

Susan Fiering, Esq.
Office of the Attorney General of California
Post Office Box 70550
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

Re: Manufacturers' compliance with clear and reasonable warnings under Proposition 65 and related regulations, for wood dust

Dear Ms. Fiering:

The American Wood Council (AWC) submits this letter on behalf of its members concerning the December 18, 2009 listing of "wood dust" as a carcinogen under Proposition 65 (California Health and Safety Code Sections 25249.5 - 25249.13). AWC represents over 60 percent of the North American traditional and engineered wood products industry. Among other things, AWC advocates on behalf of its members for environmental policies that promote and facilitate the use of this renewable resource.

AWC's members manufacture products such as dimensional lumber, plywood and other flat panels, molding, and other wood products that, when sawed, milled, drilled or sanded can generate wood dust. Some AWC members manufacture, distribute or sell wood products in California. It is unclear that, by the mere act of selling or distributing wood products (but not wood dust) in California, AWC members fall within the class of persons required to provide a warning under California Health and Safety Code section 25249.6. Nevertheless, some or all of AWC's members intend to provide a warning that is consistent with the requirements of Health & Safety Code sections 25249.6 and 25249.11(f) and Title 27 Article 6 of the California Code of Regulations.

Affixing warning labels to wood products presents unique challenges. Products are often shipped, and more often are displayed for sale, without any container or packaging on which a warning label can be printed. The surface of many wood products is not conducive to printing or affixing a warning label and, additionally, many products may be sawn prior to sale, resulting in a loss of a product label. Also, there is a very wide range of potential uses for most wood products, making it more or less impossible to generalize about potential wood dust exposure.

AWC members typically are out-of-state manufacturers that sell to regional distributors and large retailers without knowledge of where and how their products will be sold or distributed for sale. They lack control over the display and sale methods used by distributors and retailers. In some cases wood products may be selected by the end user from display shelving in a retail outlet. In other cases, the end-user may order the wood products at a

service counter rather than selecting the wood products directly from display shelving. Where an end-user orders from a service counter, he or she may never actually see the area where the wood products are stored prior to sale and therefore will not see any warnings located in the product storage area. Thus, our members need flexibility in how warnings are provided to the consumer.

With this background, our request concerns particularly how manufacturers may comply with Proposition 65 warning requirements, in light of the fact that distributors and retailers retain control over California distribution and the provision of warning signs where wood products are sold. Based on our review of (a) California Health and Safety Code sections 25249.6 and 25249.11(f); (b) a number of settlements your office has entered into in Proposition 65 enforcement cases; (c) the Office of Environmental Health Hazard Assessment regulations concerning consumer product warnings at 27 C.C.R. §§ 25601- 25603.2; (d) the specific warning provisions for sales of food and alcoholic beverages in 27 C.C.R. § 25603.3; and (e) materials prepared by OEHHA staff in connection with the OEHHA Food Warning Workgroup, AWC members are considering consumer notification that relies on distributors and retailers to post specified warnings.

Specifically, our members are considering providing the following materials to the central purchasing office of every distributor or retailer with whom they transact to sell or distribute wood products for sale in, or potentially for sale in, California:

- A letter explaining that clear and reasonable warnings must be posted where wood products offered for sale in California are displayed or at the point of sale (i.e., cash register or order counter).
 - At least one example of a sign that must be displayed on or in the immediate vicinity of display shelving or at the point of sale for wood products. The sign would read, e.g., “WARNING: Drilling, sawing, sanding or machining wood products may generate wood dust, a substance known to the State of California to cause cancer.”
 - An offer to provide additional copies of the warning sign, upon request to a telephone number or website.
 - A request that the recipient confirm, by a return mailing or an e-mail, that he has received the explanatory mailing and will post the warning signs as described or, if a distributor, will pass the information and sample sign along to the retailers he supplies.

As an additional measure, sales brochures, catalogues or price lists for such products, and online product information of a similar nature, would be accompanied with the notation e.g. “For products to be sold or used in California: WARNING: Drilling, sawing, sanding or machining wood products may generate wood dust, a substance known to the State of California to cause cancer.”

AWC seeks your concurrence that, when implemented as specified, this proposed warning system can be relied on by AWC members as a Proposition 65 warning safe harbor for wood products sold or distributed in California. We ask for written confirmation from your office that the proposed system fulfills the compliance obligations of California Code of Regulations Title 27, sections 25601 et seq. We also ask for written confirmation that the approach described above is “reasonably calculated” to make the Proposition 65 warning available to individuals prior to exposure. See 27 C.C.R. § 25601.

We also note that it appears that California retailers that are signatories to the September 29, 2000 consent judgment in *People v. Ace Hardware Company, et al.*, California Sup. Ct. No. 995893, are prohibited from posting Proposition 65 warning signs for chemically treated lumber. We would like to explore with you whether the proposed approach for providing warnings for wood dust exposure discussed above would conflict with that requirement or any similar requirement, if still in effect, and if so what we might do to resolve the conflict.

Please contact Laurie Holmes at 202-463-5174 or laurie_holmes@afandpa.org if you have any questions or require further information about this request. We appreciate your assistance and look forward to working with you.

Sincerely,

Robert Glowinski
President
American Wood Council

Cc: Russell S. Frye
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Laurie Holmes
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