

June 15, 2010

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Carol Monahan-Cummings, Chief Counsel
Fran Kammerer, Staff Counsel
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812

Re: GMA Comments on OEHHA's May 17, 2010 Pre-Regulatory Draft of Food Warning Regulations (the "Draft Regulation")

Dear Ms. Monahan-Cummings and Ms. Kammerer:

For the reasons described below, the Grocery Manufacturers Association ("GMA") is unable to provide substantive comments on the Draft Regulation by June 15, 2010. As you know, since OEHHA announced the food warning project in November 2007, GMA has submitted substantive comments, drafted regulations, participated in public workshops, and hosted and attended countless meetings with OEHHA and other stakeholders. GMA has considered issues of concern to OEHHA and the Attorney General and proposed what we hoped would be workable compromises. In short, GMA has reviewed and commented on each and every element of the evolving food warning regulation.

We continue to be interested in this rulemaking effort and would like to help it succeed. We cannot, however, in the very short time frame allocated for comments, provide meaningful input on the draft for the following reasons:

- The Draft Regulation contains significant new substantive elements that have never been part of this process;
- The Draft has new provisions that OEHHA has never shown to or discussed with manufacturers or retailers;
- The Draft contains other provisions that GMA and retailers understood from OEHHA had long ago been dropped from any regulation;

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- Use of the proposed safe harbor depends upon compliance with obligations that are so inexplicably more burdensome, impractical, and difficult to implement than the existing safe harbor regulations that it does not add a meaningful option;
- The draft also contains provisions that appear to be at odds with the existing regulatory and enforcement scheme as set forth in the plain text of Proposition 65, its implementing regulations, and court approved settlements.
- Some provisions are too vague to understand what was intended or how they would be implemented.

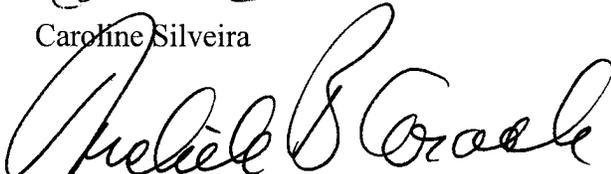
GMA would like to continue to play its intended role in the rulemaking process.¹ However, GMA cannot provide substantive comments that analyze and inform OEHHA of possible unintended consequences of the provisions in the Draft Regulation until it understands how OEHHA intends them to work and to what extent the issues identified above are unintended consequences of drafting rather than the result of a conceptual or policy decision by the agency. GMA will coordinate with similarly situated stakeholders to schedule a meeting with you for the purpose of better understanding OEHHA's intentions, so that we can thereafter provide comments and recommendations.

We expect to file substantive comments on or before September 1, 2010.

Respectfully submitted,



Caroline Silveira



Michèle B. Corash

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¹ *Tidewater Marine Western, Inc. v. Bradshaw*, 14 Cal. 4th 557, 569 (1996) (“The Legislature wisely perceived that the party subject to regulation is often in the best position, and has the greatest incentive, to inform the agency about possible unintended consequences of a proposed regulation.”).