August 22, 2006

Mr. Michael Wall
Dr. Gina Solomon
National Resources Defense Council
111 Sutter Street, 20th Floor
San Francisco, California 94101

RE: Petition for Listing 18 Chemicals

Dear Mr. Wall and Dr. Solomon:

Thank you for your letter dated July 6, 2006, in which you petitioned the Office of Environmental Health Hazard Assessment to list 18 chemicals under the "authoritative bodies"[1] provisions of the regulations implementing Proposition 65, (The Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5). The basis of your proposal is the National Institute for Occupational Safety and Health (NIOSH) Pocket Guide to Chemical Hazards (hereafter the "Pocket Guide").

We have reviewed the information you provided, along with other related materials, and find that we need more information prior to deciding whether the Pocket Guide information is sufficient to allow listing of any of these chemicals. While we agree that NIOSH is an authoritative body for purposes of Proposition 65, it does not necessarily follow that all NIOSH publications can serve as a basis for listing chemicals.

The primary issue we are concerned with in this regard is whether NIOSH formally concludes in the Pocket Guide that the chemicals cause reproductive toxicity. It is not clear to us that the Pocket Guide entries for these chemicals reflect a conclusion on the part of NIOSH or simply reflect a compilation of other NIOSH reports, documents and information available from other sources. In other words, it is not clear that the Pocket Guide entries reflect a NIOSH identification that a given chemical is known to cause reproductive toxicity as required by the Proposition 65 statute and regulations. While the appendix to the Pocket Guide contains a discussion concerning the criteria used for NIOSH to list a carcinogen, no such explanation is included for reproductive toxins. Further, certain definitions of terms adopted by the Occupational of Safety and Health Administration in its regulations (see for example 29 C.F.R. 1910) may define terms that are used in the Pocket Guide such as "target organ effects," but we have been unable to confirm whether these definitions apply to the listings in the Pocket Guide and if so, what entity drew the listed conclusion.

[1] Title 22, California Code of regulations, section 12306

Because we have been unable to satisfactorily resolve this issue and believe it is critical to our decision as to whether any of these chemicals has been sufficiently identified as causing reproductive toxicity for purposes of our regulations, we are offering you an opportunity to provide us with any additional relevant information on the subject. We request a response within 30 days so that we can make a timely decision concerning your petition.

We appreciate your interest in the Proposition 65 program. If you have questions or concerns, please feel free to contact me at (916) 322-0493 or via e-mail at cmcummings@oehha.ca.gov.

Best regards,

[*Original signed by*]

Carol J. Monahan-Cummings
Chief Counsel