

California**CSMA SUIT CLAIMS PROPOSITION 65 PRE-EMPTED BY PESTICIDE, HAZARDOUS SUBSTANCE, OSH ACTS**

Federal laws pre-empt California's Proposition 65 requirement for warnings about exposures to pesticide, consumer, and industrial products, a chemical industry group argued in a suit filed in federal district court March 2 (*Chemical Specialties Manufacturers Association v. California Health and Welfare Agency*, DC CCalif, No. 89-1222 IH, 3/2/89).

Proposition 65, a ballot initiative approved by California voters in 1986, requires that people be warned before they are exposed to a substance "known to the state to cause cancer or reproductive toxicity."

The lawsuit filed by the Chemical Specialties Manufacturers Association claimed that three federal statutes—the Federal Insecticide, Fungicide, and Rodenticide Act, the Federal Hazardous Substances Act, and the Occupational Safety and Health Act—pre-empt Proposition 65.

In the suit, CSMA asked the U.S. District Court for the Central District of California to restrain the California Health and Welfare Agency from enforcing the warning requirements of Proposition 65 concerning exposure to pesticides, consumer products, or industrial and institutional products.

Proposition 65 provides that its warning requirement does not apply to exposures "for which federal law governs in a manner that pre-empts state authority," the chemical industry group said.

According to CSMA President Ralph Engel, companies that market consumer, institutional, or industrial products in California are in a "Catch-22 situation." These firms are required to comply with federal rules as well as what Engel termed conflicting California requirements.

CSMA member companies must either alter their product labels nationwide or use special labeling for products sold in California, the suit said. In a news release, Engel said companies are exposed to potential tort liability in states where product labels differ from those used in California.

Also, the lawsuit claimed that CSMA member companies "are at immediate risk of multiple civil suits by private individuals under the 'bounty hunter' provisions of Proposition 65."

The Washington, D.C.-based trade group promotes the use of various chemical specialty products for household, industrial, and institutional use.

Pesticides Law, FHSA

FIFRA labeling requirements pre-empt Proposition 65, the chemical industry organization argued in the suit. According to Section 24(b) of the federal pesticides statute, "a state shall not impose or continue in effect any requirements for labeling or packaging in addition to or different from those required under this Act."

Congress intended nationally consistent precautionary warnings for pesticide products, the suit said.

Similarly, Congress intended consistent warnings for consumer goods nationwide, the group contended. However, under one condition allowed by Section 18(b)(3) of the Federal Hazardous Substances Act, states may impose hazardous substance labeling requirements that differ from those required by the federal law. In order to do so, the state must apply to the Consumer Product Safety Commission, and CPSC, by regulation, must exempt the state from the law's provisions establishing that the hazardous substance statute pre-empts state laws.

California has not applied to the CPSC for an exemption, the chemical specialties group said. Therefore, Proposition 65 is pre-empted by FHSA, the suit contended.

OSH Act

CSMA's argument that the OSH Act pre-empts Proposition 65 is similar to its contentions about FHSA.

Section 18 of the worker safety law requires that any state with standards differing from those set by the Occupational Safety and Health Administration must submit the regulations to OSHA for approval, the industry group said. The state must demonstrate that its standards are at least as effective as the national standard.

Another lawsuit, filed in federal district court in December 1988 by two other chemical industry groups, also argued that workplace warning regulations established under the OSH Act pre-empt Proposition 65 (*Chemical Manufacturers Association v. California Health and Welfare Agency*, DC ECalif, No. CTV-S-88-1615-Lkk JFM, 12/16/88; 12 CRR 1453).

Biotechnology**WISCONSIN BILL WOULD REQUIRE NOTIFICATION TO STATE AGENCY BEFORE ENVIRONMENTAL RELEASES**

MADISON, Wis.—(By a BNA Special Correspondent)—Legislation that would make Wisconsin the first state to require notification prior to the release of genetically engineered organisms into the environment may be enacted in March, according to the chairman of the state Senate committee considering the plan.

The bill (A 14) was approved by the state Assembly by a 98-1 vote on Feb. 2. The state Senate Committee on Science, Technology, Communications, and Energy held a hearing on the bill Feb. 22, during which the panel's chairman, Sen. William Te Winkle (D), said he wants "to put something on the books in March." The bill's author, Rep. Spencer Black, told BNA he is aiming for a Senate vote the week of March 13.

The legislation would require that one of two state agencies be notified of releases of any genetically engineered organism covered by the federal coordinated framework for regulating biotechnology (10 CRR 355).

The state agencies, according to the bill, could gather more information than the federal government now requires—from the public, the state health department, the University of Wisconsin, or the source of the release—in order to send formal comments to federal regulators considering whether to permit the release.

As approved by the Assembly, the legislation calls for a \$100 to \$25,000 daily fine or a year in jail, or both, for releases that involved an intentional failure to notify the state. Second offenses would have penalties of \$1,000 to \$50,000 and/or one year in jail.

State agencies would have to notify county and local governments and local newspapers of the proposed environmental releases.

The bill also would authorize penalties on state employees of \$50 to \$50,000 or one to six months in jail, or both, for revealing confidential business information associated with the notifications.

Monsanto, NWF Among Groups Testifying

The Monsanto Co. and the National Wildlife Federation were among groups testifying at the Feb. 22 the hearing.

Margaret Mellon, director of the NWF Biotechnology Policy Center in Washington, D.C., told the committee the

**PLAINTIFF'S
EXHIBIT**

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