

Duraflame loses ruling on labeling its fire logs

By The Record

Stockton Record, Wednesday, January 5, 2011

STOCKTON - Duraflame Inc. said Tuesday that it will comply with new package labeling requirements demanded by Bay Area clean air officials, even though those labels will also go to consumers throughout Northern California and, eventually, 12 Western states.

The Stockton-based fireplace log manufacturer had its case refused in mid-December by the California Supreme Court, leaving in place a lower court's ruling that all solid fuel, such as wood, wood pellets and fireplace logs, carry labels telling consumers how to get the current burn status in the Bay Area.

The Bay Area Air Quality Management District tried to impose that rule 18 months ago on all products sold in its nine-county jurisdiction. But Duraflame objected and argued in court that the district had failed to show the labels would help ease air pollution and be cost-effective.

"In this case, they had no evidence," Duraflame Vice President Chris Caron said. "They just said, 'We think it's a good idea if the products have a label on it.' "

Air district officials, in a news release last week, said its rule will protect public health during the winter burning season.

"Soot from fireplace burning poses a significant public health threat that will be remedied by conscientious regulatory action," said Jack Broadbent, the agency's executive officer.

Caron expects the labeling to cost Duraflame and, in turn, its consumers "several hundred thousand dollars a year."

He said it's impractical to try to label products just sold in the Bay Area, where a single distribution center in Stockton or Tracy, for example, might supply stores throughout Northern California. Eventually, Caron expects the company will produce a single label for all its products sold in the Western U.S.

"I think our laws should be a little bit more thought-out than just someone thinks it'll be a good idea," Caron said. "This state's getting buried under regulations that somebody thought would be a good idea."

Final Kettleman birth defect report out

By Eiji Yamashita

Hanford Sentinel, Tuesday, Jan. 4, 2010

For now, it remains a mystery what exactly caused a rash of birth defect cases in Kettleman City, a governor-ordered state investigation concludes.

State health officials released the final report on their investigation into the high-profile health concerns on Friday, recommending a large array of actions designed to improve health and environmental conditions in the poor farm worker community.

But the report found no link between birth defects and specific exposure to pesticides or the toxic waste facility nearby.

The report updated a draft released in late November, and it was finalized after reviewing comments from Kettleman City residents who spoke at a public meeting and submitted letters.

Former Gov. Arnold Schwarzenegger ordered the California Environmental Protection Agency and the state Department of Public Health to investigate the matter about a year ago, after activists found a large number of birth defect cases in 2009. The investigation involved interviews with mothers as well as testing of water, soil and air in Kettleman City and at Waste Management's Kettleman Hills hazardous waste facility.

"This report documents one of the most thorough environmental health investigations ever conducted in California," said Cal/EPA Secretary Linda Adams. "Although we did not identify a conclusive cause for the recent birth defects in Kettleman City, we plan to follow up with additional actions that we hope will benefit families in the community."

Among the recommendations:

- The state will continue to work with the community service district and offer funding to help pursue a new source of drinking water for Kettleman City to reduce the level of arsenic.
- The Department of Pesticide Regulation will conduct statewide risk assessment for toxic pesticides, such as diazinon and chlorpyrifos, to determine whether any action is needed. The department will implement statewide mitigation measures in 2011 to reduce exposure to methyl isothiocyanate or MITC.
- The California Air Resources Board will work with the San Joaquin Valley Air Pollution Control District to evaluate benzene emissions at the municipal water wells.
- Officials will conduct further investigation and possible cleanup of clordane contamination at one home.
- The state will provide the community with an update on when it will go forward with these recommendations by July 1.

[Contra Costa Times Guest Commentary, Wednesday, Jan. 5, 2011:](#)

Can we trust the state air board to give the whole truth and nothing but the truth?

By Thomas D. Elias

As California's smog-fighting Air Resources Board gets set to impose America's first cap-and-trade rules for fighting the greenhouse gases most scientists believe are helping cause global warming and climate change, it is also considering imposing a "truth" rule on everyone who testifies in its hearings or submits reports to it.

For some, that appears a bit ironic right now, as the board has just scaled back diesel particulate pollution regulations that were based on a report whose lead author turned out to have falsified his academic credentials. Before the changes, those regulations had already cost truckers and operators of industrial machinery big money as they struggled to clean up their engines.

Did the Air Resources Board fire the resume-inflating scientist, Hien T. Tran, whose "doctorate" turned out to come from an outfit based in a New York City post office box? Nope, he was merely demoted and still works on matters that can lead to new emissions restrictions. So the smog board opted to keep a documented liar on its staff and now it's concerned with getting the truth from others.

In fact, the "truth" rule is only in its workshop phase, meaning it will be some time before the ARB could possibly impose it. But as proposed, it would forbid dishonest statements to the board or its staff. This would also apply to the reports many companies -- including carmakers and electric utilities -- routinely make to the agency. No one has yet spelled out the penalties for lying.

Several federal boards and the state Public Utilities Commission already have "truth" rules with varying penalties for violators.

For sure, lying has long been commonplace in testimony before the ARB, from carmakers who denied they were developing electric or plug-in hybrid cars but rolled out prototypes two months later to gasoline refiners who encouraged the smog board to adopt rules without disclosing they held the patents that anyone complying with the rule would need to infringe or license in order to comply.

The case cited most often by ARB officials involved Unocal, the oil company since subsumed by Conoco-Phillips, and a rule it proposed for making reformulated gasoline.

"When the ARB adopted the recommended path and other oil companies started dispensing the reformulated gas, Unocal then sued the other oil companies for patent infringement," says an ARB background statement. "This sparked lots of litigation, including a Federal Trade Commission proceeding against Unocal." For sure, Unocal deliberately set up a situation where it planned to profit from suing other oil companies, but was eventually stymied. The ARB says it was fooled because it doesn't have sufficient staff to track every patent held by every company it regulates.

"People take advantage of the openings they get," says Ellen Peter, the board's chief counsel. "If they didn't, we wouldn't need a Securities and Exchange Commission or laws against perjury."

She says carmakers and others "often omit key facts. They'll tell us, 'This car gets a certain gas mileage,' but they won't mention its other flaws."

But others say the proposed rule represents a double standard for an agency that essentially tolerated deception by one of its own officials when it declined to fire Tran and only demoted him.

Then there are problems with the age-old question of what is truth? Some of these were outlined in a letter to the ARB from Michael Lewis, senior vice president of the statewide Construction Industry Air Quality Coalition, which includes builders, truckers and a variety of contractors.

"If a person makes a statement to the agency that they believe to be true, based on their experience, and that information cannot be proven to be true or it only becomes obviously true at a later date, are they subject to enforcement under this rule?" he asked. "Who determines the accuracy of a statement?"

All that is unclear, the ARB insists, saying the proposed rule is being floated merely because the board is taking on new responsibilities but not getting more staff, and thus will depend even more on the accuracy of the testimony and reports it gets.

"The real question is whether we should get a rule now that protects consumers and businesses," Peter said. "We've gotten so many misstatements of fact that we felt we ought to explore this."

The bottom line: The ARB can avoid the "double standard" accusations it is now hearing if it waits to adopt this rule until it has reestablished the reputation for complete veracity and integrity it enjoyed before the Tran affair and the flawed diesel rule linked to it. How long that might take is anyone's guess.