



California Stormwater Quality Association®

Dedicated to the Advancement of Stormwater Quality Management, Science and Regulation

September 2, 2014

Ms. Evelia Rodriguez
Ms. Suzanne Davis
Department of Toxic Substances Control
Attn: Comments on Draft Informal Regulations for Brake Friction Material Law
P.O. Box 806, Mail Station/Code: SPWP/MS 12A
Sacramento, CA 95812-0806

Subject: Comments on Draft Informal Regulations for Brake Friction Material Law

Dear Ms. Rodriguez and Ms. Davis:

On behalf of the California Stormwater Quality Association (CASQA¹), thank you for the opportunity to comment on DTSC's informal draft of regulations to implement SB 346, California's law regulating copper, other metals, and asbestos in vehicle brake pads. CASQA's municipal agency members and Caltrans are counting on successful implementation of SB 346 to comply with Clean Water Act and California Porter-Cologne requirements to reduce levels of copper in urban stormwater runoff. CASQA strongly supports DTSC's plan to adopt regulations. We urge the Department to complete the regulatory process as quickly as feasible and to begin the important work of enforcing SB 346.

We generally support the approach of DTSC's informal draft regulations, which are clearly written and appropriately focused only on those topics requiring regulatory clarification. Our comments focus on correcting two key shortcomings of the informal draft regulations:

- (1) California must require both the brake pad and package marking components of the industry's nationwide two-part product marking system.
- (2) DTSC must ensure the sole, unique identifying marking—the package logo used in the nationwide two-part product marking system—will be maintained and will be readily available for use by organizations like CASQA and its members for our outreach, education, purchasing preference, and enforcement programs.

Two-Part Product Marking System

To comply with Washington State and California laws, the brake friction materials industry developed a two-part product marking system that pairs an obscure code marked on each brake pad

¹ CASQA is comprised of stormwater quality management organizations and individuals, including cities, counties, special districts, industries, and consulting firms throughout California. Our membership provides stormwater quality management services to more than 22 million people in California.

with a clear, readily identifiable logo printed on product packaging. Washington State incorporated this two-part product system into its regulations. The industry has proposed to sign a Memorandum of Understanding with U.S. EPA to confirm the industry's commitment to implement the two-part product marking system nationwide. These facts demonstrate that California's adoption of regulations embodying the industry's two-part product marking system would satisfy the law's requirement that the mark of proof of certification show "a consistent date format, designation, and labeling to facilitate acceptance in all 50 states and United States territories for purposes of demonstrating compliance with all applicable requirements."²

Because each part of the product marking system is reliant on the other, DTSC must not accept one part of the nationwide two-part system without the other. The box marking logo is unique and readily identifiable. The pad marking system is neither clear nor unique (the characters may be repeated elsewhere in the pad markings)—but it does assure that each part within a marked package has been certified in accordance with SB 346.

Although SB 346 envisioned a one-part marking system entailing a unique marking on each brake pad, we see no reason why DTSC cannot accept the nationwide two-part product marking system. This acceptance can be embodied in the regulations through language that allows use of the obscure Society of Automotive Engineers brake pad marking (SAE J 866:2012) only when the accompanying packaging contains a DTSC-approved unique package marking logo (i.e., the "leaf mark").

Package Marking Logo

Some CASQA member agencies anticipate needing to conduct outreach and education programs promoting "copper-free" (<0.5% copper) brake pads in order to accelerate copper reductions within their watersheds. Accelerated brake pad copper reductions will be necessary to meet adopted copper Total Maximum Daily Load (TMDL) compliance deadlines in multiple California watersheds. The core of these outreach programs will be educating local businesses, institutions, and residents on the simplest means for them to identify copper-free brake pads. To support these outreach programs, brake pad copper content labeling must be readily identifiable. The simple and unique markings the industry is using on nationwide product packaging meet this need. To be effective, an outreach program will require use of the package marking logo in materials such as brochures, websites, educational advertisements, and model purchasing specifications.

Since these outreach and education programs are essential for Clean Water Act compliance, it is appropriate for state regulations to ensure the logos used in the unique marking system be freely available to California local governments and their organizational partners, like CASQA, for outreach and educational purposes. Trademark use restrictions, as currently provided for in the informal draft regulations (see Section 66275.4(c)(2)(D)(5)), could prevent use of the logo for these purposes. Through our direct communications with the Motor and Equipment Manufacturers Association (MEMA), CASQA has been informed that, as trademark owners of the AASA "LeafMarks", MEMA had no objections to interested stakeholders using the LeafMarks for outreach and informational purposes only provided that users comply with all the other usage guidelines.

² California Health and Safety Code Section 25250.60(j).

DTSC should also clarify its authority to review and approve the entire two-part product marking system, including the package marking logo, which is not specifically described in the informal draft regulations. Although the current two-part product marking system appears to be well-designed, if the logo and its accompanying size and printing requirements are not approved in regulation or in association with the Testing Certification Agency application, the state would lack the ability to control use of alternative logos. For example, the informal draft regulation would not prevent industry members or certification organizations using different packaging logos that might be less known and less clear than the Motor and Equipment Manufacturers Association LeafMark.

Regulatory criteria for the packaging logo should include uniqueness, clarity, minimum dimensions, and provisions for unrestricted use of the logo (within reasonable guidelines to avoid abuse) by organizations other than friction materials manufacturers for outreach and education. These could be required as part of the logo submittal required in Section 66275.4(c)(2)(D).

Detailed Comments – Quality Control and Communications

The regulations will provide essential clarification and quality controls for SB 346’s brake pad certification program, which is the heart of the law. We recommend adjusting the language to better clarify the following quality control and communication elements of the certification program.

- (1) Quality assurance & quality control for certification process. CASQA supports the requirement that the Testing Certification Agency’s processes conform to the impartiality and quality standards embodied in ISO/IEC 17056:2012. The regulations should further require Testing Certification Agency applicants to provide written procedures listing the specific steps that will be taken to check the quality assurance of each testing result and to provide for rejection of testing results that are not within quality control limits. These procedures should already be in place as part of the organization’s program to conform to ISO/IEC 17065:2012. (Sections 66275.4(a)(2) and (c)(2)(D)).
- (2) Clarification of testing requirement. The regulations should be modified to require that materials submitted for testing are representative of manufactured products (Sections 66275.3(a)(1) and 66275.4(c)(2)(D)).
- (3) Procedure to ensure unique mark of proof of certification. The Testing Certification Agency should provide a procedure that ensures that every certified material has a unique code. (Sections 66275.4(a)(5) and 66275.4(c)(2)(D)).
- (4) Testing Certification Agency public information responsibilities. We recommend clarifying the minimum requirements for the Testing Certification Agency to provide public information about certifications and the certification process (Section 66275.4(c)(2)(D)). DTSC must ensure the certification organization provides clear and timely communication to all interested parties through its website. Required information should include not only a list of certified materials, but also a description of the certification procedures, the date of the last update of the list of certified materials, and a description and graphics illustrating

both the pad and box marking components of the brake pad marking system. Most of these elements are already included in the NSF International website.

- (5) Certification posting time frame. Certifications must be posted on the Internet before the product is distributed to retailers and users, such that businesses in the supply chain can verify certifications. A requirement for posting an updated certification list every 30 days may be sufficient to meet this need. (Section 66275.4(a)(4) and 66275.4(c)(2)(D)).
- (6) Exemption markings. CASQA supports DTSC's decision to avoid developing markings to indicate regulatory exemptions. There is no need to mark brake pads as exempt. Such markings could be misleading, since pads can be designed to fit on multiple types of vehicles. Exemptions are defined on the basis of the vehicle on which the brake pad is installed – not the material itself.
- (7) Public information about implementation actions. CASQA requests that DTSC specify in the regulations that it will post on its website in a timely manner Testing Certification Agency, certified analytical laboratory, and alternative test method requests for approval (Sections 66275.4(c), 66275.5(c), and 66275.6(j)), DTSC notifications required under Sections 66275.4(d), 66275.5(d), 66275.6(k), and extension requests and renewal requests (Section 66275.8(a) and (b)).

Thank you for your consideration of our comments. We would be pleased to meet with you, and if appropriate, together with other stakeholders, to discuss approaches to addressing the issues that CASQA has raised. If you have any questions or would like to set up a meeting, please contact either Justin Malan at (916) 448-1015 (justin@ecoconsult.biz) or CASQA Executive Director Geoff Brosseau at (650) 365-8620.

Sincerely,



Gerhardt Hubner, Chair
California Stormwater Quality Association

cc: Meredith Williams, DTSC
Karl Palmer, DTSC
William Hereth, California State Water Resources Control Board
Dave Tamayo, Sacramento County
Justin Malan, Ecoconsult
CASQA Board of Directors, Executive Program Committee, and Watershed Management and Impaired Waters Subcommittee