



September 5, 2014

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, California 95812-0806

Transmitted via email to brakepad@dtsc.ca.gov

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

Dear Ms. Evelia Rodriguez and Ms. Suzanne Davis:

Clean Water Action and Heal the Bay appreciate this opportunity to comment on the draft informal regulations for brake friction material on behalf of our tens of thousands of California members. Once adopted, these regulations will be a critical tool in meeting both the Clean Water Act and California's Porter Cologne requirements to reduce copper and other constituent loads into the state's waters. Because SB 346 (Kehoe, 2010) required that these regulations go into effect for cadmium, chromium VI, lead, mercury, and asbestiform fibers in January of this year, we strongly urge the Department of Toxic Substances Control (DTSC) to finalize and enforce them with all expediency.

In general, the informal draft regulations are a step forward in addressing pollution resulting from brake pads. We do, however, have recommendations that would strengthen the regulations by making compliance clearer for all members of the supply chain and leading to real water quality improvements.

Third Party Certification

Our organizations strongly support third party certification through DTSC approved "testing certification agencies" and certified laboratories. This certification process will ensure conformity with ISO/IEC 17065:2012 and allow manufacturers, retailers, mechanics, consumers, as well as regulators to feel secure that brake pads sold in the state conform to the law.

That said, we recommend strengthening sections 66275.4 (a) (2) and (c) (2) (D) by requiring the testing certification agencies to specify in writing the steps they will take to assure the quality of testing results. There should also be a mechanism by which to reject results that are not within quality control limits. We would further suggest that these sections be revised to state that certifications are to be posted on the Internet *before* a particular brake pad is available for sale so that businesses can verify that they comply with the regulations before use.

Two-Component Product Marking System

While SB 346 solely requires that legally compliant brake pad materials have a unique marking (identification code and environmental compliance marking), developments since the bill's passage make this limited marking system inadequate. Markings on brake pads can be obscure and confusing. In order to comply with both California and the state of Washington, and to

facilitate clarity for the rest of the nation, the brake friction materials industry has developed a two-component system which includes both the marking of the products themselves and use of a unique, easily recognizable logo for the products' packaging.

We strongly urge DTSC to incorporate this two-component marking system into the regulations to be, as the law requires, consistent with the rest of the nation. Such a system will also make identification of compliant products easier for brake pad users, accelerate the use of "copper free" products, and hasten water quality benefits. We further support making whatever packaging logo that DTSC approves available to local governments in the state, as well as water agencies and others--including non-government environmental organizations--doing outreach and education to promote the use of copper free brake pads. Finally, we suggest that sections 66275.4 (a) (5) and 66275.4 (c) (2) (D) require testing certification agencies to implement a process to ensure that certified materials each have a unique code.

Exemption Markings

It is appropriate that the regulations not include markings to indicate regulatory exemptions. This is because such exemptions are based on the vehicle, not the brake pad materials. A special marking scheme would only serve to make deciphering the coding difficult for manufacturers, regulators, and consumers.

Transparency

Ultimately the effectiveness of the regulations will rely on how informed the public is, including both end-users (mechanics, vehicle manufacturers, retailers) and consumers. For this reason, we urge DTSC to explicitly state in the regulations what it will post the following on its website, and to regularly revise the content to ensure it is up to date:

- Testing certification agencies;
- Certified analytical laboratories;
- Requests to use alternative test methods) to ensure product compliance, and who made the requests;
- Extension and renewal requests, and
- Other DTSC notifications required under Sections 66275.4 (d), 66275.5 (d), 66275.6 (k).

Once again, we generally support the informal draft regulations and offer these recommendations in the spirit of promoting greater compliance. Thank you for considering these comments. We look forward to the timely finalization of the regulations

Sincerely



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