



News Release

For Immediate Release

August 17, 2020

Contact: Sarah Jane Scruggs (202) 249-6525

Email: sarah_scruggs@americanchemistry.com

ACC PETITIONS CALIFORNIA SUPREME COURT TO REVIEW PROP 65 LISTING

Listing of DINP Result of Biased Review Process

WASHINGTON (August 17, 2020) – The [American Chemistry Council \(ACC\)](#) filed a petition today with the California Supreme Court seeking review of its challenge to the listing of diisononyl phthalate (DINP) under Proposition 65. As described in the petition, the Office of Environmental Health Hazard Assessment’s (OEHHA) Carcinogen Identification Committee (CIC) failed to follow its own Guidance Criteria, or operating procedures, when evaluating DINP. OEHHA’s decision to list DINP under Proposition 65 defies what numerous, international public health agencies have concluded regarding the safety of DINP in consumer products.

“There is clear evidence that the listing of DINP on OEHHA’s Proposition 65 was the result of a biased, unfair, and arbitrary review process,” said [Eileen Conneely, Senior Director, Chemical Products and Technology Division of ACC](#). “We have appealed to the highest court in California given the wide-ranging and serious consequences a Proposition 65 listing causes. According to a recent investigation by the *Los Angeles Times*, because of Proposition 65, Californians have become ‘[overwarned, underinformed, and potentially unprotected](#).’ Small business are constantly exposed to bounty-hunter lawsuits that funnel hundreds of millions of dollars into the hands of attorneys, and that do nothing to advance the health of hardworking, California citizens.”

The Court of Appeal upheld OEHHA’s listing of DINP under Proposition 65 based on a gross misreading of the transcript from the CIC hearing to review DINP, concluding that it was ambiguous whether the Committee properly applied the Guidance Criteria. But a comprehensive review of the hearing transcript—the only evidence of the Committee’s decision-making process—removes all ambiguity and confirms that the CIC applied the wrong standard. Although the Committee’s published Guidance Criteria direct the CIC *not* to list animal carcinogens if the findings are not relevant to humans, the Chairman directed the other members of the Committee to ignore the text of the Guidance Criteria, erroneously asserting that whether the available animal data is relevant to humans is “not the question.” Because the Committee failed to follow its own internal rules, the decision to list DINP was arbitrary and capricious and thus should be invalidated by the Court.

The listing decision has resulted in warnings that do not reflect the best available science, which supports the conclusion that DINP does not pose a cancer hazard to humans. In fact, DINP is one of the most thoroughly studied compounds in the world. DINP has been reviewed by numerous international scientific panels over decades. Every other public health agency that has studied



DINP—including the Environmental Protection Agency, the European Chemicals Bureau, and the Australian public health agency—has concluded that DINP is likely not a human carcinogen.

“When it comes to important issues like public health, scientific fact and consistent, fair methodology should guide the decision making process by state and federal agencies,” continued Conneely. “Unfortunately, the decisions of the California courts thus far contradict fairness and scientific fact and uphold a misguided listing decision that does nothing to further public health. ACC believes people should feel safe when it comes to possible exposure to chemicals, and it stands firm that current uses of DINP do not pose a risk to human health. We ask that the California Supreme Court grant review to correct the Court of Appeal’s error and set aside this erroneous listing decision.”

#

<http://www.americanchemistry.com>

The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®; common sense advocacy designed to address major public policy issues; and health and environmental research and product testing. The business of chemistry is a \$565 billion enterprise and a key element of the nation's economy. It is among the largest exporters in the nation, accounting for ten percent of all U.S. goods exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

