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Labeling of HTIW Products Under California Proposition 65

Pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986, more commonly known as Proposition 65, “Ceramic fibers (airborne particles of respirable size)” and “glass wool fibers (inhalable and biopersistent)” have been listed as “chemicals known to the State of California to cause cancer.” This listing applies to refractory ceramic fiber and other specialty fibers produced by HTIW Coalition members. However, both the CA and federal regulations clarify that Proposition 65 warning labels are not required for companies that comply with the warning requirements of the federal Hazard Communication Standard (HCS).

In 1998, Unifrax and Thermal Ceramics were defendants in a “bounty hunter” lawsuit seeking to force use of Proposition 65 labels on their products. California v. Ace Hardware Corporation, et al., No. 995893 (Superior Ct., City of San Francisco, complaint filed 11/20/98). Following a series of other CA cases, the court held that Proposition 65 labeling is not required for companies that manufacture no products in CA and comply with the HCS. After Unifrax and Thermal Ceramics filed declarations indicating that no RCF products were manufactured in CA or sold there as consumer products, the court dismissed the case against them with prejudice.

Both the federal and California regulations now expressly state that compliance with the federal HCS meets the requirements of Proposition 65. OSHA regulations state that the HCS “is intended to address comprehensively the issue of classifying the potential hazards of chemicals, and communicating information concerning hazards and appropriate protective measures to employees, and to preempt any legislative or regulatory enactments of a state, or political subdivision of a state, pertaining to this subject.” 29 CFR § 1910.1200(a)(2)(emphasis added). The CA regulations state that “A warning to an exposed employee about a listed chemical meets the requirements of [Proposition 65] if it fully complies with all warning information, training, and labeling requirements of the federal Hazard Communication Standard.” CA 27 § 25606.

For these reasons, HTIW Coalition believes that Proposition 65 warning requirements do not apply to HTIW products for which warnings have been provided in compliance with the federal HCS.