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## OEHHA TO CONSIDER MODIFYING PROP 65 SAFE HARBOR LEVELS FOR LEAD

AUGUST 2015

On July 2, 2015, the Center for Environmental Health (“CEH”) submitted a [petition](#) to repeal or amend the regulatory safe harbor established for lead under California Proposition 65 (“petition”). The petition is important to any business that sells products containing lead to California consumers. In its petition, CEH seeks to repeal the safe harbor (a/k/a “maximum allowable dose level” or “MADL”) for lead, claiming that the existing MADL of 0.5 microgram per day is too high. The petition also challenges the approach used to calculate the MADL, including the practice of averaging lead exposures over time. The current MADL for lead was established in 1989 and affirmed by the Office of Environmental Health Hazard Assessment (“OEHHA”) in 2013 when it changed the basis for listing lead as a chemical known to cause reproductive harm. CEH claims that the MADL was not based on any scientifically valid testing, and that current scientific studies show that there is no safe level of exposure to lead. Thus, CEH petitioned OEHHA to (1) repeal or amend the MADL for lead; and (2) promulgate a regulation establishing that the MADL should be assessed based on per-day exposures and that averaging over time is not permitted.<sup>1</sup>

In a [response](#) dated August 3, 2015, OEHHA advised CEH that it will initiate a rulemaking to update the existing MADL for lead. OEHHA will hold a hearing on the petition on October 9, 2015 at 10:00 a.m. in Sacramento, California.

Hundreds of Prop 65 notices have been issued over the years to countless companies that manufacture and sell consumer products, including food, personal care, apparel, plumbing, and household items. Scores of companies have averted penalties for Prop 65 violations on the grounds that their products fall within the lead MADL. If CEH obtains the relief it seeks, it is possible that the MADL will be withdrawn or substantially amended, forcing companies to choose between the draconian measure of withdrawing their products from the California market or affixing Prop 65 labels to their products. Tucker Ellis represents numerous companies spanning a myriad of industries on Prop 65 matters, works closely with toxicology and scientific experts, and is assembling a coalition to respond to the petition.

### ADDITIONAL INFORMATION

We invite any company interested in joining this effort to contact:

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<sup>1</sup> The Petition followed the January 2015 filing of a Verified Petition for Writ of Mandate and Complaint for Declaratory Relief and Complaint for Declaratory Relief and Injunction filed by Mateel Environmental Justice Foundation against OEHHA in the Superior Court of the State of California County of Alameda seeking essentially the same relief. That case, captioned *Mateel Environmental Justice Foundation v. California Office of Environmental Health Hazard Assessment; Dr. George Alexeef*, Case No. RG15754547, is pending.

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