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March 19, 2009

Lisa Jackson
Administrator
Office of Pollution Prevention and Toxics
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460-0001

ATTENTION: Docket ID Number EPA-HQ-OPPT-2008-0627

Dear Administrator Jackson:

Please accept the following comments from the Retail Industry Leaders Association (RILA) in response to the Environmental Protection Agency's (EPA) Advance Notice of Proposed Rulemaking (ANPR), Formaldehyde Emissions From Pressed Wood Products [EPA-HQ-OPPT-2008-0627; FRL-8386-3]. Retailers are committed to product safety and place the highest priority on the safety and quality of the products they sell to their customers. At the same time, significant implementation challenges have arisen with California's Airborne Toxics Control Measure (ATCM), which regulates formaldehyde emissions from hardwood plywood, particleboard, and medium density fiberboard. We urge EPA to move with caution should it consider implementing similar regulations at the federal level and to make sure that the same problems with the ATCM are not adopted at the federal level. Moreover, any federal regulation should preempt state and local requirements to prevent confusion.

By way of background, RILA promotes consumer choice and economic freedom through public policy and industry operational excellence. Our members include the largest and fastest growing companies in the retail industry--retailers, product manufacturers, and service suppliers--which together account for more than \$1.5 trillion in annual sales. RILA members provide millions of jobs and operate more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

In many cases the retail industry is the primary source of goods to consumers of pressed wood products. Pressed wood products serve an important role in today's marketplace by recycling wood particles that would have otherwise been discarded, turning them into products that are environmentally-friendly while promoting sustainability of our natural resources. In the

manufacturing process, byproducts from harvesting and processing are pressed and combined with resins to make certain pressed wood products such as hardwood plywood, particleboard, and medium density fiberboard. These materials are then used to make a variety of finished products such as crown molding, cabinets, flooring, desks and other furniture, pencils, picture frames, etc., and which are sold by retailers nationwide.

As the EPA begins to study this issue, including its proposed study to be commissioned by the National Academy of Sciences, retailers are in a unique position to advise the EPA on implementation challenges that have arisen from California's Airborne Toxics Control Measure (ATCM), which went into effect on January 1, 2009. Lack of knowledge of the new ATCM standards in the supplier and manufacturing community, lack of approved third-party certifiers of ATCM compliant products, insufficient sell-through periods and onerous record keeping requirements will hamper retailer's efforts to sell ATCM compliant products to consumers. These challenges will add delay times throughout the supply chain and add considerable costs to finished goods, which in turn are reflected in higher prices for consumers.

Despite the best efforts of the retail industry to educate the supplier community on the new California ATCM standards, there remain significant challenges with educating both domestic and international suppliers on the new regulations. To begin, the European Union has instituted its own set of regulations for formaldehyde emissions, known as the European E1 and E2 standards. In today's global economy, suppliers of pressed wood composite products are spread diffusely throughout the world and often times supply products to both European Union nations and the United States. Having the same supplier comply with multiple standards invariably creates confusion and introduces extra costs into the supply chain as the supplier must retool their product to meet each country's standards and keep separate inventories. RILA would urge the EPA to study the current E1 and E2 standards, which share many of the same purposes as the California ATCM standard, to see if some harmonization could be achieved to lessen the burden on suppliers and retailers that operate and source globally—or perhaps allow both standards to be acceptable.

Another source of concern is the lack of California Air Resources Board (CARB) certified third-party inspectors to carry out testing and certifications. With respect to the ATCM, this certification is a two-step process where the composite wood manufacturer's mill is first certified and then second, the composite wood panels it produces and the production process is certified. The availability of certified third-party testing labs has not kept up with the supply of products that must undergo testing, resulting in significant backlogs. These delays add additional costs (both financial and non-monetary) for the retail and supplier community and exacerbate the already strained testing capacity, not to mention the already strained retail sector. They also

appear to be discriminatory to those who import, serving as an anticompetitive or trade restriction measure. RILA urges the EPA to carefully study the availability of third-party testing labs and their testing capacity before adopting any similar regulations.

There is also concern that the CARB standards are not based on science, as they are too broad in scope. There is apparently no de minimis exception, such as for wood buttons on a garment. There is no attention paid in the standards to how formaldehyde emissions are not constant, but may actually diminish from the time the product is produced overseas to the time it reaches the consumer. These are issues that the EPA must address if it decides to act on this issue.

Other concerns that retailers raise are the insufficient sell-through dates associated with the ATCM standards. At a minimum, should the EPA decide to regulate in this area, we ask that any ban on formaldehyde-emitting products be prospective (i.e., only applicable to products manufactured on or after a specific date, such as one year after enactment). As is the norm with new product safety standards, new standards should not apply to products that were produced before they standards were enacted, and retailers should be given the opportunity to sell through existing inventory.

Furthermore, there should be an education grace period, in which the enforcement agency would work with impacted manufacturers and retailers to bring them into compliance. Similar educational grace periods have been used for products regulated by the Consumer Product Safety Commission and the Animal and Plant Health Inspection Service and have helped to smooth implementation of important legislation that presents unique logistical challenges to the retail industry. During this educational grace period, the enforcement agency could issue warnings, but could not take further enforcement action, so that manufacturers and retailers would have time to understand the requirements and come into compliance before penalties are assessed.

Finally, any federal limit on the use of certain resins for fabrication of pressed wood products should include federal preemption to prevent an unworkable patchwork of state and local restrictions. The retail industry should not be expected to implement up to fifty different state standards. If EPA finds substantial evidence that formaldehyde emissions from pressed wood products presents a hazard to consumers, then the agency should take action and preempt states and localities from enacting their own conflicting standards, which make distribution and production of consumer goods untenable. Consumer choice is severely threatened without clear and predictable nationwide standards.

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In summary, RILA and our members urge the EPA to move cautiously in the area of regulating formaldehyde emissions from pressed wood products. Our experience with California's CARB ATCM regulations, discussed in length in the preceding paragraphs, should be taken into consideration by the EPA. We stand committed to ensuring the safety of consumer products and appreciate the opportunity to submit these comments. Should you need further assistance, please contact Andrew Szente, RILA's director of government affairs, by email at andrew.szente@rila.org or by phone at (703) 600-2033.

Sincerely,

A handwritten signature in black ink, appearing to read "John Emling". The signature is fluid and cursive, with a large initial "J" and "E".

John Emling
Senior Vice President, Government Affairs