

IEM Committee

From: Karin E Ross <rossk@personalcarecouncil.org>
Sent: Friday, November 10, 2017 11:30 AM
To: IEM Committee; Elle Cochran; Donald S. Guzman; Alike A. Atay; Robert Carroll; Riki Hokama; Yukilei Sugimura; Mike White
Cc: Mike Thompson; Tom F Myers
Subject: Letter of Opposition
Attachments: Maui County Letter Opposition Letter for Nov 13 hearing.pdf

Infrastructure and Environmental Management Committee Members:

Please see the attached letter regarding the proposed oxybenzone legislation scheduled to be discussed at your committee meeting on November 13.

Thank you for your consideration.

Karin Ross
Personal Care Products Council



November 10, 2017

Via Electronic Mail

The Honorable Elle Cochran
Chair, Infrastructure and Environmental Management Committee
Council of the County of Maui
200 South High Street
Kalana O Maui Building, 8th Floor
Wailuku, HI 96793
Email: iem.committee@mauicounty.us

RE: Opposition to Proposed Oxybenzone and Octinoxate Ordinances

Chair Cochran and Members of the Committee:

On behalf of the Personal Care Products Council (the Council), I am writing to express opposition to the two proposed local ordinances that seek to ban the sale and use of personal care products with oxybenzone and octinoxate.

The Council is the leading national trade association representing the cosmetic and personal care products industry. The Council's approximately 600 member companies manufacture and distribute the vast majority of products marketed in the U.S. As the makers of a diverse range of products that consumers rely on daily, from sunscreen, shampoo, and toothpaste to antiperspirant, moisturizer and lipstick, personal care product companies are global leaders committed to safety, quality and innovation.

Prior to adoption, we believe it is important to assess the legality of the proposed ordinances, especially with regard to jurisdictional authority, federal preemption, and commerce clause implications. As a threshold matter, there is the question of whether the county has been delegated the authority to regulate consumer behavior allegedly impacting offshore environmental resources. Such authority would seem to be exclusively within the purview of Hawaii's Department of Land and Natural Resources/Division of Aquatic Resources. Likewise, there is the question of whether the ordinances are preempted by the federal Food, Drug and Cosmetic Act, which prohibit states and localities from establishing any provision for nonprescription drugs that is different from or in addition to federal requirements. The purpose of such preemption is to provide "national uniformity" with respect to product manufacturing and composition, labeling, and advertising for nonprescription drugs. Similarly, since most sunscreens are imported into Hawaii from out of state, there are potential commerce clause ramifications with Maui County's proposed ordinances that need to be investigated. Coupled with the logistical difficulty of enforcing the bans proposed by these ordinances, we believe these legal concerns merit a detailed examination before this committee can proceed with adoption.

The proposed ordinances are not based on proven science, but rather on a single laboratory experiment that lacks sufficient scientific evidence connecting sunscreen ingredients to coral bleaching. Regulations and legislation should

be based on validated methods, reproducible studies, and conducted by more than one independent lab. The laboratory experiment was based on preliminary research conducted under exaggerated laboratory conditions, which do not accurately reflect the complexity of the natural marine environment. According to noted scientists, coral requires an elaborate ecosystem to survive. Transporting coral to an artificial setting alone, such as a laboratory, makes the coral less viable and likely to die in the face of any disturbance. In addition, the data presented by Downs *et al.* (2015) raise questions over the validity and reliability of the study's analytical and toxicological findings.

In a recent news article, Terry Hughes, Director of the Australian Research Council Centre of Excellence for Coral Reef Studies at James Cook University, suggests that **extrapolations asserting sunscreen is damaging the world's coral "are a bit of a stretch."** He continues, **"the conclusion from the media is sunscreen is killing the world's coral, and that's laughable."** Another study involving five weeks of chronic exposure to UV filters at concentrations above those reported in natural sea waters reported that sunscreens did not induce coral bleaching nor reduce the photosynthetic efficiency of the symbiotic micro-algae.

The threat to the world's coral reefs is a very serious concern. **According to the U.S. National Oceanic and Atmospheric Administration's (NOAA) Coral Reef Conservation Program, coral reefs are impacted by an increasing array of hazards – primarily from global climate change, ocean acidification, and unsustainable fishing practices.** Climate change and ocean warming are the most notable culprits for reef bleaching. According to NOAA, coral bleaching events have occurred as the world's oceans temperatures have increased to the warmest levels recorded since measuring began in the late 19th century.

Sunscreen products are vital to human health. A county-specific restriction on the use of this product would limit consumer choice and ultimately put citizens and tourists visiting the state at great risk. The U.S. Food and Drug Administration (FDA), the Centers for Disease Control and Prevention (CDC), the U.S. Surgeon General, the American Academy of Dermatology (AAD), the Skin Cancer Foundation and health care professionals worldwide emphasize that using sunscreens is a critical part of a safe sun regimen. The dangers of sun exposure are clear and universally recognized by public health professionals and dermatologists. The National Institutes of Health Report on Carcinogens identifies solar UV radiation as a 'known human carcinogen.' A single bad burn in childhood greatly increases the risk of developing skin cancer later in life.

Oxybenzone and octinoxate are FDA and internationally approved critical ingredients to the worldwide sunscreen market. Oxybenzone is a broad spectrum sunscreen, absorbing both UVA and UVB rays, and also photostabilizing other sunscreens to provide long lasting protection. The cost of oxybenzone and octinoxate containing sunscreens is substantially less than other alternative ingredients. In addition to FDA, Health Canada, Australia, the European Union and several ASEAN countries have approved the use of oxybenzone as a safe and effective sunscreen ingredient. **Consumer costs for effective sunscreen products that have the same or similar high SPF levels will increase significantly with no measurable environmental benefit.**

That claim that octinoxate is an endocrine effects is false. Endocrine activity is well studied, including studies by the National Toxicology Program showing octinoxate is not estrogenic nor androgenic/anti-androgenic. Further, the safety of octinoxate has been established in studies of reproductive toxicity and teratology. Any of the claims made in the contrary are based upon exaggerated exposures not resembling realistic human exposure.

These proposed ordinances lack the necessary scientific evidence to demonstrate that this sunscreen ingredient is in any way responsible for coral bleaching. Moreover, skin cancer is the most commonly diagnosed cancer in the United States. If passed, this local law will create confusion, put consumers' health at risk and potentially discourage the use of sunscreens – an important part of a safe sun regimen. **Oxybenzone and octinoxate based sunscreens are affordable daily use products that have excellent skin cancer prevention properties that cannot be easily attained using alternative ingredients.**

We ask that you oppose this legislation. Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas F. Myers". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Thomas F. Myers
EVP-Legal & General Counsel
Personal Care Products Council

Cc: Members, Infrastructure and Environmental Management Committee