

April 7, 2011

The Honorable Sandre Swanson, Chair  
Assembly Committee on Labor and Employment  
State Capitol, Room 6012  
Sacramento, CA 95814

RE: Opposition to AB 553 (Monning)  
Set for Hearing April 13, 2011

Dear Assemblymember Swanson,

The undersigned organizations, representing a cross-section of businesses in California, wish to express our strong opposition to AB 553 (Monning) -- a reincarnation of AB 515 (Lieber, 2007) and AB 815 (Lieber, 2006).

AB 553 is an unwarranted attempt to pre-empt California's Occupational Safety and Health Standards Board (Board) and Division of Occupational Safety and Health (Division) from crafting and adopting rational consensus standards for workplace exposures to hazardous substances. The Board is the only agency in the state authorized to adopt, amend or repeal occupational safety and health standards. AB 553 would undermine the Board's authority and mission by constraining its ability to consider all relevant data and derive reasonable Permissible Exposure Limits (PELs). This bill is intended to drive PELs lower using risk estimates based on worst-case exposure scenarios that do not reflect actual workplace conditions. It would lead to:

- Unreasonable PELs;
- A loss of transparency and due process;
- Lawsuits against the Board;
- Higher Cal/OSHA program costs;
- Punitive and unjustified employer compliance costs;
- Doves of workers unnecessarily hooded in respirators; and
- Yet another significant impediment to doing business in California.

California already leads the nation in both quantity of new PELs and their protectiveness. The first set of PELs developed under the Division's updated process is scheduled for public hearing before the Board this month. Also, the Division has new federal funding for a Med-Tox unit staffed with a doctor and two toxicologists who will provide new analytical resources to the PEL setting process. AB 553 would seriously disrupt the current flow of PELs to the Board.

AB 553 would add a new process for setting some PELs on top of the existing process that will remain for setting other PELs. The two processes would set PELs using different criteria. This would be confusing to the Board, the Division, and the regulated community. Unlike the existing process, the AB 553 process would:

- Override accepted occupational standards with environmental standards that are not relevant to the workplace. For example, Proposition 65 limits are thresholds for consumer warnings, not limits on worker exposures;
- Bypass the Board’s technical staff and the Division’s Health Experts Advisory Committee in the analysis of occupational health impacts;
- Prevent the Division from undertaking independent review of the basis for a PEL, as required by Labor Code Section 147.1;
- Preclude consideration of “the latest available scientific data in the field” or “experience gained under this and other health and safety laws” as required by Labor Code Section 144.6; and
- Forbid consideration of Threshold Limit Values (TLV) published by the American Conference of Industrial Hygienists (ACGIH) as a basis for setting PELs, despite the fact that TLVs are accepted internationally as the foundation for most of today’s PELs, including the majority of California’s existing PELs.
- Eliminate transparency and due process by declaring that “calculations and recommendations” made pursuant to AB 553 are **not** subject to the regulatory process and review standards (necessity, authority, clarity, consistency, reference, non-duplication) of the Administrative Procedures Act;

AB 553 requires a costly “safer-alternatives” analysis for every affected manufacturing process. This will substantially delay the PEL setting process and divert limited resources from higher-risk substances not covered under AB 553. For example, substances causing severe irritation such as asthma or central nervous system effects like narcosis could be pushed aside, though they may be far more important to worker health.

AB 553 constructs unreasonable hurdles for the consideration of feasibility as a real factor in setting PELs. It requires a series of findings that demand original research and analysis well beyond Board and Division capacity and would make the Board a target for litigation. For example, the Board would have to find that an employer couldn’t achieve compliance through the substitution of a safer alternative. In addition, AB 553 would force the Board to:

- Discount the value of employer or industry data which has not been “independently verified” (undefined); and
- Publish an estimate of the additional illnesses or deaths that would result from the higher PEL based on worst-case exposure scenarios that do not reflect actual workplace conditions.

These feasibility hurdles will lead inevitably to a rubber stamp of the lowest limit based on a quantitative risk assessment by one of the few agencies named in the bill, including California’s Office of Health Hazard Assessment. This practically unqualified acceptance of the lowest limit identified from an arbitrarily limited list of sources has several inherent problems.

- These agencies employ different standards to set their recommended levels.
- The fact that findings differ may indicate disagreement and uncertainty in the science.
- The lowest limit may not reflect the latest available scientific data in the field.

Hence, the lowest value may not be a solid foundation on which to set a PEL. The current PEL development process takes all available and relevant information into account, including the levels recommended by agencies listed in AB 553. It is designed to evaluate discrepancies in the available data and professional opinions in order to facilitate the most informed and scientifically defensible decision possible.

For all of these reasons and more, we oppose AB 553.

American Chemistry Council (ACC)  
Associated General Contractors (AGC)  
BIOCOM  
California Chamber of Commerce  
California Framing Contractors Association  
California Healthcare Institute (CHI)  
California Manufacturers and Technology Association  
Chemical Industry Council of California  
Consumer Specialty Products Association  
Industrial Environmental Association  
Residential Contractor's Association  
Styrene Information and Research Center  
Western Growers  
Western Plant Health Association  
Western States Petroleum Association