AHAM
association of home
appliance manufacturers

1111 19th street, nw ▲ suite 402 ▲ washington, dc 20036
202.872.5955 ▲ fax 202.872.9354 ▲ www.aham.org

**February 16, 2007**

**Association of Home Appliance Manufacturers**
**Response to**
**The California Energy Commission's Request for Reconsideration of the Denial of the Petition for Exemption from Preemption for Water Conservation Standards for Residential Clotheswashers**

**Docket Number: EE-RM-PET-100**

The CEC petition sheds no new light on its petition which would justify, under the criteria in 10 CFR 430.48(b), reversing in whole or in part DOE's denial. DOE's denial was appropriately reasoned and took into account all relevant facts presented to it and the applicable law.

The essence of CEC's argument is that it need not comply with the legal requirements to present its entire case to the Department; rather, that it is the Department's obligation to ferret out in the State record CEC's analysis and reshape the petition to create some version of it that can be granted. Indeed, at the conclusion of the Motion for Reconsideration, CEC lists a number of possible partial grants options. CEC's attitude apparently is that it is DOE's obligation to find some way to make the facts in the petition and the federal laws match up so that CEC can have some version, any version, of the state residential clotheswasher standard.

This is not the law, however. It is California's burden to justify the extraordinary circumstances that make a specific and fully- justified standard "necessary" under the law. CEC had well over a year to shape its state rule and petition to comport with the criteria in EPCA. That it failed, despite the able work of its counsel and other staff, indicates that such an exemption cannot be justified.

1. CEC requests that DOE ignore the three-year effective date lead-in requirement. CEC argues that because it is difficult to predict EXACTLY when a DOE exemption procedure will conclude it had no obligation to develop a standard with an effective date and commensurate analysis which would be AT ALL RELEVANT to the likely effective date. It is a long leap from recognizing that no petition can predict precisely a possible effective date to the CEC intentionally promulgating a standard and preparing a petition based on a January 1, 2007 initial effective date, upon which all its analysis for that tier was based, including benefits, even though it knew a legally proper date would be at least 3 years later. This is highly relevant because CEC justification for this first tier is heavily weighted toward early benefits being achieved. If the benefits are not to be achieved for another three years it significantly changes the benefit-cost calculations.

2. DOE was correct in concluding that California did not show that the standards are preferable to alternatives. The law requires CEC, as part of a state energy and water plan, to demonstrate to DOE that the standard has been considered as part of, and in comparison to, alternatives and is preferable or NECESSARY when compared to those alternatives. There is no such plan in California that makes, or even attempts to make, this showing. That explains why CEC was unable to proffer it. As AHAM comments indicated, the state water plan does not even mention, much less rely, on these standards. In the development of the state plan and in the submission to DOE, California essentially did not address the requirement that it undertake a comparative analysis. This indicates not only the deficiency in their regulatory approach and the value of preemption, but that this critical showing cannot be made by California.

The law does not allow CEC to makes its case merely by asserting that it would like to have these state standards. It must show that they are clearly preferable or necessary. Necessity is not demonstrated, contrary to the CEC's extraordinary view, by the fact that the state has requested the exemption and that major stakeholders in the state support it. Under that view, any half-decent petition would meet the "necessity" test. Rather, the federal law requires California to undertake exactly the rigorous analysis which CEC refused to do at the state level.

As we showed, if that analysis was done, one would readily conclude that residential clothes washer water and energy use are a relatively small portion of statewide water or energy use. The regulations are unlikely to have much impact on overall state water and energy use, particularly considering other regulatory and market activities. There are myriad other activities that the state could do at modest levels, including repairs of leaks and limited conservation efforts utilizing proven, cost-effective, conventional technologies aimed at California's huge agricultural water use, that would far surpass the water savings from these clothes washer standards. California water and energy problems will not be substantially alleviated even if every new clotheswasher in California was required to be only an expensive, high-end front loader, as the CEC contemplates.

CEC cannot seriously maintain that since DOE finally accepted, on purely ministerial grounds, the sufficiency of its filing that DOE must accept it on substantive grounds. Just as CEC would do, the initial DOE review of the petition simply ensures that it has the right parts, signatures, etc., not that it is justified on the merits.

More significantly, CEC creates a false standard when it claims that DOE is requiring it to show beyond a reasonable doubt that the standards are preferable to other alternatives. DOE never stated that that is the standard but rather that there must be a sufficiently detailed analysis that DOE can examine whether such standards are preferable to other alternatives. We will not repeat our arguments and the data we submitted (with clear and complete explanation and back-up on the record) which shows that CEC has grossly underestimated the costs of the limited selection of horizontal-axis products that it would require every California consumer to purchase.

3. DOE was correct in applying the "safe harbor" test to CEC's 6.0 WF proposal to eliminate top loaders. When NAECA stakeholders, including the CEC, developed the preemption language, they included language which is the same as is in the DOE standards-setting language – the so-called "safe harbor". This language indicates a 1986 consensus – renewed by Congress in every subsequent energy law – that a federal standard or exempted state standard must not deprive consumers of the same range of choices, designs, and prices and other relevant features and considerations which enrich their lives today. The quality of life of California consumers and the clear preferences of most purchasers for washers of conventional configuration, design and price must not be adversely affected by DOE action or CEC social engineering.

AHAM demonstrated, and CEC essentially did not rebut, that the 6.0 water factor leads to a handful of extremely expensive, very new design top loaders and expensive front loaders which contain certain features and aspects that a significant number of California, and U.S. consumers as whole do not like. AHAM members sell top-loaders and front-loaders and have no built-in bias against one or the other. But, we have a strong bias towards protecting consumer sovereignty and meeting the needs of all our customers with a variety of designs. And, although the market is shifting, there is no question that a huge proportion of consumers prefer the cost and feature price/package of top-loaders.

There is no basis in the law to assume that DOE should form fit the CEC petition and ascertain some other water factor level that it would exempt such as the proffered 6.3 water factor. The 6.3 number is based on an extremely low production volume product by Staber, a small manufacturer. This blatant cherry picking does not deal with the essential question of the impacts on millions of California consumers of having such radically limited choices. (Ironically, the model CEC identified as the lowest WF top-loader machine may no longer exist and is not on the current Energy Star list.) Nor does the law allow DOE to decide to abandon and tear away 90% of the CEC petition and grant only a 6.0 water factor for front loaders. Yes, that is more feasible than the rest of the petition but what is the point? What significant savings are attributable to such action that would make even a dent in California's water and energy problems?

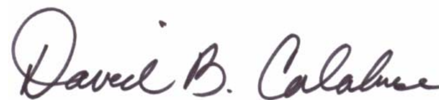
4. DOE correctly concluded that California's water and energy interest are not different than other states. AHAM showed that the water prices and energy issues in California are similar to those faced in many other parts of the United States. California is not left defenseless with respect to clothes washer water use. The expansion of the existing California programs in the context of climate change and resource conservation to deal with energy and water efficiency already have delivered powerful results in shifting of the marketplace in California and can be expected to be equally successful in the future.

6. There is no basis for DOE to determine that state standards would not significantly burden national manufacturing marketing, etc. AHAM strongly disagrees that DOE properly dismissed AHAM's arguments on these critical points. Indeed, the CEC petition sets up

exactly the scenario about which Congress was concerned – undermining a national system of manufacturing, distribution and marketing.

7. Any DOE decision to reverse in any manner its previous decision must be followed by the full procedure contemplated under the law. We urge DOE not to change its decision to deny in whole the petition. But, any action inconsistent with denial requires a full, public rulemaking applying all relevant criteria in the statute to consider the justification and consequences of any such action.

Respectfully submitted,



David B. Calabrese
Vice President
Government Relations

Charles Samuels
Counsel to AHAM
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.
701 Pennsylvania Avenue, N.W.
Washington, D.C., 20004-2608
(202) 434-7300