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April 6, 2006

Ms. Brenda Edwards-Jones
U. S. Department of Energy
Building Technologies Program
Mailstop EE-2J
Room 1J-018
1000 Independence Avenue, SW
Washington, DC 20585-0121

Re: California Preemption Exemption Petition
Docket Number EE-RM-PET-100

Dear Ms. Edwards-Jones:

The Gas Appliance Manufacturers Association (GAMA) appreciates the invitation of the U.S. Department of Energy (DOE) to comment on the petition of the California Energy Commission (CEC) for a waiver of federal preemption respecting water conservation standards for residential clothes washers. GAMA is a national trade association representing manufacturers of residential and commercial appliances and equipment whose energy use is regulated by federal law under the Energy Policy and Conservation Act (EPCA). These regulated products include residential and commercial furnaces, boilers and water heaters, as well as pool heaters and gas-fired space heaters.

GAMA does not represent the interests of manufacturers of clothes washers and is not qualified to comment on specific technical and economic issues having to do with clothes washers or clothes washer energy use or water use standards. Nevertheless, DOE's decision in the instant matter on whether or not to grant the CEC's waiver petition is very important to GAMA and our member companies. As far as we know, this is the first time DOE has considered a state petition for a waiver of federal preemption under EPCA since the passage of the National Appliance Energy Conservation Act (NAECA), which amended EPCA in 1987. NAECA established very high hurdles that a state must overcome to obtain a waiver of federal preemption. DOE's decision in this matter and its supporting analysis are likely to become precedents for DOE's handling of future waiver petitions.

In November 2005, the State of Massachusetts enacted state energy efficiency standards for residential furnaces and boilers that exceed the current federal standards for these products. In order to implement these standards, Massachusetts will have to petition DOE for a waiver of federal preemption. How DOE analyses and treats the CEC's clothes washer petition could impact how DOE handles the expected waiver petition from Massachusetts. GAMA therefore urges DOE to be very careful in considering whether the very stringent statutory criteria for granting a waiver of federal preemption to the CEC have been completely satisfied.

In its petition, the CEC reports that the California legislature has required the CEC to establish water efficiency standards for residential clothes washers. (CEC petition at 1) The CEC maintains: "DOE should be very hesitant to second-guess the determination, by the elected governing body of the largest State in the Union, that the standards are necessary." (CEC petition at 27) This is a no more than an attempt to exert political pressure on DOE and create a nice sound bite. Actually, DOE has a duty under EPCA not to rubber stamp state legislated standards; otherwise, the statutory criteria for evaluating waiver petitions would be meaningless. Instead of bowing to political pressure, DOE must look critically at the petition and insist that California meet the heavy burden of proving that the standards are "needed to meet unusual and compelling State or local energy or water interests."

In its petition, the CEC reports that six other states besides California that rely on the Colorado River for water supply "are confronting the possibility of a serious shortage." (CEC petition at 11) This raises the question whether California's water interests are so substantially different in nature or magnitude than those of many other states that DOE should even consider granting California a waiver of federal preemption. If DOE grants a waiver to California, these other six states may also feel entitled to the same treatment, with the result being a regional clothes washer standard for the entire Southwest. GAMA strongly opposes regional standards as contrary to the intent of EPCA to create a system of uniform federal standards.

EPCA directs DOE to evaluate a state's arguments in support of its waiver petition in the context of the state's energy plan and forecast or its water supply and groundwater management plan. We have not read the 1998 California Water Plan or the 2005 Draft California Water Plan that the CEC apparently submitted in connection with its waiver petition. We urge DOE to look carefully and critically at these plans to see whether the costs and benefits of residential clothes washer standards, including evaluation of alternatives to such standards, are discussed in these plans. Neither mandates by state legislative bodies nor post hoc rationalizations should be accepted as substitutes for the planning and expert analysis EPCA demands of states that petition for a waiver of federal preemption.

Even if a state is able to establish that it has unusual and compelling energy or water interests, the state must also establish that its proposed regulation of an EPCA-covered product <u>is needed</u> to meet that interest. If use of the EPCA-covered product in the state accounts for relatively little of the state's overall energy or water use, a state's claim that state regulation of the product is needed to resolve its energy or water problems should be looked at very skeptically.

EPCA requires that states petitioning DOE for a waiver must establish that alternatives to regulation, including reliance on reasonably predictable market forces, are incapable of

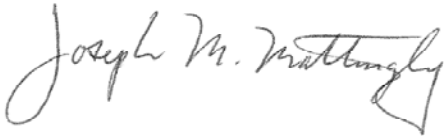
satisfying their energy or water conservation needs in whole or substantial part. In that regard, if the market share of products that would meet the proposed state standard is already high or has been increasing significantly in that state, or even in neighboring states, the petitioning state's assertion that its regulation is necessary should, again, be looked at with a great deal of skepticism.

DOE recognizes in its Federal Register notice that "unusual or compelling State or local energy or water interests" are an insufficient basis for granting a waiver of federal preemption if other parties show that the proposed regulation will significantly burden the manufacturing, marketing, distribution, sale or servicing of the covered product on a national basis. DOE further recognizes that it may not grant a waiver in any case if other parties show that the state regulation would eliminate product performance characteristics (including reliability), features, sizes, capacities and volumes that were previously available to consumers in the state. We emphasize that this latter restriction concerns adverse impacts on consumers in the state that has petitioned for a waiver. In the instant case, DOE must judge whether the California regulation will make affordable top loading clothes washers unavailable to California consumers. If and when the State of Massachusetts petitions DOE to exempt its furnace and boiler standards from federal preemption, DOE will have to evaluate whether the Massachusetts standards would make furnaces and boilers that can be vertically vented through a chimney unavailable to consumers in that state.

In conclusion, out of concern for precedents that may be established for future waiver petitions, GAMA urges DOE to be very strict in assessing the merits of the CEC's petition. If DOE gives the CEC any benefit of the doubt on the relevant issues, other states will be emboldened to prescribe their own energy or water conservation standards and to expect to receive the same liberal treatment from DOE. This would lead to a proliferation of state standards that EPCA, as amended by NAECA, was designed to avoid.

Again, we appreciate the opportunity to submit comments in this very important proceeding.

Respectfully submitted,



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