



Center for Environmental Health

THE PLANNING AND CONSERVATION LEAGUE

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Court Overturns State Approval of PEX Plastic Pipe For Failing to Consider Health Risks Coalition of Consumer, Public Health, Environmental, and Labor Groups Applaud Ruling

SACRAMENTO – In a victory for Californians, the Alameda Superior Court has filed a judgment overturning the State approval of cross-linked polyethylene (PEX) plastic drinking water pipe for use in California homes, schools, daycare centers and other buildings. The Court found that the State failed to consider cancer and other health risks from chemicals that leach from PEX pipe such as methyl tertiary-butyl ether (MTBE). The Court also found that the State failed to evaluate drinking water taste and odor impacts caused by chemical leaching and failed to address the risk of PEX pipe failure in certain applications.

“Evaluating the risks from exposure to MTBE-contaminated drinking water is particularly important to protect the health of construction workers” said Rod Cameron, Executive Director of the California State Pipe Trades Council. “Construction workers are often the first people to consume water from newly installed pipe and because they move from one job site to the next, construction workers will be repeatedly exposed to this contaminated water over the course of their work career.”

The California State Pipe Trades Council joined with a diverse coalition of environmental, consumer, public health and labor groups to file the lawsuit. In addition to the Pipe Trades Council, the coalition included the Center for Environmental Health, the Consumer Federation of California, the Planning and Conservation League, California Professional Firefighters and Sierra Club California. These groups have long advocated for state review of health and safety risks from plastic plumbing pipe and other newly proposed building materials

“Serious and meaningful environmental review of this product is long overdue,” said Michael Green, executive director of the Center for Environmental Health. The Court’s judgment requires the State to withdraw the regulations approving PEX and prepare a new environmental impact report. “We hope that the Administration takes heed of the Court’s rebuke of its attempt to sweep this product’s safety and performance concerns under the rug and embarks on a sincere effort to protect the health and safety of Californians,” said Richard Holober, Executive Director of the Consumer Federation of California.

“While this ruling addresses the State approval of PEX pipe, it also puts local jurisdictions on notice that any decision by a city or local building official to approve PEX would also require environmental review,” said the coalition’s attorney, Tom Enslow of Adams Broadwell Joseph & Cardozo.

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PEX PLASTIC PIPE LAWSUIT TIMELINE

Industry Opposes Preparation of Environmental Impact Report

The Plastic Pipe and Fittings Association filed an unsuccessful lawsuit arguing that the State of California had no authority to review the safety and reliability of PEX pipe prior to approving its use in the California Building Standards Code. In a 2004 decision, the Court of Appeal denied the Association's claim and held that the California Environmental Quality Act required PEX to undergo environmental review prior to State approval due to evidence of contamination and failure problems.

Schwarzenegger Administration Tries to Approve PEX without Environmental Impact Report

In 2006, the Schwarzenegger administration attempted to approve PEX plastic pipe through the issuance of an abbreviated environmental review document known as a "negative declaration." This document claimed that there was no evidence of health, safety or performance issues despite the 2004 Court decision to the contrary. In the face of public outcry from environmental, consumer, public health and labor groups, the 2006 negative declaration was quickly withdrawn and the California Building Standards Commission began work on an environmental impact report.

May 2008 Environmental Impact Report Corroborates Water Contamination and Failure Risks

In May 2008, the California Building Standards Commission released a draft environmental impact report confirming that PEX leaches MTBE at levels that far exceed California Safe Drinking Water Act standards for public health, taste and odor. The report recommended restricting the approval of PEX to pipes certified to meet California Safe Drinking Water Act standards. It also found that PEX is susceptible to permeation by outside contaminants and susceptible to failure in certain applications.

Commission Reversed Key Finding that MTBE Leaching from PEX May Pose Significant Risk

In October 2008, after receiving protests from the PEX manufacturers and meeting with industry lobbyists, the Commission reversed the findings of its original May 2008 report and claimed that MTBE leaching from PEX would not result in health risks or taste and odor impacts. This reversal was highly controversial. At its January 22, 2009 meeting, the Commission debated a motion to require PEX to meet minimum California Safe Drinking Water Act standards as recommended in the original Draft EIR. However, that motion was narrowly defeated on a 4 to 6 vote.

Coalition of Consumer, Environmental, Labor and Public Health Organizations File Lawsuit

In February 2009, the Center for Environmental Health, the California State Pipe Trades Council, the Consumer Federation of California, the Planning and Conservation League, California Professional Firefighters and Sierra Club California filed a lawsuit challenging the State's approval of PEX plastic pipe. The lawsuit asserted that the State improperly ignored evidence that PEX contaminates drinking water and is prone to premature failure in certain applications.

Judgment Requires Preparation of New Environmental Impact Report

On December 30, 2009, the Alameda Superior Court entered judgment overturning the approval of PEX and requiring preparation of a new environmental impact report. The Court held that the Commission failed to evaluate cancer and other health risks from chemicals leaching from PEX, failed to evaluate drinking water taste and odor impacts from chemical leaching, and failed to evaluate the risk of premature PEX pipe failures in certain applications. A copy of the Court's judgment and statement of decision may be found at www.calpipes.org.