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OPINION	:	No. 79-1202
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SUBJECT: UREA FORMALDEHYDE FOAM INSULATION—For purposes of Public Resources Code sections 25910–25931, the installer of urea formaldehyde foam insulation may not be considered the “manufacturer” thereof and the Energy Commission may not directly ban the sale or installation of urea formaldehyde foam insulation. Public Resources Code sections 25910–25931 are the only statutory provisions expressly applicable to the Energy Commission’s control of the installation of urea formaldehyde foam insulation.

The California Energy Commission has requested an opinion on questions that may be rephrased as follows:

1. May the installer of urea formaldehyde foam insulation be considered the “manufacturer” thereof for purposes of Public Resources Code sections 25910–25931?
2. Does the Energy Commission have the authority to ban the sale and installation of urea formaldehyde foam insulation?
3. What statutory provisions other than Public Resources Code sections 25910–25931 are applicable to the Energy Commission’s control of the installation of urea formaldehyde foam insulation?

CONCLUSIONS

1. The installer of urea formaldehyde foam insulation may not be considered the “manufacturer” thereof for purposes of Public Resources Code sections 25910–25931.
2. The Energy Commission may not directly ban the sale or installation of urea formaldehyde foam insulation; however, Public Resources Code section 25921 prohibits the sale or installation of any insulation that cannot meet the duly promulgated quality standards established by the Energy Commission.
3. Public Resources Code sections 25910–25931 are the only statutory provisions expressly applicable to the Energy Commissions control of the installation of urea formaldehyde foam insulation.

ANALYSIS

We are informed that urea formaldehyde foam insulation (hereinafter “UFFI”) is commonly installed in existing houses throughout the United States. The procedure is for the foam’s chemical components to be mixed together under pressure at the jobsite and sprayed into the wall cavities of the structure. A foaming agent catalyst and air induced into the spray gun create the cellular structure of the UFFI which is then bound together by a urea formaldehyde resin. The ratio of catalyst, air, and resin is based upon a weight and density calculation at the jobsite, with the proportion of each mixed together by the installer according to the specifications of the resin and catalyst manufacturer. The liquid solidifies within minutes, providing a firm insulation material.

The resin and catalyst manufacturer is thus responsible for the quality of the UFFI in that he furnishes the components and the specifications for their mixture. The final product is marketed based upon the components being combined in the ratio specified by the resin and catalyst manufacturer.

The installer of UFFI is responsible for correctly following the mixing instructions of the resin and catalyst manufacturer, as well as placing the material where it will ultimately perform its function. The questions presented for analysis concern the duties of an installer as they relate to the provisions of Public Resources Code sections 25910, 25931.¹

¹ All unidentified section references hereinafter are to the Public Resources Code.

Under the statutory scheme, the Legislature has established a system of standards for regulating thermal insulation material² sold or installed in buildings and appliances throughout the state. The standards are promulgated and administered by the Energy Commission (hereinafter “Commission”)³ under the terms of section 25920:

“The commission shall, by regulation adopted no later than July 1, 1978, establish insulation material standards governing the quality of all insulation material sold or installed within the state, including those properties that affect the safety and thermal performance of insulation material during application and in the use intended. Such standards shall specify the initial performance of the insulation material and the performance expected during the design life of the insulation material.”

The purpose of the legislative scheme is set forth in section 25910:

“It is the intent of the Legislature that in order to help meet future electrical and gas requirements at the least cost with the greatest reliability to the people of the state, it is necessary to immediately implement insulation programs regulated by the standards set forth in this chapter.”

A. Manufacturing the Foam

The key requirement of the legislation is for the “manufacturer” of insulation material to test and certify the insulation material under the terms of section 25921:

“One hundred and eighty days after the date of adoption of such standards and testing criteria insulation material may only be sold or installed in the state which has been *certified by the manufacturer to have been tested in accordance with such standards and which bears a visible commission-approved statement by the manufacturer certifying that the insulation material meets such standards and has been tested and approved by an approved testing laboratory*. Such testing criteria shall be designed to determine whether insulation materials have met or exceeded minimum

² “Insulation material” is defined as “any material placed within or contiguous to a wall, ceiling, or floor of a room or building, or contiguous to the surface of any appliance or its intake or outtake mechanism, for the purpose of reducing heat transfer and thus, the electrical or gas energy requirements for heating or cooling the building or operating the appliance or reducing adverse temperature fluctuations of the building, room, or appliance.”

³ Formally, the Commission is known as the State Energy Resources Conservation and Development Commission (§ 25104).

established standards.” (Emphasis added.)

The testing of the material by an approved testing laboratory is required to be “regular periodic testing.” (§ 25921.1) An “approved testing laboratory” is one that has “adequate personnel, facilities, equipment, and expertise to carry out the testing of” the material. (§ 25915 subd. (a).)⁴

Additionally, the manufacturer must institute “a system of procedures employed at the place of manufacture of insulation material designed to assure that insulation material produced at that place continues to meet the standards established by the commission.” (§§ 25915, subd. (d); 25921.1.)

The Legislature has not specifically defined the term “manufacturer” for purposes of sections 25910–25931. The first question presented for analysis thus concerns whether an installer of UFFI may be considered the manufacturer thereof. We conclude that he may not.

In construing these statutes, we note the cardinal rule of statutory interpretation to “ascertain the intent of the Legislature so as to effectuate the purpose of the law.” (Select *Base Materials v. Board of Equal.* (1959) 51 Cal. 2d 640, 645.) Statutes relating to the same subject matter should be construed together and harmonized by considering the statutory framework as a whole, and all statutory language should be given a practical and common sense interpretation. (*California Mfgs. Assn. v. Public Utilities Com.* (1979) 24 Cal. 3d 836, 846; *Moyer v. Workmen’s Comp. Appeals Board* (1973) 10 Cal. 3d 227, 230.)

Applying these rules, we observe first that the Legislature has distinguished between “manufacturers” and “installers” under the statutory scheme. Under section 25922 the installing contractor must certify “to the customer in writing that the amount of insulation (expressed in terms of R-value) meets or exceeds the minimum amount established by the standards.” Section 25925 provides that “manufacturers, distributors, and licensed installers of insulation materials,” among others, must be invited to participate in public hearings concerning the Commission’s standards and procedures.

More fundamental, however, is the requirement of section 25921 that insulation material be tested and certified by the manufacturer. It would be physically impossible for the installer of UFFI to affix “a visible commission—approved statement” on foam sprayed within the wall cavities of a structure. Nor can we envision an approved testing laboratory testing the UFFI between the time of manufacture and installation, if such “manufacture”

⁴ An approved testing laboratory need not be independent of the manufacturer. (§ 25915, subd. (a).)

takes place at the jobsite.

It also appears inconceivable that the Legislature would require an installer of UFFI to employ procedures (§ 25921.1) “to assure that insulation material produced at that place continues to meet the standards established by the commission” (§ 25915 subd. (d)), where no further UFFI will be produced at the jobsite.

On the other hand, the manufacturer of the UFFI resin and catalyst more naturally fits within these provisions of the statutory scheme. It is the resin and catalyst manufacturer who is responsible for the composition of the UFFI, both as to quality of the components which he furnishes and the quantity of each component which he specifies in his instructions. The installer merely follows the mixing directions and does not exercise any independent judgment with respect to the UFFI composition. The resin and catalyst manufacturer can comply with section 25921 by producing samples of the UFFI, using his own mixing directives, and can thereby test and certify the material as required. We view the certification process for UFFI as requiring the individual components to be tested in accordance with their mixing specifications, with the resulting insulation required to meet the Commissions standards. The employment of manufacturing procedures under section 25921.1 can also be readily accomplished by the resin and catalyst manufacturer.

Consequently, the provisions of the statutory scheme appear as a whole to exclude the installer of UFFI from the term “manufacturer” and instead place the manufacturing requirements for UFFI upon the UFFI resin and catalyst manufacturer.

We conclude, therefore, that under the provisions of sections 25910–25931, the installer of UFFI may not be considered the manufacturer thereof.

B. Banning the Sale and Installation of UFFI

The Legislature has given the Commission broad authority in administering sections 25910–25931. Its monitoring duties are set forth in section 25926:

“ . . . the commission may monitor compliance with its standards by conducting periodic inspections with its own personnel, or by requiring inspections conducted by an approved independent third party laboratory, of manufacturers, distributors, or retailers of insulation material sold within the state in order to determine their compliance with this article. The commission may require those manufacturers, distributors, or retailers that are inspected and found not in compliance with this article, or any regulation implementing it, to pay such reasonable fees as are necessary to cover the costs of inspections and testing necessary to investigate and enforce compliance by

those manufacturers, distributors, and retailers. The commission may also conduct, or contract with approved independent third party laboratories to conduct, independent performance tests of insulation materials sold in the state, in order to determine compliance with its adopted standards.”

The enforcement provisions of the statutory scheme are found in section 25931. It provides for a civil penalty of \$2,500 for each violation of the statutes and specifically states:

“Any person who violates or proposes to violate this article may be enjoined by any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practices which violate this chapter, or which may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of any practice which violates any provision of this chapter.”

While these statutory provisions are applicable on a case by case basis and result in judicial proceedings, we must turn to sections 25920 and 25921 in order to determine whether the Commission itself may ban the sale and installation of UFFI on an industry wide basis. Section 25920 requires the Commission to established quality standards that “specify the initial performance of the insulation material and the performance expected during the design life of the insulation material.” If the insulation material cannot meet these standards, it may not “be sold or installed in the state.” (§ 25921.)

We view these statutory provisions as (1) authority for the Commission to established reasonable and uniform standards duly promulgated by regulation,⁵ and (2) prohibiting the sale or installation of any insulation, including UFFI, that does not meet such standards.

Accordingly, we conclude that the Commission may not directly ban the installation and sale of UFFL however, section 25921 prohibits the sale or installation of any such insulation that cannot meet the duly promulgated quality standards established by the Commission.

⁵ The validity of the Commission’s regulations establishing insulation standards is presently the subject of litigation, and we do not address that issue in this opinion.

C. Other Statutory Schemes

Sections 25910–25931 deal specifically with the installation of insulation material, including UFFI. While the Commission has a wide range of responsibilities under the provisions of the Warren-Alquist State Energy Resources Conservation and Development Act (§§ 25000–25986) of which sections 25910–25931 are merely a part, we can find no other provisions that would be expressly applicable to such installation.⁶

Of course, other statutory schemes may be applicable to such installation that are not under the direct administration of the Commission. For instance, the Contractors' State License Board regulates licensed contractors who install UFFI as well as other types of insulation. (See Bus. & Prof. Code §§ 7000–7161; Cal. Admin. Code, tit. 16, § 754.8.) Under this statutory scheme, licensed contractors may be disciplined for willful departure from or disregard of “accepted trade standards for good and workmanlike construction.” (Bus. & Prof. Code § 7109.) We also note the general provisions of Welfare and Institutions Code section 41750:

“ . . . no person shall discharge from any source whatsoever such quantities of air contaminants or other material which cause injury detriment, nuisance, or annoyance to any considerable number of persons or to the public, or which endanger the comfort, repose, health, or safety of any such persons or the public, or which cause, or have a natural tendency to cause, injury or damage to business or property.

Business and Professions Code section 17500, prohibiting the making of untrue or misleading statements concerning property or services offered to the general public, is another general statute that would be applicable to the installation of any insulation, including UFFI.

As for the Commission's control of the installation of UFFI, we conclude that no statutory provisions other than sections 25910–25931 are expressly applicable.

⁶ Under the general provisions of section 25900, the Commission may petition a court to enjoin the violation or threatened violation of any provision of the Act that “constitutes an emergency requiring immediate action to protect the public health, welfare, or safety.”