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April 3, 2013

Representative Mitch Greenlick  
House Healthcare Committee, Chair  
Oregon House of Representatives  
900 Court St. NE, H-493  
Salem, OR 97301

**Re: Testimony on H.B. 2928**

Dear Chairman Greenlick:

Intelligent Global Pooling Systems (“iGPS”) operates the world’s first pallet rental service to provide lightweight, 100% recyclable plastic shipping platforms with embedded RFID technology. iGPS is committed to sustainability and environmental responsibility, and its pallets provide industry-leading environmental and economic benefits to its users. For example, iGPS’s pallets weigh 35% less than wood pallets, which saves large quantities of fuel and reduces harmful greenhouse gases. Over the course of five years, iGPS customers have cumulatively prevented the destruction of over 1.9 million trees, saved 1.7 million gallons of fuel and averted nearly 39 million pounds of greenhouse gas emissions. Therefore, it is with grave concern that we provide testimony regarding the adverse impact that H.B. 2928 would have on our client and thousands of others doing business in Oregon.

As you know, H.B. 2928 proposes to amend the Oregon Hazardous Substances Act and would greatly expand the labeling requirements of that Act. The bill would impact thousands of Oregon businesses and companies that do business in Oregon and would require the labeling of hundreds of thousands of products sold or used in Oregon. Indeed, H.B. 2928 effectively allows the Oregon Health Authority, without even a requirement for rulemaking, to create broader and more onerous requirements than those of California’s Proposition 65.

The Oregon Hazardous Substances Act already has a very broad definition of “hazardous substances,” which includes substances that may cause adverse chronic health effects; certain toys; products containing pesticide; certain flame retardants such as decabrominated diphenyl ether (“deca”); and any substance that the OHA finds to be a hazardous substance. This

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definition encompasses a wide range of materials regularly used in Oregon, including the flame retardant decabromine, which is used in iGPS's shipping pallets.

The existing statute already requires that all hazardous substances be labeled as such, with the words "Danger," "Warning," or "Caution," depending on the particular hazard posed by the substance. It also already requires that all hazardous substances be additionally labeled with an "affirmative statement of the principal hazard or hazards" of such substances (i.e., "flammable," "vapor harmful," "absorbed through skin) and that the label include "precautionary measures describing the action to be followed or avoided." This labeling requirement applies to the substances themselves, so that, for example, pesticides, paint thinners, and other chemicals must be labeled.

The proposed amendment would require the same label to be applied to all articles *containing* hazardous substances. The bill includes no threshold amount or risk level or exposure level to trigger the labeling requirement; therefore, it would require that any finished product that contains a hazardous substance in any amount, including a de minimis level, or one where the substance is not bioavailable to anyone, nevertheless be labeled. The bill also does not distinguish between types of products (e.g., children's toys vs. electronic components) or application of the substance (e.g., fully enclosed, internal components versus substances which could come in contact with consumers) or the normal context in which the products are used (in the household vs. industrial settings.)

On its face, the bill requires the labeling of an extraordinarily broad number of items used in Oregon. A small sampling of the types of items that would have to be labeled includes a wide variety of electronics (e.g., televisions, speakers, computer monitors), cars, batteries, carpet, and plastic shipping pallets. As written this bill would even require that our pennies, which contain copper, be labeled. The labeling requirement would apply to hundreds of thousands of items routinely used or sold in Oregon. Each item would have to carry a label that stated "Danger," "Warning," "Caution," or "Poison" and a "statement of the principal hazard or hazards." The labeling requirements, which would be applicable to many routinely used products, would be unnecessarily alarming to consumers.

The bill would allow exemptions to the labeling requirement only on a determination by the OHA, on a case by case basis, of impracticability. First, even if that were possible, it would be costly and exceptionally difficult. But, as you know, the OHA is already under-staffed and over-burdened, and such exemptions would be exceptionally time-consuming to obtain, would halt the shipment into Oregon of many products safely used everywhere else in the United States, and open each determination up to challenges both administratively and in the courts.

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The labeling requirements would substantially disrupt business in Oregon, as both local and national businesses would have to determine what "articles" sold or used in Oregon contained a hazardous substance in any part, including those parts that are completely encased or enclosed, and would then have to label those articles (such as computer monitors, for example) with a label stating "Warning" or "Caution." The cost to Oregon businesses alone would be enormous and would ultimately be passed on to the consumer. The cost of compliance with H.B. 2928 will significantly burden any company doing business in Oregon and will be a disincentive to doing so.

The bill also has significant obstacles to its enforceability and constitutionality. It does not include any mechanism for identifying the products that would have to be labeled, instead granting the OHA extremely broad if not unlimited and unregulated authority to impose a widespread labeling regime. It also adds a tremendous enforcement burden to the already strained OHA, without providing funds for such enforcement. Further, the bill likely will encounter federal constitutional challenges because of the constraints it places on interstate commerce. For instance, products coming into Oregon would have to be singled out and separately labeled, which would unduly burden companies doing business nationwide.

Based on the foregoing discussion, we respectfully request this committee oppose H.B. 2928 as currently composed.

Sincerely,

A handwritten signature in black ink, appearing to read "Tom Lindley", with a long, sweeping horizontal line extending to the right.

Tom Lindley

TEL:cr

