



April 8, 2015

Ms. Monet Vela
Office of Environment Health Hazard Assessment
1001 I Street
Sacramento, CA 95812
(Comments sent electronically to P65Public.comments@oehha.ca.gov)

RE: Proposals to Adopt New Article 6 for Proposition 65 & Proposition 65 Lead Agency Website

Dear Ms. Vela:

The Adhesive and Sealant Council (ASC) appreciates the opportunity to comment on the Office of Environmental Health Hazard Assessment's (OEHHA) proposed rules to adopt a revised Article 6 to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65") and the establishment of a framework for a website to provide the public supplemental information regarding Prop 65 chemicals.

ASC is a North American trade association representing 123 manufacturers of adhesives and sealants and suppliers of raw materials to the industry. Our manufacturing members produce a wide range of products utilized in both industrial applications and every day household activities and each of our members is committed to providing information to those consumers that will establish a trust that their products are safe.

With that commitment in mind ASC its members have grave concerns with OEHHA's proposals because they would substantially exacerbate an already abusive Proposition 65 climate, further increase consumer alarm and confusion about Proposition 65 warnings, and dramatically increase compliance costs for manufactures doing business not only in California but throughout the United States.

The following comments are meant to address specific proposed requirements under the two proposed rules.

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Section 25605—Chemical Name Disclosures in Warning

The proposal to include the names of 12 specific chemical warnings is unsupported by any scientific basis. The lack of scientific justification for choosing these 12 chemicals simply elevates their significance in the eyes of the public without any scientifically supportable information. We would request the thorough research studies related to the 12 chosen chemicals, and the details of why those 12 were singled out be shared in the name of transparency..

One specific example of the impracticality of this selected pool of chemicals is the inclusion of phthalates. Our members use a wide range of phthalates in their formulations, yet a broad brush approach of singling out this particular chemical family leaves the public with the impression that all pose a danger to their health. It is safe to assume that consumers will consider the use of the term “phthalates” in a similar fashion to the recent Consumer Product Safety Commission ban on the use of certain phthalates in children’s toys.

Recently the European Commission (EC) re-evaluated the restrictions on phthalates DINP (diisononyl phthalate) and DIDP (diisodecyl phthalate) and concluded that the use of these high molecular weight phthalates are safe in all current consumer applications. In particular, it finds that their use poses no risk to infants in toys and childcare articles that can be placed in the mouth. (*Additives for Polymers* Volume 2014 Issue 4 pp.1-12)

<http://www.sciencedirect.com/science/journal/03063747/2014/4>

Currently, there are only six phthalates on the Prop 65 list, but those are just a fraction of the dozens of phthalates (some of which are used by adhesive and sealant manufacturers) that would now be grouped into that category and required for listing. OEEHA needs to provide granular guidance on phthalates or else confuse the matter unnecessarily for all parties.

Finally the proposed rule continues to leave the implication that this list of chemicals could change over time. Such suggested change in the list of chemicals raises serious concerns from the standpoint of manufacturers having to continuously change product warning labels. Frequent product label changes are cost prohibitive and do not attribute any benefit to the consumers’ right-to-know. Instead what may result is a growing confusion by consumers as the same product over time exhibits different labels highlighting different chemicals.

Section 25607.1-2 Warnings for Consumer Products

ASC recognizes that OEHHA has revised this section from its pre-regulatory proposal by changing the language from the originally suggested, “Using this product **will expose** you to xxx, a chemical known to cause cancer,...” to “Using this product **can expose** you to xxx, a chemical known to cause cancer,...”. The problem is that the proposal retains the implication that utilization of the production will increase the consumers’ opportunity to develop cancer.

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The standard Proposition 65 warning has stated that a product “contains” a listed chemical. It is not always simple or a straight forward process to determine whether a product “contains” a listed chemical, yet it is far simpler than determining whether “average users of a consumer product “can be exposed” to the chemical on their average intake under California law.

Initiation of this language change to either “will expose” or “could expose” will result in the same consequences for manufacturers who will be burdened with having to perform expensive risk assessments using technical consultants in order to be prepared to defend themselves against Proposition 65 bounty hunters. The risk assessments are very difficult in a complex mixture, and are so widely dependent on variables including time of exposure, concentration, health of the person, location of use, method of use, protective equipment, etc.

Additionally OEEHA continues to ignore the fact that despite all of the existing and proposed regulations, there already is an effective federal labeling and warning requirements. The U.S. Consumer Product Safety Commission (CPSC) requires nationwide warning statements or instructions for consumer products under its jurisdiction. The CPSC requires chemical manufacturers to list specific chemicals that substantially contribute to a product’s hazard. In addition, manufacturers must assess the risk of chronic hazards resulting from the use of the product.

In the industrial setting, the Occupational Health and Safety Administration (OSHA) oversees comprehensive program regarding labeling by employers of hazardous chemicals in the workplace. On June 1, 2015 a Globally Harmonized System of Classification and Labeling (GHS) will become fully operational with a new regime of modified product labels and updated Safety Data Sheets (SDS) (formerly referred as Material Safety Data Sheets). Although the SDSs are only required for products subject to GHS regulations, it has been the practice of almost all manufacturers to make these type of documents available to anyone who requests them, either online or at a retail point of sale.

The development of the entire GHS program was negotiated over many years by hazard communication experts, international organizations, and stakeholder groups working with the United Nations. It is based on major labeling systems from around the world with input that reflects the most modern approach to warning both consumer and industrial users. OEEHA seems to have chosen to discount years of work by international experts with mandates for proscriptive language, in a proscriptive font size, and an agency-designed pictogram in it own proscriptive color.

With regard to the agency’s proposed pictogram, it is first important to point out that when OSHA adopted the new GHS regulations it required an extensive worker training program that lent considerable time to pictogram recognition. Prior to the adoption of these new regulation, pictograms had never been used in the U.S. marketplace. OSHA acknowledged this change and

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required employers to develop the necessary training program to ensure that moving to this of type warning approach did not impact safety. Without proper education, workers, especially those outside of California, will be confused by an entirely new pictogram that is outside those just recently developed through the GHS mandates. Consumers will not be expected to recognize the significance of the pictogram and will most likely render its use meaningless.

While the proposed pictogram will not raise the awareness of the consumer or the worker, it will significantly increase the costs of manufacturers being required to add a triangled exclamation point to their label. ASC has heard from several of its members with regard to cost estimates. One company calculated that adding the color yellow along with additional plate charges would increase their annual printing costs by \$375,000. Another estimated \$400 - \$650K in new plates, dyes, regulatory reviews, graphic time, and printing costs. A third company noted that they had recently purchased 16 new printers at a cost of approximately \$200,000. The printers are only capable of printing two colors (red and black for the GHS labels) and thus would have to be replaced should the company now have to go to a three color labeling system.

Additionally many ASC members are manufacturing products that are shipped worldwide yet the classifications can differ between what will be the international GHS classifications and OEEHA's Prop 65 list. Some examples include sulfuric acid which Prop 65 rules consider a carcinogen but many countries including the European Union, Japan and Korea do not. Conversely, Hydroquinone is not recognized as either carcinogenic under prop 65 regulations but Europe, Japan and Korea classify the chemical as both carcinogenic and mutagenic. These kinds of discrepancies are going to lead to confusion by consumers or force companies to print labels on a country by country basis.

Another challenge with the proposed pictogram is OEEHA's mandated size given current label constraints of federal warnings, bilingual product use information, company contact information, product brand name, UPC code, transportation restrictions, and any marketing information.

Our members estimate 1-2 years of work to update all of the packaging, and 2-3 years of sell through at retail. There may also be some "discarded" product at retail (material beyond shelf life) or further costs to manufacturers in buying back old label product that will have to be properly disposed of in a waste stream.

Website Establishment Proposal

Finally with regard to the OEEHA's separate proposal to establish a website to provide additional product information, ASC recognizes that the agency has made an effort to eliminate the threat of increased frivolous litigation by Prop 65 bounty hunters that was posed in the pre-regulatory proposal. Still the increased demand for very specific information for a sometimes very wide range of products will represent significant costs to both those providing the information and those maintaining the website. The demand for this information could be

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particularly onerous for mid-sized and smaller companies with few staff to meet the agency's information demands. In addition, all of this data will have to be assimilated into a continuing evolving website, generating massive upfront and ongoing maintenance costs with no assurances that that it will be either understood or utilized by the public for who it was created.

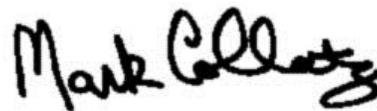
It would be ASC's contention that the proposed website should be dropped or at the very least make submissions to it voluntary. Giving the general public or the competition proprietary information about a manufacturer's formula becomes a risk to doing business in California. Many manufacturers may cease to sell certain products into California rather than disclose information that the competition can use.

In conclusion, ASC and its members understand that Prop 65 labeling will be maintained. They also understand that it has given rise over the last 25 years to a cottage industry of bounty hunter litigation. Governor Brown recognized these challenges and provided initial suggestions for how to address frivolous litigation and improve warnings for dangerous chemicals. Unfortunately this OEEHA proposal does not achieve Governor Brown's initial goal and will simply add additional costs to the regulated community with no evidence of value to residents of California.

ASC opposes the proposed amendments to increase the prop 65 warning content on the label and create the requirement to submit, via website, data that is already provided by other documents.

For additional information or questions please contact Mark Collatz at 301/986-9700 or at mark.collatz@ascouncil.org.

Best regards,

A handwritten signature in black ink that reads "Mark Collatz". The signature is written in a cursive, slightly slanted style.

Mark Collatz
Director of Regulatory Affairs