



April 8, 2015

Monet Vela
Office of Environmental Health Hazard Assessment (OEHHA)
California Environmental Protection Agency
P.O. Box 4010
1001 I Street
Sacramento, CA 95812-4010

RE: Clear and Reasonable Warning Regulations

Dear Ms. Vela:

Over the years, the American Cancer Society Cancer Action Network (ACS CAN) has received questions about relative cancer risk when some individuals encountered the current Prop. 65 warnings. The existing warnings fail to provide enough information to know what the risk is, and how much of a risk exists. The public perception appears to be that the warnings are ubiquitous, uninformative, and as a result, meaningless. The public has become inured to the warnings, not what this “right-to-know” law intended. The proposed changes to the warning requirements are a step in the right direction. ACS CAN commends OEHHA staff for drafting a thoughtful, forward-looking proposal to make the Proposition 65 warnings more meaningful.

We believe several concepts represent positive steps, such as standardized warnings; conspicuous placement; use of bold-print WARNING; the international health-hazard pictogram; stating the risk in terms of “exposure” as opposed to what is “contained” in a product or site; consideration for providing warnings in other languages spoken in the surrounding area; identifying chemical names in the warning; including a link to an OEHHA website to provide information about chemicals, routes of exposure, ways to minimize risks, and links to authoritative resources; and not allowing supplemental information that will dilute or negate the warning.

We also raise a few concerns for consideration:

- **Every warning should include the name of at least one of the trigger substances.** People do not relate well to abstractions. Individuals may or may not be familiar with the name of the particular chemical or mixture, but they are more likely to pay attention to it because of its specificity than to a generic “chemical known by the State of California to cause cancer...”. People may be even more likely to check out the OEHHA website to find out what a weird-sounding chemical is, than if they already know something about it. Requiring only certain chemicals are included in the basic warning message undermines the “right to know” purpose of Prop. 65. Transparency should not be based on the state’s determination that a chemical name will or will not be understood by the average person. The level of public awareness and concern about a certain chemical is dependent not so much on the general level of knowledge or scientific literacy, but on what has captured media headlines over time. OEHHA already proposes a strategy to avoid inordinately long and cumbersome lists of several chemicals for

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specific environmental exposures such as parking garages. Giving people at least one concrete example provides context for the personal contemplation of possible risks.

- **Expand the list of chemicals on the must-disclose list beyond the ‘dirty dozen’.** Consideration should be given to adding high-profile, commonly found chemicals that are on the Prop. 65 list, such as hexavalent chromium, diesel exhaust, methyl iodide, PCBs, perchloroethylene, and respirable titanium dioxide. Their absence can send an unintended message that they are of lesser concern than the proposed 12 chemicals which may not be the case for a particular exposure. At the very least a prescribed, timely process must be detailed to enable routine additions to the must-disclose list.
- **Strengthen the equity aspects of the warnings.** Warnings in other languages are essential to ensuring “right to know” does not exclude a significant proportion of the population. The proposal to require warnings in the same language as any other label or sign accompanying the product should be supported by in-language information on the OEHHA website, making the more detailed, supplemental information accessible as well. In California, 40% of individuals speak a language other than English at home, and an estimated 6 to 7 million Californians are Limited English Proficient (LEP)—meaning they speak English less than “very well.” (California Pan-Ethnic Health Network, <http://cpehn.org/policy-center/cultural-and-linguistic-competency>).
- **Business-derived supplemental information should be accurate and subject to expert appraisal.** The regulations should set out what additional contextual information may be included in pamphlets or other supplemental materials. Consideration should be given to a provision to ensure accuracy and efficacy. The proposed regulations include provisions to remove inaccurate information, but do not require expert appraisal of supplemental information presented by businesses.
- **Define the level of risk; all exposures are not equal.** To improve the usefulness of the warnings, include the risk level on the warning signs. Along the lines of the Homeland Security Advisory System, or the Think Dirty mobile application that scores cosmetic products (<http://www.thinkdirtyapp.com/>), or even the “spicy, medium or mild” designations of salsa, there should be a way to communicate potency and indicate orders of magnitude of risk. This would provide more meaningful information to people and allow them to make more informed decisions, prior to exposure. Risk assessment efforts should take into account vulnerable and susceptible populations to environmental pollutants, including but not limited to: children, pregnant women, those in low income communities, communities of color, and groups with extraordinary exposures (e.g., workers in some occupational environments).
- **Include tailored warnings for schools.** Given the widespread presence of pesticides, PCBs and asbestos in schools, we urge development of tailored warnings for such sources of environmental exposure, just as OEHHA has proposed in the case of parking facilities, lodging facilities, and amusement parks. While technically public schools do not have to meet Prop. 65 standards, private schools do. We hope that public school administrators would be guided by

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an ethical imperative to provide a level of safety commensurate with that mandated for their private counterparts.

- **Enhance access to OEHHA information via mobile devices, etc.** Providing consumers the ability to quickly and conveniently access OEHHA information prior to exposure will enable informed decision-making. For example, a message on warning signs could direct the reader to “Text #xyz to (123) 456-7890 for more information on the hazards at this location.”
- **Incorporate a strategy for measuring the effectiveness of Prop. 65.** Implementation of Prop. 65 has been most commonly characterized by fines and lawsuits, while voluntary reformulations have gone unrecognized. We challenge OEHHA to develop a system that identifies manufacturers and products that have voluntarily switched to chemical compounds that are not on the Prop. 65 list. This can create a more positive climate, serve as an incentive for reformulating so that a warning is not required, and enable OEHHA to recognize the “best practice” of companies that demonstrate through product changes, the spirit and intent of Prop. 65.

We appreciate the opportunity to participate in the formal regulatory process and thank you for your consideration.

Sincerely,

James K. Knox
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