April 8, 2015

Via Electronic Mail
P65Public.Comments@oehha.ca.gov

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

RE: Clear and Reasonable Warnings Regulations

Dear Ms. Vela:

Axiall Corporation is a leading integrated chemicals and building products company. Axiall has manufacturing facilities located throughout North America and in Asia to provide industry-leading materials and services to customers. Axiall sells vinyl compounds materials, chlorinated solvents, and caustic soda for use in various applications. Some of our products are sold directly into California as an ingredient while others may be shipped into California after being manufactured into consumer goods. Our compounds are used in a wide range of applications and production processes including building and housing components, computer housings, pipe fittings, water system appurtenances, window and furniture profiles, and bottles. Axiall manufactures a range of solvents used for a variety of applications including degreasing and cleaning electronics and certain metals. Caustic soda is an essential ingredient in a variety of industrial applications including pulp and paper, detergents, textiles, and petrochemical refining.

Pursuant to the January 16, 2015 public notice of proposed rulemaking, Axiall Corporation hereby submits these comments to the Office of Environmental Health Hazard Assessment (OEHHA) on its proposed repeal of Article 6and adoption of a new Article 6 in the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at Title 27, California Code of Regulations (commonly known as Prop 65). As explained in more detail below, Axiall is concerned that this new requirement would further burden businesses while failing to reduce risk to consumers.

The "List of 12"

Axiall believes the "List of 12" proposal not only fails to solve the "over warning" problem but, in fact, exacerbates this problem. Manufacturers will be forced to list chemicals regardless of quantity present or potential risk in order to avoid frivolous litigation. Consumers will therefore be warned of chemicals that do not present exposure at an unsafe level. The result would be unnecessary concern regarding chemicals present in safe quantities and dilution of the warning of real exposure risk.

Additionally, OEHHA has not provided criteria for adding (or removing) chemicals in the future. Without the ability to predict what chemicals may be added in the future, manufacturers cannot plan ahead and research alternative chemicals.

Finally, the use of groupings (such as "phthalates) obscures accurate information and completely impedes a consumer's ability to conduct additional research or learn more about the chemical at issue. There are at least 18 phthalate esters with different toxicological properties. The use of grouping disguises accurate information and hinders the ability of consumers to understand the specific chemical in the product.

The "no dilution" provision

OEHHA proposes in Subsection (d) that the person giving a warning may provide information that is "supplemental" to the warning. OEHHA then seeks to improperly regulate the content of the warning by adding the constraint that any such supplemental information "may not contradict, dilute, or diminish the warning."

It is generally accepted that the largest factor is determining whether an exposure will have adverse effects on consumer health is the amount of that exposure. Therefore Axiall believe it is imperative that consumers are offered clarification regarding risk based upon dosage. Additionally, manufactures should be permitted to provide safety information guiding consumers to further reduce risk.

Website Proposal

Proposed section 25205 proposes that OEHHA will develop a website to provide supplemental information to the public. Axiall believes consumers should be directed to the manufacturer for further information or questions regarding safe use of product. Manufactures are more familiar with current product, ingredient, and known risk information at various exposures levels than a regulatory agency.

Warning Symbol

Axiall strongly disagrees with the use of a warning symbol in any Proposition 65 warning. Proposition 65 is a right to know statute and does not determine whether a product is safe to use. Under the ANSI standard, the use of the safety alert symbol together with the signal word "WARNING" is intended to indicate a hazardous situation that could result in death or serious injury. The use of the same safety alert symbol together with the Proposition 65 term "warning" would create confusion, if not fear, in the consumer or worker.

Safe Harbor Provisions

OEHHA proposes to remove language defining a "clear and reasonable" warning. Manufacturers would be forced to either use the new "non mandatory" safe harbor language or risk litigation over alternative warnings. Axiall requests that language explaining "clear and reasonable" remain in the statute.

Inclusion of components

The proposed rule would change the definition in subsection (h) from "Consumer Product Exposure" to "Product Exposures" including components of a product. While a component or

material supplier may have a contractual or indemnification obligation to the manufacturer of the finished consumer good, upstream component or materials suppliers can have no independent liability under Proposition 65. Liability only attaches to persons who actually expose a person to a chemical. Axiall believes that OEHHA must clarify that a warning is made to consumers only with respect to a finished consumer good or article.

Effective Date

The proposed regulation provides that warning requirements will become effective two years after adoption. Products routinely remain in the marketplace for more than two years due to a variety of reasons such as warehousing or changes in consumer demand. This effective date would subject manufacturers to frivolous litigation. Axiall believes the rules must provide a means to grandfather labels currently in use.

Axiall appreciates the opportunity to comment on OEHHA's proposal.

Sincerely,

Tim R. Cobaugh

Vice President, EHS&S