



26 March 2015

Monet Vela  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
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Sacramento, California 95812-4010  
P65Public.Comments@oehha.ca.gov

Re: Comments on Potential Amendments to Proposition 65 Clear and Reasonable Warnings Requirements, Title 27, Article 6, Subarticles 1 and 2

Dear Ms. Vela:

Thank you for the opportunity to comment on the Office of Environmental Health Hazard Assessment's (OEHHA's) proposed amendments to Proposition 65 (Prop 65) Clear and Reasonable Warnings Requirements. The Phylmar Regulatory Roundtable (PRR) is a group of 34 companies and utilities committed to improving workplace safety and health, and toward that end, PRR provides informal benchmarking and networking opportunities. In addition, participating entities work together in the rulemaking process to develop recommendations to federal and state occupational safety and health agencies for effective workplace regulatory requirements. Combined, PRR members employ more than 400,000 individuals in the U.S., with annual revenues of more than \$750 billion; 15 members rank among the Fortune 500 companies.

Many of our members have both extensive experience in handling Prop 65 compliance in occupational settings and have significant interest in this proposal. Although companies participating in PRR contributed guidance and recommendations for these proposals, the opinions expressed below are those of the Phylmar Group, and may differ from beliefs and comments of individual PRR companies.

### **Support for Some Revisions**

PRR previously submitted comments on 5 June 2014 on OEHHA's March 2014 proposal to amend the warning requirements and create a lead agency website. Those comments raised several concerns voiced by PRR members. We appreciate that the revised proposal addresses many of those concerns. In particular, we support the following:

- a. Revised treatment of occupational warnings under the current proposal stating warnings to employees complying with all information, training, and labeling requirements of the Hazard Communication Standard satisfy occupational warning requirements, and no additional Prop 65 warning is required.

PRR believes strongly that the original proposal would have been duplicative and unnecessary in light of the recently revised and comprehensive Hazard Communication Standard that is already required for hazardous chemicals contained in the workplace. Companies using Prop 65 chemicals in the workplace already have implemented a Hazard Communication Program, including information and training on the nature of the health hazards and measures to protect employee health, as well as training on Safety Data Sheets (SDSs) and the new label warning requirements.

- b. Elimination of the Globally Harmonized System of Classification and Labeling of Chemicals (GHS) health hazard pictogram and replacing it with a yellow triangle and black exclamation point.

PRR believes that the draft proposal for comment, to require the GHS Health Hazard pictogram in warnings would not have been effective in furthering the public's understanding of their risk, because the symbol does not suggest the concept of "cancer" or "birth defects" to observers and most people in California do not know what the symbol means (unless they have been trained by employers under HazCom). The inclusion of the GHS pictogram would also not be appropriate. Pictograms were designed under the GHS scheme based on globally standardized hazard classification criteria, which differs significantly from the system used to list carcinogens and reproductive toxicants under Prop 65.

- c. Removing the warning phrase "will expose you." PRR members were concerned about negative consequences resulting from changing the words "this area contains" to the words "will expose you." The phrase "will expose" implies certainty that an exposure will occur whenever a person is in the area covered by the warning, regardless of the situation. In many instances this would not be an accurate statement and would be misleading and confusing to the public. It is not necessarily the case that someone walking past a facility with a posted Prop 65 warning will be exposed to chemicals known to the state to cause cancer or reproductive harm.
- d. Removing the proposed requirement to submit information on all posted warnings to OEHHA for publication on its website. Limiting the submittal of information for posting on OEHHA's website is appropriate.

PRR believes that the amount of information OEHHA would have received on chemicals for the proposed website would have undermined the Agency's goal of increasing the public understanding of exposures and risk. While having access to more information is a positive goal, unless the Agency was prepared to distill and assimilate all reasonable information that is submitted, viewers of the website simply would have been inundated with information, much of it in very technical language which may be confusing. There is also concern about ensuring the accuracy of the information that was submitted by parties.

In the environmental setting, under the current regulation, visitors to a facility have an opportunity to read a warning of the presence of Prop 65 substances prior to entering. There is a mechanism for visitors to find out information and have questions answered. The previous version would not have provided any additional information or made it easier for visitors to obtain the information they may be seeking at the time they are viewing the warning.

## **Remaining Concerns**

**Evidence of Necessity** - PRR continues to recommend OEHHA should provide more evidence demonstrating that the current Proposition 65 warning signs are inadequate and that the proposed changes would likely correct those deficiencies. We question whether the proposed modifications create additional health and safety benefits or are a worthwhile use of limited safety and health resources that will be devoted to changing warning signs and labels.

**Phrase "Can Expose You"** – We appreciate that OEHAA removed the phrase "will expose you" and believe this is a wise policy. Concern remains, however, with the proposed language "Entering this area can expose you to chemicals known to the state . . ." and whether it is an improvement over the current regulatory language "this area contains." The phrase "can expose you" implies certainty that an exposure can in fact occur to a person whenever they are in the area covered by the warning. We believe this is misleading, as the possible occurrence of a threshold exposure or any exposure may be infrequent, and only under certain controlled circumstances, if at all. PRR continues to believe that while it is important to post signage warning people about hazards and exposures they face, it is not helpful, and even counterproductive to post signage warning people about exposures that do not occur.

The current regulatory language of "this area contains" is a statement of fact, whereas "can expose you" is conjecture about the possibility, often small, of an exposure occurring. PRR is concerned that the public will misinterpret the proposed language as a guarantee of exposure, which is not the case. We believe the warning should be a statement of fact and not include conjecture, which is accomplished by the present regulatory language of "this area contains." PRR members question whether there is any material improvement from a warning that being in an area "can expose" someone to chemicals over the current language "this area contains

chemicals known to the state of California to cause..." PRR members believe that the existing language of "this area contains" is clear, effective and preferable to both of the alternative phrases that have been proposed.

Thank you for the opportunity to provide comments on the Proposed Amendments. PRR would be pleased to discuss any of these comments further with OEHHA staff.

Sincerely,

A handwritten signature in black ink that reads "Elizabeth A. Treanor". The signature is written in a cursive style with a large, prominent initial "E".

Elizabeth A. Treanor  
Director  
Phylmar Regulatory Roundtable

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