



June 15, 2010

Ms. Carol Monahan-Cummings, Chief Counsel
Ms. Fran Kammerer, Staff Counsel
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Via email to: fkammerer@oehha.ca.gov

RE: Comments on “Pre-Regulatory Draft: Proposed Amendments to Article 6, Title 27, California Code of Regulations: Safe Harbor Clear and Reasonable Warnings”

Dear Ms. Monahan-Cummings and Ms. Kammerer:

CRA once again confirms its support of the ongoing efforts to develop a safe harbor regulation that establishes a workable method for communication to consumers of Proposition 65-required warnings relative to sale of food products in retail stores. **We want** to achieve agreement on regulations that establish a system which: identifies, *to the food retailer*, products requiring warnings; establishes a credible and comprehensive database that can be accessed by food retailer; specifies in detail warning methods of transmission *to the consumer*, including warning content, size, and location, that are workable and feasible for the food retailer to implement; and that, for OEHHA, are deemed properly “clear and reasonable”.

Unfortunately we have not been able to coordinate all the feedback and responses to the Pre-Regulatory Draft from our members in time to provide you extensive feedback by today’s deadline. We do plan to submit comments in the following areas:

- Initial download of affected products
- Text of warnings on cash register receipts
- How retailers that private label must perform the manufacturer responsibilities, such as notifying themselves that a warning is required
- The need for a cost estimate and/or analysis of the fee structure
- Timeframe of 90 days for retailers to check the websites for changes may be more workable if changed to reflect statutory language in another Code that is clearer
- Warning messages on shelf tags, and type size on shelf labels
- Warnings through kiosks
- Clarification of compliance for deli and bakery departments

Since the most recent draft is “pre-regulatory”, we are assuming the deadline is not fixed and we anticipate submitting comments to you within a few weeks. Reviewing the revised language with a number of retail companies takes time—conference calls, discussions, time for individual companies to analyze and send their comments to us, and time for CRA to coordinate and evaluate comments before forwarding them to you. Certainly there is a sense of frustration among our members that the language keeps getting *less* workable rather than more workable each time a new draft is released. For example, in earlier meetings, a kiosk with access to OEHHA’s website was stated to be acceptable; now it is not sufficient without additional warning steps. A compendium of warnings in binder form was initially an option, and we discussed how to notify customers of the existence and availability of the compendium; now it is no longer an option without additional warning steps. The brochure was an option, and we discussed formats and updates; now it is no longer an option unless tied to additional warning steps. Please understand we appreciate that OEHHA has clarified many of our questions and many “gray areas”, but unless the compliance options get clearer, simpler, more practical and more cost effective, OEHHA may lose the support of the retail industry for this effort and end up with a safe harbor that is unused. This benefits neither the agency nor our members who advocated development of such a safe harbor since the very beginning of this process. It would be unfortunate if what we all wanted to achieve was instead ultimately thwarted by insistence on a system of warnings that provide a higher level of warnings to food consumers than provided by any other approved warnings on food and other products. What our industry has agreed to already exceeds food warnings provided to the *same* consumers in all restaurants, hotels, motels, and bed and breakfast lodging throughout the state. We hope that OEHHA will re-review the written comments we have submitted previously with accompanying suggestions for revisions, as well as the draft regulatory framework we previously submitted in conjunction with food manufacturers.

Thank you.

Sincerely,



Pamela Boyd Williams
Senior Vice President

cc: Dr. Joan Denton