



September 21, 2015

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

via email to P65Public.Comments@oehha.ca.gov

Re: Lead Agency Website

Dear Ms. Vela:

The American Chemistry Council (“ACC”) is pleased to submit these comments regarding the Office of Environmental Health Hazard Assessment’s (“OEHHA”) September 4, 2015, Notice of Modification to Text to add Section 25205 to Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act (“Proposition 65”). ACC represents the leading companies engaged in the business of chemistry.¹ Our prior comments, including those submitted on April 8, 2015, and June 15, 2015, are incorporated here by reference. We separately join the California Chamber of Commerce’s coalition comments, which are likewise incorporated by reference.

Our June 15, 2015, letter made four crucial points, which we believe are unaddressed by the proposal and urge OEHHA to consider them in this rulemaking process:

- OEHHA has neither statutory authorization to present additional information about covered products and facilities to the public, nor to collect, through compulsion, additional information about products and facilities. It cannot bootstrap missing statutory authority through the regulatory process.
- Consumers with questions about product and facility safety should be referred first to the product manufacturer or facility operator. OEHHA’s approach – of offering and promoting a website to address such questions - could delay consumers from promptly obtaining accurate use, first aid, or other instructions from the product manufacturer.
- OEHHA must assure that the data it seeks to disseminate to the public is high quality, reliable, objective, and accurate. It is insufficient for the agency to merely collect and report “publicly available” data, regardless of source, quality, or verification. OEHHA should outline the procedures it intends to follow rather than merely stating that they will be developed later.
- For information about a product or facility, the product manufacturer and facility operator should always have a reasonable advance opportunity to review the data to be disseminated by the agency.

¹ ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is an \$801 billion enterprise and a key element of the nation's economy. It is the nation's largest exporter, accounting for fourteen percent of all U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.



As the Chamber notes in its Coalition comments, neither Proposition 65 nor the California Administrative Procedure Act confer authority upon OEHHA to require businesses to provide the agency with information related to their products. The Coalition comments point out that OEHHA's warning regulation proposal expressly permits, but appropriately does not require, businesses to provide consumers with supplemental information in their warnings. The Chamber suggests in the Coalition's comments that if OEHHA wishes to give businesses the further option to provide such supplemental information to OEHHA for potential use on the agency's website, then proposed Section 25600(d) can expressly be modified in this rulemaking process to permit businesses to do so.

We note, however, that while it may be helpful for enforcement purposes to have this regulatory clarification, regulatory modification should not be needed in the first place because businesses already have a constitutionally protected right to offer truthful and accurate information about their products. We, therefore, assert that both the warning proposal and website proposal as currently drafted likely violate the First Amendment of the U.S. Constitution with respect to compelled speech principles.²

Thank you for the opportunity to comment. We again urge OEHHA not to launch a stand-alone Proposition 65 website for the reasons previously stated.

Sincerely,

A handwritten signature in black ink, appearing to read "Ti Shestek", with a long horizontal flourish extending to the right.

Tim Shestek
Senior Director, State Affairs

² Our comment here is intended to clarify that we reassert and do not waive our comments with respect to Proposition 65 and the First Amendment.