



January 25, 2016

California's Great America

Children's Fairyland

Disneyland Parks  
and Resorts

Funderland

Gilroy Gardens Theme Park

Golfland Entertainment  
Centers

Knott's Berry Farm

LEGOLAND California

Pacific Park

Palace Entertainment

Pixieland Amusement Park

Redwood Valley Railway

Santa Cruz Beach  
Boardwalk

SeaWorld Parks  
and Entertainment

Six Flags Discovery  
Kingdom

Six Flags Magic Mountain

Sonoma Train Town

The Wave Water Park

Universal Parks and Resorts

Water World California

Wild Rivers Water Park

\*Partial list

**ELECTRONIC MAIL**

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

Re: **Proposition 65 Warning Regulation**

Dear Ms. Vela:

The California Parks and Attractions Association (CAPA) submits these comments in response to the Office of Environmental Health Hazard Assessment's (OEHHA) November 27, 2015 notice of its intent to repeal the current clear and reasonable warning regulations and to adopt new regulations to replace them. The November 27, 2015 proposal also replaces the January 16, 2015 proposal that has been withdrawn.

CAPA recognizes the effort that OEHHA staff made to develop a more workable regulation and particularly supports the specific warning regulation for amusement parks. These comments are focused on changes made in the November 27, 2015 proposal from the January 16, 2015 proposal that impact amusement parks and on the November 27, 2015 proposed provisions that need to be clarified or amended.

**I. Amusement Park Facility**

During the public hearing on March 25, 2015 on the January 16, 2015 proposal, a commenter suggested that the specific section relating to amusement parks include a definition to make explicit that the regulation applies to amusement parks. The November 27, 2015 proposal contains a description of amusement parks and adds a definition of "amusement ride". CAPA finds the description and definition to be acceptable.

## II. Other Regulations Affecting Amusement Parks

Subdivision (d), section 25607.22 provides as follows, “In addition to the warning specified in this section, warnings that comply with this article must also provide for exposures to chemicals in consumer products, alcoholic beverages, food, and enclosed parking facilities where such exposures occur on the premises.” In addition, subsection (a)(1), section 25607.23 requires, “the symbol required in Section 25603(a)(1).” Also, subsection (a)(3), section 25607.23 requires the warning sign to name one or more chemical. The balance of these comments addresses the provisions that affect amusement parks as a result of the preceding regulatory language.

### a. Name One or More Chemicals

The requirement in section 25607.23 (a)(b) that amusement parks name one or more chemical in their warnings is obviously included to satisfy the general provision in subsection (c), section 25601. That subsection provides, ... “A warning meets the requirements of this article if the name of one or more of the listed chemicals for which the warning is being provided is included in the text of the warning, to the extent that an exposure to that chemical or chemicals is at a level that requires a warning.”

While OEHHA has made clear its interpretation of that language, the language is unfortunately subject to more than one interpretation. Accordingly, CAPA urges OEHHA to revise the language to make clear that a business has to name only one chemical even though it may be warning about multiple chemicals. This, of course, is how Mario Fernandez described the provision at the public hearing on January 13, 2016. He used the example of a business warning about chemicals A and B and explained that the business can include A or B or both. CAPA agrees with the comment of the Chamber of Commerce Coalition on this issue and urges amending subsection (c) to read as follows:

“A warning meets the requirements of this article if the name of one or more of the listed chemicals for which the warning is being provided is included in the text of the warning, ~~to the extent that an exposure to that chemical or chemicals is at a level that requires a warning.~~ **If a warning is being provided for more than one listed chemical, the warning meets the requirements of this article if the name of any one of the listed chemicals for which the warning is being provided is included in the text of the warning.**”

CAPA agrees also with the comments of the Chamber that the intent of section 25601 (c) should be confirmed in the Final Statement of Reasons (FSOR). An example would support OEHHA’s intent.

The FSOR also needs to make it explicit that complying with section 25601 (c) satisfies the many places throughout the regulation, including in section 25607.23 pertaining to amusement parks, that require the warning message to name one or more chemical.

**b. Alcoholic Beverages**

Amusement parks may serve alcoholic beverages in portions of the parks that, through sets and staff costumes, display a theme and create an immersive environment that creates the illusion of existing in a different time or place. Visitors are attracted to these areas because of their authentic and consistent look.

Having to post Proposition 65 warning signs in those areas diminishes the authenticity for visitors. The parks need a modest amendment to the warning regulation relating to alcoholic beverages to have the flexibility to satisfy both the requirement to warn about alcoholic beverages and to preserve the authenticity of the specific themes for visitors. CAPA urges an amendment to subsection (a)(1), section 25607.3 so it would read as follows:

An 8 ½ by 11 inch sign in no smaller than 22-point type, placed at eye level so that it is readable and conspicuous to customers as they enter the area or areas where, by permit or license, alcoholic beverages ~~are~~ **may be** served.

This change is consistent with the intent expressed in the regulation to permit a warning for the area encompassed by the permit or license that authorizes the sale of alcoholic beverages. It would, as described above, enhance the experience of visitors to these themed areas.

**c. Food and Non-Alcoholic Beverages**

CAPA previously urged OEHHA to permit warnings about food and nonalcoholic beverages to be provided in menus or menu boards. CAPA appreciates and supports the change made to section 25607.4 (a)(3) permitting a warning to be included “on any menu or list describing food or nonalcoholic beverage offerings...”

CAPA also urged OEHHA to address the clarity of the warning methodology in section 25607.5 (a)(1). That change was made and again CAPA appreciates and supports the current language in that subsection.

**d. Product Warnings**

Section 25602 sets out the method for providing product warnings. Subsection (a)(2) of that section describes one of these methods as follows:

A product-specific warning provided via any electronic device or process that automatically provides the warning to the purchaser prior to or during the purchase of the product, without requiring the purchaser to seek out the warning.

The Initial Statement of Reasons (ISOR) provides on page 25 that subsection (a)(2) is a “catch all” provision intended to capture existing and future methods of communication, including currently available tools such as electronic shopping carts, smartphone applications, barcode scanners, self-checkout registers, pop-ups on Internet websites, and any other electronic device that can immediately provide the consumer with the required warning.”

Section 25600.1 includes a definition of “labeling” in subsection (g) to mean, “any written, printed, graphic, or electronically provided communication that accompanies a product including tags at the point of sale or display of a product.” That section also defines “sign” in subsection (k) to mean a physical presentation a written, printed, graphic or electronically provided communication.

The ISOR, on page 17, provides that the definition of labeling has been updated to more specifically allow the use of newer technology to communicate the required warning. It also provides that the definition of “sign” are similar to those made in the labeling definition. The statement goes on to say OEHHA intends to clarify that signs can include graphics and other content and can be presented electronically. This reflects the technology that has developed in the quarter century since the original regulation was adopted.

While it is not explicit, CAPA interprets the reference to “electronic device or process” in section 25602 and the reference to “electronically provided communication,” in the definitions of “labeling” and “sign” in section 25600.1 to include a warning printed on a cash register receipt, provided that a notice at the point-of-sale informs consumers to check the receipt for a Proposition 65 warning and the warning is printed on the receipt only for products for which the retailer has determined a warning is appropriate and not for all products sold. If CAPA’s interpretation is consistent, OEHAA is encouraged to confirm that in the FSOR to provide needed clarity and guidance to retailers and to private enforcers and courts who will be called on to interpret the meaning of this regulation.

The symbol required for consumer products in section 25603 requires a black exclamation point and a yellow equilateral triangle with a bold black outline. Subsection (a)(1) of that section goes on to provide, “Where the sign, label or labeling for the product is not printed using the color yellow, the symbol may be printed in black and white.”

CAPA interprets the language in subsection (a)(1), section 25603 authorizing the symbol to be printed in black and white on a sign, label or labeling that is not printed using the color yellow to include the warning provided on cash register receipts. Again, CAPA urges OEHHA to confirm its understanding and interpretation in the FSOR to provide clarity and guidance to retailers, private enforcers, and courts who will be called on to interpret the meaning of the regulation.

### III. Conclusion

CAPA urges OEHHA to adopt the changes to the proposed regulation set out in the comments above to provide the clarity to those who are required to interpret the regulation and the flexibility for a workable implementation of the regulation. CAPA is available to discuss any of these issues at any time if OEHHA desires expansion or clarification of these comments.

Sincerely,

CALIFORNIA ATTRACTIONS AND  
PARKS ASSOCIATION, INC.

By: 

John Robinson, President and CEO