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CALIFORNIA CHAMBER OF COMMERCE

CALIFORNIA RESTAURANT ASSOCIATION
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AMERICAN BEVERAGE ASSOCIATION

Amway

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AHAM
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AAFA
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WD-40 COMPANY

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CALIFORNIA HOTEL & LODGING ASSOCIATION

CALIFORNIA FARM BUREAU FEDERATION

Toy Industry Association, Inc.

Agricultural Council of California

FDRA
FOOTWEAR DISTRIBUTORS AND RETAILERS OF AMERICA

CAA
California Apartment Association

California Business Properties Association

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AUTOMOTIVE SPECIALTY PRODUCTS ALLIANCE

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CIPA

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WESTERN GROWERS
Fresh produce from our families to yours

CIOMA

CALIFORNIA RETAILERS ASSOCIATION

CALIFORNIA MANUFACTURERS & TECHNOLOGY ASSOCIATION

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CEA
Consumer Electronics Association

BOMA California

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THE APARTMENT ASSOCIATION GREATER LOS ANGELES
Founded 1917
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www.aagla.org

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Promoting Industry and Protecting the Environment

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APARTMENT ASSOCIATION
CALIFORNIA SOUTHERN CITIES, INC.

NCRPA
Nor Cal Rental Property Association

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NORTH AMERICA

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COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
NAIOP OF CALIFORNIA

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The Vinyl Institute

CALCIMA
California Construction and Industrial Materials Association

Brawley Chamber of Commerce

100 Years AHFA
American Home Furnishings Alliance

California League of Food Processors

california Travel Association

American Wood Council

FEDERAL

SWCLC
Southwest California Legislative Council

MFASC
Metal Finishing Association of Southern California, Inc.

nocc
North Orange County Chamber

CSSA California Self Storage Association

Simi Valley Chamber of Commerce and Visitor Center
"The HeartBeat of Business"

STOP LAWSUIT ABUSE
California Citizens Against Lawsuit Abuse

California Coalition Metals

MFANC
Metal Finishing Association of Northern California, Inc.

San Diego Regional Chamber of Commerce

AHPA
American Herbal Products Association

Mexichem
Chloro-Vinyl

Sika
Building Trust

Travel Goods Association

Chamber Visalia of Commerce

FPP
Frozen Potato Products Institute

WPHA
Western Plant Health Association

SENTINEL
Connector Systems Inc.
Tel: (717) 843-4240
Fax: (717) 848-1949

California Cement Manufacturers Environmental Coalition

OCZ Storage Solutions
A Toshiba Group Company

Superior Essex

Burton Wire & Cable

AlphaGary
Formulating solutions. Multiplying possibilities.
A Mexichem Company

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Lighting—Edge Technologies

JPMA

spi the plastics industry trade association

North American Home Furnishings Association

Simplot

Western Wood Preservers Institute

RFCi
Resilient Floor Covering Institute

The Chamber
Of the Santa Barbara Region
Helping Business Succeed Since 1899

California Furniture Manufacturers Association
100th Year Anniversary

Council for Responsible Nutrition
The Science Behind the Supplements

International Council of Shopping Centers

Wima
Writing Instrument Manufacturers Association

ABMA American Brush Manufacturers Association

cabbi California Association of Boutique & Breakfast Inns

Natural Products Association

WAPA
Western Agricultural Processors Association

OPEI
Outdoor Power Equipment Institute

KCMA
Quality. Advocacy. Leadership.
Kitchen Cabinet Manufacturers Association

IFA International Franchise Association
Franchising
Building local businesses, one opportunity at a time.

AAMA

USANA Health Sciences

ACMA
American Composites Manufacturers Association

Art & Creative Materials Institute
Certifying Safety & Quality Since 1940

Flexible Vinyl Alliance

National Shooting Sports Foundation
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California Cotton Ginners Associatic

California Cotton Growers Association

California Association of Firearms Retailers

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FASA

naccd
National Association of Chemical Distributors

Associated Roofing Contractors of the Bay Area Counties, Inc.

CompTIA

International Crystal Federation

Chamber
Greater Bakersfield Chamber of Commerce

Specialty Equipment Market Association
SEMA
Serving the Motor Vehicle Aftermarket

SIRC
Information & Research Center

Can Manufacturers Institute

September 21, 2015

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

Via email

SUBJECT: LEAD AGENCY WEBSITE

Dear Ms. Vela:

The California Chamber of Commerce and the below-listed organizations (hereinafter, "Coalition") thank you for the opportunity to submit 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"). Our Coalition consists of over one hundred seventy California-based and national organizations and businesses of varying sizes that, collectively, represent nearly every major business sector that would be directly impacted by OEHHA's proposed regulation.

The Coalition appreciates OEHHA's willingness to address some of the concerns raised in our June 15, 2015 comment letter. This letter focuses on two issues that the Coalition raised in its comment letter, but that OEHHA has elected not to discuss or address. Specifically, this letter

reiterates that (1) OEHHA should provide businesses with notice prior to posting product specific or company specific information on the website and (2) the lead agency website regulation exceeds OEHHA's statutory authority. With respect to the latter issue, this letter notes that the Administrative Procedure Act does not provide OEHHA with the substantive authority to require businesses to provide OEHHA with information regarding its products. The APA only establishes basic minimum *procedural* requirements for adopting regulations when substantive authority exists elsewhere.

OEHHA Should Provide Businesses with Notice Prior to Posting Product Specific or Company Specific Information on the Website

As noted in our June 15 letter, although proposed subdivision (a)(5) allows members of the public, including businesses, to request a correction of inaccurate material provided on the website, the Coalition believes that OEHHA can establish a simple process that will reduce the number of requests for corrections OEHHA receives and will further avoid unnecessarily confusing consumers. Specifically, OEHHA should incorporate into the regulation a process wherein OEHHA would provide notice to individual businesses or trade associations prior to posting product specific, company specific, or industry specific information on the website. The recipient of the notice would, in turn, have an opportunity to review the information prior to posting and assert whether any of the information is materially inaccurate.

The concept of providing businesses notice prior to posting product specific or company specific information on a website is not new. The Consumer Products Safety Commission (CPSC), for example, established a publicly available, searchable database that includes specified information about certain consumer products pursuant to the Consumer Product Safety Improvement Act (CPSIA). Within five business days after the CPSC receives a report indicating injury, illness, death or risk associated with a product, CPSC must, to the extent practicable, transmit the report to any manufacturer and/or private labeler identified therein and provide an opportunity to comment or to assert that information in the report is materially inaccurate. Under the CPSIA, posting of the information can be delayed if CPSC determines that the report or comments were materially inaccurate.

The Coalition submits that adopting a similar notification process to that adopted on the federal level would reduce the number of requests for correction and, perhaps more importantly, would ensure that otherwise inaccurate or misleading information would be corrected before being made available for public consumption.

Neither Prop 65 Nor the APA Confer Authority to OEHHA to Require Businesses to Provide it with Information Related to Their Products

In addition to allowing OEHHA to compile its own information on the website for public consumption, the proposed website regulation, under Section 25205 subdivision (b), empowers OEHHA to *require* manufacturers, producers, importers and distributors of products bearing a Proposition 65 warning to provide the agency with a plethora of complicated and highly technical information. (Proposed Section 25205(b) ["The manufacturer, producer, distributor, or importer of a product . . . must provide the following information."].) Such information may include the identities of the chemicals in the product for which a warning is being given, the location or components of a product in which such chemicals are present, the concentration of those chemicals, and "any other information the lead agency deems necessary."

Proposition 65 does not empower OEHHA to require manufacturers, producers, importers and distributors to provide it with information related to their products (*cf*. Health and Safety Code §§ 25251 *et seq*. [providing similar authorities to the Department of Toxic Substances Control]), or regarding their decisions to provide Proposition 65 warnings for listed chemicals. (*Cf*. Health and Safety Code § 25249.7(c) [delegating Proposition 65 enforcement authority to the Attorney General and other public prosecutors, but not to OEHHA].) The Coalition urges OEHHA to stay within the statutory boundaries of Proposition 65.

We note that, in contrast, OEHHA's warning regulation proposal expressly *permits*, but appropriately does not *require*, businesses to provide consumers with supplemental information in their warnings. (Section 25600(d) ["A person may provide information to the exposed individual that is supplemental to the warning required by Section 25249.6 of the Act, such as further information about the form or nature of the exposure and ways to avoid exposure."].) 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.

With this in mind, OEHHA appears to be relying not on Safe Drinking Water and Toxic Enforcement Act, but on Government Code sections 11346.5(a)(11) and 11346.3(d) as authority for the agency to mandate businesses to provide information. Those sections, which are part of the California Administrative Procedure Act (APA), establish only procedural requirements for rulemaking when substantive authority exists elsewhere. The Government Code sections do not confer on OEHHA the substantive authority to require businesses to provide warning – and neither does Proposition 65 itself.

The APA's purpose is clear from the APA itself. Section 11346(a) states: "It is the purpose of this chapter to establish basic minimum *procedural* requirements for the adoption, amendment, or repeal of administrative regulations." (Emphasis added.) Further, Section 11349.1 establishes the criteria by which the Office of Administrative Law reviews proposed regulations. Among them is the requirement that the agency have authority to promulgate the regulation at issue. That requirement would be meaningless if in fact all that was needed to establish the requisite authority was compliance with the APA itself.

Accordingly, neither Proposition 65 nor the APA confer substantive authority to OEHHA to require businesses to provide it with information related to their products.

Thank you for considering our comments. We appreciate the opportunity to participate in this very important regulatory process.

Sincerely,

Anthony Samson
Policy Advocate
The California Chamber of Commerce

On behalf of the following organizations:

Advanced Medical Technology Association (AdvaMed)
Agricultural Council of California
Alliance of Automobile Manufacturers
Allwire, Inc.
Alpha Gary
American Apparel & Footwear Association
American Architectural Manufacturers Association
American Beverage Association
American Brush Manufacturers Association
American Chemistry Council
American Cleaning Institute
American Coatings Association
American Composites Manufacturers Association
American Fiber Manufacturers Association
American Forest & Paper Association
American Frozen Food Institute
American Herbal Products Association
American Home Furnishing Alliance
American Wood Council
Amway
APA – The Engineered Wood Association
Apartment Association of Greater Los Angeles
Apartment Association of Orange County
Apartment Association, California Southern Cities
Associated Roofing Contractors of the Bay Area Counties, Inc.
Association of Home Appliance Manufacturers
AXIALL LLC
Automotive Specialty Products Alliance
Belden
Berk-Tek
Bestway
Betco Corporation
Bicycle Product Suppliers Association
Biocom
Biotechnology Industry Organization
Brawley Chamber of Commerce
Breen Color Concentrates
Building Owners and Managers Association of California
Burton Wire & Cable
California Apartment Association
California Asphalt Pavement Association
California Association of Boutique & Breakfast Inns
California Association of Firearms Retailers
California Association of Health Facilities
California Attractions and Parks Association
California Automotive Business Coalition
California Business Properties Association
California Cement Manufacturers Environmental Coalition
California Citizens Against Lawsuit Abuse
California Construction and Industrial Materials Association

California Cotton Ginners Association
California Cotton Growers Association
California Farm Bureau Federation
California Furniture Manufacturers Association
California Hospital Association
California Hotel & Lodging Association
California Independent Oil Marketers Association
California Independent Petroleum Association
California League of Food Processors
California Life Sciences Association
California Manufacturers and Technology Association
California Metals Coalition
California/Nevada Soft Drink Association
California New Car Dealers Association
California Paint Council
California Restaurant Association
California Retailers Association
California Self Storage Association
California Travel Association
Can Manufacturers Institute
Chambers of Commerce Alliance Ventura and Santa Barbara Counties
Chemical Fabrics & Film Association, Inc.
Chemical Industry Council of California
Civil Justice Association of California
Coast Wire & Plastic Tec., LLC
Communications Cable and Connectivity Association
Composite Panel Association
CompTIA
Consumer Electronics Association
Consumer Healthcare Products Association
Consumer Specialty Products Association
Copper & Brass Fabricators Council, Inc.
Council for Responsible Nutrition
Dow Chemical Company
DuPont
East Bay Rental Housing Association
Family Winemakers of California
Fashion Accessories Shippers Association
Federal Plastics Corporation
Flexible Vinyl Alliance
Footwear Distributors & Retailers of America
Frozen Potato Products Institute
Greater Bakersfield Chamber of Commerce
Grocery Manufacturers Association
Halogenated Solvents Industry Alliance, Inc.
Hardwood Plywood Veneer Association
Independent Lubricant Manufacturers Association
Industrial Environmental Association
Information Technology Industry Council
International Crystal Federation

International Franchise Association
International Council of Shopping Centers
International Fragrance Association, North America
IPC – Association Connecting Electronics Industries
ISSA, The Worldwide Cleaning Industry Association
J.R. Simplot Company
Juvenile Products Manufacturers Association
Loes Enterprises, Inc.
Lonseal, Inc.
Metal Finishing Association of Northern California
Metal Finishing Association of Southern California
Mexichem
Motor & Equipment Manufacturers Association
NAIOP of California, the Commercial Real Estate Development Association
National Association of Chemical Distributors
National Council of Textile Organizations
National Electrical Manufacturers Association
National Federation of Independent Businesses
National Lumber and Building Material Dealers Association
National Shooting Sports Foundation
Natural Products Association
NorCal Rental Property Association
North American Home Furnishing Association
North Orange County Chamber
North Valley Property Owners
Nutraceutical Corporation
OCZ Storage Solutions
Orange County Business Council
Outdoor Power Equipment Institute
Pacific Water Quality Association
Pactiv Corporation
Parterre Flooring Systems
Personal Care Products Council
PhRMA
Plumbing Manufacturers International
Polyurethane Manufacturers Association
Procter & Gamble
Rancho Cordova Chamber of Commerce
Redondo Beach Chamber of Commerce
Resilient Floor Covering Institute
San Diego Regional Chamber of Commerce
Santa Barbara Rental Property Association
Searles Valley Minerals
Sentinel Connector System
Sika Corporation
Simi Valley Chamber of Commerce
Specialty Equipment Market Association
SPI: The Plastic Industry Trade Association
SPRI, Inc.
Southwest California Legislative Council

Styrene Information and Research Center
Superior Essex
TechNet
The Adhesive and Sealant Council
The Art and Creative Materials Institute
The Association of Global Automakers
The Kitchen Cabinet Manufacturers Association
The Chamber of the Santa Barbara Region
The Vinyl Institute
Toy Industry Association
Travel Goods Association
Treated Wood Council
USANA Health Sciences, Inc.
USHIO America, Inc.
Visalia Chamber of Commerce
Water Quality Association
WD-40 Company
West Coast Lumber & Building Materials Association
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western Propane Gas Association
Western State Petroleum Association
Western Wood Preservers Institute
Window & Door Manufacturers Association
Writing Instrument Manufacturers Association

cc: Matt Rodriguez, Secretary, CalEPA
Lauren Zeise, Acting Director, OEHHA
Allan Hirsch, Chief Deputy Director, OEHHA
Carol Monahan-Cummings, Chief Counsel, OEHHA
Mario Fernandez, Staff Counsel, OEHHA
Gina Solomon, Deputy Secretary for Science and Health, CalEPA
Dana Williamson, Cabinet Secretary, Office of the Governor
Ken Alex, Senior Policy Advisor, Office of the Governor
Cliff Rechtschaffen, Senior Policy Advisor, Office of the Governor
Panorea Avdis, Chief Deputy Director, Governor's Office of Business and Economic Development
Poonum Patel, Permit Specialist, Governor's Office of Business and Economic Development

AS:mm