



Representing Household & Institutional Products

Aerosol - Air Care - Cleaners - Polishes  
Automotive Care - Antimicrobial - Pest Management

January 25, 2016

Ms. Monet Vela  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-19B  
Sacramento, CA 95812-4010

*Sent electronically to: P65PublicComments@oehha.ca.gov*

**Re: PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6 – CLEAR AND REASONABLE WARNINGS**

Dear Ms. Vela:

On behalf of the Consumer Specialty Products Association<sup>1</sup>, thank you for opportunity to comment on the proposed repeal of Article 6 and adoption a new Article 6 – Clear and Reasonable Warning. CSPA supports the comments submitted by the California Chamber of Commerce and also submits the following comments for consideration.

#### **Adequacy of Economic Fiscal Impact Statement**

CSPA is concerned that the Economic Fiscal Impact Statement (EFIS) significantly underestimates the impacts upon our members. In particular our members are concerned that the sliding scale used to determine the number of products based upon the number of employees is not a reasonable means and often underestimates the number of products. For example, a company that would be defined a small business by the definition in Government Code §14837 (fewer than 100 employees) can market extensive product lines with 200-300 unique products.

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<sup>1</sup> The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than \$100 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; air fresheners, room deodorizers and candles that eliminate odors; pest management products for home, lawn and garden, and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care<sup>®</sup>, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products. For more information, please visit [www.cspa.org](http://www.cspa.org).

Our members are concerned that the cost estimates for relabeling significantly underestimates the costs to manufacturers. Based upon a poll of our members, labeling changes would incur costs ranging from \$1,500 - \$15,000 per product. The upper range is more typical of products regulated under the Federal Fungicide, Insecticide, and Rodenticide Act (FIFRA) which would require approval of both U.S. EPA and California Department of Pesticide Regulation for any labeling changes. Such approval incurs additional review fees and can appreciably delay the registration process which can significantly impact product sales.

Our members are concerned that the cost estimate of \$150 for Web site updates also significantly underestimates the actual costs. A more reasonable estimate would be \$2,500 with recurring annual costs of \$100 but would vary greatly depending upon whether a company utilized internal or external resources to update and maintain their Web site.

Our members are concerned that OEHHA's effort to reduce costs to retailers has shifted the labeling costs to manufacturers. While this shift is appropriate, it is unclear if this economic impact has been accurately captured.

Our members note that §25606 appears to fully defer authority in the workplace and appreciate this provision. We are concerned about potential ambiguity if a product contains a Proposition 65 listed chemical that does not meet the OSHA warning cut-off value or if the chemical is not considered a carcinogen or reproductive toxicant under the Hazard Communication Standard (HCS). Consider as an example the following: an IARC 2B carcinogen that is also listed on Proposition 65. An IARC 2B carcinogen must be present at 1% or greater to trigger a cancer statement on the HCS label, while the chemical is listed on Prop 65 based on exposure above the Safe Harbor Value. OEHHA has not promulgated a Safe Harbor Value for carbon black, for example, so there is not clarity about whether the HCS label would be sufficient for a product containing carbon black at <1%. In this scenario, a product would be fully compliant with the federal Hazard Communication Standard, but would not necessarily meet the Proposition 65 labeling requirement. We request additional clarity in this section to address these concerns.

### **Labeling Requirements**

Our members are concerned that the required font size and multiple language warnings could have significant impact on their ability to comply and could lead to consumer confusion when inconsistent with federal requirements. "Consumer information" is much too broad -- matching the Proposition 65 on-product warning to the largest type size for any consumer information could significantly skew the importance of the warning relative to FHSA warnings or HCS requirements regarding font size or the need to place pictograms on the label. In addition, if the product is a federally registered pesticide, FIFRA mandates label content, signal words, font size and placement of certain product information. These potential conflicts will confuse consumers and lead to product safety issues if consumers do not notice and comply with the most severe federally-mandated signal word and hazards.

Our members are concerned with the provision mandating that the entire warning must be in a type size no smaller than the largest type size used for other consumer information on the product. The largest font size on a label is normally the DANGER, WARNING, CAUTION statement or often the NET CONTENTS statement. Having the Proposition 65 warning at this font size will not fit on most labels.

- We request that OEHHA change this provision to align with FHSA and requiring the Proposition 65 warning be in the same font size as other product safety warnings.

There is concern that supplemental information (i.e., a company's attempt to help clarify the details of the warning) is now made illegal if the supplemental information is judged to contradict the warning. In practice, it will be difficult to describe anything related to science or assessment of the product, without being accused of trying to counter the warning. Moreover, one reading of this is to prohibit a company from publically discussing its views on the Proposition 65 listings or warnings which seems needlessly proscriptive of a company's ability to express an opinion.

CSPA members request OEHHA provide clarity on the following issues:

- How can a company provide information on the assumptions used in assessing exposure to the product, or how can it convey which uses of the product may or may not result in a significant exposure without this being considered "supplemental information" that negates the warning? How can a company provide its opinion on the levels of conservatism in the risk assessment if the regulations prohibit such commentary?
- OEHHA does not have information on exposure assessment for the product as this is done by the company; a link to the OEHHA website will provide little help to the consumer on this point.
- Does this section of the proposed regulation mean that OEHHA's interpretation of the science cannot be refuted publically once a listing or safe harbor has been developed, as it will now be illegal to do so? For example, how is a company able to publically indicate that the MADL for lead contains a 1000-fold uncertainty factor, even though it is based on extensive human data that contains little uncertainty? Would a company be prohibited from making available a paper on wood dust in a science journal for example, which is critical of Proposition 65 listing of wood dust, or discusses the practice of Prop 65 warnings in the workplace, a violation of section 25600(d)?
- We propose an alternate table of font size based on the label area similar to Consumer Product Safety Commission (CPSC), FHSA and FIFRA regulations mandating information on labels.

### **Consumer Confusion**

Our members are concerned that the use of the word "WARNING" is problematic as this word conflicts with labeling provisions for both CPSC and FIFRA products. The "warning" signal word is used to denote acute safety issues. We are very concerned about consumer confusion if both a CAUTION and a WARNING statement are on the same bottle. Product manufacturers have

used the words “IMPORTANT” or “NOTE” instead to call attention to other important consumer information to prevent such confusion. We request changes to the regulation to allow the use of IMPORTANT or NOTE with a required Prop 65 warning to prevent consumer confusion and to avoid misuse or other safety concerns.

There is also concern that Proposition 65 signal word (and exclamation-point pictogram) will put consumers at risk for harm for some product types. Corrosive products (e.g., oven cleaner) or highly toxic products have pictograms of corrosivity or a skull-and-cross bones image on the safety data sheet (SDS), respectively, which are required by OSHA, CPSC and/or FIFRA. These are accompanied by the signal word DANGER on the label. Consumers may see the Proposition 65 warnings first, or be confused about dueling warnings, and not follow the more significant warnings related to immediate, irreversible harm. It is this concern which led to CPSC and FIFRA regulations requiring that only the most severe signal word be listed on the label.

### **Sell-Through Provision**

Our members are concerned that the two-year sell through time is insufficient for all products and that this provision runs counter to other California regulation, in particular the California Air Resources Board (CARB) Consumer Products Program regulation of VOCs.

- We request continuity with the provisions with the CalEPA sister agency regulation allowing three years from date of production to comply.

Our members are seeking clarification as to whether a manufacturer that provides an on-product warning label using the reduced text option, would also obligated to provide full text warnings for use in on-line and/or catalogue sales.

### **Internet Sales**

Our members are seeking clarification of responsibility of internet warnings. It is not clear how the internet retailer would know when a product requires a Prop 65 warning. We understand OEHHA’s intent to have warning prior to the sale, but implementation of this requirement would entail considerable cost and change for on-line retailers. There is also concern that this provision also creates ambiguity about who is responsible for the “WARNING” on the internet site. It would seem to imply that the retailer/website owner is responsible; however, the language is not clear and could be read to require the product manufacturer to do so, despite their not having an “ownership” interest in the site. This situation could be further compounded given the complexity of supply chains and multiple distributors between original manufacturer and final on-line retailer. This section should be improved to clearly articulate the obligation(s) of both the website owner and the manufacturer of product.

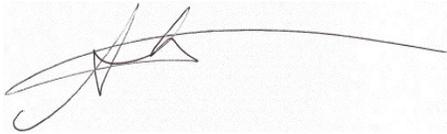
### **Catalog Sales**

Our members are seeking clarification of responsibility of catalog warnings. It is not clear how the catalog retailer would know when a product requires a Proposition 65 warning. We understand OEHHA's intent to have warning prior to the sale, but implementation of this requirement would entail considerable cost and change for catalog retailers. There is also concern that this provision also creates ambiguity about who is responsible for the "WARNING" on the internet site. It would seem to imply that the catalog retailer is responsible; however, the language is not clear and could be read to require the product manufacturer to do so, despite their not having an "ownership" interest in the catalog. This situation, similar to internet sales, could be further compounded given the complexity of supply chains and multiple distributors between original manufacturer and final catalog retailer. This section should be improved to clearly articulate the obligation(s) of both the catalog owner and the manufacturer of product.

### **Summary**

We appreciate the thoughtful consideration of comments and attempts to harmonize this consumer information regulation with federal requirements to assist consumers in reading and understanding the important information conveyed on product labels.

Respectfully submitted,



Steven Bennett, Ph.D.  
Senior Director, Scientific Affairs & Sustainability



Kristin Power  
Vice President, State Affairs

cc: CSPA Scientific Affairs Committee Prop 65 Task Force  
CSPA State Government Affairs Advisory Committee  
Nicole Quinonez, Randlett/Nelson/Madden