

Office of Environmental Health Hazard Assessment

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(916) 323-2625

April 12, 2016
Comments due date April 26, 2016

Monet Vela and the Proposition 65 associates of OEHHA:

P65Public.Comments@oehha.ca.gov ↑ *monet.vela@oehha.ca.gov*

This Comment#1 is being furnished in response for comments requested from the general public on the **"Proposed repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings"**

Comment#1

Summary: This comment expounds the destiny and prognosis of "tailored warnings".

Proposition 65 regulation is hereafter listed herein as Prop65.

We appreciated the 12-slide presentation by Mario Fernandez entitled "Proposition 65 Safe Harbor Warnings" [http://oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/Jan132016WarningWebPresentation.pdf] shown for the OEHHA's Public Hearing on January 13, 2016. Therein is implied your dilemma of interpreting a "clear and reasonable warning" in accordance with Health & Safety Code Section 25249.6.

Your dilemma becomes civilian companies' crystal-clear dilemma in trying to dig through all the "tailored warnings" (starting at your modified/proposed Section 25607), of which, their quantity will only grow larger as your Prop65/OEHHA teams pursue more and more locales. This observation was implied in one of the aforementioned slides of Mr. Fernandez, quoting: [we should] "Anticipate on-going additions to "tailored" warning section".

HISTORICAL IMPLICATIONS NOTE:

Perhaps your colleagues are not old enough to experience or remember the time when US EPA started classifying industrial operations into their causation for generating various types of air emissions? They started at the beginning of the alphabet; now look how long their list has grown! (These 133 listed below are only part of their complete list).

As verification, EPA's Code of Federal Regulations Title 40, Part 63 shows the following listing (compiled on 3/30/2016):

EPA 40 CFR Part 63 National Emission Standards for Hazardous Air Pollutants:

- 1 Subpart Aa - Phosphoric Acid Manufacturing Plants
- 2 Subpart Aaaa - Municipal Solid Waste Landfills
- 3 Subpart Aaaaa - Lime Manufacturing Plants
- 4 Subpart Aaaaaa - Asphalt Processing and Asphalt Roofing Manufacturing
- 5 Subpart Bb - Phosphate Fertilizers Production Plants
- 6 Subpart Bbbbbb - Semiconductor Manufacturing
- 7 Subpart Bbbbbbb - Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities
- 8 Subpart Bbbbbbbb - Chemical Preparations Industry
- 9 Subpart Cc - Petroleum Refineries
- 10 Subpart Ccc - Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants
- 11 Subpart Cccc - Manufacturing of Nutritional Yeast
- 12 Subpart Ccccc - Coke Ovens: Pushing, Quenching, and Battery Stacks
- 13 Subpart Cccccc - Gasoline Dispensing Facilities
- 14 Subpart Ccccccc - Paints and Allied Products Manufacturing
- 15 Subpart Dd - Off-Site Waste and Recovery Operations
- 16 Subpart Ddd - Mineral Wool Production
- 17 Subpart Dddd - Plywood and Composite Wood Products
- 18 Subpart Ddddd - Industrial, Commercial, and Institutional Boilers and Process Heaters
- 19 Subpart Dddddd - Polyvinyl Chloride and Copolymers Production Area Sources
- 20 Subpart Ddddddd - Prepared Feeds Manufacturing
- 21 Subpart Ee - Magnetic Tape Manufacturing Operations
- 22 Subpart Eee - Hazardous Waste Combustors
- 23 Subpart Eeee - Organic Liquids Distribution (Non-Gasoline)
- 24 Subpart Eeeee - Iron and Steel Foundries
- 25 Subpart Eeeeeee - Primary Copper Smelting Area Sources
- 26 Subpart Eeeeeeee - Gold Mine Ore Processing and Production...
- 27 Subpart F - Synthetic Organic Chemical Manufacturing Industry
- 28 Subpart Ffff - Miscellaneous Organic Chemical Manufacturing

- 29 Subpart Fffff - Integrated Iron and Steel Manufacturing Facilities
- 30 Subpart Ffffff - Secondary Copper Smelting Area Sources
- 31 Subpart G - Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater
- 32 Subpart Gg - Aerospace Manufacturing and Rework Facilities
- 33 Subpart Ggg - Pharmaceuticals Production
- 34 Subpart Gggg - Solvent Extraction for Vegetable Oil...
- 35 Subpart Ggggg - Site Remediation
- 36 Subpart Gggggg - Primary Nonferrous Metals Area Sources-Zinc, Cadmium, and Beryllium
- 37 Subpart H - Equipment Leaks
- 38 Subpart Hh - Oil and Natural Gas Production Facilities
- 39 Subpart Hhh - Natural Gas Transmission and Storage Facilities
- 40 Subpart Hhhh - Wet-Formed Fiberglass Mat Production
- 41 Subpart Hhhhh - Miscellaneous Coating Manufacturing
- 42 Subpart Hhhhhh - Paint Stripping and Miscellaneous Surface Coating Operations at Area Sources
- 43 Subpart Hhhhhhh - Polyvinyl Chloride and Copolymers Production
- 44 Subpart I - Certain Processes Subject to the Negotiated Regulation for Equipment Leaks
- 45 Subpart II - Shipbuilding and Ship Repair (Surface Coating)
- 46 Subpart III - Flexible Polyurethane Foam Production
- 47 Subpart IIIi - Surface Coating of Automobiles and Light-Duty Trucks
- 48 Subpart IIIii - Mercury Emissions From Mercury Cell Chlor-Alkali Plants
- 49 Subpart J - Polyvinyl Chloride and Copolymers Production
- 50 Subpart Jj - Wood Furniture Manufacturing Operations
- 51 Subpart Jjj - Group IV Polymers and Resins
- 52 Subpart Jjjj - Paper and Other Web Coating
- 53 Subpart Jjjjj - Brick and Structural Clay Products Manufacturing
- 54 Subpart Jjjjjj - Industrial, Commercial, and Institutional Boilers Area Sources
- 55 Subpart Kk - Printing and Publishing Industry
- 56 Subpart Kkkk - Surface Coating of Metal Cans
- 57 Subpart Kkkkk - Clay Ceramics Manufacturing
- 58 Subpart L - Coke Oven Batteries
- 59 Subpart Ll - Primary Aluminum Reduction Plants
- 60 Subpart Lll - Portland Cement Manufacturing Industry
- 61 Subpart Llll - Asphalt Processing and Asphalt Roofing Manufacturing
- 62 Subpart Lllll - Acrylic and Modacrylic Fibers Production Area Sources
- 63 Subpart M - Dry Cleaning Facilities
- 64 Subpart Mm - Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semicheical Pulp Mills
- 65 Subpart Mmm - Pesticide Active Ingredient Production
- 66 Subpart Mmmm - Surface Coating of Miscellaneous Metal Parts and Products
- 67 Subpart Mmmmm - Flexible Polyurethane Foam Fabrication Operations
- 68 Subpart Mmmmmm - Carbon Black Production Area Sources
- 69 Subpart N - Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks
- 70 Subpart Nnn - Wool Fiberglass Manufacturing
- 71 Subpart Nnnn - Surface Coating of Large Appliances
- 72 Subpart Nnnnn - Hydrochloric Acid Production
- 73 Subpart Nnnnnn - Chemical Manufacturing Area Sources: Chromium Compounds
- 74 Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities
- 75 Subpart Oo - Tanks-Level 1
- 76 Subpart Ooo - Manufacture of Amino/Phenolic Resins
- 77 Subpart Oooo - Printing, Coating, and Dyeing of Fabrics and Other Textiles
- 78 Subpart Oooooo - Flexible Polyurethane Foam...
- 79 Subpart Pp - Containers
- 80 Subpart Ppp - Polyether Polyols Production
- 81 Subpart Pppp - Surface Coating of Plastic Parts and Products
- 82 Subpart Ppppp - Engine Test Cells/Stand
- 83 Subpart Pppppp - Lead Acid Battery Manufacturing Area...
- 84 Subpart Q - Industrial Process Cooling Towers
- 85 Subpart Qq - Surface Impoundments
- 86 Subpart Qqq - Primary Copper Smelting
- 87 Subpart Qqqq - Surface Coating of Wood Building Products
- 88 Subpart Qqqqq - Friction Materials Manufacturing Facilities
- 89 Subpart Qqqqqq - Wood Preserving Area Sources

90	Subpart R - Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations)
91	Subpart Rr - Individual Drain Systems
92	Subpart Rrr - Secondary Aluminum Production
93	Subpart Rrrr - Surface Coating of Metal Furniture
94	Subpart Rrrrr - Taconite Iron Ore Processing
95	Subpart Rrrrrr - Clay Ceramics Manufacturing Area...
96	Subpart S - Pulp and Paper Industry
97	Subpart Ss - Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process
98	Subpart Ssss - Surface Coating of Metal Coil
99	Subpart Sssss - Refractory Products Manufacturing
100	Subpart Ssssss - Glass Manufacturing Area Sources
101	Subpart T - Halogenated Solvent Cleaning
102	Subpart Tt - Equipment Leaks-Control Level 1
103	Subpart Ttt - Primary Lead Smelting
104	Subpart Tttt - Leather Finishing Operations
105	Subpart Ttttt - Primary Magnesium Refining
106	Subpart Tttttt - Secondary Nonferrous Metals...
107	Subpart U - Group I Polymers and Resins
108	Subpart Uu - Equipment Leaks-Control Level 2 Standards
109	Subpart Uuu - Petroleum Refineries: Catalytic...
110	Subpart Uuuu - Cellulose Products Manufacturing
111	Subpart Uuuuu - Coal- and Oil-Fired Electric Utility...
112	Subpart Vv - Oil-Water Separators and Organic-Water Separators
113	Subpart Vvv - Publicly Owned Treatment Works
114	Subpart Vvvv - Boat Manufacturing
115	Subpart Vvvvvv - Chemical Manufacturing Area Sources
116	Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production
117	Subpart Ww - Storage Vessels (Tanks)-Control Level 2
118	Subpart Wwww - Reinforced Plastic Composites Production
119	Subpart Wwww - Hospital Ethylene Oxide Sterilizers
120	Subpart Wwww - Plating and Polishing Operations
121	Subpart X - Secondary Lead Smelting
122	Subpart Xx - Ethylene Manufacturing Process Units: Heat Exchange Systems and...
123	Subpart Xxx - Ferroalloys Production...
124	Subpart Xxxx - Rubber Tire Manufacturing
125	Subpart Xxxxx - Nine Metal Fabrication and Finishing Source Categories
126	Subpart Y - Marine Tank Vessel Loading Operations
127	Subpart Yy - Generic Maximum Achievable Control Technology Standards
128	Subpart Yyyy - Stationary Combustion Turbines
129	Subpart Yyyyy - Electric Arc Furnace Steelmaking Facilities
130	Subpart Yyyyyy - Ferroalloys Production...
131	Subpart Zzzz - Stationary Reciprocating Internal Combustion Engines
132	Subpart Zzzzz - Iron and Steel Foundries Area Sources
133	Subpart Zzzzzz - Aluminum, Copper, and Other Nonferrous Foundries

Your Health & Safety Code Section 25607 starts the "tailored warnings" that could mutate like that of the EPA's list above; EXPANDED with every new instance is a new warning about which you would add another section to the Prop 65 regulation.

Your proposed/modified sections already are doubled for each specific Product, Chemical and Area Exposure Warnings since you sectionalized "Content" from "Methods of Transmission" for each specific; your high watermark shows 29 subsections "ending" at Section 25607.29! [The only single inclusive Section you have is at 25607.7 on "Prescription Drugs...etc."]

Do you really want to impose this kind of expanding monstrosity on Californian companies?
Maybe a standard warning system is better?

Simplifying some of the requirements for Prop65 compliance would be desirable to the people and businesses of California for better understanding and ease of utilizing Safe Harbor Warnings.

Respectfully submitted,

Gary Valasek
Staff Facilitator
Intercontinental Chemical Corporation
4660 Spring Grove Avenue
Cincinnati, Ohio 45232

P.S. Copies of this comment is also being provided to the following:

<p>-with thanks for initiating extension of the comment period deadline</p> <p>Martha Maltz, Legislative Staff Policy Assistant to Mira Morton and Anthony Samson California Chamber of Commerce 1215 K Street, Suite 1400, Sacramento, CA 95814 P.O. Box 1736, Sacramento, CA 95812-1736 (916) 444-6670 martha.maltz@calchamber.com</p>	<p>-with thanks for your presentation</p> <p>Mario Fernandez Staff Counsel III, OEHHA (916).323-2635 mario.fernandez@oehha.ca.gov</p>
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Monet Vela and the Proposition 65 associates of OEHHA:

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This Comment#2 is being furnished in response for comments requested from the general public on the **“Proposed repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings”**

Comment#2

Summary: This comment recommends that initial Proposition 65 warning statement format be placed into Section 15 of the OSHA HazCom 2012 Safety Data Sheet (SDS) for applicable chemicals.

Proposition 65 regulation is hereafter listed herein as Prop65.

The proposed wordings are provided here for discussion from the following:

§25600.1 Definitions

(k) “Occupational exposure” means an exposure to any employee at his or her place of employment.

and

§25606 Occupational Exposure Warnings

(a) A warning to an exposed employee about the chemical in question a listed chemical which meets the requirements of this article if it fully complies with all warning information, training and labeling requirements of the federal Hazard Communication Standard (29 Code of Federal Regulations, section 1910.1200), the California Hazard Communication Standard (Title 8, California Code of Regulations section 5194), or, for pesticides, the Pesticides and Worker Safety requirements (Title 3, California Code of Regulations section 6700 et seq.) meets the requirements of this article.

Accordingly, let's consider the following statements, observations and questions:

A.	It appears that most people who work nowadays are employees according to §25600.1(k).
B.	Such Hazard Communication requirements call for maintaining Safety Data Sheets (SDS) as "readily accessible".
C.	SDS's are required to have carcinogens listed therein that are contained in the particular product (substance or chemical) at 0.1% or more on a weight to weight basis.
D.	Why shouldn't Prop65 adopt the same levels as required on SDS's for carcinogens as a <i>de minimus</i> for Prop65 chemicals? If not satisfied with the 0.1% level, why not adopt lower <i>de minimus</i> concentrations for carcinogens and reproductive toxicity agents, to say 0.01%?
E.	Such a simple process would allow the SDS to become the recommended base logistics to provide initial "clear and reasonable warning" to employees as well as the general public who could have a wide range of accessibility, for example, through direct reading of a hard paper copy or a digital version of the SDS or referencing the SDS to more detailed information via Product-specific shelf signs, Electronic notice before purchase, Internet warning before purchase, Product-specific catalog warning, and The Prop65 website at www.P65Warnings.ca.gov .

F. There may be some obfuscation with the phrase "clear and reasonable" as shown earlier via Mario Fernandez's presentation [http://oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/Jan132016WarningWebPresentation.pdf] entitled "Proposition 65 Safe Harbor Warnings" shown at the OEHHA's Public Hearing on January 13, 2016.

Nonetheless, it has been shown at the State of California Office of the Attorney General's website <http://oag.ca.gov/prop65/regulations> that there is also a need to know

"(1)....whether the warning will be "reasonably conspicuous" under the circumstances of purchase or use of the product; and

(2) sufficient proof that the product causes exposure to a listed chemical to enable a finding that the warning would be truthful....."

Disclosure of Prop65 information in the SDS may reduce the anxiety of "clear & reasonable", "reasonably conspicuous", "truthful" and "readily accessible" into a harmonized acceptance.

G. Disclosure of Prop65 information on the SDS would appear in Section 15, for example:

SECTION 15: REGULATORY INFORMATION

California Regulations:

Proposition 65: *[Here would be placed the required Warning symbol and WARNING word and Statement including website www.P65Warnings.ca.gov.]*

NOTE: Just in case you haven't seen an OSHA Safety Data Sheet (SDS) lately based on the 2012 regulation, visit web address https://www.osha.gov/Publications/HazComm_QuickCard_SafetyData.html for a quick review of the basic 16-sections format outline.

Realize that federal OSHA does not regulate Section 15 Regulatory Information of the SDS, therefore, supplemental Prop65 information can be placed conveniently therein for the benefit of all concerned.

Employees in the workplace and wherever people travel and shop could be exposed to some of the chemicals or substances listed on the Prop65 list. Accordingly, when properly completed, the OSHA Safety Data Sheet (SDS) can be used to fulfill all the particulars of "clear and reasonable warnings", "reasonably conspicuous", and "truthful" characteristics needed to handle ALL Prop65 chemicals and substances.

Simplifying some of the requirements for Prop65 compliance would be desirable to the people and businesses of California for better understanding and ease of utilizing Safe Harbor Warnings.

Respectfully submitted,
Gary Valasek, Staff Facilitator
Intercontinental Chemical Corporation
4660 Spring Grove Avenue, Cincinnati, Ohio 45232

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This Comment#3 is being furnished in response for comments requested from the general public on the **“Proposed repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings”**

Comment#3

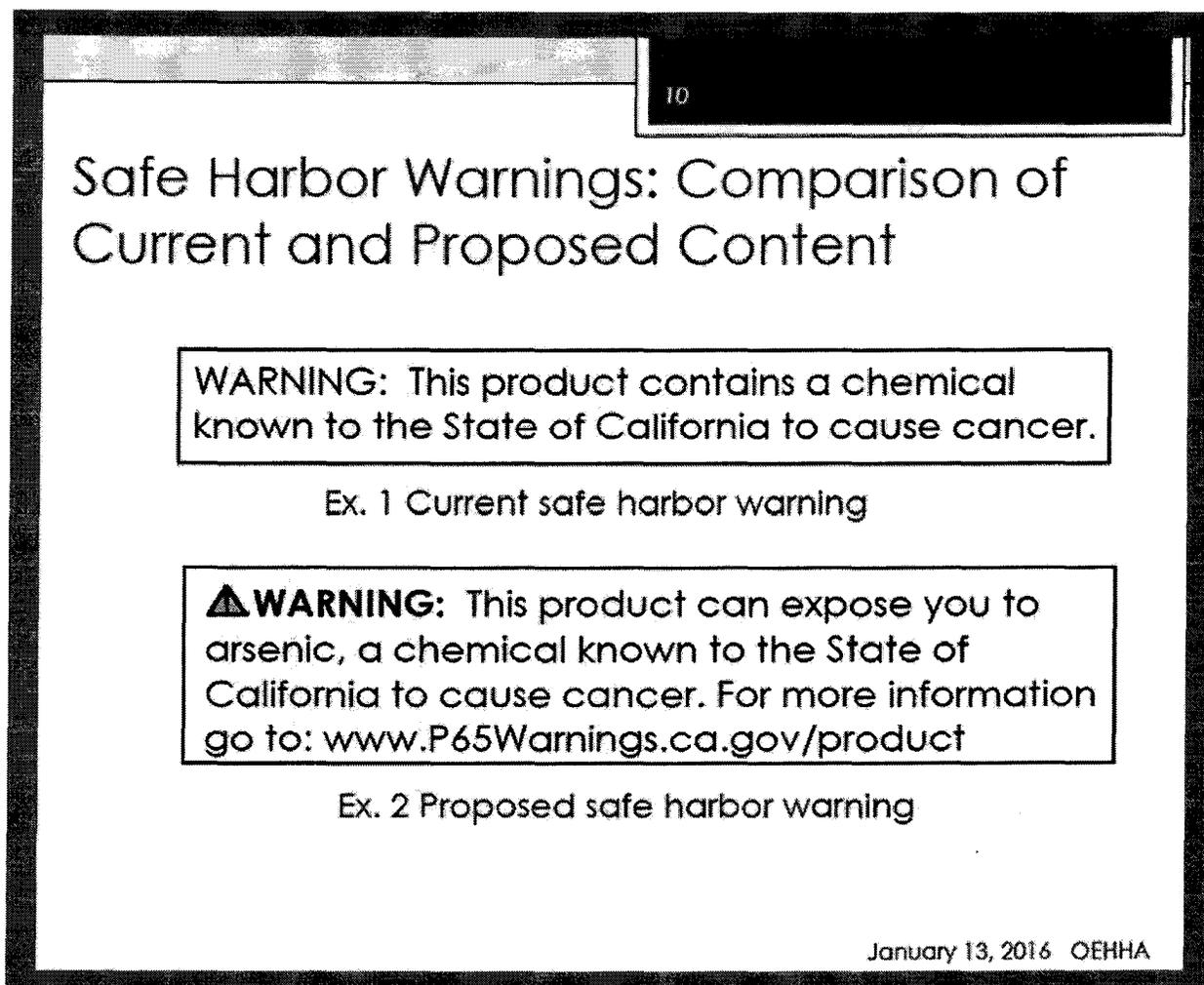
Summary: This comment recommends modifying the Proposition 65 warning statement and symbol.

Proposition 65 regulation is hereafter listed herein as Prop65.

A.

We appreciated the 12-slide presentation by Mario Fernandez entitled "Proposition 65 Safe Harbor Warnings" [http://oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/Jan132016WarningWebPresentation.pdf] shown for the OEHHA's Public Hearing on January 13, 2016. Therein was shown the current and proposed warning in accordance with Health & Safety Code Section 25249.6.

Here's page 10 of that presentation:



B. Notice the current pictogram and its representative hazards from the federal 2012 OSHA Hazardous Communication Standard (29 Code of Federal Regulations, section 1910.1200), accordingly:

PICTOGRAM & HAZARDS IDENTIFICATION

**Exclamation
Mark**



**Irritant (skin and eye)
Skin Sensitizer
Acute Toxicity
Narcotic Effects
Respiratory Tract Irritant
Hazardous to Ozone
Layer (Non-Mandatory)**



Realize that the OSHA pictogram has been educating industry for over 4 years now as primarily meaning an irritant to the eyes, skin and respiratory tract along with the other characteristics charted above.



So, when Prop65 uses the symbol , it may cause confusion and become misleading to employees against the historical background and federal research & training efforts of OSHA's Exclamation Mark pictogram for employers.

Note that federal OSHA HazCom 2012 says in Appendix C that supplementary information that would "contradict or cast doubt on the validity" or "impede identification" of the hazard information or pictograms is not acceptable.

C. Likewise, notice the current pictogram and its representative hazards from the federal 2012 OSHA Hazardous Communication Standard (29 Code of Federal Regulations, section 1910.1200), accordingly:

PICTOGRAM & HAZARDS IDENTIFICATION

**Health
Hazard**



**Carcinogen
Mutagenicity
Reproductive Toxicity
Respiratory Sensitizer
Target Organ Toxicity
Aspiration Toxicity**



Understand that the OSHA pictogram has been educating industry for over 4 years now as primarily meaning a carcinogen or reproductive toxicity identity along with the other characteristics charted above.

This pictogram covers 3 hazard categories for carcinogenicity, accordingly:

Pictogram	Hazard Category	Signal Word	Hazard Statement
	1A	DANGER	May cause cancer
	1B	DANGER	May cause cancer
	2	WARNING	Suspected of causing cancer

The fact that the proposed Prop65 warning uses "WARNING" in the format, implies to the federal OSHA HazCom 2012-accustomed employers and employees that the Prop65 cancer chemical is not necessarily a

"chemical known to the State of California to cause cancer" (via §25249.5.)

but at least, at minimum toxicity, a

"chemical known to the State of California as suspected of causing cancer".

Otherwise, if wanting to be harmonized with federal OSHA HazCom 2012, the "chemical known to the State of California to cause cancer" (via §25249.5.) would be classified as a higher-in-toxicity 1A or 1B carcinogen since its hazard statement uses "May cause cancer".

This leaves 2 possibilities for a Prop65 warning paragraph;

1 with the word "DANGER" since the chemical would be known to cause cancer, and
1 with the word "WARNING" since the chemical would be suspected of causing cancer.

D.



So, if the Prop65 proposed symbol could be more harmonized with the well-documented work of federal OSHA concerning pictograms and symbol recognition, it may permit employees (as well as the general public) to better understand its significance.

E.

Consequently, the following pair of symbols are presented here for the first time as possibilities to replace



the current symbol to help harmonize with aforementioned and associated guidelines:



Consider allowing either or both colors of the [Triangled Silhouette] to prevail for use with the Prop 65 warning statement.

Allowing this format of the symbol to be used would appropriately correspond with an immediate acknowledgement of a possible health hazard involving a carcinogen and/or a reproductive toxicity concern.

F.

The recommended "Safe Harbor" warning for Prop65 (using two chosen Prop65 chemicals within a mixture as an example) could become any of the following 6 examples:

1



WARNING This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

2



DANGER This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

3

There may be more preference for the yellow-background symbol vs. the white-background symbol.



WARNING This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

4



DANGER

This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

5



WARNING

This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

6



DANGER

This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

G.

NOTE: The broad coverage of the above phrase "... **to cause one or more of the following**....." for the standard disclosure statement allows this standard statement format to be used for ALL Prop65 chemicals.

The need for multiple "Content" and "Methods of Transmission" "tailored warnings" at every conceivable place for every conceivable chemical usage is unnecessary when this standard format that covers the entire range of Prop65 toxicity concerns is applied.

H.

ALSO NOTE: The fact that the statement "**For more information go to www.P65Warnings.ca.gov.**" would be part of the Prop65 statement covered in Section 15 - Regulatory Information on the Safety Data Sheet (SDS), automatically allows more detailed information successfully to be found by the user at your website www.P65Warnings.ca.gov.

NOTE: Just in case you haven't seen an OSHA Safety Data Sheet lately based on the 2012 regulation, visit web address https://www.osha.gov/Publications/HazComm_QuickCard_SafetyData.html for a quick review of the basic 16-sections format outline. Realize further that federal OSHA does not regulate Section 15 Regulatory Information of the SDS, therefore, supplemental Prop65 information can be placed conveniently therein for the benefit of all concerned. The SDS must be "readily accessible" for OSHA compliance.

The Prop65 regulation calls for the warning statement to be "clear and reasonable" (which showed some obscurity in the definition) as shown earlier via Mario Fernandez's presentation [http://oehha.ca.gov/prop65/CRNR_notices/WarningWeb/pdf/Jan132016WarningWebPresentation.pdf] entitled "Proposition 65 Safe Harbor Warnings" shown at the OEHHA's Public Hearing on January 13, 2016.

Nonetheless, it has been shown at the State of California Office of the Attorney General's website <http://oag.ca.gov/prop65/regulations> that there is also a need to know

"(1)....whether the warning will be "reasonably conspicuous" under the circumstances of purchase or use of the product; and

(2) sufficient proof that the product causes exposure to a listed chemical to enable a finding that the warning would be truthful....."

I.

Disclosure of Prop65 information on the Safety Data Sheet (SDS) would conveniently appear in Section 15,

for example (chosen from one of the 6 possibilities above in item "E"):

SECTION 15: REGULATORY INFORMATION

California Regulations:

Proposition 65:



WARNING This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

J. So, why not take the opportunity to utilize the available space on the SDS for understandable Prop65 symbol, warning and statement?

It is with good intentions that Safety Data Sheets be "readily accessible" at all locations wherever Prop65 chemicals need to be considered to provide "clear and reasonable warnings" that are "truthful" and "reasonably conspicuous".

Modifying some of the requirements for Prop65 compliance, appearance, and aesthetics would be desirable to incorporate into its structure for the people and businesses of California to better understand and utilize Safe Harbor Warnings.

Respectfully submitted,
Gary Valasek
Staff Facilitator
Intercontinental Chemical Corporation



and Triangled Silhouettes are recommended by INTERCONTINENTAL CHEMICAL CORPORATION, 4660 Spring Grove Avenue, Cincinnati, Ohio 45232, for your review. They were developed by us in response for public comments to proposed regulation for Proposition 65.

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-with thanks for your presentation

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From: Gary Valasek
Sent: Wednesday, April 13, 2016 2:42 PM
To: 'P65Public.Comments@oehha.ca.gov'
Cc: 'monet.vela@oehha.ca.gov'; 'martha.maltz@calchamber.com'
Subject: Comment#4 - "Proposed repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings" ↑

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This Comment#4 is being furnished in response for comments requested from the general public on the **"Proposed repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings"**

Comment#4
Proposition 65 regulation is hereafter listed herein as Prop65.

Let's consider the following statements, observations and questions:

<p>A.</p>	<p>Previous Comment#3 submitted to <u>P65Public.Comments@oehha.ca.gov</u> from us has explained the suggested new symbol, Triangled Silhouette, and a recommendation for a revised statement to be used in Prop65 notifications.</p>
<p>B.</p>	<p>PROP65 CLEAR AND REASONABLE WARNING CONSIDERATIONS</p> <p>Here is an example for Prop65 Clear and Reasonable Warning of how the Triangled Silhouette warning symbol and the rest of the disclosure statement could properly appear under the Section 15 heading of the federal OSHA HazCom 2012 Safety Data Sheet (SDS) with a product that has two different Prop65 chemicals:</p> <p>SECTION 15: REGULATORY INFORMATION California Regulations: Proposition 65:</p> <div style="text-align: center;">  </div> <p>WARNING This product can expose you to chemicals (Thiourea and Di-n-butyl phthalate) which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.</p> <p>[Just in case you haven't seen an SDS format based on the 2012 regulation, visit web address https://www.osha.gov/Publications/HazComm_QuickCard_SafetyData.html for a quick review of the basic 16-sections format. Realize that OSHA does not regulate Section 15 Regulatory Information of the SDS, therefore, supplemental Prop65 information can be placed conveniently therein for the benefit of all concerned.]</p>
<p>C.</p>	<p>NOTE: The broad coverage of the above phrase "... to cause one or more of the following....." for the standard disclosure statement allows this standard statement format to be used for ALL Prop65 chemicals. The need for multiple "tailored warnings" for every conceivable place on every conceivable chemical usage is</p>

unnecessary when this standard format that covers the entire range of Prop65 toxicity concerns is applied.

D. NOTE: The fact that the statement "For more information go to www.P65Warnings.ca.gov." would be part of the Prop65 statement covered in Section 15 - Regulatory Information of the Safety Data Sheet (SDS), automatically allows more detailed information successfully to be found by the user at the website www.P65Warnings.ca.gov.

E. IF and when the time comes when analytical methods are easily able to detect parts per trillion (ppt) of specified chemicals in mixtures, when more & more attributed health concerns can be verified, and when the Prop65 list gets incredibly expanded, then the Prop65 warning statement may have to end up ubiquitously covering a wide range of chemicals, accordingly:

SECTION 15: REGULATORY INFORMATION

California Regulations:

Proposition 65:



WARNING This product may expose you to Proposition 65 chemicals which are known to the State of California to cause one or more of the following: cancer, birth defects or other reproductive harm.
For more information go to www.P65Warnings.ca.gov.

At that time, it would be very desirable to maintain this same Prop65 declaration in each Safety Data Sheet.

F. LABEL CONSIDERATIONS

It would be helpful to eliminate additional warning symbols and statements on the label because bar codes, QR codes, pictograms and other logos and symbols potentially present there already take up considerable space and attention.

Since you have already in your proposal sought the reader, consumer and employee to find more information anyways at www.P65Warnings.ca.gov, it would not be necessary to confuse labeling further with any such Prop65 warning symbols or statements; folks usually have enough already to read on the label just to properly use the product.

Some Non-Californian manufacturers consider even the normal statement for Prop65 warnings on goods to be additionally cumbersome. When a Non-Californian manufacturer wants to sell goods nationwide (especially when national blanket advertising would be promoting the product), the Prop65 warnings have to be added as an extra sticker to the goods –OR- new labels need to be printed just for Californian customers

to satisfy Prop65. Your current proposal would generally require the bi-color symbol  on the label or sticker. Either way, there is additional logistics required that make providing the same product to California and the rest of USA country a problem. Realize that any extra hazard warning about minute amounts of chemicals that even federal OSHA has shown no interest in, at those present low levels, can be a deterrent for some non-Californian customers who don't understand the significance of such "extra" Prop65 labeling. Maybe their loss, maybe their gain. In any event, at some instances, it may be considered over-labeling.

It should be also noted from https://www.dir.ca.gov/dosh/dosh_publications/hazcom.pdf statement: "Hazardous substance containers from out-of-state chemical manufacturers or distributors (who are not subject to Proposition 65) may not have Proposition 65 hazard warnings. California's suppliers/employers must meet the requirement in various ways, including affixing additional Proposition 65 warning labels on containers or posting signs in the workplace." This lends further credence that places an undo burden on the

California employer.

Basically, the State of California Office of the Attorney General's website,
<http://oag.ca.gov/prop65/regulations>,

states that there is also a need to know

- "(1)...whether the warning will be "reasonably conspicuous" under the circumstances of purchase or use of the product; and
(2) sufficient proof that the product causes exposure to a listed chemical to enable a finding that the warning would be truthful....."*

It is with good intentions that Safety Data Sheets (with appropriately completed Prop65 symbol, warning and statement in Section 15) be "readily accessible" at all locations wherever Prop65 chemicals need to be considered.

This proposes that No Prop65 warning or symbol be used on the label.

It is hoped that these recommendations will blend the anxiety of "clear & reasonable", "reasonably conspicuous", "truthful" and "readily accessible" to provide harmonized acceptance. Concerns would be considered resolvable at www.P65Warnings.ca.gov.

G.

POSTING / TRANSMISSION or NON-LABEL CONSIDERATIONS

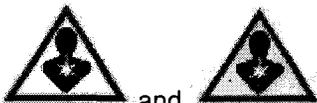
"For detailed California Prop65 information go to www.P65Warnings.ca.gov also read Section 15 in each Safety Data Sheet (SDS) for chemical identification."

This simple statement (above) should be adequate enough to identify to the user that there is a possibility that a Prop65 chemical (or chemicals) can be within their proximity. Such wording would be used in a location where it can be readily seen and read or identified.

The definition of "Sign" found in Section 25600.1 is already appropriate but as modern electronic technology continues to progress to always get our attention, there will be numerous methods to assist in the broadcasting, both visually and auditory, of Prop65 information's basic data and further extent about the most recent knowledge to the public.

Simplifying some of the requirements for Prop65 compliance would be desirable to the people and businesses of California for better understanding and ease of utilizing Safe Harbor Warnings.

Respectfully submitted,
Gary Valasek, Staff Facilitator
Intercontinental Chemical Corporation



Triangled Silhouettes are recommended by INTERCONTINENTAL CHEMICAL CORPORATION, 4660 Spring Grove Avenue, Cincinnati, Ohio 45232, for your review. They were developed by us in response for public comments to proposed regulation for Proposition 65.

P.S. Copies of this Comment#4 are being provided to the following:

Thanks for initiating extension time for comments!

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Thanks for your January 2016 presentation!

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