



Western States Petroleum Association
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Catherine H. Reheis-Boyd
President

June 15, 2015

Via E-Mail (to P65Public.Comments@oehha.ca.gov)

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

Re: Western States Petroleum Association's Comments on Proposed Amendments to
Proposition 65 Lead Agency Regulations

Dear Ms. Vela:

The Western States Petroleum Association ("WSPA") again appreciates the opportunity to provide comments on the Office of Environmental Health Hazard Assessment's ("OEHHA") proposed regulations under Proposition 65 ("Prop 65") establishing a "lead agency website" to provide supplemental information related to Prop 65 exposures and chemicals (proposed 27 C.C.R. § 25205). Although this comment letter focuses only on OEHHA's proposed May 22, 2015 changes to the regulatory text, WSPA also hereby incorporates its previous comments on the "lead agency website" regulations by reference. WSPA also reserves the right to supplement these comments as additional or different information is made available to the public about the proposed regulations.

The May 22, 2015 modifications to the proposed "lead agency website" regulations appear to address some, but not all, of the comments WSPA provided to OEHHA on April 8, 2015 on those proposed regulations.

- Proposed Section 25205(b)(10) – WSPA agrees with OEHHA's decision to improve the wording of this section to better avoid ambiguity and overly broad application. The section now limits OEHHA's ability to request "[a]ny other related information" for the website to that information "the lead agency deems necessary concerning exposures to listed chemicals for which [Prop 65] warnings are being required."

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- Proposed Section 25205(c) – We appreciate OEHHA’s revision to this section clarifying that a business need not perform any testing or analysis for the sole purpose of responding to a request for website information under Section 25205(b), and that the business also need not procure requested information that is not already in the business’ possession or control. WSPA remains concerned, however, that this section could be misconstrued to allow “new” testing or analysis for the purpose of supplementing the website in certain situations (e.g., if OEHHA can also find some *other* justification for that testing or analysis). We believe that OEHHA’s intent here is not to create unnecessary ambiguity or misuse the website regulations as a way to justify testing or analysis – other regulations may require such testing or analysis, but that is not the purpose of the lead agency website regulations. Thus, we would encourage OEHHA to consider making a few additional clarifying changes as follows: “This section does not require, and cannot be used to require, a business to perform any new or additional testing or analysis.”
- Proposed Section 25205(d) – In our April 8, 2015 comments, WSPA expressed its concern that the 15-day time period provided in this section is far too short a period for businesses to gather sufficient information to contest a planned lead agency release of Confidential Business Information. While the extension of the 15-day period to 30 days in the most recent regulatory draft is a step in the right direction, WSPA continues to believe that **60 days** is the minimum time period businesses will need to provide “additional justification for the claim or to contest the determination in an appropriate proceeding.” Documenting and “proving” the confidential nature of the requested information often can require locating archived documentation and/or locating the proper personnel with knowledge of the confidential elements of the information.

Maintaining business confidentiality is critical for WSPA’s members, as it is for most businesses. While the lead agency is prohibited by law from disclosing confidential business information in response to public record requests, WSPA members cannot rely entirely on OEHHA or the lead agency to protect the members’ interests. Only the businesses themselves can ensure that business confidential information remains confidential. Thus, we reiterate our request that OEHHA provide a **minimum** of 60 days for businesses to respond to the lead agency in the event that the lead agency determines the information must be released to the public.

WSPA believes the rest of the most-recently revised proposed regulations do not yet address the issues we raised in our April 8, 2015 comment letter. We continue to be concerned that the lead agency website regulations can and will be manipulated by professional Prop 65 plaintiffs who seek to leverage the website information into a lawsuit. The proposed regulations still do not clearly and unambiguously provide for businesses’ ability to provide lead agency website information through a trade group or other representative association, as we believe OEHHA intends. And the change in proposed Section 25205(b)(9) from the “anticipated level of human exposure” to “estimated level of exposure” simply introduces a new ambiguous term, and does not reflect the fundamental problem that businesses cannot easily or reliably estimate the potential “exposure” level for every individual in every possible situation.

Also, as we stated in our April 8 comments, businesses can never have complete information about **all** possible “anticipated routes and pathways of exposure to the listed chemical(s) for which the warning is being provided” for every single individual, as proposed Section 25205(b)(8) continues to provide. Finally, the regulations continue to lack any requirements on how OEHHA must manage the website going forward: how often OEHHA must update the website, how much time OEHHA has to add new pieces of information to the website, whether the website must contain all information provided by regulated businesses or just some subset, and whether OEHHA itself is bound to ensure that information provided on the website is complete, up to date, and not misleading.

WSPA again thanks you for this opportunity to comment on the revised proposed Prop 65 lead agency website regulations. Providing the additional detail and clarification we have requested is important to give stakeholders clarity on how the website will be administered and updated, and assurance that the website will not be abused by Prop 65 plaintiffs who have a strong financial incentive to leverage it to their advantage. We believe further targeted edits to the proposed regulations will help make the regulation more predictable, less costly to meet, and better ensure that Prop 65 warnings are “clear and reasonable.” Again, we appreciate working with OEHHA on the proposed Prop 65 regulations.

Please feel free to contact me or Mike Wang of my staff (cell: 626-590-4905; email: mike@wspa.org).

Sincerely,

A handwritten signature in blue ink, appearing to read "Cathy Wang".