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Via Electronic Mail

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Re: Comments regarding OEHHA's Notice of Modification to Text of Proposed Amendments to Proposition 65's Warning Regulations – Section 25600.2

These comments are respectfully submitted on behalf of the Center for Environmental Health (“CEH”) regarding the above-referenced Notice of Modification. CEH previously submitted comments in connection with this rulemaking on January 11, 2019.

CEH appreciates that OEHHA has incorporated some of CEH's suggestions in the revised proposal, and applauds those revisions as generally improving the clarity of the regulation and narrowing some of its deficiencies. In particular, the new proposed modifications to Sections 25600.2(b) and (c) will make it clear that, in order for an upstream manufacturer or distributor to pass along the responsibility to provide a warning to a downstream entity, that downstream entity must be “subject to Section 25249.6 of the Act.” See Proposed 27 Cal. Code Regs. § 25600.2(b). And the new proposed language in Section 25600.2(f) will ensure consistency between this regulation and OEHHA's longstanding regulation governing the required content for pre-suit 60-day notices. Cf. Proposed 27 Cal. Code Regs. § 25600.2 (f) and 27 Cal. Code Regs. § 25903(b)(2)(D).

On the other hand, OEHHA has failed to address the overarching problems CEH identified with the regulation in its current and proposed revised form. Most importantly, Section 25600.2 (both in its current form and with these proposed modifications) exceeds OEHHA's statutory authority and creates potentially huge gaps in enforcement. Rather than restate its previous comments, CEH hereby incorporates them by reference.

Thank you for your consideration of these comments.

Best,



Caroline Cox