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March 29, 2021

Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23rd Floor  
P. O. Box 4010  
Sacramento, California 95812-4010

**RE: Proposed Amendments to Article 6, Clear and Reasonable Warnings Short-Form Warnings**

Dear Ms. Vela:

On behalf of the US Hemp Roundtable (“the Roundtable”), we wish to offer the following public comments relative to the proposed amendments referenced above.

The Roundtable is engaged in an industry (hemp) that will be among the most regulated and consumer safety-focused in the state under pending state law. Products in the hemp industry will contain robust warning requirements to ensure that consumers have abundant information in hand before making a decision to purchase a product. These warnings include reproductive health warnings for both pregnant and breastfeeding persons, child safety warnings and stringent protections against misleading health claims. The members of the Roundtable subscribe to the commitment to full regulatory compliance, especially as it relates to consumer safety.

While we would assert that hemp statute will be more rigorous than Proposition 65, we are concerned for three reasons that under the Proposition 65 framework, we are facing unnecessary challenges for our consumers and ourselves that hemp governing statutes do not similarly create.

**Warning label “real estate:”** As already noted, imminent law for hemp places very specific requirements on manufacturers to include labels that highlight specific health warnings as well as other information, including:

- A link (barcode, QR code, etc.) to a testing certificate of analysis
- Product manufacturer or distributor information
- Batch numbers
- Concentration levels of THC and/or CBD
- Expiration or “best by” date

Additionally, hemp products that are regulated by the U.S. Food and Drug Administration, such as dietary supplements, food, and cosmetics, must have additional information on the label depending on the type of product, including but not limited to a Nutrition or Supplement Facts panel, ingredients list, and certain disclaimers – all of which are required under federal law and occupy a significant amount of label space. Further, a growing number of states have or will impose state-specific labeling requirements for hemp products in addition to federal labeling mandates.

We are also required to include the information established in the current Proposition 65 short form warning regulations. All of this information must be placed on a label that resides on a product that is often substantially less than 5 square inches.

This overabundance of information effectively crowds all of the warnings to the point that they become the visual equivalent of “white noise.” Ultimately, all of the verbiage on the label will be so small and dense that it will be meaningless to the consumer. The effect will be to seriously undermine the public policy goals of both Proposition 65 and the hemp laws. This is especially true for FDA-regulated hemp products that would no longer be eligible to use the short form warning under the proposed amendments and may be forced to switch to larger packaging to accommodate federal, state, and Proposition 65-specific labeling requirements, thereby creating unnecessary waste and impacting the environment.

Because hemp products already have expansive warning requirements, we submit that OEHHA should not increase the Proposition 65 verbiage on short form warning labels. We further submit that while we can speak authoritatively about hemp, we know that other industries face similar challenges. Because of that, we caution OEHHA against further marginalizing Proposition 65’s effectiveness by crowding more and more language onto small labels.

**Explicit mention of one chemical:** The enforcement of Proposition 65 is mostly in the hands of the private legal sector. The experience of the business community, and the dietary supplements/food sector in particular, is that this private right of action authority is often aggressively pursued for reasons that are financially motivated and not altruistically dedicated to the state’s public policy goals.

Adding a requirement to identify one chemical known to cause cancer or reproductive harm opens new opportunities for private enforcers to seek action against a business that explicitly names one chemical while not naming others. The burden is on the business to

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choose the right chemical to name because the result will be that private enforcers will challenge that the business made the wrong selection and that the consumer safety is jeopardized because the wrong chemical was named. While the business' selection might be validated ultimately, the cost of defending its choice will place an unnecessary burden with substantial cost consequences on the business.

This requirement on the hemp industry is unnecessary because of the expansive testing requirements and the obligation to make those test results easily accessible to all consumers.

**Timing:** We share the broader concern of the business community that these changes come very close on the heels of the last round of short form warning regulatory changes. While the hemp industry has not been subject to Proposition 65 regulations for very long, it is arising at the time the current short form warning regulations are in place, and companies are creating their packaging and labeling in part to comply with those regulations. These proposed changes will force the industry to engage in the very expensive revamping of labels on a very wide variety of products at a time that regulatory ramp up under hemp laws is already expected to be costly.

We thank you for your favorable consideration of these comments.

Sincerely,



Rand Martin

Rand Martin