



CEH



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seguridad, salud y justicia para los trabajadores



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FOR THE EARTH**

OUR HEALTH. OUR FUTURE. TOXIC FREE.



**Just
Transition
Alliance**



**CALIFORNIA
HEALTHY NAIL SALON
COLLABORATIVE**

Liên Hiệp Ngành Móng Tay Lành Mạnh



Know your Environment.
Protect your Health.
ewg



**CLEAN
WATER
ACTION**



**Breast Cancer
Prevention Partners**
Exposing The Cause Is The Cure



NRDC
NATURAL RESOURCES
DEFENSE COUNCIL

**BREAST
CANCER
ACTION**



AS YOU SOW

March 29, 2021

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

Dear Monet Vela:

The **Center for Environmental Health, Just Transition Alliance, Natural Resources Defense Council, Physicians for Social Responsibility- San Francisco Bay Chapter, Clean Water Action, As You Sow, Women's Voices for the Earth, Breast Cancer Prevention Partners, Worksafe, California Healthy Nail Salon, Breast Cancer Action, and Environmental Working Group** are

pleased to provide these comments in support of OEHHA's proposed amendments to Article 6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). We believe that short form warnings, as currently constituted, are inadequate in providing consumers with the clear warning required by Proposition 65 and that since regulations became operative in August 2018, short form warnings have been used in situations where they were not warranted or appropriate and have thus failed to offer the consumer adequate information to make an informed and health-protective decision. We thank OEHHA for protecting California's residents by taking steps to ensure that Article 6 provisions for short form warnings for consumer product exposures clearly and effectively provide Californians with information about toxic exposures.

Please find our comments below regarding OEHHA's proposed action to provide clarifying guidance and specificity to the existing short form warning provisions:

- Since we strongly believe that full, detailed warnings more adequately inform the consumer, we support OEHHA in limiting the use of the short form warning to products with 5 square inches or less of label space. However, we believe the minimum font should be raised to at least 10 point font. To drive this point home, we have written the following paragraph in 6 point font, which can be easily expanded at the comfort of a computer, but not to a consumer shopping in-store. For comparison, the same paragraph is written subsequently in 10 point font.

The intent of Prop 65 when passed by an astounding 60% of voters was to provide California consumers with meaningful information about potential exposure to toxic chemicals in products so that they can make the best decisions for themselves and their families, regardless of the size of the packaging of a product. There are numerous examples of very small products, especially cosmetics, where peel and fold-out labels provide details about the product contents. While products with 5 square inches or less of label space could still provide comprehensive Prop 65 warnings in theory, we believe the short form warning will provide consumers of small products with adequate warnings in a practical way. However, the proposed minimum size 6 font is much too small and should be raised to 10 point font. We disagree that size 6 font should be considered a clear and reasonable warning. Critical health information should be made equitably accessible to all consumers, regardless of their ability to read fine print.

The intent of Prop 65 when passed by an astounding 63% of voters was to provide California consumers with meaningful information about potential exposure to toxic chemicals in products so that they can make the best decisions for themselves and their families, regardless of the size of the packaging of a product. There are numerous examples of very small products, especially cosmetics, where peel and fold-out labels provide details about the product contents. In the absence of requiring such full warnings, the proposed minimum size 6 font for the short form warning is much too small and should be raised to 10 point font. We disagree that size 6 font should be considered a clear and reasonable warning. Critical health information should be made equitably accessible to all consumers, regardless of their ability to read fine print.

- We support OEHHA in eliminating the use of short-form warnings for internet and catalog warnings.

As described in both its Initial and Final Statement of Reasons during the 2016 regulations, OEHHA was clear that the short form warning was only intended to be used for on-product labels. In addition, given that companies have adequate space to provide detailed information (product size, weight, material composition, etc.) about products sold on the internet and via catalogs, it is important that equitable access to any details related to potential health concerns associated with the use of those products be provided to the consumer during the selection process and before products are purchased. Hence, we believe that OEHHA's proposal to

eliminate the short form warnings from being used in internet and catalog sales is consistent with the intent of the law.

- We believe that safe harbor warnings should require the listing of *all* Prop 65 chemicals contained in a product. If permitting the use of a short form warning, OEHHA should require companies to list at least one chemical for each of the health warning categories- carcinogenicity and reproductive toxicity.

Contrary to arguments made by industry at the March 11th hearing held by OEHHA, we believe listing specific chemicals on short form warnings furthers Proposition 65's right-to-know purpose. Concerned consumers are much more likely to understand "Warning" combined with the name of a chemical like "lead" than "Warning" combined with the words "Proposition 65." Including chemical names provides clearer information to consumers who are seeking, for instance, to avoid cumulative exposure to a particular chemical, or to further educate themselves about their choices. In the 2015 OEHHA contracted study by the U.C. Davis Extension Collaboration Center to evaluate the effectiveness of warnings, researchers found that "66% of [survey respondents] selected the warning with the specific chemical names as being more helpful than the warnings that generally referred to chemicals." Furthermore, it was found that "the inclusion of the chemical names made people feel better able to make an informed choice." Providing specific chemical names and the Prop 65 website on warnings helps alert consumers to potential dangers that they may be concerned about and gives them a trustworthy, scientifically sound resource they can use to find out more information. Per information gathered in meetings with OEHHA, the Prop 65 Warnings website, www.P65warnings.ca.gov, was launched a couple of years ago when the new enhanced warnings regulation took effect. It has drawn more than 600,000 unique visitors per month and more than 1 million monthly pageviews and is among the top 10 most-visited websites in California state government. The fact that OEHHA has seen such large volumes of visitors to their Prop 65 website is testament to the level of interest consumers have in learning more about the warnings and the potential health effects of the chemicals listed on products.

From a public health perspective, and in alignment with the intent of the law, all Prop 65-listed chemicals in a product should be listed on warnings. Given that different chemicals have different health endpoints, consumers deserve the right to know which specific Prop 65 chemicals they are being exposed to in the products they are considering purchasing. Just as diabetics look at food labels to avoid products with high levels of sugar and people with high blood pressure try to limit salt intake, cancer survivors may want to avoid carcinogens and families suffering from infertility may want to avoid any reproductive toxicants. While consumers are likely to care about both carcinogenicity and reproductive toxicity, allowing companies to disclose only one fails to provide consumers with equitable access to the information they need to make the best choice for themselves and their families. Food labels would be considered inadequate for diabetics if they only disclosed the amount of salt and not sugars. Likewise, for consumers trying to make decisions between products, it would be inadequate and inequitable for those concerned about carcinogens to only have information related to reproductive toxicity and not cancer.

All consumers deserve equitable access to this critical health information, regardless of the size of a product. For these reasons, we believe that if OEHHA decides to continue to allow the use of short form warnings, that businesses be required to list at least one chemical for each of the health warning categories- carcinogenicity and reproductive toxicity.

- We support OEHHA's proposal to permit a one-year *maximum* phase-in period for companies choosing to use the short-form warning on existing products, to allow for a smooth transition to these modifications.

We believe the burden of testing and ensuring the safety and regulatory compliance of products is one that lies on the manufacturer, not on the individual purchasing that product. Given that the original regulations were developed in 2016 and went into effect in 2018, businesses have had more than adequate time to comply with their responsibility to determine which, if any, Prop 65 chemicals are contained in their products and to develop appropriate warnings.

- While we understand the intent of OEHHA's proposal to allow for an unlimited sell-through period for products that were compliant when manufactured, we are concerned that older products with less helpful information will accumulate in discounted retailers and dollar stores in already overburdened communities. We strongly suggest OEHHA reevaluate this proposal.

Given that OEHHA is updating the regulations, we understand that companies would likely consider it burdensome to recall products with outdated labels. At the same time, we want to uplift the problem described by our allies in communities across the country as "downstream dumping" - when older products are sold off to discounted retailers and dollar stores often located in low-income and communities of color. At best, this "downstream dumping" can lead to the accumulation of inadequately labeled products and inequities in access to critical health information that all communities, regardless of race or socioeconomic status, deserve. And at worst- depending on whether companies choose to reformulate rather than list harmful chemicals in products manufactured to meet new warning requirements- it can lead to the accumulation of more toxic products in already overburdened communities.

For these reasons, we believe that OEHHA's proposal to allow for unlimited sell-through may unintentionally and inequitably shift the burden from companies to vulnerable communities. We strongly suggest that OEHHA reconsider this approach and work with companies and communities to find a solution that addresses industry concerns without creating inequities in access to critical health information or placing an unfair burden of more toxic products that have the potential to create more adverse impacts on already overburdened communities.

Overall, we are in support of OEHHA taking these important steps forward in amending Article 6, with a few critical changes outlined above. We believe it is especially important that when a short-form warning is in use, a company specify chemical(s) to which people are being exposed. As described in the ISOR, the current version of the short form has led to “unnecessary prophylactic warnings which dilute the effectiveness of warnings for actual exposure to listed chemicals.” This proposed requirement will help to avoid the overuse of meaningless and prophylactic warnings on products, and better inform the consumer, which is in the public interest. We also strongly support language accompanying chemical name(s), which is both succinct and informative for the consumer.

While we recognize that the pandemic has put strains on the business community, the reality is that public health has suffered astronomically in comparison. What the pandemic has laid bare is that [vulnerable populations, including those suffering from exposure to toxic chemicals, have been disproportionately impacted by the health impacts of COVID-19.](#) For these reasons it is imperative that OEHHA take seriously its duty to protect public health to the fullest extent possible by requiring the business community to provide consumers with the information they need to protect their health and that of their loved ones, and to do it as soon as possible.

Given that Proposition 65 was passed by California voters due to their concern about being exposed to toxic chemicals in the water they drink, the air they breathe, the products they use and the food they eat, we are enthusiastically in favor of this effort to afford consumers their legal right to know. Without these changes, use of the short-form warning will continue to be in contravention of the intent of the statute and OEHHA’s adoption of the 2016 regulations — that warnings communicate meaningful information about chemical exposures to consumers, and that short-form warnings be used only on labels for small products that cannot accommodate the full-length warning content described in Section 25603(a)(2).

Sincerely,



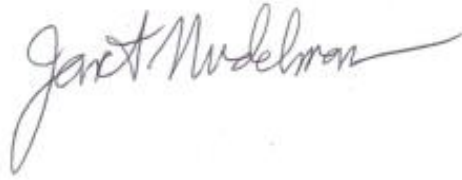
Michael Green
Chief Executive Officer
Center for Environmental Health



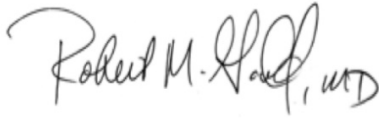
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Janet Nudelman
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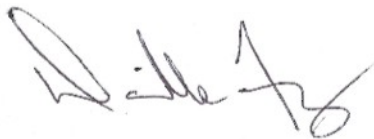
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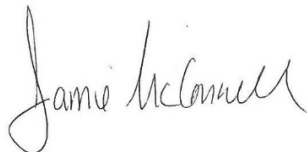
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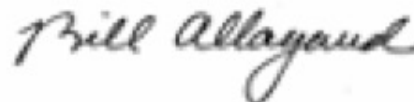
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