

From: Penny Newman

Official Ballot Proponent of Proposition 65

Proposed Intervenor-Defendant in *Cal. Chamber v. Bonta*

A victim of governmental dump of toxic waste in 1978 that led to enactment of Proposition 65, Penny Newman has won *Newman v. Stringfellow* (Super. Ct. Riverside County, No. 165994MF), the largest personal injury lawsuit in the history of California, against California Attorney General and 217 corporate defendants, about 4000 plaintiffs, 3 mln documents, and the designation of Stringfellow as a US EPA Superfund site.

<https://blog.epa.gov/tag/penny-newman/>,

<https://chej.org/2021/03/18/from-shy-young-woman-to-powerful-leader-penny-newman/>

Public Comment

To Proposition 65 Initial Statement of Reasons

OEHHA proposes creating the first exemption with a different warning language for only one of 838 chemicals in the same group of “probable” human carcinogens as acrylamide, basing this decision on the language proposed by a district judge granting a preliminary injunction in an order (“Order”) in [Cal. Chamber of Commerce v. Bonta \(9th Cir. May 27, 2021, No. 21-15745\) 2021 U.S. App. LEXIS 16008.](#)

This proposal is the first such for label warnings on a specific chemical, and sets a precedent that will open the door for further exploration by the industrial lobbyists. These would include requests to rewrite warnings for the rest of the listed chemicals, foreseeable complications for prosecuting violators, additional inevitable industrial attacks on the constitutionality of the vague language of the new proposed warning, and multipliers in costs of attorney fees for all parties.

There are enormous potential public health consequences from the wide reach of Chamber's requested relief, as admitted to in the press by Chamber. Such consequences may include: (1) the removal from Proposition 65 list of carcinogens of up to 93% of chemicals (those in the same group of "probable" carcinogens); (2) changing the allowable levels of acrylamide in drinking water from 0.2 mcg/day as a carcinogen, to 140 mcg/day as a reproductive toxin only; (3) the increasing use of acrylamide polymers in chemical treatment of drinking water, plastics, paints, grout, allowances in oil and gas fracking waste discharge; and, most likely, (4) application of similar relief to unlimited categories, types and number of chemicals and products.

"Purely factual" and "non-controversial" cancer causation is non-existent. The "not purely factual" and "controversial" cancer causation that the the judge used to effectively repeal the law that the people of California enacted by a whopping 63% votes and supported for 35 years, applies to carcinogenicity of any chemical toxin, and, if upheld, would result in declaring safe 838 out of about 900 chemicals on Prop. 65, including lead, 1,4-dioxane, nitrogen mustard hydrochloride, diesel exhaust particulars, progesterone, glass wool fibers, polychlorinated biphenyls, whose toxicity is based on animal studies and, customarily for science, has to wait 10-40 years to be re-assessed by public entities. Lead was listed for reproductive toxicity in 1987 and for cancer in 1992 (acrylamide in foods was listed only in 2002) and has not been moved to the upper group of "known" human carcinogens for nearly 30 years and will potentially fall out from the warning requirement.

Asbestos, formaldehyde, aflatoxin warnings were unconstitutional for years under the court's logic, before they were moved to the group of "known" carcinogens, and it is more reasonable to wait for the body count of 30 years of added

cancers than to compel corporations to disclose the presence of a “reasonably anticipated human carcinogen” in their supply, while profiting on neglecting children's health.

Irreparable harm from 8-30 words and fewer than 70 notices a year. The court has found that manufacturers suffer irreparable harm from an 8-30 words fine-print warning on the back label of products that tested positive for high levels of “known” carcinogens, which overweighs any risks of cancers to human health; that irreparable harm to the corporate lobby comes from enforcing a public health law, in the form of mere 1,323 notices of violations filed to date, which is equal to fewer than 70 per year since the chemical was discovered in foods in 2002 and are nowhere near millions of consumer products sold by the largest sector of the world’s economy.

When foods like almond butter or snack mixes are snagged by private enforcers, the amount of acrylamide found in the foods that get prosecuted is frequently over 500 parts per billion and about a third of the time close to one part per million.

OEHHA is making a proposal that is based on reacting to bias science. It is opening the door for further erosion of the integrity of our scientific agencies that have declared acrylamide a “known” carcinogen. This is the first carve out for a chemically related warning in food. But it is the third big cave by OEHHA when it comes to regulating a chemical known to cause cancer. Recently, OEHHA used equally questionable science to excuse coffee and cereal makers from improving their products by reducing acrylamide.

The people of California enacted Prop. 65 after the government failed to protect them, deciding by 63 percent to trust self-funded private enforcers. Prop. 65

arose from recurring disillusionment with the government that not only failed to protect people from dangerous toxins, but actively participated in dumping chemical waste on communities and ensuring a cover up.

Proposition 65 is deeply rooted in governmental acquiescence and collusion with industrial offenders to conceal their environmental crimes against humanity. For Prop. 65 to meet this objective and have a chance to succeed, government agencies had to be reinforced and simply replaced by efficient and self-funded private enforcers. The initiative's root arose on a sunny day in 1978 when I watched my school playground flooded with waste filled with lead, DDT, radiation, and 400 other chemical toxins, after the government decided to release one million gallons of toxic wastewater, telling people it was safe, watching children making play beards out of the toxic foam, while their tennis shoes and blue jeans begun to disintegrate.

My price for the gifts from the government was a miscarriage, hysterectomy, non-smoker COPD, my children and husband's cracked skin, asthmas, seizures and allergies. We slept in turns to assure our children were still breathing.

By virtue of the fact that Proposition 65 authorizes private enforcers, the people decided that the government not only cannot adequately represent the health interests of citizens, but had grossly failed them.

Now, the state government is once again compromising and acquiescing to the "science" funded by industrial polluters to achieve a political favor to the biggest industry of the world- the food industry, in the worlds' sixth largest economy- State of California. I've seen how the story ends when scientific integrity is sacrificed. Let's not repeat history.

