



January 21, 2022

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

Sent Electronically to: <https://oehha.ca.gov/comments>

RE: Modification of Text to Proposed Amendments to Article 6 Clear and Reasonable Related to Short-Form Warnings for Consumer Product Exposures

Dear Ms. Vela:

We are writing on behalf of ourselves, Berryman Products, Inc. (“Berryman”). Berryman is a 103-year-old small business based in Arlington, TX and manufactures consumer products for the automotive industry. We primarily blend and package gasoline and diesel fuel additives, aerosol brake and carburetor cleaners, and aerosol lubricants.

We are providing the following comments regarding the December 17, 2021 notice “Modification of Text to Proposed Amendments to Article 6 Clear and Reasonable Warnings Related to Short-Form Warnings for Consumer Product Exposures”(15-day notice).

We greatly appreciate California Office of Environmental Health Hazard Assessment’s (“OEHHA”) efforts to mitigate the burden of the proposed amendments to the regulations for the Proposition 65 (“Prop 65”) warnings related to the short-form warnings. We have significant concerns with some of OEHHA’s proposed amendments and the proposed modifications for the Prop 65 short-form warnings amendments. As such, we respectfully request that OEHHA withdraw the short-form warning amendments and modifications based on our comments below.

- **One-Year Transition Period** – The proposed one-year transition period is not feasible for small businesses to evaluate and relabel all products and published materials that are subject to Prop 65. We strongly implore OEHHA to provide a longer, more reasonable transition and recommend a five-year transition period. At Berryman, we have many dozens of SKUs to review, redesign artwork for, and work with upstream packaging suppliers on. In some cases, especially with lower-volume SKUs, we have to buy multiple years’ worth of labels to meet minimum order quantities. The cost

associated with having to simply throw away suddenly-obsoleted labels would be quite significant. Moreover, with supply chain disruptions so rampant in all industries, it is not practical to expect compliance in one year. Rather, having a longer transition period would help offset the significant compliance costs and logistical complications.

- **Maximum Label Size Limitation** – We appreciate the fact that OEHHA has amended the proposed maximum label size for the short-form warnings from 5 square inches to 12 square inches. However, a maximum of 12 square inches for allowing the short-form warning is still too small. Due to hazardous nature of fuel additives and aerosols in general, we are required by law to include a significant number of warnings and first aid statements on our labels.

However, employment of the Prop 65 short form warning allows us to keep both English and Spanish Prop 65 warnings to one line. The long form in most cases would require up to four or five lines for each language. For Berryman to be able to incorporate that much additional text, we would either have to greatly reduce the font size, thereby impacting the readability of all warnings and first aid measures, or we would have to remove Spanish language warnings and first aid measures all together. Obviously, neither of these options are especially viable solutions. Being able to continue to use the short form warning would let us keep our font size more legible and still permit us to provide critical warnings and first aid recommendations for Spanish speakers.

- **Short-Form Warning Amendments Withdrawal** – We ask that OEHHA withdraw the short-form warning amendments. OEHHA's original proposed revisions to the short-form warning are inappropriately timed as these changes would be remarkably difficult to implement, quite costly, and overly burdensome, especially given the fact that Berryman spent such significant resources to comply with the 2018 modifications. In short, these current proposed amendments will have significant adverse economic impacts on our business...again. Each SKU that has to be redesigned will cost upwards of \$10,000 dollars in direct labor costs, legal review, supplier fees, and new printing plates.

Moreover, there is truly little to nothing to be gained by requiring the use of the long form warning. If a chemical requires a Prop 65 warning (of any sort), we are already required to list that chemical on the label. Every example of a Berryman offering that requires a Prop 65 warning also lists the triggering chemical in the ingredients disclosure *on label*. There is no reason the Prop 65 short form warning should not suffice when coupled with this automatic ingredient disclosure.

While we appreciate OEHHA making modifications to the original proposal, we do not feel the current proposed changes will solve the obstacles and burden of the amendments. In the end, the proposal by OEHHA affecting the short-form warnings will do little to nothing to address OEHHA's stated goal of reducing Prop 65 over-warnings. Instead, the currently proposal will only further exacerbate the already abusive Prop 65 litigation climate by providing additional opportunities for private enforcers to continue to file frivolous enforcement lawsuits against

businesses. There is a plethora of alternative paths for OEHHA to reduce Prop 65 over-warnings; however, the proposed changes to the short-form warnings are not the solution.

We strongly urge OEHHA to withdraw the short form warning amendments proposal. If OEHHA is unable to withdraw this proposal, we strongly urge OEHHA at a minimum to provide a five-year transition period to mitigate the extreme burden, required resources, and numerous expenses that small businesses like Berryman would encounter.

Thank you for considering our comments and recommendations included herein. Please do not hesitate to contact us with questions or requests for additional information. We look forward to working with OEHHA as this proposal moves forward.

Best regards,



Dan Nowlan
Chemist, Regulatory Affairs
(817) 695-5647 direct
(817) 640-4850 fax