



April 20, 2022

Monet Vela
 Office of Environmental Health Hazard Assessment
 P. O. Box 4010
 Sacramento, California 95812-4010

Re: Proposition 65 Proposed Amendment: Clear and Reasonable Warnings - Short Form

Dear Monet Vela,

On behalf of the undersigned organizations, we are writing to comment on the California Office of Environmental Health Hazard Assessment's Second 15-Day Modification to proposed amendments to the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) short-form warning regulations, Title 27, California Code of Regulations, Sections 25601, 25602, 25603, and 25607.1. We appreciate the opportunity to comment and thank OEHHA for its efforts to protect California residents by taking steps to ensure that businesses are clearly and effectively providing consumers with information regarding exposure to toxic chemicals. While we support OEHHA's attempts to improve Proposition 65 and more effectively protect public health, we believe that the recent proposed modifications to the short-form warning regulations gravely run afoul of Proposition 65's purpose by backsliding and thus undermining California consumers' ballot approved right to know about exposures to toxic chemicals. The reasons we believe these recent modifications should be reversed are discussed below.

The first proposed modification is to eliminate any label size restriction on use of the short-form warning. In its Initial Statement of Reasons ("ISOR"), OEHHA explained one of its primary purposes in proposing to amend the short-form warning regulations to situations in which a longer warning is not feasible. OEHHA stated:

Implementation of the warning regulations has revealed the need for express limits on the use of the short-form warning for consumer products. The regulation did not limit application of the short-form warning to a maximum label surface area. While OEHHA intended for this warning option to only be used for small products or containers with insufficient space for the longer warning, businesses have used the short form warning on a wide range of consumer products that have more than enough label space for the longer warning.

ISOR, p. 3. OEHHA went on to explain:

Without these changes, use of the short-form warning will continue to be inconsistent with the intent of the Act and OEHHA's intent in adopting 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).

ild., p. 4. See *also* ISOR, p. 6 (“There is no reason to use short-form warning for such [larger] products.”). Thus, OEHHA clearly expressed its view that, in order to be consistent with Proposition 65, short-form warnings must be limited to smaller products that do not have sufficient label space to accommodate a longer warning. Unfortunately, the proposed modification completely backtracks on this approach by eliminating any label size restriction on short-form warnings.

As it stands, there is already precedent for more information to be added to Proposition 65 warnings, so we are confused and disappointed to see the proposed amendment revert to the existing provisions of Subsection 25602(a)(4), which allow for the use of the short-form warning label on a product of any size. We believe that, by expressly allowing a short-form warning to be used on any product regardless of packing size and shape, we will see increasing abuse of the short-form warnings and they will soon become the new standard. Companies selling products with sufficient label space to accommodate a full-length warning should not have the option to use a short-form warning, as this will deny consumers access to information necessary to make fully informed decisions.

OEHHA explained its rationale for eliminating the label size restriction due to comments it received regarding “the feasibility of using the long form Proposition 65 safe harbor warning on a variety of products with label sizes greater than 12 square inches, as well as about how label size was to be determined.” Notice Second 15-Day Modification, April 5, 2022. Rather than scrapping label size restrictions altogether, OEHHA could: (1) explain its rationale for proposing a 12 square inch label size restriction (which it

already increased from the initial proposal of 5 square inches), and (2) provide more clarity on how label size is to be measured. In doing so, OEHHA could also look to numerous other examples of California laws that restrict label size in various contexts for guidance. See, e.g., CCR Title 4, §1126(e) (size of labels for compliance with CA Technical Bulletin 117-2013 furniture flammability standards).

The second proposed modification is to eliminate the existing requirement that the font size of a short-form warning be at least as large as the largest type size of other consumer information on a label. See 27 Cal. Code Regs. Section 25602(a)(4). OEHHA explains this change as follows:

OEHHA is making this change because recent federal requirements would in some cases result in oversized short-form warnings, and provide a disincentive to adding Proposition 65 warnings to a label, an important method for giving warning. For example, the Nutrition Facts Label final rule which recently became effective requires in some instances large font sizes on nutrition labels (e.g., 16 and 22 point font) and this in some circumstances would result in the short form warning taking up a high percentage of the product label, dominating other important consumer information, and rendering its use infeasible.

Notice Second 15-Day Modification, April 5, 2022. Rather than scrap this restriction altogether, OEHHA could address this concern by eliminating the font size correlation requirement only as to food.

Additionally, we believe it would be helpful to have additional clarification regarding font size regulations. The current language regarding usage of the minimum font size creates a false impression that the visibility requirement is always fulfilled by a six point font. Providing more clarity and guidance regarding when a six point font size would be appropriate to use would prevent inappropriate uses of the short-form warning. We recommend that provisions be added to indicate that visibility and conspicuousness will be determined by size.

Proposition 65 was passed in 1986, when over 60% of Californians voted to ensure that laws would be set in place to protect them from being exposed to toxic chemicals in water, air, and consumer products. The amendments proposed on April 5, 2022 would contradict the intent of the short-form warning and remove full consumer access to information by allowing the short-form warnings to be hidden on large packages. By making these recommended changes, we believe it will strengthen the short form warnings without undermining the intent of the law and public health. Thank you for your continued work on this issue and we strongly urge you to take these comments into consideration.

Sincerely,



Michael Green
Chief Executive Officer
Center for Environmental Health



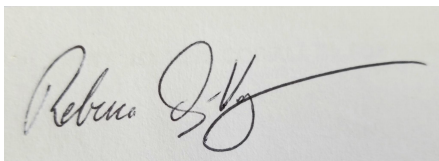
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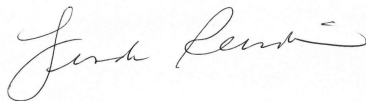
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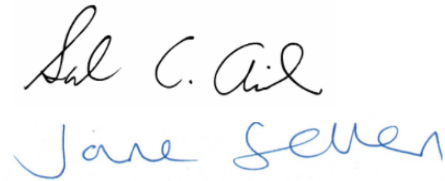


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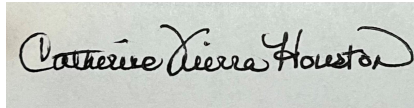


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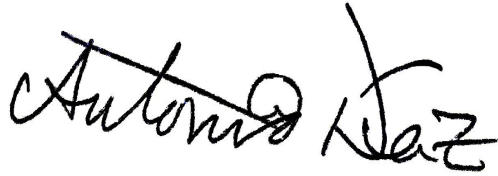
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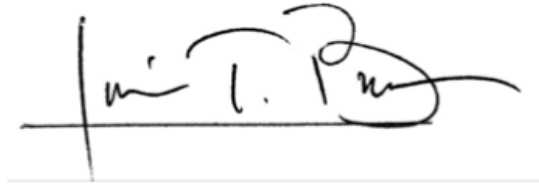
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