

December 20<sup>th</sup>, 2023

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**Re: October 27<sup>th</sup>, 2023** - Request for Comment, Notice of Modification to Text of Proposed Regulation Title 27 – California Code of Regulations, Proposed Amendments to Sections 25601, 25602, 25603, and 25607.2 and adopt new sections 25607.50, 25607.51, 25607.52, and 25607.53.

Esteemed Monet Vela and Office of Environmental Health Hazard Assessment (OEHHA),

FLUIDRA, a California employer and manufacturer of pool and spa equipment with hundreds of employees within California and hundreds more throughout the United States, appreciates the opportunity to comment on the proposed modifications to the OEHHA “Proposition 65” warning. As a manufacturer with a focus on safe, sustainable, and energy efficient products, Fluidra understands and agrees with the importance and value of providing clear and reasonable safety warnings to consumers. Accordingly, with tremendous effort and investment, we had aligned our product portfolio to the requirements of the 2018 modification of the Proposition 65 regulation to provide clear and reasonable chemical exposure warning to consumers.

With respect to the newly proposed amendments to the Proposition 65 regulation, Fluidra fully supports comments made by the California Chamber of Commerce, as well as the Pool & Hot Tub Alliance (PHTA), and respectfully submit the following comments to the proposed amendment notice issued October 27<sup>th</sup>, 2023:

### **CURRENT SHORT FORM WARNING**

The current requirements for clear and reasonable warning are sufficient to inform a consumer of the potential cancer and reproductive risks of a product. The inclusion of a chemical name such as “Di(2-ethylhexyl)phthalate” which, other than chemists and litigation lawyers, does not is not generally understood by a consumer, nor does it provide additional precautionary value to the associated product risks already indicated on the existing product warning(s). With the existing short-form warning, the consumer is already clearly and sufficiently alerted to the potential cancer and reproductive risks of a product. The addition of tenebrous chemical names will not make the warning any more understandable, or make the product any more or less safe. On the contrary, we believe it would only cause unnecessary confusion and misunderstanding of the true risks of a product and would only serve to add legal complexities and liability to manufacturers, distributors, and retailers.

In addition, there is no clear evidence that the proposed amendments would serve to better convey the risks of a product as to influence and promote “better” decision-making by

consumers, compared to the already established proposition 65 warnings. We feel the assumptions OEHHA made regarding the added value of the proposed amendments lack the reasonable evidence to justify these changes.

## **IMPACT AND BURDEN TO BUSINESSES AND CONSUMERS**

We believe OEHHA's estimated impact cost of \$4,273.46 per business to comply with the proposed regulation to be **egregiously** inaccurate and misrepresentative of the realistic cost of doing business.

As a manufacturer with thousands of unique product SKUs, we conservatively estimate the cost to organize, redesign, document, and execute this change to product labeling to be a minimum of **\$225,000.00** in man hours. This estimate does NOT include the cost for label/packaging scrap, capital equipment, and most importantly the OPPORTUNITY COST of resources that could have been used innovating Energy-Efficient, Carbon-Reducing, Money Saving products for California consumers. Moreover, we are being conservative with this estimate, and it is very likely that our, and other manufacturer's, costs may be much higher and likely to be passed on to consumers.

## **MINIMUM FIVE YEAR TRANSITION PERIOD**

While we appreciate increasing the proposed transition period from 1 year (in 2021) to 2 years, we still feel this is not a reasonable amount of time for manufacturers which manage thousands of unique product SKUs to effectively implement such a change. Fluidra requests a 5-year transition period to allow business and manufacturers the time needed to review, identify, revise, and implement changes to product labeling.

## **CONCLUSION**

Fluidra strongly recommends rescinding the proposed amendments to the short-form warning as these amendments are non-value added.

The lingering effects of the COVID-19 pandemic have all manufacturers struggling with numerous unforeseen challenges such as labor shorted, increased component, material, and freight costs, as well as rising inflation disrupting consumer confidence and spending. We do not feel there is enough value in these proposed amendments to justify the financial burden to California business and consumers.

Respectfully,



Philip Escobedo  
FLUIDRA  
Director of Regulatory Compliance