

January 2, 2024

Submitted electronically through <https://www.oehha.ca.gov/comments>

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

Dear Ms. Vela,

The Center for Environmental Health, Alaska Community Action on Toxics, Asbestos Disease Awareness Organization, Black Women for Wellness, Central California Asthma Collaborative, Clean Production Action, Clean Water Action, Consumer Attorneys of California, Elavo Mundi Solutions LLC, Environmental Law Foundation, Environmental Working Group, Ethical And Respectful Treatment of Humans, Greenaction for Health and Environmental Justice, Green Dentistry, Mamavation, Pesticide Action Network, Seventh Generation, West Berkeley Alliance for Clean Air and Safe Jobs, and Women's Voices for the Earth appreciate the opportunity to provide comments regarding OEHHA's proposed modifications to Article 6 of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). 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. We applaud OEHHA for most of the proposed changes - particularly the listing of at least one chemical name on short form warnings. In addition, the proposal will require that, "[w]here a warning is being provided for more than one endpoint (cancer and reproductive toxicity) the warning must include the name of one or more chemicals for each endpoint, unless the named chemical is listed as known to cause both cancer and reproductive toxicity and has been so identified in the warning." These modifications are in line with the results from the UC Davis Extension Collaboration Center's 2015 study on the effectiveness of Prop 65 warnings, that showed that a majority of survey respondents preferred warnings with at least one chemical name. We believe that providing consumers with more information is necessary to further the purposes of Prop. 65, facilitate informed decision making, and protect public health.

While we commend OEHHA for taking the necessary actions to amend Article 6 to reduce the over-use of short form warnings, we believe several of the proposed modifications conflict with

the sound policies underlying the short form warning option and should be revised as discussed below.

There should be a maximum label size for short form warnings.

In 2021, when OEHHA initiated its prior rulemaking proceeding to amend the short form warning regulations, the agency 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.

Initial Statement of Reasons (“ISOR”), Proposed Amendments to Article 6, Jan. 2021. OEHHA continues to recognize this problem in the ISOR issued in conjunction with this rulemaking:

After adopting the safe harbor warning regulations in August 2016, OEHHA found that many businesses were using the short-form warning for a wide variety of consumer products, regardless of product or package size. For example, OEHHA has received multiple inquiries from members of the public concerning short-form warnings provided on large products with ample space for full-length warnings, including home appliances such as washing machines, refrigerators, and stoves.

ISOR, Proposed Amendments to Article 6, Oct. 27, 2023, p. 7. Having identified this as one of the primary purposes of its regulatory efforts, OEHHA previously proposed maximum label size limits for the use of the short form warning. Now, despite continuing to recognize that the problem persists, OEHHA has abandoned that effort altogether, essentially blessing the use of short form warnings on any product irrespective of label size.

To the extent a label is sufficiently large to accommodate a “full” safe harbor warning, there is no valid justification for providing a safe harbor for a shorter form of warning. By allowing the short form warning on products with sufficient label space to accommodate the full-length warning, the proposed regulation will deny consumers full access to information necessary for informed decision making.

The minimum 6 point font size is too small.

We applaud OEHHA for clarifying what we believe has always been the law: irrespective of anything else in the safe harbor warning regulations, a consumer product warning must be “prominently displayed on a label, labeling, or sign, and must be displayed with such conspicuousness as compared with other words, statements, designs or devices on the label, labeling, or sign, as to render the warning likely to be seen, read, and understood by an ordinary individual under customary conditions of purchase or use.” 27 Cal. Code Regs. §25601(c). However, OEHHA should go one step further and eliminate the minimum 6 point font size as that is simply too small to meet the conspicuousness standard of Section 25601(c). To drive this point home, we have written the following paragraph in size 6 font which can be easily expanded at the comfort of your computer, but not to the consumer shopping in-store.

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 minimum size 6 font is much too small and should either be eliminated altogether or be raised to size 10 font. We disagree that size 6 font should ever be considered clear and reasonable warning. Critical health information should be made equitably accessible to all consumers, regardless of their ability to read fine print.

We do not support the use of short-form warnings for internet and catalog warnings and believe that it is inconsistent with the intent of providing an option for short form warnings.

In its original 2021 proposal to amend Article 6, Section 25602(b) and (c), OEHHA removed the option to use short form warning content on websites and online catalogs. We are dismayed that this change has been revoked and that short form warnings are again permitted online. 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. Online and in web catalogs, companies have adequate space to provide detailed information (product size, weight, material composition, etc.) about their products and 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.

Furthermore, we do not believe that retailers will bear an unnecessary burden for providing full-length warnings on their websites, as this content is often provided by manufacturers to accompany a short form warning on the physical product. It is imperative that consumers be given access to the information necessary to make informed decisions to protect their health - where no space limitations are present, this information should include full-length warning content.

Overall, we are in support of OEHHA taking steps forward in amending Article 6, but urge OEHHA to address our concerns discussed above.

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. Thank you for the opportunity to provide these comments.

Sincerely,

Center for Environmental Health
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Asbestos Disease Awareness Organization
Black Women for Wellness
Central California Asthma Collaborative
Clean Production Action
Clean Water Action
Consumer Attorneys of California
Elavo Mundi Solutions LLC
Environmental Law Foundation
Environmental Working Group
Ethical And Respectful Treatment of Humans
Greenaction for Health and Environmental Justice
Green Dentistry
Mamavation
Pesticide Action Network
Seventh Generation
West Berkeley Alliance for Clean Air and Safe Jobs
Women's Voices for the Earth