



January 3, 2024

Mrs. Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> Floor  
Sacramento, CA 95812-4010

*Via portal at:* <https://oehha.ca.gov/comments>

**SUBJECT: COMMENTS TO REVISED PROPOSED AMENDMENTS TO ARTICLE 6, CLEAR AND REASONABLE WARNINGS SHORT-FORM WARNINGS, OCTOBER 2023 PROPOSAL**

Dear Mrs. Vela,

Seymour of Sycamore appreciates the opportunity to comment on the proposed amendments to short-form warnings under Article 6 of regulations implementing the *California Safe Drinking Water and Toxic Enforcement Act* (hereinafter, "Prop. 65"). Seymour of Sycamore is committed to working with OEHHA to help providing the most appropriate information to enhance consumer safety relating to our products. Being the inventor of aerosol spray paint, Seymour of Sycamore manufacturers fully formulated products which are labeled in accordance with the Federal Hazardous Substances Act and the Occupational Safety and Health Administration's Hazard Communication (OSHA Haz Com) Standard including a list of chemicals which contribute to the flammability or toxicity of the product, as required by law. Seymour of Sycamore has carefully analyzed issues related to labeling requirements and safety to provide downstream users with information to enable safe use of our products.

Seymour of Sycamore will be directly affected by OEHHA's proposed changes to short-form warnings and is eager to assist OEHHA in developing an effective system of conveying information to consumers to enable purchasing decisions based on safety considerations.

Seymour of Sycamore appreciates OEHHA's willingness to interact with stakeholders and commend OEHHA on its efforts to try and keep the public safe. Seymour of Sycamore is optimistic that through continued involvement with the public and stakeholder community, OEHHA will successfully implement a viable and effective Prop 65 labeling program.





On October 27, 2023, OEHHA issued the current proposed revision to Prop. 65 warnings, proposing:

- Listing of at least one chemical for each toxicity endpoint in a short-form warning.
- Allowing variations of the phrase “WARNING” to indicate a warning is for compliance in California.
- Requiring minimum font size of 6-point font.
- Requiring Prop. 65 internet warnings for internet purchases.
- Requiring Prop. 65 warnings in catalogs for catalog purchases.
- Requiring warnings on vehicles and vehicle parts.
- Requiring warnings on recreational marine vessels and parts.

The current proposal is a modified version of a previous proposal OEHHA initially published in January 2021, with subsequent revisions. Seymour of Sycamore appreciated OEHHA's willingness not to implement the proposed 2021 changes based on stakeholder feedback. Seymour of Sycamore hopes OEHHA will make those same decisions to the current proposal as it did with the January 2021 proposals. OEHHA proposed to address overuse of Prop. 65 short form labels by amending short-form label text, eligible package size and font requirements. OEHHA also proposed requiring identification of at least one Prop. 65 chemical for each specific Prop. 65 warning type. Because of limited label space on aerosol packaging and minimum type size requirements, under the Federal Hazardous Substance Act; the inclusion of additional verbiage under the latest Prop 65 short form proposal; and the duplication in other languages of the additional verbiage under the latest Prop 65 short form proposal, creates more excessive verbiage than the open label space.

Seymour of Sycamore's would like OEHHA to not change the current short form Prop 65 warnings for formulated chemical products because our labels comply with regulatory elements under the *Federal Hazardous Substances Act* and OSHA's Haz Com Standard for product labeling, based on the fact that in most cases an industrial aerosol product is considered a “consumer product” based its product form under the Federal Hazardous Substances Act. Under the Department of Transportation (DOT), a Safety Data Sheet (SDS) is required for the shipment of “hazardous” substances. Since formulated aerosol products are considered hazardous products, they require an SDS. The Prop 65 warning information





relating to a hazardous product would be found under Section 15 of the product's SDS, including the chemicals driving the Prop 65 Warning type, thus eliminating the need for this chemical information to be included on the label. This chemical information is also available under the Environmental Protection Agency's (EPA) "Right to Know Act", thus eliminating the need for the chemical information to be included on the label as well.

Seymour of Sycamore is very concerned that the rule imposes significant costs to our business due to the potential changes needed on thousands of labels both branded and private label products. Seymour of Sycamore includes the short form of the Prop 65 warning on most of the labels it produces. **A change to the current Prop 65 Warning regulation would result in over a million dollars of cost to our company.** In effect, addition of a Prop. 65 listed ingredients to a label would not add to a consumer's understanding of risks associated with formulated products. OEHHA's proposed rule is not narrowly tailored to address a clearly defined issue, in effect imposing a labeling change for products that already clearly provide consumers with relevant information.

California's Administrative Regulations provide criteria for "necessity" of regulations. Specifically, the section requires:

The record of rulemaking proceeding shall include:

- (1) A statement of the specific purpose of each adoption, amendment, or repeal; and
- (2) **information explaining why each provision of the adopted regulation is required to carry out the described purpose of the provision.** Such information shall include, but is not limited to, facts, studies, or expert opinion. **When the explanation is based upon policies, conclusions, speculation, or conjecture, the rulemaking record must include, in addition, supporting facts, studies, expert opinion, or other information.** An "expert" within the meaning of this section is a person who possesses special skill or knowledge by reason of study or experience which is relevant to the regulation in question.

In contradiction to this section, OEHHA has not provided requisite studies or factual information describing the scope of over warning requiring costly and burdensome





changes to Prop. 65 warnings affecting a broad range of products that already provide relevant information about hazardous ingredients.

***A limited exemption would more appropriately address OEHHA's concerns related to products whose labels do not include detailed safety information.***

In its statement of reasons issued with the initial proposed amendments, OEHHA identifies two related issues motivating this proposal: 1) consumer inquiries related to chemical identity in products; and 2) overuse of Prop. 65 warning language where presence of a listed chemical may be unknown. Both issues are not relevant to formulated products.

Consumer inquiries requesting information about chemical ingredients relate to articles, not to formulated products. In response to a *Public Records Act* request, OEHHA disclosed a list of consumer inquiries requesting identity of chemicals in products. Of the approximately 4,900 inquiries summarized in the disclosure only 18% of the 4,900 inquiries requested chemical identity. Based on OEHHA's disclosures of about 4,900 Prop.65-related inquiries over a year, this would result in 617 inquiries requesting chemical identity. To base such a broad-reaching change in short-form warnings on these 617 inquiries is unconscionable, especially when considering these inquiries relate to articles and not formulated products.

In its most recent Statement of Reasons OEHHA provides two examples of consumer inquiries relating to a bidet and an electric kettle. These articles are not subject to the extensive disclosures and safety instructions mandated under federal law for chemically formulated products. It is understandable that a consumer might inquire about Prop. 65 labels on these articles since they are not accompanied by additional information required for chemically formulated products. Formulated chemical products are different and should not be grouped with articles.

The timing of changes provides further difficulties. OEHHA's proposed mandate of new short-form warnings two-years from the effective date is not enough time to design, print and affix labels across thousands of products. Assuming label changes could be accommodated, although this is highly unlikely, manufacturers would need at least five years to evaluate, redesign labels and incorporate them on to products. Seymour of Sycamore appreciates the unlimited sell-through of products manufactured prior to the date proposed changes would be required.





## Conclusion

OEHHA proposes an amendment to Prop. 65 short-form warnings that would broadly affect products that currently provide information about hazardous chemical ingredients under federal labeling requirements. Prop. 65 labeling provides supplementary notification regarding Prop. 65 listed chemicals, but these warnings are not paramount to safe use of a product. OEHHA has not fully considered the complexities of labeling chemically formulated products in its Statement of Reasons. This would include more accurate consideration of costs of label changes, limited label space needed for information related to safe use of a product and barriers to identification of Prop. 65 listed chemicals from supply changes.

Seymour of Sycamore suggests that OEHHA carefully consider the aggregate of information a consumer receives on product labels when purchasing products with hazardous substances, including all label elements required by federal labeling requirements and maintain the current Prop. 65 short form warning as is.

Seymour of Sycamore appreciates the opportunity to comment on this matter. We would welcome the opportunity to discuss this matter further with OEHHA. Please feel free to contact me if I can provide any additional information.

Kind Regards,

*Patrick S. Gieske*

Patrick S. Gieske

Technical Director

