June 13, 2014

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

P65Public.Comments@oehha.ca.gov

Dear Ms. Vela:

Californians for a Healthy and a Green Economy, and 36 of its member organizations (listed below) commends OEHHA on this effort to improve regulations describing how to implement the warning requirements of the Safe Drinking Water and Toxic Enforcement Act (Proposition 65). We strongly support the effort to make Proposition 65 warnings more informative, more useful, and more consistent with the purposes of the statute.

Thank you for the opportunity to provide comments on the pre-regulatory proposal. Our comments about specific sections of the proposed regulation follow.

Section 25603 - Court approved settlements

We support the vast majority of the proposed regulations as an important step forward in improving warnings to Californians about exposures to toxic chemicals. However, this entire effort will be substantially undermined if OEHHA retains the broad “grandfathering” provision, which states that parties to court-approved settlements “prescribing warning content and methods” are exempt from the new requirements. The current language indicated that it applies to all exposures irrespective of whether those exposures were even addressed by the earlier settlement.

We understand that industry may be concerned about having to change warnings that were crafted in reliance on a Court-approved settlement. However, this is no different than any other change in law: individuals and businesses are expected to act in conformance with existing law, and to change their behavior as necessary to comply with any changes in existing law.

Section 25604 - Lead Agency Website

The content that would be provided by the proposed OEHHA website is thorough and useful to consumers. It will improve the ability of the statute to provide information to consumers about exposures to toxic chemicals. We also support OEHHA's proposal to be responsible for the website to insure content consistency and access for people with disabilities. We support the proposed website provided that it is intended to supplement, not replace, on product or in store warnings. On product or in store warnings are critical to insure consumers are notified in advance of purchasing products to prevent exposure. They are also important for consumers without internet access. OEHHA should clarify that the website will be developed in addition to on product or in store labels in the proposed regulations.
Section 25605 - Chemicals, Substances or Mixtures that must be Disclosed in Warnings

The requirement to identify specific chemicals in warnings provides consumers with a crucial tool. Without this information, consumers cannot take measures to reduce aggregate exposures from multiple sources. Neither can they consult health professionals about potential symptoms of exposure. We support the list of chemicals currently in the proposed regulations and recommend that diesel exhaust be added to the list. In addition, OEHHA should develop a process for adding chemicals to the list as appropriate and require that all Prop 65 chemicals in products be disclosed on the DTSC website, regardless of whether they are also disclosed on the product label.

Section 25606 - Consumer Product and Food Warnings (subsection (c) about language).

The requirement to provide warnings in languages other than English is a crucial tool for consumers, especially in a state like California with enormous linguistic diversity. The description of this requirement (that warnings should be provided in the same languages that labeling or other materials provided with the product use) is appropriate and consistent with the purpose of the statute. We strongly support this amendment to expand this crucial right-to-know law for non-English proficient consumers.

Section 25607- Opportunity to Cure

We support efforts by OEHHA to assist small businesses. However, providing anyone with an "opportunity to cure" violations of health and safety laws is simply bad public policy. Consider, for example, if speeders could "cure" a speeding violation by promising to obey speed limits in the future. This would remove all incentives to obey speed limits. The option for public prosecutors to pursue these types of violations is insufficient since Proposition 65 reflects Californians’ determination that private enforcement is a crucial supplement to government enforcement. We believe the amendments in this section are not in furtherance of the voter’s intent.

Section 25607.1 - Consumer Products Exposure Warnings – Methods of Transmission for Consumer Products Other Than Food

The approved methods of transmission for consumer products detailed in this section are all reasonable. Importantly, they provide the necessary information to consumers without putting extra burdens on consumers to take extra actions to receive warnings about the products they are purchasing. We also support subsection (b) which allows a business to provide information concerning an exposure in addition to a warning as long as that information does not dilute or negate the required warning.

Section 25607.2 - Consumer Products Exposure Warnings for Consumer Products Other than Food, Drugs, Medical Devices or Dental Care – Content

The proposed wording for consumer product warnings is clear and informative and consistent with the purpose of the statute. We strongly support use of the "will expose you to" language because it is direct and easy for consumers to understand. We also support use of the pictogram as it is being used by a number of state, federal, and international agencies. The short warning statement for on-product warnings is clear and concise and will provide options that businesses will appreciate when label space is limited.

Section 25607.3 - Food Exposure Warnings – Methods of Transmission for Food Products
We support OEHHA’s efforts to make methods of transmission for food products the same as those for other consumer products.

Section 25607.4 - Food Exposure Warnings – Content

We strongly support OEHHA's proposed wording “consuming this product will expose you to ....” because it is informative and will be clear to consumers. We also support the provision for allowing supplemental material like a pamphlet in addition to (not instead of) the warning statement.

Section 25607.12 Occupational Exposure Warnings – Methods of Transmission

We support the general framework of the proposed regulations. To improve the regulations, OEHHA should require multiple signs in 25607.12(a)2 for large or complex workplaces. OEHHA should also use the phrase "hazardous chemicals" rather than "toxic chemicals" in 25607.12(b) to align with the vocabulary used by the Hazard Communication Standard.

Section 25607.13 Occupational Exposure Warnings – Content

We support the warning content in the proposed regulations. To improve the regulations OEHHA should require that warnings be provided in languages other than English if the exposed workers commonly speak languages other than English.

Section 25607.15 - Environmental Exposure Warnings – Methods of Transmission

We support the transmission methods proposed by OEHHA (signs, mailings, and personal delivery). We also support the proposal to require warnings in languages other than English when people in the affected area commonly speak another language. Both these proposals are consistent with the purpose of the statute.

Section 25607.16- Environmental Exposure Warnings – Content

We support the proposed wording for environmental exposure warnings because it will be clear and informative for affected residents. We support the optional use of extra materials, like pamphlets, in addition to but not instead of required warnings.

Thank you again for the opportunity to comment. Should you have any questions, please contact Kathryn Alcantar at changecallifornia@gmail.com or 510-655-3900 x315.

Sincerely,

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