June 13, 2014

Via Email - P65Public.Comments@oehha.ca.gov

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812

RE: Pre-Regulatory Proposal on Proposition 65 Warnings

Dear Ms. Vela:

The Consumer Specialty Products Association (CSPA) appreciates the opportunity to comment on the pre-regulatory proposal to potentially amend Article 6: Clear and Reasonable Warnings. Among CSPA’s members are companies who have an interest in the process by which information is provided regarding chemicals under Proposition 65. CSPA supports comments submitted by the California Chamber of Commerce.

CSPA participated in meetings in 2013 to effectuate Governor Brown’s proposed reforms to strengthen and restore the intent of Proposition 65. We appreciate the efforts to provide more useful information to the public and to provide flexibility for businesses required to comply with the warning requirements. We were hopeful the Office of Environmental Health Hazard Assessment (OEHHA) pre-regulatory proposal on Proposition 65 warnings would balance the burden on those who must comply with reforms, however, we think the proposal could induce further consumer confusion, even more litigation, and significant price increases on affected products. As a baseline, we think changes to the warnings requirements should only be considered and implemented in the context of a more comprehensive set of Proposition 65 reforms rather than in isolation. Expanding warning requirements without further consideration of when warnings really should be required results in an ever increasing warning infrastructure.

1 The Consumer Specialty Products Association (CSPA) is the premier trade association representing the interests of companies engaged in the manufacture, formulation, distribution and sale of more than $100 billion annually in the U.S. of familiar consumer products that help household and institutional customers create cleaner and healthier environments. CSPA member companies employ hundreds of thousands of people globally. Products CSPA represents include disinfectants that kill germs in homes, hospitals and restaurants; candles, and fragrances and air fresheners that eliminate odors; pest management products for home, garden and pets; cleaning products and polishes for use throughout the home and institutions; products used to protect and improve the performance and appearance of automobiles; aerosol products and a host of other products used every day. Through its product stewardship program, Product Care®, and scientific and business-to-business endeavors, CSPA provides its members a platform to effectively address issues regarding the health, safety and sustainability of their products.
(more warnings and more warning rules/systems) which diminishes the value and utility of the warnings and could result in the over warning OEHHA is seeking to avoid.

CSPA is opposed to the provisions of the rule that require reporting information on specific chemicals and exposure pathways to OEHHA and naming specified chemicals on product labels.

We offer the following specific comments and questions on the pre-regulatory proposal:

**Remove the report and website data collection requirement.** This is burdensome and does not add any point-of-sale value to the California citizen. The enhanced warning statements proposed by OEHHA in conjunction with the first aid statements required by FHSA and already on product labels provide the consumer with the information needed to make an informed decision on purchase and use of the product. A report of the suggested magnitude would require more than 30 days to complete and would only be manageable if updates were limited to when new warnings for cancer or reproductive toxicity are required. Exposure assessment should not be included in a report and is especially inapposite in this report because it goes beyond the scope of a clear and reasonable warning for the intended use of the product. Has there been any consideration given to the number of products that would be impacted by this shift away from Safe Harbor warnings and the resources required to fully implement? Has OEHHA considered the economic impact of maintaining and continually updating a website with this information?

25604(d)(3) indicates that OEHHA will “Provide general information to the public concerning listed chemicals. What kind of information is OEHHA intending to provide? What is the criteria by which the strategies for reducing and avoiding exposure will be created? Will this be scientifically based? …” for (A) Ingesting foods, (B) Contact with or use of consumer products or dental services, (C) Common environmental scenarios, (D) Occupational activities” which incorporates potential exposures outside of the scope of the regulation.

**Reduce the required text.** Chemical identity should only have to be disclosed in one place on the label- preferably the “contains” section. Listing ingredients in multiple sections on the same product will consume label space and possibly confuse consumers. Mandatory font size and box should be eliminated because placement and font size is regulated by FHSA. OEHHA has not presented any customer study data to support the concept that a box specific to Proposition 65 will be more effective than the current warning practice. The pre-regulatory proposal replaces existing safe harbor language with exposure statements. "Will expose...” requires a high level of confidence to be accurately used. CSPA opposes the inclusion of such a statement. This level of assessment will be difficult to obtain until OEHHA has promulgated a Safe Harbor Value for every listed chemical and route of exposure.
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**Remove the pictogram requirement.** CSPA objects to the use of the pictogram and requests that it be removed from consideration. This is not a widely understood pictogram for consumers and may cause confusion. The Proposition 65 usage of a pictogram will not always align with the Occupational Safety and Health Administration (OSHA) Globally Harmonized System of Classification and Labeling (GHS) Hazard Communication Standard 2012 classifications on the label and Safety Data Sheets (SDS), which could cause confusion in the workplace.

In addition, the requirement that the safe harbor level provides a risk assessment for the product, and without a risk assessment and safe harbor level for the chemical of concern, the risk to the consumer is not adequately described.

**Warning content requirement.** Requirements for warning content are too detailed and not practical for placement on a product label. The recommended Proposition 65 warning text will consume label space and may deflect the consumers’ attention away from more immediate hazards associated with the product; i.e., flammability or corrosivity. Through this reform proposal OEHHA has not addressed the potential inconsistent use of signal words on a consumer label. There may be hazards that drive a signal word of CAUTION or DANGER for the product, however the draft proposal will require a signal word of WARNING be added. Currently companies have more flexibility in determining appropriate clear and reasonable language. OEHHA should change the requirement to a recommendation for signal word.

**Flexibility on multi-lingual products.** CSPA thinks translations should be optional. Label space will not always allow for multiple languages.

**Safe harbor for internet sales:** A safe harbor for manufacturers is needed when downstream online distribution/sales is out of their control. Manufacturers do not always have full line of sight or control of downstream sales, especially on-line sales. There needs to be a safe harbor for manufacturers when an appropriately labeled product is sold on-line by a downstream retailer. It cannot be the manufacturer’s responsibility to ensure the retailers transfer the label warnings to the on-line sites.

**Retain ability to utilize section 15 of SDS for Prop 65 specific warnings.** CSPA requests that any proposal maintain the existing OSHA GHS classifications separate as the criteria will often not align between the two regulatory frameworks. Proposition 65 and OSHA HazCom 2012 are separate regulations and should not be combined. Section 15 of the SDS allows for additional regulatory text, warnings and disclosures. Proposition 65 warnings should remain in this section.

**Occupational exposure.** How would trade secret processes/equipment which are part of the workplace exposure assessment be handled on a website report? The level of detail and documentation greatly exceed what is needed to effectively communicate potential hazards and exposure risk already covered by CalOSHA's Hazard Communication.
List of chemicals. The scientific basis and purpose for the proposed list of chemicals requiring disclosure is unclear and provides no apparent benefit. The proposed list will lead to confusion by consumers and give inappropriate impressions that the listed chemicals are somehow ‘more hazardous’ than other chemicals requiring warnings but not listed. Further the proposed list includes broad classes of chemicals of which a portion of the chemicals are listed but many are not. For example, there are greater than thirty known phthalates, of which only eight are currently listed which would lead to labeling and legal ambiguity for products containing non-listed phthalates. In addition, there is no indicated scientific basis for the listed chemicals or how other chemicals may be added or removed from list and gives the impression that the list was generated in an arbitrary and capricious manner. CSPA recommends that this entire section be removed.

Court-approved warning language. We agree and applaud OEHHA’s recognition that court-approved warning language and terms of settlements from prior litigation should be retained and remain unchanged by the current proposed changes. In fact, such language should be adopted in the regulation wherever court decisions have interpreted provisions in the regulation or contemplated by the regulation. This avoids wasting government resources re-litigating a settled issue and provides certainty to all who need to comply with the regulation.

Use of UPC. The suggestion for a barcode (whether UPC, QR, or other type) encourages a “consumer” type practice be required on chemical products intended for industrial/workplace use. The suggestion should be limited to consumer products. The absence of a UPC barcode is one practice used by some chemical manufacturers to ensure product is not sold into “retail” or “consumer” markets. The workplace employee should be looking to the SDS and company training tools for more information on the product; a barcode search could distract the employee from using the more appropriate sources of information.
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Summary and Conclusion:  
We appreciate the effort to provide more meaningful information to consumers, however, we believe that the proposed changes will not bring about meaningful change and benefit to consumers in California. Rather, the changes could induce further consumer confusion, litigation, and significant price increases on affected products.

Sincerely,

Steven D. Bennett, Ph.D.  
Senior Director of Scientific Affairs and Sustainability

Kristin Power  
Vice President, State Affairs

cc:  CSPA State Government Affairs Advisory Committee  
     CSPA Scientific Affairs Committee Proposition 65 Task Force  
     Laurie Nelson, Randlett Nelson Madden