June 13, 2014

Monet Vela
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1001 “I” Street
Sacramento, California 95812

Re: Comments to the March 7, 2014 Pre-Regulatory Draft of Proposition 65 Warning Regulation Revisions

Dear Ms. Vela:

The Environmental Law Foundation (ELF) is pleased to submit the following comments about the Office of Environmental Health Hazard Assessment (OEHHA)’s pre-regulatory draft of revised Proposition 65 warning regulations.

As we understand the draft of these regulations to be part of a pre-regulatory process, ELF is not commenting about specific provisions at this time. We understand that the language will continue to develop as the rulemaking process proceeds, making specific comments less useful at this stage. Nevertheless, we think it appropriate to offer general comments on the proposal and what we hope the final regulations will achieve.

As a whole, ELF commends OEHHA for undertaking to improve the Proposition 65 warning regulations. ELF’s overall impression is that the proposed regulations will increase clarity, remove ambiguity, and make Proposition 65 warnings more effective. Any steps taken in this direction is a net win for Californians, whose ability to be more informed about the products they consume will increase.

ELF applauds OEHHA’s attempt to increase clarity in Proposition 65 warnings by providing detailed specifics of what warnings are to contain and how warnings are to be transmitted to the consumer, which differ by product category and/or industry. We believe that regulations specifically tailored to different types of products and businesses will improve the ability of businesses to understand their obligations under Proposition 65 and to comply with those obligations. This, we further believe, will lead to a decrease in Proposition 65 litigation and help to avoid the Proposition 65-based conflicts of recent years.

ELF also welcomes the proposal that would target common chemicals and require warnings to specifically identify them by name. As a “right-to-know” law, Proposition 65 depends on placing more knowledge in the hands of the consumer. By putting the names
of chemicals in the warning itself, the proposed regulations serve this goal by increasing transparency and lifting a barrier to information.

Similarly, ELF is pleased with the proposal to revise the warning language from “this product contains” to “this product will expose you to.” This change aligns the regulations with the statutory language, which of course requires that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual” to a listed chemical without warning. (Health & Saf. Code, § 25249.6.)

Finally, ELF approves of the new regulatory provision that allows supplemental information such as pamphlets or online sources to be available provided that the information does not replace or substitute for a warning and cannot dilute or negate the warning. Again, the common theme of more information, not less, continues to apply.

For all of the above reasons, ELF particularly applauds the proposed regulations concerning food exposure warnings. These regulations exemplify the ideas discussed above: increased clarity, decreased obfuscation, more information in the hands of the consumer. The opportunity, in particular, for a consumer to visit P65Warnings.ca.gov as a source of further information makes much sense in today’s connected world and is, we believe, consistent with the everyday realities of the consumer market today.

ELF understands that these proposed regulations are still unfinished, and there is much work to be done. However, we hope by these comments to affirm our support for OEHHA’s task in improving the Proposition 65 warning scheme and to encourage further work to proceed in essentially the current direction. ELF thanks you for the opportunity to submit these comments.

Sincerely,

James Wheaton