



June 6, 2016

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

*Electronic filing via: P65Public.Comments@oehha.ca.gov*

**Re: Comments of the American Chemistry Council on 15 Day Notice of Modification to Text of Proposed Regulation - Proposition 65 “Clear and Reasonable Warnings Regulation”**

Dear Ms. Vela:

The American Chemistry Council (“ACC”), which represents the leading companies engaged in the business of chemistry,<sup>1</sup> offers these comments on the above captioned notice. Our earlier comments on this rulemaking and earlier related rulemakings are incorporated here by reference. We are also a member of the California Chamber of Commerce coalition participating in this rulemaking; we incorporate comments previously submitted by the coalition on this and earlier related rulemakings here by reference,<sup>2</sup> as well as the coalition comments submitted separately today.<sup>3</sup>

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<sup>1</sup> ACC members apply the science of chemistry to make innovative products and services that make people’s lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing.

<sup>2</sup> OEHHHA’s website says “There is no need for commenters to incorporate by reference their earlier comments on the regulation as OEHHHA will respond to all relevant comments in the Final Statement of Reasons for the regulation.”

<http://oehha.ca.gov/proposition-65/events/comment-period-modification-text-proposed-regulation-proposed-repeal-article-0>

We nonetheless incorporate by reference here previous comments filed by the Chamber’s coalition and all previous comments filed by ACC in this rulemaking, earlier rulemakings to modify the warning regulation, the related website regulation, and other coalition comments to which ACC is or was a party related to the above. See, e.g., June 13, 2014, Comments of the American Chemistry Council on OEHHHA’s Pre-regulatory Proposition 65 Warning Regulation Proposal; June 12, 2014, Comments of the California Chamber of Commerce and Coalition on Prop 65 Warning Regulation; April 8, 2015, Comments of the American Chemistry Council on OEHHHA’s Proposed Clear and Reasonable Warning Regulation and Website Regulation; April 8, 2015, Comments of the California Chamber of Commerce and Coalition on Prop 65 Warning Regulation; April 8, 2015, Coalition Comments on OEHHHA’s Proposed Clear and Reasonable Warning Regulation and Website Regulation; January 25, 2016, Comments of the California Chamber of Commerce and Coalition regarding Proposed Repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings; January 25, 2016, Comments of the American Chemistry Council regarding Proposed Repeal of Article 6 and Adoption of New Article 6 – Clear and Reasonable Warnings; April 26, 2016 Comments of the California Chamber of Commerce and Coalition regarding Proposed Repeal of Article 6 and Adoption of New Article 6 – Clear

We appreciate that the current proposal is the result of several years of work through the regulatory process. ACC, however, continues to have serious concerns with several elements of the current regulatory proposal. These include (1) the proposed requirement to include specific chemical names in safe harbor warnings; (2) the proposed limitations on a manufacturer's right to include, whether on a product, near a product, at a facility, or elsewhere, properly substantiated, truthful, and accurate information, including contextual product use, benefit and risk information that helps consumers make informed choices; and (3) the proposed requirement to include an inappropriate "danger/warning/caution" style pictogram in a safe harbor warning. In addition, we remain concerned about the requirement for the warning to include a URL to a government-run website, and the information posted on the website.

The rulemaking record offers ample argument and substantial evidence why these changes will not improve the operation of the statutory program or the meaning of warnings. The record is also clear that these modifications will undermine statutory goals and increase bounty hunter litigation, in direct contradiction to the vision of the Governor when he initiated reform efforts several years ago. The government's proposal to suppress delivery of truthful and accurate information by manufacturers – made worse by government omission of critical information on the agency website to which it seeks to drive consumers -- is more than ironic for a proclaimed "right to know" statute – it violates the First Amendment.

For these reasons, and as articulated in earlier comments, we again urge OEHHA to withdraw the proposed rule in its entirety.

Thank you for the opportunity to comment.

Sincerely,



Karyn M. Schmidt  
Senior Director, Regulatory & Technical Affairs  
American Chemistry Council

cc: Tim Shestek, Senior Director, State Affairs, ACC