



AmericanCoatings
ASSOCIATION

August 30, 2013

Monet Vela
Office of Environment Health and Hazard Assessment
1001 I Street
Sacramento, CA 95812-2815
Via Electronic Mail Only: P65Public.Comments@oehha.ca.gov

Re: Comments on OEHHA's Proposed Changes to Proposition 65

Dear Ms. Vela:

The American Coatings Association (ACA or Association) submits these comments to the Office of Environment and Health and Hazard Assessment (OEHHA or Agency) on the proposed California Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop 65) reforms. ACA supports OEHHA's litigation reform efforts; however, the comments below are focused solely on the proposed additional warning requirements.

ACA is a voluntary, nonprofit trade association representing approximately 350 manufacturers of paints, coatings, adhesives, sealants, and caulks, raw materials suppliers to the industry, and product distributors. The manufacture, sale, and distribution of paints and coatings are a \$20 billion dollar industry in the United States. ACA's membership represents over 90% of the total domestic production of paints and coatings in the United States. The state of California currently represents approximately 18% of our domestic coatings sales market.

The Association has been an active proponent of Prop 65 litigation reform and applauds the Agency's efforts in this regard; however, as written, the additional warning requirements in the current proposal will do little to increase safety and decrease exposure. The purpose of Prop 65 is to provide information to consumers that will guide product selection, reinforce safe use, and disclose exposures that present statutorily assigned hazards. The additional warning requirements proposed will duplicate federal and state law, create confusion in the marketplace, and provide no greater safety information to the California public. Accordingly, ACA strongly urges OEHHA to carefully consider and fully respond to its suggestions and comments.

ACA remains hopeful that with continued collaboration between OEHHA and all interested stakeholders, Prop 65 reform will alleviate the large number of frivolous lawsuits crippling the system, while continuing to protect human health and the environment. For additional information or questions, please contact Alexandra Whittaker at (202) 719-3705 or at awhittaker@paint.org or Stephen Wieroniey at (202) 719-3687 or at swieroniey@paint.org.

Respectfully Submitted,

Stephen Wieroniey
Specialist, Health, Safety and Environmental Affairs

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Counsel, Government Affairs

COMMENTS

Currently, various federal laws require hazard labeling and warning information on products. The proposed Prop 65 enhanced warning requirements would duplicate already effective federal hazard labeling and warning requirements. In the industrial setting, the Occupational Health and Safety Administration (OSHA) has comprehensive requirements regarding labeling by employers of hazardous chemicals in the workplace. The Consumer Product Safety Act, which is implemented by the Consumer Product Safety Commission (CPSC), provides CPSC with authority to require warning statements or instructions for particular consumer products under its jurisdiction. And, the Federal Hazardous Substances Act, another statute administered by the CPSC, requires precautionary labeling on the immediate container of products for household use that meet the statutory definition of “hazardous.”

The proposed increased warning content is already included in federally mandated Safety Data Sheets (formerly referred to as Material Safety Data Sheets) – a tool used to catalogue safety and hazard information for chemicals, compounds, and mixtures. OSHA requires all employers to make Safety Data Sheets (SDSs) available to employees and emergency personnel. In addition to employees, SDSs are available to consumers, certainly by request and often through on-line access. Moreover, the Globally Harmonized System for Classification and Labeling of Chemicals (GHS), a United Nations created system designed to harmonize and replace the various classification and labeling standards used in different countries, has generated a sixteen (16) section SDS, which OSHA has adopted and implemented in its most recent Hazard Communication Standard 2012 (See 29 C.F.R. 1910.1200.)

The sixteen (16) section SDS includes a wealth of hazard and chemical information, specifically: chemical identification; hazard identification; composition/information on ingredients; first-aid measures; fire-fighting measures; accidental release measures; handling and storage; exposure controls/personal protection; physical and chemical properties; stability and reactivity; toxicological information; ecological information; disposal considerations; transport information; regulatory information; and other information, including date of preparation or last revision. All of OEHHA’s proposed increased warning content is included in the SDS and there is no need to include such information on the label itself.

The SDS and the entire GHS was negotiated in a multi-year process by hazard communication experts from many different countries, international organizations, and stakeholder groups. It is based on major existing systems around the world, including OSHA’s Hazard Communication Standard and the chemical classification and labeling systems of other US agencies. The GHS is regarded, worldwide, as the most effective and prescriptive labeling system, which takes a modern approach to warn both consumer and industrial users. This system is based on classifications, all of which have standardized hazard and precautionary statements required for the product label. This standardization process requires the following label statements for hazardous chemicals classified as Carcinogens and Reproductive Toxicants:

Carcinogens:

1. May cause cancer <...>. <...> *(state route of exposure if no other route of exposure causes the hazard.)*
2. Obtain special instructions before use.
3. Do not handle until all safety precautions have been read and understood.
4. Use personal protective gloves/protective clothing/eye protection/face protection. Chemical manufacturer, importer, or distributor to specify type of equipment, as required.
5. If exposed or concerned: Get medical advice/attention.

Reproductive Toxicity; Genetic Effects:

1. May cause genetic defects <...>. <...> (state route of exposure if no other route of exposure causes the hazard.)
2. Obtain special instructions before use.
3. Do not handle until all safety precautions have been read and understood.
4. Use personal protective gloves/protective clothing/eye protection/face protection. Chemical manufacturer, importer, or distributor to specify type of equipment, as required.
5. If exposed or concerned: Get medical advice/attention.

Reproductive Toxicity;

1. May damage fertility or the unborn child <...> <<...>>. <...> (state specific effect if known.) <<...>> (state route of exposure if no other route of exposure causes the hazard.)
2. Obtain special instructions before use.
3. Do not handle until all safety precautions have been read and understood.
4. Use personal protective gloves/protective clothing/eye protection/face protection. Chemical manufacturer, importer, or distributor to specify type of equipment, as required.
5. If exposed or concerned: Get medical advice/attention.

The clear and concise statements listed above for carcinogens and reproductive toxicants, coupled with the SDS, provide a more in depth system of warnings than the proposed warnings outlined by OEHHA. **At a minimum, if a chemical listed under Prop 65 triggers the classification as a carcinogen or reproductive toxicant under the GHS, the product should be automatically exempted from providing a more detailed and repetitive Prop 65 warning, such as the one proposed by OEHHA.** Given that the SDS already includes the enhanced warning information proposed by OEHHA, and is available to both consumers and workers, the proposal is unnecessary and redundant.

In addition to federal regulation, at the state level, many states, including Maine and Washington have their own consumer product and “green chemistry” regulations to identify certain chemical substances in consumer products. Often these laws require additional warnings and cautions, and as such have already created a confusing and duplicative environment. Adding the proposed warning requirements under Prop 65 will add to the duplication of these state requirements (e.g., how a person will be exposed, or how to avoid or reduce exposure to a listed chemical). Notwithstanding the duplicative nature of such a requirement, the label does not provide enough space to include the proposed information nor is the label the appropriate medium to list such detailed hazard information.

Given the abundance of label content, product labels have become cluttered with small print. The additional language is certain to make labels more confusing for employees to understand and consumers to read and inform purchasing decisions competently. Considering label space constrictions, it seems counterproductive to the “clear and reasonable” legislative mandate to require duplicative and potentially confusing information as proposed by OEHHA. As a practical matter, given that Prop 65 requires the Office of Environmental Health Hazard Assessment to update the Prop 65 List at least once per year, requiring companies to update their internal regulatory information database and labels in order to comply with these changes is prohibitively costly. The paint and coatings industry estimates that the proposed changes to the warning requirements could cost companies millions of dollars.

In addition to the duplicative nature of increased warning information, the proposal to include the specific chemical identity on a Prop 65 label is subject to a host of legal issues, namely, trade secret concerns, confidential business information, and the ability of both domestic and foreign competitors to misappropriate the intellectual

property of companies doing business in California. Finally, the change in warning statement from “This product contains lead, a chemical known to the State of California...” to “Using this product will expose you to lead, a chemical known to cause cancer, ...” is too definitive and is misleading. ACA fervently opposes the proposed amendments to increase the warning requirements Prop 65 labels. **Finally, if the Agency requires additional warning information on Prop 65 labels, ACA requests that OEHHA accept GHS conforming labels as compliant with California Prop 65 warning regulations.**