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August 29, 2013

Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

Dear Ms. Vela:

Thank you for the opportunity to comment on OEHHA's pre-regulatory concepts for Proposition 65 warning regulations.

Our comments address the seven concepts for which OEHHA has requested comment.

1. A requirement that a warning inform an individual that he or she will be exposed to a listed chemical.

This is an important regulatory concept which the Center for Environmental Health supports. We believe it is an important part of the "clear and reasonable" statutory requirement. The way that this concept was used in the sample warnings provided at the July 30 workshop is excellent. We believe that regulations requiring this type of language are appropriate and necessary.

2. The minimum information that must be included in all warnings, including the health effect (cancer, male reproductive toxicity, female reproductive toxicity, developmental toxicity) for which the chemical(s) involved in the exposure was listed; information on how a person will be exposed; and, where applicable, simple information (such as washing hands) on how to avoid or reduce an exposure.

In order to be clear and reasonable, CEH believes all warnings should include information regarding the health effects at issue, information on how a person will be exposed, and information on how to avoid or reduce an exposure. All of this information will further Proposition 65's right-to-know purposes.

As for health effects, CEH supports the language used in OEHHA's sample warnings to describe health effects ("cancer, birth defects and other harm to a developing baby"). We believe that the use of simple, minimally technical words in describing health effects meets the "clear" criteria in the statute.

We also support the way in which the sample warnings described how a person will be exposed ("ingesting this product will expose you...") and how to avoid exposure ("Do not stay in the area longer than necessary.") We believe that regulations requiring this type of language are appropriate and necessary.

CEH believes that OEHHA should also include additional minimum requirements for all warnings. For instance, it is critical that the regulations require warnings for consumer product exposures to be product-specific. Warnings that apply to a group of products but do not give enough information to allow a consumer to identify which products are causing the exposure are neither clear nor reasonable. For example, a warning which states that "products in this store will expose you to..." does not meet the requirements of the law. Likewise, a warning which states that "[type of products] in this store will expose you to..." does not satisfy Proposition 65 unless every single product of that type causes an exposure.

CEH also believes that OEHHA should require all warnings to include the name of the listed chemical to which people will be exposed. If the name of the chemical is not provided, the warning is not clear since an individual cannot evaluate how many exposures to a given chemical he or she may be experiencing. Without the name of the chemical, individuals are also precluded from seeking additional information about the exposures from their physician, other health professional or other resources about the significance of their exposures.

We also believe that warning regulations should specify that warnings be given in the same language that is used on product labels. For example, if product packaging is in Spanish, the warning should be given in Spanish.

3. Approved warning methods and content for use by product manufacturers and retailers regarding exposures to listed chemicals from consumer products, including products sold at retail establishments and products sold via the internet. These approved methods may include alternatives to on-product warnings.

Any approved warning methods must ensure that, as required by the statute, the warning is provided to the individual prior to exposure. To satisfy this requirement, consumer product warnings should be required prior to purchase. Many products will expose a consumer to a listed chemical as soon as the product is opened. For instance, a warning placed on a product that causes exposure through inhalation that is purchased on the internet without a pre-purchase warning does not provide a warning prior to exposure because a consumer will be exposed while opening the package in which the product was shipped. Even for products that are shipped with warning on the packaging that serves as a barrier to any exposure, a consumer should not be required to incur the burden and expense of trying to return the product for a refund in order to avoid the exposure.

In addition, warnings must be provided without consumers needing to take extra steps to receive the warnings. If a consumer needs to click through multiple web pages, call a telephone number, scan a barcode, or search through multiple warnings at a kiosk, the warning is neither clear nor reasonable.

To ensure that warnings are provided prior to exposure, OEHHA should also address the format and location of warnings. For example, a warning that is in a font that is too small for the average person to read easily and/or is located inside a product causing exposure through dermal contact is not acceptable because the consumer will be exposed to the listed chemical while locating and reading the warning.

Finally, while CEH acknowledges that alternatives to on-product warnings may sometimes be necessary (e.g., for internet or catalog purchases where the consumer is not physically present to view the warning), OEHHA should require on-product warnings as the most effective means of warning in most circumstances, and should narrowly and specifically define the limited situations in which alternatives to on-product warnings are acceptable.

CEH also incorporates by reference the issues we raised in points 1 and 2 above as that discussion is also relevant here.

4. Approved warning methods and content for use by manufacturers and retailers regarding exposures to listed chemicals in foods, including foods sold at retail establishments and food products sold via the internet. These approved methods may include alternatives to on-product warnings.

In general, we believe that warnings on food products should meet the same requirements as other consumer products. Therefore, CEH incorporates by reference the issues we raised in points 1, 2 and 3 above as that discussion is also relevant here.

5. Approved warning methods and content for environmental exposures, including exposures an individual may experience when entering or spending time in an area where listed chemicals are present. OEHHA intends to provide specific warning language and methods for some common environmental scenarios, such as parking structures, food courts, hotels, apartments and other businesses, to provide greater clarity and certainty where appropriate.

CEH supports regulations that would require warnings for environmental exposures to be similar to the sample warnings provided at the July 30 workshop. We also suggest that warnings be provided in the languages commonly used by people who use the facility where the warning is located.

6. Requirements and approved methods for providing additional contextual information to persons concerning exposures to listed chemicals. Such information would allow individuals to learn more about some or all of the specific chemicals involved in the exposure, and the applicability of other state and federal laws to these exposures. This information would not have to be provided prior to the exposure, but instead would have to be available to the public on a web site or other generally accessible location.

CEH supports this concept if the web site is an OEHHA website and all content is approved by OEHHA.

7. Reasonable transition times for businesses to come into compliance with this regulation and recognition of existing warnings that are included in court-approved settlements.

CEH supports reasonable transition times for businesses to come into compliance with the new regulations so long as the transition times are in fact reasonable. For instance, the regulations should specify that warnings on consumer product labels need not meet the new standards for any products that were manufactured prior to the effective date of the regulations. We also oppose the concept of "grandfathering" existing language in any previous regulations or settlements. As is normally done when regulations change, all businesses should come into compliance with the new regulations in a reasonable time frame.

Thanks again for this opportunity. We look forward to working with OEHHA on this regulation.

Sincerely,

A handwritten signature in cursive script that reads "Caroline Cox".

Caroline Cox
Research Director
Center for Environmental Health