



## California Craft Brewers Association

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January 25, 2016

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

Sent electronically to: [P65PublicComments@oehha.ca.gov](mailto:P65PublicComments@oehha.ca.gov)

**RE: PROPOSED REPEAL OF ARTICLE 6 AND ADOPTION OF NEW ARTICLE 6 –  
CLEAR AND REASONABLE WARNINGS – IMPACTS ON CRAFT BREWERS**

Dear Ms. Vela:

The California Craft Brewers Association (hereinafter "CCBA") thank you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment's ("OEHHA") Notice of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act ("P65") dated November 27, 2015 ("Proposal").

CCBA consists of over three hundred and eight five California-based businesses of varying sizes who, collectively, manufacture more than ninety eight percent of the craft beer sold in California. CCBA members are manufacturers of alcohol beverage products and will be directly impacted by OEHHA's Proposal.

On November 27, 2015, OEHHA noticed its decision not to proceed with its Notice of Proposed Rulemaking to Article 6 in Title 27 of the California Code of Regulations dated January 19, 2015 ("2015 Proposal") to allow sufficient time for public comment regarding modifications to the proposed regulatory language. The Proposal repeals and replaces the 2015 Proposal and thus initiates a new formal rulemaking process under the California Administrative Procedure Act.

CCBA members appreciate OEHHA's goals and stated efforts in this regulatory proposal to benefit the health and welfare of California residents and improve worker safety by providing more information to the public and facilitating businesses' compliance with the Act. Our following comments reflect a similar goal.

### **§25600(f) -- Alcohol Industry's 2014 P65 Settlement – The Two Sign Conundrum**

It is understood that when OEHHA began the P65 original rulemaking process in 2015 a unique and unprecedented industry-wide consent judgment was already in effect following the approval of the plaintiffs, defendants, the California State Attorney General and the Superior Court in Los Angeles with an effective date of May 30, 2014.

The terms of this consent judgment specify all P65 signage content and signage maintenance requirements that are legally binding upon all defendants, as well as, those who later opt-in to the agreement. By the end of 2014, 266 alcohol manufacturers were included in the settlement including a handful of craft brewers. Taken together, these 266 entities produce more than 90% of the alcohol sold in California.

Significant industry-wide investments have subsequently been made towards compliance by the defendants. Pursuant to the settlement a database and third-party vendor service has been established to provide all existing 83,000+ ABC licensed retailers, including any new licensees, with P65 signage at no-cost. All ABC retailers are also encouraged to sign-on to the website created by the settlement to download and/or order additional P65 signs at no-cost and as necessary. The content of the P65 signs is specified to be the requirements set forth in CCR Title 27, §25603.3(e) at the time of the effective date of the settlement, i.e. May 30, 2014. The signage will be provided to all retailers on a continued and regular basis every five years.

Appropriately, OEHHA's currently proposed regulation recognizes this court settlement and has established in the proposed §25600(f) that persons or parties to the settlement are 'deemed to be providing a "clear and reasonable" warning for that exposure for purposes of this article, if the warning fully complies with the order or judgment.'

However, unless amended, OEHHA's current language in §25600(f) will also create a two-sign conundrum wherein two separate P65 signs (with slightly different content) must be legally posted at each retail account where alcohol is sold (i.e. supermarkets, liquor stores, bars, restaurants, etc.). This two-sign requirement will create unnecessary confusion for the public and retailers alike. It also increases the risk of litigation to California small businesses.

It only takes the failure of one confused retailer to NOT post both signs to expose our members to litigation. While 266 alcohol manufacturers are currently part of the settlement many thousands are not, including but not limited to, hundreds of craft brewers in the state that already have more than 10 employees and those who grow past this employment threshold in the future. It is these non-parties, who are typically smaller in size and often competitors to the parties already listed in the settlement, who will be subjected to heightened risk of non-compliance and litigation if OEHHA does not amend the proposed regulation.

CCBA respectfully requests OEHHA to amend §25600(f) as follows:

- **25600 General**

(f) A person that is a party to a court-ordered settlement or final judgment establishing a method or content for a consumer product or environmental warning or a person or party that provides a sworn declaration that they are participating in an industry program developed pursuant to a court-ordered settlement or final judgment is deemed to be providing a "clear and reasonable" warning for that exposure for purposes of this article, if the warning fully complies with the order or judgment.

CCBA understands that it is OEHHA's position that instead of amending the regulation it is the parties to the settlement judgment whom should simply "re-open" the agreement and make the necessary changes to comport with OEHHA's new proposal. Yet, as OEHHA knows, the defendants cannot be forced to make these changes and they are adamant in their refusal to do

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so for legitimate legal and economic reasons. They are further compelled to not make these changes for competitive purposes.

Thus, CCBA respectfully requests OEHHA to fully understand these circumstances and amend the proposed language so as to successfully avoid consumer confusion and legal jeopardy for thousands of small businesses created by the “two-sign” conundrum.

#### **25600.2(b)(5) – Requirement for Manufacturer to Receive Confirmation of Receipt from Retail Seller**

CCBA is concerned about small business cost of compliance with the proposed language in §25600.2(b)(5). This language requires manufacturers to receive confirmation of receipt from the retail seller that they have received the warning materials and signage from the manufacturer.

The only compliance strategy we are aware of and comfortable to recommend our members use is U.S. Post Office certified return-receipt mail. The cost of which could be \$4 to \$5 per package or more to each of the current 83,000+ retail licensees (plus all new licensees) at a fairly frequent interval to ensure compliance. This would be a significant economic impact on small businesses and affected industry members.

As such, CCBA respectfully requests OEHHA to amend §25600(b)(5) as follows:

- (5) Has been renewed ~~and receipt confirmed by the retail seller~~ at least every 180 days for the first year after the effective date of the regulation, then annually during the period in which the product is sold in California by the retail seller. An additional notice is required within 90 days if a new chemical name or endpoint (i.e. cancer or reproductive toxicity) is required to be included in the warning.

#### **25600.2(c) – Responsibility of the Retail Seller to Place and Maintain Warning Materials**

CCBA supports OEHHA's proposed language in §25600.2(c) making the placement and maintenance of warning materials the retail seller receives from the manufacturer the responsibility of the retail seller.

#### **25607.3 Alcoholic Beverage Exposure Warnings – Methods of Transmission – Languages Other Than English Requirement**

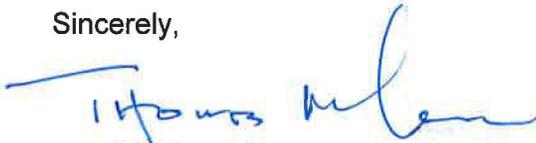
Craft breweries like other alcohol beverage manufacturers cannot legally control the languages used by the 83,000+ retail premises throughout the State of California to label or advertise products within their locations. The liability, if any, should be limited to the languages used in the materials provided by the manufacturer itself in labeling or advertising the product at those specific retail locations.

As such CCBA suggests OEHHA amend Section 25607.3(b) as follows:

- 25607.3 Alcoholic Beverage Exposure Warnings – Methods of Transmission  
(b) The warning must be provided in English and in any other language used for labeling or advertising the product as provided by the manufacturer to the retail premise. ~~on the premises.~~

Thank you in advance for your consideration of our comments. We appreciate the opportunity to participate in this regulatory process on behalf of California's craft beer industry.

Sincerely,



Tom McCormick  
Executive Director  
California Craft Brewers Association

cc: Matt Rodriguez, Secretary, CalEPA  
Lauren Zeise, Acting Director, OEHHA  
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