



June 6, 2016

California's Great America

Children's Fairyland

Disneyland Parks
and Resorts

Funderland

Gilroy Gardens Theme Park

Golfland Entertainment
Centers

Knott's Berry Farm

LEGOLAND California

Pacific Park

Palace Entertainment

Pixieland Amusement Park

Redwood Valley Railway

Santa Cruz Beach
Boardwalk

SeaWorld Parks
and Entertainment

Six Flags Discovery
Kingdom

Six Flags Magic Mountain

Sonoma Train Town

The Wave Water Park

Universal Parks and Resorts

Water World California

Wild Rivers Water Park

*Partial list

ELECTRONIC MAIL

Monet Vela
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, California 95812-4010
E-mail: P65Public.Comments@oehha.ca.gov

Re: **Proposition 65 Warning Regulation**

Dear Ms. Vela:

The California Parks and Attractions Association (CAPA) submits these comments to the May 20, 2016 Updated version of the proposed Clear and Reasonable Warnings regulation. These comments focus solely on the modifications made to the March 25, 2016 version that affect amusement parks.

Source of Exposure

The March 25, 2016 version added a new provision to section 25607.23 that required amusement parks to identify "the affected area and the source of the exposure" in all warnings posted at the entrance to the parks. CAPA commented in its April 26, 2016 letter that such a requirement was inconsistent with the thrust of the previous versions of the regulation to provide such detail in OEHHA's P65 warning website rather than in a complicated warning sign that visitors would find overwhelming. Moreover, CAPA expressed concern that the added language imposed a confusing burden on parks and would subject them to increased litigation. Also, CAPA questioned the legality of such a change being made pursuant to the 15-day notice process.

OEHHA in the May 20, 2016 Updated version struck the requirement that parks identify the affected area and exposure source. It also modified the specific warning language to provide: "*Some areas or features* in this amusement park can expose you to chemicals...." CAPA is relieved by these changes and supports them.

Determination That a Warning is Required

The March 25, 2016 version of the warning regulation modified section 25601(c) to require that a person providing a warning about a listed chemical shall have “determined a warning is required.” CAPA objected to this modification, pointing out that warnings about exposures constitute admissions that the exposure is above the No Significant Risk Level or Maximum Allowable Daily Limit, that is, at a level that could be harmful.

CAPA highlighted what OEHHA has heard repeatedly, that businesses provide prophylactic warnings to avoid litigation and the attendant cost even when the exposures are de minimus. In other words, businesses warn even when no warning is legally required. Further, nothing in the statute precludes a business from warning even if exposures are well below the applicable NSRL or MADL. The March 25, 2016 language was inconsistent with the statute and with business realities.

OEHHA, in the May 20, 2016 Updated version, struck the provision, “determine a warning is required.” Also it modified the provision (now section 25607(b)) to provide: “...a warning meets the requirements of this article if the name of one or more of the listed chemicals *in the consumer product or affected area for which the warning is being provided* is included in the text of the warning.” Again, CAPA is relieved by these changes and supports them.

CAPA recognizes the work that OEHHA has done to reach this point with the warning regulation. It appreciates OEHHA having responded to CAPA’s concerns with the March 25, 2016 version and urges OEHHA to adopt the provisions of the regulation affecting amusement parks without further changes.

Sincerely,

CALIFORNIA ATTRACTIONS AND
PARKS ASSOCIATION, INC.

By:


John Robinson, President and CEO