



November 7, 2015

Carol Monahan-Cummings
Office of Environmental Health Hazard Assessment
P. O. Box 4010
1001 I Street
Sacramento, California 95812-4010

Re: Comments Regarding the List of Twelve Chemicals in the September 23, 2014, Warning Regulation Discussion Draft

Dear Ms. Cummings:

These comments focus specifically on one of the proposed provisions in the Office of Environmental Health Hazard Assessment's (OEHHA) Preliminary Discussion Draft Warning/Website Regulations (dated September 23, 2014) – the proposed additional label requirements for products containing 12 listed chemicals. While many of the undersigned groups have raised a range of concerns in comments submitted either individually or through the California Chamber of Commerce's coalition on the overall proposed regulatory changes to Proposition 65, there was an express desire to highlight concerns over the proposed Section 25604 on specific chemicals.

The undersigned groups represent a broad spectrum of California businesses and employers, and other businesses with value chain connections to California, that would be directly impacted by the proposed warning requirements for products containing any of the 12 listed chemicals. We raise the following concerns and request that you eliminate proposed Section 25604.

The statute does not provide any authority to support Section 25604. The statute currently provides that a chemical is either listed or not based exclusively on a hazard assessment. Once a chemical has been listed on Proposition 65, there is simply no mechanism to further designate a subset of chemicals for further evaluation or designation. Unless the legislature decides to amend the statute, OEHHA simply does not have the authority to pursue this approach. We further note that OEHHA has not articulated an objective basis for developing criteria to list specific chemicals, even if the legal authority existed.

Creating two kinds of warnings will further confuse consumers and will defeat any objective of providing meaningful information. Consumers presented with two different kinds of labels – those listing specific chemicals and those that do not – will have to make sense of what the distinction means. After all, if information is presented in a “warning” it must be presented for a reason. We think consumers will interpret warnings listing chemicals by name to mean that the chemical and/or consumer product is “worse” and that the warning is elevated. Conversely, consumers would likely understand the generic warnings to mean that the chemicals/product is “less bad.”

OEHHA has expressed repeated concern for a perceived “overwarning” problem whereby consumers see Proposition 65 warnings so frequently and are then unable to differentiate between them or understand actual risks presented by the product. This “special warning” approach, however, also creates the potential for consumers to disregard all warnings except those mentioning a chemical by name – a result that is inconsistent with the objectives set out in Proposition 65.

Warning labels will become unwieldy, particularly for businesses that may have to label for multiple chemicals on the list. Requiring additional text to warning labels will prove challenging, particularly for businesses whose products contain more than one of the 12 listed chemicals. This challenge would be compounded each time OEHHA decides to add new chemicals to the list of 12.

The proposed approach would open businesses in California to a new area of potential bounty hunter litigation, contrary to Governor Jerry Brown's objective to limit frivolous lawsuits. It is easy to envision how OEHHA's list of specific chemicals that must be identified in warnings would create an endless source of frivolous lawsuits that provide no benefit to the public or environment. Businesses in the state of California could be sued if they did not include one or more listed chemicals on a label, even if only miniscule amounts of any of the 12 chemicals were present, whether added intentionally or not.

Product manufacturers, for example, would still be compelled to defend themselves against frivolous suits that will further tax the already burdened court system, drain time and resources from defendants doing business in California, or force defendants to settle meritless lawsuits. Furthermore, each time OEHHA added new chemicals to this list of 12, new rounds of lawsuits could be initiated. The potential for "shake-down" suits would be endless, not in the public interest, and a significant impediment to conducting business in California.

For these reasons, we ask that this proposal not be included in the draft regulation published for comment at the close of this pre-regulatory phase. Thank you in advance for the opportunity to provide these comments. Should you have any questions, please contact Tim Shestek with the American Chemistry Council at 916-448-2581 or tim_shestek@americanchemistry.com

Sincerely,



Tim Shestek
American Chemistry Council

On behalf of the following organizations:

Air-Conditioning, Heating, and Refrigeration Institute
Airlines for America
Alliance of Automobile Manufacturers
American Apparel & Footwear Association
American Architectural Manufacturers Association
American Coatings Association
American Forest & Paper Association
American Fuel and Petrochemical Manufacturers
APA – The Engineered Wood Association
Asphalt Roofing Manufacturers Association
California Asphalt Pavement Association
California Citizens against Lawsuit Abuse
California Citrus Mutual
California Cotton Growers Association
California Cotton Ginners Association
California Construction and Industrial Materials Association
California Farm Bureau Federation
California Fresh Fruit Association
California League of Food Processors

Carpet and Rug Institute
Chemical Fabrics & Film Association
Civil Justice Association of California
Composite Panel Association
Consumer Electronics Association
Consumer Specialty Products Association
CropLife America
EIFS Industry Members Association
EPS Industry Alliance
Extruded Polystyrene Foam Association
Fashion Accessories Shippers Association
Flexible Packaging Association
Flexible Vinyl Alliance
Grocery Manufacturers Association
Juvenile Products Manufacturers Association
Industrial Environmental Association
Independent Lubricant Manufacturers Association
Institute of Makers of Explosives
International Fragrance Association North America
International Wood Products Association
IPC – Association Connecting Electronics Industries
Metal Construction Association
National Asphalt Pavement Association
National Association of Chemical Distributors
National Black Chamber of Commerce
National Electrical Manufacturers Association
National Federation of Independent Business
National Roofing Contractors Association
National Shooting Sports Foundation
National Wood Flooring Association
North American Metals Council
Outdoor Power Equipment Institute, Inc.
Pavement Coatings Technology Council
Personal Care Products Council
Plastic Pipe Institute
Plumbing Manufacturers International
Resilient Floor Covering Institute
Roof Coatings Manufacturers Association
Seaman Corporation
Sika Corporation
Specialty Graphic Imaging Association
SPI – The Plastics Industry Trade Association
SPRI, Inc – Representing the Single Ply Roofing Industry
Structural Insulated Panel Association
Styrene Information Research Center
The Adhesive and Sealant Council
The Vinyl Institute
TOTAL Petrochemicals & Refining - Polymers
Toy Industry Association
Travel Goods Association
Treated Wood Council

Vinyl Building Council
Wallcoverings Association
Western Agricultural Processors Association
Western Growers Association
Western Plant Health Association
Western Wood Preserver's Institute
Window & Door Manufacturers Association

cc: Dr. George Alexeeff, PhD, Director, Office of Environmental Health Hazard Assessment
Secretary Matthew Rodriguez, California EPA
Gina Solomon, Deputy Secretary for Science and Health, Cal EPA
Allan Hirsch, Deputy Director, Office of Environmental Health Hazard Assessment
Cliff Rechtschaffen, Office of the Governor
Kish Rajan, Governor's Office of Business and Economic Development
The Honorable Luis Alejo, Member of the Assembly
The Honorable Jerry Hill, Member of the Senate