



June 28, 2024

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, CA 95812-4010

Via portal at: <https://oehha.ca.gov/comments>

Dear Ms. Vela:

The Adhesive and Sealant Council appreciates the opportunity to comment on the modifications to proposed amendments to short form Proposition 65 warning dated June 13, 2024.

On balance, we are disappointed with the final decisions made by the Office of Environmental Health Hazard Assessment. We stand by our original arguments submitted March 29, 2021, by Maureen F. Gorsen. In summary, OEHHA has failed to demonstrate that modifications to the 2018 revisions to the safe harbor regulations are necessary.

The Adhesive and Sealant Council reiterates the reasons we oppose this rulemaking as explained in our letter dated March 29, 2021, and in subsequent letters:

- The proposed rulemaking should be abandoned because it is unnecessary;
- The proposed rulemaking should be abandoned because it violates the Administrative Procedure Act standards;
- The proposed rule requires study under a full environmental impact report under the California Environmental Quality Act (CEQA); and
- The proposed rulemaking should be abandoned as the labeling requirements are unworkable.

As ASC argued in 2021, there is an absence of any public outcry that would necessitate modifications. At the public hearing OEHHA held at the beginning of the proposed revision process, not a single commenter was in favor of this proposed rulemaking. It appears that the only justification for this proposed rulemaking is that OEHHA receives too many phone calls.

These modifications will not reduce the number of phone calls made to OEHHA. Whether reading the long form or short form warning, consumers basically want to know “will I get cancer” if I buy this product. Neither the long form nor short form warning answer this fundamental question.

The statute itself makes this a difficult question to answer as the answer is complicated toxicological assessment based on exposure and use of product.

The proposed additions to the wording on the product label will not answer this question and thus calls to OEHHA will continue as they always have, long before the 2018 change in warning language.

ASC members also report a lack of public outcry among consumers. For example, from 2019 to 2023, the total number of consumer inquiries made to one of ASC's major brand manufacturers about Proposition 65 was 26 out of 204,430. That equates to just 0.013 percent of all contacts. If there was public outcry over the warnings, we would expect this number to be much higher.

OEHHA's major innovation in the 2018 rulemaking was the addition of P65Warnings website. Rather than continue with this proposed rulemaking and causing massive costs to add a few words to product labels that will do little to help consumers, OEHHA should focus on improving and making more robust the www.p65warnings.ca.gov website and directing consumer questions, phone calls and inquiries to it.

Also, the proposed rulemaking should be abandoned as the proposed labeling requirements are unworkable. The short form warning adopted by OEHHA in 2018 adequately considered packaging size. The proposed revision to this rule is unworkable and OEHHA should stick with the 2018 solution.

As explained in our March 29, 2021, letter, there is very limited space on the standard package size for adhesives, caulks and sealants. This is a challenge that is unique to our industry and one we feel still is not adequately appreciated by OEHHA. Adhesives and sealants are very useful products that contain a complex mixture of chemicals. There is only so much space on our product packaging to communicate to consumers, whereas there is a near infinite amount of space – a googol or unfathomable amount – on the Internet.

Our members just spent multiple millions to revise all their packaging a mere six years ago when OEHHA changed the Prop 65 warning in 2018. Indeed, the cost burden imposed on ASC members is enormous for a modification that lacks justification or necessity. In fact, one ASC member estimates the cost to comply with the modifications is more than \$932,000. These expenses would include (a) label artwork file updates, (b) printing plate costs, (c) production plant costs, (d) updating SDS documents, and (e) managing customer relationships, such as notifying them of the changes and updating customer portals.

For another member, a small company with only 203 SKUs, the cost to revise their labels to comply with the 2018 rulemaking changes was over \$650,000. This included (a) new packaging dies and plates, (b) regulatory agency reviews, (c) printing and proofs, (d) costly updates to all product safety data sheets, and (e) disposal of products with incorrect labels. This cost did not include internal costs such as the marketing components, communication to our customers, controlling inventory, additional space for the extra inventory, among others.

For yet another small member company with over 500 SKUs, the cost to revise their product labels to comply with the 2018 changes was over \$800,000 and over 3,000 hours of labor.

Without adequate justification from OEHHA on the need, or sufficient appreciation of the costs, the proposed modifications are no more than a solution in search of a problem. Unfortunately, they will have a significant financial impact with little to no demonstrated consumer benefit.

Sincerely,

A handwritten signature in blue ink that reads "W E Allmond, IV". The signature is written in a cursive style with a large, sweeping flourish at the end.

William E. Allmond, IV
President