

Proposed Amendments to California's Proposition 65 "Safe Harbor" Warning Regulations



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Doreen L. Manchester

Deputy General Counsel

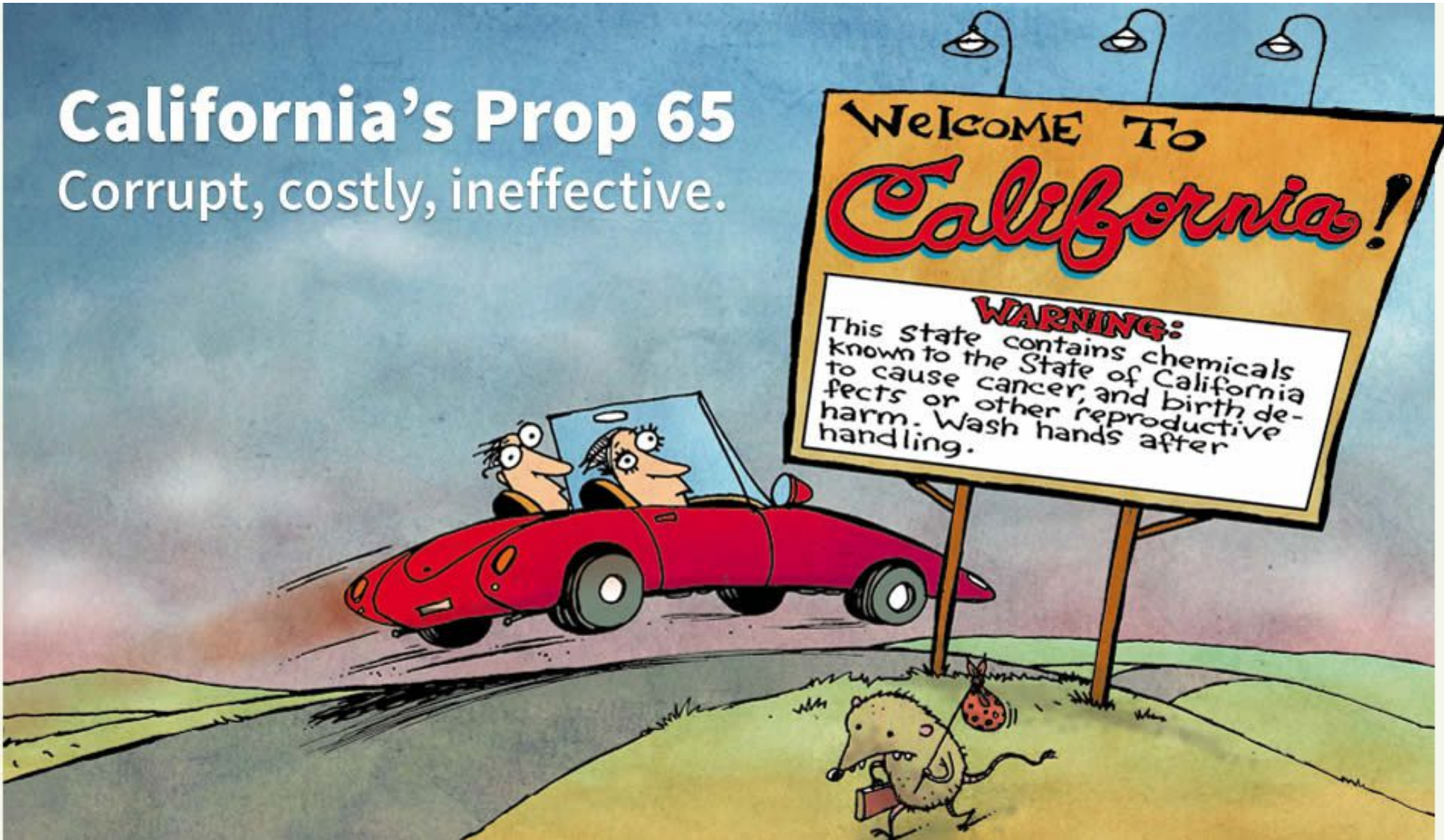
CropLife America



California's Proposition 65



California's Prop 65
Corrupt, costly, ineffective.





ATTENTION: This presentation does not include chemicals which are known to the State of California to cause cancer.

Proposition 65 “Safe Harbor” Amendments Background



- Notice of Proposed Rulemaking: April 2018 - California’s Office of Environmental Health Hazard Assessment (“OEHHA”) issued a Notice of Proposed Rulemaking to amend its “Safe Harbor” Warning Regulations under Proposition 65.
 - Amendments propose adding a provision for products that are registered as pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (“FIFRA”).
- Public hearing: June 21, 2018.
- Public comments: July 5, 2018.



Proposition 65 “Safe Harbor” Amendments

Background




- OEHHA: the current Proposition 65 safe harbor regulations for consumer products conflict with EPA requirements for pesticide labeling under FIFRA.
- Proposed Amendments would:
 - change provisions in the OEHHA regulations;
 - allow federal pesticide registrants to substitute the words “Notice” or “Attention” for “Warning” in the Safe Harbor warning regulations.

Proposition 65 “Safe Harbor” Amendments Background



- Examples of the proposed safe harbor warnings:

-  **ATTENTION:** This product can expose you to chemicals, including [name of one or more chemicals], which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov

Or

-  **ATTENTION:** Cancer--
www.P65Warnings.ca.gov/product

CLA Comment on Proposition 65 “Safe Harbor” Amendments



- CLA and its members agree with OEHHA that the current Proposition 65 safe harbor regulations conflict with EPA requirements for pesticide labeling under FIFRA.
- CLA and its members recognize the differences of opinion across the industry on how to resolve the conflict between federal and state labeling requirements.



CLA Comment on Proposition 65 “Safe Harbor” Amendments



- The Proposed Amendments do not resolve the underlying conflicts between federal and state labeling requirements.
- EPA registration of a pesticide product is based on a finding that the product “will perform its intended effect without unreasonable adverse effects on the environment.” FIFRA § 3(c)(5)(e).
- Proposition 65 warning on the label of a product contradicts the use instructions and precautionary statements of FIFRA and the registration.

CLA Comment on Proposition 65 “Safe Harbor” Amendments



- Federal pesticide registrants would be compelled to use safe harbor language:
 - to foreclose Proposition 65 litigation.
- Proposition 65 warning on a FIFRA-registered products contradicts:
 - EPA approved precautionary language and use directions; and
 - EPA product registration.

CLA Comment on Proposition 65 “Safe Harbor” Amendments



- The Proposed Amendments:
 - may serve as precedent for other states to follow;
 - may create confusion among distributors, retailers consumers, and even regulators within the states; and
 - would create a tremendous burden on EPA.

CLA Comment on Proposition 65

“Safe Harbor”: Proposed Alternatives



Proposed Alternatives:

- Revise the regulations so that the labeling approved for pesticides by EPA is deemed to satisfy Proposition 65;
- Indicate that a reference on a label to US EPA risk assessments for carcinogenicity and/or reproductive toxicity endpoints are deemed to be “clear and reasonable” for purposes of Proposition 65; or
- Revise the regulations to allow a reference on a label to information on the Safety Data Sheet to be “clear and reasonable” for purposes of Proposition 65.

Proposition 65 “Safe Harbor” Next Steps



- OEHHA coordination with EPA.
- OEHHA input from interested stakeholders before proposing or implementing new safe harbor language.
- CLA discussions with EPA.

Questions

