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Is Toxics Battle Over, or About to Begin?

By BARRY C. GROVEMAN

Last November California voters, by a huge margin, passed Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, with the expectation that the governor would enforce the law and that it would result in greater protection of the public health.

Three months later Gov. George Deukmejian said in his State of the State address that he would follow the public mandate and forcefully implement the new law. Now we learn that he has done just the opposite.

The new law required the governor to establish a list of dangerous chemicals to be regulated, and to appoint a commission to monitor and update the list as needed. This list, at a minimum, must include "those substances identified in Labor Code Sect. 6382(b)(1) and 6382(d)." These sections define known carcinogenic chemicals as established by highly regarded scientists at the U.S. National Toxicology Program and the United Nations International Agency for Research on Cancer.

The governor on Friday, at the urging of special-interest lobbyists, published a very short list of chemicals that will be regulated, instead of the approximately 200 required by the law. Thus Deukmejian may in effect accomplish administratively what opponents of Proposition 65 could not do by election.

The lobbyists have succeeded in excluding from regulation some of the most dangerous chemicals known to man. For

example, DDT and dioxins are not included on the governor's list, even though both were banned by the Environmental Protection Agency years ago. It is unbelievable that the governor has excluded these and other dangerous chemicals from the tough provisions of Proposition 65.

So how does Deukmejian justify this perversion of the law? He says that it should apply only to carcinogens that have been shown to cause cancer in human beings on the basis of human exposure only. He has excluded the large majority of cancer-causing chemicals that have been identified by animal tests.

The governor knows, or should know, that no better science exists to identify carcinogens, because we do not allow testing on humans. This dead-body approach to cancer awareness is legally unsound and inconsistent with established scientific principles, and completely contradicts the plain language and intent of the law.

By removing the teeth from this law Deukmejian has re-ignited the war over Proposition 65. It already has mobilized the initiative's supporters who immediately filed a lawsuit. The last thing that we need now is years of court battles while toxic chemicals seep into our water and into the marketplace.

The high-intensity campaign surrounding Proposition 65 was an emotional tug-of-war for both sides. The huge amounts of money that were spent and the inflammatory rhetoric that was used polarized the state. The campaign is over. It is time now for both sides, the public and private sectors, to work together for fair, equitable enforcement. Those who opposed the law must adhere to the overwhelming public mandate for greater controls on toxic chemicals. Those of us who support it should employ reason and moderation in advocating its implementation.

Some people may find it surprising that many segments of industry that opposed the measure now are ready to put the campaign behind them, move forward and find strategies to implement it.

The governor, by refusing to adhere to the law, has done a great disservice to the business community. Industry now will be faced with a climate of uncertainty about what rules to follow concerning tighter controls on dangerous chemicals. Neither the public nor the business community is well served by forcing a resolution of this issue in the courts.

It is a terrible mistake for the governor, enticed by those who still cling to hopes of undermining the law, to contribute to the polarization of the two camps by delaying the implementation of needed safeguards. Deukmejian is acting in opposition to the public will, his own public statements and the clear provisions of the law.

California voters approved a law that finally held out the promise that uncertainties about public health would be resolved in favor of the public rather than economic considerations. The absence of known safe levels for most chemicals would no longer permit exposure to humans until "more is learned," but would have afforded protection until a safe level was demonstrated.

Instead, the governor's surgical strike has reduced the required list of carcinogens to 10% of what was intended (and what is legally required), sabotaging the historic victory for greater toxic-chemical controls and luring us into a false sense of security. We cannot let this happen. Deukmejian must be made to realize that he is obligated to implement the overwhelming will of the people, not thwart its righteous intent.

Let's not invent ambiguities or fight battles that ought not be fought. Californians declared in unmistakable terms that they want an end to further pollution of their drinking water with dangerous chemicals, and they demand to know when they are being exposed to such chemicals at work, home or anywhere else. Those who stand in the way of achieving these ends do so at their own risk, and ours.

Barry C. Groveman is a former special assistant district attorney in charge of environmental crimes and a co-author of Proposition 65.