



Independent Lubricant Manufacturers Association

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April 8, 2015

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
1001 I Street
P.O. Box 4010
Sacramento, CA 95812-4010

Sent electronically to: P65Public.comments@oehha.cal.gov

Re: Proposition 65 Warning Regulation

Dear Ms. Vela:

The Independent Lubricant Manufacturers Association (“ILMA”) offers the following comments on the Office of Environmental Health Hazard Assessment’s January 12, 2015 proposal (“OEHHA”) to amend Article 6, Clear and Reasonable Warnings, at Title 27, California Code of Regulations Sections 25601 *et seq.*

I. Introduction of ILMA

ILMA is a national trade association of 317 member companies. As a group, ILMA’s Manufacturing Members blend, compound, and sell over 30 percent of the automotive lubricants, including passenger car motor oils (“PCMOs”) and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country. Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks. Base stocks are purchased from refiners and re-refiners, who are also competitors in the sale of finished lubricant products, including PCMOs and MWFs. Independent lubricant manufacturers succeed by manufacturing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

ILMA members manufacture lubricant mixtures by compounding and blending components, including base stocks, with additives purchased from upstream chemical suppliers. As a result, some ILMA members’ products may contain very, very small amounts of listed chemicals, which are below the levels that can be analyzed, yet *may* be in components purchased from upstream suppliers. Unless they perform complicated and expensive calculations to determine whether lubricants may be below the “safe harbor” No Significant Risk Levels (“NSRLs”) for carcinogens or for Maximum Allowable Dose Levels (“MADLs”) for chemicals which cause reproductive harm, upstream suppliers – and by necessity – downstream blenders including ILMA members - by and large all indicate that their products may contain listed chemicals.

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As OEHHA is well aware, chemical manufacturers, including ILMA members, are also subject to the new requirements of the Globally Harmonized System (“GHS”) as promulgated by the Occupational Safety and Health Administration (“OSHA”) on March 26, 2012, and for which substantially changed classification rules for mixtures and new requirements for labeling of products and preparation of Safety Data Sheets (“SDSs”) go into effect on June 1, 2015.

ILMA members provide industrial lubricants to many California manufacturers, as well as market lubricants, including PCMOs, through several distribution modes to retail consumers in the State. While supportive of OEHHA’s efforts to provide regulatory specifics for “clear and reasonable warnings,” ILMA believes that the changes as proposed to the warning language will confuse both industrial consumers and retail consumers.

II. Proposed Changes to Title 27, Sections 25601 *et seq.* – General Comments

While ILMA is generally supportive of OEHHA’s efforts to establish requirements for “clear and reasonable warnings” we had serious issues with many of the sections of the proposed regulations and so noted those issues in our letter to you, dated June 13, 2014.

In addition, ILMA is a member of the California Chamber of Commerce coalition (“Coalition”) and supports the comments separately made by the Coalition on April 7, 2015, including its comments relating to Sections 25600 (a)(b) and (d), 25602 and 25604, as well as Section 25205.

With this letter, ILMA comments on proposed Sections 25607, Occupational Exposure Warnings, Section 25608.22, Petroleum Products Warnings (Environmental Exposures) – Methods of Transmission and Section 25608.23, Petroleum Products Warnings (Environmental Exposures) – Content, and Section 25205-Lead Agency Website.

- **§25607-Occupational Exposure Warnings**

ILMA appreciates the steps OEHHA has taken to simplify this Section:

(a) A warning to an exposed employee about the chemical in question which fully complies with all information, training and labeling requirements of the federal Hazard Communication Standard (29 Code of Federal Regulations, section 1910.1200), the California Hazard Communication Standard (Title 8, California Code of Regulations section 5194), or, for pesticides, the Pesticides and Worker Safety requirements (Title 3, California Code of Regulations section 6700 *et seq.*) meets the requirements of this Article.

However, while the above language may seem to be entirely sensible, manufacturers, including ILMA members, who comply with the federal Hazard Communication Standard (“HCS 2012”), may, but are not under any obligation, via complying with HCS 2012, to in fact notify anyone that a chemical product may contain a chemical known to the State of California to cause cancer or reproductive harm. The location for including such information, Section 15, is non-mandatory per Appendix D of the regulation. Further, the recently adopted changes¹ to Title 8, California Code of Regulations, Subchapter 7, General Industrial Safety Orders, Article 109, Hazardous Substances and Processes, Section 5194, Hazard Communication, notes at subsection (b)(6) that, while California employers are obligated to provide Proposition 65 warnings to potentially exposed employees if they learn such chemicals are included in a chemical product, there seems to be no mechanism that would inform California employers that a product they have purchased might contain a chemical identified in proposed Section 25602, unless such chemical is voluntarily noticed to the employer. Thus, the proposed Section 25607, seems to be unworkable in practice.

¹ See <https://www.dir.ca.gov/title8/5194.html>

- **§25608.22-Petroleum Products Warnings (Environmental Exposures) – Methods of Transmission and §25608.23, Section Petroleum Products Warnings (Environmental Exposures) – Content.**

ILMA believes that Sections **25608.22** and **25608.23** will require that general manufacturing shops that produce machined metal parts such as might be manufactured using products supplied by ILMA member companies – nuts, bolts, turnings and the like – will be required to post warning signage according to this Section. More specifically, ILMA believes that the following, proposed warning language and symbol is misleading to workers in such general manufacturing shops:

- (a) The symbol described in Section 25604(a)(1), that is, a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline, except that where other signage or labeling for the product is not provided in color, the symbol may be printed in black and white.
- (b) The word “**WARNING**” in all capital letters and bold print.
- (c) The words: “Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals such as toluene and benzene that are known to the State of California to cause cancer or birth defects or other reproductive harm. These exposures can occur in and around oil fields, refineries, chemical plants, transport and storage operations such as pipelines, marine terminals, tank trucks and other facilities and equipment.

For more information go to: www.P65Warnings.ca.gov/petroleum.

Almost without exception, the highly-refined petroleum oils used in such machining and grinding applications do not contain any toluene or benzene. Thus, by adoption of this proposed language for such general manufacturing shops, employees are over warned on one hand (warned of toluene and benzene which are not present) but not necessarily warned of chemicals proposed in Section **25602**, unless such chemical is voluntarily noticed to the employer. This presents both the California employer and the chemical manufacturer, including an ILMA member, a virtually impossible set of requirements to meet.

- **§25205-Lead Agency Website**

ILMA believes that the Lead Agency Website would not be a valuable resource in an industrial environment. Employees have a much better source for that information in the Material Safety Data Sheets (“MSDSs”) -- soon to be SDSs under OSHA’s GHS rules -- that employers are required to provide. It is readily available and covers the exact products employees utilize in an industrial setting. Additionally, should any incident arise, first responders and corporate management also would have easy access to these documents. As such, the website is an unnecessary additional burden upon industry, and it would not serve as a valuable informational resource for employees given that MSDSs or SDSs already contain that information.

III. ILMA Recommendations

The draft regulations as proposed on January 12, 2015, remain seriously flawed as detailed both above and in the above-referenced comment letter from the Coalition. OEHHA should make substantial revisions to the draft regulations and should present the revised draft for public comment.

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We appreciate the opportunity to provide these comments. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Holly Alfano". The signature is written in a cursive, flowing style.

Holly Alfano
Executive Director

cc: ILMA Board of Directors
ILMA SHERA and Metalworking Fluids Committees
John K. Howell, Ph.D.
Jeffrey L. Leiter, Esq.
Daniel T. Bryant, Esq.