

**STATE OF CALIFORNIA
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**

**Proposed Repeal of Article 6 of)
Title 27 (Proposition 65 Regulations))
And Adoption of New Article 6)** **Public Hearing Date: March 25, 2015**

**COMMENTS OF
THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION**

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The Force and Effect of Pre-Existing Consent Decrees Should Be Made More Explicit

Generally, EMA supports OEHHA's proposed amendments to Article 6. In particular, EMA appreciates the steps that OEHHA has taken to propose specific regulatory provisions delineating the "safe harbor" warning requirements for exposures to "diesel engine exhaust." (See Proposed §§ 25608.14 and 25608.15.) EMA further appreciates that the proposed diesel-specific requirements are generally consistent with the "safe harbor" requirements spelled out in pre-existing consent decrees relating to exposures to diesel exhaust from nonroad engines and equipment. (See, e.g., *Mateel Environmental Justice Foundation, et al. v. Caterpillar, Inc., et al.*, Case No. 955969 (Sup. Ct. Cty. of San Francisco.)) The two-year leadtime that OEHHA has proposed (in § 25600(b)) for the diesel-specific regulations should allow sufficient time for manufacturers to make any necessary changes to their product labels and operating manuals.

That said, one of EMA's two concerns relates to OEHHA's elimination of an earlier proposed regulatory provision acknowledging the primacy of pre-existing court-approved consent decrees. That earlier proposal stated, as follows:

§ 25603. Court-Approved Settlements

(a) Parties to court-approved settlements prescribing warning content and methods, entered prior to January 1, 2015, are not subject to this Article.

While OEHHA states in its Initial Statement of Reasons that there is no "need for a grandfathering provision in light of the non-mandatory, safe harbor approach in the proposed regulations," EMA believes that the earlier grandfathering provision adds needed clarity for the broad range of readers of the Proposition 65 regulations. Without the grandfathering provision, some readers of the provisions of Article 6 may be left confused regarding the force and effect of earlier consent decrees that may not exactly track the amended "safe harbor" warning requirements. Accordingly, since there is no downside to specifying the primacy of pre-existing consent decrees, and since otherwise unnecessary ambiguity can be avoided, the earlier regulatory provision that exempted pre-existing court-approved settlements from amended Article 6 should be restored.

The Requirement For Proposition 65 Warning Language In On-Screen Displays Should Be Optional, Not Mandatory

The second of EMA's two concerns relates to the third proposed warning requirement set forth in proposed Section 25608.14(a)(3), which states that "[i]f other warnings or operating instructions are provided in an on-screen display, the [specified Proposition 65] warning is [to be] provided in that manner, using the same size and font as other operator warnings." This third proposed warning requirement is inconsistent with the existing consent decrees relating to "diesel engine exhaust," which specify that Proposition 65 warnings should be provided through a visible label affixed to the vehicle (e.g., on the sun visor) **or** provided by a digital display or an "on-screen" warning, **not both**. By mandating both modes of the on-product warning in Section 25608.14(a)(2) and (a)(3), OEHHA is requiring an unnecessary redundancy that will serve only to impose unnecessary costs and potential coding burdens on diesel vehicle manufacturers.

To resolve this costly redundancy and unnecessary inconsistency with pending consent decrees, the first sentence of proposed Section 25608.14(a) should be revised to read as follows:

(a) A warning for exposure to diesel engine exhaust from products other than passenger vehicle engines meets the requirements of this Article if the warning is provided using method (1) and either method (2) or (3), as set forth below, and includes the elements required in Section 25608.15.

Conclusion

EMA appreciates the opportunity to submit these comments, and further appreciates the outreach efforts that OEHHA has undertaken toward the development of a generally-acceptable updated version of Article 6, subject to the necessary revisions noted above.

Respectfully submitted,

TRUCK AND ENGINE
MANUFACTURERS ASSOCIATION