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September 21, 2015

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

**Sent Electronically to:** [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov)

**SUBJECT:** Lead Agency Website Regulation Amendments – Second 15-Day Notice for Public Comment

Dear Ms. Vela:

We are writing on behalf of the members of the Association of Global Automakers, Inc.<sup>1</sup> (Global Automakers) and the Alliance of Automobile Manufacturers<sup>2</sup> (Auto Alliance), which include nearly every company selling new vehicles in the United States, and the Motor & Equipment Manufacturers Association (MEMA), representing more than 1,000 companies that manufacture components and systems for use in motor vehicles and equipment in the light vehicle and heavy-duty, on- and off-highway commercial vehicle markets for the original equipment and aftermarket industries. We appreciate the opportunity to provide the following comments on the California Office of Environmental Health Hazard Assessment's (OEHHA) proposed amendments (amendments) for the Proposition 65 (Prop 65) Lead Agency Website.<sup>3</sup>

With the proposed amendments, OEHHA has addressed some of our previous concerns,<sup>4</sup> and we appreciate OEHHA's willingness to work with the industry to create a better regulation. We are particularly pleased that OEHHA made the following changes:

- Specifying that the information requested should be provided if it is readily available, thus removing the need for additional testing and coordination with extensive supply chains.

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<sup>1</sup> Global Automakers' members are Aston Martin, Ferrari, Honda, Hyundai, Isuzu, Kia, Maserati, McLaren, Nissan, Subaru, Suzuki, and Toyota. Please visit [www.globalautomakers.org](http://www.globalautomakers.org) for further information.

<sup>2</sup> Auto Alliance members are BMW Group, FCA US, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars North America, Toyota, Volkswagen Group of America, and Volvo Cars of North America. For additional information, please visit <http://www.autoalliance.org>.

<sup>3</sup> We also support the comments submitted by the California Chamber of Commerce on the 15-day Notice for the "Lead Agency Website" and herein incorporate those comments by reference.

<sup>4</sup> Global Automakers and Auto Alliance "Joint Comments-Prop 65 Lead Agency Website," submitted to OEHHA on June 15, 2015 and April 9, 2015.

- Helping protect trade secrets by providing manufacturers with 30 days instead of 15 days to dispute trade secret claims.
- Allowing businesses to respond to OEHHA’s requests for information through their trade organizations.
- Explicitly stating that a business is not required to provide information to OEHHA that is subject to legal privileges under California law.
- Clarifying the timeframe for a business to provide requested information

We agree there are benefits associated with providing chemical exposure information to consumers via a website. However, we have concerns with the following issues for which we are providing recommendations:

- OEHHA should allow a six-month response time for submitting information.
- OEHHA should consider the problem that the requested information could overwhelm consumers with overly technical information.
- Stronger protection for trade secrets is necessary.
- OEHHA should clarify what is meant by the term “source” in Section (b)(4) in the context of “environmental warnings.”

### **OEHHA Should Allow a Six-Month Response Time for Submitting Information**

We request that the time to submit information to OEHHA be no less than six months from the receipt of the request. To determine what information a manufacturer has direct access to, the request needs to be sent through the proper channels within the organization. The average automobile is a complex web of systems and networks, containing thousands of unique components from hundreds of suppliers around the world. Investigating chemicals in automobiles takes six months with the databases available to the industry due to the extensive supply chain. Furthermore, including requests for information about exposure information makes the process more challenging since this information may not be available within existing databases. Therefore, sufficient time is necessary for manufacturers to do their due diligence to obtain information and to ensure accuracy of the information being provided.

In addition to time, the costs of providing the requested information are not insignificant for automobile manufacturers. OEHHA claims in the Notice of Proposed Rulemaking that providing information to populate the website will not add any significant new costs to businesses. This statement is inaccurate; given the size and complexity of supply chains and time and resources necessary to gather and report information, populating the website will add significant costs for our members who manufacture complex goods. The requirements mentioned on page six of the Initial Statement of Reasons (ISOR) are all examples of information that are time and resource intensive to collect, even when they are available to the manufacturer. Aggregating the necessary information requires substantial resources, including cost and manpower.

### **OEHHA Should Address the Problem that the Requested Information Could Overwhelm Consumers with Overly Technical Information**

As noted in our comments on the proposed regulations for the Lead Agency Website, we understand the intent for consumers to be informed and to be aware of possible health risks, but we believe providing the specified information on every product with a potential Prop 65 chemical exposure would inundate consumers with overly technical information which, ultimately, does not help them gauge exposure. We recommend that OEHHA instead provide consumers with high-level information on the characteristics of the chemicals covered by the regulation, the typical uses of the chemical in products, and methods of reducing exposure. This would balance the consumers' ability to make an informed decision regarding exposure with the amount and types of information provided and may simplify the data that OEHHA requests in the first place.

### **Stronger Protection for Trade Secrets is Necessary**

We appreciate and support OEHHA's effort to strengthen the protection of trade secrets in the amended draft regulation by notifying businesses 30 days instead of 15 days prior to disclosure of claimed trade secrets. However, stronger protection of trade secrets is still needed. The language in the rule should be strengthened to stress the importance of protecting against the disclosure of trade secrets in the development of the Lead Agency Website. Otherwise, there is a significant potential that legitimate concerns regarding intellectual property rights and competition could be overwhelmed by the effort to compile information for the website. Therefore, in Section 25205(a), we recommend adding a new subparagraph (8) as follows:

(8) Prevent the public disclosure of trade secrets and confidential business information in the course of providing the information described above.

### **OEHHA Should Clarify What Is Meant by the Term "Source" in Section (b)(4) in the Context of "Environmental Warnings"**

Section (b)(f) applies to "environmental warnings," and in the amended proposal, OEHHA changed the term "location" to "source." We understand this amendment was intended to be consistent with the wording in the Clear and Reasonable Warning Proposal. Based on our review of the proposed changes to the regulatory text, it is our understanding that Section 25205(b)(4) does not apply to consumer products such as automobiles. In the event that this section would apply to automobiles, the amended language makes it unclear as to the level of information needed. "Location" clearly indicated that the area of the car in which the chemical is present should be identified, whereas "source" is more ambiguous in meaning. OEHHA should clarify what is meant by "source" when identifying a chemical. We request clarification as to the type of information OEHHA is requesting in this section.

In summary, OEHHA should extend the time frame for submitting information to six months, increase protections to trade secrets, consider whether the website may overwhelm consumers with overly technical information, and clarify the meaning of "source" in Section (b)(4) to the extent that that section would apply to automobiles. If OEHHA decides to proceed, we recommend additional consideration and industry engagement to better define the type of information that would best inform the consumer and the optimal collection methods for this information.

We thank you for considering our comments. Please do not hesitate to contact us with questions or for additional information at:

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Laurie Holmes, Senior Director, Regulatory Policy, MEMA, 202.312.9247 or  
[lholmes@mema.org](mailto:lholmes@mema.org).

We look forward to working with OEHHA as the amendment moves forward.

Sincerely,



Julia M. Rege  
Director, Environment and Energy  
Association of Global Automakers, Inc.



Stacy Tatman  
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Alliance of Automobile Manufacturers



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