ilma
Independent Lubricant Manufacturers Association
400 N. Columbus Street, Suite 201, Alexandria, VA 22314 • p 703.684.5574 • f 703.836.8503 • www.ilma.org • ilma@ilma.org

January 25, 2016

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

Via Electronic Mail to: P65Public.comments@oehha.cal.gov

Re: Proposition 65 – Clear and Reasonable Warning Regulations

Dear Ms. Vela:

The Independent Lubricant Manufacturers Association ("ILMA" or "Association") submits the following comments regarding the Office of Environmental Health Hazard Assessment's ("OEHHA") Notice of Proposed Rulemaking to Amend Article 6, Clear and Reasonable Warnings, at Title 27, California Code of Regulations pursuant to the Safe Drinking Water and Toxic Enforcement Act ("Proposition 65").

Introduction to ILMA

ILMA is national trade association with 338 member companies. As a group, ILMA members blend, compound, and sell over 25 percent of the United States' lubricant needs (*e.g.* passenger car motor oils) and nearly 80 percent of the metalworking fluids 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 or that produce chemical additives. Base oils are purchased from refiners, who also are competitors in the sale of finished products. Additives are purchased from suppliers, who also may be competitors in the sale of finished products. ILMA members succeed by processing, producing, and distributing high-quality, often specialized, lubricants.

ILMA members provide industrial lubricants to many California manufacturers, as well as market lubricants, including passenger car motor oils, 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 and retail consumers.

In addition to the comments contained herein, ILMA fully supports the comments submitted by the California Chamber of Commerce on behalf of the Coalition.

President Frank H. Hamilton III, South Atlantic Services, Inc. | **Vice President** Beth Ann Jones, Hangsterfer's Laboratories, Inc. | **Treasurer** Dave P. Croghan, Maxum Petroleum | **Secretary** Barbara Kudis, Allegheny Petroleum Products Company | **Immediate Past President** Barbara A. Bellanti, Battenfeld Grease & Oil Corporation of N.Y. | **Executive Director** Holly Alfano | **General Counsel** Jeffrey L. Leiter

§ 25606 – Occupational Exposure Warnings

As provided for in the proposed regulatory text, § 25606 presents significant issues. First and foremost, the Occupational Safety and Health Administration's Hazard Communication Standard 2012 ("HCS 2012") does not explicitly require that a company provide the Proposition 65-required warnings in its Safety Data Sheets. The location for including such information, Section 15, is non-mandatory per Appendix D of the regulation. ILMA members who comply with the federal HCS 2012 may, but are not under any obligation from HCS 2012, to notify anyone that a chemical product may contain a chemical known to the state of California to cause cancer or reproductive harm. Therefore, the stipulation that a "warning to an exposed employee about the chemical in question which fully complies with . . . the federal Hazard Communication Standard . . . meets the requirement of this article" is simply incongruent with what HCS 2012 and Proposition 65 require. As a result, ILMA fails to understand how compliance with the federal HCS 2012 would prove sufficient for relevant Proposition 65 warnings. Therefore, this section requires revisions to address those lingering issues.

§ 25607.24 Petroleum Products Warnings (Environmental Exposures) – Methods of Transmission and Section 25607.25 – Petroleum Products Warnings (Environmental Exposures) – Content

The proposed text from § 25607.24 and § 25607.25 is problematic. ILMA believes that both sections will require general manufacturing shops, which produce machined metal parts, to post warning signage according to this section. More specifically, ILMA asserts that the proposed language from both sections is misleading to workers and therefore counter to the intent of the Proposition 65 warnings. Proposed § 25607.24 highlights that "a warning for environmental exposures to petroleum products from industrial operations and facilities . . . meets the requirements of this article if it complies with the content requirements of Section 25607.25 . . ." § 25607.25 requires the following:

> (a) A warning for exposures to petroleum products from industrial operations and facilities, other than from service stations and vehicle repair facilities, meets the requirements of this article if it is provided using the methods required in Section 25607.24, and includes all the following elements:
>
> (1) The symbol described in Section 25603(a)(1).
>
> (2) The word "**WARNING**" in all capital letters and bold print.
>
> (3) 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 and 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.

The proposed OEHHA regulation is inappropriate in the context of industrial operations where refined petroleum products are used. If required to be posted by compounder-blenders that make product subject to the regulation in the state, and by those companies' customers, at a minimum workers for whom the regulations are intended to benefit will be inappropriately warned, as there is no crude oil in industrial facilities. Additionally, 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 general manufacturing shops, employees are both over warned (warned of toluene and benzene that are absent), but likely not warned of other chemicals unless an employer voluntarily notices such substances. This presents both the California employer and chemical manufacturer, including an ILMA member, with a virtually impossible set of requirements to meet.

Conclusion

ILMA appreciates this opportunity to submit comments to OEHHA regarding its proposed rulemaking. OEHHA's proposed amendment to the Proposition 65 regulations as proposed on November 27, 2015 remain seriously flawed as detailed *supra* and in the above-referenced comment letter from the California Chamber of Commerce Coalition. ILMA respectfully requests that OEHHA carefully consider the Association's comments and effectively incorporate revisions to address those issues and then subsequently allow for public comment on the revised draft. Thank you for your consideration.

Sincerely,

Holly Alfano
Executive Director

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