STATE OF CALIFORNIA
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

Proposed Repeal of Article 6 of	**)**	
Title 27 (Proposition 65 Regulations)	**)**	**Public Hearing Date: January 13, 2016**
And Adoption of New Article 6	**)**	

COMMENTS OF THE TRUCK AND ENGINE MANUFACTURERS ASSOCIATION

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Jed R. Mandel
Timothy A. French
Truck and Engine Manufacturers Association
333 West Wacker Drive, Suite 810
Chicago, Illinois 60606

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Introduction

The Truck and Engine Manufacturers Association ("EMA") submits the following comments on the rulemaking proposal that the Office of Environmental Health Hazard Assessment ("OEHHA") published on November 27, 2015, to repeal the current version of Article 6 of Title 27 of the California Code of Regulations ("CCR") – the regulations relating to the form and content of clear and reasonable "safe harbor" warnings under Proposition 65 – and to adopt a new version of Article 6. As OEHHA has explained in its rulemaking notice, the proposed regulations would provide "more specific guidance on the content of safe harbor warnings for a variety of exposure situations."

EMA is the not-for-profit trade association that represents the world's leading manufacturers of medium-duty and heavy-duty diesel-fueled on-highway vehicles, as well as the leading manufacturers of diesel-fueled engines utilized in virtually all on-highway and nonroad applications (except passenger cars). Inasmuch as "diesel engine exhaust" is a listed Proposition 65 chemical, EMA and its members have a direct and significant interest in any proposed amendments to the applicable Proposition 65 regulations. Moreover, several of EMA's members are parties to consent decrees previously entered with the California Superior Court (and, in some instances, upheld on appeal), and so have a direct interest in ensuring that any proposed regulatory amendments do not improperly encroach upon or modify the still-operative and controlling consent decrees relating to "diesel engine exhaust." On March 18, 2015, EMA submitted comments on OEHHA's previous regulatory proposal (since withdrawn) to repeal and amend Article 6.

EMA is generally supportive of OEHHA's reissued proposal to adopt a revised Article 6 as it relates to safe harbor warnings for "diesel engine exhaust." In that regard, EMA appreciates OEHHA's proposal to make it more explicit that the amendments at issue cannot and will not have any impact on the force and effect of pre-existing consent decrees resulting from earlier Proposition 65 litigation. EMA also supports OEHHA's clarification that the specified safe harbor warning language for use in diesel vehicles' on-screen displays is optional, not mandatory.

The Force and Effect of
Pre-Existing Consent Decrees

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 §§ 25607.14 and 25607.15.) 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.

EMA also specifically endorses OEHHA's inclusion of an express regulatory provision acknowledging the primacy of pre-existing court-approved consent decrees. That proposed regulatory provision states, as follows:

> § 25600(f). A person that is a party to a court-approved settlement or final judgment establishing a method or content for a consumer product or environmental warning is deemed to be providing a "clear and reasonable" warning for that exposure for purposes of this article, if the warning fully complies with the order or judgment.

This provision adds needed clarity for the broad range of readers of the Proposition 65 regulations. Without this provision, some readers of Article 6 may be left confused regarding the force and effect of consent decrees and judgments that may not exactly track the amended regulatory "safe harbor" warning requirements. Accordingly, EMA supports proposed section 25600(f).

The Optional Provision For Providing Proposition 65
Warning Language Through On-Screen Displays

EMA also supports the wording of proposed section 25607.14(a). That section is now consistent 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 diesel vehicle/equipment **or** provided by a digital display or an "on-screen" warning in cases where other operating instructions are conveyed in that matter, **not both**. By recognizing the optional nature of "on-screen" Proposition 65 warnings, OEHHA's pending proposal is a marked improvement over the initial proposal that OEHHA circulated on January 15, 2015.

Conclusion

EMA appreciates the opportunity to submit these comments, and further appreciates the significant outreach efforts that OEHHA has undertaken toward the development of a generally-acceptable updated version of Article 6, particularly as it relates to the safe harbor warnings for "diesel engine exhaust."

Respectfully submitted,

TRUCK AND ENGINE
MANUFACTURERS ASSOCIATION