

March 19, 2021

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, CA 95812-4010

Via portal at: <https://oehha.ca.gov/comments>

**SUBJECT: COMMENTS TO PROPOSED AMENDMENTS TO ARTICLE 6, CLEAR AND REASONABLE
WARNINGS SHORT-FORM WARNINGS**

Dear Ms. Vela:

I write on behalf of our member companies to express our concerns with the subject rulemaking, and to request agency consideration of withdrawal of this rulemaking or an extended implementation date of three-years after its adoption. We also want to note that we are a signatory of the comments submitted by the California Chamber of Commerce.

OPEI disagrees with OEHHA's characterization of the subject rulemaking proposal as "clarifying" since it fundamentally revises previous Article 6 amendments. Additionally, we are concerned with the timing of such a complex technical amendment to this regulation when businesses in California, and companies selling into the state, continue to face the burdens of the covid-19 pandemic and its economic impacts. For these fundamental reasons we urge consideration of a three-year transition period, if not withdrawal of the rulemaking altogether.

OPEI is an international trade association representing the manufacturers and their suppliers of non-road gasoline powered engines, personal transport & utility vehicles, golf cars and consumer and commercial outdoor power equipment ("OPE"). OPE includes lawnmowers, garden tractors, trimmers, edgers, chain saws, snow throwers, tillers, leaf blowers and other related products. OPEI member companies and their suppliers contribute approximately \$16 billion to US GDP each year, and last year shipped 40 million products in the U.S. with millions sold in California.

Our industry's products are ubiquitous to California's households and businesses and sold across the state through a diversity of retail outlets including national & regional home improvement chains, local hardware stores, e-commerce retailers, and independent dealers. Our member companies have invested significant resources to implement warnings consistent with OEHHA's safe harbor guidelines, including those adopted just two years ago for so-called "short-form" warnings. Current guidelines, including those for short-form warnings, are followed by our industry to warn where appropriate for whole-good products, accessories, and spare (service) parts, which together account for a significant diversity of products and a complex industry supply chain and retail network.

As explained in OEHHA's August 2016 Initial Statement of Reasons (ISOR) for the previous rulemaking, its purpose was to provide consumers with more information on the chemicals they were exposed to and direct them to a new OEHHA website for more information. In this former rulemaking, implemented in 2018, OEHHA also included an option to provide a "short-form" warning on a product label with few parameters around when it could be used.

Now, only two years later, OEHHA's proposed rulemaking released in January 2021 would impose significant restrictions and parameters for the Prop 65 short-form warning. Even when the Prop 65 short-form warning can be used, businesses are required to list at least one Prop 65 chemical in the short-form warning to which the consumer may be exposed while using the product. OEHHA argues that this change will provide more information to consumers to make informed decisions. Furthermore, OEHHA argues that mandating that businesses list at least one chemical in the Prop 65 short-form warning would essentially "stop the practice of over-warning" by businesses.

The proposal by OEHHA, upending the short-form requirements, will do little to nothing to address OEHHA's stated goal of reducing Prop 65 over-warnings. The proposal will only further exacerbate the already abusive Prop 65 litigation climate by providing additional opportunities for private enforcers to file frivolous enforcement lawsuits against businesses. Year after year, the California Attorney General's summary shows that the volume of settlements and settlement amount is consistently high and trending upward. There is a litany of other ways for OEHHA to reduce Prop 65 over-warnings, but the proposed changes to the short-form warnings is not the way.

Accordingly, OPEI urges that:

- **OEHHA Withdraw the Short-Form Warning Proposal**

OEHHA's proposed revisions to the short-form warning are inappropriately timed as these changes would be extraordinarily difficult, expensive, and burdensome after companies just spent significant resources to implement changes in 2018. OPEI is also concerned that this proposal is ill-timed when businesses are already burdened with a global pandemic, and its likely lasting impacts on company supply chains and retail markets.

These proposed amendments will have significant adverse economic impacts on businesses as small as 10 employees. This proposal could cost some OPEI member companies millions of dollars to re-label the thousands of whole-goods, accessories, and spare (service) parts our members manufacture and sell. More importantly, this proposed change would be of no measurable benefit to California consumers.

- **Alternatively, We Request OEHHA Provide a Three-Year Transition Period**

If OEHHA does not withdraw the proposal, we urge OEHHA, at a minimum, to provide a reasonable transition. We recommend a three-year transition period to reflect that the subject proposal is a complex technical amendment of Article 6, rather than a clarifying rule. Whereas OEHHA provided a two-year transition period for the Article 6 amendments adopted in 2018, which was justified, OPEI would argue that the subject proposal poses even further technical complexities requiring at least, but more, than that granted in 2016. If adopted, the subject proposal would require broad identification of chemicals for placement on the revised short-form labels, a burden not required as companies transitioned to the short-form warnings specified in the 2018 amendments. This added burden and necessary investments by OPEI members will require a 3-year transition period.

Further, a one-year transition is unworkable for businesses to evaluate and re-label all their Prop 65 warnings and published materials. Outdoor power equipment suppliers often have thousands of Stock Keeping Units (SKUs) to review, re-design packaging, or re-label, considering whole goods, accessories, and spare (service) parts.

Specific to the distribution and sale of spare parts in our industry, there is an added and significant complexity since businesses in the retail chain downstream of the OEMs (i.e. distributors, dealers,

retailers) can often be the businesses empowered to provide Prop 65 warnings. Especially in the sale of spare parts, this can include thousands of SKUs per manufacturer, adding great complexity to the process. This includes significant investments in educational tools, website upgrades, packaging, and communications to coordinate across the distribution/retail chain, all requiring a three-year transitional period. These same burdens required significant investments by our members responsive to the 2018 amendments, and will now require a re-doubling of efforts, with complex adjustments necessary to meet the proposed safe harbor warnings. Our members also have complex supply chains making communication through the supply chain extremely challenging. Businesses need to have confidence that the regulations they invest significant resources to comply with will stay stable and consistent, and having a longer transition period would help with the compliance costs.

In conclusion, we request that OEHHA consider our recommendations, the comments provided by the California Chamber of Commerce, and also those of numerous other voices in the business community who work to achieve the goal(s) of Proposition 65 but have serious concerns with the subject proposal.

Thank you for the consideration of these comments, and please let me know if you have any questions.

Best regards,

A handwritten signature in black ink that reads "Daniel J. Mustico". The signature is written in a cursive, slightly slanted style.

Daniel J. Mustico
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