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March 25, 2021

Ms. Monet Vela  
Office of Environmental Health Hazard Assessment  
1001 I Street, 23<sup>rd</sup> 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,

The Power Tool Institute (PTI) thanks you for the opportunity to submit comments regarding the Office of Environmental Health Hazard Assessment's ("OEHHA") Notice of Proposed Rulemaking: Amendments to Article 6, Clear and Reasonable Warnings Short-form Warnings dated January 8, 2021 ("Proposed Rulemaking"). PTI is an industry association representing market-leading brands of portable and stationary power tools, encouraging high standards of safety in the manufacturing of power tools, and committed to promoting the safe use of power tools. PTI agrees with comments previously submitted by CalChamber and the National Association of Manufacturers (NAM).

The Power Tool Institute and its members have significant concerns with the Proposed Rulemaking because it seeks to upend the Article 6 warning requirements that went into effect only two years ago. Many constituents engaged with OEHHA in an extensive multi-year regulatory process that culminated in the repeal and replacement of Article 6 and the creation of the "long-form" and "short-form" warnings. Businesses in turn invested significant time and capital to overhaul their Prop 65 warning programs to bring them into compliance with the new regulations.

OEHHA now proposes to effectively undo that multi-year process by proposing changes so substantial to the Article 6 warning requirements that it would require *every single* business utilizing short-form warnings to redo their programs. This Proposed Rulemaking will inject confusion into the market, force a complete overhaul of warnings programs, disrupt manufacturing supply chains nationwide, and impose *substantial financial burdens* and additional litigation risks on businesses. OEHHA's finding that "The proposed regulatory action will not have a significant adverse economic impact directly affecting businesses..." was clearly challenged by numerous industry associations during the public hearing, noting the multiple steps which businesses would face to bring hundreds, if not thousands, of SKU's into compliance. As was also pointed out repeatedly, the economic impact, as businesses are trying to recover from unprecedented conditions during 2020, is ill-timed at best. The proposed changes are not likely to change any person's behavior when it comes to selecting or not selecting a product, and OEHHA has not provided any research on how the Proposed Rulemaking will change behavior. In addition, a one-year phase in for the substantive changes the Proposed Rulemaking will require is not feasible.

Many industries, including the power tool industry, have state and federal regulations that require specific warnings or safety instructions to the consumer that must be included on product labels. These warnings serve an essential consumer safety objective and can include such cautions as the safe use of power tools. Often these labels must appear on smaller products that already have



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limited space. The proposed changes to the short-form warning threaten to crowd that limited space, resulting in labels that lose their consumer safety value due to small type and excessive verbiage. The proposed amendment is also not clear on the 5 square inches of space and how that would be applied to on product warnings.

These substantive changes to the warning requirements further infuse uncertainty and liability for businesses attempting to comply. Businesses relied not only on the plain language of the regulations, but OEHHA's own statements ensuring them that their compliance with the new warning regulations would provide businesses "more certainty and confidence that [they are] in compliance with the regulations while retaining the right to provide other non-safe-harbor warnings." The Proposed Rulemaking will only further exacerbate the already abusive Prop 65 litigation climate by providing additional opportunities for private enforcers to file frivolous and unscrupulous private enforcement lawsuits against businesses. In fact, the amendments do nothing to address the bounty hunter provisions which have plagued businesses, and been acknowledged by California as a problem, since the inception of Prop 65.

In conclusion, the Power Tool Institute, for the reasons noted above, respectfully requests that the Proposed Rulemaking amending the short-form warning requirements under Article 6 be withdrawn.

Sincerely,

A handwritten signature in black ink that reads "Susan Young". The signature is written in a cursive, flowing style.

Susan Young  
Power Tool Institute