

Via electronic submission
<https://oehha.ca.gov/comments>



March 29, 2021

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

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

Dear Ms. Vela:

On behalf of the State of California Auto Dismantlers Association (SCADA), we appreciate 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). In addition to the SCADA-specific concerns raised in this letter, we also echo the concerns raised within the California Chamber of Commerce and Consumer Brands Association coalition letter.

SCADA is a statewide trade association representing automobile dismantlers with over 200 members statewide. SCADA was founded in 1959 to serve the members in areas of education, government, business and social activities as they relate to auto dismantling and recycling. Automobile dismantlers, occupationally licensed and regulated by the Department of Motor Vehicles, are entities in California responsible with managing and properly processing end-of-life vehicles through proper removal, recycling and/or disposal of unused batteries, gasoline, brake fluid, engine oil, catalytic converters, tires, mercury switches and more. They are regulated by over a dozen local, state, and federal environmental, worker safety, tax and public safety agencies and seek, wherever possible, to promote source reduction and reuse of vehicle components through sales to consumers and automotive repair facilities.

The Proposed Rulemaking is highly concerning, as it would override the current Article 6 warning requirements that became effective just in the last two years. As part of that process, OEHHA promised the business community "more certainty and confidence" in the new warning requirements – a particularly important commitment for SCADA and its members.

While some SCADA members fall under the small business, 10 employee threshold and will not be impacted by the Proposed Rulemaking, our larger members may indeed be impacted. Unfortunately, Proposition 65 doesn't distinguish between original manufacturers/dealers

and secondhand dealers/sellers, much less exempt secondhand dealers/sellers when it comes to the obligations to warn for chemicals listed under Proposition 65. While the regulations provide some parameters relative to “retail sellers,” we are concerned that ambiguity remains regarding whether SCADA members are considered “retail sellers” and exempt from the requirements to warn based on being secondhand dealers/sellers and the specific exemptions within the regulations. More specifically, the Proposition 65 regulations provide that a retailer seller is responsible for providing the warning required by Section 25249.6 if the retail seller has “covered, obscured or altered a warning label that has been affixed to the product...”¹ Does dismantling a vehicle for which the original equipment manufacturer would have provided a warning for the vehicle as a whole constitute covering, obscuring or altering the warning label affixed to the product? To the extent it does, SCADA members would seemingly be in scope and impacted by the Proposed Rulemaking.

First, the original manufacturer/dealer would have already had to comply and provide a warning under Proposition 65, not to mention the fact that they would either know or could obtain through their supply chain information about what Proposition 65-listed chemicals are in the product (vehicle component) and could result in an exposure necessitating a warning be provided. Although applicable SCADA members may believe it prudent to provide a warning as a result of some general understanding of the potential for an exposure, the Proposed Rulemaking would take away their ability to use the short-form warning.

Clearly, secondhand dealers/sellers, like SCADA members selling used/aftermarket parts, would have some general awareness and knowledge of a potential exposure associated with a vehicle component. They would not, however, have exact knowledge or information about what specific Proposition 65-listed chemicals were in a product (vehicle component) and could result in an exposure, much less what specific chemicals to list on the warning based on the changes in the Proposed Rulemaking. They wouldn't have line of sight to that information or ability to obtain it from the original equipment manufacturer.

Further, while SCADA members with 10 or more employees comply with Proposition 65 warning parameters on their premises to warn of facility/area exposures, it is not SCADA's understanding that those will be sufficient to cover their obligation to warn under Proposition 65 for specific vehicle components that may result in an exposure and obligation to warn separately and individually. The Proposed Rulemaking would eliminate SCADA members' ability to use a short-form warning and require any warnings to include information they are not likely to have in order to take advantage of the safe harbor warning provisions under Proposition 65 and avoid litigation risk.

To this end, OEHHA's characterization of the Proposed Rulemaking having a mere “clarifying” effect and no financial impact to businesses, such as those represented by SCADA, is false. Further, OEHHA justifies the changes to the current short-form warning as helping to address “over-warning.” The Proposed Rulemaking would do nothing to help this issue, but instead would raise significant compliance impact for SCADA members, who are already struggling to stay afloat amidst California's burdensome regulatory climate, and

¹ Title 27, Division 4, Chapter 1, Article 6 Section 25600.2(e)(3)

substantially increase litigation risks. For SCADA members, in particular, the changes within the Proposed Rulemaking will be next to impossible to implement without significant risk of liability.

For these reasons and those outlined in the coalition letter mentioned above, we respectfully request that the Proposed Rulemaking amending the short-form warning requirements under Article 6 be withdrawn.

Sincerely,



Gary Umphenour
President
State of California Auto Dismantlers Association