

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

Re: Proposed Amendments to Regulations Clear and Reasonable Warnings, Safe Harbor Methods and Content California Code of Regulations, Title 27, Section 5601-25603, 25607.2 New Sections 25607.50-25607.53

Dear Ms. Vela,

The Association of Equipment Manufacturers (AEM) appreciates the opportunity to comment on the Office of Environmental Health Hazard Assessment's (OEHHA) *Proposed Amendments to Regulations Clear and Reasonable Warnings, Safe Harbor Methods and Content California Code of Regulations, Title 27, Section 5601-25603, 25607.2 New Sections 25607.50-25607.53*, hereafter referred to as the Proposed Rule. We look forward to sharing the expertise and technical knowledge of our industry sectors. We believe it is critically important when developing regulations, that the interest of all stakeholders be considered and understood.

AEM is the North American-based international trade group representing off-road equipment manufacturers and suppliers with more than 1,000 member companies and over 200 product lines in the construction, agriculture, mining, forestry, and utility industries. The equipment manufacturing industry in the United States supports 2.8 million jobs and contributes roughly \$288 billion to the economy every year. Our industries remain a critical part of the U.S. economy and represent 12 percent of all manufacturing jobs in the United States. Our members develop and produce a multitude of technologies in a wide range of products, components, and systems that ensure off-road equipment remains safe and efficient, while at the same time reducing carbon emissions and environmental hazards. Finished products have a life cycle measured in decades and are designed for professional recycling of the entire product at the end of life. Additionally, our industry sectors strive to develop climate friendly propulsion systems and support robust environmental stewardship programs around the world.

The off-road equipment manufacturing industry understands the value and importance of using sound science to inform future policymaking decisions. AEM strives to be a key stakeholder in these policymaking discussions. To ensure that new rules meet their objectives with accurate and complete data, AEM requests that OEHHA take into consideration the following points:

1. Include *Off-Road Equipment*, which includes mobile off-road equipment, large scale fixed installations, large scale stationary industrial tools, alternative power applications, attachments, and implements, in Section 5601-25607.50 & 25607.51, providing off-road Original Equipment Manufacturers (OEMs) the same requirements as passenger cars and off-road vehicles.
2. Reassess these cost assumptions to more accurately reflect the realities businesses will face as they work to implement this rule.

The Definition of Off-Highway Motor Vehicle:

OEHHA introduces a new section under Title 27, Section 5601-25607.50 & 25607.51, establishing separate short form safe harbor warning methods of transmission and content requirements for passenger and off-highway motor vehicles. OEHHA notes in their initial statement of reasons that:

"[P]assenger or off-highway motor vehicles and recreational marine vessel parts carry unique challenges for parts manufacturing and retail entities. First, passenger or off-highway motor vehicles and recreational marine

vessel replacement parts number in the tens of thousands and are manufactured all over the world. A retail seller may carry hundreds of individual parts, a large number of which may require a Proposition 65 warning. Currently, many passenger or off-highway motor vehicle and recreational marine parts manufacturers provide a short form warning for their products because a full-length warnings can be difficult to fit on very small parts.... In addition, it is difficult to estimate an individual's exposure from contact with each part as the exposures are both user- and part-specific. For example, one consumer may only touch a part once while installing it during the life of the vehicle, while another individual may own several vehicles and maintain all of them using the same or similar parts and, therefore, will have more frequent contact with the same part. Finally, in addition to exposure to chemicals in the part itself, the do-it yourself mechanic can be exposed to other listed chemicals while servicing the passenger or off-highway motor vehicle or recreational marine vessel to replace the part. Therefore, OEHHA is proposing a general warning for potential exposure to listed chemicals, combined with a recommendation that the consumer practice good industrial hygiene (e.g., service the vehicle in a well-ventilated area, wear gloves, and wash hands), would provide a greater benefit than receipt of the standard safe harbor warning."

To define these new classes OEHHA uses the definitions found in the California Vehicle Code section 465 for on-highway passenger vehicles and 38012(b) for off-highway motor vehicles.

Off-road equipment operates under many of the same safety, design, manufacturing, maintenance, purchasing, and customer issues experienced by other adjacent industries. The off-road equipment industry, as well as the passenger and off-highway vehicle sectors, manufacture complex products with many of the same parts, components, and systems designed to last far longer than standard consumer products. The similar design considerations among on-road and off-road OEMs are the reason why they share roughly 60% of their supply chains with each other.

In their initial statement of reasons, OEHHA indicated that passenger and off-highway vehicles would face unique challenges in providing full length warnings due to the sheer number and size of many of the replacement parts offered to retailers. Similar to passenger and off-highway vehicles, off-road equipment contains over one hundred thousand parts and components in each product, many of them similar in size, material composition, and intended-use as their on-highway counterparts. These parts are provided to dealers, rental companies, and various individuals and companies to help the end-users maintain their equipment over the life cycle of the machine.

Furthermore, as indicated in OEHHA's statement of reasons, the end user's exposure level to Proposition 65 chemicals will differ based on a variety of factors. Some individuals may perform maintenance on these machines which requires the handling and replacement of numerous parts and components with a potential exposure to numerous different materials and substances, whereas other users may only come into contact with a small number of parts under specific situations. For these reasons, OEHHA amended Section 5601 to include specific short form safe harbor requirements to account for these unique issues.

With these considerations in mind, off-road equipment should be included under Title 27, Section 5601-25607.50 & 25607.51. The off-road equipment industry shares many of the same risk factors and design elements, but their function and use profiles will vary widely. Therefore, it is important to understand the different equipment types to ensure the entire sector is properly covered under this definition.

Off-Road Equipment includes the following:

- Mobile off-road equipment is one of the larger categories of machines. While mobile off-road equipment is not found in the California Vehicle Code, it is defined in Title 13 Section 2431(29):

"Off-Road Equipment" means any non-stationary device, powered by an internal combustion engine or motor, used primarily off the highways to propel, move, or draw persons or property including any device propelled, moved, or drawn exclusively by human power, and used in, but not limited to, any of the following applications: Marine Vessels, Construction/Farm Equipment, Locomotives, Small Off-Road Engines, Off-Road Motorcycles, and Off-Highway Recreational Vehicles.

- Large Scale Fixed installations cover a combination of several types of machines which include, but are not limited to, tower cranes, light towers, crushers, and screeners:

- A combination of several types of apparatus and, where applicable, other devices;
 - Assembled, installed and de-installed by professionals;
 - With the intention to be used permanently in a pre-defined and dedicated location;
 - And it has to be large-scale.
- Large scale stationary industrial tools include, but are not limited to, cranes and blow-out preventers.
 - An assembly of machines, equipment and/or components, functioning together for a specific application;
 - Permanently installed and de-installed by professionals at a given place;
 - Used and maintained by professionals in an industrial manufacturing facility or R&D facility;
 - And it has to be large-scale.
 - Alternative power applications intended to power off-road equipment, such as batteries, battery packs, and recharge equipment.
 - Attachments & implements associated with the above equipment (i.e., towed mowers, sprayers, buckets, forks)

Recommendation:

AEM recommends, based on the reasons listed in this section, that OEHHA include *Off-Road Equipment*, which includes mobile off-road equipment, large scale fixed installations, large scale stationary industrial tools, alternative power applications, attachments, and implements, in Section 5601-25607.50 & 25607.51, providing off-road Original Equipment Manufacturers (OEMs) the same requirements as passenger cars and off-road vehicles.

If OEHHA agrees with this recommendation, AEM suggests using the definition for mobile off-road equipment found in Title 13, rather than change the definition of off-road vehicle. This will avoid regulatory confusion and ensure current legal requirements outside of Proposition 65 are left unchanged.

Cost/benefit of compliance:

In their statement of reasons, OEHHA estimated that the overall total cost per business would be \$697.30 to use new tailored warning signs for passenger or off-highway motor vehicle parts. While the rule does help industry simplify the task of warning their customers and end-users of the chemical substances contained in their products, the process of applying these types of changes to complex products is intricate and requires time and resources to successfully implement.

The off-road equipment industry has supply chains that run 20 layers deep, with ten thousand unique suppliers scattered around the world, providing hundreds of thousands of parts to OEMs, dealers, and fleet managers. Many of these part suppliers lack the experience, education, and sophistication to quickly and efficiently identify and implement this type of requirement. Under a best-case scenario, OEMs will need to look at, and redesign, their packaging and labelling, because implementing these types of changes across so many components requires scaling across the business, which is time consuming and expensive. Due to this complexity, this cost estimate likely understate the true cost to industry by several orders of magnitude, with the likely real-world minimum cost per manufacturer somewhere in the range of hundreds of thousands of dollars.

In their initial statement of reasons, OEHHA had not conducted an analysis on whether changing the short form language will provide a benefit to public health or the environment. With the high costs associated with the implementation of this rule, we believe that OEHHA should demonstrate that these changes will bring positive benefits to the public.

Recommendation:

AEM recommends that OEHHA reassess these cost assumptions to more accurately reflect the realities businesses will face as they work to implement this rule.

Summary of Requests:

The off-road equipment manufacturing industry recognizes the importance of uncovering the presence and usage related to chemicals. Additionally, off-road equipment manufacturers understand the value in collaborating with policymakers to communicate the needs of industry during crucial rulemaking decisions. To ensure new rules meet their objectives with accurate and complete data, AEM requests that OEHHA:

3. Include *Off-Road Equipment*, which includes mobile off-road equipment, large scale fixed installations, large scale stationary industrial tools, alternative power applications, attachments, and implements, in Section 5601-25607.50 & 25607.51, providing off-road Original Equipment Manufacturers (OEMs) the same requirements as passenger cars and off-road vehicles.
4. Reassess these cost assumptions to more accurately reflect the realities businesses will face as they work to implement this rule.

AEM Appreciates your consideration of these comments.

Please feel free to contact me at Jmalcore@aem.org if you have any questions or require any further information.

Best Regards,



Jason Malcore
Senior Director – Safety & Product Leadership
Association of Equipment Manufacturers (AEM)