



Independent Lubricant Manufacturers Association

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April 11, 2016

Ms. Monet Vela
Office of Environmental Health Hazard Assessment
California Environmental Protection Agency
P.O. Box 4010
Sacramento, CA 95812-4010

Via Electronic Mail to: P65Public.comments@oehha.cal.gov

Re: Notice of Modification to Text of Proposed Regulation – Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6, Proposition 65 – Clear and Reasonable Warning Regulations

Dear Ms. Vela:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) submits the following comments regarding the Office of Environmental Health Hazard Assessment’s (“OEHHA”) Notice of Modification to Text of Proposed Regulation – Title 27, California Code of Regulations, Proposed Repeal of Article 6 and Adoption of New Article 6, Proposition 65 – Clear and Reasonable Warning Regulations.

Introduction to ILMA

ILMA is national trade association with 338 member companies. As a group, ILMA members blend, compound, and sell over 25 percent of the United States’ lubricant needs (e.g. passenger car motor oils) and nearly 80 percent of the metalworking fluids utilized in the country. Independent lubricant manufacturers by definition are neither owned nor controlled by companies that explore for or refine crude oil to produce lubricant base stocks or that produce chemical additives. Base oils are purchased from refiners, who also are competitors in the sale of finished products. Additives are purchased from suppliers, who also may be competitors in the sale of finished products. ILMA members succeed by processing, producing, and distributing high-quality, often specialized, lubricants.

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ILMA members provide industrial lubricants to many California manufacturers, as well as market lubricants, including passenger car motor oils, through several distribution modes to retail consumers in the state. While supportive of OEHHA's efforts to provide regulatory specifics for "clear and reasonable warnings," the changes as proposed to the warning language will confuse both industrial and retail consumers. While OEHHA modified several provisions of Article 6 it did not address several of the comments ILMA previously submitted. As a result, these comments reiterate several points previously made to OEHHA.

In addition to the comments contained herein, ILMA fully supports the comments submitted by the California Chamber of Commerce on behalf of the Coalition.

§ 25606 – Occupational Exposure Warnings

ILMA previously commented on this section, and while OEHHA slightly altered the wording in § 25606, it did not address the underlying issues the Association presented.

The proposed harmonization¹ of Proposition 65 and the Occupational Safety and Health Administration's Hazard Communication Standard 2012 ("HCS 2012") is problematic. First and foremost, HCS 2012 does not explicitly require that a company provide the Proposition 65-required warnings in its Safety Data Sheets. The location for including that information, Section 15, is non-mandatory per Appendix D of HCS 2012. ILMA members who comply with the federal HCS 2012 may, but are not under any obligation from HCS 2012, to notify anyone that a product may contain a chemical known to the state of California to cause cancer or reproductive harm. Therefore, the stipulation that a "warning to an exposed employee about a listed chemical meets the requirements of this article if it fully complies with all warning information, training and labeling requirements of the federal Hazard Communication Standard . . ." is simply incongruent with what HCS 2012 and Proposition 65 require. As a result, ILMA fails to understand how compliance with the federal HCS 2012 would prove sufficient for relevant Proposition 65 warnings. Therefore, this section requires revisions to address those lingering issues.

¹ The November 2015 Initial Statement of Reasons notes, "[g]iven that warnings for occupational exposures are also regulated by federal and state entities, including the federal Occupational Safety and Health Administration, several stakeholders expressed concern over the possibility of federal preemption of Proposition 65 warnings for occupational exposures. To address these concerns, the proposed regulation incorporates by reference existing federal and state law and regulatory requirements related to warnings for occupational exposures. The requirements of the proposed regulation thus harmonize with existing federal and state laws and regulations in this area and pose no preemption concern."

§ 25607.24 Petroleum Products Warnings (Environmental Exposures) – Methods of Transmission and Section 25607.25 – Petroleum Products Warnings (Environmental Exposures) – Content

ILMA also previously addressed the problematic portions of § 25607.24 and § 25607.25. The Association believes that both sections will require general manufacturing shops, which produce machined metal parts, to post warning signage.

More specifically, the proposed language from both sections is misleading to workers and therefore counter to the intent of the Proposition 65 warnings. Proposed § 25607.24 highlights that “a warning for environmental exposures to petroleum products from industrial operations and facilities . . . meets the requirements of this article if it complies with the content requirements of Section 25607.25 . . .” § 25607.25 requires the following:

(a) A warning for environmental exposures to petroleum products from industrial operations and facilities, other than from service stations and vehicle repair facilities, meets the requirements of this article if it is provided using the methods required in Section 25607.24, and includes all the following elements:

- (1) The symbol described in Section 25603(a)(1).
- (2) The word “**WARNING**” in all capital letters and bold print.
- (3) The words, “Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals such as toluene and benzene which are known to the State of California to cause cancer and birth defects or other reproductive harm. These exposures can occur in and around oil fields, refineries, chemical plants, transport and storage operations such as pipelines, marine terminals, tank trucks and other facilities and equipment. For more information go to: www.P65Warnings.ca.gov/petroleum.”

The proposed OEHHA regulation is inappropriate in the context of industrial operations where refined petroleum products are used. If the warning is required to be posted by compounder-blenders that make product subject to the regulation in the State, and by those companies’ customers, at a minimum workers for whom the regulations are intended to benefit will be inappropriately warned, as there is no crude oil in industrial facilities. Additionally, almost without exception, the highly-refined petroleum oils used in such machining and grinding applications do not contain any toluene or benzene. Thus, by adoption of this proposed language for general manufacturing shops, employees are both overwarned (warned of toluene and benzene that are absent), but

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likely not warned of other chemicals unless an employer voluntarily notices such substances. Both of these situations are counter to the intent of Proposition 65.

Conclusion

ILMA appreciates this opportunity to submit comments to OEHHA regarding its proposed modification. OEHHA's proposed March 25, 2016 revision to the Proposition 65 regulations remain seriously flawed as detailed above and in the above-referenced comment letter from the California Chamber of Commerce Coalition. ILMA respectfully requests that OEHHA carefully consider the Association's comments and effectively incorporate revisions to address those issues and then subsequently allow for public comment on the revised draft. Thank you for your consideration.

Respectfully submitted,

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

Holly Alfano
Chief Executive Officer

cc: ILMA Board of Directors
ILMA SHERA and MWF Committees
John K. Howell, Ph.D.
Jeffrey L. Leiter, Esq.
Daniel T. Bryant, Esq.