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May 17, 2018

***Via Overnight Delivery***

Ms. Michelle Ramirez  
Environmental Scientist  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010, MS-12B  
Sacramento, California 95812-4010

**Re: Proposition 65 – Clear And Reasonable Warning Requirements**

Dear Ms. Ramirez:

The Independent Lubricant Manufacturers Association (“ILMA” or “Association”) respectfully requests that the California Environmental Protection Agency – Office of Environmental Health Hazard Assessment’s (“OEHHA”) respond to the following inquiries related to compliance with its Safe Drinking Water and Toxic Enforcement Act of 1986 – commonly referred to as Proposition 65 (“Prop 65”). More specifically, ILMA’s members have questions regarding compliance with the new “safe harbor” clear and reasonable warnings that become fully operative on August 30. Simply, the Association’s members want to comply, but need further clarification and guidance from OEHHA. ILMA would appreciate OEHHA’s written reply to this letter within thirty (30) days to ensure its members have sufficient time to review the responses and to tailor their compliance activities before August 30.

**Introduction to ILMA**

ILMA is a national trade association with 350 member companies that is headquartered in Alexandria, Virginia. ILMA’s manufacturing members blend, compound, and sell over 25 percent of the United States’ lubricant needs (*e.g.*, passenger car motor oils, gear oils, and hydraulic fluids) and over 75 percent of the metalworking fluids (“MWFs”) utilized in the country. The overwhelming majority of ILMA’s manufacturing members are “small businesses” based on the Small Business Administration’s size standards. ILMA members, as manufacturers, are classified at NAICS 324191.

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President, **Dave Croghan**, Maxum Petroleum  
Vice President, **Barbara Kudis**, Allegheny Petroleum Products Company  
Treasurer, **Chuck Decker**, American Oil & Supply International LLC  
Secretary, **Scott Schwindaman**, Lubrication Engineers, Inc.

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Immediate Past President, **Beth Ann Jones**,  
Hangsterfer’s Laboratories, Inc.  
Chief Executive Officer, **Holly Alfano**  
General Counsel, **Jeffrey L. Leiter**

Independent lubricant manufacturers are neither owned nor controlled by the companies that explore for or refine crude oil to produce lubricant base stocks or that produce chemical additives. Base oils are purchased from refiners and re-refiners, who are also direct competitors in the sale of finished products. Additives are purchased from suppliers, who also may be direct competitors in the sale of finished products. ILMA members succeed over their suppliers/competitors by manufacturing and distributing high-quality, often specialized, lubricants accompanied by localized, allied services to their customers.

Lubricants are essential to the U.S. economy. Americans cannot get to work without the engine oils, transmission fluids and other automotive lubricants in their vehicles. Manufacturers cannot operate most of their machinery without industrial oils and hydraulic fluids. MWFs are used to bend, shape or cut metal for the production or fabrication of automobiles, military equipment, airplanes, medical devices and thousands of other products. ILMA members' products are vital to the economic freedom and prosperity enjoyed by the U.S.

### Compliance Questions

- (1) Our company has received several Safety Data Sheets (“SDS”) with Prop. 65 warnings on them. The suppliers are including this information in section 16 of the OSHA-compliant SDS. We use a software package that produces both our labels and SDS. We have already updated our label format to properly present the warning  and signal word. Do companies also need to use the triangle pictogram on our SDS? Currently, our software publishes the warning, but does not use the triangle pictogram.
- (2) Sections 25607.24 and 25607.25 describe the Clear and Reasonable Warning requirements for Petroleum Product Warnings resulting from Environmental Exposures. ILMA Members routinely supply lubricant products either directly or through distributors to industrial users who otherwise utilize these products in occupational settings. In OEHHA’s Petroleum Fact Sheet (<https://www.p65warnings.ca.gov/fact-sheets/petroleum-products-environmental-exposure-industrial-operations-and-facilities>), one finds this answer to the question “What are petroleum products?”:

Petroleum products are made from crude oil, coal and natural gas. They include gasoline, diesel fuel, and **lubricants** (for automobiles, airplanes, trains, snowmobiles, cooking stoves, generators, and furnaces) and are used to make chemicals, plastics, and synthetic materials. [Emphasis added.]

In addition to complying with the Clear and Reasonable Warning requirements for Occupational Exposures, do lubricant product users, such as customers of ILMA Members, also need to comply with the requirements of section 25607.25 by providing signage such as:

**⚠ WARNING:** Crude oil, gasoline, diesel fuel and other petroleum products can expose you to chemicals including 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](http://www.P65Warnings.ca.gov/petroleum).

- (3) Many manufacturers, who are customers of ILMA members, utilize “straight oil” metalworking fluids, a subclass of the category of lubricants known as metalworking products (broadly, those formulated petroleum products utilized as processing aids for machining and grinding metal alloys including steel and alloy steel).

Experience has shown that when such fluids are used to machine stainless steels which contain nickel or machine lead-containing alloys, are likely to see parts per million levels of those metals in their fluids. The OEHHA web pages which describe these metals are: lead: <https://oehha.ca.gov/proposition-65/chemicals/lead-and-lead-compounds>, and nickel: <https://oehha.ca.gov/proposition-65/chemicals/nickel-metallic>

In these cases, it is not the ILMA Members whose fluids contain lead or nickel, but it is the *process of machining* that can cause the metals to contaminate fluids. Is it required that ILMA Members who supply those fluids to their customers in California advise their customers of potential nickel or lead contamination?

- (4) Some ILMA members distribute biocidal products, whose labels are regulated by EPA, which may release formaldehyde under certain conditions. OEHHA published on April 23, 2018, a proposed amendment to the Clear and Reasonable Warning regulations that would allow substitution of the word “Warning” with “Attention” or “Notice” if the word “Warning” was already part of the EPA-required label. Does the original manufacturer of the biocidal product or does the distributor of the biocidal product (which may be an ILMA member) need to apply a label in compliance with the proposed amendment, should that amendment be adopted?
- (5) If a product contains, for example, five component parts that are all listed on Prop 65, how does a company correctly select what substance to list? May it simply choose whichever of the five listed? Must a company select the substance that is present at the highest concentration?
- (6) What guidance does OEHHA have on the “only one ingredient required rule” (Section 25605)? Why did OEHHA do this in the first place? Why not require all?

- (7) Should we list the most toxic, most prevalent, most likely in terms of exposure route, or should we use another guiding principle?
- (8) There is the standard Environmental Exposure language at 25605. There is a specific Petroleum Products Warnings (Environmental Exposures) at 25607.25. If a product, as sold, does not contain any of the ingredients 25607.25 mentions is it still required, or can the manufacturer use the general warning?
- (9) If a manufacturer introduces metallic nickel or lead into our products as part of their processes, which sign is required? Where must it be placed: at the entrances, or in the specific areas where the lead and nickel are present?
- (10) Section 25604 (1) refers to “public entrances” (25607.25 also defaults to this sub section). If there is a separate employee entrance not accessible to the “public,” are signs at those entrances also required?
- (11) Does OEHHA have a recommendation for labeling if an item does not contain chemicals that would initiate the Prop. 65 warning statement? Technically, a manufacturer would not have to do anything, but the concern is that many of a company’s products will require warnings, so does that company run risk of getting “picked up” if a product does not have anything related to Prop 65 on label? As a corollary, for OSHA’s Hazard Communication Standard 2012 (HCS 2012) we put on our bottles a statement that indicated the product was not hazardous under HCS 2012, so there was never a question if the product had been examined to meet HCS 2012 labeling requirements.
- (12) Many companies distribute products manufactured by other companies. What responsibilities and/or liabilities does the distributor have if the original manufacturer fails to properly label the product they make?
- (13) Even though OEHHA does not require warnings on SDS, do companies incur any liabilities if the choose not to mention Prop 65 on their SDS?

## **Conclusion**

ILMA respectfully requests a written response to these questions within thirty (30) days.

Sincerely,



Holly Alfano  
Chief Executive Officer

Ms. Michelle Ramirez  
May 17, 2018  
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CC: ILMA MWF Committee  
ILMA SHERA Committee  
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