June 13, 2014

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

Re: Potential Amendments to Proposition 65 Article 6, Clear and Reasonable Warnings
(Section 25601 of Title 27, California Code of Regulations)

Dear Ms. Vela:

The National Marine Manufacturers Association (NMMA) is pleased to provide the Office of Environmental Health Hazard Assessment (OEHHA) with the following comments with respect to the proposed amendments to the Water and Toxic Enforcement Act of 1986 (Proposition 65), Article 6 titled Clear and Reasonable Warnings published in the California Regulatory Notice Register on March 7, 2014.

By way of background, NMMA is the leading recreational marine industry trade association in North America, representing 1,400 boat, engine, and accessory manufacturers. NMMA members collectively produce more than 80 percent of the recreational marine products sold in the United States. Statewide, recreational boating is a significant contributor to the California economy by employing nearly 72,000 people through more than 3,000 boating businesses. The total economic impact for recreational boating in California was $8.94 billion in 2012.

NMMA supports sound OEHHA regulations that ensure the public’s health and safety. In fact, our organization has been the industry leader in Proposition 65 compliance, providing both our members and our non-members with compliant warning labels to be used throughout California. Manufacturers and suppliers can acquire a Proposition 65 hand tag—a flexible plastic hand tag which is designed for all boats sold in the state—directly from the NMMA website.

NMMA has concerns with the proposed amendment to modify Article 6 of Proposition 65. First, our organization supports the existing labelling requirements; we believe the existing requirements are sufficient and provide the public with clear and understandable warnings. The modifications, as proposed, would potentially render the labels ineffective by adding excessive information and deviating from the regulation’s intent without clear, measurable benefits for the consumer.
Second, NMMA believes that the proposed Proposition 65 website will place an excessive burden on businesses. Mandating a company to publically disclose chemicals and other information on a website will threaten a company’s right to protect its proprietary information, forcing it to unwillingly disclose trade secrets and other classified information to its competitors.

In addition, it is unclear exactly what information will be required to be submitted online. Boats and other marine products contain many different parts and components that may be subject to this new proposal, such as fuel tanks and marine engines that use gasoline. It is unclear if boat manufacturers will be responsible to identify and disclose all potential Proposition 65 chemicals found in by-products, such as fuel.

NMMA believes that this lack of clarity and certainty will uniquely affect our small businesses who do not possess the resources to ensure compliance on a case-by-case basis. While OEHHA has put in provisions to exempt certain small businesses from these requirements, our manufacturers would not enjoy these protections. If small businesses are to be exempt, then it should not be a select subset of small businesses, but should be applied to all small businesses as defined by the United States Small Business Administration.

NMMA also believes that the website will fail to achieve OEHHA’s intended goal of educating the public. The chemical names and health effects expected to be documented online are technical and complex. This information will be of little use to the average consumer, and will not provide more awareness or clarity on the chemicals’ potential effects. There is no evidence to support any demand amongst the public for access to additional information, or studies showing that the public would even use this additional information.

Finally, NMMA has concerns on how the proposed amendment will impact litigation. As an organization we stand with Governor Brown, sharing his opposition to frivolous lawsuits and the litigious abuse of Proposition 65. Unfortunately, we believe that the additional requirements, specifically the mandatory warning language, will spur new lawsuits and legal claims against boat manufacturers and other industry stakeholders. This proposal would open our members up to greater compliance liability without offering any tangible benefits to the consumer. While NMMA recognizes that this proposal attempts to remedy these types of frivolous lawsuits, we believe that this proposal subjects companies to increased liability by implementing a new reporting burden and modifying the labelling process.

NMMA recognizes OEHHA’s authority to continue to improve the health and safety of the California public, and look forward to opportunities to work together to achieve this shared goal.
However, we believe that the amendment, as proposed, fails to improve the public’s health and safety, while adding unnecessary administrative, legal and financial costs on manufacturers.

I appreciate the opportunity to offer these comments. For additional questions, please feel free to contact me at jmcknight@nmma.org or 202-737-9757.

Sincerely,

John McKnight
Vice President of Government Relations
National Marine Manufacturers Association