INDEPENDENT LUBRICANT MANUFACTURERS ASSOCIATION

March 2, 2012

Honorable Juan Vargas
California State Senate
State Capitol, Room 3092
Sacramento, California 95814

Re: Senate Bill 1127

Dear Senator Vargas:

The Independent Lubricant Manufacturers Association ("ILMA") would like to express its concerns with and opposition to your bill, SB 1127, as introduced. Exempting "consumer products" regulated by the California Air Resources Board ("CARB") under California Health and Safety Code section 41712 from the South Coast Air Quality Management District's ("District") Rule 1144 for certain metalworking fluids and direct-contact lubricants would frustrate the rule's air quality goals and could create severe competitive inequities for suppliers of these fluids in the South Coast Basin, who already have taken significant steps at some expense to comply with Rule 1144

Introduction of ILMA

ILMA is a national trade association of 127 manufacturing member companies. As a group, ILMA member companies blend, compound and sell over 25 percent of the United States' lubricant needs and over 75 percent of the metalworking fluids (MWFs) 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. Base oils are purchased from refiners, who are also competitors in the sale of finished products. Independent lubricant manufacturers succeed by manufacturing and marketing high-quality, often specialized, lubricants. Their success in this competitive market also is directly attributable to their tradition of providing excellent, individualized service to their customers.

A number of ILMA member companies are headquartered in California, including in the South Coast Basin. Other ILMA member companies based outside of the State historically have sold or distributed MWFs and other lubricants into California and the South Coast Basin. ILMA supports the comments you already have received from one of its California members, W.S. Dodge Oil Company, Inc.

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"Evolution" of Rule 1144

It is important for you and other Members of the Legislature to take into account the "evolution" of Rule 1144 as part of your consideration of SB 1127. ILMA and its members, along with other stakeholders, worked closely with the District's staff in the development, adoption and amendment of Rule 1144. With the exception of the WD-40 Company ("WD-40"), there was, and continues to be, general consensus from industry that Rule 1144, as amended, is workable and that compliant products under the rule can be, and are being, provided to end-users in the South Coast Basin. Further, ILMA is co-sponsoring with the District the March 8, 2012 symposium that will be held in Diamond Bar on metalworking fluids and Rule 1144.

WD-40 has not been satisfied with Rule 1144, even though the District built stakeholder support for the rule and incorporated suggestions made by WD-40 during the rulemaking process, including:

- The exclusion of maintenance and repair activities;
- The exclusion of household, commercial and institutional uses; and,
- The exemption of consumer products from prohibition of sale and labeling.

Although WD-40 opposed the U.S. Environmental Protection Agency's State Implementation Plan approval of Rule 1144, as amended, the company did not file suit, seeking judicial review of the final rule. Instead, WD-40 went back to the District, seeking a full exemption from liability or indemnification under Rule 1144 for any use of its consumer products by end-users for non-compliant purposes. Unhappy with the District's response, WD-40 now seeks to have the Legislature, through the enactment of SB 1127, totally exempt consumer products regulated by CARB from Rule 1144. Such exemption, if created by the Legislature would have a number of adverse effects discussed below.

WD-40 Should Be Satisfied with the Liability Protection Provided to All Suppliers

ILMA is perplexed that WD-40 is not satisfied with the same liability protection afforded to all suppliers of metalworking fluids and direct-contact lubricants regulated under Rule 1144. Under Rule 1144(d)(2)(B), a manufacturer, such as WD-40, generally would not be liable for a violation where an end-user had used a regulated lubricant in a non-compliant manner, provided the manufacturer provides its distributors with the written notice provided in the rule. ILMA members, for example, have informed the Association that they have notified their distributors with the required written notice. Further, many ILMA members have provided instructions or training to their distributors (and end-users) on compliance with Rule 1144.

ILMA understands that the District has worked with WD-40 on an Advisory Notice and an "On the Air" video to assist the company's distributors and other customers. To the best of ILMA's knowledge, WD-40 has not set forth any reasonable basis to be treated differently than any other supplier under Rule 1144 with respect to the liability protection provided in Rule 1144(d)(2)(B). To the extent that the overwhelming majority of uses of WD-40's products are in consumer applications or for commercial maintenance and repair activities – which are exempt under Rule 1144 – then WD-40's motivations in pursuing the legislation must lie elsewhere than fears of enforcement actions by the District.

The Legislature Should Not Pick "Winners" and "Losers" under Rule 1144

ILMA members have reported to the Association that they have spent the past two years developing Rule 1144 compliance strategies. Such strategies include the reformulation of their metalworking fluids and direct-contact lubricants as "super compliant" products under the rule, as well as the discontinuation of sale or distribution of certain non-compliant products into the South Coast Basin. These efforts have not been without the expenditure of considerable time and money, including laboratory and field testing. It would be extremely unfair to suppliers of metalworking fluids and direct-contact lubricants if, following a lawful, open public process in promulgating Rule 1144, the Legislature were now to pick one company – that is, WD-40 -- as a "winner" simply because maybe a dozen out of 2,000 uses of its product (claimed on its website) at most are affected by the rule.

It would seem to ILMA that WD-40 could use its resources more effectively in reformulating, like other suppliers, its products used for those dozen uses regulated under Rule 1144 into compliant or super-compliant products. WD-40 should be asked why it cannot make good-faith efforts to comply with Rule 1144 like other suppliers and why instead it should be singled-out for a legislative exemption.

SB 1127 Would Provide WD-40 with a Competitive Advantage

Anecdotal information from ILMA members (and we believe corroborated by District investigations) suggests that WD-40's products are not routinely used in parts manufacturing and assembly operations in the South Coast Basin -- that is, the uses that are regulated under Rule 1144. Instead, WD-40 has an excellent reputation (admired by ILMA and its members) for its products being used for typical repair and maintenance purposes and consumer uses, which are excluded from coverage under Rule 1144. If WD-40 were to receive a full exemption for its products under Rule 1144, then the company would have the unfettered ability to sell its non-compliant products for use in parts manufacturing and assembly in the South Coast Basin. WD-40 effectively would have no regulatory barriers under Rule 1144 and could sell its products for these regulated uses without regard to the rule. Such a "loophole" likely is WD-40's motivation in seeking an exemption from the Legislature. This simply is unfair to other suppliers, as it would create competitive imbalances in the South Coast Basin, especially when these other suppliers have invested considerable time and resources in making and substituting super compliant products.

There also is another way to look at the unintended effects of SB 1127, if enacted as introduced. As you know, SB 1127 would amend California Health and Safety Code section 41712. Under the definition of "consumer product" in section 41712(a), Rule 1144 could be totally eviscerated if an ILMA member or any other supplier of metalworking fluids or direct-contact lubricants simply makes one or more sales of its now-regulated product to households or institutional customers. The product would now become a "consumer product" and then would be fully exempt from Rule 1144. ILMA doubts that this is a potential result you envisioned when drafting SB 1127.

SB 1127 Would Retard the District's Air Quality Goals in Rule 1144

Under either of the above scenarios, the enactment of SB 1127, as introduced, would adversely affect the air quality improvement goals of Rule 1144. Section 41712, as understood by ILMA, would not regulate the use of consumer products in parts manufacturing and assembly operations – that is, the specific uses covered by Rule 1144 and within the District's jurisdiction. It appears to ILMA that the CARB rules on consumer products, and the District's coverage of parts manufacturing and assembly in Rule 1144, are intended to be complementary, rather than mutually exclusive. Enactment of SB 1127, as introduced, would leave a regulatory "gap" that would undercut the intent of the Legislature, CARB and the District in protecting human health and the environment.

Rule 1144 Has Not Cost Jobs

ILMA is unaware of any member company that has been forced to reduce or eliminate jobs because of Rule 1144. To the best of ILMA's knowledge, WD-40 has not presented any credible evidence that Rule 1144 has caused it, or any other supplier for that matter, to reduce its employee headcount. Rule 1144 is not a jobs "killer." To the contrary, if SB 1127 is enacted, as introduced, it could cause the market distortions discussed above that could lead some suppliers to layoff staff.

Conclusion

ILMA appreciates this opportunity to share its views on SB 1127. We hope that you will reconsider providing WD-40 with a full exemption of its products from Rule 1144 in your proposed legislation. SB 1127, as introduced, will provide a significant, unfair competitive advantage to one company that historically does not operate in the area regulated by Rule 1144; will undercut the State and the District's air quality goals; and, may lead to job losses when compared to the current impact of Rule 1144.

We would be happy to discuss ILMA's concerns with you and your staff.

Sincerely,

Celeste Powers

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Executive Director

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