

What Every Business Needs to Know About Prop 65

Buchalter and Exponent

Presenters



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Agenda

- History of Prop. 65, scope, governing bodies, trends
- How to determine chemicals of concern and conduct an exposure analysis; upcoming changes
- How to meet the warning requirements
- How Prop. 65 is enforced, and what to do if you receive a Notice of Violation

Important

Recent email from OEHHA

- *“The new regulations **do not** determine when a warning is required, they provide guidance for businesses when they have decided to provide a warning for a given exposure to a listed chemical!”*



Brief Primer on Proposition 65

Prop 65 – The Basics

- Safe Drinking Water and Toxic Enforcement Act
- Covers both Product and Environmental/Occupational Warnings
- Regulated by California Office of Environmental Health Hazard Assessment and Enforcement by California Attorney General
- Warnings for Exposure to Enumerated Chemicals
- Applies to businesses with 10 or more employees
- <https://www.buchalter.com/publication/primer-new-requirements-proposition-65/>

The list of chemicals

🔍

Listed Chemicals

- Choose - ▼

Products

- Choose - ▼

Places

- Choose - ▼

STATE OF CALIFORNIA
 ENVIRONMENTAL PROTECTION AGENCY
 OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
 SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

CHEMICALS KNOWN TO THE STATE TO CAUSE CANCER OR REPRODUCTIVE TOXICITY
 September 13, 2019

The Safe Drinking Water and Toxic Enforcement Act of 1986 requires that the Governor revise and republish at least once per year the list of chemicals known to the State to cause cancer or reproductive toxicity. The identification number indicated in the following list is the Chemical Abstracts Service (CAS) Registry Number. No CAS number is given when several substances are presented as a single listing. The date refers to the initial appearance of the chemical on the list. For easy reference, chemicals which are shown underlined are newly added. Chemicals or endpoints shown in ~~strikeout~~ were placed on the Proposition 65 list on the date noted, and have subsequently been removed.

<u>Chemical</u>	<u>Type of Toxicity</u>	<u>CAS No.</u>	<u>Date Listed</u>
A-alpha-C (2-Amino-9H-pyrido [2,3-b]indole)	Cancer	26148-68-5	January 1, 1990
Abiraterone acetate	developmental, female, male	154229-18-2	April 8, 2016
Acetaldehyde	cancer	75-07-0	April 1, 1988
Acetamide	cancer	60-35-5	January 1, 1990
Acetazolamide	developmental	59-66-5	August 20, 1999
Acetochlor	cancer	34256-82-1	January 1, 1989
Acetohydroxamic acid	developmental	546-88-3	April 1, 1990
2-Acetylaminofluorene	cancer	53-96-3	July 1, 1987
Acifluorfen sodium	cancer	62476-59-9	January 1, 1990
Acrylamide	cancer	79-06-1	January 1, 1990
Acrylamide	developmental, male	79-06-1	February 25, 2011
Acrylonitrile	cancer	107-13-1	July 1, 1987
Actinomycin D	cancer	50-76-0	October 1, 1989
Actinomycin D	developmental	50-76-0	October 1, 1992
AF-2;[2-(2-furyl)-3-(5-nitro-2-furyl)] acrylamide	cancer	3688-53-7	July 1, 1987
Aflatoxins	cancer	---	January 1, 1988
Alachlor	cancer	15972-60-8	January 1, 1989
Alcoholic beverages	cancer	---	April 29, 2011
Alcoholic beverages, when associated with alcohol abuse	cancer	---	July 1, 1988
Aldrin	cancer	309-00-2	July 1, 1988
All-trans retinoic acid	developmental	302-79-4	January 1, 1989

Wide range of chemicals

- Additives in pesticides;
- Household products, food, drugs, dyes, solvents, used in manufacturing and construction;
- Byproducts of chemical processes.
- Lead in surface coatings/paint and materials;
- Phthalates in soft plastics (BBP, DBP, DEhP, DIDP, DINP, DnHP);
- BPA in hard plastics.

Products



Alcoholic Beverages



Diesel Engine Exhaust



Food



Furniture Products



Passenger and Off-Highway Vehicles



Petroleum Products



Recreational Vessel



Wood Dust

Places



Amusement Parks



Dental Offices



Designated Smoking Areas



Enclosed Parking Facilities



Hotels



Restaurants



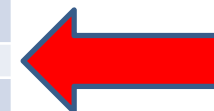
Service Stations



Vehicle Repair Facilities

Recent Notices

Environ. Health Advocates	Nicholas & Tomasevic LLP	Kroger/Ralphs	Acrylamide in vanilla wafers
Environ. Health Advocates	Glick Law Group	Baskin-Robbins	Acrylamide in cake cones
Anthony Ferreiro	Evan Smith	Uriah Products; Walmart	DEHP in booster cables
Consumer Advocacy Group	Yeroushalmi & Yeroushalmi	MJ Accessories	Handbag with PVC components
Anthony Ferreiro	Evan Smith	Boot Barn	Chromium in leather lined rancher gloves
Safe Products for Californians, LLC	Tanya Moore	Home Goods	Lead and lead components in dietary supplements
Kingpun Cheng	Parker Smith	Wal Mart, Bell Sports	Lead in tire inflator
Center for Environmental Health	Lexington Law Group	Albertsons, Safeway, Humm Kombucha	Ethyl alcohol in Kombucha Alcoholic Beverages
Center for Environmental Health	Lexington Law Group	TB Footwear	Chromium in leather footwear
Ema Bell	Evan Smith	Target, American Promotional Events	Di(2-ethylhexyl)phthalate in TNT Fireworks Pack N Pop
Anthony Ferreiro	Evan Smith	Walmart	DEHP in bulletin board storage bag
Ema Bell	Ean Smith	Asweets Global, Inc.	Di(2-ethylhexyl)phthalate in Campout Fire & Smores Set
Precila Blabbo	Evan Smith	Victoria's Secret	DINP in bag
Consumer Advocacy Group	Yeroushalmi & Yeroushalmi	Daiso Industries	Di(2-ethylhexyl)phthalate and Di-n-butyl phthalate (DBP) in plastic bath tub, shower mat, sandals with plastic components
Jan Graham	Ali Abtahi, Simons Hanly & Conroy	Multiple Talc manufacturers and retailers	Arsenic (inorganic arsenic compounds), Arsenic (inorganic oxides), Chromium (hexavalent compounds), Lead, Lead and lead compounds, Silica, crystalline (airborne particles of respirable size)

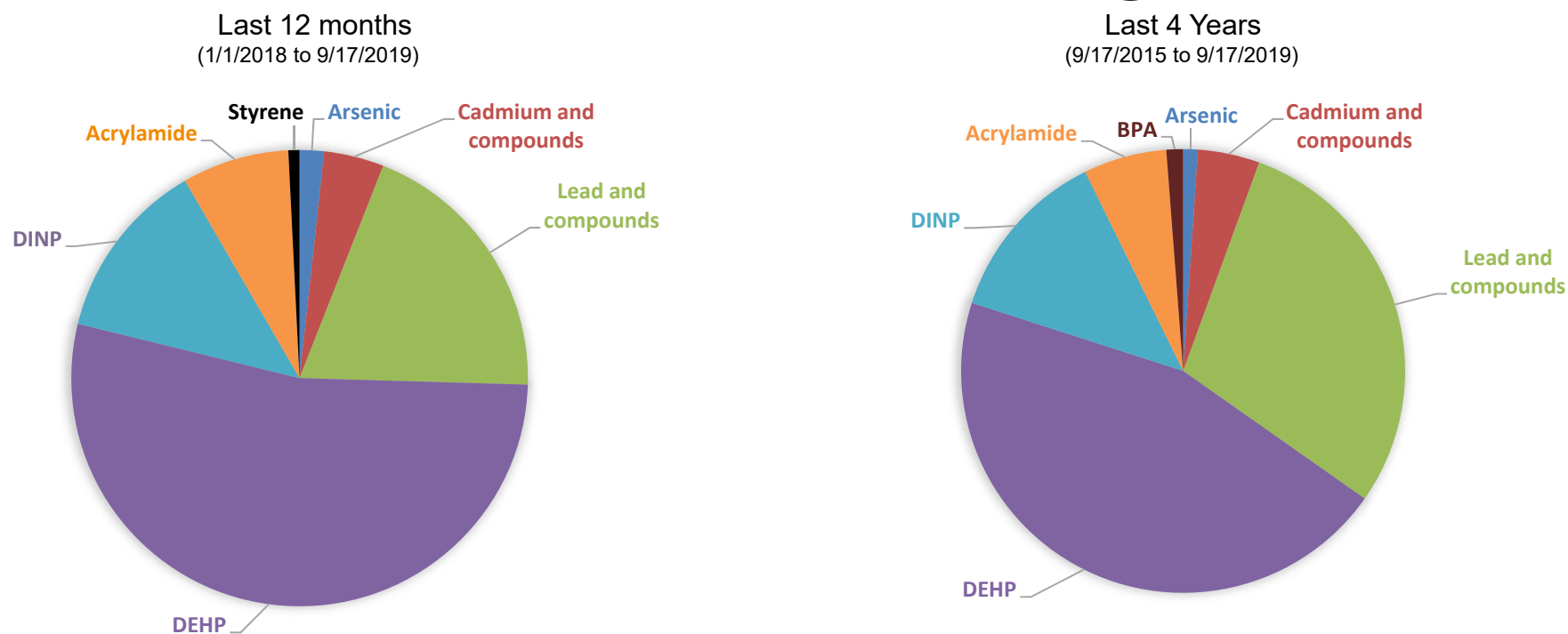


Recent Notices (Auto)

- Custodio & Dubey LLP- primary filer against auto industry/lead

Auto electrical repair kits	DEHP
12V air compressor	DEHP
Brass automotive center punch/brass ball valve ¼"	Lead and lead compounds
Auto gauge electric senders	Lead
PVC Air hose	DEHP, DBP, DINP
Car dealerships [automobile or motor vehicles]	Benzene, carbon monoxide, diesel engine exhaust, others
Tires	Request that the DTSC designate zinc in tires as a priority product

Chemicals Involved in 60-day Notice Filings
(Percent of all Filings*)

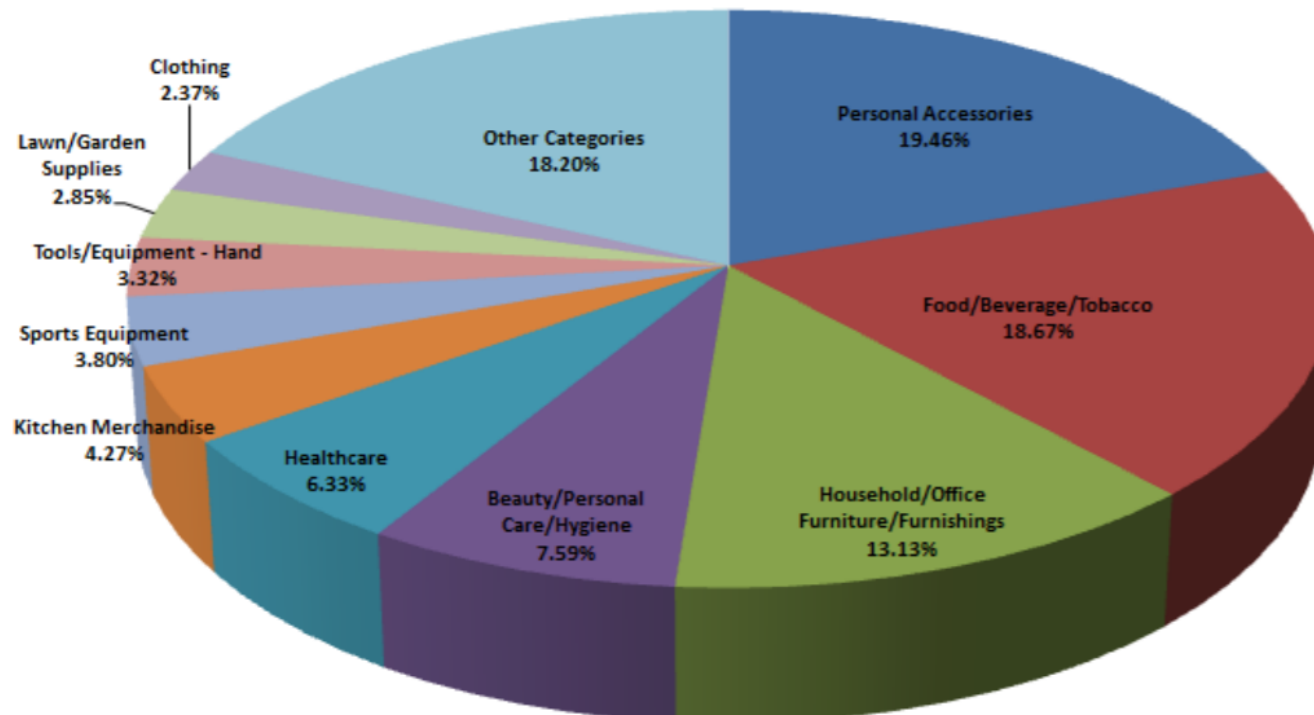


*some filings may involve multiple chemicals

Top Targeted Product Categories

Q2 2019 TOP TARGETED PRODUCT CATEGORIES

* Products are classified in accordance to the GPC (global product classification system). <http://www.gs1.org/gpc>



Commonly Targeted

- Easy for bounty hunters to spot;
- Looking for non-labeled products; short form;
- Phthalates- softened plastics and vinyl materials
- Cadmium- found in yellow, red and orange pigments
- Lead- brass alloys;
- Easily identified in product detail pages on websites

Practical Advice

- All parties in stream of commerce subject to Prop 65 (suppliers-manufacturers-distributors);
- Compliance or resolution is on all parties;
- Can you put the compliance on others;
- Ask upstream retailers for information;
- Provide written notice to downstream retailers;
- Indemnification agreements are key.

Practical Advice

- Do you know what is in your products? Inventory products/materials/substances;
- Getting accurate information through the supply chain: Product composition – Bills of Material, Safety Data Sheets, Commercial Invoices;
- If you are asked for information, be specific (eg. Instead of “wood and metal” state “MDF with nickel plated fittings”);
- Cross reference with Prop. 65 chemical list to determine if finished product requires a warning and which chemical you choose;
- Manufacturer vs supplier responsibilities- indemnity/contract;
- Document your efforts/compliance.

Practical Advice

- Where to find/put Prop 65 compliance terms:
 - Written notification forms;
 - Vendor agreements, supplier agreements
 - Agreements of Sale
 - Terms and Conditions
 - Purchase Orders
 - Warranty Agreements

Common Issues

- Do you want a label on all products exported into North America with a warning label (despite destination to CA);
- Will you permit products exported *outside* North America to be unlabeled (competition);
- Altered, obscured, removed or tampered with warnings by retailers.

Common Issues

- Bulk packaging (“not to be re-packaged for individual sale”);
- If repurposed or repackaged- the re-packager will agree to defend and indemnify the company in the event the product ends up in consumer’s hand not labeled;
- Ensure prompt notice to everyone in the stream of a Prop. 65 claim or lawsuit.

AG's Enforcement Trends

- Concern about over warning; improper warning;
- Ethics of Prop. 65- pre notice letters being sent;
- Settlements with little testing;
- Consent judgments vs out of court settlements;
- Out of state sales.



Enforcement Trends- Notice to Retailer

- Currently manufacturers, producers, etc. can either put a label on the product or provide the retailer with the required warnings;
- Due to confusion in supply chain, OEHHA has proposed amendments to allow parties in the supply chain to provide the notice to the authorized agent to the next link in the supply chain, even if it is not the retailer;
- And if there is no authorized agent to accept the notice, then it can go to the legal agent for service of process;
- This is not intended to circumvent the current policy of minimizing burden on retailers

Notice to Retailer

Must:

- State that a warning is required
- Include the name, description or identifying information for the product;
- Include all necessary warning materials

Business providing notice must obtain confirmation of receipt of notice, electronically or in writing. Set up an email address to track.

Notice to Retailer

- Within 6 months during the first year
February 28, 2019 and then annually;
- Additional notice within 90 days when a new or different chemical endpoint is included;
- Retailer must provide notice within 5 business days of when it has actual knowledge of potential exposure.

Enforcement/Preemption



- Acetaminophen – to be considered for listing as a carcinogen
- Glyphosate- on Prop 65 list, but EPA says it is safe and listing it as a carcinogen is a “false claim”

Enforcement Trends



- Cal. Educ. Code Section 32064 prohibits CA public and private schools from purchasing art or craft materials containing a toxic substance for use by students in K-6;
- In addition to these products, those with Prop. 65 warning should not be purchased for use in grades K-6.

Sample list of prohibited items

Adhesives		
<i>Substances applied to a surface to bind materials together, such as glue, rubber cement, plastic cement, or spray adhesives.</i>		
Blockhead Innovations	EcoGloo	1
C2F, Inc.	ProArt Rubber Cement	1
DESIGN MASTER Color Tool, Inc.	DESIGN MASTER Glue for Glitter (Aerosol)	1
DESIGN MASTER Color Tool, Inc.	Tack 2000 Spray Adhesive (Aerosol)	1
Helmar Australia Pty. Ltd.	101 Quilt Basting Spray Adhesive	1
Helmar Australia Pty. Ltd.	Helmar 450 Quick Dry Adhesive	1
Helmar Australia Pty. Ltd.	Helmar Fabric Glue	1
Helmar Australia Pty. Ltd.	Helmar Premium Craft Glue	1
Helmar Australia Pty. Ltd.	Repositionable Spray Adhesive	1
New Port Sales, Inc.	All Gloop	1
New Port Sales, Inc.	Craft Glue	1
Newell Brands	Elmer's Contact Cement	1
Newell Brands	Elmer's Craftbond Extra-Strength Spray Adhesive	1
Newell Brands	Elmer's Craftbond Fabric and Leather Adhesive	1
Newell Brands	Elmer's Craftbond Mounting Spray Adhesive	1
Newell Brands	Elmer's Craftbond Multi-Purpose Spray Adhesive	1
Newell Brands	Elmer's Craftbond Polyurethane Glue	1
Newell Brands	Elmer's Craftbond Rubber Cement	1
Newell Brands	Elmer's Craftbond Ultra Stix-All Clear	1
Newell Brands	Elmer's Extra-Strong Spray Adhesive	3
Newell Brands	Elmer's Glue-All Max	1
Newell Brands	Elmer's Household Cement	1
Newell Brands	Elmer's Model & Hobby Cement	1
Newell Brands	Elmer's Multi-Purpose Spray Adhesive	3
Newell Brands	Elmer's No Wrinkle Rubber Cement	1
Newell Brands	Elmer's Pegalo Todo Gel	1
Newell Brands	Elmer's Plastic Cement	1
Newell Brands	Elmer's ProBond Polyurethane Glue	1
Newell Brands	Elmer's Rotted Wood Repair Epoxy Putty	1
Newell Brands	Elmer's Slide-All Dry Spray Lubricant	1
Newell Brands	Elmer's Stix-All	1
Newell Brands	Elmer's Super Fast Epoxy Cement	1
Newell Brands	Elmer's Super Glue	1
Newell Brands	Elmer's Ultimate Glue	1
Newell Brands	Elmer's Ultra Stix-All Gel	1

*Some products in this line bear the AP Seal.

Enforcement Trends



“Rental vehicle” exposure
– effective 10/1/19;

Not defined in statute;

May use language for
motor vehicle sale
exposure;

Many options for location
of warning

Enforcement Trends



- Pending deliberations on whether marijuana, marijuana smoke, cannabis extracts and THC also cause reproductive toxicity (in addition to cancer as currently listed)

A View From the Scientist: Safe Harbor Levels and Testing

EMILY GOSWAMI

What is a Prop 65 Safe Harbor Level?

- A level of EXPOSURE to a listed chemical that does not require a warning
 - no significant risk level (NSRL) for carcinogens
 - maximum allowable dose level (MADL) for chemicals that cause reproductive or developmental toxicity
- SHLs are in units of micrograms/day ($\mu\text{g}/\text{day}$)
- It is NOT a concentration or content level of a chemical (NOT ppm, mg/kg or %)

But aren't there also existing content limits?

- Yes. Many settlement reformulation limits have established de facto composition limits for ease of implementation
 - Only for a FEW chemicals and they are product specific
 - Laboratory testing cannot tell you if you are below a SHL – only if you are below a certain content concentration
- **Lead**
 - SHL = 0.5 $\mu\text{g}/\text{day}$
 - Settlement value = 90 ppm in paints/coatings
- **Phthalates**
 - SHL = range from 8 to 2200 $\mu\text{g}/\text{day}$
 - Default settlement value = 1,000 ppm (0.1%)

What if there is no SHL?

- Only ~300/900 chemicals have SHLs
- You still may need to warn
- Can warn anyway OR
- Develop your own level
 - Use agency recommended toxicity values
 - Develop toxicity values by reviewing the published literature
 - OEHHA may develop SHL later on and you may need to re-evaluate your level is different

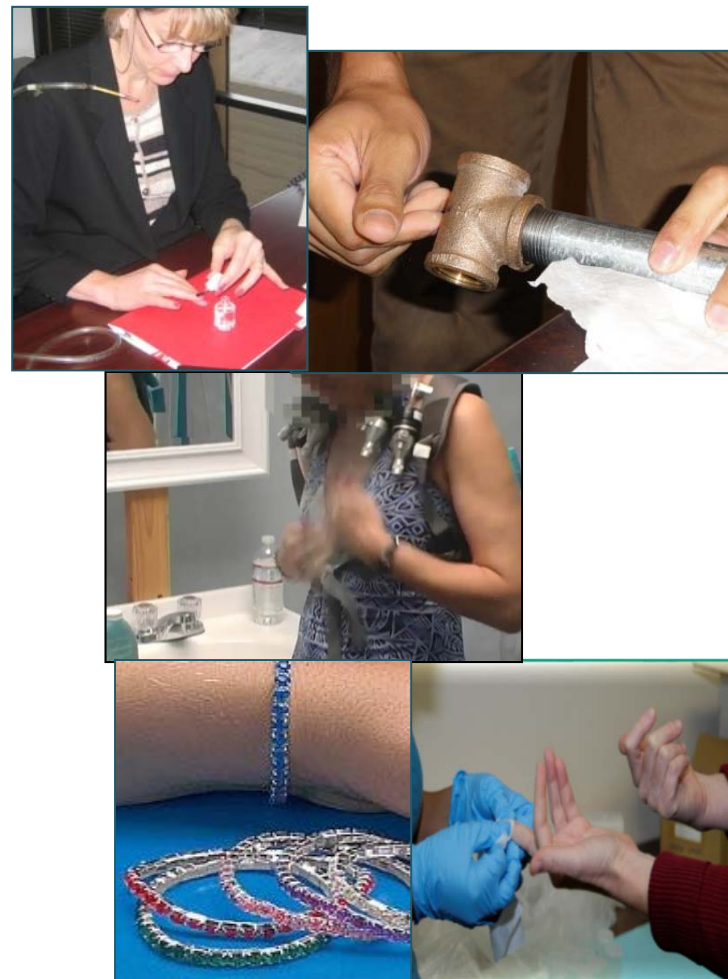
Do I have a chemical above a SHL?

- Get as much information from supplier as you can
- Prioritize high risk chemicals and products
- Conduct targeted sampling of products
 1. Is it present?
 2. If yes, does it pose an exposure to an “average consumer”?
 3. If yes, consider exposure testing...



Is exposure testing useful?

- YES, it can be in certain instances.
- Requires evaluation of how your product is used, handled
 - But this does NOT need to be complicated and costly
 - Used by plaintiffs as well as defendants
- Laboratories usually do not conduct this type of testing
- Requires toxicologist or exposure assessor to conduct and evaluate the data



Testing Types

Content Testing

- Determines if chemical is present
- Can be conducted by laboratory
- Depending on results, can make some very conservative assumptions for exposure
- Does not account for various exposure pathways

Exposure Testing

- Determines how much a person may be exposed to
- Need toxicologist / exposure assessor
- Can get more realistic values

Safe Use Determinations (SUDs)

- OEHHA has granted SUDs for products based on exposure testing for several products
- Past SUDs can be used in current assessments
 - Valuable OEHHA-approved assumptions
- Can apply for SUD for your product
- Can be an excellent mechanism
- Process can be lengthy
- Cannot seek SUD if in current litigation
- SUD may not be issued

Proposition 65 Compliance Strategies

- Demonstrate chemical is below SHL
 - Know your products, materials, and suppliers
 - Chemical testing with supplier understood criteria
 - Documentation
 - Internal checks/auditing – off the shelf testing
 - You may still be served with a 60-day notice but you will be prepared

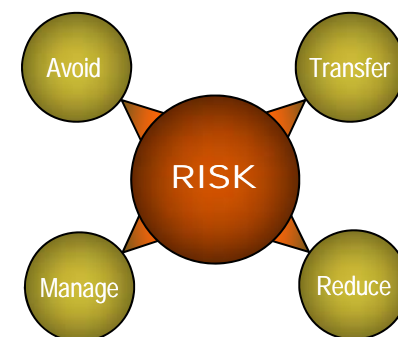
Proposition 65 Compliance Strategies

- Or you can warn anyway
 - Can be costly
 - Not reasonable in some situations
 - Branding issues/competitor products
 - Some retailers do not want Proposition 65 labeled products
 - Unlikely to be served with a 60-day notice but
 - Requires a well managed labeling program
 - Be ready for customers inquires/questions, aggressive public interest groups
 - Be ready for plaintiffs to look for inaccurate labels



Case Study – Expanding Retail into California

- Identified **high priority** products and chemicals of interest
- Identified **gaps in knowledge** in chemical use for products
- Provided **supplier program guidance** to ensure they have the relevant Proposition 65 chemical specific compliance requirements
- Developed Proposition 65-appropriate **testing procedures** to supplement existing testing procedures
- Identified products that may be best handled through **labeling** of products or additional testing
- **In-store verification** of labels and testing



Updates and Trends; Changes to Warning Requirements

Prop 65: Changes in 2018

- Modified warnings;
- Assign primary responsibility to suppliers;
- Transmission of warnings;
- E-commerce warnings, catalogs.

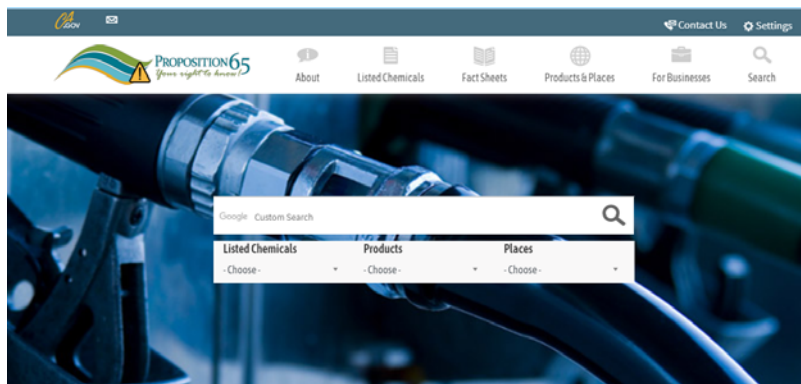
Use OEHHA's safe harbor warnings- deemed "clear and reasonable"

Existing court-approved settlements/judgments are grandfathered in- must cover company and specific product

August 30, 2018

Products manufactured *before 8/30/18* with old label are still useable

Yellow exclamation point, hyperlink to website and standard vs. short form warning, one chemical for each endpoint



www.p65warnings.ca.gov

Welcome to the Proposition 65 Warnings Website

The California Office of Environmental Health Hazard Assessment is establishing this website to provide the public with information on [chemicals](#), [products](#) and [locations](#) often associated with Proposition 65 warnings. These warnings inform Californians about their exposures to chemicals that cause [cancer](#), birth defects or other [reproductive harm](#).

Visiting this website regularly will help you learn about these chemicals and how you can reduce your [exposure](#) to them. We will be adding new information frequently.

- listed chemicals
- specific products and locations requiring warnings
- chemical fact sheets
- FAQs
- Safe Harbor Warnings



[Home](#) | [Chemicals](#) | [Lead and Lead Compounds](#)



Lead and Lead Compounds

Listed as Causing

Cancer

Cancer: 10/01/1992
Basis for Listing: [AB-US EPA](#)

Reproductive Toxicity

Developmental Effects: 02/27/1987
Basis for Listing: [FR](#)

Effects on Female Reproductive System: 02/27/1987
Basis for Listing: [FR](#)

Effects on Male Reproductive System: 02/27/1987
Basis for Listing: [FR](#)

Standard Warning

Cancer and Reproductive Harm

- ✓ Fill in for a chemical known to be a carcinogen
- ✓ Fill in for a chemical known to be a reproductive toxin
- ✓ Delete one if inapplicable



WARNING: This product can expose you to chemicals including lead and DEHP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Short Form Warning

Cancer and Reproductive Harm

- ✓ Fill in for a chemical known to be a carcinogen
- ✓ Fill in for a chemical known to be a reproductive toxin
- ✓ Delete one if inapplicable



WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

Specific Requirements

- **Language**
 - If product instructions / warnings in language other than English, Prop 65 warning must be in those languages too.
- **In Store**
 - Shelf tags or on product warnings
- **Size**
 - Short form - at least 6 pt. type.
 - Standard - at least as large as other consumer warnings on label.
- **Catalog**
 - Requires warning in catalog and on product.
 - Must be prominently displayed.
 - Short form warnings okay if short form warning used on product too.
- **Internet**
 - Requires both internet (hyperlink) warning and product warning.
 - Warning given prior to completing purchase.

Internet Warnings: Target & Amazon

Warning in Target's Online Product Description

Amazon Prop 65 Page for Sellers

Specifications

Dimensions (Overall): 46 inches (L) x 5.1 inches (W)

Size: One Size Fits Most

Weight: 1 pounds

Targeted Muscle Area: ABS

Material: Neoprene

TCIN: 52481308

UPC: 009283585570

Item Number (DPCI): 082-02-2096



⚠ WARNING:CANCER AND REPRODUCTIVE HARM – www.p65warnings.ca.gov

If your product has one of the following on-product warnings printed on or affixed to the product or its container or wrapper, then you must select one of the following warning types:

California Proposition 65 warning type	Warning that will be displayed
On Product Cancer	⚠Warning: Cancer – www.P65Warnings.ca.gov/
On Product Reproductive	⚠Warning: Reproductive Harm – www.P65Warnings.ca.gov/
On Product Combined Cancer and Reproductive	⚠Warning: Cancer and Reproductive Harm – www.P65Warnings.ca.gov/

If your product is an Alcoholic Beverage, Raw Wood, a Passenger or Off-road Vehicle, a Recreational Vessel, or includes a Diesel Engine, then you must select the relevant warning type:

California Proposition 65 warning type	Warning that will be displayed
Alcoholic Beverage	⚠Warning: Drinking distilled spirits, beer, coolers, wine and other alcoholic beverages may increase cancer risk, and, during pregnancy, can cause birth defects. For more information go to www.P65Warnings.ca.gov/alcoholic-beverages .
Raw Wood	⚠Warning: Drilling, sawing, sanding or machining wood products can expose you to wood dust, a substance known to the State of California to cause cancer. Avoid inhaling wood dust or use a dust mask or other safeguards for personal protection. For more information go to www.P65Warnings.ca.gov/wood .
Passenger or Off-road Vehicle	⚠Warning: Operating, servicing and maintaining a passenger vehicle or off-road vehicle can expose you to chemicals...

What To Expect If You Get A 60-Day Notice Of Violation

60 Day Notice

Prop 65 Enforcers:

- Attorney General
- District Attorney
- City Attorney
- Citizens, groups or “bounty hunters”

Private Party Enforcement

- 60 days notice of intent to sue
- If no enforcement- lawsuit can proceed

Statute of Limitations

- 1 year for statutory penalty violations (1 year prior to date of notice or complaint)

October 10, 2019

Evriholder Products, LLC
c/o Honeylyn Chang
1500 S. Lewis St.
Anaheim, CA 92805

T.J. Maxx of CA, LLC
c/o CT Corporation System
818 W. 7th St., Suite 930
Los Angeles, CA 90017

Re: NOTICE OF VIOLATION AGAINST EVRIHOLDER PRODUCTS, LLC AND T.J. MAXX OF CA, LLC OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6

To Whom It May Concern and to Public Prosecutors:

Ecological Alliance, LLC, a California limited liability company (“Alliance”) is a California company acting in the interest of the general public seeking to further, among other causes, the protection of the environment, toxics reduction, the promotion and improvement of human health, the improvement of workers and consumer rights, environmental education and corporate accountability. As described below, Alliance has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65” or “Act”), codified at Cal. Health & Safety Code §25249.5 *et seq.* by Evriholder Products, LLC, an Indiana corporation and T.J. Maxx of CA, LLC, a Virginia limited liability company (collectively the “Violators”). This letter serves to provide Alliance’s notification of these violations to the Violators and elected prosecutors. Pursuant to §25249.7(d) of the statute, Alliance intends to bring an enforcement action sixty (60) days or more after effective service of this notice unless the appropriate public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

The products which are causing an exposure without a warning in violation of Proposition 65, are telescopic dusters, including but not limited to Item #150606/UPC #714415263362 (“Products”) manufactured/distributed by Evriholder Products, LLC and offered for sale by retailers, including T.J. Maxx of CA, LLC, to California consumers.

A copy of the Proposition 65 summary prepared by the Office of Environmental Health Hazard Assessment is attached, to the copy of this letter served to the Violators.

Certificate of Merit

- Has been in effect since 2001
- Applies to private enforcers
- Attest that enforcer has consulted with someone with relevant expertise and there is a reasonable and meritorious basis for action
- Must attach “factual information” to back up certificate of merit-filed with Cal. AG

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

Re: Ecological Alliance, LLC's Notice of Proposition 65 Violations by Evriholder Products, LLC and T.J. Maxx of CA, LLC

I, Vineet Dubey, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience and have assembled evidence attached to the copy for the California Attorney General as Exhibit 1 to this Certificate of Merit regarding the lack of warnings for the listed chemical that is the subject of the notice.

4. Based on the information obtained and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2).

What do I do next?

- Consult with defense attorney / contact noticing party
- Insurance or indemnity
- Collect testing and data from plaintiff
- Collect internal testing and sales data
- Consider lab testing and exposure assessment
- Consider settlement / consent judgment
- Stop selling product / instruct retailers
- Reformulate or warn

Settlements vs. Consent Judgment

Settlement

- Settlement agreement must be submitted to AG's office
- Release on own behalf-not public
- Cannot prevent future suits
- Publicly available

Court approval

- If filed in court, the court must approve the settlement – binding
- Served on AG
- Can prevent future suits
- Violation = contempt
- Publicly available

Penalties and Fines

- \$2,500 per day, per violation
- Injunctive relief
- Public prosecutor- unfair business practice claim = more penalties!
- Legal fees
- Attorney's fees- 25% of penalty collected
- 2018 Figures
 - 829 settlements;
 - Over \$35M in total settlement payments
 - Over \$27M in attorneys' fees and costs

**QUESTIONS/
COMMENTS?**

Thank you for your time and attention today!



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thank you!