

Proposition 65 Made Simple

What Is Proposition 65?

In November 1986, California voters overwhelmingly approved an initiative to address growing concerns about exposures to toxic chemicals. That initiative became The Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name, Proposition 65.

What Does Proposition 65 Require?

Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, birth defects or other reproductive harm. Agents that cause cancer are called carcinogens; those that cause birth defects or other reproductive harm are called reproductive toxicants. This list must be updated at least once a year. Over 550 chemicals have been listed as of April 1, 1996. Proposition 65 imposes certain controls that apply to chemicals that appear on this list. These controls are designed to protect California's drinking water sources from contamination by these chemicals, to allow California consumers to make informed choices about the products they purchase, and to enable residents or workers to take whatever action they deem appropriate to protect themselves from exposures to these harmful chemicals.

Thus, Proposition 65 also provides a market-based incentive for manufacturers to remove listed chemicals from their products. The benefits of the Proposition have their costs. Businesses have incurred expenses to test products, develop alternatives, reduce discharges, provide warnings and otherwise comply with the requirements of the Proposition. Recognizing that compliance with the Proposition comes at a price, Cal/EPA and the Office of Environmental Health Hazard Assessment (the lead agency for Proposition 65 implementation) have worked hard to minimize any unnecessary regulatory burdens and ensure that placement of a chemical on the list is done in accordance with rigorous science in an open public process.

- **What Kinds of Chemicals Are on the List?**

The list contains a wide range of chemicals, including dyes, solvents, pesticides, drugs, food additives, and by-products of certain processes. These chemicals may be naturally occurring, or synthetic. Some of them are ingredients of common household products, others are specialty chemicals used in very specific industrial applications.

- **How Does a Chemical Get Listed?**

The State of California relies upon information that already exists in the scientific literature when determining the threat of a chemical. A chemical is listed if the "state's qualified experts"-two independent committees of scientists and health professionals appointed by the Governor-find that the chemical has been clearly shown to cause cancer or birth defects or other reproductive harm.

In addition, a chemical can be listed if it has been classified as a carcinogen or as a reproductive toxicant by an organization that has been designated as "authoritative" for purposes of Proposition 65. The organizations that have been designated as authoritative are the U.S. Environmental Protection Agency, U.S. Food and Drug Administration, National Institute for Occupational Safety and Health, the National Toxicology Program and the International Agency for Research on Cancer. A chemical can also be listed if it is required to be labeled or identified as a carcinogen or as a reproductive toxicant by an agency of the state or federal government.

- **What Are the Responsibilities of Companies Doing Business in California?**

Any company with ten or more employees that operates within the State or sells products in California must comply with the requirements of Proposition 65.

Under Proposition 65, businesses are:

- 1) prohibited from knowingly discharging listed chemicals into sources of drinking water; and
- 2) required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, by posting signs at the workplace, or by publishing notices in a newspaper.

• What Does a Warning Mean?

If you are given a warning or if a warning is posted in a workplace, a facility or an area in your community, this means that the business issuing the warning knows that one or more listed chemicals is present in its product, in its workplace, or in its emissions into the environment. Under the law, a warning must be given unless a business demonstrates that the exposure it causes poses no significant risk. For a chemical that is listed as a carcinogen, the "no significant risk" level is defined as the level which is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. In other words, if you are exposed to the chemical in question at this level every day for 70 years, theoretically it will increase your chances of getting cancer by no more than 1 case in 100,000 individuals so exposed. For chemicals that are on the list as reproductive toxicants, the no significant risk level is defined as the level of exposure which, even if multiplied by 1,000, will not produce birth defects or other reproductive harm. That is, the level of exposure is below the "no observable effect level (NOEL), divided by 1,000. (The "no observable effect level" is the highest dose level which has not been associated with an observable reproductive harm in humans or test animals.)

When a warning is given by a business, it means one of two things:

- (1) the business has evaluated the exposure and has concluded that it exceeds the no significant risk level; or
- (2) the business has chosen to provide a warning simply based on its knowledge about the presence of a listed chemical, without attempting to evaluate the exposure. In these cases, exposure could be below the Proposition 65 level of concern, or could even be zero.

Since businesses do not file reports with the State regarding what warnings they have issued and why, the State is not able to provide further information about any particular warning which you may have received. The business issuing the warning is the appropriate party to contact if you seek more specific information about the warning, such as what chemicals are involved, in what manner these chemicals are present, and how exposures to those chemicals may or may not occur.

• What Has Been Accomplished as a Result of Proposition 65?

Proposition 65 has provided an effective mechanism for reducing certain exposures that may not have been adequately controlled under existing federal or State laws. For example, a Proposition 65 enforcement action has resulted in the reduction of the amount of lead in ceramic tableware. Air emissions of certain chemicals - including ethylene oxide, hexavalent chromium, and chloroform - from facilities in California have been significantly reduced as a result of Proposition 65.

Certain chemicals on the list are no longer used as constituents of some commonly used products - for example, trichloroethylene is no longer used in most correction fluids, toluene has been removed from many nail care products, and foil caps on wine bottles no longer contain lead.

Proposition 65 has resulted in the extensive dissemination of important information regarding the dangers to the unborn child of drinking alcoholic beverages during pregnancy. The warnings about alcoholic beverage consumption during pregnancy are perhaps the most widespread and visible type of warning issued as a result of Proposition 65.

*This is a draft of the "plain language" brochure produced by the Office of Environmental Health Hazard Assessment (OEHHHA) explaining The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986

25249.5. Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity. No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

25249.6. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity. No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

25249.7. Enforcement. (a) Any person violating or threatening to violate Section 25249.5 or Section 25249.6 may be enjoined in any court of competent jurisdiction. (b) Any person who has violated Section 25249.5 or Section 25249.6 shall be liable for a civil penalty not to exceed \$2500 per day for each such violation in addition to any other penalty established by law. Such civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction. (c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California or by any district attorney or by any city attorney of a city having a population in excess of 750,000 or with the consent of the district attorney by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d). (d) Actions pursuant to this section may be brought by any person in the public interest if (1) the action is commenced more than sixty days after the person has given notice of the violation which is the subject of the action to the Attorney General and the district attorney and any city attorney in whose jurisdiction the violation is alleged to occur and to the alleged violator, and (2) neither the Attorney General nor any district attorney nor any city attorney or prosecutor has commenced and is diligently prosecuting an action against such violation.

25249.8. List Of Chemicals Known to Cause Cancer Or Reproductive Toxicity. (a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d). (b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of this chapter if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state's qualified experts have not found to have been adequately tested as required. (d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section. (e) In carrying out the duties of the Governor under this section, the Governor and his designates shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370.

25249.9. Exemptions from Discharge Prohibition. (a) Section 25249.5 shall not apply to any discharge or release that takes place less than twenty months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8. (b) Section 25249.5 shall not apply to any discharge or release that meets both of the following criteria:

(1) The discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water.

(2) The discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order. In any action brought to enforce Section 25249.5, the burden of showing that a discharge or release meets the criteria of this subdivision shall be on the defendant.

25249.10. Exemptions from Warning Requirement. Section 25249.6 shall not apply to any of the following: (a) An exposure for which federal law governs warning in a manner that preempts state authority. (b) An exposure that takes place less than twelve months subsequent to the listing of the chemical in question on the list required to be published

under subdivision (a) of Section 25249.8. (c) An exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.

25249.11. Definitions. For purposes of this chapter: (a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 4010.1.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water. (d) "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses. (e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

25249.12. Implementation. The Governor shall designate a lead agency and such other agencies as may be required to implement the provisions of this chapter including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement the provisions of this chapter and to further its purposes.

25249.13. Preservation Of Existing Rights, Obligations, and Penalties. Nothing in this chapter shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.

25180.7. (a) Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section 82019, as amended. (b) Any designated government employee who obtains information in the course of his official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his jurisdiction and who knows that such discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within seventy-two hours, disclose such information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that such disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge. (c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years. The court may also impose upon the person a fine of not less than five thousand dollars (\$5000) or more than twenty-five thousand dollars (\$25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction. (d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make such information available to the public without delay.

25192. (a) All civil and criminal penalties collected pursuant to this chapter or Chapter 6.6 (commencing with Section 25249.5) shall be apportioned in the following manner: (1) Fifty percent shall be deposited in the Hazardous Substance

Account in the General Fund. (2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7 to such person. (3) Twenty-five percent shall be paid to the department and used to fund the activity of the local health officer to enforce the provisions of this chapter pursuant to Section 25180. If investigation by the local police department or sheriff's office or California Highway Patrol led to the bringing of the action, the local health officer shall pay a total of forty percent of his portion under this subdivision to said investigating agency or agencies to be used for the same purpose. If more than one agency is eligible for payment under this provision, division of payment among the eligible agencies shall be in the discretion of the local health officer. (b) If a reward is paid to a person pursuant to Section 25191.7, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a). (c) Any amounts deposited in the Hazardous Substance Account pursuant to this section shall be included in the computation of the state account rebate specified in Section 25347.2.