

## CLIENT ALERT

### Prop 65 Reform Update – New OEHHA Draft Changes Target Chemicals

Jan.13.2015

On Monday, January 12, California's Office of Environmental Health Hazard Assessment (OEHHA) released a new formal rulemaking draft concerning its Proposition 65 warning regulations. Officially known as the Safe Drinking Water and Toxic Enforcement Act of 1986, Prop 65 requires businesses to notify Californians of potential exposures to target chemicals "known to" the State to cause cancer, birth defects or other reproductive harm. Over the past year, OEHHA has undertaken an ambitious campaign to "reform" Prop 65, ostensibly to make warnings more "consumer-friendly" and relevant.

A significant portion of the original proposed revisions would add heightened requirements for businesses to warn consumers about potential exposures to 12 "priority chemicals," including naming the chemical(s) in the product warnings. The January 12 draft modifies the list of priority chemicals. Notably, it removes 1,4 dioxane, tobacco smoke, and toluene, and adds methylene chloride, carbon monoxide, and hexavalent chromium.

Accompanying this revised list of chemicals, OEHHA includes a statement of reasons indicating why each of the 12 chemicals was selected. For example, OEHHA expresses concern that Californians do not recognize the potential health risks resulting from low-level exposures to carbon monoxide from sources such as parking garages and tobacco smoke. It notes that seven Prop 65 60-Day Notices have been filed within the past five years alleging exposure to carbon monoxide.

With respect to phthalates, OEHHA cites concerns regarding the effect of cumulative exposures from multiple sources, and the potential impact of such exposures on children. In the past five years, more than 2000 60-Day Notices have been filed regarding alleged phthalates exposures. Similar examples are provided for the other 10 priority chemicals.

OEHHA reiterates that the January 12 draft is not a final product, and urges stakeholders to participate in the drafting process by submitting comments and offering revisions. OEHHA will accept comments on this latest draft from January 16th to April 8.

In contrast to previous comment periods, OEHHA will post comments as they are received, with the intention of fostering a more interactive process. Because OEHHA has signaled that it is not abandoning its stated goal of finalizing these revisions by

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the Summer of 2015, stakeholders are encouraged to participate in these final stages of crafting the reformulated regulations. To that end, a public hearing will be convened in Sacramento on March 25, 2015, from 1:30 to 4:00 PM.

Monday's notice marks the latest development in OEHHA's ambitious efforts to reform Prop 65. As we have chronicled in prior Client Alerts, OEHHA's initial proposals have engendered much discussion and resulting change since their original March 2014 release. The stakeholder communities' efforts have largely tracked OEHHA's stated twin goals of:

- decreasing litigation by making it "clear how to comply [with Proposition 65];" and
- changing the warning format and language to address public perception that current Prop 65 warnings are vague and lack sufficient information to assist consumer decision-making about whether to use certain products.

Fortunately, OEHHA has been generally receptive to the legitimate concerns and interests of the affected business communities, and has regularly solicited feedback from all stakeholders. Nonetheless, because these proposed amendments will be the most sweeping changes to Prop 65 since its original implementation in 1987, all potentially regulated parties should continue to play an active role in the reformation discussion.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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