

New Amendments to California's Proposition 65 Warning Requirements Effective August 30, 2018

By Scott R. Thistle, Esq.

California's Safe Drinking Water and Toxic Enforcement Act, a/k/a "Proposition 65," is a law passed in 1986 as a result of a voter referendum. It seeks to protect the State's drinking water sources from contamination by chemicals determined by the State to cause cancer, birth defects, or other reproductive harm, and it requires businesses to inform consumers about exposures to such chemicals via contact with consumer products sold in California, or via occupational or environmental exposure.

The Proposition and its implementing regulations require the State of California to update annually a list of chemicals that the State has determined to cause cancer or reproductive harm ("the List"). The List currently contains some 900 chemicals.

Any consumer product that might cause exposure to a consumer above a defined threshold level of a listed chemical must have a warning. The warning can be provided in a variety of ways, including affixing a label on the product itself or its immediate container, including a label in the product packaging, or posting a sign on the store shelf where the product is sold.

Recent Amendments to the Proposition 65 regulations, which become effective for any consumer products requiring Proposition 65 warnings that are manufactured on or after August 30, 2018, include certain "Safe Harbor Warning" requirements. These include language the State deems compliant with the "clear and reasonable warning" standard in the statute.

The warning must reference at least one listed chemical for each "endpoint" (cancer or reproductive harm) for which the product contains one or more listed chemicals. In addition, the warning must include a pictogram of a yellow triangle with an exclamation point inside, include certain boilerplate language, and reference the State's Proposition 65 website.

Below is an example of a warning for a product containing chemicals listed for reproductive harm, including toluene:

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

The recent Amendments also make provision for a Short-Form Warning that may only be used on a label printed on or applied to a product or its immediate container or wrapper. The following is the Short Form for the Long-Form Warning example above:

 **WARNING:** Reproductive Harm -
www.P65Warnings.ca.gov.

In general, the recent Amendments place the burden on manufacturers and suppliers to provide the warnings to California retailers, with just a few exceptions placing the burden on retailers. The Amendments also require compliant warnings if consumer products are sold in California via the Internet or a catalog.

Because government and private (such as citizen groups) enforcers of Proposition 65 will likely be stepping up their investigations and looking closely at companies' compliance with the new Safe Harbor Warning regulations after the effective date of August 30, 2018, it is important that manufacturers, packagers, importers, suppliers, and distributors selling products in California that may trigger Proposition 65 evaluate their need for a Proposition 65 Compliance Program or scrutinize and update their existing Proposition 65 Compliance Programs as soon as possible, if they have not already done so.

Cohen & Grigsby has significant experience working with clients to develop their Proposition 65 Compliance Programs and to comply with the new Amendments. If your company sells products to consumers in California that may trigger Proposition 65, and you desire assistance in obtaining necessary information from material suppliers, setting up a Proposition 65 Compliance Program, coordinating with retailers in California, or revising your warning labels to come under the protections of the new Safe Harbor Warning regulations, contact [Scott R. Thistle](mailto:sthistle@cohenlaw.com) at (412) 297-4953 or sthistle@cohenlaw.com.

Please keep in mind that this Client Alert has provided an overview of Proposition 65 and the new Amendments, and should not be regarded as legal advice. Cohen & Grigsby's [Energy & Environmental Practice Group](#) will continue to monitor Proposition 65 developments, as these developments will significantly impact manufacturers, importers, suppliers, and distributors whose products are sold to California consumers. To receive future news alerts, please send an e-mail to bulletins@cohenlaw.com.

Copyright © 2018 by Cohen & Grigsby, P.C.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without prior written permission of Cohen & Grigsby, P.C. and is intended to alert the recipients to new developments in the area of energy and environmental law. The hiring of a lawyer is an important decision that should not be based solely on advertisements. Before you decide, ask us to send you free written information about Cohen & Grigsby's qualifications and experience.