

TGG: JCL: MMG: RF
XF: None

TO: Distribution

FROM: T. G. Grumbles
DATE: June 28, 1988

VISTA

Interoffice
Communication

SUBJ: PROPOSITION 65 COMPLIANCE - RESOURCES NEEDED

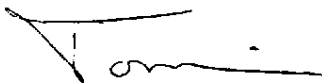
To assure compliance with Proposition 65 requirements and meet the data needs of customers complying with Proposition 65, significant analytical expenditures and manhours will be needed in the next quarter. Briefly, California Proposition 65 requires that when you have any detectable amounts of the chemicals listed by the Proposition present in your products, a "clear and reasonable" warning must be given to users in California, or a risk assessment be done to determine no significant risk exists from exposure to the product. Levels of exposure creating risk are generally undefined and in the few cases where the State has defined the level are very low.

Compliance activities are not confined to our California customers, as anyone supplying chemicals or products to California must meet the requirements. Subsequently, Vista customers from all states who may ship product to California are asking us for quantitative information regarding the presence of Proposition 65 chemicals in our products.

In many cases, we do not have the analytical data necessary or the data available is not of a level of detection low enough to meet the "any detectable amount" criteria. To obtain this data GC/Mass spec sensitivity is needed. Significant in-house analytical resources or contract laboratory services will be needed.

I have attached a current list of our projected analytical needs. Also a good summary article on Proposition 65 and it's requirements is attached.

Your Chief Chemists and plant analytical budgets will be impacted by this regulatory need. I wanted to be sure you were informed of the reason for this effort and the need for quick action in obtaining the data.



T. G. Grumbles

ajo
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VVV 000014575

Attachments

cc P. Fetzner, K. Resh, D. Whitehead, G. Lakich, D. Zimmer,
J. Yates, E. Sones, G. Lipps, D. Frohreich, D. Campanella

DIST: Plant Managers, THH, JAD

**PROPOSITION 65 CHEMICALS
WITH PRODUCTS TO BE ANALYZED**

<u>BENZENE (3/1/88)</u>	<u>NOTES</u>
LAB (N500L, DN600, etc.)	1
Specialty Alkylates	
n-Paraffins	1
Muriatic Acid (Baltimore)	1,2
Hydrotropes	1
LPA Solvents	
EDC	1,2
MR Solvent	
SSO	1,2
Butadiene	
HAD	1,2
LAC	1,2
Light Ends	1,2
AlCl ₃ Liquor	1,2
Spent Sulfuric	1
Spent Carbon	1
Sulfonic Acids	3
Sulfonate Salts	3
 <u>ETHYLENE OXIDE (7/1/88)</u>	
Ether Sulfates (Each Tolling Plant)	
Ethoxylates	1,2
Light Ends	
Slop Ethoxylates	1
 <u>DIOXANE (1/1/89)</u>	
Ether Sulfates	1,2
Ethoxylates	1,2
 <u>EPICHLOROHYDRIN (10/1/87)</u>	
EDC	
Light Ends	
 <u>EDC (10/1/87)</u>	
VCM	1,2
Light Ends	1,2
Heavy Ends	1,2
Methyl Chloride	

VCN (3/1/88)

Methyl Chloride	1,2
EDC	1,2
Light Ends	1,2
Muriatic (LCVCM)	1,2

BCME (3/1/88)

EDC
Methyl Chloride
VCN
Light Ends

CHCl₃ (10/1/88)

Methyl Chloride	2
EDC	2
VCN	2
Light Ends	

CCL₄ (10/1/88)

Methyl Chloride	2
VCN	2
EDC	2
Light Ends	
Heavy Ends	

PNAs (7/1/88)

Specialty Alkylates	
LAB	
n-Paraffins	
HAD	1
SSO	
LPA Solvent	
MR Solvent	
LAC	
AlCl ₃ Liquor	
ALFOL® Alcohols	3
Sulfonic Acids	3
Sulfonate Salts	3

PCBs (1/1/88)

LAB (Baltimore)
Specialty Alkylates
n-Paraffins
Muriatic Acids
Spent Sulfuric
Heavy Ends

1,2

Pb, As, Ni (Non-Specific For Metal Only)

Alcohol Sulfates
Sulfonic Acids
Sulfonate Salts
AlCl₃ Liquor
Muriatic Acids
LAB
Specialty Alkylates
ALFOL® Alcohols
Ethoxylates
Solvents
Spent Sulfuric
Spent Carbon
Paraffins
Methyl Chloride
Alumina
Plasticizers

NOTES

1. Chemical present or potentially present.
2. Data currently available.
3. Analysis will depend on results of another product.

Periscope

The Safe Drinking Water and Toxic Enforcement Act of 1986: California's Proposition 65

by Richard Fehler
Manager, Regulatory Affairs
Environmental Engineering
Pleasanton Office

On February 27, 1988, 29 chemicals became subject to the regulatory requirements of Proposition 65-- California's Safe Drinking Water and Toxic Enforcement Act of 1986. More than 200 chemicals are included under this Act, with effective dates through the rest of 1988 and 1989.

Proposition 65 was developed in toxics-conscious California, where it was endorsed by voters by a 2 to 1 margin in the November 1986 elections.

General Provisions

Specifically, Proposition 65 prohibits any business with 10 or more employees from knowingly or intentionally exposing anyone to "significant levels" of specified chemicals known to cause cancer or reproductive toxicity, unless the business provides a "clear and reasonable" warning to the potentially exposed person. In addition, businesses are prohibited from knowingly discharging "significant amounts" of specified chemicals known to cause cancer or reproductive toxicity into water or land where the chemical could get into any source of drinking water.

Proposition 65 defines "significant amounts" of chemicals as any *detectable* amount, unless it can be shown that:

- for cancer-causing chemicals, the exposures, assuming lifetime exposure, will result in no more than one excess cancer in an exposed population of 100,000 (no significant risk level)

- for reproductive toxins, the

exposures will have no observable effect, assuming exposure at 1,000 times the actual level of the chemical (no observable effect level)

The State of California has determined no significant risk/no observable effect levels for 31 chemicals. The amounts set are controversial because many feel that the allowable levels are too low.

For example, the levels set for asbestos and lead are 100 fibers inhaled per day and 0.5 micrograms per day, respectively. These levels are well below the ability of today's commonly accepted technology to analyze. Technology aside, the levels set for each of these chemicals is now law, and compliance concerns must be addressed regardless of the difficulties inherent in low-level chemical detection and analysis.

Who is Affected?

Proposition 65 applies to any business, profit or nonprofit, that employs at least 10 people. It does not apply to any city, county, state, or federal government entity, although there is at least one bill pending in the

Warning

**Detectable Amounts of Chemicals Known to the State
of California to Cause Cancer, Birth Defects or Other
Reproductive Harm May be Found
In and Around This Facility**

(California Health and Safety Code Section 25249.6)

Under Proposition 65, Warning Signs Like This are Required
for the First 29 Listed Chemicals

state legislature that would remove this exemption.

Proposition 65 applies only when *listed* chemicals are involved (currently only the 29 chemicals on the February 27 list). In July 1988, October 1988, and January 1989, these regulations will apply to more chemicals, and many more businesses will be affected.

Clear and Reasonable Warnings

Firms that know they may expose people to significant levels of listed chemicals have two choices:

- reduce the exposure levels and keep them below the significant levels

- provide clear and reasonable warnings to potentially exposed people

The regulations specify the various forms that clear and reasonable warning can take. In the case of affected consumer products, warnings may consist of signs at the point of sale or labels on the products

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Proposition 65

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themselves. Posting of warning signs or full compliance with state and federal hazard communication standards will fulfill workplace exposure requirements.

Companies can provide warnings of "environmental" exposures by placing signs in the affected area, mailing notices to each occupant in an affected area, or by providing warnings through the public media (e.g., newspapers). Environmental exposures include those in the ambient air, water, and soil, and include airborne emissions from plants that reach or cross plant boundaries.

The warning requirement creates a strong incentive for industries to conduct additional research on their processes and products. Obtaining actual knowledge of the presence or absence of listed chemicals in products, the work environment, or even at the plant's fence line, is the only way businesses can begin to protect themselves from litigation.

Risk Assessments and Compliance

Firms seeking to evaluate their operations within the scope of Proposition 65 must ask two questions:

- does the business produce, use, or otherwise have in the workplace, a chemical listed by the state?
- is there an exposure route whereby someone could be exposed to the chemical at significant levels?

If the answer to both questions is "yes," Proposition 65's requirements for warnings and prohibitions against chemical discharge apply.

Clayton is currently helping many businesses answer these questions and develop strategies for Proposition 65 compliance. Typical steps toward compliance include performing an environmental audit to determine such things as chemical use, production

practices, and workplace characteristics, followed by the collection and analysis of samples taken from products, raw materials, and the work environment. In this way, a business can determine its liability and responsibility under Proposition 65. Asbestos is a good example.

Asbestos

Asbestos is one of the cancer-causing chemicals currently regulated under Proposition 65. Since the compliance date of February 27, Clayton has received numerous calls from clients who have asbestos in their buildings or workplaces, and are unsure of their obligations under Proposition 65.

... the only thing certain is that some businesses will pay.

Clayton believes that the mere presence of asbestos in a building does not automatically trigger Proposition 65 requirements. If the asbestos is in good condition or in inaccessible areas so that people are not exposed to asbestos fibers, the requirements may not apply. If the potential exists for anyone to be exposed to "significant levels" of asbestos, then all Proposition 65 requirements apply. In this context, "significant levels" means any detectable level above background concentrations.

Liability Issues

Any violation of Proposition 65 could subject a business to the substantial penalties allowed under Proposition 65's citizen suit provisions. A willingness to employ this new avenue for litigation was evidenced by a workshop held in early February entitled "Winning Under Prop 65." The workshop, sponsored by environmental groups and attended by

more than 200 lawyers, was designed to assist lawyers in winning cases and recovering civil penalties from businesses that do not comply with the new requirements.

For companies to ensure compliance and prevent liabilities and lawsuits, Clayton recommends that surveys and appropriate sampling be conducted and documented. Because, under Proposition 65, almost anyone can bring a lawsuit without necessarily having to show harm, a conservative and well-defined approach to providing warnings and eliminating or carefully controlling chemical discharges is advisable.

The regulations note that warning requirements for occupational exposures can be met by providing exposed employees with warnings that comply with all information, training, and labeling requirements of the federal and state hazard communication standards. It is unclear, however, whether existing thresholds for reporting chemicals on material safety data sheets (MSDS) will still be adequate (1% for hazardous chemicals and 0.1 % for carcinogens), because many Proposition 65 levels are below existing reporting thresholds.

If an MSDS or label from a manufacturer does not contain information that a listed chemical is present in a product used in the workplace, the employer may not be "knowingly and intentionally" exposing workers. Both employers and those responsible for preparing MSDS, however, will be closely examining their potential liabilities.

All businesses should be aware that noncompliance will not be monitored by state inspectors. Compliance will be enforced by attorneys retained by special interest groups, someone in the neighborhood, or an employee. The penalties for noncompliance are substantial, and the only thing certain is that some businesses will pay.