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FROM: T. G. Grumbles

DATE: June 2, 1988

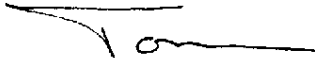
Interoffice
Communication

SUBJ: CALIFORNIA PROPOSITION 65

VISTA

Attached is one of the better "simplified" summary articles I've seen on Proposition 65. It does a good job of describing the warning issues, analytical problems and enforcement liabilities.

I've also attached the current Proposition 65 list for those who haven't seen it.



T. G. Grumbles

ajo
.319

Attachments

DIST:

Env. Coordinators
Ed Sones
Jim Yates
Don Whitehead
Darrell Zimmer
Gina Lakich
Kyle Resh
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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

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

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

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

(Continued from Page 3)

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.

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65)

CHEMICALS KNOWN TO CAUSE CANCER OR REPRODUCTIVE TOXICITY
January 1, 1988

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. Comments should be directed to the State's lead agency for implementation of the Safe Drinking Water and Toxic Enforcement Act:

State of California
Health and Welfare Agency
1600 Ninth Street, Room 450
Sacramento, CA 95814

Note: (1) The identification number is the Chemical Abstracts Service (CAS) Registry Number. No CAS number is given when several substances are presented as a single listing.

(2) The date refers to the initial appearance of the chemical on the list.

CARCINOGENS

<u>Chemical</u>	<u>CAS Number</u>	<u>Date</u>
2-Acetylaminofluorene	53963	July 1, 1987
Acrylonitrile	107131	July 1, 1987
Adriamycin	23214928	July 1, 1987
AF-2; [2-(2-furyl)-3-(5-nitro-2-furyl)]acrylamide	3688537	July 1, 1987
Aflatoxins	----	January 1, 1988
ortho-Aminoazotoluene	97563	July 1, 1987
4-Aminodiphenyl	92671	February 27, 1987
2 Amino-5-(5-nitro-2-furyl)-1,3,4-thiadiazole	712685	July 1, 1987
Amitrole	61825	July 1, 1987
ortho-Anisidine and ortho-Anisidine hydrochloride	90040	July 1, 1987
Analgesic mixtures containing phenacetin	---	February 27, 1987
Aramite	140578	July 1, 1987
Arsenic (inorganic arsenic compounds)	---	February 27, 1987
Asbestos	1332214	February 27, 1987
Auramine	492808	July 1, 1987
Azaserine	115026	July 1, 1987
Azathioprine	446866	February 27, 1987
Benz[a]anthracene	56553	July 1, 1987
Benzene	71432	February 27, 1987
Benzidine [and its salts]	92875	February 27, 1987
Benzo[b]fluoranthene	205992	July 1, 1987
Benzo[j]fluoranthene	205823	July 1, 1987
Benzo[k]fluoranthene	207089	July 1, 1987
Benzo[a]pyrene	50328	July 1, 1987
Benzotrichloride	98077	July 1, 1987

Benzyl violet 4B	1694093	July 1, 1987
Beryllium and beryllium compounds	---	October 1, 1987
N,N-Bis(2-chloroethyl)-2-naphthylamine (Chlornapazine)	494031	February 27, 1987
Bischloroethyl nitrosourea (BCNU)	154938	July 1, 1987
Bis(chloromethyl)ether	542881	February 27, 1987
1,4-Butanediol dimethanesulfonate (Myleran)	55981	February 27, 1987
beta-Butyrolactone	3068880	July 1, 1987
 Cadmium and cadmium compounds	---	October 1, 1987
Carbon tetrachloride	56235	October 1, 1987
Certain combined chemotherapy for lymphomas	---	February 27, 1987
Chlorambucil	305033	February 27, 1987
Chlordecone (Kepone)	143500	January 1, 1988
1-(2-Chloroethyl)-3-cyclohexyl-1-nitrosourea (CCNU)	13010474	January 1, 1988
Chloroform	67663	October 1, 1987
Chloromethyl methyl ether (technical grade)	107302	February 27, 1987
4-Chloro-ortho-phenylenediamine	95830	January 1, 1988
Chromium (hexavalent compounds)	---	February 27, 1987
Coke oven emissions	---	February 27, 1987
Conjugated estrogens	---	February 27, 1987
para-Cresidine	120718	January 1, 1988
Cupferron	135206	January 1, 1988
Cycasin	14901087	January 1, 1988
Cyclophosphamide	50180	February 27, 1987
 Dacarbazine	4342034	January 1, 1988
Daunomycin	20830813	January 1, 1988
DDT (1,1,1-Trichloro-2,2-bis(p-chlorophenyl)ethane)	50293	October 1, 1987
Degraded Carrageenan (not food grade carrageenan)	---	January 1, 1988
2,4-Diaminoanisole sulfate	39156417	January 1, 1988
4,4'-Diaminodiphenyl ether	101814	January 1, 1988
2,4'-Diaminotoluene	95807	January 1, 1988
Dibenz[a,h]acridine	226368	January 1, 1988
Dibenz[a,j]acridine	224420	January 1, 1988
Dibenz[a,h]anthracene	53703	January 1, 1988
7H-Dibenzo[c,g]carbazole	194592	January 1, 1988
Dibenzo[a,e]pyrene	192654	January 1, 1988
Dibenzo[a,h]pyrene	189640	January 1, 1988
Dibenzo[a,i]pyrene	189559	January 1, 1988
Dibenzo[a,l]pyrene	191300	January 1, 1988
1,2-Dibromo-3-chloropropane (DBCP)	96128	July 1, 1987
3-3'-Dichlorobenzidine	91941	October 1, 1987
3,3'-Dichloro-4,4'-diaminodiphenyl ether	28434868	January 1, 1988
Diepoxybutane	1464535	January 1, 1988
Di(2-ethylhexyl)phthalate	117817	January 1, 1988
1,2-Diethylhydrazine	1615801	January 1, 1988
Diethyl sulfate	64675	January 1, 1988
Diethylstilbestrol	56531	February 27, 1987
Dihydrosafrole	94586	January 1, 1988
3-3'-Dimethoxybenzidine (ortho-Dianisidine)	119904	January 1, 1988
4-Dimethylaminoazobenzene	60117	January 1, 1988
trans-2-[(Dimethylamino)methylimino]-5-[2-5-nitro-2-furyl]vinyl]-1,3,4-oxadiazole	55738540	January 1, 1988
3,3'-Dimethylbenzidine (ortho-Tolidine)	119937	January 1, 1988

Dimethylcarbamoyl chloride	79447	January 1, 1988
1,2 Dimethylhydrazine	540738	January 1, 1988
Dimethyl sulfate	77781	January 1, 1988
1,4-Dioxane	123911	January 1, 1988
Direct Black 38 (technical grade)	1937377	January 1, 1988
Direct Blue 6 (technical grade)	2602462	January 1, 1988
Epichlorohydrin	106898	October 1, 1987
Estradiol 17 B	50282	January 1, 1988
Estrone	53167	January 1, 1988
Ethinylestradiol	57636	January 1, 1988
Ethylene dibromide	106934	July 1, 1987
1,2-Dichloroethane (Ethylene dichloride)	107062	October 1, 1987
Ethyleneimine	151564	January 1, 1988
Ethylene oxide	75218	July 1, 1987 ←
Ethylene thiourea	96457	January 1, 1988
Ethyl methanesulfonate	62500	January 1, 1988
Formaldehyde (gas)	50000	January 1, 1988
Formylhydrazino-4-(5-nitro-2-furyl)thiazole	3570750	January 1, 1988
Glycinaldehyde	765344	January 1, 1988
Gyromitrin (acetaldehyde methylformylhydrazone)	16568028	January 1, 1988
Hexachlorobenzene	118741	October 1, 1987
Hexachlorocyclohexane (technical grade)	---	October 1, 1987
Hexamethylphosphoramide	680319	January 1, 1988
Hydrazine and hydrazine sulfate	302012	January 1, 1988
Hydrazobenzene	122667	January 1, 1988
Indeno [1,2,3-cd]pyrene	193395	January 1, 1988
Iron dextran complex	9004664	January 1, 1988
Lead acetate	301042	January 1, 1988
Melphalan	148823	February 27, 1987
Methoxsalen with ultraviolet A therapy (PUVA)	298817	February 27, 1987
2-Methylaziridine (propyleneimine)	75558	January 1, 1988
4,4'-Methylene bis(2-chloroaniline)	101144	July 1, 1987
4,4'-Methylenedianiline and its dihydrochloride	101779	January 1, 1988
Metronidazole	443481	January 1, 1988
Michler's ketone	90948	January 1, 1988
Mirex	2385855	January 1, 1988
Mustard Gas	505602	February 27, 1987
2-Naphthylamine	91598	February 27, 1987
Nickel refinery dust from the pyrometallurgical process	---	October 1, 1987
Nickel carbonyl	13463393	October 1, 1987
Nickel subsulfide	12035722	October 1, 1987
Nitrilotriacetic acid	139139	January 1, 1988
Nitrofen (technical grade)	1836755	January 1, 1988
Nitrogen mustard	51752	January 1, 1988
2-Nitropropane	108032	January 1, 1988
N-Nitrosodi-n-butylamine	924163	October 1, 1987

N-Nitrosodiethanolamine	1116547	January 1, 1988
N-nitrosodiethylamine	55185	October 1, 1987
N-nitrosodimethylamine	62759	October 1, 1987
p-Nitrosodiphenylamine	156105	January 1, 1988
N-Nitrosodi-n-propylamine	621647	January 1, 1988
N-nitroso-N-ethylurea	759739	October 1, 1987
N-nitroso-N-methylurea	684935	October 1, 1987
N-Nitrosomethylvinylamine	4549400	January 1, 1988
N-Nitrosomorpholine	59892	January 1, 1988
N-Nitrosornicotine	16543558	January 1, 1988
N-Nitrosopiperidine	100754	January 1, 1988
N-Nitrosopyrrolidine	930552	October 1, 1987
N-Nitrososarcosine	13256229	January 1, 1988
 Oxymetholone	 434071	 January 1, 1988
 Panfuran S	 ---	 January 1, 1988
Phenazopyridine and its hydrochloride	136403	January 1, 1988
Phenytoin and sodium salt of phenytoin	57410	January 1, 1988
Polybrominated biphenyls	---	January 1, 1988
Polychlorinated biphenyls (containing 60 or more percent chlorine by molecular weight)	---	January 1, 1988
Procarbazine and its hydrochloride	366701	January 1, 1988
Progesterone	57830	January 1, 1988
1,3-Propane sultone	1120714	January 1, 1988
beta-Propiolactone	57578	January 1, 1988
Propylthiouracil	51525	January 1, 1988
 Sodium saccharin	 128449	 January 1, 1988
Safrole	94597	January 1, 1988
Soots, tars, and lubricant base oils and derived products, specifically vacuum distillates, acid treated oils, aromatic oils, mildly solvent-refined oils, mildly hydrotreated oils, and used engine oils; and mineral oils, when used in occupations such as mulespinning, metal machining, and jute processing.	---	February 27, 1987
Streptozotocin	18883664	January 1, 1988
Sulfallate	95067	January 1, 1988
 2,3,7,8-Tetrachlorodibenzo-para-dioxin (TCDD)	 1746016	 January 1, 1988
Thioacetamide	62555	January 1, 1988
Thiourea	62566	January 1, 1988
Thorium dioxide	1314201	February 27, 1987
ortho-Toluidine and its hydrochloride	95534	January 1, 1988
Toxaphene (polychlorinated camphenes)	8001352	January 1, 1988
2,4,6-Trichlorophenol	88062	January 1, 1988
Treosulfan	299752	February 27, 1987
Tris(1-aziridinyl)phosphine-sulfide (thiotepa)	52244	January 1, 1988
Tris(2,3-dibromopropyl)phosphate	126727	January 1, 1988
 Urethane	 51796	 January 1, 1988
 Vinyl chloride	 75014	 February 27, 1987

REPRODUCTIVE TOXICANTS

Aminopterin	54626	July 1, 1987
Chlorcyclizine hydrochloride	82939	July 1, 1987
1,2-Dibromo-3-chloropropane (DBCP)	96128	February 27, 1987
Diethylstilbestrol (DES)	56531	July 1, 1987
Diphenylhydantoin	630933	July 1, 1987
Ethyl alcohol in alcoholic beverages	64175	October 1, 1987
Ethylene oxide	75218	February 27, 1987
Etretinate	54350480	July 1, 1987
Isotretinoin	4759482	July 1, 1987
Lead	---	February 27, 1987
Methyl mercury	---	July 1, 1987
Thalidomide	50351	July 1, 1987
Valproate	99661	July 1, 1987
Warfarin	81812	July 1, 1987

RF

TO: R. D. Gamblin
FROM: T. G. Grumbles
DATE: June 24, 1988
SUBJ: PROGRESS REPORT

VISTA

Interoffice
Communication

1. A preliminary review of OSHA's June 7 proposal to revise approximately 400 permissible exposure limits indicates an area of potential impact. The proposal includes dropping the Ethylene Dichloride exposure limit from 50 ppm to 1.0 ppm. Our current internal limit for EDC is 10 ppm.
2. We are continuing to work with the International Food Additives Council (IFAC) and Keller & Heckman to address the potential revocation of food grade status for by-product Muriatic Acid. Additional information from FDA indicates they may consider approving specific processes, including detergent alkylate.
3. Recent changes in the EPA pesticide inert policy may have an impact on the ability to sell certain surfactants into the pesticide inert ingredient market. Recent conversations with DuPont regarding two ethoxylates have brought this issue to our attention. Basically if a potential inert ingredient isn't previously recognized by EPA (on agency lists) then extensive data requirements may apply to get approval for use in the formulations.
4. Joe Ledvina and Tom Grumbles attended a CLER presentation at DIAL and a CLER steering committee meeting.
5. Michele Goodreau and Ron Edwards accompanied a Bureau of Explosives inspector on an audit of the LCCP and LCLAB rail operations.
6. A sample of Vista 47 Ink Solvent was sent to StillMeadow for skin toxicity testing.
7. On June 20, 1988 EPA removed titanium dioxide from the SARA Section 313 list of Toxic Chemicals. The delisting is EPA's first and is effective for the 1987 reporting year. Aberdeen, Blane and Premiere can now remove this material from their Annual Emissions Report due July 1 each year.
8. The contractor working on the development of standardized MSDS language submitted their work product for review. Armed with this information, we should be moving along quickly to generate new MSDS's for all Vista products.



T. G. Grumbles