

Proposition 65 – The Safe Drinking Water and Toxic Enforcement Act of 1986

Introduction

Proposition 65 was intended to protect California citizens and the State's drinking water from chemicals known to cause cancer, birth defects, or other reproductive harm. Proposition 65 consists of two principal parts. Part 1 requires businesses to provide clear and reasonable warnings to people exposed to specific chemicals. Part 2 requires designated government employees to disclose information.

Part 1: Clear and Reasonable Warnings

Businesses with 10 or more employees are required to provide clear and reasonable warning to any person exposed to chemicals on the Proposition 65 list above specified safe harbor levels. The Proposition 65 list is available on the Office of Environmental Health Hazard Assessment's (OEHHA) web site at: www.oehha.ca.gov/prop65.html. The list identifies only chemicals that cause cancer, birth defects, or other reproductive harm.

Government entities are exempt from these warning requirements.

What Triggers the Warning Requirement?

The warning requirement is triggered by exposing people to any Proposition 65 listed chemical above the specified safe harbor levels that the OEHHA has established. Information on the safe harbor levels is available at: <http://www.oehha.ca.gov/prop65/pdf/Aug2006StatusReport.pdf>.

Enforcement and Penalties

The warning requirement is enforced by Attorney General, District Attorneys, City Attorneys, and private parties. "Failure to warn" violations are subject to civil penalties up to \$2,500 per day per violation.

Part 2: Government Employee Disclosure Requirement

Any designated government employee who obtains information on the job revealing the illegal discharge or threatened illegal discharge of a hazardous waste and who knows that it is likely to cause substantial injury to the public health or safety must disclose such information.

A designated government employee is any local or state agency employee in a position that entails the making or participating in decisions which may foreseeable have a material effect on anyone's financial interest and who files form 700 - Economic Interest or other Conflict of Interest forms is a designated government employee.

What Triggers the Disclosure Requirement?

- Knowledge gained on the job of
- An illegal
- Release or threatened release of
- Hazardous waste
- Likely to cause substantial injury to public health or safety.

Exceptions to Disclosure Requirements

There are three exceptions to the disclosure requirements:

1. Unlawful to make the disclosure
2. Law enforcement determines disclosure will adversely affect ongoing criminal investigation
3. Information is already general public knowledge within the affected locality via the TV, newspaper, internet, or radio

Timing and Who Receives Disclosure

Disclosure must be made within 72 hours of gaining knowledge. The notice goes to the Board of Supervisors and Local

Health Officer in the County where the release/threatened release occurs. Clearly state Proposition 65 report on the notice and explain if the information is preliminary and if further tests are pending. Consider working with your supervisor/management when developing a disclosure.

Enforcement and Penalties

“Failure to disclose” is punishable by fines of \$5,000 - \$25,000 and/or imprisonment to the designated government employee. Violations are enforceable as criminal offenses by district attorneys.

Examples Requiring Disclosure

Discover that a business disarmed their UST leak detection equipment and has reported a leak in the past from that UST.

A business recently reported a release of a hazardous waste with dangers where only their employees were exposed. (Yes, the law extends to employees.)

Discover that a company was washing drums containing hazardous waste out side in back of the facility where the waste water was running directly into a stream.

Examples Not Requiring Disclosure

Discover that a business disarmed their UST leak detection equipment. (There is no evidence that a release or threatened release will occur.)

Discover that a contractor spilled hazardous material when cleaning a community pool. (The law specifies hazardous waste not hazardous materials.)

During an inspection, used oil is spilled and an employee quickly and properly cleans up the spill. (Not likely to cause substantial injury to public health or safety, including the employees.)

Sample Disclosure

Addressed to the Board of Supervisors and Local Health Officer in the County

where the release/threatened release occurred.

Re: Proposition 65 notification pursuant to California Health and Safety Code Section 25180.7: insert property address

The Certified Unified Program Agency (CUPA) is hereby fulfilling its duties pursuant to the State Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). More specifically, this notification is being made pursuant to California Health and Safety Code Section 25180.7, which is part of Proposition 65. Preliminary investigation shows that a demolition of on-site structures occurred at an unknown point in the past, resulting in demolition debris piles that were subsequently abandoned at the site. Recent sampling analyses show elevated levels of lead, above hazardous waste concentrations, are contained in the debris piles in one of six sampling locations.

Additionally, sampling analyses showed that the debris piles contain asbestos containing material (ACM) in five of six sampling locations. Concentrations of asbestos could not be quantified, and therefore were not above hazardous waste levels. However, if the ACM becomes disturbed in the future, a discharge of asbestos at hazardous waste concentrations and characteristics may result.

Statutory Authorities

California Health and Safety Code Sections 25180, 25180.7 (government employee disclosure), 25192, and 25249.5 through 25249.13

Government Code Section 82019 defines a designated government employee.

Additional Proposition 65 Information

Visit the Office of Environmental Health Hazard Assessment (OEHHA) web site at: www.oehha.ca.gov for more information.