

HOW TO GIVE PROP65 WARNING TO EMPLOYEES

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In some companies, the difficulty of providing "clear and reasonable warning" to the public can be dwarfed by the difficulty of providing "clear and reasonable warning" to employees.

This difficulty is explained in the "Proposition 65...Summary...prepared by the Office of Environmental Health Hazard Assessment [OEHHA]...[that] must be included as an attachment to any notice of violation served upon an alleged violator". In that summary, companies are reminded ...

"A business is required to warn a person before 'knowingly and intentionally' exposing that person to a listed chemical. The warning must be 'clear and reasonable'. This means that the warning must : (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed".

Here in the Silicon Valley, most startups house at one site not only incipient manufacturing operations but also research, development, manufacturing engineering, quality control, and product support. In such situations, even a small company may house many hazardous materials that are not included in the final commercial product.

For illustration purposes in this article, let's focus only on materials that cause birth defects; the principles involved apply to the other categories of Prop65 materials as well. Notice that I say "materials" rather than "chemicals", because many of the items on the official Prop65 list are solid metals (e.g., Lead).

How does Management of a company inform a pregnant employee, who handles hazardous materials in her job as an R&D technician, that one of those materials has a Prop65-listed substance that may injure her unborn child? A more difficult question is: How does management know *which* of those materials cause birth defects specifically? A generic "safe harbor" sign on the employee entrance is inadequate for this purpose since it does not "effectively" warn the employee; without specific information as to which material to avoid, her only option may be to quit her job.

Furthermore, since pregnancies last about 3 fiscal quarters, and since California updates the Prop65 List once or twice a quarter, how does

Management ensure that the warning given to the employee is updated (expanded) in a timely manner? Of course, as explained in the "Summary" by OEHHA mentioned above, "Exposures are exempt from warning requirements if they occur less than twelve months after the date of listing of the chemical [*on the official Prop65 list*]." However, no such time limit for warning is allowed under the *OSHA Hazardous Communication Standard* ("Right to Know") or California's *Injury & Illness Prevention Plan* (SB198).

The most practical compliance strategy is to prepare a list of all hazardous materials housed at the company, and their ingredients, and to compare that list with the official Prop65 list, ingredient by ingredient. When the Prop65 list is updated, then the comparison must be repeated, for all the materials on the company list.

A company's list of hazardous materials is best organized not by material name but by Chemical Abstract Service number (CAS). CAS numbers can be found on each material's Material Safety Data Sheet (MSDS), which can be obtained from the manufacturer of the material. Comparison of material names alone is ineffective because MSDS's and the official Prop65 list do not always use the same material descriptions, whereas CAS numbers are common internationally recognized identifications.

Unfortunately, there are about 60 substances on the Prop65 list that do not have CAS numbers, and some ingredients on some MSDS's do not have CAS numbers. In these cases, to determine whether or not an ingredient is on the Prop65 list, a company has no recourse but to compare material names in the two lists and to make an educated, conservative judgment call as to whether or not there is a match.

If a company's hazardous material list is not too extensive, an in-house developed spreadsheet version of a material-comparison database can be created with only a few hours labor, as described in the next paragraphs. Alternatively, there is a commercially available software package (called *HAZMAT65*, from Zorich Technical Consultants) that can both perform the CAS-number comparisons and help compare names of ingredients that do not have CAS numbers.

To create a spreadsheet database for Prop65 comparisons, start by going to the OEHHA Prop65 webpage (<http://www.oehha.ca.gov/prop65.html>). There, in the "Select a Topic" drop-down list, select "Current List", and then click the nearby "GO" button. On the next window, scroll down to the bottom, where the words "MS Excel Spreadsheet" are underlined. Clicking on those words will start the download of a spreadsheet version of the official Prop65 list.

Next, create a similar spreadsheet that lists each of the company's in-house hazardous materials, one material per row, with each one of the material's ingredient's CAS numbers listed in separate spreadsheet cells to the right of the material name. Be sure to check for CAS numbers and ingredient names not only on page one of the MSDS but also on the last

page, in the "Regulatory" section (if there is one), because some MSDS's include additional ingredients there. Enter the CAS numbers as pure whole numbers, without leading zero or dashes (because that is how they are listed in the OEHHA spreadsheet).

For ingredients on an MSDS that do not have CAS numbers, type the ingredient names into separate spreadsheet cells to the right of the material name on the company spreadsheet.

When all ingredients on all MSDS's have been entered on the company spreadsheet, do a search in the OEHHA spreadsheet for each individual CAS number listed in company spreadsheet. If any numbers match up, highlight them (e.g., color the cell yellow). Next, do a manual search in the OEHHA spreadsheet for the name of each no-CAS-number ingredient on the company spreadsheet; highlight any matches.

When both searches have been completed, prepare a report that lists in-house material vs. Prop65 hazards.

Some materials may have more than one Prop65 ingredient. Any one ingredient may have only one Prop65 hazard (e.g., carcinogenicity); however, if all ingredients of a material are assessed together, the material may be seen to have additional Prop65 hazards (e.g., fetal and male reproductive toxicity).

IN SUMMARY: To comply with Prop65's requirement for employee warnings that "*effectively reach the person before he or she is exposed*", a company will need to create or purchase a database (such as HAZMAT65) that facilitates comparisons of its list of in-house hazardous materials, and their individual ingredients, with the official Prop65 list of substances, and will need to perform timely updates of that comparison and those warnings whenever OEHHA updates the official Prop65 list.

To learn more about HAZMAT65, contact the author of this article at: JOHNZORICH@YAHOO.COM.