

Environment - USA

OEHHA consults on proposed Proposition 65 warning changes

Contributed by **Sidley Austin LLP**

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The California Office of Environmental Health Hazard Assessment (OEHHA) has proposed significant changes to the regulations that govern Proposition 65 warnings. OEHHA has now announced that the comment period on the draft proposed regulations will be open until 5:00pm on June 13 2014.

The most significant proposed changes would:

- mandate that certain specific "clear and reasonable" warning language be used in certain specified situations;
- require the warning to state that the consumer will be exposed to a listed chemical (ie, requiring an admission of exposure and possible liability for past conduct) and not just a statement that the product contains a listed chemical;
- require that warnings for exposures to acrylamide, arsenic, benzene, cadmium, chlorinated tris, 1,4-dioxane, formaldehyde, lead, mercury, phthalates, tobacco smoke and toluene name those chemicals specifically in the warning;
- require businesses that provide warnings submit a detailed report to OEHHA (to be published on OEHHA's website), including:
 - contact information for product manufacturers;
 - the anticipated route of exposure to the listed chemical;
 - the anticipated level of human exposure; and
 - actions to minimise or eliminate exposure; and
- exempt warnings contained in court-approved settlements from the new regulations, but not exempt anyone else who relied on those consent judgments and conformed their labels accordingly.

The draft regulations have raised numerous concerns regarding the costs of implementation, the impact on litigation and their effectiveness in accomplishing the purported goal of consumer education. It is unclear whether the proposed regulations would result in accurate, reasonable warnings.

OEHHA recently held a pre-regulatory public workshop during which commenters criticised:

- the possibility of increased litigation flowing from the mandatory warning language;
- impairment of trade secrets in the reporting obligations;
- the lack of scientific criteria by which the 12 chemicals that must be disclosed by name were chosen;
- the lack of studies suggesting that the public was clamouring for clarity as to Proposition 65 warnings; and
- the costs to all parties of implementing such a scheme.

OEHHA plans to propose formal regulations by Summer 2014 and hopes to adopt final regulations, following additional notice and comment periods, by Summer 2015.

For further information on this topic please contact [Amy Lally](#) or [Judith Praitis](#) at Sidley Austin LLP by telephone (+1 213 896 6000), fax (+1 213 896 6600) or email (alally@sidley.com or jpraitis@sidley.com). The Sidley website can be accessed at www.sidley.com.

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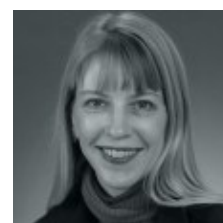
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