

# TerranearPMC Safety Share

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## Week of April 16, 2018 – California's Proposition 65

If you have ever read the contents of a Safety Data Sheet (SDS) – which, by the way, is not just a right, but an obligation for anyone working with a specific hazardous material – you will notice that Section 11, titled Toxicological Information, lists a number of organizations that may categorize the health effects of that material as a carcinogen. The organizations typically referenced are: the American Conference of Governmental Industrial Hygienists (ACGIH), the International Agency for Research on Cancer (IARC) and the National Toxicological Program (part of the US Department of Health and Human Services) as well as California Proposition 65. Because most people do not live in California, this last reference may not just be unfamiliar, but quite possibly, even overlooked when one is determining the potential health risk to the material-in-question. That is, most Americans do not understand what the significance of this regulation and why it is referenced in a SDS that is now used on the global stage.

“WARNING: This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.”

These are the typical words used to warn Californians when they enter into a facility – be it a business such as a chemical manufacturer or materials storage building – where there is a possibility that they are about to come into contact with certain materials that have been identified as harmful to human health. Under the California Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65, businesses must give customers a "clear and reasonable warning" about the presence of agents that affect health. For gas stations, this warning is aimed at gasoline, as it contains such known carcinogens as benzene while restaurants serve alcohol, which has been linked to adverse effects to the human reproductive system as well as the liver, kidney and heart.

Without a doubt, such notices seem to be well intentioned. And now it appears that California coffee shops may soon be forced to warn customers about a possible cancer risk linked to their morning jolt of java. In this case the health concern is due to acrylamide; a chemical that has been identified in coffee and used in the production of plastics.

In 2002, Swedish scientists discovered acrylamide in a wide range of foods, including baked goods and coffee. Scientists believe the acrylamide in food is a product of the Maillard reaction. This reaction occurs when sugars and amino acids are heated above 248° F (120° C). What we do know is that when coffee beans are roasted, acrylamide is formed. There's no way to remove acrylamide from coffee, so when you drink it, you're exposing yourself to this chemical.

A lawsuit first filed in Los Angeles County Superior Court in 2010 by the nonprofit Council for Education and Research on Toxics targets several companies that make or sell coffee, including Starbucks, 7-Eleven and BP. The suit alleges that the defendants "failed to provide clear and reasonable warning" that drinking coffee could expose people to acrylamide.

Proposition 65 stemmed from a growing concern that many chemicals may cause cancer, birth defects, or other reproductive harm. Under this law, chemicals identified by the state as having even a one-in-100,000 chance of causing such adverse health effects may not be discharged into drinking water or onto land where they could contaminate sources of drinking water.



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In addition, businesses are required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a chemical listed per Prop 65 requirements. This warning can be given by a variety of means, such as by labeling a consumer product, posting signs at the workplace, distributing notices at a rental housing complex, or publishing notices in a newspaper. Once a chemical is listed, businesses have 12 months to comply with warning requirements. The state is required to update the list of harmful chemicals annually. As of 2015, the list includes almost 900 chemicals.

The wording used to warn the public can be changed as necessary, so long as it communicates that the chemical in question is known to the state to cause cancer, or birth defects or other reproductive harm.

Proposition 65 also prohibits companies that do business within California from knowingly discharging listed chemicals into sources of drinking water. Once a chemical is listed, businesses have 20 months to comply with the discharge prohibition.

Businesses with less than 10 employees and government agencies are exempt from Proposition 65's warning requirements and prohibition on discharges into drinking water sources. Businesses are also exempt from the warning requirement and discharge prohibition if the exposures they cause are so low as to create no significant risk of cancer or birth defects or other reproductive harm.

As one might expect, Proposition 65 remains politically controversial even after all these (32) years. This is, in large part because, this law places the burden of proof on business instead of government to make a key scientific determination about safety levels for specific toxic chemicals that the businesses are knowingly exposing members of the public. Yet, according to the California Environmental Protection Agency, "Proposition 65 has... increased public awareness about the adverse effects of exposures."

Some Prop 65 chemicals are prevalent in the natural environment, and they unavoidably end up in supplements that contain natural ingredients. While there are certain allowable "safe harbor" levels for Prop 65 chemicals in a product, these levels are often either extremely low or must be established through complicated and expensive lab testing at the expense of the supplement company. Prop 65 does provide an exemption for "naturally occurring" chemicals—but it is up to the supplement company to prove this is the case, which is both very difficult and expensive.

There are those that believe that Prop 65 has come at a cost for companies doing business in the state as it has been criticized for the proliferation of "bounty hunter" lawsuits. This term refers to private citizens filing lawsuits against businesses they claim aren't fully complying with the law—regardless of whether or not that's true. AND there are some attractive incentives for citizens to do this. For instance, according to opponents of Prop 65 regulations, as a "bounty" reward, citizens or organizations that bring lawsuits against businesses are awarded one-quarter of the civil penalty paid by a business found in violation.

**To educate a man in mind and not in morals is to educate a menace to society - Theodore Roosevelt**

