



PROPOSITION 65: Implications for Companies in the Compressed Air & Gas Industry





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WHAT IS PROPOSITION 65?

[The California Safe Drinking Water and Toxic Enforcement Act of 1986](#) (Proposition 65) was passed by the state of California to protect consumers, workers and the environment from harmful chemical exposure. Under Proposition 65, California must annually publish an up-to-date list of chemicals known to cause cancer, birth defects and/or reproductive harm.¹

To date, this list contains nearly 1,000 chemicals found in products such as pesticides, food, drugs, solvents and household products, as well as substances used and/or discharged by the manufacturing and construction industries. Proposition 65 is therefore broad in scope and has the potential to cover any number of substances as further medical and environmental data is gathered.

Companies that manufacture or sell products that contain Proposition 65-listed substances must provide the public with warnings about potential exposure. Warnings must also be given if there is a risk that individuals may come in contact with these substances through other means — for example, via occupational exposure.

¹ OEHHA. (2019). Chemicals Known to the State to Cause Cancer or Reproductive Toxicity. Retrieved from <https://oehha.ca.gov/media/downloads/proposition-65/p65list062819.pdf>

HOW DOES PROPOSITION 65 AFFECT COMPANIES IN THE COMPRESSED AIR & GAS INDUSTRY?

Proposition 65 requires that manufacturers provide the public with clear and reasonable warnings prior to purchase if they may be exposed to listed chemicals, whether through intended or foreseeable product use.

This high-profile regulation has received significant attention from regulators and litigators alike. In 2018, “bounty hunter” litigators won approximately \$35.1 million USD in damages, up nearly \$10 million from 2017.² Recent litigation includes a \$1.5 million USD suit³ that identified products using vinyl and polyvinyl chloride (PVC) products containing phthalate plasticizers. As numerous vinyl and PVC products are used in the compressed air and gas industry, these parts and components pose a risk, although the Compressed Air and Gas Institute (CAGI) recommends against the use of PVC pipes for compressed air.

Another potential concern for air and gas companies are parts that contain heavy metals, such as lead in brass fittings or valves. A significant portion of claims and cases were directly related to heavy metals.⁴ These substances are easily identifiable on product descriptions and are frequent targets of these cases as a result.

Once a product has been sold to a distributor or retailer, manufacturers are still responsible for providing clear and reasonable warning.

² State of California Office of the Attorney General (2018). Proposition 65 Settlement Executive Summary 2018. Retrieved from <https://oag.ca.gov/sites/all/files/agweb/pdfs/prop65/2018-summary-settlements.pdf>

³ State of California Office of the Attorney General. (2013, July 3). 60 Day Notice 2013-00631. Retrieved from <https://oag.ca.gov/prop65/60-day-notice-2013-00631>

⁴ State of California Office of the Attorney General. (2018). Judgments by Plaintiff Report. Retrieved from <https://oag.ca.gov/prop65/report/judgments-by-plaintiffs?year%5Bvalue%5D%5Byear%5D=2018>



AFFECTED PRODUCTS

Products that may be components of compressed air and gas system equipment that may [be in scope](#) include the following:

- Brass valves and fittings that may be at risk for lead exposure.
- Levers, switches, etc., and other vinyl components containing plasticizers.
- Materials used in electric motors.
- Rotor coatings.
- Compressed air dryers that use refrigerants and desiccants.
- Hoses or similar components.

EXEMPTIONS & SAFE HARBOR LEVELS

There are two exemptions from Proposition 65:

- Companies with 10 employees or fewer.
- Products containing Proposition 65-listed substances below safe harbor levels.⁵

[Safe harbor levels](#) are the levels above which a substance may be considered harmful. If these thresholds are surpassed, the chemicals in question will activate warning and discharge prohibition requirements.

⁵ OEHHA. (2013). Proposition 65 in Plain Language. Retrieved from <https://oehha.ca.gov/proposition-65/general-info/proposition-65-plain-language>

MANAGING YOUR PROPOSITION 65 REQUIREMENTS

Managing Proposition 65 requirements can feel daunting, but a step-by-step approach can reduce liability and ensure compliance with existing regulations.

Companies should first identify potential risks with a materials-based assessment of their product portfolios; high-risk products should include a Proposition 65 warning substantiated by thorough documentation. Each product will require a body of documentation to support necessary Proposition 65 warnings.

Responsibilities vary from party to party:⁶

Manufacturers:

- Must provide a warning for the product, which may include labeling, shelf signs, tags or written communication with appropriate warning language.
- Must provide written notice directly to the authorized agent for a retail seller (to be updated annually).

Distributors:

- Must pass manufacturer information on to an authorized agent for the retail seller.

Retail Sellers:

- Must confirm that all relevant information is provided to consumers.

Proposition 65 is designed to link a product's manufacturer, producer, packager, importer, supplier and distributor together, ensuring a coordinated effort to provide consumers with appropriate warning information regarding possible risks. Manufacturers can transfer responsibility downstream to distributors by providing clear written notice with a request for response. Once a response is received, responsibility has been transferred, but manufacturers are required to follow up at regular intervals with additional written notices.

⁶ OEHHA. (2016, December 13). Notice of Adoption Article 6: Clear and Reasonable Warnings. Retrieved from <https://oehha.ca.gov/proposition-65/crn/notice-adoption-article-6-clear-and-reasonable-warnings>

CLEAR & REASONABLE WARNINGS

Should the amount of a Proposition 65-listed substance in a product exceed safe harbor levels, clear and reasonable warnings are required. These warnings must include one or more of the following:⁷

- Triangle warning symbol followed by the word “WARNING” in the same sized font.
- A description of exposure hazards followed by the URL www.P65warnings.ca.gov. If no warning label is provided on the product, then catalogs and websites must feature a warning with a link to the URL.
- Specific warning language for products with carcinogenic or toxic chemicals.
- The type size for warning text must be no smaller 6-point type.⁸

Examples of Proposition 65 Warning Labels



WARNING: Cancer - www.P65Warnings.ca.gov.



WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the state of California to cause cancer, and [name of one or more chemicals], which is [are] known to the state of California to cause birth defects or other reproductive harm. For more information, go to www.P65Warnings.ca.gov.

⁷ Proposition 65 Warnings. (n.d.). Warning Symbol. Retrieved from <https://www.p65warnings.ca.gov/warning-symbol>

⁸ OEHHA. (2018). Proposition 65 Clear and Reasonable Warnings: Questions and Answers for Businesses. Retrieved from: <https://oehha.ca.gov/media/downloads/crn/art6businessqa.pdf>

LEARN MORE ABOUT PROPOSITION 65

The information for this piece was provided by Dr. Bruce Jarnot, a regulatory subject matter expert at Assent Compliance. Dr. Jarnot is a board-certified toxicologist with broad knowledge of global product compliance, including Proposition 65.

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[State of California Proposition 65 Website](#)