



New Chemical Listings: How to Make Sure Your Company Stays Compliant

2019 Prop 65 Conference Panel Session

Merchants Exchange Building, San Francisco

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Panelists

- Moderator:

- **Margaret Whittaker**, Managing Director & Chief Toxicologist, ToxServices

- Panel:

- **Sophia Castillo**, Partner, Downey Brand
- **Ann Grimaldi**, Principal, Grimaldi Law Offices
- **Ryan Landis**, Principal, Polsinelli
- **Tom Lee**, Partner, Bryan Cave Leighton Paisner



Panel Structure

Keep calm and carry on: Trends in Prop 65 listings

How should parties in the supply chain respond to new chemical listings?

Making a decision to warn

Do Big SKUs correspond to “Big” Testing?

10 minute Q & A



Ice Breaker

- Example of a product used on a regular basis that contains a Prop 65 chemical?

Keep Calm and Carry On: Trends in Prop 65 – New Chemical Listings

Recent Activity/Trends (in the last 2 years)

– 21 Chemicals Listed

- 10 via Labor Code (LC)
- 5 via Authoritative Bodies (AB)
- 5 via State Qualified Experts (SQE)
- 1 via Formerly Required (FR)

– 5 Notices of Intent pending decision

- All under Authoritative Bodies

– 1 “Under Consideration” for NOI re RT where already listed for Cancer

- Benzo [a] pyrene





Keep Calm and Carry On: Trends in Prop 65 – New Chemical Listings

- **Prop 65 comprises many chemicals**
 - Listed for cancer: 546 chemicals and 69 chemical classes/mixtures
 - Listed for reprotox: 305 chemicals and 14 chemical classes/mixtures
- **Remember that numerous chemicals are listed for both cancer and repro toxicity!**
 - 109 chemicals are listed for both Cancer and Reprotox!
- **Remember there are 4 methods by which a new chemical may be listed!**

Prop 65 – New Chemical Listings

■ Chemical Endpoints

- Cancer: 16
- Reproductive Toxicity/Developmental Harm: 11

■ Categories of New Chemical Listings

- Textiles/Goods/Industrial: 10
- Dyes/Inks/Paint/Solvents: 8
- Drugs/Pharmaceuticals: 5
- Laboratory/R&D: 1
- Misc (cannabis/coal-tar/grill meats) 3





Responding to New Chemical Listings

- **How should parties in the supply chain respond to new chemical listings?**
 - Trade associations as a resource
 - What can (and should) be done in advance?
 - How do actions differ in the supply chain?
 - Various options: Labeling, SUD (breakout sessions 4-5 pm), Safe harbor assessment, Reformulating
 - Exposure assessment: Don't forget to consider environmental exposures and occupational exposure (they may be relevant)



Making a Decision to Warn

- What are standard approaches to incorporating a Prop 65 warning?
- Are there recommended shortcuts?
- What do I do if my supplier will only disclose that there is a Prop 65 listed chemical but won't identify the chemical?
- What are recommended resources to learn more about incorporating Prop 65 warnings?



Do Big SKUs Correspond to “Big” Testing?

- What are robust approaches to screening large numbers of SKUs for newly listed Prop 65 chemicals?
 - Is it necessary to test all SKUs?
- Uh oh—I found the chemical in my product!
 - Where can I find NSRLs and MADLs for newly listed chemicals?
 - OEHHA’s website
<https://oehha.ca.gov/proposition-65/general-info/current-proposition-65-no-significant-risk-levels-nsrls-maximum>
 - Peer-reviewed literature contains unpublished NSRLs/MADLs:
 - e.g., SOT’s Toxicologist:
<https://www.toxicology.org/pubs/amp/toxicologist.asp>

Q&A

- What are effective techniques to convince overseas suppliers to move away from use of a Prop 65 chemical?



Additional Resources

- Recommended resources for Prop 65 issues:
 - Prop65 Clearinghouse:
<https://www.prop65clearinghouse.com/>
 - OEHHA's Prop 65 website and ListServ emails:
<https://oehha.ca.gov/proposition-65> **and**
<https://oehha.ca.gov/about/listserv>
 - Product Safety Newsletter:
<http://www.productsafetyletter.com>
 - Law360:
<https://www.law360.com/>