

**OEHHA to List Six New  
Chemicals- Agency continues to  
develop more regulations**

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# OEHHA Lists Para-chlorobenzotrifluoride (PCBTF)

By Jack Schatz | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

California's Office of Environmental Health Hazard Assessment (OEHHA) has added Para-chlorobenzotrifluoride (PCBTF) to its list of carcinogens under Proposition 65. also add para-chlorobenzotrifluoride (PCBTF), a solvent to the Proposition 65 list of carcinogens.

Companies using any of approximately 900 substances listed under Prop 65 are required to provide warnings to Californians that using their products may possibly expose them to the chemicals identified as carcinogens or toxic to the reproductive system.

In its notice of intent, to list the OEHHA announced that it's taking the steps to list PCBTF based on the 'authoritative bodies' mechanism after a 2018 National Toxicology Program (NTP) reported "clear evidence" of PCBTF's carcinogenicity.

The NTP's report on PCBTF's carcinogenicity was titled "*Toxicology and Carcinogenesis Studies of p-Chloro- $\alpha,\alpha$ -Trifluorotoluene in Sprague Dawley Rats.*" The reported findings met the sufficiency of the evidence and formal identification criteria required to be added to the Prop 65 list. PCBTF is also used as a solvent in inks, coatings, and paints.

The use of PCBTF is important for manufacturers in California because its contribution to ground-level ozone formation is insignificant which makes PCBTF an approved alternative solvent that meets the strict requirements for volatile organic compound (VOC) emissions.

The public comments period on the PCBTF proposal was initially set to end on December 24, 2018, but the American Coatings Association (ACA) requested an extension. California's Office of Environmental Health Hazard Assessment (OEHHA) agreed to extend the public comment period until January 23, 2019.

PCBTF was listed as a Proposition 65 carcinogen on June 28, 2019. The effective date of the listing is the same as the listing date. The enforcement date for (PCBTF) will take effect on June 28, 2020.



*(PCBTF) is a carcinogenic and useful solvent*

# Defense Punts on Motion to Dismiss Prop 65 Case

By Jack Schatz | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

Plaintiffs' attorney Mark Lanier a Los Angeles based attorney has filed a motion in court for the dismissal of a case that seeks to require cancer warnings on Johnson & Johnson's baby powder products sold in California.

However, Johnson & Johnson, the defendant, opposed the motion and accused Lanier of intentionally stalling the case.

Lanier of The Lanier Law Firm filed the case under California's Safe Drinking Water and Toxic Enforcement Act of 1986 AKA Proposition 65 in Los Angeles County Superior Court. His clients were seven California residents who claim they were misled about the safety of J&J's Shower to Shower and baby powder products. Asbestos, a carcinogen was found on both products.

Proposition 65 requires businesses to provide a "clear and reasonable warning" before exposing consumers to listed carcinogens and Reproductive, and or developmental toxicants that potentially can cause birth defects or other developmental harm.

Lanier's suit also sought for restitution and civil penalties of \$2,500 daily for each violation.

On April 18, plaintiffs moved to amend their complaint to add Valeant Pharmaceuticals North America LLC as another defendant. They claimed that they found out that Shower to Shower products have been owned by Valiant since 2012, but some stores still carried the product with the Johnson & Johnson label. They added that both companies used talc sourced from the same Chinese mines that contained asbestos.

Michael Akselrud, an associate at the Lanier Law Firm said that the purpose of the motion was to bring all parties that violated Proposition 65 to court in one case.

According to Akselrud, he intended to refile the case.

Both Valeant which was renamed Bausch Health US LLC and Johnson & Johnson opposed the amendment. The defendants saw it as the plaintiff's way to buy more time.

Johnson & Johnson attorney Elyse Echtman noted that the plaintiffs already knew about J&J's sale of Shower to Shower.

According to Echtman, now that they have records that show that the plaintiffs have known that the products are safe, they are asking the court for voluntary dismissal of the case "so that they can try again."

Lanier and Michael Akselrud did not respond to requests for comment.

A hearing is set for July 29.

Echtman wrote that the plaintiffs are apparently not satisfied with the strategies they have developed "which

is why they seek court permission for a complete do-over.”

J&J also noted that only one of the five plaintiffs who sat for depositions knew they were parties in a lawsuit. Some of them were not aware of Prop 65.

Johnson & Johnson attorney Peter Bicks said that the lawsuit “was completely lawyer manufactured,”

In a [response filed](#), Akselrud refused to consider the defendant’s concerns about the plaintiffs’ lack of awareness about the case. He said that cases against Johnson & Johnson that its talcum powder products contain asbestos have been widely publicized.

Akselrud wrote that the “FDA’s warnings about asbestos in cosmetic products demonstrates the merits of plaintiffs’ case.”

FDA’s warnings about asbestos will probably not be enough for the Lanier firm to get out of the mess they have created, but stranger things have happened in Prop 65 litigation. If the case proceeds beyond the July



29 hearing date, it may proceed to trial in October 2019.

# OEHHA Posts Fact Sheet on Styrene

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

California's Office of Environmental Health Hazard Assessment (OEHHA) recently posted a fact sheet about styrene on its Proposition 65 warning website. The fact sheet includes a strange recommendation concerning polystyrene. The Proposition 65 warnings website was a rulemaking initiative undertaken by OEHHA to increase the level of detail provided about chemicals on the Proposition 65 lists.

OEHHA listed [styrene](#) as a carcinogen under the state's Safe Drinking Water and Toxic Enforcement Act of 1986, also known as Proposition 65, on April 22, 2016, and on May 4, 2017, the California Office of Administrative Law approved a No Significant Risk Level (NSRL) for styrene of 27 µg per day.

Proposition 65 requires companies to provide a warning if exposure from the use of a product to a listed carcinogen will exceed a No Significant Risk Level derived using regulatory criteria. For some substances, like styrene, OEHHA has published NSRLs, which are deemed "safe harbors," meaning that products associated with exposures below the NSRL need not carry a warning statement.

The styrene fact sheet suggests that "Small amounts of styrene can be transferred to some food from polystyrene-based food-contact items such as drinking cups, plates, and other containers." One way to reduce potential exposure to styrene, suggested by OEHHA on the fact sheet is: "If possible, do not store or microwave food in polystyrene-based containers." Including this recommendation is perplexing since, in a final statement of reasons supporting the NSRL for styrene of 27 µg per day, OEHHA stated:

"It should be emphasized that the chemical that is listed under Proposition 65 is styrene, not polystyrene. The American Chemical Council, a prominent trade association notes that Styrene is the monomer used for the production of polystyrene. A warning for styrene would only be required in cases where residual levels of styrene in polystyrene food packaging materials result in exposures that pose a significant cancer risk, i.e., styrene exposures greater than 27 µg/day. The levels of such residual styrene in polystyrene food packaging materials are generally thought to be fairly low in most cases,"

The trade association said.

(See <https://oehha.ca.gov/media/downloads/crrr/styrenesfor05112017.pdf>.)



# State AGs Want Role in Regulation of CBD-Products

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

## State AGs Want Role in Regulation of CBD-Products



Tuesday, July 24, 2019

Many state regulators are closely watching the U.S. Food and Drug Administration (FDA) as it works through the challenges associated with regulating cannabidiol (CBD) products. Under the Federal Food, Drug and Cosmetic Act (FD&C Act), CBD cannot lawfully be added to a food or marketed as a dietary supplement; however, industry has been pressuring the Agency to create a pathway for the lawful use of CBD in food and dietary supplements through either an exception by regulation to the FD&C Act or through a nonenforcement policy.

As previously reported The FDA held a public meeting on May 31, 2019, to obtain scientific data and information about the safety of FDA-regulated products containing cannabis or cannabis-derived compounds. The Agency has made clear that outstanding questions related to the safety of CBD products must first be addressed before a regulatory framework can be established for lawfully marketing foods and dietary supplements containing CBD.

In response to FDA's request for safety data and information, on July 16, 2019, a coalition of 37 Attorneys Generals submitted a letter to the agency, urging the Agency to cooperate with the states to protect consumer from false advertising and potential harms to their health from products containing cannabis or cannabis-derived compounds, including CBD. The letter also urged the Agency to develop ongoing assessments of potential risk and benefits of these products, including how they interact with other dietary or pharmaceutical products. Ultimately, the letter requests that the FDA "ensure that states maintain a role as regulators in this emerging market." Because now CBD products are now widely available in many U.S states and territories, it is not surprising that public health officials and state regulators seek a role in the regulation of these products.

# EPA Rule to Restrict Five Toxic Chemicals

By James | OEHHA to List Six New Chemicals- Agency continues to develop more regulations



The five chemicals designated under the proposed rule include: decabromodiphenyl ether (DecaBDE); phenol, isopropylated phosphate (3:1); (PIP (3:1)), also known as tris(4-isopropyl phenyl) phosphate; 2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP); hexachlorobutadiene (HCBd); and pentachlorothiophenol aka (PCTP).

decabromodiphenyl ether (DecaBDE); phenol, isopropylated phosphate (3:1) (PIP (3:1)), also known as tris(isopropyl phenyl) phosphate; 2,4,6-tris(tert-butyl)phenol (2,4,6-TTBP); hexachlorobutadiene (HCBd); and pentachlorothiophenol (PCTP).

The proposed rule would restrict or prohibit manufacture (including import), processing, and distribution in commerce for many uses of all of the chemicals except HCBd, for which EPA is proposing no regulatory action.

For the other four chemicals, the proposed rule includes recordkeeping requirements, as well as additional downstream notification requirements for PIP (3:1). Publication of the proposed rule in the *Federal Register* will begin a 60-day comment period.

## Background

Under the Frank R. Lautenberg Chemical Safety for the 21st Century Act (Lautenberg Act), TSCA Section 6(h) requires EPA to propose Section 6(a) regulatory action by June 22, 2019, on chemicals from the 2014 update of the TSCA Work Plan that meet the PBT requirements specified in Section 6(h). The proposed Section 6(a) rules must, pursuant to Section 6(h)(4), "address the risks" presented by the chemicals and reduce exposure "to the extent practicable." EPA identified five PBT chemicals that meet the statutory criteria — DecaBDE; PIP (3:1); 2,4,6-TTBP; HCBd; and PCTP.

## What Action Is EPA Taking?

EPA is proposing to restrict or prohibit certain actions with respect to four of the five PBT chemicals subject to the rulemaking — DecaBDE; PIP (3:1); 2,4,6-TTBP; and PCTP. As of the effective date of the final rule, affected persons would be required to maintain, for three years from the date the record is generated, ordinary business records that demonstrate compliance with the restrictions, prohibitions, and other requirements.

EPA states that the extent of exposure, the severity of the hazard, and thus the likely risk of these chemicals varies significantly. For example, according to EPA, the evidence suggests that human exposure to HCBd “is very limited due in large part to the high waste treatment efficiencies achieved by the chemical manufacturers.” Additionally, the amount and type of hazard information vary substantially, from relatively well-studied chemicals (*e.g.*, DecaBDE) to data-sparse chemicals without significant hazard data (*e.g.*, PCTP).

The proposed rule includes hazard summaries for each of the five PBT chemicals. According to the proposed rule, EPA “did not perform a systematic review of the literature to characterize the hazards of the five PBT chemicals, and instead performed a limited survey of the reasonably available scientific information.” EPA states that “[d]ue to Congress’ direction in TSCA to expeditiously regulate PBTs on the 2014 Work Plan and because risk evaluations were not required by Congress, EPA prepared a general-purpose summary of the hazards presented by the five PBT chemicals.” The proposed rule briefly summarizes “reasonably available hazard information.” EPA requests public comments making it aware of any more recent hazard information available. EPA notes that the hazard statements “are not based on a systematic review of the available literature and information may exist that could refine the hazard characterization.”

### **DecaBDE**

DecaBDE is a flame retardant that has been widely used in textiles, plastics, adhesives, and polyurethane foam. For DecaBDE, the proposed rule would prohibit the manufacture (including import), processing, and distribution in commerce of DecaBDE, and articles and products to which DecaBDE has been added except for the following:

- Manufacture, processing, and distribution in commerce for use in parts for new aircraft and aerospace vehicles, and distribution in commerce of the new vehicles containing such parts, for a period of three years;

EPA states that 2,4,6-TTBP is an antioxidant that can be used as a fuel additive or lubricant additive, as an intermediate in the manufacture of other compounds, and as a waste fuel. For 2,4,6-TTBP, the proposed rule would prohibit the distribution in commerce of 2,4,6-TTBP and products containing 2,4,6-TTBP in any container with a volume of fewer than 55 gallons for any use to prevent the use of 2,4,6-TTBP as a fuel additive or fuel injector cleaner by consumers and small commercial operations (*e.g.*, automotive repair shops, marinas). According to the proposed rule, it is EPA’s intent that the 55-gallon container restriction will ensure the continued fuel additive or fuel injector cleaner use of this PBT only by commercial operators who have the capacity to protect their workers who may come into contact with 2,4,6-TTBP and whose workplaces are generally subject to the standards promulgated by the Occupational Safety and Health Administration (OSHA). The restriction also would prohibit processing and distribution in commerce of 2,4,6-TTBP, and products containing 2,4,6-TTBP, for use as an oil or lubricant additive, regardless of container size. The hazard statement states: 2,4,6-TTBP is toxic to aquatic plants, aquatic invertebrates, and fish. Data indicate the potential for liver and developmental effects. **HCBd** HCBd is produced as a byproduct in the production of chlorinated solvents and has also been used in the past as an absorbent for gas impurity removal and as an intermediate in the manufacture of rubber compounds. For HCBd, EPA states that it has evaluated the uses of hexachlorobutadiene and is proposing no regulatory action.

The hazard statement states:

HCBd is toxic to aquatic invertebrates, fish, and birds. Data indicate the potential for renal, liver, and developmental effects in mammals. HCBd has been identified as a possible human

carcinogen.

PCTP is used in the manufacture of rubber compounds. For PCTP, the proposed rule would prohibit the manufacture (including import), processing, and distribution in commerce of PCTP, and products containing PCTP, unless in concentrations at or below one percent by weight.

The hazard statement states:

PCTP is toxic to protozoa, fish, terrestrial plants, and birds. Data for analogous chemicals (pentachloronitrobenzene and hexachlorobenzene) indicate the potential for liver effects in mammals and systemic (bodyweight) effects for PCTP in mammals (no repeated-dose animal or human epidemiological data were identified for PCTP).

EPA is expected to finalize the proposed Rule and publish it in the Federal Register following the end of the public comment period.

# OEHHA Proposes Prop 65 listings for Six Chemicals

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

California's Office of Environmental Health Hazard Assessment (OEHHA) announced it intends to list six nitrobenzene chemical candidates and other industrial chemicals as carcinogens under Proposition 65.

The nitrobenzene compounds included in the proposed listing include:

- 2-amino-4-chlorophenol;
- 2-chloronitrobenzene;
- 1,4-dichloro-2-nitrobenzene;
- 2,4-dichloro-1-nitrobenzene;
- N,N-dimethylacetamide;and
- Para-nitroanisole

OEHHA intends to list the chemical candidates named above by the Labor Code' listing mechanism to add the proposed chemicals to the Proposition 65 List of Carcinogens.

The proposed listings were based on determinations made by the International Agency for Research on Cancer (IARC) that the substances are possibly carcinogenic to humans (Group 2B), based on sufficient evidence of carcinogenicity in animals.

When finalized, businesses will be required to provide Prop 65 warnings where there are exposures to these chemicals above 'Safe Harbor' thresholds if and when they are established by the agency.

- 2-Amino-4-chlorophenol is a light brown colored crystalline solid. that may be toxic by ingestion. It is insoluble in water. It is used as an intermediate to create other chemical compounds.

**PubChem CID:** 7265

**Molecular Weight:** 143.57 g/mol

**Molecular Formula:** C<sub>6</sub>H<sub>6</sub>ClNO or HOC<sub>6</sub>H<sub>3</sub>...

**Chemical Names:** 2-Amino-4-chlorophenol95-

2-Nitrochlorobenzene is an organic compound with the formula ClC<sub>6</sub>H<sub>4</sub>NO<sub>2</sub>. It is one of three isomeric nitrochlorobenzenes. It is a yellow crystalline solid that is important as a precursor to other compounds due to its two functional groups.

[Formula:](#) C<sub>6</sub>H<sub>4</sub>ClNO<sub>2</sub>

[Boiling point:](#) 474.8°F (246°C)

[Solubility in other solvents:](#) Highly soluble in [diethyl ether](#), benzene, and hot ethanol

[Molar mass:](#) 157.553 g/mol

[Formula:](#) C<sub>6</sub>H<sub>4</sub>ClNO<sub>2</sub>

[Boiling point:](#) 474.8°F (246°C)

[Solubility in other solvents:](#) Highly soluble in [diethyl ether](#), benzene, and hot ethanol.

[Appearance:](#) Yellow crystals

[ChemSpider ID:](#) 13853953

1,2-Dichloro-4-nitrobenzene is an organic compound with the formula  $1,2\text{-Cl}_2\text{C}_6\text{H}_3\text{-4-NO}_2$ . This pale yellow solid is related to 1,2-dichlorobenzene by the replacement of one H atom with a nitro functional group. This compound is an intermediate in the synthesis of agrochemicals.

**Formula:**  $\text{C}_6\text{H}_3\text{Cl}_2\text{NO}_2$

CAS No. 611-06-3

- N, N-dimethylacetamide N, N-dimethylacetamide is a member of the class of acetamides that is acetamide in which the hydrogens attached to the N atom have been replaced by two methyl groups respectively.
- Metabolite observed in cancer metabolism has a role as a human metabolite. It is a member of acetamides and a monocarboxylic acid amide. It derives from an acetamide.



- Para-nitro anisole.  
4-nitro anisole  
CAS# 100-17-4  
Chemical Formula  $\text{C}_7\text{H}_7\text{NO}_3$

OEHHA is proposing the listings via the “Labor Code” listing mechanism to make the additions, which are based

The public comment period for the on the proposed listings will be open through August 1, August 12, 2019.

OEHHA notes that this is a “ministerial listing” process, and it cannot consider scientific arguments concerning the weight or quality of evidence considered by IARC. “Comments should be limited to whether IARC has identified the specific chemical or substance as a known or potential human or animal carcinogen,” the agency said in its July 12 regulatory notice.

# OEHHA Revises Prop 65 Warning Requirements for Rental Vehicles

By Jack Schatz | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

The California Office of Environmental Health Hazard Assessment (OEHHA) has revised its regulations on how to provide 'clear and reasonable' warnings as required under Proposition 65 for possible chemical exposures while in rental vehicles.

The amendments are in response to concerns from the rental car industry that prominently displaying Prop 65 warning stickers could make the vehicles easier to identify as rentals, and therefore more vulnerable to break-ins.

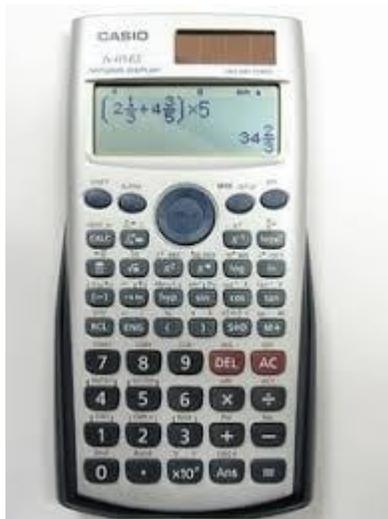
The new amendments provide car rental companies with a number of options for informing consumers of this warning. The consumers can be warned using any of the following options:

1. The warning can be included in the rental agreement, on the rental ticket jacket or on a tag which is hung from the rental vehicle's rearview mirror.
2. The warning can be on a sign, at least 22-point type that is posted at an area in the rental facility where rental transactions are processed. The warning sign should be easily noticed, read and understood by the renter while processing the vehicle rental.
3. The warning can be included in the electronic rental contract as well as in the confirmation that is emailed to the renting party.
4. The warning can be a clearly marked hyperlink word "**WARNING**" on the online reservation page or prominently displayed to the renters before they complete the online reservation.

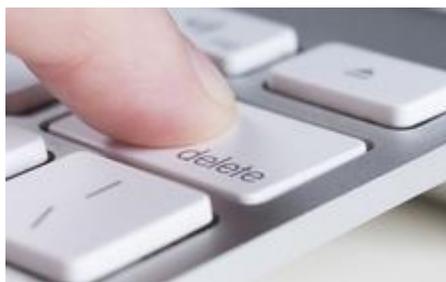
The updated regulations take effect on October 1, 2019

# OEHHA Abandons Changes to Prop 65 Reprotox Calculation

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations



3 July 2019 / Prop 65, US states



California's Office of Environmental Health Hazard Assessment has announced it is no longer planning to change the process for calculating exposure to reproductive toxicants from consumer products under Proposition 65.

The announcement follows an October 2018 notice of a proposal to make "clarifying" changes to how a business determines if such an anticipated exposure will require a warning under the state's scheme.

Specifically, it proposed to establish the arithmetic mean as default in calculating the reasonably anticipated rate of intake or exposure for average users of a consumer product. This, it said, would help businesses determine if a warning is required for a given exposure.

But a broad coalition of industry groups protested against the change, saying that it would "present entirely new regulatory requirements that will directly affect businesses in their Proposition 65 compliance efforts, as well as placing additional obstacles to a defendant meeting its burden of proof in litigation".

It also cautioned that the change would result in a significant increase in warnings under the right-to-know

regulations.

The groups urged the agency to abandon the proposal and to continue to allow case-by-case determinations for selecting an average measure.

Now, six months later, OEHHA has confirmed that it will abandon its plans accordingly. In a notice emailed to Prop 65 stakeholders on 2 July, the agency said that it “is not proceeding at this time with the amendment”.

The notice also sets out a revised regulatory proposal on calculating exposure to reproductive toxicants in food products.

Public comments on this will be accepted from July 5 to July 22.

# Study Reports High Levels of Arsenic in Bottled Water

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

## Study Reports High Levels of Arsenic in Bottled Water Sold At Target, Whole Foods

By A.J. Esposito

A study by the Oakland based Center for Environmental Health (CEH) reported high levels of arsenic in Starkey Water and Penafiel which are owned by Whole Foods and Keurig Dr. Pepper respectively and sold at Target.

CEH has sent notices of violation to the manufacturers and retailers of the bottled water that the amount of arsenic in the water is at a level that requires a warning under California's consumer protection law Proposition 65. According to CEH, heavy metal arsenic can cause reproductive disorder and cancer.

A CEH press release also stated that high levels of arsenic can harm an unborn child and young children whose bodies are still developing.

Michael Green, CEH CEO said that customers buy expensive bottled water because they assume that it is "safer and healthier to drink than tap water" without knowing that they are drinking water with a highly toxic metal known to cause birth defects and cancer.

Earlier research performed by **Consumer Reports** "also discovered high levels of arsenic in these bottled water brands."

On June 21, 2019, [Keurig Dr. Pepper withdrew its Peñafiel bottled water](#) for sale in the U.S., citing high arsenic levels.

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The U.S. Food and Drug Administration learned about high levels of arsenic in a brand of bottled water owned by Keurig Dr. Pepper as early as 2013, two years earlier than previously known, according to records obtained this week by Consumer Reports.

But the company and the agency have never issued a recall for the product, which is still available for sale online and in stores.

Consumer Reports' recent tests of the bottled water—Peñafiel Mineral Spring Water, imported from Mexico—found it had arsenic levels nearly double the federal limit of 10 parts per billion. And CR had previously found that the FDA knew about high levels of arsenic in the water as early as 2015 when the agency put Peñafiel on an "import alert" for excessive arsenic.

### MORE ON ARSENIC

[Arsenic in Some Bottled Water Brands at Unsafe Levels](#)

[How Much Arsenic Is in Your Rice?](#)

[Arsenic and Lead Are in Your Fruit Juice](#)

[Heavy Metals in Baby Food: What You Need to Know](#)  
[Arsenic, Lead Found in Popular Protein Supplements](#)

But it now seems that the FDA knew about concerning levels of arsenic in Peñafiel as early as 2013, according to records obtained by CR through a Freedom of Information Act request.

The documents show that in March of that year, the federal agency sent inspectors to R.R. Importaciones, a food importer in New Jersey after tests from the state's health department found Peñafiel water with 21.1 ppb of arsenic.

(Though the [FDA report redacts the brand name](#) (PDF), key details from the records make clear that the bottled water is Peñafiel, including that the product was collected on Jan. 29, 2013, and later destroyed as a result of the tests on March 14 of that year.)

According to the U.S. Food and Drug Administration Keurig, Dr. Pepper will be withdrawing Penafiel products from the shelves of Target, Walmart and other vendors. Consumers can also return the bottled water to a retailer and get a full refund.

However, a Whole Foods Market spokesperson said that Starkey Water is fully compliant with the standards set by the FDA for heavy metals as verified not only during the annual testing in an FDA certified lab but also



by an accredited third-party lab test of every production run.

# Residential Rental Regulation Burdens Managers

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

## New Prop 65 Regulations for Residential Rental Properties Burdens Property Managers

By A.J.Esposito

The Office of Environmental Health Hazard Assessment (OEHHA) has promulgated two related warning regulations for commercial and residential property owners.

The first regulation which took effect on August 30, 2018, requires that businesses with 10 or more employees provide “clear and reasonable” warnings to people entering their properties if they could be exposed to chemicals listed as carcinogens or reproductive or developmental toxicants.

The most recent regulation took effect on July 1, 2019. It requires residential rental property owners to provide new warnings to occupants. This regulation applies to houses, apartments, condominiums, duplexes, triplexes and other residential properties except for hotels.

### Warnings Must be conveyed to Each Adult Occupant

In the previous requirement, residential property owners could post warnings on the property to inform tenants of their exposure to chemicals listed under Prop 65 as carcinogens or can cause reproductive harm.

The new regulation requires that a landlord provide “each known adult occupant” direct notice of the exposure through the lease, an email or through a letter “at the time of renting, leasing...and each year thereafter.

The regulation provides property owners with guidelines, including “safe harbor” language and content, to use in the warning to tenants as follows:

- The word “**WARNING**” in bold capital letters with this warning symbol.
- The notice must inform tenants that they can talk to the property owner about the details (how and when) of the exposure to harmful chemicals.
- Identify the sources of exposure (e.g. fireplaces, building materials) in the rental property.
- Identify the harmful chemicals and the risk involved (reproductive harm or cancer).

### Additional Warnings Requirements

In addition to the direct notice, landlords are still required to post signs to provide tenants with warnings posted in enclosed parking facilities and designated smoking areas.

### The Duties of Landlords and Property Managers are Vague and Ambiguous

There are concerns regarding the warning requirement that occupants may “talk to your landlord or the building owner about how and when you could be exposed to these chemicals in your building”.

The requirement is not clear as to the scope or coverage of information that the landlord should provide. It is not clear what would be considered as incomplete or vague advice by the landlord. Because the most recent regulation requires that the landlord must identify the “source of the alleged exposure.” it is unclear how far

their duty to warn goes. What is crystal clear is that the residential regulation needs revision to clarify and amend the regulation for property owners and tenants.

In addition, the regulation requires that the landlord must identify the “source of exposure.” However, it is not clear how specific or detailed a property owner must identify the source of exposure.

### **Conclusion**

To comply with the new Prop 65 residential property regulation owners may consider modifying their lease agreements starting on July 1, 2019, and ensure they include the required Prop 65 notice. They should also prepare their annual Prop 65 notices to tenants at their earliest convenience.

# Prop 65 Notices Served on Leather Goods

By LisaLisa | OEHHA to List Six New Chemicals- Agency continues to develop more regulations

Six 60-day notices of violation were recently issued for hexavalent chromium detected in leather goods. The notices serve as warnings of the intent to start legal proceedings, that may end up in California Courts or settle out of court, depending on the products and chemicals involved, and the noticing Prop 65 enforcer.



Hexavalent chromium (Cr (VI)) was listed in 1987 under California Proposition 65 (Prop 65) as a toxic chemical that causes birth defects and other reproductive problems and cancer.

The six Notices of Violation were issued because of consumer exposure to Cr (VI) in a variety of leather products used in gloves for work and gardening, driving and fashion, golf and sports.

Humans can be exposed to Cr (VI) through hand to mouth contact after touching, wearing, or handling the leather products. Exposure can also be possible through dermal absorption. Health problems associated with exposure to Cr (VI) include allergies, throat, nasal, or respiratory irritation.

Cr (VI) is often unintentionally formed as an unwanted tanning process by-product in leather manufacturing, while in storage and shipment of leather products.

The Safe Drinking Water and Toxic Enforcement Act of 1986 or California Proposition 65 (Prop 65), became law in November 1986. The law is the basis why there is a Prop 65 list of approximately 900 harmful substances.

Businesses based in California are required to provide a Prop 65 Warning or a clear and reasonable warning on products that can expose anyone to a substance above its specified safe level.

Hexavalent chromium is typically used in machining metal parts in aircraft and anodizing other components that require chrome plating applications.

The presence of hexavalent chromium in leather processing is unusual. Hexavalent chromium was prominently featured in the 2000 movie "Erin Brockovich" featuring Julia Roberts as the loudmouth Paralegal who found evidence of the chemical in the water of the desert town of Hinkley California.