



Making Sense Out of the Ever Increasing U.S. States' Chemical Composition Laws

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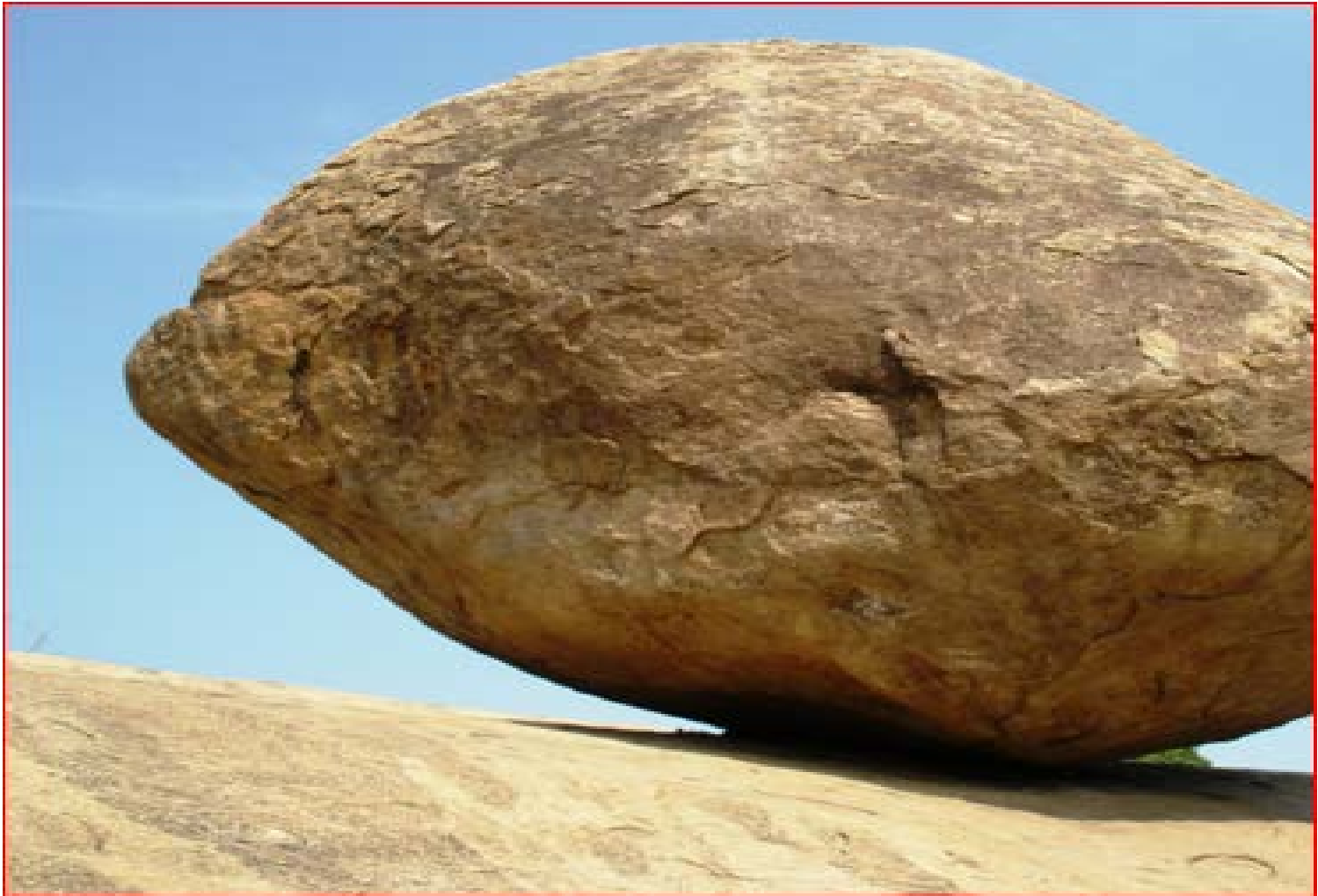
Ever Increasing . . .



States are leading the way

23 states are considering **97 policies** to protect people from toxic chemicals. **165 state policies** have been adopted in **34 states**.

[Learn About More Toxics Policies](#)





California Proposition 65

“No person in the course of doing business shall **knowingly and intentionally expose** any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving **clear and reasonable warning**”



Prop 65 What You Need to Know

- > The List
- > The Warning Requirement
- > Regulation by Litigation
- > Defenses—Safe Harbor Levels
- > Strategies—Make your company a hard target

Regulation by Litigation



The Warning Requirement

WARNING:

This product contains a chemical known to the State of California to cause cancer, or birth defects or other reproductive harm.

Safe-Harbor Product Warning

Prop 65's Warning is Likely to Change

- > The new warning will be more onerous!
 - Use of an **exclamation-point** symbol.
 - A statement that the product can **expose** a person to a Prop 65 chemical
 - Identification **of at least one** Prop 65 chemical to which the consumer would be exposed.
 - Listing on the product the **URL for OEHHA's website** that will provide information about Prop 65 chemicals.

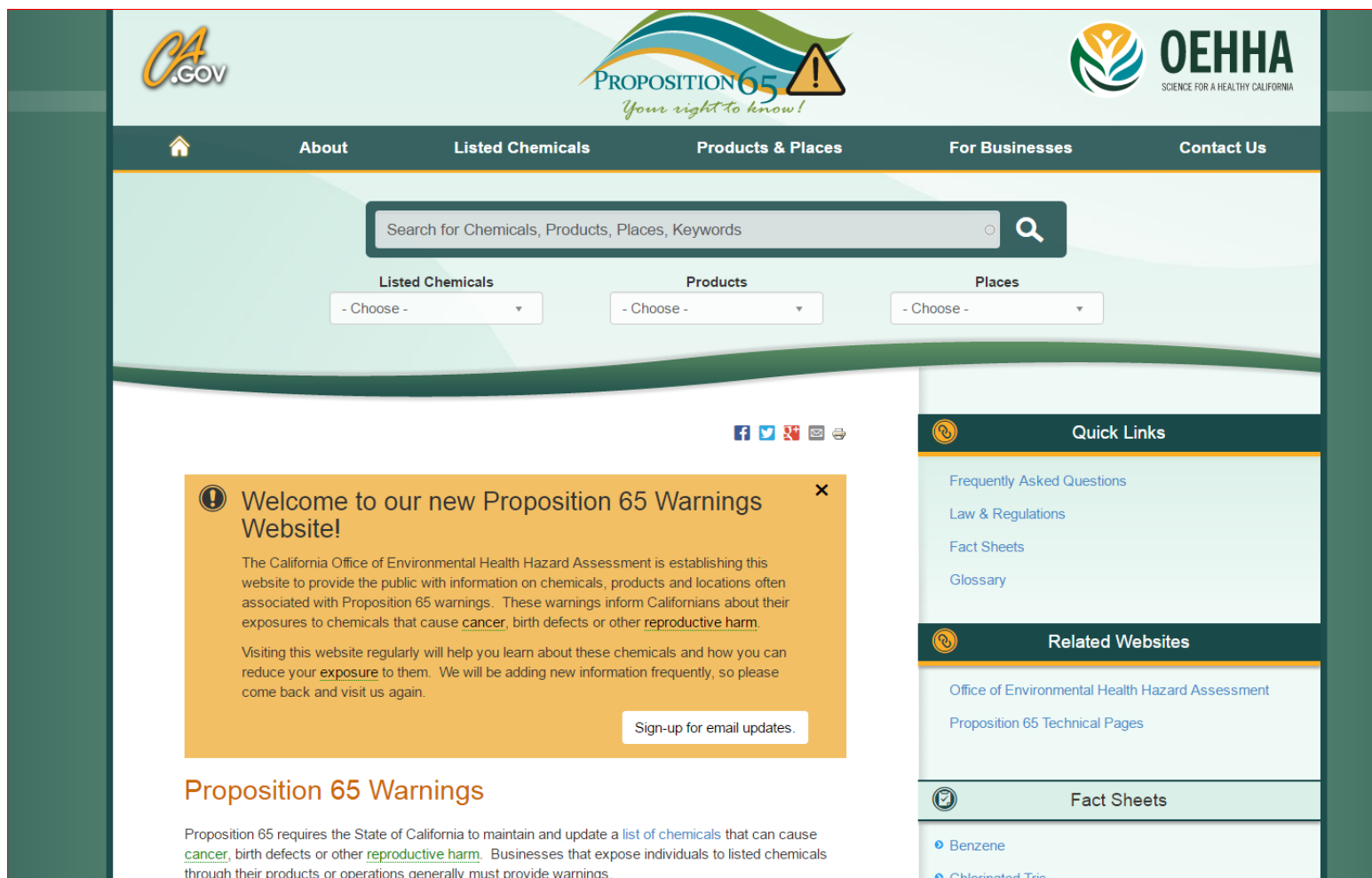
The Safe Harbor Defense

**No Warning Needed if Company can
Show the Exposure from Use of the Product
is Below the Safe Harbor Intake Level**

Safe Harbor Intake Level for Some but not all Prop 65 Chemicals

- > For carcinogens-the No Significant Risk Level (NSRL).
- > For reproductive toxicant-the Maximum Acceptable Dose Level (MADL).
 - Exposure levels (micrograms per day) for consumer.
 - Based on “average user” of the product.

California OEHHA's New Website



The screenshot displays the homepage of the California Office of Environmental Health Hazard Assessment (OEHHA) website. The header features the CA.GOV logo, the Proposition 65 logo with the tagline "Your right to know!", and the OEHHA logo with the tagline "SCIENCE FOR A HEALTHY CALIFORNIA". The navigation menu includes links for Home, About, Listed Chemicals, Products & Places, For Businesses, and Contact Us. A search bar is prominently displayed, allowing users to search for chemicals, products, places, or keywords. Below the search bar, there are three dropdown menus for "Listed Chemicals", "Products", and "Places", each with a "- Choose -" option. A social media sharing bar is located below the search bar. A large orange banner with a warning icon and a close button (X) reads "Welcome to our new Proposition 65 Warnings Website!". The banner text states: "The California Office of Environmental Health Hazard Assessment is establishing this website to provide the public with information on chemicals, products and locations often associated with Proposition 65 warnings. These warnings inform Californians about their exposures to chemicals that cause **cancer**, birth defects or other **reproductive harm**. Visiting this website regularly will help you learn about these chemicals and how you can reduce your **exposure** to them. We will be adding new information frequently, so please come back and visit us again." Below the banner is a "Sign-up for email updates" button. The main content area is titled "Proposition 65 Warnings" and includes a paragraph: "Proposition 65 requires the State of California to maintain and update a [list of chemicals](#) that can cause **cancer**, birth defects or other **reproductive harm**. Businesses that expose individuals to listed chemicals through their products or operations generally must provide warnings." The right sidebar contains a "Quick Links" section with links to "Frequently Asked Questions", "Law & Regulations", "Fact Sheets", and "Glossary". Below this is a "Related Websites" section with links to "Office of Environmental Health Hazard Assessment" and "Proposition 65 Technical Pages". At the bottom of the sidebar is a "Fact Sheets" section with links to "Benzene" and "Chlorinated Tris".

Bisphenol A - BPA

- > Used to make polycarbonate plastics and epoxy resins.
- > Effective May 11, 2016 Prop 65 60-Day Notices may be sent for failure to place a warning on a product that contains BPA.
- > In March OEHHA issued “emergency regulations” that a Point-of-Sale warning sign would temporarily be a sufficient warning.
- > MADL for BPA of 3 micrograms per day for dermal exposure from “solid materials.”

BPA Warning Rules Delayed Warning Rules

4/5/2016

California delays BPA warning rules, fearing they could scare away shoppers - LA Times

LOCAL / L.A. Now

California delays BPA warning rules, fearing they could scare away shoppers

By Associated Press

MARCH 24, 2016, 6:35 PM

California plans to delay state-required warnings on metal cans lined with the chemical BPA, arguing too-specific warnings could scare stores and shoppers in poor neighborhoods away from some of the only fruits and vegetables available — canned ones, officials said Thursday.

Instead, the state on May 11 will require stores to post general warnings at checkout counters about the dangers of BPA and note that some canned and bottled products being sold have liners with the toxic chemical.

The decision and rationale of the California Environmental Protection Agency are angering some community and public-health groups.

It's "ridiculous. It's paternalistic," said Martha Dina Arguello, executive director of Physicians for Social Responsibility-Los Angeles. "I just can't imagine that it's a better idea not to let us know what's in our food."

OEHHA is Always Considering Adding Chemicals to Prop 65 List

- > Perflourochemicals
 - PFOA
 - PFOS and its salts
- > Nickel and nickel compounds

California Department of
Toxic Substances Control



DTSC Three Year Priority Work Plan



Priority Product Work Plan

Three Year Work Plan | 2015 - 2017

APRIL 2015

SAFER CONSUMER PRODUCTS BRANCH

DEPARTMENT OF TOXIC SUBSTANCES CONTROL

DTSC Three Year Plan Products

Products Categories

1. Beauty, Personal Care and Hygiene Products
2. Building Products and Household, Office Furniture and Furnishings
3. Building Products: Painting Products, Adhesives, Sealants and Flooring
4. Household: Office Furniture and Furnishings
5. Cleaning Product
- 6. Clothing**
7. Fishing and Angling Equipment

Potential Candidate Chemicals in Clothing Products

Table 5 Potential Candidate Chemicals in Clothing Products

Chemicals or Chemical Classes	Functional Use
Alkyl-phenol ethoxylates (APEs)	Surfactant
Aromatic amines and azo dyes	Colorant, Dye, Pigment
Perfluorochemicals, formaldehyde	Water repellency Oil, stain, or wrinkle resistance
Phthalates	Plasticizer
Triclosan	Antimicrobial agent, Material Preservative

U.S. TSCA Reauthorization – Relief From State Chemical Content Laws?



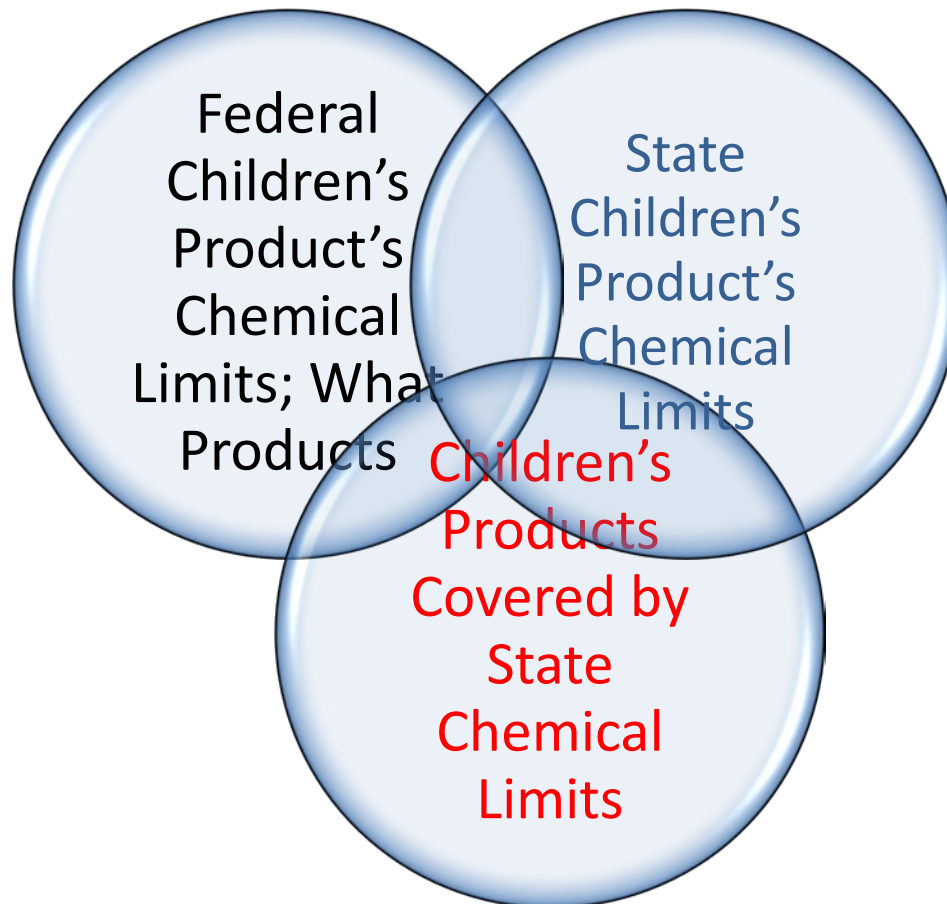
TSCA Reauthorization

What Does it Mean for Your Company?

- > Thoughts from Jean Warshaw, Esq.
 - New York City Attorney, Environmental Law Expert

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States' Chemical Content Laws- Federal Preemption?



Washington State's Children's Safe Products Act



Washington Children's Safe Products Act

- > Children's Product Manufacturers Have an Obligation:
 - to Report to the State of Washington
 - about the presence of any of the 66 Chemicals of High Concern to Children ("CHCCs").

WHEN? What Products?

Manufacturer category	Tier #1- Children's Products intended to be in the mouth	Tier #2- Children's Products greater than 1 hour exposure	Tier #3- Children's Products less than 1 hour exposure
Largest—sales of more than \$1 billion	August 2012	August 2013	August 2013
Larger—\$250 million-\$1 billion	February 2013	August 2013	August 2014
Medium—\$100-\$250 million	August 2013	August 2014	August 2015
Small—\$5-\$100 million	August 2014	August 2015	<u>August 2016</u>
Smaller—100,000 - \$5 million	August 2015	<u>August 2016</u>	<u>August 2017</u>

WHAT?

> Chemicals of High Concern to Children

- Intentionally added, above the Practical Quantification Limit.
- Contaminants when greater than 100 PPM
- But not if manufacturer has:
 - A manufacturing control program and
 - Has exercised due diligence.

What's on Your List?

Toxic Chemicals In Your Shopping Cart



WASHINGTON
TOXICS
COALITION



Washington State Changes its Position



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[Ecology home](#) > [News](#) > News Release

Department of Ecology News Release - March 15, 2016

High levels of cadmium and lead found in children's jewelry accessories
Toxic chemicals violate standards for children's products

Washington State Says It will **Now** Enforce the CPSA's Chemical Limitations not Preempted by the CPSIA

- > The Washington State CSPA prohibits sale of any children's product with a component that has more than:
 - 90 PPM lead
 - 40 PPM cadmium
 - Individually or in combination more than 1000 PPM of the phthalates (DEHP, DBP, BBP, DINP or DNoP).

Washington Says It will **Now** Enforce the CSPA's Chemical Limitations

- > In a change of position, most likely prompted by NGOs, Washington's Department of Ecology has announced a major change:
- > Where a product is covered by the state limits but not by a limit under the CPSIA, the Department of Ecology **"will enforce the state limits."**

Other U.S. States' Have Reporting Requirements for Chemicals of High Concern in Children's Products

Chemical Reporting Rule	Vermont	Oregon	Maine
List of Chemicals	Washington State's 66 Chemicals of High Concern	Washington State's 66 Chemicals of High Concern	11 Priority Chemicals
Reporting Level	PQL Based on Chemical	PQL Based on Chemical	PQL Based on Chemical
Contaminant Reporting Level	100 PPM	100 PPM	100 PPM
Reporting by Component	Yes	Yes	Yes

What All 4 States' Laws Have in Common

66 Chemicals;
but Maine Only
Enforces 11

Chemical
Reporting to be
Done in Ranges

100 PPM
Exception for
Contaminants

States Are
Working
Together

Maine's Priority Chemicals

Arsenic

Cadmium

Mercury

Nonylphenols (NP)
& Nonylphenol
Ethoxylate (NPEO)

Bisphenol A
(BPA)

Phthalates

- BBP
- DBP
- DEHP
- DEP

Formaldehyde

Differences Comparison Chart

Reporting Rule	Vermont	Oregon	Maine
Scope	66 Chemicals of High Concern	66 Chemicals of High Concern	11 Priority Chemicals
Reporting Required By	Brand and Model Name	Not Yet Defined	Brand and Model Name and Number of Units Sold
Due Date for First Report	July 1, 2016 ??	July 1, 2018	180 Days After Rule for Each Chemical Issued
Reporting Frequency	Every 2 Year	Every 2 Years	Report Once
Substitute Safer Alternative	No	Yes, After 2 Reports	Not At This Time
Enforcement Mechanism	Yes	No, But Could be Added	Yes

New York State Counties That Have Children's Products Chemical Content Limit Laws

- > Albany County
- > Westchester County
- > Suffolk County
- > Rockland County

Comparison Between Federal and New York Counties Limits

SUBSTANCE	FEDERAL Limits		NEW YORK COUNTIES' LIMITS			
	CPSIA— Applicable to Children's Products	ASTM F963-11— Applicable to Toys soluble	Albany County	Westchester County	Suffolk County	Rockland County
lead	90 surface coatings; 100 in substrate	90	Same as federal	prohibited	Same as federal	prohibited
mercury		60	60	prohibited	40	prohibited
arsenic		25	25	prohibited	40	prohibited
cadmium		75	75	prohibited	75	prohibited
antimony		60	60	prohibited	40	prohibited
cobalt		40		prohibited	40	prohibited
benzene		100		prohibited		prohibited
formaldehyde				prohibited		

THANK YOU!

