

# Air Quality Update

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## CALIFORNIA PROPOSITION 65 UPDATED CLEAR AND REASONABLE WARNING REQUIREMENTS

*California Code of Regulations Title 27, §25600, et seq. (2016)*

On August 30, 2016, California's Office of Environmental Health Hazard Assessment (OEHHA) approved modifications to the "clear and reasonable warning" requirements under California's "right-to-know" regulation, Proposition 65 (Prop 65). Until August 30, 2018, companies may follow any combination of the prior or the modified version of the regulation; after August 30, 2018, companies must comply with the revised regulation. The modified regulation changes the standards and responsibilities for providing warnings under Prop 65, but not whether a warning is required, so only businesses already required to provide Prop 65 notifications are expected to be impacted by the changes.

Under Prop 65, businesses with 10 or more employees must provide "clear and reasonable warning" to individuals they expose to carcinogens or reproductive toxics, at amounts exceeding OEHHA's established No Significant Risk Level (NSRL) for carcinogens or Maximum Allowable Dose Level (MADL) for reproductive toxics. Exposure can be from the use or consumption of a Consumer Product and/or an Environmental Exposure from chemicals present in the air or water.

OEHHA promulgated "safe harbor" warning methods for providing Prop 65 notifications, which offer businesses a minimum standard for warnings, such that there is a reasonable certainty the warnings will not result in enforcement action. However, businesses have the option of providing notifications using any other methods that meet the "clear and reasonable" standards of the regulation, without the safe harbor protections. As part of the 2016 rule modification, the safe harbor warning standards have been amended with more stringent requirements, which include:

- Identify by name at least one chemical requiring warning, for each endpoint (cancer and/or reproductive toxic);
- Identify the *source* of the chemical named in the warning;
- Include website: [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov);
- Include "Warning Symbol": ;
- "Contains" has been replaced with "can expose you to";
- Post at all public entrances to the affected area, in at least 72-point type;
- "Clearly identify" the area for which a warning is being provided;
- Provide in English and "in any other language used in signage in the affected area"; and
- Include specific language for exposure to categories of certain exposure types, including diesel exhaust, petroleum products, and

smoking areas (categories listed in §25607).

Revised rule language is available for review at: <http://oehha.ca.gov/proposition-65>

### Air Quality Tip

*For good compliance, look to your air permit conditions. There will be four areas of potential conditions to pay attention to: monitoring/testing, record-keeping, throughput or limits, and rule requirements. Be sure to check the current rules. Changes to the rules can affect the compliance requirements.*

### Upcoming Training Offered by Yorke Engineering

- Bay Area Air Quality Regulations, Permitting, and Compliance Seminar: April 4 – April 5, 2017
- California Multi-Media Environmental Regulations: Permitting, Compliance, and Reporting Seminar: March 21 – March 22, 2017  
<http://www.yorkeengr.com/AirQualityClasses.htm>

### Upcoming Due Dates for 2017\*

- CARB On-Road Heavy-Duty DV\*\* Reporting for Flexibility Options..... 1/31
- CARB In-Use Off-Road DV\*\* Annual Reporting for Medium and Large Fleets..... 3/1
- CARB PERP Equipment Units Annual Report..... 3/1
- CARB Refrigerant Reporting for Medium and Large Systems (≥ 200 lbs.)..... 3/1
- USEPA GHG Report ..... 3/31
- CARB GHG > 25K Metric Tons ..... 4/10
- CARB GHG 10-25K Metric Tons and All Electric Retailers ..... 6/1
- CARB GHG SF<sub>6</sub> Switchgear ..... 6/1
- Semi-Annual Title V Report ..... Semi-Annually
- Annual Title V Compliance Certification ..... Annually
- Title V – Application for Permit Renewal – Due 180 Days Prior to Permit Expiration

*\*All due dates listed are the statutory dates; sometimes dates are extended when they fall on a weekend/holiday.*

*\*\*Diesel Vehicle*

#### Example Prop 65 Safe Harbor Warning Before August 30, 2018:

WARNING: This area contains a chemical known to the State of California to cause cancer.



#### Example Prop 65 Safe Harbor Warning After August 30, 2018:

**WARNING:** Entering this area can expose you to chemicals known to the State of California to cause cancer, including asbestos, from construction debris. For more information, go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## BAAQMD PROPOSED/ADOPTED RULE CHANGES

▪ Hazardous Pollutants: Regulation 11, Rule 18: *Reduction of Risk from Air Toxic Emissions at Existing Facilities*

For full details on changes below, go to: <http://www.baaqmd.gov/rules-and-compliance/rule-development/regulatory-workshops>

A series of public workshops were held at various Bay Area locations in November on proposed new Rule 11-18. Rule 11-18 continues implementation of the California AB 2588 Air Toxics Hotspots Program. It would apply to existing emissions from facilities that may result in a significant risk to nearby residents and workers. Under the proposed rule, if a facility exceeds risk thresholds, toxic air containment (TAC) emissions must be reduced below risk thresholds, or Best Available Retrofit Control Technology for Toxics (TBARCT) must be applied on significant toxic emission sources.

Under the proposed rule, the Bay Air Quality Management District (BAAQMD) will first screen all facilities using toxic emissions in their database and assign each facility with a Prioritization Score (PS) determined by:

- 1) The number of TACs emitted;
- 2) The toxicity of each TAC;
- 3) Proximity to sensitive receptors; and
- 4) Other factors deemed important by the air district.

The air district will conduct health risk assessments (HRAs) for facilities with a high PS in accordance with the proposed schedule in the following table. These HRAs will incorporate the new Office of Environmental Health Hazard Assessment (OEHHA) risk assessment methodology, which will result in higher calculated health risks than previously with the same set of emissions.

Phase Number	Criteria	HRAs	Risk Reduction Plan Review and Approval	Plan Implementation
1	Cancer PS > 250 or Non-Cancer PS > 2.5	2017-2018	2018-2019	2019-2022
2	Cancer PS > 10 or Non-Cancer PS > 1.0	2019-2021	2021-2022	2022-2025
3	Diesel Internal Combustion Engines	2021-2023	2023-2024	2024-2027
4	Retail Gas Stations	2023-2024	2024-2025	2025-2028

Facilities that pose cancer risks in excess of 10 in one million or a chronic or acute non-cancer hazard index in excess of 1.0 will be required to develop 3-year Risk Reduction Plans for submittal and approval by the BAAQMD. Facilities must then implement the approved plans or demonstrate all significant emission sources are implementing TBARCT.

The proposed Risk Reduction Plan schedule is included in the table above.

▪ Permits: Regulation 2, Rule 5: *New Source Review of Toxic Air Contaminants*

For full details on changes below, go to: <http://www.baaqmd.gov/rules-and-compliance/rule-development/public-hearings>

On December 7, 2016, the BAAQMD Board held a public hearing to consider adoption of amendments to Regulation 2, Rule 5, which would increase the stringency of the Air Toxics New Source Review (NSR) program for permitting new and modified TAC emissions by incorporating the updated OEHHA risk assessment guidelines. Other revisions include revised TAC trigger levels for HRA requirements, simplified procedures for calculating pre-modification baseline TAC emissions for modified sources, and revised regulatory language

for consistency with other guidelines.

The rule is intended to mitigate potential increases in public health risks by further implementation of Best Available Control Technology for Toxics (TBACT).

▪ Permits: Regulation 2, Rule 2: *New Source Review*

The full text of the rule can be found at: <http://www.baaqmd.gov/~media/files/planning-and-research/rules-and-regs/reg-02/rg0202.pdf?la=en>

Amendments to Regulation 2, Rule 2, originally adopted on December 17, 2012, became effective as of August 31, 2016, after final action by the U.S. Environmental Protection Agency (EPA). Changes include adding new NSR permitting requirements for fine particulate matter (PM<sub>2.5</sub>), adopting a Prevention of Significant Deterioration (PSD) permitting program consistent with current U.S. EPA requirements, revising NSR requirements for existing modified sources, expanding requirements to ensure new and modified sources will not cause or contribute to exceedance of the National Ambient Air Quality Standards (NAAQS), public comment review for smaller sources, and other minor changes to ensure compliance and consistency with existing U.S. EPA requirements.

*Yorke Engineering, LLC specializes in air quality and environmental consulting for stationary and mobile sources, including dispersion modeling, health risk assessments, permitting, emission inventories, air quality compliance systems, etc. Yorke Engineering has assisted over 600 customers, including a wide variety of industrial facilities and government organizations throughout California.*