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California Proposition 65 Update for CPDA

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- **California** State Proposition **65**, the Safe Drinking Water and Toxic Enforcement Act of 1986, was enacted as a "right to know" ballot initiative in November 1986.

- Implemented and overseen by the Office of Environmental Health and Hazard Assessment (OEHHA)
  - Listing Processes
  - Warning Requirements
  - Enforcement

- This presentation focuses on listed pesticides, but constituents that may be in plant nutrient products can trigger warning statements and training also.

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Proposition 65 - Fundamentals

- List of Chemicals "known to the state" to cause
  - Cancer
  - Reproductive toxicity (includes developmental toxicity)
    - The list of chemicals can be found at **www.oehha.ca.gov**
- Warning requirements for persons exposed
  - Businesses must provide “Clear And Reasonable” Warning before knowingly or intentionally exposing anyone to a listed chemical when exposure levels are significant: consumer products, occupational, and environmental exposure warnings.
- Discharge into sources of drinking water prohibited
  - When exposures are significant
- Enforcement
  - Through Litigation
  - Burden on Defendant

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Proposition 65 List

- The present list contains approximately 1,000 chemicals, metabolites and substances.

- Pesticides listed - 140:
  - 42 no longer in marketplace
  - 35 have less than 10 lbs. active ingredient (a.i.s.) used
  - Top 8 make up 93% of lbs. a.i.s. of Prop-65 pesticide use
  - Top 20 product a.i.s account for 592 product labels

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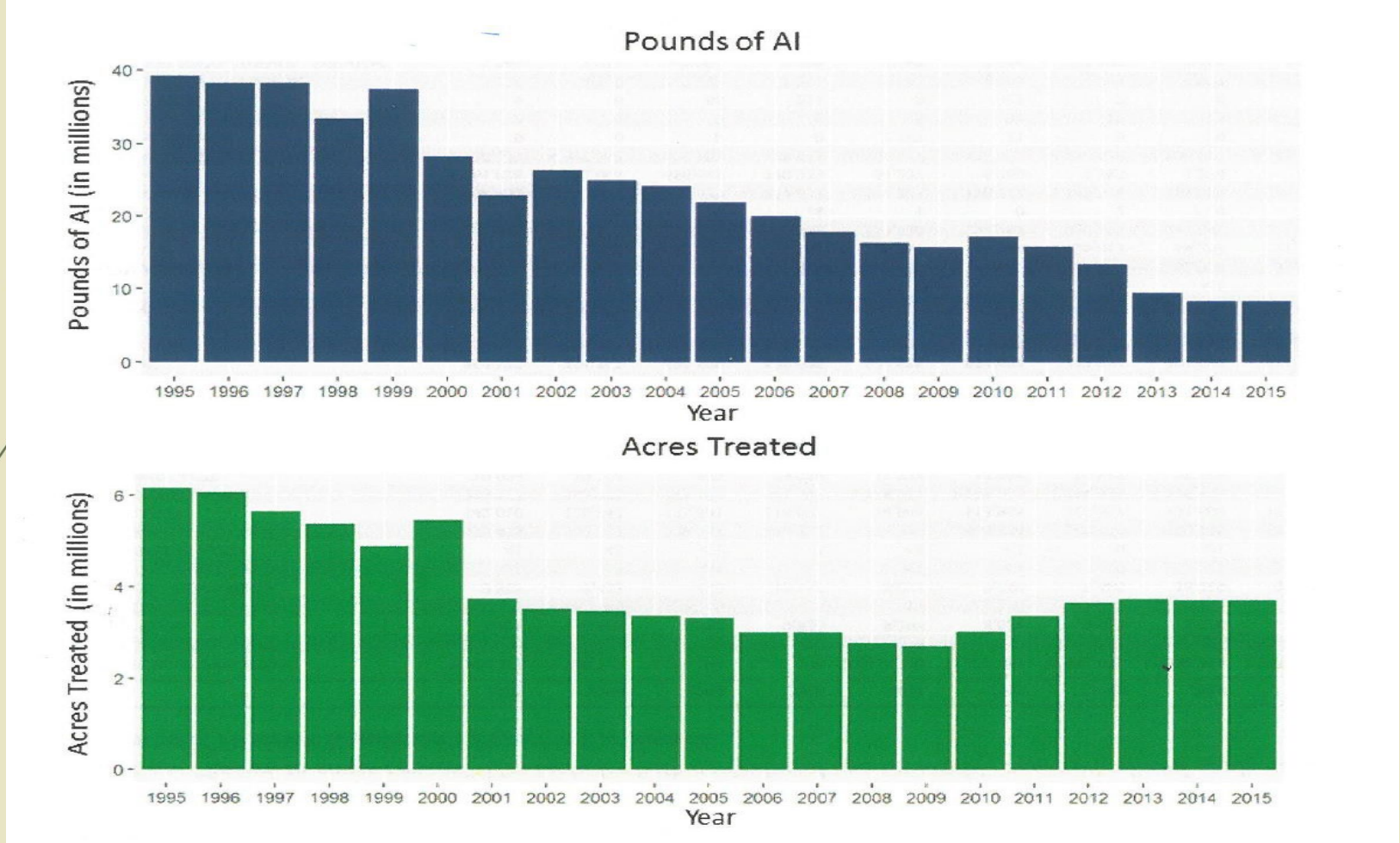
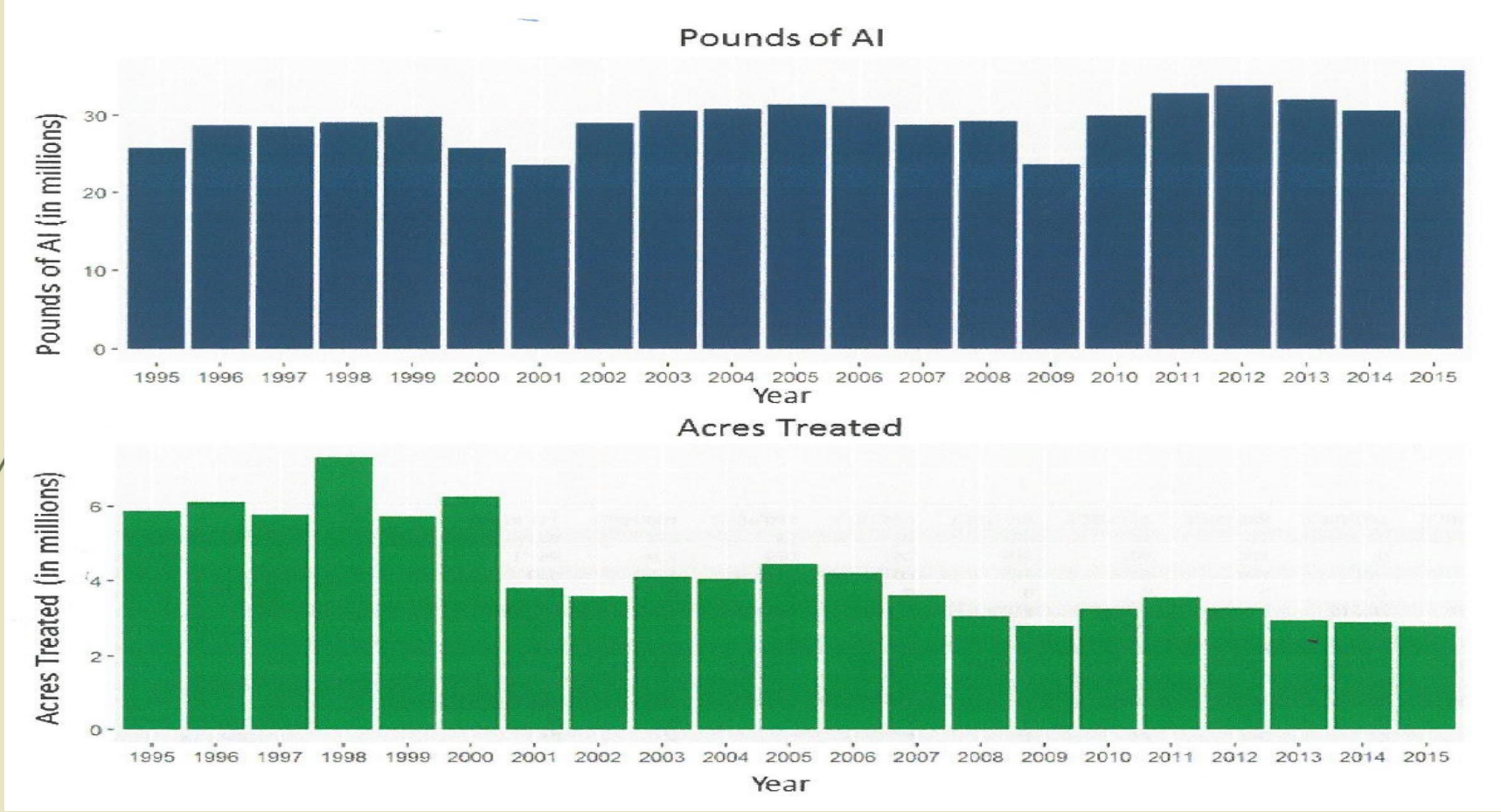
Proposition 65 List - Example

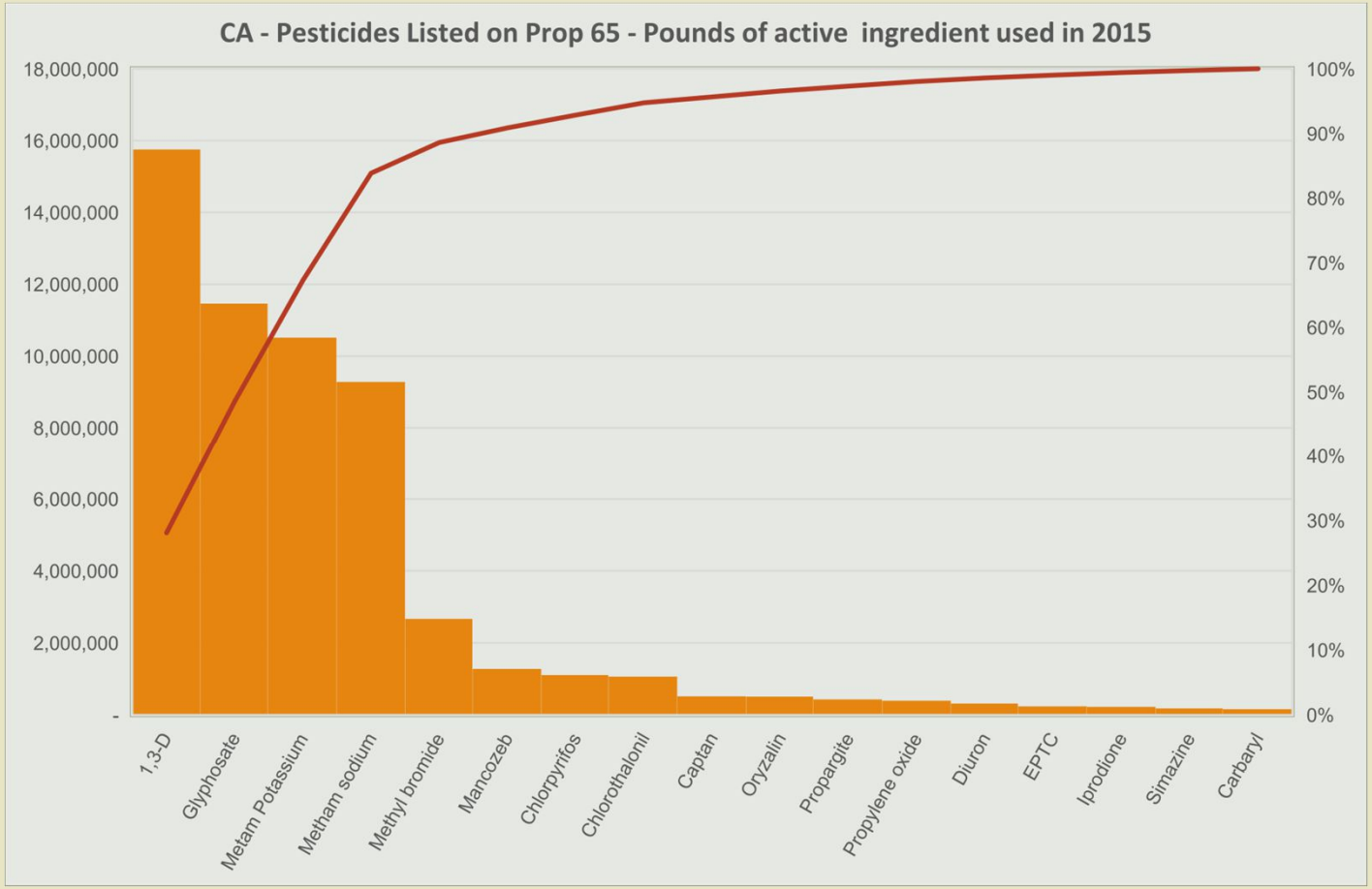
Chemical	Type of Toxicity	Listing Mechanism	CAS No.	Date Listed	NSRL or MADL (µg/day)[a]	Product Names	Registrants	Type of Chemical	P.U.R. Data 2015 lbs. a.i.
Des-ethyl atrazine (DEA)	developmental, female	AB	6190-65-4	15-Jul-16	100 (oral)	Atrazine metabolite		Pesticide-metabolite	
Des-isopropyl atrazine (DIA)	developmental, female	AB	1007-28-9	15-Jul-16	100 (oral)	Atrazine metabolite		Pesticide-metabolite	
1,2-Dibromo-3-chloropropane (DBCP)	cancer	FR	96-12-8	1-Jul-87	0.1	Nemagon; Fumazone		Pesticide	
1,2-Dibromo-3-chloropropane (DBCP) [Basis for listing changed effective November 22, 2013]	male	FR	96-12-8	27-Feb-87	3.1 (oral) 4.3 (inhalation)	Nemagon; Fumazone		Pesticide	
1,3-Dichloropropene	cancer	SQE	542-75-6	1-Jan-89		Telone	Dow DuPont	Pesticide	15,757,907
1080 repro						1080 Vertebrate Control	None	Pesticide	1
Alachlor	cancer	SQE	15972-60-8	1-Jan-89		Bullet; Lariat	Monsanto	Pesticide	3,230
Aldrin	cancer	SQE	309-00-2	1-Jul-88	0.04	Aldrin insecticide		Pesticide	-
Amitraz	developmental	AB	33089-61-1	30-Mar-99		acaricide; insecticide	None	Pesticide	96
Amitrole	cancer	SQE	61-82-5	1-Jul-87	0.7	herbicide		Pesticide	-
Aramite	cancer	SQE	140-57-8	1-Jul-87	20	organic acaricide		Pesticide	-
Arsenic Acid	carcinogen						None	Pesticide	-
Arsenic Pentoxide	Birth Defects - Repro Tox						None	Pesticide	22,190
Arsenic Pentoxide	carcinogen						None	Pesticide	22,190
Arsenic Trioxide	Birth Defects - Repro Tox						None	Pesticide	1
Arsenic Trioxide	carcinogen						None	Pesticide	1
Atrazine	developmental, female	AB	1912-24-9	15-Jul-16	100 (oral)	herbicide	Syngenta	Pesticide	18,287
Avermectin B1 (Abamectin)	developmental	AB	71751-41-2	3-Dec-10	4.4	Abamectin miticide, acaricide	Avicta; MANNA; Willowood;Rotam	Pesticide	38,263

Prop 65 Listed Pesticides: Reproductive Toxicity



Prop 65 Listed Pesticides: Cancer Toxicity





(Recent Prop 65 listings of glyphosate and chlorpyrifos have been added to this chart.)

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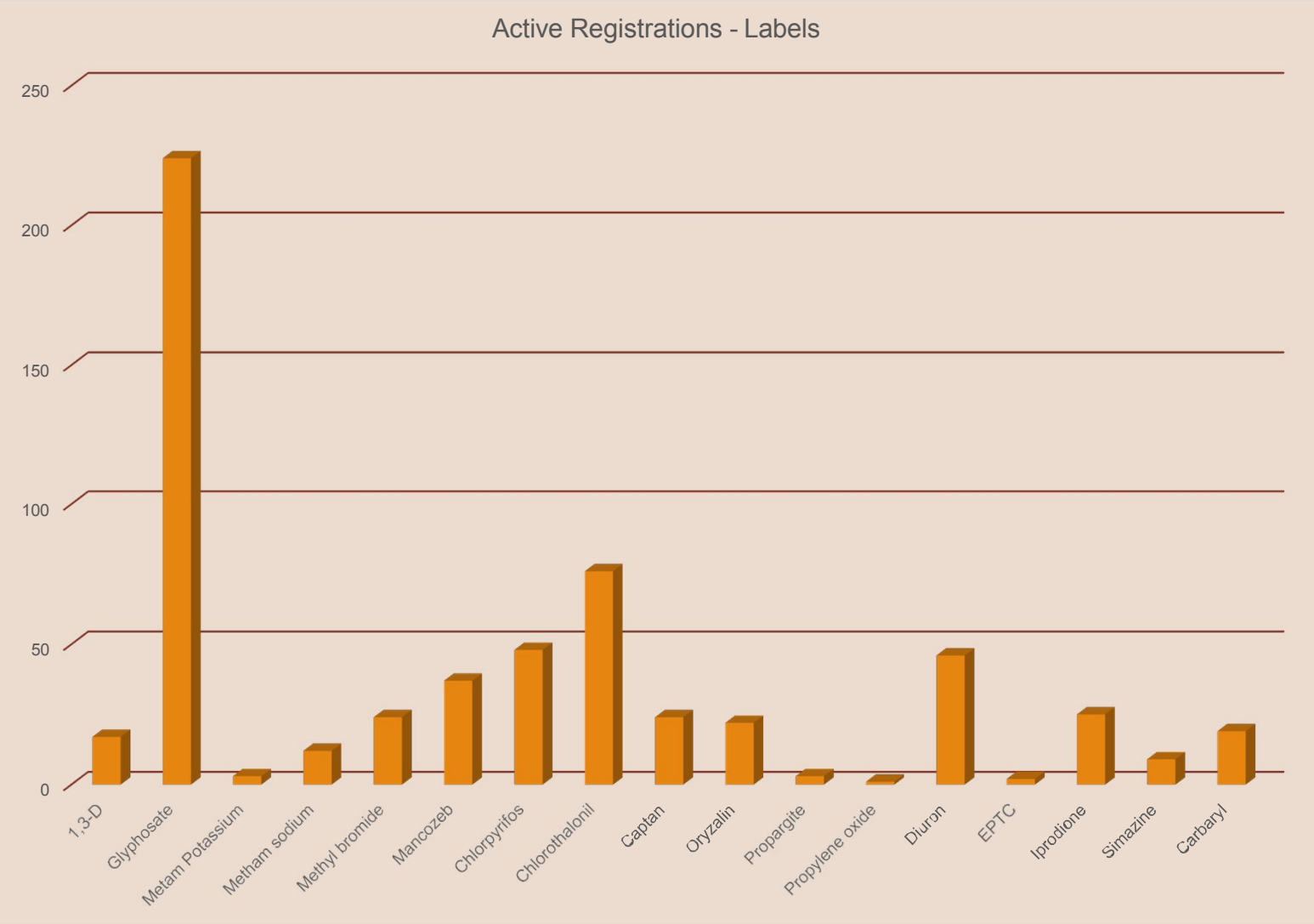
Active Registrations - Labels
250
200
150
100
50
0
1,3-D
Glyphosate
Metam Potassium
Metham sodium
Methyl bromide
Mancozeb
Chlorpyrifos
Chlorothalonil
Captan
Oryzalin
Propargite
Propylene oxide
Diuron
EPTC
Iprodione
Simazine
Carbaryl

Product Label Warnings

BEFORE	AFTER
WARNING: This product contains chemicals known to the state of California to cause cancer and birth defects or other reproductive harm.	⚠ **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.

Safe Harbor Warnings for Consumer Products

➢**Product Warnings [27 CCR §§25602(a) and (d), and25603(a)]—The Safe Harbor Regulation requires either a warning on a package label or a point of sale warning:**

✓Label warnings must meet the following criteria and content must be stated in the following format:

WARNING: This product can expose you to chemicals, including *<chemical name>*, which is known to the State of California to cause cancer, and *<additional chemical name (if appropriate)>*, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

- Triangle must be presented in yellow with a black outline unless there is no other yellow printing on the label.
- Warning must be predominantly displayed and conspicuous compared to other statements so as likely to be seen and read.
- Warning must be printed in the languages used on the label.

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Providing Safe Harbor-compliant Warnings
Major Changes In Warning Methods

- **Tables comparing former regulations versus August 30, 2018 regulations:**
  - ✓ Consumer product labels [27 CCR §§25602 and25603]

Wording	"This product contains" and other flexible terms	"This product can expose you to…" and little flexibility
Chemical Identification	No requirement to name chemicals (except in the AG's regulations)	Must name at least 1 listed chemical (depending on the hazard) causing cancer, reproductive harm or both
Short-Form Warning	No short-form warning	Short-form warning option: **WARNING:** Cancer— www.P65Warnings.ca.gov OR **WARNING:** Cancer and reproductive harm— www.P65Warnings.ca.gov

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Providing Safe Harbor-compliant Warnings

Highlights Of Major Changes In Warning Methods, Cont.

✓ Consumer product labels, cont.

Pictogram	No pictogram	Pictogram in yellow (unless no other yellow color printed on container)
Web Address for More Information	None	**Mandatory wording: "For** more information go to "**www.P65Warnings.ca.gov**"
Languages	No mandatory requirement	English and any additional language included on the container (usually Spanish)
Minimum Type Size	Prominent and likely to be read	Prominent plus conspicuous compared to other printing on the container
Warning Location	Container labels, signs, postings, shelf labels, etc.	Same, except warnings must also be included in catalogs and Internet ads and product displays

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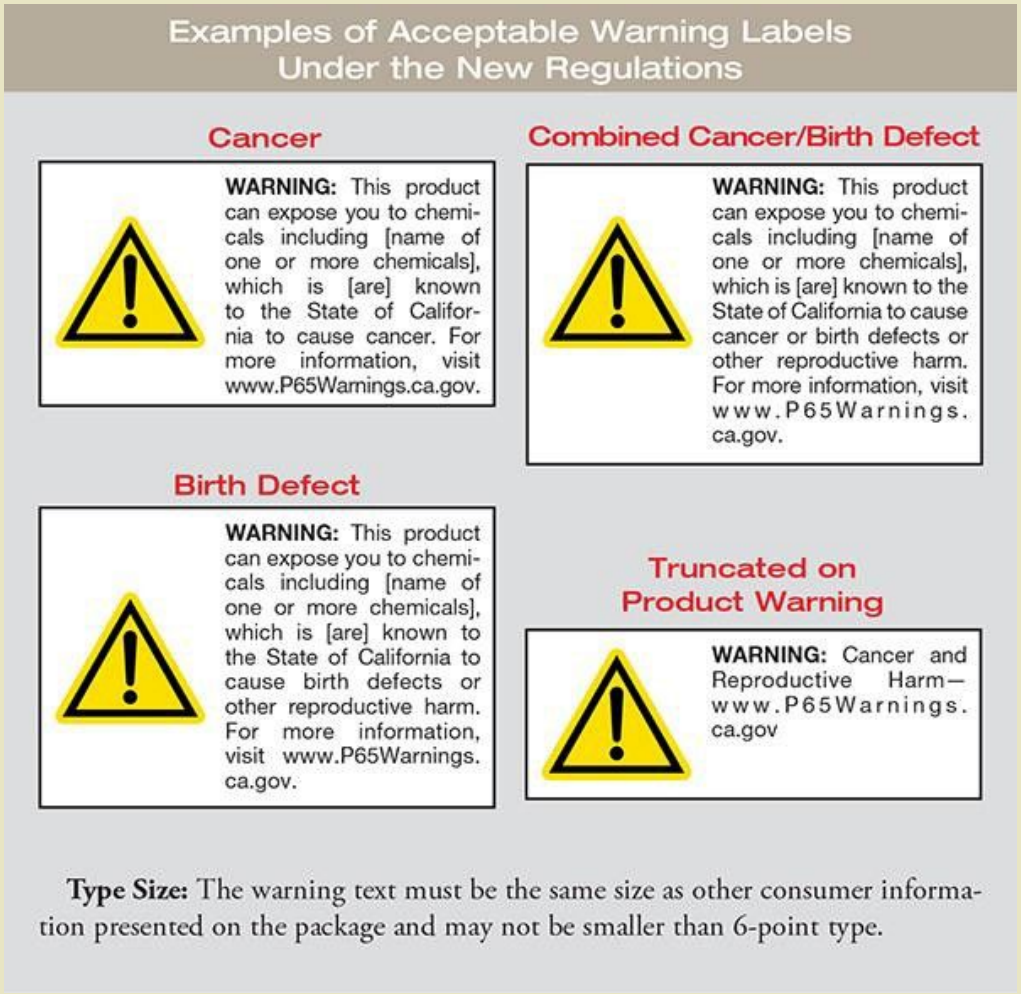
Consumer Products Warnings:



Prop 65 Rule Making Amendment may allow businesses to request new tailored warning. "Attention" rather than "Warning" is going through a rule making process at OEHHA for FIFRA regulated products (pesticides) labels.

ATTENTION: 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. For more information go to www.P65Warnings.ca.gov .

ATTENTION: Cancer--www.P65Warnings.ca.gov/product

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Alternative Language Process

- WPHA Regulatory Affairs Cmte./ WPHA BoardApproval (October 2017)
- Outreach to state agencies: OEHHA and DPR (November 2017)
- Submitted request for rule-making –
- OEHHA internal process
- WPHA outreach/ information sharing activities:
  - RAC emails, WPHA newsletters/bulletins
  - Allied groups: CPDA in March, Farm Bureau, Western Growers
  - EPA meeting and phone calls
  - CLA – conference call (May 24, 2018)
- ACC - Public Hearing set for: (6/21/18) hearing also web-casted
- ACC – Requested extended comment period deadline to be (7/5/18)
- OEHHA determination – currently reviewing and responding to comments

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Moving on to Occupational and Environmental Warnings: (Meetings with Distributors and Dealerships)

- The new regulations clarify that manufacturers have the primary responsibility for providing proposition 65 warnings.
- Manufacturers can choose whether to put warning labels on their products or to provide notices to their distributors, importers or retail outlets that have a product that may cause an exposure to a listed chemical.
- Manufacturers can also enter written agreements with retailers to modify this allocation of responsibility as long as the consumer receives a clear and reasonable warning for which he or she is exposed to a proposition 65 chemical.
- Retailers must confirm that they received the notice and must use the warning signs or other materials provided by the manufacturer.
- Sophisticated retailers that oppose this relief for manufacturers during rulemaking have already notified suppliers that consumer product labeling is mandatory for their suppliers.
- Retailers are also responsible for their own warnings, if they cause an exposure to any regulated chemical or make or market products containing listed chemicals.
- There may be instances in which consumer warning through the retailer using manufacturer information may be appropriate and effective; for example, with bulk materials.

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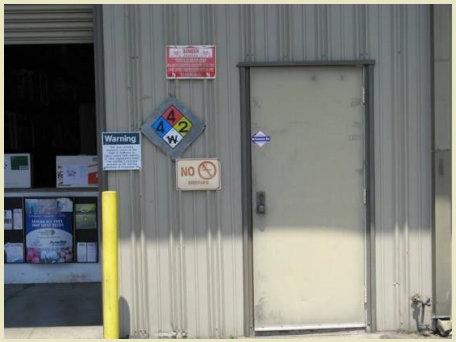
Occupational and Environmental Warnings: Pesticide warnings in the workplace



Occupational Exposure Warnings [27 CCR§ 25606]

- There is no change in the requirements for Prop. 65 warnings applicable to employees, which include: OSHA Hazard Communication Standard (HCS) methods (labels, Safety Data Sheets and training)
- **DPR's hazardous communication regulations governing pesticide safety requirements also helps to meet the warning requirements of Proposition 65 regarding warning employees – if proper statements are added. Prop 65 wording should be integrated, as much as possible, to other warning language and notices.**
- **Considerations should include signs and support materials:**
  - Front gate and warehouse signage.
  - Leaflets may be produced – examples: English, Spanish, and Punjabi.
  - These must be read upon request to any employee.
  - Agricultural worker safety regulations at 3 CCR §§ 6700, *et seq.* may also be used.
  - Also, suggested - in addition, specific information regarding the location of the treated area, restricted entry interval, and the crop or site treated should be displayed at the central location within 24 hours of the application and remain for 30 days or until field workers are no longer present, whichever occurs earlier.

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Providing Safe Harbor - Compliant Warnings - Environmental

Method of Transmission	Sign in affected area, mailed warning every 3 months, print media warning every 3 months	Indoor or defined outdoor locations with entrances, and 3-month periodic mailed notices and news media publication with map
Location, Size & Prominence of Signage	Conspicuous manner, likely to be seen and read, associated with location and source of exposure	Entrances to outdoor or indoor areas with 72-point type (extremely large)
Languages	English	English and any other language printed on signs in the affected area
Sources of Exposure	Not required	Must identify source of exposure
Pictogram	Not Required	Required

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Providing Safe Harbor-compliant Warnings

Highlights Of Major Changes In Warning Methods, Cont.

✓ Environmental Exposure Warnings, cont.

Web Address for More Information	Not required	Mandatory wording: "For more information go to "www.P65Warnings.ca.gov"
Wording	Generic wording	Specific wording tailored to chemicals, hazard(s) and sources of exposure

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Providing Safe Harbor-compliant Warnings

Environmental Exposure Warnings (Signage), Cont.

- **Model Sign Wording:**

WARNING: Entering this area can expose you to chemicals, including <*chemical name*> from <*source*>, which is known to the State of California to cause cancer; and <*chemical name*>, from <*source*>, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

- **Permissible Additional Wording:**

  - For local information, contact EHS Manager at Extension 3111.

- *Note*: 72-point type looks like this: PROP. 65

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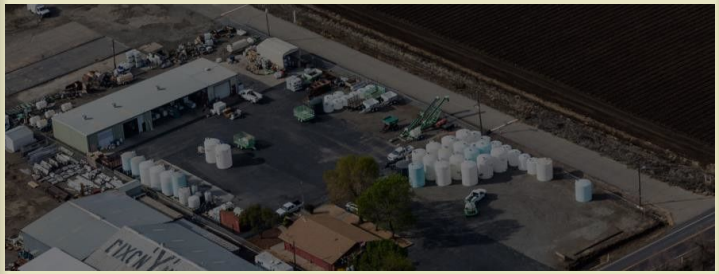
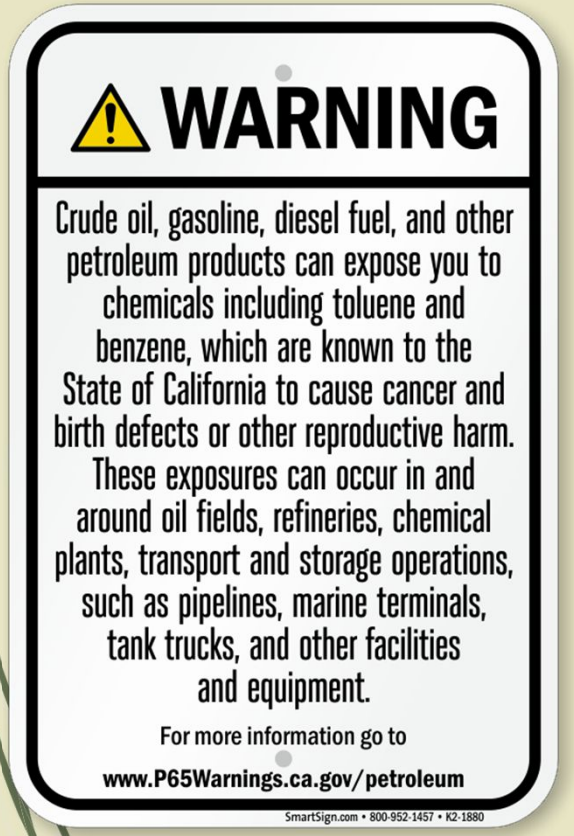
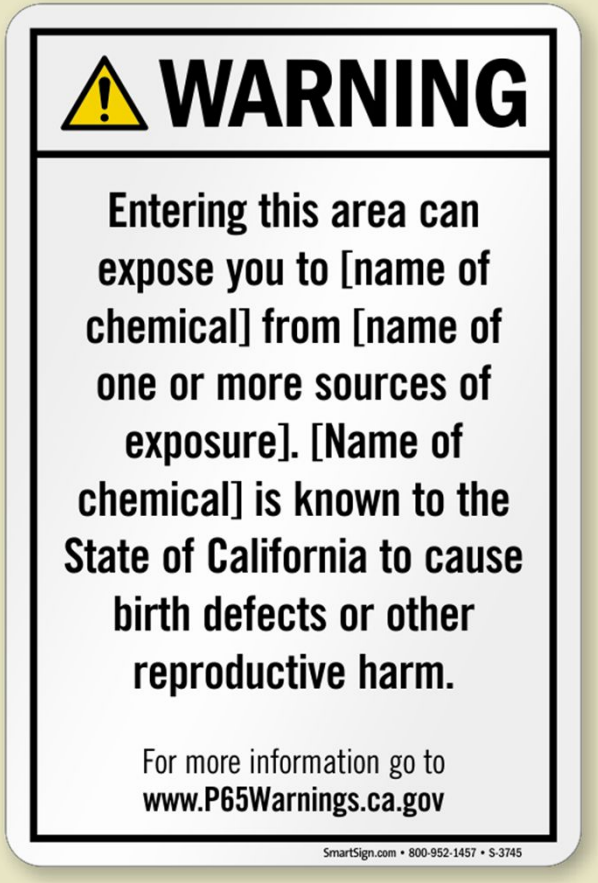
Facility Warnings

Front Gate



Warehouse





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Facilities – Safe Harbor Warnings
Environmental Exposure Warnings (Signage)

- **Facility outdoor places and indoor spaces with clearly defined entrances where there is a known (anticipated or probable) detectable exposure to 1 or more Prop. 65 substances can be covered by the safe harbor environmental exposure warnings. [§§ 25604 and 25605].**

- **Safe harbor requirements for signs:**
  - Posted conspicuously at all entrances
  - No smaller than 72-point type (about 3/4-inch tall)
  - Clearly identify 1 or more sources of exposure
  - Use exact language provided in the regulation
  - Include symbol, and the word "**WARNING**" in CAPITAL LETTERS and **bold type**
    - Name at least 1 substance known to cause cancer and 1 substance known to cause reproductive harm if both hazards are included in the warning

  Include OEHHA's web address, www.P65Warnings.ca.gov

    - Other language intended to supplement but not detract from the warning; for example, a local contact for more information.

    If another language in addition to English is posted in the affected area, Prop. 65 signage must follow suit

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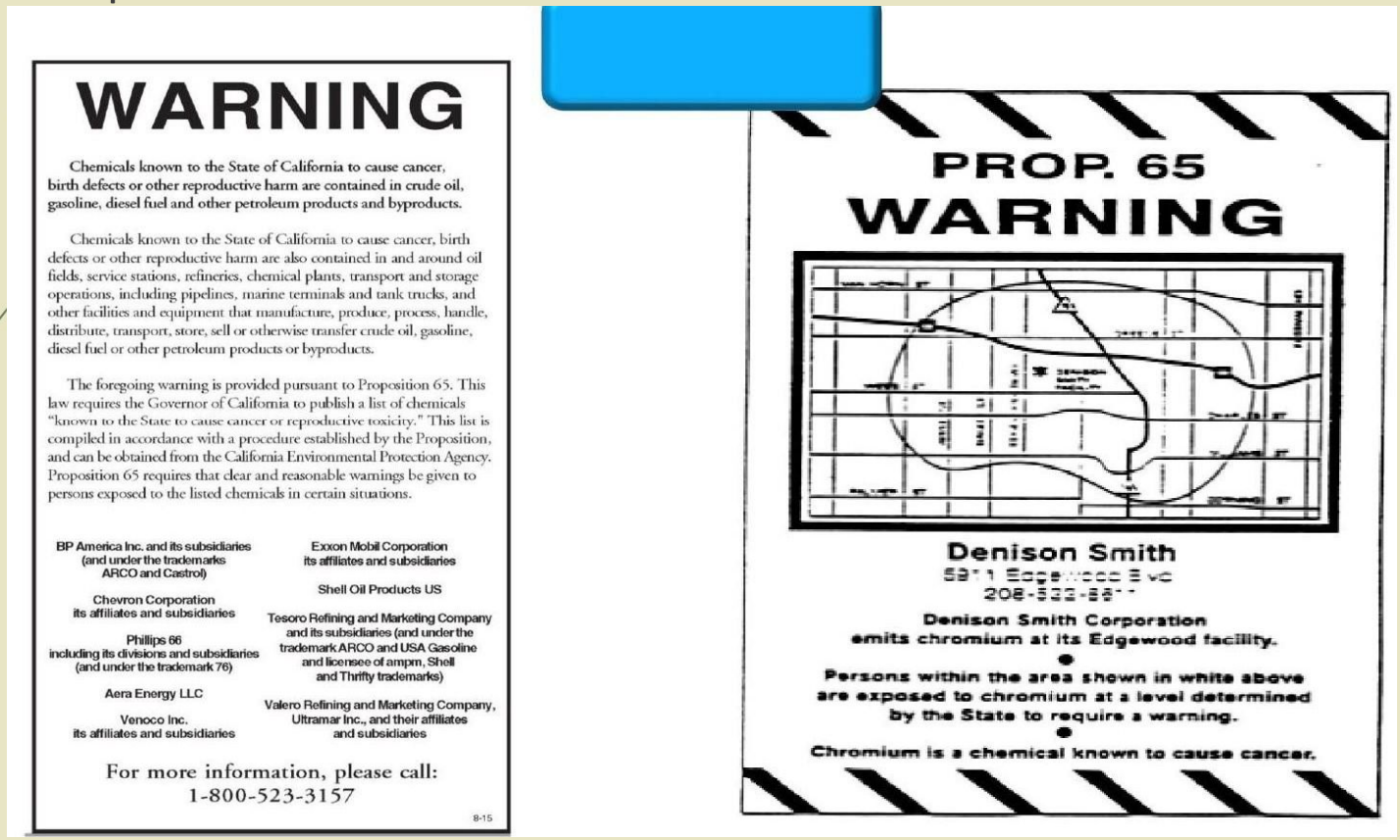
- Facility Maps and Notification
  - Publication must be $^1/_4$-page size and included in the publication's online edition.



WARNING

Chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are contained in crude oil, gasoline, diesel fuel and other petroleum products and byproducts.

Chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are also contained in and around oil fields, service stations, refineries, chemical plants, transport and storage operations, including pipelines, marine terminals and tank trucks, and other facilities and equipment that manufacture, produce, process, handle, distribute, transport, store, sell or otherwise transfer crude oil, gasoline, diesel fuel or other petroleum products or byproducts.

The foregoing warning is provided pursuant to Proposition 65. This law requires the Governor of California to publish a list of chemicals "known to the State to cause cancer or reproductive toxicity." This list is compiled in accordance with a procedure established by the Proposition, and can be obtained from the California Environmental Protection Agency. Proposition 65 requires that clear and reasonable warnings be given to persons exposed to the listed chemicals in certain situations.

BP America Inc. and its subsidiaries (and under the trademarks ARCO and Castrol)

Chevron Corporation its affiliates and subsidiaries

Phillips 66 including its divisions and subsidiaries (and under the trademark 76)

Aera Energy LLC

Venoco Inc. its affiliates and subsidiaries

Exxon Mobil Corporation its affiliates and subsidiaries

Shell Oil Products US

Tesoro Refining and Marketing Company and its subsidiaries (and under the trademark ARCO and USA Gasoline and licensee of ampm, Shell and Thrifty trademarks)

Valero Refining and Marketing Company, Ultramar Inc., and their affiliates and subsidiaries

For more information, please call:
1-800-523-3157

8-15

PROP. 65
WARNING

Denison Smith
5911 Edgewood Blvd
208-[illegible]

Denison Smith Corporation emits chromium at its Edgewood facility.

Persons within the area shown in white above are exposed to chromium at a level determined by the State to require a warning.

Chromium is a chemical known to cause cancer.

Private Enforcement Begins With The Service of 60-day Notice Of Violation (NOV)

Citizen Suits: may be brought by "any person in the public interest" subject to the following preconditions [HSC § 25249.7(d)]:

- A notice of violation must be served on the proposed defendant, the AG and any District Attorney or City Attorney of a jurisdiction in which a violation is alleged to have occurred 60 days prior to filing of a complaint in Superior Court. 60-Day Notice of Violation (NOV).
- A Certificate of Merit attesting to the validity of the proposed enforcement action along with sufficient technical information to support the allegations must be served with the AG's copy of the 60-Day NOV and handled by the AG as privileged information.
- If the AG does not reject the NOV, the private action may proceed.

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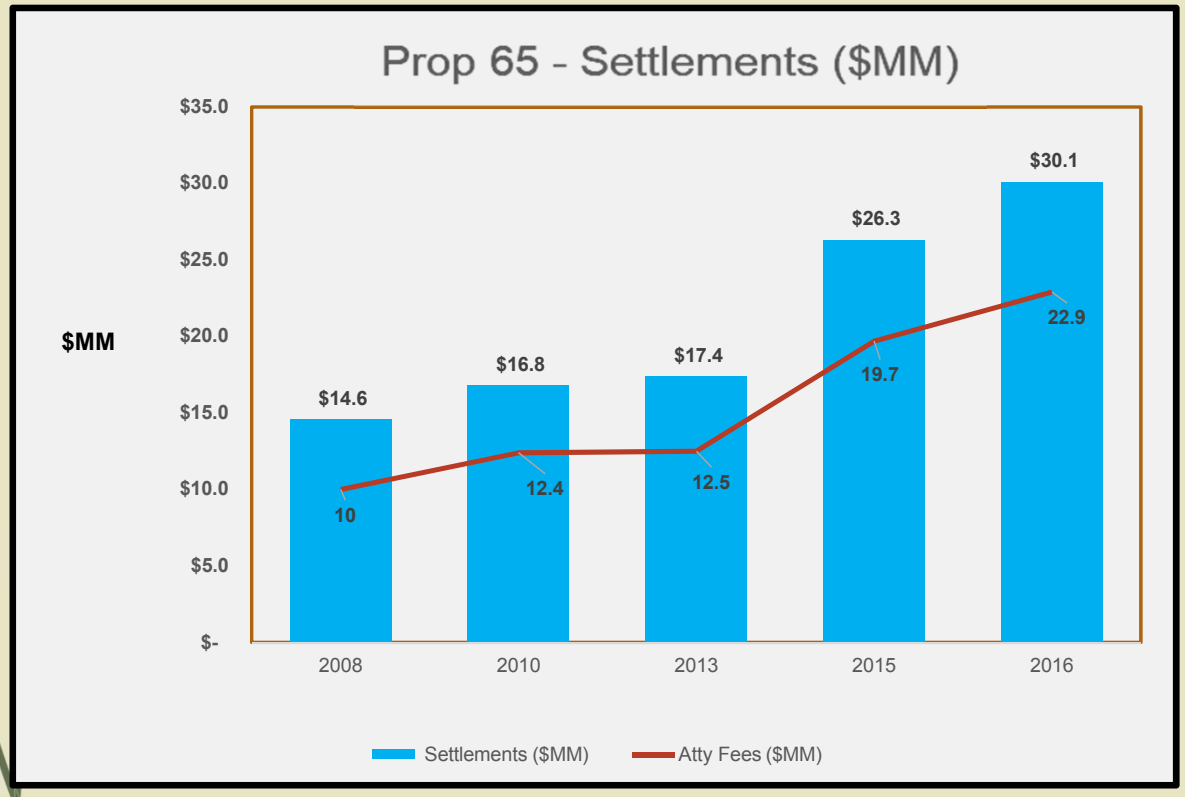
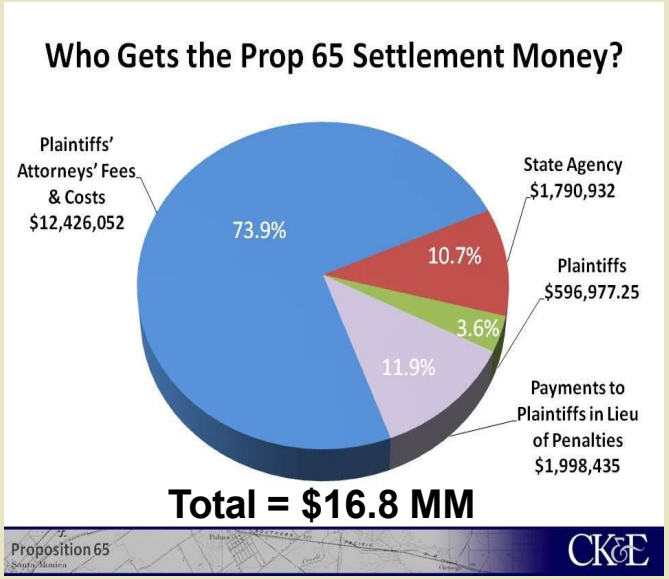
Proposition 65 lawsuits are extremely lucrative for law firms.





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Summary:

- Timing: August 30, 2018 – New warnings mechanisms in place.
- Prohibition of discharges into state waters is still in place.
- Inerts on a confidential statement of formula (CSF) may also require a product to warn… based on their NSRL or MADL.
- Each registrant, manufacturer, and business must decide upon their "warning" strategy which may be different for different products in the company's portfolio.
- Much more public process now.
- Future – More pesticides/inerts to be listed.
- Ultimately – Prop 65 is litigation driven$.

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QUESTIONS?

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