

Client Alert

October 7, 2014

Get Ready Now for the Upcoming Proposition 65 Warning Requirements for DINP and Other Chemicals

By Michael Steel and Lois Miyashiro

With the 2014 holiday season fast approaching, businesses should not lose sight of what the Proposition 65 “bounty hunter” plaintiffs’ lawyers are eagerly awaiting. And that’s the opportunity to send out 60-Day Notice letters to companies that fail to provide Proposition 65 warnings for products containing diisononyl phthalate (DINP) that are manufactured, sold, and distributed in California. The Proposition 65 warning requirement goes into effect for DINP (listed as a carcinogen) on December 20, 2014. Examples of some products containing DINP include vinyl flooring, wire and cable insulation, stationery, coated fabrics, gloves, toys, tubing, garden hoses, artificial leather, footwear, automobile undercoatings, roofing materials, rubbers, inks, pigments, paints, lacquers, adhesives, and sealants.

The upcoming warning requirement stems from the State of California’s Office of Environmental Health Hazard Assessment (OEHHA) and its December 2013 listing of DINP on the Proposition 65 list (“List”). In June, the American Chemistry Council filed a lawsuit, *American Chemistry Council (ACC) v. Office of Environmental Health Hazard Assessment*, challenging OEHHA’s listing on the scientific basis that DINP does not cause cancer in humans and that observed cancers in animals do not extend to humans. If ACC is successful, the DINP listing may be deemed unlawful and DINP would then be removed from the List, making the warning requirements for DINP moot. But unless the court issues an order staying the warning requirement, it will go into effect and plaintiffs will begin to serve notices of intent to sue, probably beginning on December 21, 2014.

Some other chemicals with upcoming effective warning requirement dates include:

- 1/31/2015: **Trichloroethylene** (reproductive toxin) (e.g., used as a metal degreasing agent and an ingredient in paints, cleaning agents, varnishes, adhesives, and inks. Also used in the production of lithium ion batteries.)
- 3/28/2015: **Methyl Isobutyl Ketone (MIBK)** (reproductive toxin) (e.g., used mainly as a coating solvent in cellulose-based and resin-based coating systems; as a separating agent for metals from solutions of their salts and in the mining industries to extract plutonium from uranium; in the production of paints, pesticide formulations, adhesives, wax/oil separation, leather finishing, textile coating, and specialty surfactants for inks and as a denaturant for ethanol formulations.)
- 4/18/2015: **Pulegone** (carcinogen) (e.g., an ingredient of essential oils of plants including mint, pennyroyal, and peppermint. It is used as a mint flavoring in food. Several essential oils contain pulegone and are used in herbal medicines, for flavoring drinks, foods and dental products, and as fragrance agents.)

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- 5/2/2015: **N,N-Dimethyl-p-Toluidine** (carcinogen) (e.g., used in the manufacture of dental materials and bone cements, in industrial glues, and in artificial fingernail preparations. Also used as an intermediate in dye and pesticide synthesis.)

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