

Proposition 65

For more than three decades, California's Proposition 65 has been a minefield for manufacturers, distributors, and retailers — large and small and located anywhere in the world — whose products are ultimately sold or resold to consumers in the state. It has also served as a gold mine for a cottage industry of plaintiffs' attorneys. Today, as new product labeling requirements are about to be implemented, even previously compliant companies must be aware of potential snares.

Clark Hill has a core team of attorneys with years of experience helping clients with all their Proposition 65 needs. With our national and global resources, we are fully prepared to advise companies located inside and outside of California whose products are purchased by consumers in the state.

We understand the goals of Proposition 65 (including minimizing the presence of toxic chemicals and helping consumers make informed purchasing decisions), the effects of court rulings in Proposition 65 cases, and the statutory scheme that has evolved to manage and enforce the law. Equally important, we understand the motivations and tactics of so-called bounty hunter law firms, having dealt with these firms on numerous occasions.

How We Help

Proposition 65 regulations can be daunting. Often, a company's first exposure to Proposition 65 is receiving a 60-day notice of violation and intent to sue. Even if a company is aware of Proposition 65, the regulations include specific, complex warning requirements and severe penalties — up to \$2500 per day per violation — which, taken together, can make it difficult to identify the most effective compliance strategies or determine the practical risks associated with alleged non-compliance. While most cases resolve for a fraction of the maximum possible damages, the potential liability may be quite large.

Drawing on our extensive experience, we provide comprehensive counsel to clients that can help minimize or prevent lawsuits under Proposition 65. We work proactively with numerous businesses to develop labels and language that provide appropriate warnings and safe-harbor protections for the product manufacturer, distributor or retailer.

Similarly, when clients receive notice of noncompliance and an intent to sue by one of the law firms active in this space, we help identify the potential liabilities associated with the complaint and the known risks of the chemical compound in question.

Our assessments go beyond dollars, cents, and science. We also review the steps involved in litigating or resolving claims, including the costs and benefits of each strategy. When a resolution is an advisable strategy, we consider in-court and out-of-court alternatives and examine how each option may close or prop open the door for future litigation. When settlement is an appropriate response, we draw on our extensive negotiating skills and our reputation with opposing counsel to negotiate a satisfactory resolution. We have also worked with industry consortia to negotiate group settlements and opt-in provisions for such settlements, particularly where entire classes of products have been named in high-profile litigation.

Our broad experience with Proposition 65 and broad reach — in California specifically and the country generally — places us in a unique position to help our clients address all their Proposition 65 needs, from prevention and investigation to litigation and resolution.



Environment, Energy & Natural Resources Leader

Patrick J. Larkin
+12146512132
patrick.larkin@clarkhillstrasburger.com

Environment, Energy & Natural Resources Director

Rod E. Williamson
+12485309133
rwilliamson@clarkhill.com

Environment, Energy & Natural Resources Areas of Practice

- Alternative/Renewable Energy
- Brownfields Redevelopment
- Combined Sewer Overflow
- Energy Management
- Energy Technology & Innovation
- Environment, Energy & Natural Resources Litigation
- Environmental Assessments, Due Diligence & Audits
- Permits & Licenses
- Public Utility Litigation, Regulatory Intervention & Counseling
- Remediation & Natural Resource Restoration
- Riparian (Water) Rights
- Solid & Hazardous Waste Management
- Tax Incentives & Grants