

# CELLY SERVICES, INC.

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Environmental, Health and Safety Services

## Proposition 65 Compliance – January 25, 2003 Deadline

### January 22, 2003

Over the last year, we have written to our clients regarding compliance with Proposition 65 matters that essentially require the dealership to post Proposition 65 warning signs in a *clear and reasonable manner* at various locations throughout the dealership and on the vehicles being sold at the dealership. Last week CMCDA sent a memo on compliance with Proposition 65 matters to each of its members.

We have reviewed the memo and agree with the content and procedural actions stated in the memo, and urge our clients to IMMEDIATELY implement the 'action' detailed in the memo. While you should review the six-page memo in its entirety, the basic requirement is that you should post the warning signs. Two signs are enclosed with the CMCDA memo; one is an area sign and the other is a sign that needs to be affixed to vehicles being sold at the dealership. Please complete the posting of the warning signs by January 25, 2003 which is within the 60-day notice period as stated by the lawyers for Citizens For Responsible Business in their notice dated November 25, 2002.

#### I. Area Signs:

The area signs should be placed at locations where it can be read by customers, visitors, and employees prior to exposures. This would entail posting of the signs at locations as follows:

- All entrances to your facility by customer, visitor's and employees
- Parts department front and back counters
- Customer waiting lounge
- Employee notice boards (where you currently post your labor law posters);
- Cashiers' window

There maybe other locations where signs maybe deemed necessary and the dealership should use prudence.

#### II. Vehicle Signs:

The vehicle signs should be posted on windows of each vehicle being sold at a location where driver visibility is not compromised. Make this a PDI procedure. The signs are available as a sticker from CMCDA. You may fax the order for 100 stickers for \$15.00 to:

**FAX ORDER: (310) 301-0304**

With a great amount of rush, chances are a sticker will not arrive prior to January 25, 2003 deadline; therefore, please copy the sticker language and affix to the window with scotch tape.

#### III. THE DEVIL IS IN THE DOCUMENTATION (DETAILS)

The dealership should document each step undertaken at their facility. Proposition 65 was enacted in 1986 and the first list of hazardous chemicals that require warnings were published in 1987. In a letter or memo to the dealership lawyer, the responsible staff of the dealership should outline the steps taken since 1987 or later regarding the posting of signs and other Proposition 65 compliance activities. The compliance activities maybe documented as follows:

- Take pictures of signs already posted at the dealership. Label the pictures for the location and approximate date they were posted. In the event, the present signs replaced earlier signs, document that fact as well.
- Place new signs provided by CMCDA at the locations as earlier stated in this memo and take pictures of their placement. Date these pictures as well. Sign and date the entire documentation. Lastly, mark the whole file as follows:

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## **Confidential and Privileged**

Attorney Client Privileged Communication Prepared on Advice of Counsel in Contemplation of a Lawsuit.

The complete file should be sent to the dealership counsel for review. In general, such procedures protect the confidentiality of documentation and from discovery by the opposing Counsel.

## **IV. Employee Notification/Training:**

The employees at the dealership maybe notified of Proposition 65 warning by a memo outlining the language in the 'area sign' and seeking their acknowledgement. A Proposition 65 warning insert should be placed in the employee handbook or the new hire package as well.

We know all this may be challenging in the small amount of time available. However, the steps undertaken by placing the warning signs may help the dealership in the event of ensuing litigation; and may immunize the dealership from further action on Proposition 65 matters.

The article was authored by Sam Celly of Celly Services, Inc. Sam has been helping automobile dealers comply with EPA & OSHA regulations in California, Nevada, Arizona, Hawaii & Idaho since 1987. Sam received his BS & MS in Chemical Engineering followed by a JD from Southwestern University. Sam is a Certified Safety Professional & a Registered Environmental Assessor (CA). Your comments/questions are always welcome. Please send them to [sam@cellyservices.com](mailto:sam@cellyservices.com).