

CELLY SERVICES, INC.

Environmental, Health and Safety Services

Resurrection of Proposition 65

October 07, 2002

The Proposition 65 suing team is back! And this time they are armed with studies, data, reports from investigators and consultants indicating that automobile dealers are indeed in violation of Proposition 65 requirements. After evaluation of the evidence from the lawyers (these are the same folks who had sent 1000s of letters to dealerships in December 2001) bringing a complaint against automobile dealers, the California Attorney General's (AG) office has allowed them to "take further action" against dealers that are not in compliance with Proposition 65 requirements. We again recommend that dealers immediately review their compliance status on this matter.

In a letter to the lawyers for Citizens For Responsible Business, the AG's office has noted that some of the complaints in the original December 2001 "60-Day Notice of Intent to Sue" letter under Proposition 65 are being dropped. Some of the complaints that are being followed and demand your attention and action are discussed below. As you receive the notice, and that will probably happen in the next few weeks, please contact your attorney. The local corporate counsel may not be the right fit as Proposition 65 actions are somewhat specialized in nature. If you need help in locating an attorney on Proposition 65 and related matters, please call your local auto dealers' association and/or the dealers' association in Sacramento.

Secondly, ensure that your Proposition 65 notices are in place today, forever and ever. Pursuant to Proposition 65 requirements, businesses exposing any individual to 442 chemicals or more as listed by the state to cause cancer, birth defects or other reproductive harm must be given *clear and reasonable warning*. Advice from a lawyer must be taken on the posting of notices as well. Notices such as those described below maybe used depending upon the location and the entity to which the notice is directed.

A. Place of Usage of Chemicals: Chemicals on the Proposition 65 list are routinely used in the service area, bodyshop areas, and the detail areas. Notice to employees working in this area should state as follows: ***This facility uses chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm.***

B. Point of Sale or Distribution*: Chemicals are sold or distributed in the bodyshop areas, the parts department and in detail areas. Notice should state as follows: ***This facility sells chemicals known to the state of California to cause cancer, birth defects, and other reproductive harm.***

* If the Bodyshop provides touch up paint to customers, the touch up paint bottles should also have Proposition 65 warning notices.

C. Exposure to Customers: Customers in the driveway may be exposed to chemicals such as gasoline, auto exhaust and diesel fumes-all on the Proposition 65 list that requires warning signs. Therefore, warning signs should be posted in driveway areas and other locations where customers may be exposed. ***Gasoline, diesel, and auto exhausts and other chemicals present at this facility are known to the state to cause cancer, birth defects, and other reproductive harm.***

D. Auto Sales: New cars are detailed utilizing chemicals on the Proposition 65 list. For used cars, even more detail chemicals are used. Signs should be posted in the sales showroom and finance offices where deals are closed. The language that may be used is as follows: ***This facility uses chemicals known to the state of California to cause cancer, birth defects and other reproductive harm.***

E. Fuel and Auto Exhausts*: Gasoline, diesel and auto exhausts are all on the Proposition 65 list. Notices inside the vehicles being sold to customers or on the 'due bill' as follows: ***Gasoline or diesel utilized as fuels in automobiles and auto exhaust from automobiles are known to the state of California to cause cancer, birth defects and other reproductive harm.***

* The notice mentioned above should also be posted on the fuel pump.

CELLY SERVICES, INC.

Environmental, Health and Safety Services

F. Addendum to Hazard Communication Program*: The dealership should make an addendum to the Hazard Communication Program located in the office of the service manager and have a notice inserted as follows: ***This facility uses chemicals in the shop area known to the state of California to cause cancer, birth defects and other reproductive harm.***

* A draft of the addendum to the Hazard Communication Program is enclosed and can be utilized. Material safety data sheets for all chemicals utilized at the facility should be kept accessible to employees during their work turn.

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.