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California agency confirms BPS Prop 65 warnings needed for packaging and labels

Stickers and shipping materials could become bigger private enforcement targets

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California's Office of Environmental Health Hazard Assessment (OEHHA) has clarified that shipping labels, product stickers and other items accompanying consumer goods are subject to Proposition 65 warning requirements for bisphenol S (BPS).

The clarification came nearly a year after BPS violations became enforceable under Prop 65, a period during which companies have already seen notices of violation (NOVs) stack up over alleged failures to provide warnings for exposures to BPS in thermal receipt paper and other products (see box).

OEHHA's recent communication could invite expanded private enforcement attention on product stickers and shipping materials, underscoring the need for companies to consider not only the substances in their products, but also those used in packaging materials.

OEHHA provided the compliance clarification in an 8 December letter, which it said responded to "multiple questions" received about receipts and shipping labels containing BPS.

In the letter, the agency confirmed that warning requirements for listed chemicals apply to exposures that occur when acquiring a consumer product, even if the source of that exposure is not the consumer product itself.

"Receipts, labels, tags, product stickers, shipping materials, packaging and instructions/manuals" are all covered by the regulations, OEHHA said, for both in-person and online purchases.

The guidance could have "broad relevance for online retailers selling in California", OEHHA told Chemical Watch News & Insight. At the same time, the agency confirmed that what the letter reflects is "not a new requirement or law".

"The purpose of the letter was simply to assist businesses and members of the public who were trying to understand existing regulations," the agency said.

Details of letter

OEHHA noted that warnings must be given before the exposure occurs, meaning "that a warning for BPS in a receipt

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cannot be printed on the receipt itself".

The agency added that companies may inform the public whether a particular warning applies to a receipt or label, rather than the product it accompanies.

In fact, it encourages this additional context, since it "provides consumers with useful information about the source of the exposure", OEHHA said.

The agency also reminded businesses that occupational exposure warning requirements apply under Prop 65.

"OEHHA recommends that businesses concerned about BPS exposures from product receipts and shipping labels consider not only consumer product exposures, but also occupational exposures to any workers handling the receipts or labels," it said.

OEHHA, which is considering listing bisphenols as a class under Prop 65, also recommended "that businesses consider BPS-free alternatives such as electronic receipts or phenol-free paper and labels".

Implications and best practices

Dennis Raglin, an attorney at Carlton Fields, said that while it is too soon to say for certain, OEHHA's letter could lead to more NOVs related to BPS in product stickers and labels.

"Whether this 'letter' has the force and effect of an actual regulation is debatable," Raglin said. "The effect, however, will be the same, as this alerts plaintiffs' lawyers of targets beyond receipt paper."

He suggested that companies examine their supply chains for the presence of BPS in other items listed in OEHHA's letter, as well as in receipt paper.

"Best practice – at least as far as California goes – is to ensure 200 parts per million or less BPS," Raglin said, noting that under 200ppm paper is generally considered BPS-free.

Even small amounts of BPS present in a product could still result in an NOV, according to Peter Coneski, a senior scientific adviser at K&L Gates.

"The only surefire ways to avoid an NOV are to select products that don't contain BPS or to provide a Prop 65 warning for products that do contain detectable levels of this substance," Dr Coneski said.

California has not yet set a safe harbour level for BPS, he added. As a result, NOVs are possible if BPS is detected, even if exposures are below any level of concern.

Moreover, the state may list bisphenols as a class, Dr Coneski said, which means that switching to thermal paper using other phenols could still result in NOVs down the line.

He advised comprehensive product reviews and supply chain audits to understand vulnerabilities, alongside scientific and legal risk evaluations to understand potential exposures.

Hundreds of NOVs in 2025

Since BPS warning requirements took effect last December, there have been hundreds of NOVs for alleged violations related to thermal paper and more than a dozen NOVs for thermal stickers, sticky-back paper and adhesive paper.

Most of the private enforcement efforts came from two entities, the Center for Environmental Health (CEH) and Environmental Health Advocates (EHA).

Other items cited in recent NOVs include:

- UPC stickers and price tags;
- labels used to identify food orders for pickup;
- labels used to package items sold by weight, such as meat at butcher counters;
- airline luggage tag stickers; and
- shipping labels, including those provided for return orders.

The CEH has also pressed industry to transition away from BPS through public messaging efforts.

Earlier this year, the NGO publicly campaigned for companies to remove BPS from thermal labels used on takeaway beverage cups, highlighting exposures that occur while consumers are eating.

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This article was updated on 18 December to include a comment from OEHHA

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