

CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT
SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65

NOTICE OF PROPOSED RULEMAKING

TITLE 27, CALIFORNIA CODE OF REGULATIONS

Proposed Amendment Of Section 25903
Notices Of Violation

SEPTEMBER 2, 2011

NOTICE IS HEREBY GIVEN that the Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 27, Cal. Code of Regulations, section 25903¹, to allow electronic service on the Attorney General's offices for Notices of Violation. The text of the proposed amendment is attached to this notice.

PUBLIC PROCEEDINGS

OEHHA is requesting public comment concerning the proposed amendment to the regulation. A public hearing to present oral comments will be scheduled only upon request. Such a request must be submitted in writing no later than 15 days before the close of the comment period on October 18, 2011. The written request must be received by OEHHA at the address listed below no later than October 3, 2011. A notice for the public hearing, if one is requested, will be posted on the OEHHA web site at least ten days in advance of the hearing date. The notice will provide the date, time, location and subject matter to be heard. Notices will also be sent to those individuals requesting such notification.

Any written statements or arguments, regardless of the form or method of transmission, must be received by OEHHA by 5:00 p.m. on October 18, 2011, which is hereby designated as the close of the written comment period. Written comments regarding this proposed action may be sent by fax, mail or by e-mail addressed to:

Fran Kammerer
Office of Environmental Health Hazard Assessment
P. O. Box 4010
Sacramento, California 95812-4010
Telephone: 916-445-4693
Fax: 916-323-2610
E-mail: fkammerer@oehha.ca.gov

¹ All further references are to Title 27, California Code of Regulations, unless otherwise indicated.

Comments sent by courier should be delivered to:

Fran Kammerer
Office of Environmental Health Hazard Assessment
1001 I Street, 23rd Floor
Sacramento, California, 95814

It is requested, but not required, that hard-copy statements or arguments be submitted in triplicate.

CONTACT

Inquiries concerning the action described in this notice may be directed to Fran Kammerer, Staff Counsel via e-mail at fkammerer@oehha.ca.gov, or via mail at OEHHA, P.O. Box 4010 Sacramento, California 95812-4010. Monet Vela is a back-up contact person for inquiries concerning processing of this action and is available at (916) 323-2517 or mvela@oehha.ca.gov.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Proposition 65 was enacted as a voters' initiative on November 4, 1986, and codified at Health and Safety Code section 25249.5 et seq. OEHHA, within the California Environmental Protection Agency, is the state entity responsible for the implementation of Proposition 65. OEHHA has the authority to promulgate and amend regulations to further the purposes of Proposition 65². Proposition 65 requires a private person who brings an action in the public interest for violation of Proposition 65 to first give notice of the alleged violation to the alleged violator, the Attorney General, district attorneys, and certain city attorneys.

Currently, the district attorneys or district attorneys can receive the notice electronically, if they so elect, but the office of the Attorney General must be notified via U.S. Mail. The proposed amendments to Section 25903(c)(1) would allow electronic service on the Attorney General's office.

AUTHORITY

Health and Safety Code section 25249.12.

REFERENCE

Health and Safety Code sections 25249.5, 25249.6, 25249.10(c), 25249.11, and 25249.12

² Health and Safety Code section 25249.12

IMPACT ON LOCAL AGENCIES OR SCHOOL DISTRICTS

OEHHA has determined the proposed regulatory action would not impose a mandate on local agencies or school districts; nor does it require reimbursement by the State pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.

OEHHA has also determined that no nondiscretionary costs or savings to local agencies or school districts will result from the proposed regulatory action. Proposition 65 expressly does not apply to federal, state or local governmental agencies (Health and Safety Code section 25249.11(b)).

COSTS OR SAVINGS TO STATE AGENCIES

OEHHA has initially determined that no significant savings or increased costs to any State agency will result from the proposed regulatory action. Proposition 65 expressly does not apply to federal, state or local governmental agencies (Health and Safety Code section 25249.11(b)).

EFFECT ON FEDERAL FUNDING TO THE STATE

OEHHA has initially determined that no costs or savings in federal funding to the State will result from the proposed regulatory action.

EFFECT ON HOUSING COSTS

OEHHA has initially determined that the proposed regulatory action will have no effect on housing costs.

SIGNIFICANT STATEWIDE ADVERSE ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING ABILITY TO COMPETE

OEHHA has made an initial determination that the adoption of the amendments to the regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed regulation does not impose any new requirements upon private persons or businesses.

IMPACT ON THE CREATION, ELIMINATION, OR EXPANSION OF JOBS/BUSINESSES

OEHHA has initially determined that the proposed regulatory action will not have any impact on the creation or elimination of jobs, the creation of new businesses or the elimination of existing businesses, or the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESSES

The OEHHA is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESSES

OEHHA has determined that the proposed regulatory action will not impose any new or additional requirements on small businesses. Proposition 65 exempts businesses with less than 10 employees³.

CONSIDERATION OF ALTERNATIVES

Pursuant to Government Code section 11346.5(a)(13), OEHHA must determine that no reasonable alternative considered by OEHHA, or that has otherwise been identified and brought to the attention of OEHHA, would be more effective in carrying out the purpose for which Proposition 65 is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

OEHHA has prepared and has available for public review an Initial Statement of Reasons for the proposed regulatory amendments, all the critical information upon which the regulation is based, and the text of the proposed amendments to the regulation. A copy of the Initial Statement of Reasons and a copy of the text of the proposed regulation are available upon request from Monet Vela at the telephone number indicated above. These documents are also posted on OEHHA's Web site at www.oehha.ca.gov.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

The full text of any proposed regulation which is changed or modified from the express terms of the proposed action will be made available at least 15 days prior to the date on which OEHHA adopts the resulting regulation. Notice of the comment period on the changed proposed regulations and the full text will be mailed to individuals who testified or submitted oral or written comments at the public hearing, whose comments were received by OEHHA during the public comment period, and who request notification from OEHHA of availability of such change. Copies of the notice and the changed regulation will also be available at OEHHA's web site at www.oehha.ca.gov.

³ Health and Safety Code section 25249.11(b)

FINAL STATEMENT OF REASONS

A copy of the Final Statement of Reasons may be obtained, when it becomes available, from OEHHA's Monet Vela at the telephone number indicated above. The Final Statement of Reasons will also be available at OEHHA's web site at www.oehha.ca.gov.

OFFICE OF ENVIRONMENTAL
HEALTH HAZARD ASSESSMENT

Allan Hirsch
Chief Deputy Director

Dated: August 22, 2011

**INITIAL STATEMENT OF REASONS
TITLE 27, CALIFORNIA CODE OF REGULATIONS**

**PROPOSED AMENDMENT TO SECTION 25903
NOTICES OF VIOLATION**

**SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
PROPOSITION 65**

PURPOSE

The Office of Environmental Health Hazard Assessment (OEHHA) proposes to amend Title 27, Cal. Code of Regulations, section 25903(c)(1) to allow electronic service on the Attorney General's Offices for Notices of Violation.

The Safe Drinking Water and Toxic Enforcement Act of 1986, commonly known as Proposition 65¹, was enacted as a voters' initiative on November 4, 1986, and codified at Health and Safety Code section 25249.5 et seq. OEHHA is the state entity responsible for the implementation of Proposition 65. OEHHA has the authority to promulgate and amend regulations to further the purposes of Proposition 65.²

Proposition 65 requires a private person who brings an action in the public interest for violation of the law to first give notice of the alleged violation to the alleged violator, the Attorney General, district attorneys, and certain city attorneys in whose jurisdiction the violation occurred, 60 days prior to filing an enforcement action. Regulations concerning the Notice of Violation are found in Title 27, Cal. Code of Regulations, section 25903.³

Currently, the regulation allows a 60-Day Notice of Violation to be served electronically on district attorneys or city attorneys who elect to receive notice in that format. The Attorney General must be served via U.S. Mail. This notification process is expensive and time-consuming for staff at the Attorney General's Office.

The proposed amendments to Section 25903(c)(1) would allow electronic service on the Attorney General's office. The proposed regulatory amendments are set out below in underline/strikeout format.

¹ Codified at Health and Safety Code section 25249.5 et. seq., hereafter referred to as "Proposition 65" or "Proposition 65"

² Health and Safety Code section 25249.12(a)

³ All further references are to sections of Title 27 of the California Code of Regulations, unless otherwise noted.

Regulatory Amendment

25903. Notice of Violation

(c) Service of Notice.

(1) Notices shall be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure. In lieu of service as prescribed in the California Code of Civil Procedure, a notice may be served on the Attorney General, a district attorney or city attorney by electronic mail if:

(A) the Attorney General, District Attorney or City Attorney has specifically authorized such service and the authorization appears on the Attorney General's Web site;

(B) the Notice and related documents are sent to the electronic mail address specified, and in the format (e.g. Word, Adobe Acrobat) specified.

(C) Service by this method is not effective until the documents are actually received. Notice is actually received when it is acknowledged by the recipient.

(D) Where a document is served electronically, time shall be computed as it would for service by mail within the State of California.

(2) A certificate of service shall be attached to each notice listing the time, place, and manner of service and each of the parties upon which the notice was served.

(3) Notices shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred.

(4) Where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons.

These proposed amendments to Section 25903(c)(1) would not affect the existing requirement in the regulation that notices of violation be served on the alleged violator in a manner consistent with the California Code of Civil Procedure.

NECESSITY

Proposition 65 is enforced by the California Attorney General's office or any district attorney or certain city attorneys or by any individual acting in the public

interest. Proposition 65 requires that an individual acting in the public interest to enforce Proposition 65 give notice of the impending action to the person alleged to be committing the violation. The notice must also be served on the Attorney General, district attorneys and certain city attorneys in each jurisdiction where the violation is alleged to have occurred. The notice must be served on these parties no less than 60 days before commencing Proposition 65; thus this notice is commonly referred to as the “60-day Notice of Violation”.

Section 25903 describes the requirements for the notification, including the content of the notice and manner of service. Subsection (c)(1) requires the notices to be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure. OEHHA amended the regulation in 2010 to allow for notices to be served on district attorneys or city attorneys electronically. The Attorney General’s Office has requested that the regulation be changed to allow electronic service on that Office as well. This change will make the process more efficient and will be simpler for the private entities that are required to serve the notices.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS.

OEHHA did not rely upon any technical, theoretical, or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVES TO THE REGULATION AND THE AGENCY’S REASONS FOR REJECTING THOSE ALTERNATIVES.

No other alternatives were presented to or considered by OEHHA.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The proposed regulatory action will not adversely impact small business and may reduce the costs associated with service of 60-day notices of violation by allowing such notices to be served via electronic mail. In addition, Proposition 65 is limited by its terms to businesses with 10 or more employees (Health and Safety Code § 25249.11(b)) so it has no effect on very small businesses.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.

The proposed amendment will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. The proposed amendment does not impose any new requirements upon private persons or business and may, in fact,

reduce the costs of providing 60-day notices of violation to the Attorney General's office.

EFFORTS TO AVOID UNNECESSARY DUPLICATION OR CONFLICTS WITH FEDERAL REGULATIONS CONTAINED IN THE CODE OF FEDERAL REGULATIONS ADDRESSING THE SAME ISSUES.

Proposition 65 is a California law that has no federal counterpart. There are no federal regulations addressing the same issues and thus, there is no duplication or conflict with federal regulations.

TITLE 27 CALIFORNIA CODE OF REGULATIONS
STATE OF CALIFORNIA
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

ARTICLE 9. MISCELLANEOUS

Proposed Regulatory Amendment

§ 25903. Notices of Violation.

(c) Service of Notice.

(1) Notices shall be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure. In lieu of service as prescribed in the California Code of Civil Procedure, a notice may be served on the Attorney General and a district attorney or city attorney by electronic mail if:

(A) the Attorney General, District Attorney or City Attorney has specifically authorized such service and the authorization appears on the Attorney General's Web site;

(B) the Notice and related documents are sent to the electronic mail address specified, and in the format (e.g. Word, Adobe Acrobat) specified.

(C) Service by this method is not effective until the documents are actually received. Notice is actually received when it is acknowledged by the recipient.

(D) Where a document is served electronically, time shall be computed as it would for service by mail within the State of California.

(2) A certificate of service shall be attached to each notice listing the time, place, and manner of service and each of the parties upon which the notice was served.

(3) Notices shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred.

(4) Where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.