

## California's Office of Environmental Health Hazard Assessment Targets Industrial Rubber Byproduct For Listing

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The **Office of Environmental Health Hazard Assessment (OEHHA)**, the agency responsible for implementing California's Proposition 65, has announced that on November 29, 2012, the **State's Carcinogen Identification Committee (CIC)** will evaluate 2,6-Dimethyl-N-nitrosomorpholine (DMNM), an industrial byproduct found in rubber factories. The CIC will determine if the chemical must be listed as a carcinogen on the list of chemicals known to the State of California to cause cancer, birth defects, or other reproductive harm (the "Proposition 65 list").

DMNM is a member of the class of chemicals known as nitrosamines, many of which are already heavily regulated by environmental protection agencies and listed as carcinogens on the Proposition 65 list. DMNM is an industrial byproduct formed through the combination of nitric oxides or nitrate salts and 2,6 dimethylmorpholine, an industrial product used in rubber production and certain industrial oils. Like other nitrosamines, DMNM can be found in rubber factories and workshops where metalworking fluids are used.

A decision to list the chemical could have a large impact on industrial manufacturers because under California's "**Safe Drinking Water and Toxic Enforcement Act of 1986**" (Proposition 65) companies are required to warn consumers and industrial workers prior to exposing them to chemicals on the Proposition 65 list, which now includes close to 900 chemicals. In conjunction with the upcoming meeting, OEHHA has made available the hazard identification materials (the "hazard report") the CIC will consider in making a decision on whether to list.

OEHHA's release of the hazard report, officially titled Evidence on the Carcinogenicity of DMNM, is a significant step in CIC's evaluation process prior to deciding whether to place the chemical on the Proposition 65 list pursuant to the "State's Qualified Experts" listing mechanism. In the hazard report, OEHHA noted that while no epidemiology studies investigating the risk of cancer in humans had been conducted, numerous animal studies showed that the chemical caused tumors in various rodents. The hazard report also indicates that DMNM has not been classified as carcinogenic by any federal agency or the **International Agency for Research on Cancer**.

OEHHA's meeting announcement and the release of the hazard report marks the opening of a public comment period on the hazard report. **OEHHA must receive comments on the hazard report and any supporting documentation by 5:00 p.m. on Tuesday, October 9, 2012.** The November 29,

2012 meeting of the CIC will be held at 10:00 a.m. in the Cal/EPA Headquarters building in Sacramento.

If the CIC determines that DMNM must be listed as a carcinogen on the Proposition 65 list, OEHHA is obligated by state regulations to list the chemical. The requirement to warn consumers prior to exposure to the chemical would go into effect one year after OEHHA lists the chemical. Once that year has passed, businesses that fail to provide a “clear and reasonable” warning are at risk of being forced to pay steep statutory penalties when the law is enforced by the California Attorney General or, more commonly, when private plaintiffs bring an action under Proposition 65’s “private attorney general” provision.

Interested parties that would like to provide comments and supporting documentation regarding OEHHA’s hazard report must keep a close eye on the October 9, 2012 deadline and should strongly consider contacting counsel for assistance.

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