



Got Cadmium? Next Trend in Proposition 65 Litigation

The Center for Environmental Health (“CEH”), an organization that has spearheaded several lawsuits against purported violators of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (referred to as Proposition 65) recently notified four leading retailers that costume jewelry being sold to adults and children contained unsafe levels of cadmium. According to CEH, cadmium—a popular lead replacement used in response to state and federal regulation regarding the use of lead—can purportedly cause cancer, genetic damage and kidney problems.

While CEH’s latest action focuses on costume jewelry, cadmium also is commonly used in the production of solder and is sometimes used as an alternative to lead. Since CEH has already brought numerous suits relating to lead solder, it seems very likely that Proposition 65 litigation regarding the use of cadmium will expand to include products with any exposed solder parts.

In light of what may be the next stage of Proposition 65 litigation, it would be prudent for manufacturers, distributors, and retailers to contact their suppliers to confirm whether cadmium has been, is being, or will be used to replace lead components, and if so, the levels of cadmium being used. It is important to note that CEH has taken the position that any level of cadmium is unsafe. While CEH’s position may be subject to attack, it might be prudent at this time to avoid the use of cadmium altogether and dispel the risk of litigation. CEH’s assertions regarding the dangers of cadmium may be overbroad, but litigation of the issue would likely be time-consuming and potentially expensive.



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