



"The Public Interest"

Health/Safety and Environmental Issues

the PASMA way to shared knowledge

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Editor: Dick Monod de Froideville,
Cal/OSHA-Retired 310/464/7237
Dmonod.pasma@gmail.com

PASMA NORTH & SOUTH

Board Members:

President PASMA South:

Don Coccozza, Safety Administrator City of Santa Monica. 310/458/4908
Don.Coccozza@santamonica.gov

Vice President:

Chuka Udengwu, Safety Officer II, Los Angeles County Department of Child & Family Svcs 213/910/7208
UdengC@dcpf.lacounty.gov

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Treasurer: Mary Ann Pham, Safety Off II.

DHS, L.A. County HSE. 562/385/6840
Mpham2@dhs.lacounty.gov

Member at Large:

Jason Monod de Froideville

WebMaster: Antony Garcia, Safety Officer,

City of Palmdale Operations and Risk Mgt. 661/267/5494.
agarcia@cityofpalmdaleca.gov

PASMA Interim Legislative Affairs:

Dick Monod de Froideville

PASMA North:

Gina Eicher, City of Walnut Creek, Director Public Wrks. 925/256/3513
eicher@walnutcreek.org

Vice President: Vacant

Treasurer:

Sylvia Elizarraraz, Safety Services Mgr. Contra Costa Health Pers. Safety Svcs 925/655/2443
Sylvia.Elizarraraz@cchealth.org

Secretary & Leg. Affairs: Vacant

Hazardous Communication & Training Program T8CCR5194

The featured article is a discussion about the **ONLY** employer program that is a **mandatory inspection priority** for every CSHO Nationwide regardless of the reason for the inspection. If you've read last month's lead article, you'll have noticed that program is listed midway of both tables. I've been monitoring the top ten most issued citations since 2006 for both California and Federal OSHA jurisdictions and noticed that the HazCom Standard has consistently placed midway in the top 10, and, is usually cited as "Serious". To reverse this reality, I'm hoping this discussion will provide the impetus for change.

As with all OSHA "written" program requirements, HazCom is comprehensive, scientific, technically rooted and designed to provide the initial cautionary **RED FLAG** of hidden exposure hazards that may have any **HEALTH** effects on the employee. It is **MORE THAN LIBRARY WORK**. It mandates review, analysis, assessment and action for any chemistry used in support of the organization's routine and special activities. Although it does not specify a technically proficient administrator, the mere fact that it involves a scientific document, would suggest that such an administrator be assigned. The lack of assigning such an administrator is the first organizational fail in most programs I've evaluated.

The second most common systems failure I believe, is the "boiler plating" of the program. Meaning that most programs are templated to apply across all functional units of the organization, and as such, loses direct functionality and certainly visibility to those typically exposed. Since the program exists around a document (SDS), it simply gets cataloged and relegated to the "library" for collection; much like "junk mail" and simply forgotten.

The third and final systems failure I believe, is the quality of the training in general. In the case of any "chemistry", training cannot just simply be relegated to the global onboarding of new personnel. It should be focused only on those working within **zones of danger** for specific activities, should be explained in **normal conversational speech** and most importantly should leave residual, actionable memories of all the associated hazards. The idea behind that type of education is so that the employee can recognize the hazards and take appropriate action prior to that anticipated exposure.

What follows is an edited version of that program from the perspective of any compliance officer finding any evidence leading to the decision to issue a citation for NOT maintaining compliance to the Safety Order as written.



**Hazard Communication (HazCom) Program Major Elements
Special Reminder: Mandatory Evidentiary Activities:
Documents/Interviews/Observations**

Date: Insert a date of last review - Compliance knows that programs, processes, equipment, tools and raw materials will change over time. The Hazcom Program is expected to be reviewed when "new materials" are introduced that may affect exposures. A review date would signal consistent and continuous program auditing.

Administrator: Unlike the Resp. Protect Program, HazCom does not require an administrator, HOWEVER, SDS content is TECHNICAL AND SCIENTIFICALLY ROOTED. Only a person with a working knowledge and understanding of the Program Concept and the content of the SDS could perform that task. Has such a person should have been vetted and assigned as the program administrator. CSHO will ask who has full authority and responsibility for implementing and maintaining this program.

List of hazardous chemicals

CSHO will verify the current list of all known hazardous chemicals present in the workplace that are in use or storage and, at the same time. Verification is done via corporate records and the product identifiers listed will match those on the corresponding container labels and SDSs. Specific information on each noted hazardous chemical can be obtained by reviewing the corresponding label and SDS.

Proposition 65 list of chemicals – Yes there are periodic updates

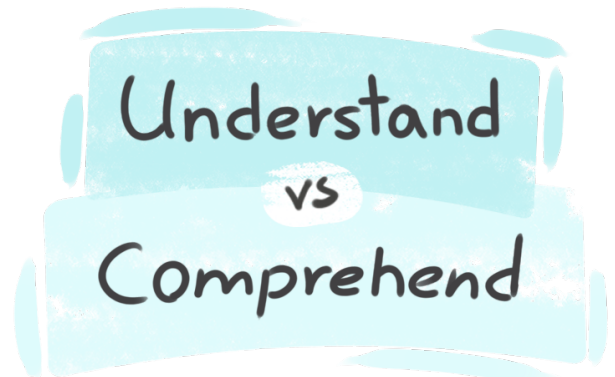
CSHO will audit how and who has the responsibility for obtaining updates of Prop 65 listed chemicals and providing new information to affected employees. In the case of newly added chemicals to the Prop 65 list, the additional warning requirements will take effect within 12 months from the date of listing.

Safety Data Sheets (SDSs)

CSHO will identify how a new SDSs is requested, obtained and reviewed for actionable intel and completeness, does it correspond to the existing list, and where is the new SDS stored and disseminated to the user. CSHO will also audit protocols should a SDS **not be received** with or prior to receipt of the initial shipment of a hazardous chemical, or with the first shipment after a safety data sheet is updated. If a new or revised SDS is received that indicates significantly increased risks or measures needed to protect employee health, how is that information conveyed to employees and **does it occur within 30 days.** CSHO will review the procedures that will ensure that they are readily accessible during each work shift to employees when they are in their work area(s). Electronic access and other alternatives to maintaining paper copies of the safety data sheets are permitted as long as no barriers to immediate employee access in each workplace are created by such options. SDSs are readily available for review by all employees in their work area and during each work shift without the need to ask someone. CSHO will audit SDS access for workers at more than one geographical location. CSHO will ask if employees know **who** to contact for specific questions or additional information. CSHO will check procedures and protocols for alternative access to electronic libraries. Since SDSs (and the older Material Safety Data Sheets) constitute an "employee exposure and medical record" and will be kept according to T8CCR section 3204 requirements. CSHO will audit and test records retention protocols.

Labels and other forms of warning

CSHO will verify who and how hazardous chemical containers are released to the work area with the proper labels and forms of warning consistent with the elements of the SDS document. Where products are transferred to workplace containers, CSHO will audit the contents of the original containers received from the manufacturer, distributor, importer have been transferred with the appropriate labels and hazard statements.



Employee information and training

CSHO will audit and verify if employees are trained at the time of their initial assignment and whenever a new chemical hazard is introduced into the work area. CSHO will audit trainer working knowledge, content and delivery regarding:

- The requirements of the Hazard Communication regulation, including the employees' rights under the regulation.
- The location and availability of the written HazCom Program and list of hazardous chemicals and SDSs. Included here will be how this information will be addressed when there are other employer activities at the work site.
- Any operation in the employees' work area, including non-routine tasks, where hazardous chemicals or Proposition 65 carcinogens/reproductive toxins are present and exposures are likely to occur.
- Methods and observation techniques used to determine the presence or release of hazardous chemicals in the work area.
- Protective practices the company has taken to minimize or prevent exposure to these substances.
- The details of our HazCom Program, including how to read labels and review SDSs to obtain hazard information, and an overview of our workplace-specific labeling procedures for original and workplace containers, as well as stationary processes.
- Physical and health effects of the hazardous chemicals either individually or as hazard groups. Chemical-specific information will always be available through labels and safety data sheets.
- **Symptoms of overexposure.**
- Measures employees need to put into practice to reduce or prevent exposure to these hazardous chemicals by engineering controls, work practices, and use of personal protective equipment.
- Emergency and first aid procedures to follow if employees are exposed to hazardous chemicals.
- The location and interpretation, if needed, of warning signs or placards to communicate that a chemical known to cause cancer or reproductive toxicity is used in the workplace.
- **Hazardous non-routine tasks**
- CSHO will have a general understanding of the work "normally" done and will audit any "non-routing" tasks involving hazardous materials. Pending that information, CSHO will audit:
 - Specific hazards.
 - Measures the company has taken to reduce the risk of these hazards, such as providing ventilation, ensuring the presence of another employee, providing a respiratory protection program that meets T8 section 5144 requirements, and establishing emergency procedures.
 - Required protective/safety measures.
 - Where is this documented.

Labeled/unlabeled pipes

CSHO will identify any above-ground pipes transporting hazardous chemicals (gases, vapors, liquids, semi-liquids, and plastics) will be identified in accordance with T8 CCR, section 3321, "Identification of Piping.". CSHO will audit, who and how piping is labeled and the information relayed to the employees prior to their exposure to the materials.

Independent contractors and temporary employees working in our workplace

CHSO will identify and audit information transfer and training regarding hazardous materials with exposure potential and how is this documented.



On multi-employer worksites, OSHA categorizes employers into four roles:



Sample Support Documents to Consider

- Master Hazardous Chemical List w/End users identified
- Hazardous Chemical List For End Users
- HazCom Traing Roster For:
- Initial, New product and Program Re-training
- Sample SDS Request Letter

Training Topic Checklist

Requirements of T8 CCR section 5194.

Operations where hazardous chemicals are present.

Location and availability of the written Hazard Communication Program, including the list of hazardous chemicals and safety data sheets.

Methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area.

The physical, health, simple asphyxiation, combustible dust, and pyrophoric gas hazards, as well as hazards not otherwise classified, of the chemicals in the work area.

The measures employees can take to protect themselves from these hazards, including specific procedures implemented to protect employees from exposure to hazardous chemicals.

Details of the Hazard Communication Program, including an explanation of the labels received on shipped containers and the workplace labeling system, safety data sheets, and how employees can obtain and use the appropriate hazard information.

Employee rights:

To personally receive information regarding hazardous chemicals to which they may be exposed.

For their physician or collective bargaining agent to receive information regarding hazardous chemicals to which the employee may be exposed.

Against discharge or other discrimination due to the employee's exercise of the rights afforded pursuant to the provisions of the Hazardous Substances Information and Training Act.

Other [enter other topics applicable to your workplace]

SDS Word Quiz – Define and Contextualize in common terms to help in Comprehension - CHALLENGE

OSHA Specific Terms	Code Reference	Plain Meaning & Implications
“C”		
PEL (Implication)		
STEL (Implication)		
Engineering Control (List)		
TWA (Implication)		
Route of Entry (List)		
NRR		
APF		
ANSI		
NFPA		
Dose		
Flash Point		
dBA		
Acute		
Chronic		
SLM		
MUC		
ESLI		
PPM		
Mg/M ³		
AQI		
PM2.5		

Critical Pre-cursors to a Legitimate Citation – See Cal/OSHA P&P C-1B

❖ **Rebuttable Presumption – Legal framework: What is it and how is it used**

Definition & meaning

A rebuttable presumption is a legal assumption that is accepted by a Judge as true until evidence is presented to dispute it. This means that the presumption holds weight in legal proceedings but can be challenged. In essence, it serves as a starting point for legal arguments, allowing one party to assert a fact that the other can contest.

Legal use & context

- Rebuttable presumptions are commonly used in various areas of law, including:
- Family Law: Often used in paternity cases and adoption scenarios.
- **Civil & Administrative Law:** Can apply in tort cases where certain facts are presumed until disproven.
- Criminal Law: May be relevant in cases involving intent or knowledge.

Key legal elements

- The presumption is accepted as true until evidence is provided to refute it.
- It applies to specific legal contexts, such as family law or civil cases such as Cal/OSHA Citations.
- The burden of proof lies with the party contesting the presumption.

Real-world examples

Here are a couple of examples:

- Example 1: In a divorce proceeding, if a child is born during the marriage, the court will presume that the husband is the father unless evidence, such as a DNA test, proves otherwise.
- Example 2: A Cal/OSHA Inspection results in Citations

Common misunderstandings

Some people believe that a rebuttable presumption is the same as a fact. Not so, it is an assumption that can be challenged with stronger evidence. Others think that once a presumption is established, it cannot be overturned. However, presenting sufficient evidence can refute it.

What to do if this term applies to you – Cal/OSHA Citations based on AB1127 and SB606

- If you believe a rebuttable presumption applies to your situation, consider the following steps:
- Gather any evidence you have that may contest the presumption.
- Ensure you
 - ✚ Define terms with outcome measures.
 - ✚ Consistently Document, Document and Document.

❖ **Realistic Possibility**

A violation is presumed to be “serious” if compliance personnel **can show** there is “a realistic possibility that death or serious physical harm could result from the actual hazard created by the violation” (Labor Code section 6432(a)). An **employer can rebut this presumption** by showing that the employer “**did not know and could not, with the exercise of reasonable diligence,** have known of the presence of the violation” Labor Code section 6432(c)).

The term “**realistic possibility**” means “a prediction clearly within the bounds of human reason, not pure speculation”. The **Division must provide a valid evidentiary foundation** for the “realistic possibility.” The Appeals Board has held that this foundation can be provided by testimony from compliance personnel based on “**expertise on the subject, reasonably specific scientific evidence, experience-based rationale, or generally accepted empirical evidence.**”

Types of Audit Evidence



NOTE: Under Labor Code section 6432(g), compliance personnel are deemed "competent" (i.e., qualified) to testify about each element of a serious violation if their Division-mandated training is current. (see Cal/OSHA P&P C12). The Appeals Board has held that the Division may assume a worst-case scenario in evaluating whether a violation is serious. **Lack of an actual accident is immaterial to this determination**, but the fact of an accident is relevant and would tend to prove the realistic nature of the hazard.

1. Elemental Analysis

Elemental Analysis **Must be performed and documented** (see worksheet P&P C-1B).

Elemental Analysis Example: 8 CCR Section 3382(a) states in part that:

"Employees (Element 1) working (Element 2) in locations where there is the risk of receiving eye injuries such as punctures, abrasion, contusions, or burns (Element 3) as a result of contact with flying particles, hazardous substances, projections or injurious light rays (Element 4) which are inherent in the work or environment (Element 5), shall be safeguarded by means of face or eye protection (Element 6)."

#	Element	Evidence Summary	Types of Evidence
1	Employees	3 in a service garage	EOS
2	Working	Checking/adding oil and water	OB
3	Location w/Risk "Zone of Danger"	Working around in facility	
4	Of eye injuries	Batteries and Motor e.g. motor oil, puncture, Abrasions, contusions, batties burns,	CSHO experiences
5	Inherent in the work or environment	Used in the garage	OB, PH
6	Shall be guarded with face or eye protection.	No goggles or face shields provided.	EA, PH

Evidence legend: OB-Observation; EA-Employer Admission; EOS-Employer Oral Statements; OOS-Other Oral Statement; EWS-Employer written Statement; OWS-Other Written Statements; PH-Photograph; BO-Business Record; DO-Document; SM-Sample Measurement; MM-Monitoring Measurements; EPM-Equipment, Parts, Machinery identifiers; Other.

Next Month – Energy Control aka LOTO



Burnie & Les



In the 1970s, before the NFPA 70E, real electricians worked it hot!

Round Table Curious about any Cal/OSHA Topic?

Please let me know

