

electronically FILED by Superior Court of California, County of Los Angeles on 08/09/2021 09:12 PM Sherri R. Carter, Executive Officer/Clerk of Court, by H. Flores-Hernandez, Deputy Clerk

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5 Attorney for Plaintiff California Toxins Project, LLC

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 8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 9 **COUNTY OF LOS ANGELES**

10
 11 **CALIFORNIA TOXINS PROJECT, LLC**

12 **Plaintiff,**

13 **vs.**

14 **METAL IMPROVEMENT COMPANY, LLC**
 15 **dba EM COATING SERVICES and DOES 1-**
 16 **100**

17 **Defendants.**

CASE NO. 21STCV29339

**COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF AND
 CIVIL PENALTIES**

[Miscellaneous Civil Complaint (42)]
 Proposition 65, Health & Safety Code
 Section 25249.5 et seq.]

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 21 Plaintiff California Toxins Project, LLC hereby alleges:

22 **I**

23 **INTRODUCTION**

24 1. Plaintiff California Toxins Project, LLC (hereinafter "Plaintiff" or "CTP") brings this
 25 action as a private attorney general enforcer and in the public interest pursuant to Health &
 26 Safety Code section 25249.7, subdivision (d). The Safe Drinking Water and Toxic Enforcement
 27 Act of 1986 (Health & Safety Code section 25249.5 *et seq.*) also known as "Proposition 65,"
 28 mandates that businesses with ten or more employees must provide a "clear and reasonable

1 warning” prior to exposing any individual to a chemical known to the state to cause cancer or
2 reproductive toxicity. Chromium (hexavalent compounds) is a chemical known to the State of
3 California to cause cancer, birth defects, and other reproductive harm. This Complaint seeks
4 injunctive and declaratory relief and civil penalties to remedy the ongoing failure of Defendant
5 Metal Improvement Company, LLC dba EM Coating Services and Does 1-100 (hereinafter
6 individually referred to as “Metal Improvement Company or “Defendant”), to warn workers
7 from various businesses in and around its North Hollywood, California facility that they have
8 been exposed to chromium (hexavalent compounds) from the company’s operations at levels
9 exceeding the applicable No Significant Risk Level (“NSRL”) for the chemical and requiring a
10 warning pursuant to Health & Safety Code section 25249.6.

11 **II**
12 **PARTIES**

13 2. Plaintiff CTP is dedicated to environmental protection and enhancement. One of CTP’s
14 objectives is to prevent and reduce toxic hazards to human health and the environment,
15 specifically from pollution of air, water and land in California.

16 3. Defendant Metal Improvement Company is a limited liability corporation licensed to do
17 business in the State of California. Defendant operates a facility located at 6940 Farmdale Ave.,
18 North Hollywood, California 91605. During the course of normal business operations,
19 Defendant emits chromium (hexavalent compounds) into the atmosphere. Metal Improvement
20 Company is a business subject to Proposition 65 as it employs ten or more persons and has
21 employed ten or more persons at all times relevant to this action.

22 4. Defendants Does 1-100, are named herein under fictitious names, as their true names
23 and capacities are unknown to CTP. CTP is informed and believes, and thereon alleges, that
24 each of said Does is responsible, in some actionable manner, for the events and happenings
25 hereinafter referred to, either through said Does’ conduct, or through the conduct of its agents,
26 servants or employees, or in some other manner, causing the harms alleged by CTP in this
27 Complaint. When said true names and capacities of Does are ascertained, CTP will seek leave
28 to amend this Complaint to set forth the same.

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III

JURISDICTION AND VENUE

5. This Court has jurisdiction pursuant to California Constitution Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other trial courts. The statute under which this action is brought does not specify any other basis for jurisdiction.

6. This Court has jurisdiction over Defendant because the company conducts business operations in California, that creates sufficient minimum contacts with the State so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

7. The Complaint is based on allegations contained in the Notice of Violation dated September 1, 2020 served on the California Attorney General, other public enforcers, and Defendant. The Notice of Violation constitutes adequate notice to Defendant because the Notice of Violation provided adequate information to allow the company to assess the nature of the alleged violations, consistent with Proposition 65 and its implementing regulations. A certificate of merit and a certificate of service accompanied each copy of the Notice of Violation, and both certificates comply with Proposition 65 and its implementing regulations. The Notice of Violation served on the company also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." Service of the Notice of Violation and accompanying documents complied with Proposition 65 and its implementing regulations. Attached hereto as **Exhibit A** is a true and correct copy of the Notice of Violation and associated documents. More than 60 days have passed since CTP mailed the Notice of Violation and no public enforcement entity has filed a Complaint in this case.

8. This Court is the proper venue for the action because the causes of action have arisen in the County of Los Angeles where the violations of law have occurred, and will continue to occur, unless the company takes appropriate actions to comply with State law. Furthermore, venue is proper in this Court under Code of Civil Procedure section 395.5 and Health & Safety

1 Code section 25249.7.

2 IV

3 **STATUTORY BACKGROUND**

4 9. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
5 passed as "Proposition 65" by an overwhelming majority vote of the people in November of
6 1986.

7 10. The warning requirement of Proposition 65 is contained in Health & Safety Code
8 section 25249.6, which provides:

9 No person in the course of doing business shall knowingly and
10 intentionally expose any individual to a chemical known to the state to
11 cause cancer or reproductive toxicity without first giving clear and
12 reasonable warning to such individual, except as provided in Section
25249.10.

13 11. The Office of Environmental Health Hazard Assessment ("OEHHA"), a division of Cal
14 EPA, is the lead agency in charge of the implementation of Proposition 65. OEHHA
15 administers the Proposition 65 program and administers regulations that govern Proposition 65
16 in general, including warnings to comply with the statute. The warning regulations are found at
17 Title 27 of the California Code of Regulations, Article 6. The regulations define expose as "to
18 cause to ingest, inhale, contact via body surfaces or otherwise come into contact with a listed
19 chemical. An individual may come into contact with a listed chemical through water, air, food,
20 consumer products and any other environmental exposure as well as occupational exposures."
21 (Cal. Code Regs., tit. 27, § 25102, subd. (i).)

22 12. In this case, the exposures are environmental exposures. An environmental exposures is
23 "an exposure that occurs as the result of contact with an environmental source, such as ambient
24 air, indoor air, ... through inhalation, ingestion, or skin or other contact with the body. All
25 exposures that are not consumer product exposures or occupational exposures are
26 environmental exposures." (Cal. Code Regs. tit. 27, § 25600.1, subd. (f).)

27 13. On August 30, 2016, the Office of Administrative Law approved the adoption of
28 OEHHA's amendments to Article 6, Clear and Reasonable Warnings of the California Code of

1 Regulations. This action repealed virtually all of the regulatory provisions of Title 27 of the
2 California Code of Regulations, Article 6 (sections 25601 *et seq.*) and replaced the repealed
3 sections with new regulations set forth in two new Subarticles to Article 6 that became
4 operative on August 30, 2018 (the “New Warning Regulations”). The New Warning
5 Regulations provide, among other things, methods of transmission and content of warnings
6 deemed to comply with Proposition 65. Defendant is subject to the warning requirements set
7 forth in the New Warning Regulations that became operative on August 30, 2018.

8 14. Health & Safety Code section 25249.6 provides that “No person in the course of doing
9 business shall knowingly and intentionally expose any individual to a chemical known to the
10 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning
11 to such individual” The New Warning Regulations apply when clear and reasonable
12 warnings are required under Section 25249.6. Pursuant to the New Warning Regulations,
13 environmental exposure warnings “must be provided in a conspicuous manner and under such
14 conditions as to make the warning likely to be seen, read, and understood by an ordinary
15 individual in the course of normal daily activity.” (Cal. Code Regs. tit. 27, § 25601, subd. (d).)
16 Such a warning would be “a warning provided in a notice mailed, sent electronically, or
17 otherwise delivered to each occupant in the affected area.” *Id.* at § 25604, subdivision (a) (2).
18 The warning must clearly identify the source of the exposure, include a map that clearly
19 identifies the affected area, be provide at least every three months, and be provided in English
20 and in any other language ordinarily used by the person to communicate with the public. *Ibid.*

21 15. Proposition 65 establishes a procedure by which the State is to develop a list of
22 chemicals “known to the State to cause cancer or reproductive toxicity.” (Health & Safety Code,
23 § 25249.8.) There is no duty to provide a clear and reasonable warning until 12-months after
24 the chemical is published on the State list. (Health & Safety Code, § 25249.10, subd. (b).)

25 16. Chromium (hexavalent compounds) was listed as a chemical known to the State of
26 California to cause developmental toxicity in the fetus and male and female reproductive
27 toxicity on December 19, 2008. Chromium (hexavalent compounds) was listed as a chemical
28 known to the State of California to cause cancer on February 27, 1987. (State of California

1 EPA OEHHA Safe Drinking Water and Toxic Enforcement Act of 1986 Chemicals Known to
2 the State to Cause Cancer and Reproductive Toxicity.) The No Significant Risk Level for
3 chromium (hexavalent compounds) as a carcinogen is 0.001 micrograms per day. (Cal. Code
4 Regs., tit. 27, §25705, subd. (b).) This safe harbor level is the second most stringent on the
5 Proposition 65 list for a carcinogen with only dioxin having a more stringent level.

6 17. Proposition 65 provides that any person “violating or threatening to violate” Proposition
7 65 may be enjoined in any court of competent jurisdiction. (Health & Safety Code, §25249.7,
8 subd. (a).) To “threaten to violate” means “to create a condition in which there is a substantial
9 probability that a violation will occur.” (Health & Safety Code, § 25249.11, subd. (e).)
10 Furthermore, violators are subject to a civil penalty of up to \$2,500 per day for each violation.
11 (Health & Safety Code, § 25249.7, subd. (b)(1).)

12 18. Proposition 65 may be enforced by any person in the public interest who provides notice
13 sixty days before filing suit to both the violator and designated law enforcement officials. The
14 failure of law enforcement officials to file a timely Complaint enables a citizen suit to be filed
15 pursuant to Health & Safety Code section 25249.7, subdivisions (c) and (d).

16 V

17 STATEMENT OF FACTS

18 19. During Defendant’s operations at its North Hollywood facility, chromium (hexavalent
19 compounds) is produced and released into the air, causing people to be exposed to this chemical
20 at levels exceeding the NSRL of 0.001 micrograms per day and requiring a warning. Nearby
21 workers have been and continue to be exposed to chromium (hexavalent compounds) from
22 these operations without any knowledge of their exposure to this very dangerous chemical.

23 20. Defendant reports its emissions annually under penalty of perjury to the South Coast
24 Air Quality Management District. Defendant has continuously reported chromium (hexavalent
25 compounds) to the Air District as follows: For 2018 and 2019, Defendant reported emissions of
26 .245 pounds of chromium (hexavalent compounds) to the Air District. Due to the extremely
27 high toxicity level of this chemical, these emissions have caused exposures to people in the
28 surrounding area.

1 21. Defendant's facility is located primarily in an industrial/commercial area where many
2 people are employed. The closest workers are situated within .1-.2 miles from the facility.
3 Workers within the general vicinity of the facility are exposed to Defendant's chromium
4 (hexavalent compounds) emissions.

5 22. For many years, Defendant has knowingly and intentionally exposed numerous persons
6 to chromium (hexavalent compounds) without providing any type of Proposition 65 warning.
7 Prior to CTP's Notice of Violation and this Complaint, Defendant failed to provide a warning to
8 the workers at various businesses in the surrounding community. Defendant has, at all times
9 relevant hereto, been aware that its operations cause this chemical to be produced and emitted
10 into the atmosphere. Defendant has always been aware that residents are located about less than
11 .3 miles from the facility and that workers from other businesses are situated even closer.
12 Despite this knowledge, Defendant has failed to disclose the presence of this chemical in the
13 area surrounding its operations to workers who continue to be exposed to the chemical during
14 the course of normal operations at levels requiring a warning. Defendant has been aware that
15 there are methods and pollution control technology to reduce these emissions and has failed to
16 take all appropriate measures to eliminate this exposure.

17 23. Both prior and subsequent to CTP's Notice of Violation, Defendant failed to provide
18 workers in the vicinity of the facility with a clear and reasonable warning that they have been
19 exposed to a chemical known to the State of California to cause cancer, birth defects and other
20 reproductive harm. This failure to warn is ongoing.

21 **FIRST CAUSE OF ACTION**
22 **(Violation of Section 25249.6 of the Health and Safety Code, Failure to Provide Clear and**
23 **Reasonable Warning under Proposition 65)**

24 24. CTP refers to paragraphs 1-23, inclusive, and incorporates them herein by this reference.

25 25. By committing the acts alleged above, Defendant has, in the course of doing business,
26 knowingly and intentionally exposed people situated in the area surrounding its facility to a
27 chemical known to the State of California to cause cancer, birth defects, and other reproductive
28 harm, without first giving clear and reasonable warning to such individuals within the meaning

1 of Health & Safety Code section 25249.6. In doing so, Defendant has violated Health & Safety
2 Code section 25249.6 and continues to violate the statute with each successive person exposed
3 on a daily basis.

4 26. Said violations render Defendant liable for civil penalties, up to \$2,500 per day for each
5 violation, and subject Defendant to injunction.

6 **SECOND CAUSE OF ACTION**
7 **(Declaratory Relief)**

8 27. CTP refers to paragraphs 1-26, inclusive, and incorporates them herein by this reference.

9 28. There exists an actual controversy relating to the legal rights and duties of the Parties,
10 within the meaning of Code of Civil Procedure section 1060, between CTP and Defendant,
11 concerning whether Defendant has exposed individuals to a chemical known to the State of
12 California to cause cancer, birth defects, and other reproductive harm without providing clear
13 and reasonable warning.

14 **VI**

15 **PRAYER**

16 WHEREFORE CTP prays for relief as follows:

17 1. On the First Cause of Action, for civil penalties for each and every violation according
18 to proof;

19 2. On the First Cause of Action, and pursuant to Health & Safety Code section 25249.7,
20 subdivision (a), for such temporary restraining orders, preliminary and permanent injunctive
21 orders, or other orders as are necessary to prevent Defendant from exposing persons to
22 chromium (hexavalent compounds) without providing clear and reasonable warning;

23 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
24 Procedure section 1060 declaring that Defendant has exposed individuals to chromium
25 (hexavalent compounds) without providing clear and reasonable warning; and

26 4. On all Causes of Action, for reasonable attorneys' fees pursuant to Code of Civil
27 Procedure section 1021.5 or the substantial benefit theory;

28 5. For costs of suit herein; and

1 6. For such other relief as the Court may deem just and proper.

2 DATED: August 6, 2021

MICHAEL FREUND & ASSOCIATES

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4 Michael Freund

5 Attorney for Plaintiff California Toxins Project, LLC

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EXHIBIT A

Michael Freund & Associates

1919 Addison Street, Suite 105

Berkeley, CA 94704

Voice (510) 540-1992 Fax (510) 371-0885

Email: freund1@aol.com

September 1, 2020

Xavier Becerra
California Attorney General
1515 Clay Street, Suite 2000
Oakland, CA 94612-1413

Jackie Lacey, District Attorney
Los Angeles county District Attorney Office
Hall of Justice
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012

Mike Feuer, Los Angeles City Attorney
200 N. Main Street
James K. Hahn City Hall East, Suite 800
Los Angeles, CA 90012

Plant Manager
Metal Improvement Company, LLC
dba EM Coating Services
6940 Farmdale Ave.
North Hollywood, CA 91605

Re: Corrected Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Sections 25249.5 et seq. ("Proposition 65")

Dear Alleged Violators and the Appropriate Proposition 65 Public Enforcement Agencies:

I represent California Toxins Project LLC ("CTP"), 7993 Rock Springs Road, Penryn, California 95663; Tel. (916) 223-4033. CTP's Executive Director is Lorell Long. CTP is a California non-profit corporation whose primary mission is to prevent chemical toxins from adversely impacting the environment and human health in California communities. This letter constitutes notification that Metal Improvement Company, LLC, dba EM Coating Services, located at 6940 Farmdale Ave., North Hollywood, CA 91605, has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act which is codified at Health & Safety Code § 25249.5 et seq.

CTP has identified violations of Proposition 65 from the alleged Violators identified below. The alleged Violators emit chromium (hexavalent compounds) into the atmosphere from its North Hollywood facility and have exposed and continue to expose individuals in and around the facility to this chemical without providing a clear and reasonable warning to these individuals. This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code Section 25249.7, subdivision (d), CTP intends to file a private enforcement action in the public interest 60 days after effective service of this Notice of Violation unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information About Proposition 65: A copy of a summary of Proposition, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators.

Alleged Violators: The names of the companies covered by this Notice of Violation that violated Proposition 65 are:

Metal Improvement Company, LLC dba EM Coating Services

Information Pertaining to Hexavalent chromium and Proposition 65: On February 27, 1987, the State of California officially listed chromium (hexavalent compounds) as a chemical known to cause cancer. On December 19, 2008, the State of California officially listed chromium (hexavalent compounds) as a chemical known to cause developmental toxicity, and male and female reproductive toxicity.

General Geographic Location of the Unlawful Exposure and Route of Exposure: The general geographic location of the unlawful exposure to the occupational community includes the noticed facility and other commercial and industrial businesses situated within a radius of approximately .1-.2 miles from the facility.

The exposures that are the subject of this Notice of Violation occur through inhalation.

Approximate Time Periods of Violations: Ongoing violations have occurred each day during the ordinary course of business operations since at least September 1, 2019 and will continue every day until clear and reasonable warnings are provided to those persons exposed to chromium (hexavalent compounds) or until the level of emission from the facility is reduced to allowable levels.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. Based on the environmental exposure at issue, the method of warning should be one or more of the methods required in the California Code of Regulations ("CCR"), title 27, Section 25604. CTP believes that the method of warning most likely to be seen, read, and understood by an ordinary individual in the course of normal daily activity would be "a warning provided in a notice mailed, sent electronically, or otherwise delivered to each occupant in the affected area." 27 CCR Section 25604, subdivision (a) (2). As required by Section 25604, subdivision (a) (2) (A-D) the warning must clearly identify the source of the exposure, include a

map that clearly identifies the affected area, be provided at least every three months, and be provided in English and in any other language ordinarily used by the person to communicate with the public.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CTP is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the alleged Violators to (1) take immediate measures to reduce the amount of chromium (hexavalent compounds) emitted from its North Hollywood facility so as to reduce or eliminate further exposures to this dangerous chemical; 2) provide clear and reasonable warnings compliant with Proposition 65 to those persons exposed to a significant risk of cancer from the emissions; and 3) pay an appropriate civil penalty. Such a resolution will prevent further unwarranted exposures to the identified chemical, as well as expensive and time-consuming litigation.

Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated on the letterhead or at freund1@aol.com.

Sincerely,



Michael Freund

Attorney for California Toxins Project

Attachments: Certificate of Merit, Certificate of Service, OEHHA Summary (to Violators only), and Additional Supporting Information for Certificate of Merit (to Attorney General only)

CERTIFICATE OF MERIT

Re: California Toxins Project LLC Notice of Proposition 65 Violation

I, Michael Freund, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the parties identified in the Notice of Violation violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the Notice of Violation.
4. Based on the information obtained through this consultation, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and that the information did not provide that the alleged Violators will be able to establish any of the affirmative defenses set forth in the statute.
5. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts studies, or other data reviewed by the individual.

Dated: September 1, 2020


Michael Freund

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action. My business address is 1919 Addison Street, Suite 105, Berkeley, CA 94704.

On September 1, 2020, I served the following documents: Notice of Violation of California Health & Safety Code § 25249.5 et seq; Certificate of Merit; and Appendix A, Office of Environmental Health Hazard Assessment, California Environmental Protection Agency, "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" on the following parties by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, at a United States Postal Service Office in Berkeley, California for delivery by Certified Mail and via electronic mail addressed as follows:

Willis Wagner (wagnerw@gtlaw.com) (Counsel for Noticed Parties)
Greenberg Traurig
1201 K Street, Suite 1100
Sacramento, CA 95814

On September 1, 2020, I served the following documents: Notice of Violation of California Health & Safety Code § 25249.5 et seq; Certificate of Merit; and Additional Supporting Information for Certificate of Merit by uploading to the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

California Attorney General/Proposition 65 Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

On September 1, 2020, I served the following documents: Notice of Violation of California Health & Safety Code § 25249.5 et seq; and Certificate of Merit by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, at a United States Postal Service Office in Berkeley, California for delivery by Certified Mail addressed as follows:

Jackie Lacey, District Attorney
Los Angeles County District Attorney Office
Hall of Justice
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012

Mike Feuer, Los Angeles City Attorney
200 N. Main Street
James K. Hahn City Hall East, Suite 800
Los Angeles, CA 90012

I, Michael Freund declare under penalty of perjury that the foregoing is true and correct. Executed on September 1, 2020 at Berkeley, California.


Michael Freund

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Proposition 65 List." Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at:
<http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: May 2017

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.