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San Francisco, CA 94133-4067  
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**Herbert Chao Gunther**  
*President*

October 19, 2001

**60-DAY NOTICE**

California Health and Safety Code Section 25249.6 (Proposition 65)

TO: The Attorney General of the State of California, The District Attorney of each California County, The City Attorneys for the Cities of Los Angeles, San Diego, San Jose and San Francisco

Re: Exposure Without Adequate Notice  
Alleged Violator: **StarKist Foods, Inc.**  
**H.J. Heinz Company**  
**Corporate Affairs Department**  
**P.O. Box 57**  
**Pittsburgh, PA 15230**

Dear Attorney General, District Attorneys and City Attorneys:

This letter notifies you of violations of California Health & Safety Code Section 25249.6, the warning provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") by StarKist Foods, Inc. The particulars are set forth below. You may bring an action to enforce the law under Health & Safety Code Section 25249.7(c).

The noticing party is Public Media Center, 466 Green Street, San Francisco, California 94133-4067, telephone (415) 434-1403. The Public Media Center is a California non-profit organization which, among other things, monitors environmental activities and compliance. The responsible person within the noticing party is Herbert Chao Günther. The law firm representing Public Media Center is The Law Offices of Robert C. Goodman. The responsible attorney is Robert C. Goodman, 177 Post Street, Suite 600, San Francisco, California 94108, telephone (415) 777-2210.

## STATEMENT OF PARTICULARS

The violation consists of the following:

**Identity of Violator:** STARKIST FOODS, INC.

**Identity of Chemicals:** Mercury and Methyl mercury

**Consumer products and services:** The alleged violator processes, distributes, and offers for sale canned tuna fish.

**Exposure without a clear and reasonable warning:** The alleged violator is exposing individuals in the State of California to methyl mercury through ingestion resulting from the normal and intended use of its products and the products identified above which it manufactures and which are sold throughout California. On July 1, 1987, methyl mercury was listed by the State of California as a chemical known to the State to cause reproductive toxicity. After July 1, 1987, the alleged violator has knowingly and intentionally offered the above-described product for sale without providing the clear and reasonable warning required by Proposition 65. The route of exposure is ingestion.

The alleged violator is exposing individuals in the State of California to mercury through ingestion resulting from the normal and intended use of its products and the products identified above which it manufactures and which are sold throughout California. On July 1, 1990, mercury was listed by the State of California as a chemical known to the State to cause reproductive toxicity. After July 1, 1990, the alleged violator has knowingly and intentionally offered the above-described product for sale without providing the clear and reasonable warning required by Proposition 65. The route of exposure is through ingestion.

An explanatory summary of Proposition 65 prepared by California's Office of Environmental Health Hazard Assessment is attached to the copy of this letter served on StarKist Foods, Inc. as Appendix A.

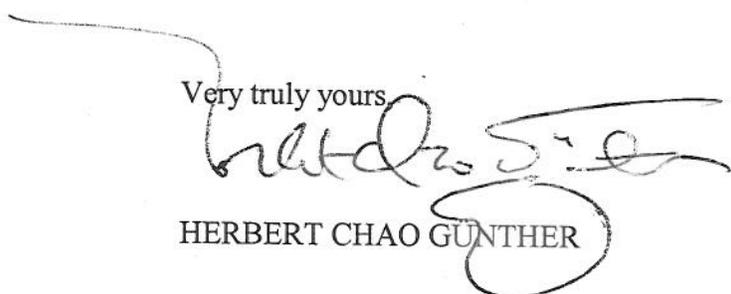
**Individuals exposed:** Persons using the above-referenced product.

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StarKist Foods, Inc.  
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**Duration of violations:** Unlawful failure to provide the clear and reasonable warning required by Proposition 65 has occurred since July 1, 1987. Under Proposition 65 each exposure constitutes a separate violation. Health & Safety Code Section 25249.7(b). The maximum civil penalty for each such violation is \$2,500. Id. The same facts constitute a violation of California Business and Professions Code Section 17200, et seq.

Please advise the undersigned as soon as possible of your plans for initiating action under Health & Safety Code Section 25249.7(c) in this matter. Please also provide us with copies of any pleadings you file in this matter and any communications you initiate with any of the parties named in this notice. If we do not hear from you within sixty (60) days of the date of this notice, we will be legally entitled to file an action pursuant to Health & Safety Code Section 25249.7(d).

Very truly yours



HERBERT CHAO GÜNTHER

cc (w/enclosure of explanatory summary):

**President  
StarKist Foods, Inc.  
H.J. Heinz Company  
Corporate Affairs Department  
P.O. Box 57  
Pittsburgh, PA 15230**



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Proposition 65

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## Proposition 65 in Plain Language!

### What Is Proposition 65?

In November 1986, California voters overwhelmingly approved an initiative to address growing concerns about exposures to toxic chemicals. That initiative became The Safe Drinking Water and Toxic Enforcement Act of 1986, better known by its original name.

### What Does Proposition 65 Require?

Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, birth defects or other reproductive harm. Agents that cause cancer are called *carcinogens*; those that cause birth defects or other reproductive harm are called *reproductive toxicants*. This list must be updated at least once a year. Over 700 chemicals have been listed as of March 10, 2000.

Proposition 65 imposes certain controls that apply to chemicals that appear on this list. These controls are designed to protect California's drinking water sources from contamination by these chemicals, to allow California consumers to make informed choices about the products they purchase, and to enable residents or workers to take whatever action they deem appropriate to protect themselves from exposures to these harmful chemicals.

Thus, Proposition 65 also provides a market-based incentive for manufacturers to remove listed chemicals from their products.

The benefits of the Proposition have their costs. Businesses have incurred expenses to test products, develop alternatives, reduce discharges, provide warnings and otherwise comply with the requirements of the Proposition. Recognizing that compliance with the Proposition comes at a price, Cal/EPA and the Office of Environmental Health Hazard Assessment (the lead agency for Proposition 65 implementation) have worked hard to minimize any unnecessary regulatory burdens and ensure that placement of a chemical on the list is done in accordance with rigorous science in an open public process.

### What kinds of chemicals are on the list?

The list contains a wide range of chemicals, including dyes, solvents, pesticides, drugs, food additives, and byproducts of certain processes. These chemicals may be naturally occurring, or synthetic. Some of them are ingredients of common household products, others are specialty chemicals used in very specific industrial applications.

### How Does a Chemical Get Listed?

The State of California relies upon information that already exists in the scientific literature when determining the threat of a chemical. A chemical is listed if the "state's qualified experts" -- two independent committees of scientists and health professionals appointed by the Governor -- find that the chemical has

been clearly shown to cause cancer or birth defects or other reproductive harm.

In addition, a chemical can be listed if it has been classified as a carcinogen or as a reproductive toxicant by an organization that has been designated as "authoritative" for purposes of Proposition 65. For carcinogens, the organizations that have been designated as authoritative by OEHHA Science Advisory Board's Carcinogen Identification Committee are the U.S. Environmental Protection Agency, U.S. Food and Drug Administration, National Institute for Occupational Safety and Health, the National Toxicology Program and the International Agency for Research on Cancer. The OEHHA Science Advisory Board's Developmental and Reproductive Toxicant Identification Committee have designated the following organizations as "authoritative bodies" for reproductive toxicants: the U.S. Environmental Protection Agency, U.S. Food and Drug Administration, National Institute for Occupational Safety and Health and International Agency for Research on Cancer (limited only to transplacental carcinogenicity). A chemical can also be listed if it is required to be labeled or identified as a carcinogen or as a reproductive toxicant by an agency of the state or federal government.

### **What Are the Responsibilities of Companies Doing Business in California?**

Any company with ten or more employees that operates within the State or sells products in California must comply with the requirements of Proposition 65.

Under Proposition 65, businesses are:

- 1) prohibited from knowingly discharging listed chemicals into sources of drinking water; and
- 2) required to provide a "clear and reasonable" warning before knowingly and intentionally exposing anyone to a listed chemical. This warning can be given by a variety of means, such as by labeling a consumer product, by posting signs at the workplace, or by publishing notices in a newspaper.

### **What Does A Warning Mean?**

If you are given a warning or if a warning is posted in a workplace, a facility or an area in your community, this means that the business issuing the warning knows that one or more listed chemicals is present in its product, in its workplace, or in its emissions into the environment. Under the law, a warning must be given unless a business demonstrates that the exposure it causes poses no significant risk.

For a chemical that is listed as a carcinogen, the "no significant risk" level is defined as the level which is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. In other words, if you are exposed to the chemical in question at this level every day for 70 years, theoretically it will increase your chances of getting cancer by no more than 1 case in 100,000 individuals so exposed.

For chemicals that are on the list as reproductive toxicants, the no significant risk level is defined as the level of exposure which, even if multiplied by 1,000, will not produce birth defects or other reproductive harm. That is, the level of exposure is below the "no observable effect level (NOEL)," divided by 1,000. (The "no observable effect level" is the highest dose level which has not been associated with an observable reproductive harm in humans or test animals.)

When a warning is given by a business, it means one of two things:

- (1) the business has evaluated the exposure and has concluded that it exceeds the no significant risk level; or
- (2) the business has chosen to provide a warning simply based on its knowledge about the presence of a listed chemical, without attempting to evaluate the exposure. In these cases, exposure could be below the Proposition 65 level of concern, or could even be zero.

Since businesses do not file reports with the State regarding what warnings they have issued and why, the State is not able to provide further information about any particular warning which you may have received. The business issuing the warning is the appropriate party to contact if you seek more specific information about the warning, such as what chemicals are involved, in what manner these chemicals are present, and how exposures to those chemicals may or may not occur.

### **What has been accomplished as a result of Proposition 65?**

Proposition 65 has provided an effective mechanism for reducing certain exposures that may not have been adequately controlled under existing federal or State laws. For example, a Proposition 65 enforcement action has resulted in the reduction of the amount of lead in ceramic tableware. Air emissions of certain chemicals - including ethylene oxide, hexavalent chromium, and chloroform - from facilities in California have been significantly reduced as a result of Proposition 65.

Certain chemicals on the list are no longer used as constituents of some commonly used products - for example, trichloroethylene is no longer used in most correction fluids, toluene has been removed from many nail care products, and foil caps on wine bottles no longer contain lead.

Proposition 65 has resulted in the extensive dissemination of important information regarding the dangers to the unborn child of drinking alcoholic beverages during pregnancy. The warnings about alcoholic beverage consumption during pregnancy are perhaps the most widespread and visible type of warning issued as a result of Proposition 65.

*This is a draft of the "plain language" brochure produced by the Office of Environmental Health Hazard Assessment (OEHHA) explaining The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65). It is intended to demystify the Proposition and shed light on the process OEHHA uses to determine whether or not compounds are "known to the state" to be carcinogens or reproductive toxicants.*

Your comments are welcome.

### **For Further Information**

**Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.**

[Click here to download](#) a copy of this document.

*Last Updated October 16, 2001*

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