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PRACTICE CONCENTRATED IN TOXIC
TORT & ENVIRONMENTAL LITIGATION

OCCUPATIONAL & ENVIRONMENTAL LUNG
DISEASE, CANCER, AND TOXIC INJURIES

May 1, 2002

Jack M Greenberg, Chairman, C.E.O., and President
McDonald's Corporation
One McDonald's Plaza
Oak Brook, IL 60523

**RE: NOTICE OF PROPOSITION 65, CALIFORNIA HEALTH & SAFETY CODE
SECTION 25249.6, VIOLATIONS: EXPOSURE OF CONSUMERS TO
CARCINOGENIC SUBSTANCES WITHOUT FIRST GIVING WARNINGS**

Dear Mr. Greenberg:

This office represents the Council for Education and Research on Toxics ("CERT"), a California public benefit corporation whose charitable purposes are education and research regarding toxic substances.

This letter constitutes notice that McDonald's Corporation ("McDonald's") has violated and continues to violate provisions of the California Safe Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.5 *et seq* (commonly known as California's Proposition 65). Specifically, McDonald's has violated and continues to violate Health & Safety Code § 25249.6, which provides: "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual"

Pursuant to Health & Safety Code §25249.7(d), CERT intends to bring suit in the public interest against McDonald's sixty days hereafter to correct the violations set forth herein, unless McDonald's fully and completely remedies and ceases and desists from violating Proposition 65 within said sixty day period.

General Information: Pursuant to 22 California Code of Regulations § 12903(b)(1), attached hereto is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)", as prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Description of Violation: Since January 1990 and continuing to the present, McDonald's has exposed and continues to expose numerous consumers purchasing french fries at all of McDonald's's restaurants located within the State of California, including within the cities of

Los Angeles, San Diego, San Francisco, and San Jose, to high levels of acrylamide — a toxic chemical contained in McDonald's's french fries which is ingested by customers consuming said french fries. Exposures to acrylamide unavoidably occurred via ingestion whenever a consumer purchased and thereafter consumed McDonald's's acrylamide-containing french fries from January 1990 and continuing to the present. Studies have shown that McDonald's's french fries contain approximately 100 times more acrylamide than the maximum level permitted by the World Health Organization for drinking water. Acrylamide is a toxic chemical known to the State of California to cause cancer and has been listed since January 1990 as a carcinogen on the list of carcinogenic chemicals published by the Governor of the State of California at 22 California Code of Regulations § 1200(b). Because acrylamide is listed in Proposition 65 as a carcinogen, pursuant to Health & Safety Code § 25249.6, McDonald's was, and is, required to warn its customers that McDonald's's french fries contain a chemical known by the State of California to cause cancer before exposing said customers to acrylamide contained in McDonald's's french fries. Since January 1990, McDonald's has violated and continues to violate California Health & Safety Code § 25249.6 by exposing numerous individuals within the State of California to acrylamide without first giving clear and reasonable warnings to said individuals that McDonald's's french fries contain a chemical known by the State of California to cause cancer.

Noticing Entity: The noticing entity is Council for Education and Research on Toxics ("CERT"), a California public benefit corporation whose charitable purposes are education and research regarding toxic substances. The mailing address of CERT is 1125 Woodside Road, Berkeley, CA 94708. CERT is represented in this matter by the undersigned, and through him all communications should be directed at the address and telephone number that appears on the letterhead of the first page of this notice.

Names of Violators: The violators are McDonald's Corporation, a Delaware Corporation, and Does 1 through 1000, inclusive.

Time of Violations: The violations of California Health & Safety Code § 25249.6 are numerous and have occurred continuously and uninterrupted since January 1990 (the date on which acrylamide was listed as a carcinogen in Proposition 65) to the present at all McDonald's restaurants located within the State of California during this period and at all places where "take-out" was purchased from McDonald's restaurants. The timing of the violations is such that they occurred every moment that every individual within the State of California purchased and consumed McDonald's's french fries without first receiving the required Proposition 65 warnings from January 1990 and continuing to the present.


Listed Chemicals: The carcinogenic chemical involved in McDonald's's Proposition 65 violations is acrylamide, with a Chemical Abstracts Service Registry number of 79-06-1, and which was first listed at 22 California Code of Regulations § 1200(b) as a chemical known to the State of California to cause cancer on January 1, 1990.

Jack M Greenberg, President
May 1, 2002
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Consumer Product Exposure Description: Since January 1990 and continuing to the present, McDonald's has exposed and continues to expose numerous consumers purchasing french fries at all of McDonald's's restaurants located within the State of California to high levels of acrylamide, a toxic chemical contained in McDonald's's french fries. Exposures to acrylamide unavoidably occurred via ingestion whenever a consumer purchased and thereafter consumed McDonald's's acrylamide-containing french fries from January 1990 and continuing to the present. Medical studies have concluded that McDonald's's french fries contain approximately 100 times more acrylamide than the maximum level permitted by the World Health Organization for drinking water. Acrylamide is a toxic chemical known to the State of California to cause cancer and has been listed since January 1990 as a carcinogen on the list of carcinogenic chemicals published by the Governor of the State of California at 22 California Code of Regulations § 1200(b). Since January 1990, McDonald's has violated and continues to violate California Health & Safety Code § 25249.6 by exposing via ingestion numerous consumers within the State of California to acrylamide without first giving clear and reasonable warnings to said individuals that McDonald's's french fries contain a chemical known by the State of California to cause cancer. McDonald's's Proposition 65 violations are particularly egregious and hazardous, given the enormous quantities of McDonald's french fries consumed by California consumers since January 1990 and the extraordinarily high levels of acrylamide contained in McDonald's's french fries.

Conclusion. Proposition 65 requires that notice and intent to sue be given to a violator 60 days before suit is filed. By this letter, CERT gives notice of the foregoing violations to McDonald's Corporation and to the appropriate governmental authorities. If McDonald's wishes to resolve this matter before CERT files suit, McDonald's should contact the undersigned forthwith. Otherwise, suit will be filed after 60 days have elapsed. Although notice is not required before filing an action asserting claims for violations of California Bus. & Prof. Code § 17200, CERT also gives McDonald's advance notification that it intends to sue McDonald's for violations of said statute in addition to suing McDonald's for violations of Proposition 65, unless a resolution of all such violations is reached prior to the expiration of 60 days.

Very truly yours,



Raphael Metzger

RM:ip

mail copies to: governmental authorities
per attached proof of service

attachments: Summary of Proposition 65
Certificate of Merit
Proof of Service by Mail

CERTIFICATE OF MERIT

I, Raphael Metzger, declare as follows:

1. I am an attorney at law, duly licensed and authorized to practice law in the State of California.
2. Unless the context indicates otherwise, I have personal knowledge of the matters set forth hereinafter and, if called as a witness, I would competently testify thereto.
3. I represent the Council for Education and Research on Toxics, a California corporation whose charitable purposes are education and research regarding toxic substances.
4. I submit the following Certificate of Merit in accordance with the requirements of California Health & Safety Code §25249.7(d)(1).
5. My client, Council for Education and Research on Toxics, alleges that since January 1990 and continuing to the present, McDonald's Corporation has exposed and continues to expose numerous consumers purchasing french fries at all of McDonald's restaurants located within the State of California, including within the cities of Los Angeles, San Diego, San Francisco, and San Jose, to high levels of acrylamide — a toxic and carcinogenic chemical contained in McDonald's french fries which is ingested by customers consuming said french fries. Recent studies have concluded that McDonald's french fries contain approximately 100 times more acrylamide than the maximum level permitted by the World Health Organization for drinking water. Acrylamide is a toxic chemical known to the State of California to cause cancer and has been listed since January 1990 as a carcinogen on the list of carcinogenic chemicals published by the Governor of the State of California at 22 California Code of Regulations § 1200(b). Because acrylamide is listed in Proposition 65 as a carcinogen, pursuant to Health & Safety Code § 25249.6, McDonald's was, and is, required to warn its customers that McDonald's french fries contain a chemical known by the

State of California to cause cancer before exposing said customers to acrylamide contained in Burger King's french fries. Since January 1990, McDonald's has violated and continues to violate California Health & Safety Code § 25249.6 by exposing numerous individuals within the State of California to acrylamide without first giving clear and reasonable warnings to said individuals that Burger King's french fries contain a chemical known by the State of California to cause cancer.

6. I have consulted a professor of toxicology with relevant experience and expertise in the field of toxicology, who has reviewed studies and facts regarding the presence of acrylamide in McDonald's french fries and the exposure to acrylamide resulting from the consumption of McDonald's french fries. Based on such consultation, I believe that exposures to extraordinarily high levels of acrylamide unavoidably occurred via ingestion whenever a consumer purchased and thereafter consumed McDonald's acrylamide-containing french fries from January 1990 and continuing to the present. Based on such consultation and the fact that McDonald's has failed to provide the warnings required by Health & Safety Code § 25249.6 before exposing consumers to acrylamide, I also believe that there is a reasonable and meritorious case for a private action, pursuant to Health & Safety Code §25249.7(d), brought by my client, Council for Education and Research on Toxics, for McDonald's violations of Proposition 65 since January 1990 and continuing to the present. In fact, I believe that McDonald's Proposition 65 violations are particularly egregious and hazardous, given the enormous quantities of McDonald's french fries consumed by California consumers since January 1990 and the extraordinarily high levels of acrylamide contained in McDonald's french fries.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed May 1, 2002, at Long Beach, California.



Raphael Metzger

Proposition 65 in Plain English!

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 550 chemicals have been listed as of April 1, 1996.

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 by-products 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. The organizations that have been designated as authoritative 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. 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 English" 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. This brochure was drafted by OEHHA as part of CAL/EPA's Regulatory Reform Initiative, in keeping with Governor Wilson's Executive Order W127-95 which calls for reform of regulatory processes throughout state government. Your comments are welcome.

For Further Information

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

PROOF OF SERVICE BY MAIL
(Our File No. 5528)

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles. I am over the age of 18 and not a party to the within action. My business address is 401 E. Ocean Boulevard, Suite 800, Long Beach, California 90802. On May 1, 2002, I served the within Notices of Proposition 65, California Health & Safety Code Section 25249.6 Violations: Exposure of Consumers to Carcinogenic Substances Without First Giving Warnings, addressed to McDonald's Corporation and Burger King Corporation, Certificates of Merit and Statement entitled "Proposition 65 in Plain English" on the following violators and governmental attorneys who are required to be served copies of said notice, by placing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid, in the U.S. mail at Long Beach, CA, addressed as follows:

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Oak Brook, IL 60523

John H. Dasburg, President
Burger King Corporation
17777 Old Cotler Road
Miami, FL 33157

26 I declare under penalty of perjury under the laws of the
27 State of California that the foregoing is true and correct.
28 Executed May 1, 2002, at Long Beach, California.

Kathi Keyse, Declarant