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60 Day Notice of Intent to Sue Brinker International, Inc. Under Health & Safety Code Section 25249.6

This letter constitutes notification that Brinker International, Inc. (hereinafter, "the Violator") has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5). This notice is given by the Consumer Defense Group Action, Inc. (hereinafter "Consumer Defense Group"), which may be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

Summary of Violation:

Proposition 65 requires that when a party, such as the Violator, has been and is knowingly and intentionally exposing its customers, the public and/or its employees to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Mercury, mercury compounds, methyl mercury and methyl mercury compounds are Designated Chemicals. Methyl mercury compounds were listed under Proposition 65 as a chemical known to the State of California to cause cancer on May 1, 1996. Methyl mercury was listed as a chemical known to the State of California to cause reproductive toxicity on July 1, 1987. Mercury and mercury compounds were listed as chemicals known to the State of California to cause reproductive toxicity on July 1, 1987. 22 CCR § 12000.

The Violator owns and/or operates (1) the "Chili's" chain of restaurants which operate at each of the facilities listed on Exhibit A to this Notice; (2) the "Romano's Macaroni Grill" chain of restaurants listed on Exhibit B to this Notice, (3) the "Maggiano's Little Italy" chain of restaurants listed on Exhibit C to this Notice, and the "Corner Bakery Café" restaurants listed on Exhibit D to this Notice (hereinafter referred to collectively as "the Facilities"). In the ordinary course of business, the Violator sells food for consumption by its customers. One of the foods it sells and serves are various kinds of fish in the form of meals containing tuna, salmon, sole and lobster (hereinafter referred to collectively as "Fish"). Fish contains mercury, mercury compounds, methyl mercury and methyl mercury compounds.

At the "Chili's" restaurants listed on Exhibit A the Violator serves tuna in the form of a "tuna steak sandwich" and a "margarita grilled tuna steak." Tuna contains mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the tuna by eating it.

At the "Romano's Macaroni Grill" restaurants listed on Exhibit B the Violator serves the following types of fish; salmon in the form of a "grilled salmon filet", a "salmon scallopine" and a

“salmon fritti salad”; sole in the form of “sole parmigiana”; and, lobster in the form of “lobster ravioli.” Lobster, salmon and sole contain mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the lobster, salmon and/or the sole contained in one of the identified meals by eating that meal.

At the “Maggianos Little Italy” restaurants listed on Exhibit C the Violator serves salmon in the form of a “filet of salmon”, a “salmon sandwich with bacon and avacado” and “salmon oreganata.” Salmon contains mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the salmon by eating it.

At the “Corner Bakery Café” restaurants listed on Exhibit D the Violator serves tuna in the form of a “tuna salad on olive bread” sandwich” and a “tuna salad.” Tuna contains mercury, mercury compounds, methyl mercury and methyl mercury compounds. Customers and employees are exposed to these Designated Chemicals when they ingest the tuna by eating it.

The Violator knows or has known since at least July 1, 1988 that the Fish served at the restaurants it owns and/or operates contain methyl mercury; since May 1, 1997 that the Fish contain methyl mercury compounds; and since July 1, 1991 that the Fish contain mercury and mercury compounds, and that persons eating the Fish are exposed to these chemicals.

Although the Violator has chosen to allow its customers and employees to be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish, the Violator has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds.

Investigators for the Consumer Defense Group have conducted an investigation of the Facilities between January 3, 2003 and February 5, 2003 (the “Investigation Period”). During those investigations the Consumer Defense Group discovered that the properties are owned and/or operated by the Violator. Further, the Consumer Defense Group discovered that the Violator has more than nine employees, and not only permits but requires the preparation and sale of Fish at each of the Facilities. Finally, the investigators for the Consumer Defense Group saw that at none of the Facilities during the Investigation Period was there a clear and reasonable warning sign at the front entrances, inside the Facilities at the reception area, or on the menus in use at the Facilities.

Product Exposures:

While in the course of doing business, at the locations in the attached Exhibits A, B, C and D, from at least the period between January 3, 2003 and February 5, 2003, the Violator has been and is knowingly and intentionally exposing its customers and employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the customers and/or employees ingest the Fish at the Facilities.

Environmental Exposures:

While in the course of doing business, at the locations in the attached Exhibits A, B, C and D, from at least the period between January 3, 2003 and February 5, 2003, the Violator has been and is knowingly and intentionally exposing its customers and employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the customers and/or employees ingest the Fish at the Facilities.

Occupational Exposures:

While in the course of doing business, at the locations in the attached Exhibits A, B, C and D, from at least the period between January 3, 2003 and February 5, 2003, the Violator has been and is knowingly and intentionally exposing its employees to mercury, mercury compounds, methyl mercury and methyl mercury compounds by serving its customers and employees Fish in the form as delineated above, without providing a clear and reasonable warning at the entrances to the Facilities, inside the Facilities or on its menus so that its customers and employees, who may not wish to be exposed, can be warned that, upon eating (ingesting) the Fish offered at the Facilities, they may be exposed to mercury, mercury compounds, methyl mercury and methyl mercury compounds. The source of exposures is the Fish prepared and offered for sale at each of the Facilities. The exposure takes place when the employees ingest the Fish at the Facilities. Employees include and are not limited to bartenders, cashiers, waiters, waitresses, cooks, service personnel and administrative personnel. Such exposures take place inside the Facilities when and where meals containing Fish are consumed.

The route of exposure for Product, Occupational and Environmental Exposures to the Designated Chemicals has been ingestion, that is via the eating of the Fish contained in the meals delineated above.

Proposition 65 requires that notice and intent to sue be given to the violators (60) days before the suit is filed. With this letter, Consumer Defense Group gives notice of the alleged violations to the Violator and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Consumer Defense Group from information now available to them. With the copy of this notice submitted to the violations, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: February 7, 2003

By:

Exhibit A

1. 8950 Rosedale Highway
Bakersfield, CA 93312-2142
2. 7010 N. Fresno
Fresno, CA 93720-2906
3. 26631 Aliso Creek Rd.
Aliso Viejo, CA 92656-2882
4. 1021 W. Avenue P
Palmdale, CA 93551
5. 8376 La Palma Avenue
Buena Park, CA 90620-3208
6. 4931 Candlewood
Lakewood, CA 90712-1834
7. 407 Auto Center Dr.
Claremont, CA 91711-5459
8. 26782 Portola Pkwy.
Foothill Ranch, CA 92610
9. 17071 Beach Blvd.
Huntington Beach, CA 92647
10. 3745 Alton Pkwy.
Irvine, CA 92606-8293
11. 10643 Valley View
Cypress, CA 90630
12. 1600 W. Imperial Highway
La Habra, CA 90631-6999
13. 1912 Foothill Blvd.
La Verne, CA 91750
14. 201 World Way
Los Angeles, CA 90045-5807

15. 27407 Bellogente
Mission Viejo, CA 92691
16. 630 W. Huntington Dr.
Monrovia, CA 91016-3206
17. 12525-A Frederick St.
Moreno Valley, CA 92388
18. 9200 Reseda Blvd.
Northridge, CA 91324-3136
19. 1411 W. Katella Ave.
Orange, CA 92867-3408
20. 2221 N. Rose Ave.
Oxnard, CA 93030-2698
21. 17588 Castleton
City of Industry, CA 91748-1701
22. 10598 Foothill Blvd.
Rancho Cucamonga, CA 91730
23. 475 E. Hospitality Ln.
San Bernardino, CA 92408-3549
24. 25970 The Old Rd. N.
Santa Clarita, CA 91381
25. 25 W. Cochran
Simi Valley, CA 93065
26. 27645 Ynez Rd.
Temecula, CA 92591
27. 100 S. Westlake Blvd.
Thousand Oaks, CA 91362-3752
28. 21835 Hawthorne Blvd.
Torrance, CA 90503-7003
29. 2929 E. Garvey Ave. N.
West Covina, CA 91791-1634

30. 6775 Fallbrook Ave.
West Hills, CA 91307
31. 18380 Yorba Linda Blvd.
Yorba Linda, CA 92686
32. 1855 41st Avenue, Suite E1
Capitola, CA 95010-2502
33. 42540 Bob Hope Drive
Rancho Mirage, CA 92270-4471
34. 7410 Laguna Blvd.
Elk Grove, CA 95758-5060
35. 1516 Eureka Rd.
Roseville, CA 95661-3040
36. 5303 Sunrise Blvd.
Fair Oaks, CA 95628
37. 161 Iron Point Rd.
Folsom, CA 95630
38. 3401 Dale Rd
Modesto, CA 95356-0502
39. 2100 Ardenway, Suite #185
Sacramento, CA 95825
40. 5756 Pacific Ave., Suite #95
Stockton, CA 95207
41. 2001 Harbison Dr.
Vacaville, CA 95687-3903
42. 1004 N. El Camino Real
Encinitas, CA 92024
43. 1105 W. Valley Pkwy.
Escondido, CA 92025-2555
44. 8285 Fletcher Pkwy.
La Mesa, CA 91942

45. 5969 Lusk Blvd.
San Diego, CA 92121
46. 4252 Camino Del Rio N.
San Diego, CA 92108
47. 800 Paseo Del Rey
Chula Vista, CA 91910
48. 9804 Mission Gorge Road
Santee, CA 92071-3834
49. 10184 Scripps Poway Parkway
San Diego, CA 92131
50. 5650 Almaden Expwy.
San Jose, CA 95118
51. 1501 Concord Ave.
Concord, CA 94520
52. 20060 Stevens Creek Blvd.
Cupertino, CA 95014-2308
53. 39131 Fremont Blvd.
Fremont, CA 94538
54. 4261 1st Street
Livermore, CA 94550-2267
55. 700 El Camino Real
Menlo Park, CA 94025-4864
56. 300 W. Calaveras Blvd.
Milpitas, CA 95035
57. 2560 W. El Camino Real
Mountain View, CA 94040
58. 4801 Hopyard Ave.
Pleasanton, CA 94588
59. 4851 Redwood Dr.
Rohnert Park, CA 94928

60. 899 El Camino Real
San Bruno, CA 94066
61. 490 Las Gallinas
San Rafael, CA 94903-3618
62. 3150 Crow Canyon Rd.
San Ramon, CA 94583
63. 3591 El Camino Real
Santa Clara, CA 95051
64. 32120 Dyer Street
Union City, CA 94587
65. 1403 Locust
Walnut Creek, CA 94596
66. 6950 Market Place Drive
Goleta, CA 93117

EXHIBIT B

1. 12380 Seal Beach Blvd, Seal Beach, CA 90740
2. 13652 Jamboree Rd, Irvine, CA 92602
3. 8000 El Cerrito Plaza, El Cerrito, CA 94530
4. 9198 W Stockton Blvd, Elk Grove, CA 95758
5. 4000 E Thousand Oaks Blvd, Thousand Oaks, CA 91362
6. 2001 Alta Arden Expy, Sacramento, CA 95825
7. 12875 Towne Center Dr, Cerritos, CA 90703
8. 945 W Huntington Dr, Monrovia, CA 91016
9. 26641 Aliso Creek Rd, Aliso Viejo, CA 92656
10. 25352 Crenshaw Blvd, Torrance, CA 90505
11. 7901 Edinger Ave, Huntington Beach, CA 92647
12. 13652 Jamboree Rd, Irvine, CA 92602
13. 110 Ranch Dr, Milpitas, CA 95035
14. 10742 Foothill Blvd, Rancho Cucamonga, CA 91730
15. 2739 E Bidwell St, Folsom, CA 95630
16. 2010 Douglas Blvd, Roseville, CA 95661

Exhibit C

MAGGIANO'S RESTAURANTS

1. Farmers Market-Maggiano's
189 The Grove Drive Z80
Los Angeles, CA 90036-3154
2. S. Coast Plaza-Maggiano's
3333 Bristol St.
Costa Mesa, CA 92626-1811
3. Woodland Hills-Maggiano's
6100 N. Topanga Canyon Rd.
#1330
Woodland Hills, CA 91367
4. San Jose-Maggiano's
3055 Olin Avenue
Suite 1000
San Jose, CA 95128

Exhibit D

CORNER BAKERY CAFE:

1. S. Coast Plaza
3333 Bristol St.
Costa Mesa, CA 92626
2. Calabasas
4776 Commons Way
Calabasas, CA 91302
3. South Coast Jewel CT
3333 Bristol St., Ste 1622
Costa Mesa, CA 92626
4. Harvard & Main
17575 Harvard
Irvine, CA 92614
5. Irvine Marketplace
13786 D Jamboree Rd #4
Irvine, CA 92602
6. 8th&Figueroa
801 S. Figueroa Suite 150
Los Angeles, CA 90017
7. Farmers Market
189 The Grove Drive
Los Angeles, CA 90036-3154
8. The Block
20 City Blvd. West
Building G-2, Space #R-4
Orange, CA 92868
9. Woodland Hills
6100 N. Topanga Canyon Blvd.
#1330
Woodland Hills, CA 91367

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing plaintiff Consumer Defense Group Action, Inc. (hereinafter "Consumer Defense Group", the "noticing party" as to the "60 Day Notice of Intent to Sue" (the "Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with Andrew Brach and other toxicologists with Komex International, which is an international, full-service environmental consulting company providing leading-edge technology and innovative solutions to industries and governments worldwide. Komex has more than twenty years of industry experience and a depth of professional expertise in every aspect of environmental sciences and provides economical solutions to environmental problems worldwide. The clients of Komex range from small independent owners to multinational corporations, governments and international development agencies. The toxicologists at Komex, including Dr. Brach, have relevant and appropriate experience and expertise, and have reviewed the facts as set forth below regarding the exposure to the listed chemicals (mercury, mercury compounds, methyl mercury and methyl mercury compounds) set forth in the attached Notice.

3. Based on the information obtained through those consultations, and on all 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

4. The information referred to in paragraph 3 is as follows; by investigation of the locations referenced in the Notice plaintiff discovered that:

- (1) the violator owns and/or operates the specific subject property (“operate” in this context means controls the use of the property, and/or its management, and/or the decision as to whether to permit the serving of the specified food at that facility);
- (2) the violator has more than nine employees;
- (3) the violator permits the serving of the specified food at the locations referenced in the Notice;
- (4) as to the locations referenced in the Notice, Plaintiff examined the major entrances to the facilities, the reception area and the menus in use at the facilities;
- (5) at none of the locations did Plaintiff see any sign purporting to comply with the requirements of Proposition 65.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on February 7, 2003.

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 Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business 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 for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business 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 (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibitive ban on discharges into drinking water does not apply if the discharger can demonstrate that a "significant amount" of the listed chemical does not, does not, or will not enter any drinking water source, 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" "no observable effect" test if an individual were exposed to such amount in drinking water.

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 (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, 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. A lawsuit must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12900). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

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

FOR FURTHER INFORMATION...

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

§ 14000. Chemicals Required by State or Federal Law Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.5].

Readers should note a chemical that already been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency. The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, "onc mouse" means oncogenicity in mice, "onc rat" means oncogenicity in rats, "repro" means reproduction, "tera rodent" means teratogenicity in rodents, "tera rabbit" means teratogenicity in rabbits.

Chemical	Testing Needed
Bendiocarb	onc rat, repro, tera rodent
Chloroneb	onc rat, onc mouse, repro, tera rodent, tera rabbit
PCP Petroleum distillates, aromatic	repro, onc rat onc rat, onc mouse, repro, tera rodent, tera rabbit

(c) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, "tera" means teratogenicity, "tox" means reproductive toxicity, "onc" means oncogenicity.

Chemical	Testing Needed
Alkyl (C12-13) glycidyl ether	tox, tera
t-Amyl methyl ether	tox, tera
Bisphenol A diglycidyl ether	onc, tox
Cyclohexane*	tox, tera
Glycidyl methacrylate*	tera
1,6-Hexamethylene diisocyanate	tox, tera
N-Methylpyrrolidone	onc, tox, tera
Phenol	tox

* The Toxic Substances Control Act Section 4 health effects testing programs for cyclohexane and glycidyl methacrylate have been completed and the U.S. Environmental Protection Agency's review of the testing program data is currently underway.

(d) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Pesticide Programs

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their EPA-approved labels.

In 1988, FIFRA was amended to strengthen EPA's pesticide regulatory authority and responsibilities to reregister pesticides registered prior to 1984 to ensure they meet today's stringent scientific and regulatory standards. Reregistration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the reregistration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, reregistration reviews will identify any pesticides where regulatory action may be necessary to deal with unreasonable risks. EPA has been directed to accelerate the reregistration process so that the entire process is completed by 1997. The 1988 amendments set out a five-phase schedule to accomplish this task with deadlines applying to both pesticide registrants and the EPA. These amendments are requiring a substantial number of new studies to be conducted and old studies to be reformatted for EPA review to ensure they are adequate. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, "onc" means oncogenicity, "tera" means teratogenicity, and "repro" means reproductive toxicity.

Chemical	Data Requirements
Acrolein	onc, tera
Alkyl imidazolines	tera
Ametryn	repro, tera
4-Aminopyridine	onc, repro, tera
4-T-Amylphenol	onc, repro
Aquashade	onc, repro, tera
Bensulide	onc, repro, tera
Benzisothiazoline-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Busan 77	repro
Chlorflorethol methyl	tera
Chlorophacinone	tera
Chloropierin	onc, repro
Chromated arsenicals	tera
Cyloate	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop methyl	onc, tera
Dicrotophos	onc, repro
Dihaloalkylhydantoins	onc, repro, tera
Dimethipin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Dinocap and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenyl amine	onc, tera
Dipropyl isocinchomerate	repro
Djuro...	onc

Chemical	Data Requirements
Dodine	onc, repro, tera
Endothal and salts	onc, repro, tera
Ethofumesate	onc
Ethoxyquin	tera
Fenthion	tera
Fenvalerate	onc, repro, tera
Fluvalinate	repro, tera
Hydroxy-methylthiocarbamate	tera
Imazalil	onc
Inorganic chlorates	onc, repro, tera
Inorganic sulfites	onc, repro, tera
Iodine-potassium iodide	tera
Iprodione	tera
Irgasan	onc, repro, tera
Lampicide	onc, repro
Magnesium phosphide	onc
Malathion	onc
Maneb	onc, tera
MCPB and salts	tera
Melfluidide and salts	tera
Mepiquat chloride	onc, tera
Metaldehyde	onc, repro, tera
Methoxychlor	tera
Methyl isothiocyanate	tera
Methyl parathion	repro
Methylthiocarbamate	tera
MGK 264	repro
Molinat	repro
Naphthalene	onc
Naphthaleneacetic acid	onc, repro
Naphthenate salts	tera
Napropamide	repro
Niclosamide	onc, tera
Nicotine and derivatives	onc, tera
Nitrapyrin	onc, tera
4-Nitrophenol	onc, repro, tera
Octhilinone	tera
Oil of Pennyroyal	tera
Omadine salts	onc, repro, tera
Oxadiazon	repro
Oxyfluorfen	onc
Pebulate	tera
Perfluidone	tera
Phenmedipham	onc
Phenol and salts	tera
2-Phenylphenol and salts	onc, tera
Pine oils	tera
Piperonyl butoxide	tera
Poly (hexamethylene biguanide)	onc, repro
Polyethoxylated aliphatic alcohols	onc, repro, tera
Prometon	tera
Propachlor	onc

Chemical	Data Requirements
Propanil	onc, repro
Propetamphos	tera
Propiconazole	onc
Propylene oxide	tera
Pyrazon	onc, repro
Pyrethrin and salts	onc, tera
Pyrimidino	onc, tera
Sethoxydim	onc
Siduron	onc, repro, tera
Sodium fluo	tera
Sulfomet	onc, tera
TBT-con	onc, tera
TCMB	onc, repro, tera
Temephos	onc, tera
Tetrachlor	onc
Tetramet	onc
Thiaben	onc, repro, tera
Thidiaz	onc, repro, tera
Thiodic	tera
Thiophan	onc, tera
Thiram	onc
Triadim	onc, repro
Triclop	onc
Vernol	onc, repro
Revised	

HISTORY

1. New... OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 17).
2. Am... OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 2).
3. Am... OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 17).
4. Edi... subsection (d) (Register 91, No. 31).
5. Edi... printing error (Register 91, No. 43).
6. Edi... inadvertently omitted amendment. Submitted to OAL for printing pursuant to Government Code section 11343.8 (Register 93, No. 45).
7. Edi... printing errors (Register 93, No. 45).
8. Am... subsection (d) filed 8-1-94. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 1).
9. Am... sections (b), (c), and (d) filed 12-23-94. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 1).
10. Am... OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 52).
11. Am... 95-97; operative 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 97, No. 7).
12. Am... sections (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 98, No. 7).

[The next page...]

Animal bioassay data is admissible and generally indicative of potential effects in humans.

For purposes of this regulation, substances are present occupationally when there is a possibility of exposure either as a result of normal work operations or a reasonably foreseeable emergency resulting from workplace operations. A reasonably foreseeable emergency is one which a reasonable person should anticipate based on usual work conditions, a substance's particular chemical properties (e.g., potential for explosion, fire, reactivity), and the potential for human health hazards. A reasonably foreseeable emergency includes, but is not limited to, spills, fires, explosions, equipment failure, rupture of containers, or failure of control equipment which may or do result in a release of a hazardous substance into the workplace.

(b) Administrative Procedure Followed by the Director for the Development of the Initial List. The Director shall hold a public hearing concerning the initial list. The record will remain open 30 days after the public hearing for additional written comment. Requests to exempt a substance in a particular physical state, volume, or concentration from the provisions of Labor Code sections 6390 to 6399.2 may be made at this time. If no comments in opposition to such a request are made at the public hearing or received during the comment period, or if the Director can find no valid reason why the request should not be considered, it will be incorporated during the Director's preparation of the list.

After the public comment period the Director shall formulate the initial list and send it to the Standards Board for approval. After receipt of the list or a modified list from the Standards Board, the Director will adopt the list and file it with the Office of Administrative Law.

(c) Concentration Requirement. In determining whether the concentration requirement of a substance should be changed pursuant to Labor Code section 6383, the Director shall consider valid and substantial evidence. Valid and substantial evidence shall consist of clinical evidence or toxicological studies including, but not limited to, animal bioassay tests, short-term in vitro tests, and human epidemiological studies. Upon adoption, a regulation indicating the concentration requirement for a substance shall consist of a footnote on the list.

(d) Procedures for Modifying the List. The Director will consider petitions from any member of the public to modify the list or the concentration requirements, pursuant to the procedures specified in Government Code section 11347.1. With petitions to modify the list, the Director shall make any necessary deletions or additions in accordance with the procedures herein set forth for establishing the list. The Director will review the existing list at least every two years and shall make any necessary additions or deletions in accordance with the procedures herein set forth for establishing the list.

(e) Criteria for Modifying the List. Petitions to add or remove a substance on the list, modify the concentration level of a substance, or reference when a particular substance is present in a physical state which does not pose any human health risk must be accompanied with relevant and sufficient scientific data which may include, but is not limited to, short-term tests, animal studies, human epidemiological studies, and clinical data. If the applicant does not include the complete content of a referenced study or other document, there must be sufficient information to permit the Director to identify and obtain the referenced material. The petitioner bears the burden of justifying any proposed modification of the list.

The Director shall consider all evidence submitted, including negative and positive evidence. All evidence must be based on properly designed studies for toxicological endpoints indicating adverse health effects in humans, e.g., carcinogenicity, mutagenicity, neurotoxicity, organ damage/effects.

For purposes of this regulation, animal data is admissible and generally indicative of potential effects in humans.

The absence of a particular category of studies shall not be used to prove the absence of risk.

inherent insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list or modifying the list in reference to concentration, physical state or volume, so that appropriate information may be provided regarding those positive results. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

NOTE: Authority cited: Section 6380, Labor Code. Reference: Sections 6361, 6380, 6380.5, 6382 and 6383, Labor Code.

HISTORY

1. New article 5 (section 337) filed 11-5-81; effective thirtieth day thereafter (Register 81, No. 45).
2. Amendment of subsection (d) filed 1-15-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 87, No. 3).
3. Editorial correction of HISTORY 2. (Register 91, No. 19).

§ 338. Special Procedures for Supplementary Enforcement of State Plan Requirements Concerning Proposition 65.

(a) This section sets forth special procedures necessary to comply with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31159 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. Any person proceeding "in the public interest" pursuant to Health and Safety Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code § 25249.7(c) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR § 12903, setting forth specific requirements for the content and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

"This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantial court orders in this matter must be submitted to the Attorney General.

(c) A Supplemental Enforcer or Public Prosecutor who comments Supplemental Enforcement Matter shall serve a file-endorsed copy of the complaint upon the Attorney General within ten days after filing the Court.

(d) A Supplemental Enforcer or Public Prosecutor shall serve upon the Attorney General a copy of any motion, or opposition to a motion

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6 and Certificate of Merit;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to Violator*);
- 3.) Supporting documents for Certificate of Merit (only sent to Office of Attorney General, Office of Proposition 65 Enforcement).;

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: February 7, 2003
Place of Mailing: Irvine, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Ronald A. McDougall
Chairman of the Board and Chief Executive Officer
Douglas H. Brooks President and Chief Operating Officer
Brinker International, Inc.
6820 LBJ Freeway
Dallas, TX 75240

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San Diego City Attorney
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San Diego, CA 92101

Los Angeles City Attorney
200 N. Main St. N.E.
Los Angeles, CA 90012

San Mateo District Attorney
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South Lake Tahoe, CA 96150

Napa County DA
931 Parkway Mall
Napa, CA 94559

Inyo County DA
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Lake County DA
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Turlock, CA 95380

Santa Clara County DA
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San Francisco, CA 94102

Contra Costa County DA
727 Court Street
Martinez, CA 94553

Ventura County DA
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Ventura, CA 95695

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

San Joaquin DA
225 W. Elm Street #C
Lodi, CA 95240

Mendocino County DA
700 S. Franklin St.
Forst Bragg, CA 94537

Solano County DA
321 Tuolomne Street
Valejo, CA 94590

Butte County DA
25 County Center Drive
Oroville, CA 95695

Sutter County DA
446 Second Street
Yuba City, CA 95991

Santa Cruz County DA
701 Ocean Street
Santa Cruz, CA 95061

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

San Luis Obispo County DA
1050 Monterey Street, Rm. 450
San Luis Obispo, CA 93408

Del Norte County DA
450 H Street
Crescent City, CA 95531

San Bernardino County DA
316 N. Mountain View Av.
San Bernardino, CA 92415

Mono County DA
P.O. Box 617
Bridgeport, CA 93517

Siskyou County DA
P.O. Box 986
Yreka, CA 96097

San Francisco County DA
880 Bryant Street
San Francisco, CA 94103

Orange County District Attorney
700 Civic Center Dr. W., 2nd Fl.
Santa Ana, CA 92701

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 7, 2003
