



A NON-PROFIT CORPORATION
311 California Street, Suite 510
San Francisco, California 94104
www.asyousow.org

May 20, 2004

NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **KMART CORPORATION** ("Kmart").

Chemicals. These violations involve exposures to lead and lead compounds from the products described below. On February 27, 1987, the State of California

officially listed lead as a chemical known to cause reproductive toxicity (Title 22 California Code of Regulations § 12000, *et seq.*). On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer (Title 22 California Code of Regulations § 12000, *et seq.*)

Consumer products. The products that are the subject of this notice are jewelry manufactured, distributed or sold by Kmart including, but not limited to, the products identified in Exhibit A attached hereto.

Route of exposure. The consumer exposures that are the subject of this notice result from the handling and/or wearing of these products. Accordingly, the consumer exposures have occurred and continue to occur through the dermal contact and ingestion.

Duration of violations. Each of these ongoing violations has occurred on every day since May 20, 2000, and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products. Under Proposition 65, each exposure constitutes a separate violation. Health & Safety Code §25249.7(b). The maximum civil penalty for each such violation is \$2,500. *Id.* These same facts constitute a violation of Business and Professions Code § 17200 *et seq.*

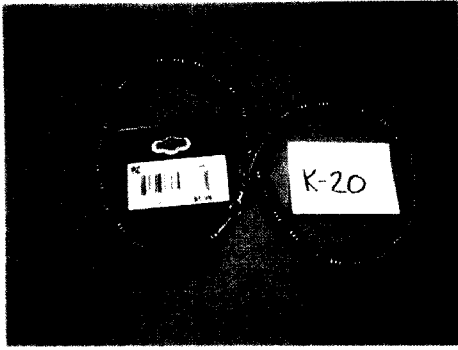
Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Babak Naficy, Esq.
1204 Nipoma Street
San Luis Obispo, CA 93401
Telephone: (805) 593-0926
Facsimile: (805) 593-0946

Enclosure

EXHIBIT A (K MART CORPORATION)



Product ID 8 09310 08733 2

CERTIFICATE OF MERIT
**(for As You Sow's Notice of Proposition 65 Violation
on KMART CORPORATION)**

I, Lawrence E. Fahn, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that **KMART CORPORATION** has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am the Executive Director of the noticing party, As You Sow.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

4. 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 that the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §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 those persons.

Dated: 5/19/04

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, California 94104.

On May 20, 2004, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

James B. Adamson, CEO
Kmart Corporation
3100 W. Big Beaver Road
Troy, MI 48084

On May 20, 2004, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Craig Thompson, Deputy Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, CA 94244-2550

On May 20, 2004, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on May 20, 2004, at San Francisco, California.

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PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 03/25/04)

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE ARTHUR MAILLET
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE DEAN FLIPPO
MONTEREY COUNTY DISTRICT ATTORNEY
PO BOX 1131
SALINAS CA 93902

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PO BOX 248
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25 COUNTY CTR DR
OROVILLE CA 95965

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891 MTN RANCH RD
SAN ANDREAS CA 95249

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11562 B AVE
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547 MARKET ST
COLUSA CA 95932

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210 W TEMPLE ST STE 18000
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LOS ANGELES CA 90012

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