

## CONSUMER DEFENSE GROUP ACTION

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GRAHAM & MARTIN, LLP  
950 South Coast Drive, Suite 220  
Costa Mesa, CA 92626  
Telephone: (714) 850-9390  
Facsimile: (714) 850-9392

### 60 Day Notice of Intent to Sue International Business Machines Corporation (IBM) and All of Its Operating Subsidiaries Under Health & Safety Code Sections 25249.6

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or the "Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5, *et seq* (the "Notice") to Samuel J Palmisano, the CEO of International Business Machines Corporation or IBM and all of its operating subsidiaries (hereinafter referred to collectively as "IBM"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through its counsel, Anthony G. Graham, of the law firm of Graham & Martin, LLP, at the above address and phone number.

This Notice is intended to inform IBM that it is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65"), specifically Section 25249.6. Proposition 65 states that when a party, such as IBM, an entity with more than ten employees, has been or is knowingly and intentionally exposing its customers and users of its products to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemicals"), it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of the exposure to the potentially exposed persons (Health & Safety Code § 25249.6). IBM manufactures, distributes, sells and markets copiers and printers, and the re-fill toners for these copiers and printers ("the Consumer Products") in California through retail outlets and through its internet website ([www.ibm.com](http://www.ibm.com) and [www-1.ibm.com](http://www-1.ibm.com)), which when operated or used emit detectable levels of Designated Chemicals. The Consumer Products relevant to this Notice are identified on Exhibit A hereto. IBM however has not placed on the any of the Consumer Products, its packaging or marketing materials, nor anywhere on its internet website a clear and reasonable warning that use of any such Consumer Products will expose the user to a Designated Chemical. IBM is therefore violating Health & Safety Code Section 25249.6.

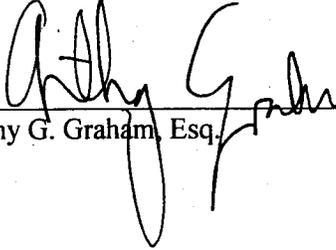
In the ordinary course of its business, IBM manufactures, distributes and offers for sale, both through retail outlets and through its internet website ([www.ibm.com](http://www.ibm.com) and [www-1.ibm.com](http://www-1.ibm.com)) in California the copiers, printers and toners identified on Exhibit A hereto. It has been doing so for at least one year prior to the date of this Notice. These copiers, printers and toners, when used to print or create copies of documents, emit vapors, gases and particles containing Designated Chemicals. Each of the Consumer Products identified on Exhibit A hereto emit, when in operation or use, the following Designated Chemicals: benzene, a chemical known to the State of California to cause cancer and reproductive toxicity; styrene oxide, a chemical known to the State of California to cause cancer; carbon black (airborne, unbound particles of respirable size), a chemical known to the State of California to cause cancer; ethylbenzene, a chemical known to the State of California to cause cancer; naphthalene, a chemical known to the State of California to cause cancer; toluene, a chemical known to the State of California to cause reproductive toxicity; and, 1,1,2,2, tetrachlorethane, a chemical known to the State of California to cause cancer. Persons using the products identified on Exhibit A will be exposed to these Designated Chemicals primarily by inhalation. None of the products identified on Exhibit A hereto have a clear and reasonable warning, as required under Proposition 65, informing persons either purchasing or using the products that

use of such products will result in exposures to the identified Designated Chemicals.

Proposition 65 requires that notice and intent to sue be given to IBM sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to IBM and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to it. CDG reserves the right to amend this Notice to inform IBM of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to IBM, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: March 28, 2005

By:

  
\_\_\_\_\_  
Anthony G. Graham, Esq.

**IBM CORPORATION.****Corporate Office:**

International Business Machines Corporation (IBM)  
 New Orchard Road  
 Armonk, New York  
 10504  
 CEO Samuel J Palmisano

**COPIER/PRINTERS****INFOPRINT SERIES (IBM)**

2060 ES  
 2075 ES  
 2090 ES  
 2105 ES  
 2000 Multifunctional Production System  
 4400 Thermal Printer  
 6400 Line Matrix Printer  
 4247 Multiform Printer  
 62 Continuous Forms Printer  
 1412  
 1422  
 1226  
 1332 with MFP Options  
 1352 with MFP Options  
 1372 with MFP Options  
 1145 with MFP Options  
 1145 MFP  
 70 Plus

**COLOR INFOPRINT SERIES**

1454  
 1464  
 1334  
 1357 with MFP Option  
 2000 Advanced Function Printing System

**OTHER BRAND PRODUCTS SOLD BY IBM**

Lexmark z715/z615/z816  
 Lexmark X215 multi function Laser Printer  
 Lexmark x1185/x4250/x4270 All-in-One  
 Lexmark x5270/x2250/x6170 All-in-One  
 Lexmark E322 Laser Printer

**HP REPLACEMENT CARTRIDGES**

4000/4050(HP Part No. C4127X)  
 5si/ Laserjet 8000 (HP Part No. C3909A)  
 2100/2200 printers (HP Part No. C4906 A)  
 4m/ 4plus/ 5/ 5m/ 5n (HP No. C8061X)  
 4100 printer series (HP Part No. C8061 X)  
 8100/8150 printer series (HP No. C4182X)

High Capacity for Laserjet 4/ 4m/ 4plus/  
 5/ 5m/ 5n printers (HP Part No. 92298A)

1100/3200 series printers (HP No. C4092 A.)  
 5p/ 6p series printers (HP No. C3903 A)  
 5L/ 6L series printers (HP No. C3906 A)

**ALL IBM PRODUCT COMPATIBLE  
 REPLACEMENT TONER/INK CARTRIDGES**

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Anthony G. Graham, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

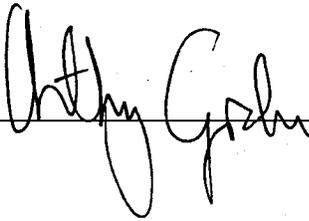
2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing party Consumer Defense Group Action.

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 alleged exposures 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 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 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 those persons.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Costa Mesa, California on March 28, 2005.



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**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 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

I SERVED THE FOLLOWING:

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

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: March 28, 2005  
Place of Mailing: Costa Mesa, California

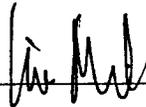
NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

International Business Machines Corporation (IBM) New Orchard Road Armonk, New York 10504 CEO Samuel J Palmisano	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
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And all entities on the attachment hereto

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

Dated: March 28, 2005

  
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## ATTACHMENT TO PROOF OF SERVICE

San Diego City Attorney  
1200 3rd Ave. Ste. 1620  
San Diego, CA 92101

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

San Francisco City Attorney  
1390 Market Street  
San Francisco, CA 94102

Riverside County DA  
4075 Main St., 1<sup>st</sup> Fl.  
Riverside, CA 92501

Sacramento County DA  
P.O. Box 749  
Sacramento, CA 95812

San Jose City Attorney  
151 W. Mission St.  
San Jose, CA 95110

Humboldt County DA  
825 5th Street  
Eureka, CA 95501

San Mateo District Attorney  
1050 Mission Road  
South San Francisco, CA 94080

Sonoma County DA  
600 Administrative Dr.  
Santa Rosa, CA 95403

Yolo County D A  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

El Dorado County DA  
1360 Johnson Blvd. #105  
South Lake Tahoe, CA 96150

San Diego County District Attorney  
330 Broadway  
San Diego, CA 92101

Los Angeles County DA  
210 W. Temple Street, 18th Floor  
Los Angeles, CA 90012

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

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

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

Santa Clara County DA  
2645 Zanker Road  
San Jose, CA 95134

Shasta County District Attorney  
1525 Court Street  
Redding, CA 96001-1632

Marin County DA  
3501 Civic Center Dr. #130  
San Rafael, CA 94903

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

District Attorney  
1430 Freedom Blvd.  
Watsonville, CA 95076

Ventura County DA  
800 South Victoria Avenue  
Ventura, CA 95695

Napa County DA  
931 Parkway Mall  
Napa, CA 94559

Inyo County DA  
386 W. Line Street  
Bishop, CA 93514

Lake County DA  
255 N. Forbes St.  
Lakeport, CA 95453

Stanislaus County DA  
300 Starr Avenue  
Turlock, CA 95380

District Attorney  
14227 Road 28  
Madera, CA 93638

Sutter County DA  
446 Second Street  
Yuba City, CA 95991

Mariposa County DA  
P.O. Box 748  
Mariposa, CA 95338

Nevada County DA  
201 Church Street, Suite 8  
Nevada City, CA 95959

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

Merced County DA  
445 I Street  
Los Banos CA 93635

Mondoc County DA  
204 S Court Street  
Alturas CA 96101

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.  
Fort Bragg, CA 94537

Butte County DA  
25 County Center Drive  
Oroville, CA 95695

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

Solano County DA  
321 Tuolomne Street  
Valejo, CA 94590

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

Alameda County DA  
1225 Fallon Street  
Oakland, CA 94612

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

Santa Clara DA  
2645 Zanker Rd  
San Jose CA 95134

Solano County DA  
321 Tuolumne St  
Vallejo CA 94590

Glenn County DA  
540 W Sycamore St  
Willows CA 95988

Kings County DA  
1400 W Lacey Blvd  
Hanford CA 93230

Riverside DA  
82675 US Hwy 111 FL4  
Indio CA 92201

Santa Rosa D.A.  
111 N Pythian Rd  
Santa Rosa CA 95409

Monterey County DA  
240 Church St.  
Salinas, CA 93902

Placer County DA  
11562 B Avenue  
Auburn, CA 95603

Fresno County DA  
2220 Tulare Street, #1000  
Fresno, CA 93721

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

Tulare County DA  
425 E. Kern  
Tulare, CA 93274

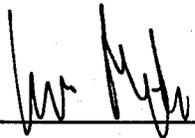
Inyo County DA  
PO Drawer D  
Independence, CA 93526

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

Santa Barbara County DA  
1105 Santa Barbara St.  
Santa Barbara, CA 93101

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

Dated: March 28, 2005

  
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