

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER
AND TOXIC ENFORCEMENT ACT OF 1986
(Cal. Health & Saf. Code, §§ 25249.5 et seq.) (“Proposition 65”)

June 17, 2005

TO: William R. Johnson
H.J. Heinz Company
Chairman, President, and CEO
600 Grant St.
Pittsburgh, PA 15219

AND THE PUBLIC PROSECUTORS LISTED ON THE ATTACHED CERTIFICATE OF SERVICE

Re: Consumer Product Exposure to Acrylamide

To Whom It May Concern:

Environmental World Watch, Inc. (“EWW”) serves this Notice of Violation (“Notice”) upon H.J. Heinz Company (“Heinz”) pursuant to and in compliance with Proposition 65. Heinz may contact EWW concerning this Notice through its designated person within the entity, its attorney, Reuben Yeroushalmi, Esq., 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, telephone # 213-382-3183, facsimile # 213-382-3430. This Notice incorporates the notice sent to the named entity by EWW on June 26, 2002. This Notice satisfies a prerequisite for EWW to commence an action against Heinz in any Superior Court of California to enforce Proposition 65. The violations addressed by this Notice occurred in every county in California. EWW is serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for every county where alleged violations occurred, and the City Attorney for every city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred.

Attached to this Notice is a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”. The summary provides general information about Proposition 65.

- EWW is a registered corporation based in California. By sending this Notice, EWW is acting “in the public interest” pursuant to Proposition 65. EWW is dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that “[n]o 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 . . .” (Cal. Health & Saf. Code, § 25249.6.)
- The Chemical known to the State to cause cancer relevant to this Notice is **Acrylamide**. The Governor of California added Acrylamide to the list of chemicals known to the State to cause cancer more than twelve months before EWW served this Notice.

- The type of exposure addressed by this Notice is consumer products exposure. "A 'consumer products exposure' is an exposure which results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service. (Cal. Code Regs. tit. 22, § 12601(b).)

Heinz caused consumer product exposures by selling by Extra Crispy Easy Fries™, Extra Crispy Golden Crinkles®, Extra Crispy Fast Food Frie™, Extra Crispy Tater Tots®, Golden Fries®, Golden Crinkles®, Shoestrings, Country Style Steak Fries, Potato Wedges, Tater Tots®, Mini Tater Tots®, Crispy Crowns!®, Waffle Fries, Golden Twirls®, Pixie Crinkles®, Crispers!®, Oven Chips™, Cottage Fries, Crispy Crunchies, Country Style Steak Fries, Onion Tater Tots®, Country Style French Fries, Zesty Twirls®, Zesties!®, Fajita Seasoned Fries, Texas Crispers®, Country Style Hash Browns, Hash Browns, Toaster Hash Browns, Golden Patties®, Hash Browns Southern Style, and/or Potatoes O'Brien, ("Ore-Ida Products") to consumers. When consumers ate Ore-Ida Products, they became exposed to Acrylamide.

The principal route of exposure was through ingestion, when consumers ate Ore-Ida Products, which Heinz manufactures and/or distributes, and which are available for purchase by consumers in California. The exposures took place from September 17, 1991 through June 17, 2005 and have continued thereafter. EWW investigated Heinz and concluded that Heinz does not provide clear and reasonable warnings consumers through signage or other means that they will be exposed to Acrylamide by eating Ore-Ida Products. The exposures described above occur at concentrations that exceed any safe harbor level for the Listed Chemical as defined under Proposition 65.

Accordingly, in the course of doing business, Heinz, which on information and belief EWW asserts has ten or more employees, has knowingly and intentionally exposed, and continues to expose, individuals to Acrylamide without first providing clear and reasonable warnings, in violation of Proposition 65. Therefore, since Acrylamide is a chemical known under Proposition 65 to cause cancer, Heinz was and is required to provide clear and reasonable warnings to all consumers of Ore-Ida Products. The warnings must state that Ore-Ida Products contain chemicals known to the State of California to cause cancer.

Proposition 65 requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, **EWW** gives notice of the alleged violations to Heinz and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, **EWW** may file suit. This notice covers all violations of Proposition 65 that **EWW** currently knows of from information now available to it.

Dated: June 17, 2005



Reuben Yeroushalmi, Esq.

Yeroushalmi & Associates

3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, 213-382-3183

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION
AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACTION 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

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is 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.

Dated: June 17, 2005

By: 
REUBEN YEROUSHALMI

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 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit: Health and Safety Code Section 25249.7(d) *Attorney General Copy (only sent to Attorney General)*
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S. mail with the postage fully prepaid. Place of Mailing: Los Angeles, CA

Name and address of each violator to whom documents were mailed:


William R. Johnson
H.J. Heinz Company
Chairman, President, and CEO
600 Grant St.
Pittsburgh, PA 15219

Name and address of each public prosecutor to whom documents were mailed:

See Exhibit A

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

Dated: 06/17/05

By: 

(Silva Albaryan)

EXHIBIT A

Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Mono County District Attorney PO Box 617 Bridgeport, CA 93517
Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Madera County District Attorney 209 W Yosemite Ave Madera, CA 93637	San Joaquin County District Attorney PO Box 990 Stockton, CA 95201-0990
Amador County District Attorney 708 Court, Suite 202 Jackson, CA 95642	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
Butte County District Attorney 25 County Center Dr. Oroville, CA 95965-3385	Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Bernardino County District Attorney 316 N Mountain View Ave San Bernardino, CA 92415-0004
Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102
Colusa County District Attorney Courthouse, 547 Market St. Colusa, CA 95932	Inyo County District Attorney P.O. Drawer D Independence, CA 93526	Placer County District Attorney 11562 "B" Ave Auburn, CA 95603-2687
Contra Costa County District Attorney 725 Court St., Room 402 Martinez, CA 94553	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Merced County District Attorney 2222 "M" St. Merced, CA 95340
Del Norte County District Attorney 450 "H" St. Crescent City, CA 95531	Nevada County District Attorney 201 Church St, Suite 8 Nevada City, CA 95959-2504	Napa County District Attorney PO Box 720 Napa, CA 94559-0720
El Dorado County District Attorney 515 Main St. Placerville, CA 95667-5697	Plumas County District Attorney 520 Main Street, Rm 404 Quincy, CA 95971	Riverside County District Attorney 4075 Main St Riverside, CA 92501
Fresno County District Attorney 2220 Tulare St, Ste. 1000 Fresno, CA 93721	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	San Benito County District Attorney 419 4th St Hollister, CA 95023
Glenn County District Attorney PO Box 430 Willows, CA 95988	San Luis Obispo County District Attorney County Government Center, Rm 450 San Luis Obispo, CA 93408	Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Humboldt County District Attorney 825 5th St., 4 th Floor Eureka, CA 95501	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Solano County District Attorney 600 Union Ave Fairfield, CA 94533

Imperial County District Attorney 939 W. Main St., 2 nd Floor El Centro, CA 92243-2860	Santa Barbara County District Attorney 1105 Santa Barbara St. Santa Barbara, CA 93101	Sonoma County District Attorney 600 Administration Dr., Rm 212-J Santa Rosa, CA 95403
Kern County District Attorney 1215 Truxtun Ave. Bakersfield, CA 93301	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	Shasta County District Attorney 1525 Court St, 3rd Floor Redding, CA 96001-1632
Kings County District Attorney Gov't Ctr, 1400 W Lacey Blvd Hanford, CA 93230	Santa Cruz County District Attorney PO Box 1159 Santa Cruz, CA 95061	Sierra County District Attorney PO Box 457 Downieville, CA 95936-0457
Lake County District Attorney 255 N Forbes St Lakeport, CA 95453-4790	Stanislaus County District Attorney PO Box 442 Modesto, CA 95353	Trinity County District Attorney PO Box 310 Weaverville, CA 96093
Modoc County District Attorney 204 S. Court Street Alturas, CA 96101-4020	Sutter County District Attorney 446 Second Street Yuba City, CA 95991	Yuba County District Attorney 215 5th St Marysville, CA 95901
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Lassen County District Attorney 200 S Lassen St, Suite 8 Susanville, CA 96130	Monterey County District Attorney PO Box 1131 Salinas, CA 93902
Tuolumne County District Attorney 2 S Green St Sonora, CA 95370	Tulare County District Attorney County Civic Center, Rm 224 Visalia, CA 93291	Yolo County District Attorney 310 Second St Woodland, CA 95695
Ventura County District Attorney 800 S Victoria Ave Ventura, CA 93009	Tehama County District Attorney P.O. Box 519 Red Bluff, CA 96080	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110