

# 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

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Date: March 17, 2006

To: Raymond Kyle Vannoy, President – Dr. Pepper Bottling Company of West Jefferson, North Carolina, Incorporated

California Attorney General's Office;  
District Attorney's Office for 58 Counties;  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

From: Whitney R. Leeman, Ph.D.

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## I. INTRODUCTION

My name is Whitney R. Leeman. I hold a Doctor of Philosophy degree in Environmental Engineering. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). As noted above, notice is being provided to the violator, Dr. Pepper Bottling Company of West Jefferson, North Carolina, Incorporated (the "Violator"). The violations covered by this Notice consist of the product exposures, routes of exposures and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

Product Exposure: See Section VI. Exhibit A  
Listed Chemical: Lead  
Routes of Exposure: Ingestion, Dermal  
Types of Harm: Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products (hereafter the "products") that are causing consumer and occupational exposures in violation of Proposition 65 (and that are covered by this Notice) are listed in Exhibit A in section VI below. The Violator's sales of these beverage products have been occurring from at least March 17, 2005, to the present. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical contained in the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use or consumption of the products.

## **A. CONSUMER PRODUCT EXPOSURE**

California consumers, through the act of buying, acquiring, utilizing or consuming the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when California citizens use (such as drink from the vessel), display, clean, repair, pack, unpack, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed directly and/or indirectly to the listed chemical through the routine touching of the parts or portions of the products containing readily available amounts of the listed chemical on the surface. Additionally, exposure can occur through the routine touching and ingesting of other materials that become contaminated with the listed chemical from the products (such as food items consumed while handling the products). Finally, exposures can occur through the direct ingesting of the products. People likely to be exposed include both children and adults.

## **B. OCCUPATIONAL EXPOSURE**

Similarly, men and women in California use, consume or otherwise handle the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical. Employees are exposed at the California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemical are, by way of example but not limitation, used (such as drank from the vessel), consumed packed, unpacked, labeled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure directly and/or indirectly to the listed chemical though the routine touching of the parts or portions of the products containing readily available amounts of the listed chemical on the surface. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks as well as through the direct ingestion of the products. These products are also used by sole proprietors and other persons in settings not covered by the Occupational Safety Health Act ("OSH Act"). This Notice alleges the violation of Proposition 65 with respect to occupational exposure 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 contained in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the California Attorney General.

### III. CONTACT INFORMATION

Please direct all questions concerning this notice to me at the following addresses:

Whitney R. Leeman, Ph.D.  
c/o Clifford Chanler  
c/o Joshua Voorhees  
Hirst & Chanler LLP  
71 Elm Street, Suite 8  
New Canaan, CT 06840  
Telephone: (203) 966-9911

Whitney R. Leeman, Ph.D.  
c/o Laralei Paras  
Hirst & Chanler LLP  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710  
Telephone: (510) 848-8880

### IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

### V. ADDITIONAL NOTICE INFORMATION

*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 §12903(b)(4).*

Identified below are specific examples of the categories or types of offending products recently purchased and witnessed as being available for purchase, use or consumption in California. Based on publicly available information, the retailers, distributors and/or manufacturers of these examples of the categories or types of products are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at other locations including, but not limited to, transactions made over-the-counter, business-to-business, through the internet and/or via a catalog by the Violator and other retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Mountain Dew Glass Bottle, 12 fl. oz. (Model # 0 124450 2)	Sandy's Deli & Liquor San Luis Obispo County Central California	Dr. Pepper Bottling Company of West Jefferson, North Carolina, Incorporated; PepsiCo, Inc.
Original Nehi Peach Glass Bottle, 12 fl. oz. (UPC #0 29500 26252 7)	Beverages & More San Mateo County Northern California	Dr. Pepper Bottling Company of West Jefferson, North Carolina, Incorporated; Royal Crown Company, Inc.; Dr. Pepper/Seven-Up, Inc.

## VI. EXHIBIT A

<i>Product Category</i>	<i>Such As*</i>	<i>Toxin(s)</i>
Glass Soda Bottles and Other Glassware Intended for the Consumption of Food or Beverages with Colored Artwork or Designs (containing lead) on the Exterior Surface	Mountain Dew Glass Bottle, 12 fl. oz. (Model # 0 124450 2)  Original Nehi Peach Glass Bottle, 12 fl. oz. (UPC #0 29500 26252 7)	Lead
Soda (containing lead) Stored in Glass Bottles	Mountain Dew Glass Bottle, 12 fl. oz. (Model # 0 124450 2)	Lead
Metal (containing lead) Crown Cap Carbonated Beverage Bottle Closures	Mountain Dew Glass Bottle, 12 fl. oz. (Model # 0 124450 2)  Original Nehi Peach Glass Bottle, 12 fl. oz. (UPC #0 29500 26252 7)	Lead

\*These specifically identified examples of the types of products which are subject to this Notice are for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within each product category listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category" in Exhibit A. Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

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 2560 Ninth Street, Parker Plaza, Suite 214, Berkeley, CA 94710.

On March 17, 2006, I served the following document:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH  
& SAFETY CODE §25249.7(d);**

**PROPOSITION 65: A SUMMARY;**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE  
ATTORNEY GENERAL)**

served on the Violator listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the Violator and placing such envelope in a United States Postal Service mailbox:

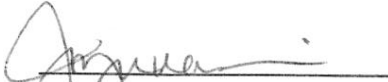
Raymond Kyle Vannoy, President  
Dr. Pepper Bottling Company of West  
Jefferson, North Carolina, Incorporated  
109 3<sup>rd</sup> Ave.  
West Jefferson, NC 28694  
Tel. (336) 246-4591

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a Federal Express Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

*A list of addresses for each of these recipients is attached.*

Executed on March 17, 2006 at Berkeley, California.

  
Joyce van Ginkel

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
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* exposure to the listed chemical that is the subject of this 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 plaintiff's 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 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: 3/17/06

  
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Clifford A. Chanler

## SERVICE LIST

The Honorable Tom Orloff  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable William Richmond  
Alpine County District Attorney  
270 Laramie Street, Annex Building  
Markleeville, CA 96120

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street, #202  
Jackson, CA 95642

The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive,  
Administration Building  
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The Honorable Jeffrey Tuttle  
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891 Mountain Ranch Road  
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The Honorable John R. Poyner  
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Colusa, CA 95932

The Honorable Robert J. Kochly  
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725 Court Street, 4<sup>th</sup> Floor, Rm. 402  
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The Honorable Michael Riese  
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2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Robert Holzapfel  
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Susanville, CA 96130

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Madera, CA 93637

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Ukiah, CA 95482

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Merced, CA 95340

The Honorable Jordan Funk  
Modoc County District Attorney  
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Alturas, CA 96101

The Honorable George Booth  
Mono County District Attorney  
Old Court House, Main Street  
Bridgeport, CA 93517

The Honorable Dean Flippo  
Monterey County District Attorney  
240 Church Street, #101  
Salinas, CA 93901

The Honorable Gary Lieberstein  
Napa County District Attorney  
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Napa, CA 94559

The Honorable Michael Ferguson  
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201 Church Street, Suite 8  
Nevada City, CA 95959

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401 Civic Center Drive West  
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Placer County District Attorney  
11562 B Avenue  
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Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Grover Trask II  
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4075 Main Street  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814

The Honorable John Sarsfield  
San Benito County District Attorney  
419 4<sup>th</sup> Street, Second Floor  
Hollister, CA 95203

The Honorable Michael Ramos  
San Bernardino County District Attorney  
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San Bernardino, CA 92415

The Honorable Bonnie Dumanis  
San Diego County District Attorney  
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San Diego, CA 92101

The Honorable Kamala Harris  
San Francisco County District Attorney  
850 Bryant Street, Room 325  
San Francisco, CA 94103

The Honorable James Willett  
San Joaquin County District Attorney  
222 E. Weber Avenue, 2<sup>nd</sup> Floor, Room 202  
Stockton, CA 95201

The Honorable Gerald Shea  
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San Luis Obispo, CA 93408

The Honorable James Fox  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Thomas Sneddon, Jr.  
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1112 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable George Kennedy  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Bob Lee  
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701 Ocean Street, Room 200  
Santa Cruz, CA 95060

The Honorable Gerald Benito  
Shasta County District Attorney  
1525 Court Street, Third Floor  
Redding, CA 96001

The Honorable Lawrence Allen  
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100 Courthouse Square, Second Floor  
Downieville, CA 95936

The Honorable James Andrus  
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800 South Victoria Avenue  
Ventura, CA 93009

The Honorable David C. Henderson  
Yolo County District Attorney  
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The Honorable Samuel Jackson  
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Sacramento, CA 95814

The Honorable Dennis J. Herrera  
Office of the City Attorney, San Francisco  
City Hall, Room 234  
San Francisco, CA 94102

The Honorable Richard Doyle  
Office of the City Attorney, San Jose  
200 East Santa Clara Street  
San Jose, CA 95113

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
ATTN: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550