CONSUMER DEFENSE GROUP ACTION

950 South Coast Drive, Suite 220
Costa Mesa, CA 92626
Phone Number: (714) 850-9390
Facsimile: (714) 850-9392

March 21, 2006

Second 60 Day Notice of Intent to Sue BANK OF AMERICA Under Health & Safety Code Section 25249.6

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or the "Noticing Party") hereby provides a Second Notice of Intent to Sue Under Health & Safety Code Section 25249.5 (the "Notice"), following the provision of a prior Notice, to Kenneth D. Lewis, Chairman, CEO and President of Bank of America Corporation (hereinafter referred to as "BANK OF AMERICA" or "the Violator" or "YOU" or "YOUR"), as well as the individuals and governmental entities on the attached proof of service. The Noticing Party may be contacted through its counsel, Anthony G. Graham, at the above address.

This Second Notice is intended to inform BANK OF AMERICA that it has violated and continues to violate, despite the prior Notice, Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") by failing and refusing to post clear and reasonable warnings at each of the facilities listed on Exhibit A hereto (which are owned/leased by BANK OF AMERICA) (hereinafter individually as "the Facility" or collectively as "Facilities") that the smoking of tobacco products occurs at the Facilities, which may foreseeably expose customers, visitors and employees to tobacco smoke in the areas where smoking occurs and/or is permitted.

Summary of Violation:

This Second Notice concerns YOUR failure to warn YOUR customers, employees and visitors to YOUR facilities, **prior to any potential exposure**, that tobacco smoking occurs at the facilities and thus any such person "may foreseeably" be exposed to tobacco smoke while using the facility. Under Proposition 65 YOUR duty is to provide a clear and reasonable warning, **prior** to exposure, to all persons who "may foreseeably" be exposed if they come onto the property when someone is smoking on the property. *See, e.g.*, Tit. 22, Div. 2, section 12601 ["An 'environmental exposure' is an exposure which may foreseeably occur as the result of contact with an environmental medium. . ."].

Proposition 65 requires that when a party, such as YOU, 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). Tobacco smoke is one of the Designated Chemicals.

The Violation:

In the ordinary course of business YOU control much of the conduct and actions of YOUR customers, visitors and employees at each of the facilities listed on Exhibit A to this Notice (hereinafter, "the Facilities"). One of the actions YOU control is whether or not to prohibit YOUR customers, visitors and employees at each of the Facilities from smoking cigarettes and cigars, something which would be easily accomplished by the posting of "No Smoking" or "Smoking Prohibited Signs". In fact, at certain designated areas at each of the Facilities YOU have prohibited smoking and have posted signs barring smoking in those areas, which are the interiors of the Facilities. However, YOU have also chosen to permit YOUR customers, visitors and employees at each of the Facilities to smoke cigarettes and cigars in certain areas. Those areas are the entrances to the Facilities, where persons are allowed to congregate and smoke, and the areas surrounding the partially-covered/uncovered ATM machines where YOU conduct business at the locations in the attached Exhibit A. In those areas YOU have chosen to allow YOUR customers, visitors and employees to expose each other and to be exposed to tobacco smoke via the breathing of second hand tobacco smoke and via contact with their skin and clothing.

YOU have however ignored the requirements of Proposition 65 and have failed to post clear and reasonable warnings at those areas so that YOUR customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering and/or using the bank facilities in those areas, they may foreseeably be exposed to tobacco smoke. This Notice is limited to those areas where the statute can be enforced by YOU, which are the identified areas at the Facilities, and to those tobacco smoke exposure which may foreseeably occur to individuals on the premises from tobacco smoke emitted by persons in the identified areas at the Facilities.

There is nothing complicated about this claim. As anyone would testify, it is a commonplace experience of every Californian, be they an office worker, YOUR defense counsel or even a trial judge, that one must often walk through a cloud of tobacco smoke before entering a commercial building or business, especially in the morning or at lunchtime. Given the universal knowledge of this fact, there is no excuse for allowing such conduct without a warning for those areas where such conduct is known to occur.

Persons representing CDG have investigated YOUR Facilities during July and August, 2005 (hereinafter referred to as the "Investigation Period"). Those investigations showed the following;

1. YOU own and/or lease the Facilities;
2. YOU have more than nine employees;
3. The smoking of tobacco products occurs in the areas identified in this Notice, that is, the entrances to the Facilities, and the areas surrounding the ATM machines where YOU conduct business at the locations in the attached Exhibit A ("the Noticed Areas").
4. When smoking occurs in the Noticed Areas other persons in the Noticed Areas, such as customers, employees and visitors may foreseeably be exposed to tobacco smoke at the Facility;
5. YOU know that such activity occurs because YOU provide janitorial services and/or cigarette disposal containers in the Noticed Areas for the clean up of cigarette

butts/waste, and YOU monitor the Noticed Areas with security and other personnel as well as film the Noticed Areas with YOUR security cameras;

6. YOU do not have and have never had in place a Proposition 65 warning for the Noticed Areas.

The lead agency for Proposition 65 enforcement is OEHHA. OEHHA has conducted monitoring tests at various outdoor locations, including the outside entrances to commercial properties and businesses. The report prepared by OEHHA and after full and complete testing of relevant outdoor tobacco smoke exposures, in support of its recent determination that tobacco smoke (or "ETS") is a "toxic air contaminant," a report and findings which have been highly publicised in the media, concludes as follows,

> "Non-smokers **are exposed to ETS** in several different environments, such as **outside office buildings, schools, businesses**, airports and amusement parks. The ARB monitored outdoor nicotine (a marker for ETS) concentrations in those environments and found that some of the highest nicotine monitoring results are **comparable to those found in smoker's' homes.**"

In the areas noted YOUR customers, visitors and employees therefore may foreseeably be exposed to tobacco smoke via the breathing of second hand tobacco smoke and via contact with their skin and clothing. For YOUR assistance I have enclosed the California EPA Air Resources Board "Fact Sheet" as to "Environmental Tobacco Smoke as a Toxic Air Contaminant". A full copy of the OEHHA report is available at www.arb.ca.gov/homepage.htm.

The investigation by CDG at the Facilities showed that YOU have failed to either prohibit smoking or to post clear and reasonable warnings in the areas noted above where smoking occurs so that YOUR customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering any of those areas, they may be exposed to tobacco smoke, a chemical known to the State of California to cause cancer and/or reproductive toxicity, and which is emitted by smokers in those areas.

It is clear therefore that for the entire period of time that YOU have owned and/or leased the Facilities prior to the Investigation Period, YOU failed to either prohibit smoking or to post clear and reasonable warning signs at the Facilities in compliance with Proposition 65. Given that the maximum period of potential liability pursuant to Proposition 65 is four years, this Notice is intended to inform YOU that YOU have been in violation of Proposition 65 from the time period from four years prior to the last date of the Investigation Period noted above, for every day upon which YOU owned and/or lease any listed Facility.

The written reports prepared by the investigators for CDG, prepared contemporaneously with the investigations conducted during the Investigation Period, together with supporting scientific data as to outdoor tobacco smoke exposures, have been provided to the Office of the Attorney General responsible for Proposition 65 enforcement.

Environmental Exposures:

While in the course of doing business, at the locations in the attached Exhibit A, for up to four years prior to 03/01/2006, YOU have been and are knowingly and intentionally exposing its customers and the public to tobacco smoke and other chemicals listed below and designated

by the State of California to cause cancer and/or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The source of exposures is tobacco smoke from persons on YOUR property who smoke thereon in the Noticed Areas. The areas where exposures occur are the entrances to the Facilities and the areas surrounding the ATM machines where YOU conduct business at the locations in the attached Exhibit A.

Occupational Exposures:

While in the course of doing business at the locations in the attached Exhibit A, for up to four years prior to 03/01/2006, YOU have been and are knowingly and intentionally exposing its employees to tobacco smoke and other chemicals listed below and designated by the State of California to cause cancer and/or reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). The source of exposure is tobacco smoke from persons on YOUR property who smoke thereon in the Noticed Areas at the locations in Exhibit A. Employees include and are not limited to security personnel, maintenance workers, janitorial personnel, service personnel and administrative personnel. Such exposures take place in the areas where exposures occur are the entrances to the Facilities and the areas surrounding the ATM machines where YOU conduct business at the locations in the attached Exhibit A.

The route of exposure for Occupational Exposures and Environmental Exposures to the chemicals listed below has been inhalation, ingestion and dermal contact with tobacco smoke in the Noticed Areas at the locations in the attached Exhibit A. In other words, via the breathing of tobacco smoke and contact with the skin at those locations. For each such type and means of exposure, YOU have exposed and are exposing and continue to foreseeably expose the above referenced persons to:

SEE ATTACHED LIST OF CARCINOGENS/TOXINS

Legal Support for This Notice:

Although unnecessary for purposes of fulfilling the Notice requirements under the regulations promulgated under Proposition 65, CDGA believes it reasonable to make clear its legal and factual support for serving YOU with this Notice, so as to facilitate YOUR understanding of the violation as well as to facilitate, if possible, a potential resolution of that violation, or at minimum to assist YOU in YOUR discussions with counsel of YOUR choice.

This Notice concerns YOUR failure to warn YOUR customers, employees and visitors to YOUR facilities, **prior to any potential exposure**, that tobacco smoking occurs at the facilities and thus any such person "may foreseeably" be exposed to tobacco smoke while using the facility. Under Proposition 65 YOUR duty is to provide a warning, **prior** to exposure, to all persons who "may foreseeably" be exposed if they come onto the property when someone is smoking on the property. *See, e.g.*, Tit. 22, Div. 2, section 12601 ["An 'environmental exposure' is an exposure which may foreseeably occur as the result of contact with an environmental medium. . ."].

CDGA can fulfill its burden as to its *prima facie* case. The burden on a Plaintiff in a Proposition 65 case is to prove that "defendants had knowingly and intentionally exposed

employees and [others] to [a designated chemical] without a warning." *Consumer Cause, Inc. v. Smilecare et al.* (2001) 91 Cal. App. 4th 454, 460 (*citing People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 314). **"Because Proposition 65 [is] a remedial statute intended to protect the public ... [a court must] construe the statute broadly to accomplish that protective purpose."** *Id.* [1]

Thus, in this case, CDGA would need to prove the following: First, that YOU have more than nine employees; Second, that tobacco smoke is a Designated Chemical; Third, that tobacco smoke is present at YOUR business and YOU know of that presence; Fourth, that persons (such as employees or customers) "may foreseeably" be "exposed" to (i.e. come into physical contact with) tobacco smoke when using the business or being at the business location; and, Fifth, that YOU do not have a compliant Proposition 65 warning sign informing YOUR employees and customers of such potential exposure prior to such exposure. That is CDGA's burden of proof in any such "failure to warn" action. YOU will not be able to rebut any element of CDGA's *prima facie* case:

First, YOU have more than nine employees.

Second, "tobacco smoke" is a Designated Chemical (as are many of its constituent chemicals listed in this Notice) by operation of law.

Third, YOU cannot dispute that the smoking of tobacco products occurs at the Facilities. YOU know that such activity occurs because YOU monitor those Facilities. YOU provide janitorial services in all noticed areas and/or provide containers for cigarette disposal at the ATMs and at the entrances. YOU have security and other personnel who patrol those areas. YOU also have security cameras in all noticed areas and thus know, because YOU have observed it, that such exposures occur. In other words, YOU have **actual** knowledge of the referenced activity. **[In this regard, please ensure that the security camera tapes herein referenced are not destroyed, since they will be subject to discovery during litigation should YOU choose to deny such knowledge.]** YOU intend that such conduct occur (i.e. foreseeable exposures without a warning) because, although YOU could choose to either prohibit smoking in the Noticed Areas or provide a Proposition 65 warning, YOU have chosen to do neither.

Fourth, since it is undisputed, as OEHHA itself has found, that people in fact do smoke in the noticed areas, it is equally indisputable that other persons (such as customers and employees) who enter onto YOUR Facilities "may foreseeably" be exposed to tobacco smoke in the Noticed Areas from a source in the Noticed Areas . Our use of the word "may" in the Notice is not to suggest we are not sure that such exposure will occur. The use of the word "may" is intended to reflect the intent of the statute, which is to provide a warning **prior** to exposure, that is, to all persons who "may" be foreseeably exposed if they come onto the property when someone is smoking thereon. *See, e.g.*, Tit. 22, Div. 2, section 12601 ["An 'environmental exposure' is an exposure which may foreseeably occur as the result of contact with an environmental medium. . ."]. Moreover, in this case, as already noted, YOU in fact **know** that such exposures occur. Thus, a Proposition 65 warning is required.

Fifth, as you know, YOU have never provided a Proposition 65 warning for the noticed

---

[1] "'Knowingly' refers only to knowledge of the fact that a discharge of, release of, or exposure to a chemical listed ... is occurring." *See*, Cal. Code Regs., tit. 22, § 12201, subd. (d).

areas, nor prohibited smoking. [2]

These indisputable facts are sufficient for CDGA to be granted summary judgment on the liability issue under Proposition 65. The remaining issue will be the extent of the civil penalty to be imposed (up to $2500 per day per violation at each Facility operated by the bank) and the amount of our attorneys fees and costs (including expert witness costs). At that time the number of potential exposures, the size and sophistication of the Violator, as well as the Violators' response to our prior and this Notice, would be relevant factors for the court to consider in determining the extent of that penalty.

The only remaining question is whether YOU have an available viable defense. YOU do not.

The only potentially available defense is the so-called "exposure exemption" under section 25249.10 of the Health & Safety Code. As to this, YOU would have to prove that any and all tobacco smoke exposures at the Facilities will fall below the significant risk level for carcinogens, or 1,000 times below the No Observable Effect Level ("NOEL") for reproductive toxins. Tobacco smoke is both a carcinogen and a reproductive toxin.

California law expressly provides that the Plaintiff (in this case CDGA) in a Proposition 65 action has no burden to prove the precise "level of exposure" to tobacco smoke. In the seminal case of *Consumer Cause, Inc. v. Smilecare et al.* (2001) 91 Cal. App. 4th 454, the California Court of Appeal expressly found that it is the defendant (i.e. YOU) which has the burden of proof and production on this issue:

> [Plaintiff] did not have to fund scientific studies or collect medical data to establish the NOEL or to gauge the level of exposure at defendants' offices. Nor did it have to hazard a guess. Under the Act, defendants, not [Plaintiff], had to contend that the exposure was at a specific level -- 1,000 times below the NOEL . . . Under the Act, a defendant relying on the exposure exemption at trial would have to establish the NOEL, the level of exposure in question, and, ultimately, that the level of exposure was 1,000 times below the NOEL.

Id., at 469, 474. [3]

The Court concluded that therefore **"plaintiff has no evidentiary burden"** on the level of exposure. *Id.* at 455. "The plaintiff need only prove that the defendant has knowingly and intentionally exposed individuals to listed chemicals without providing a warning. The plaintiff

---

[2] YOU may decide to provide such warning or ban smoking **after** receiving our Notice. While under the Federal Clean Water Act a violation may be "cured" during the Notice period, and thus a lawsuit is barred, no such defense exists under Proposition 65.

[3] As the *Smilecare* Court noted, the burden lies with the defendant because the Act itself specifically so provides: "The Act's warning requirement (§ 25249.6) is subject to statutory exemptions, one of which applies to "an exposure for which the person responsible can show that the exposure ... will have no observable effect assuming exposure at one thousand (1,000) times the level in question for substances known to the state to cause reproductive toxicity ...." (§ 25249.10, subd. (c), italics added).) "In any action brought to enforce [the warning requirement,] **the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.**" *Id.*

need not prove, nor even introduce evidence, of the amount of this exposure or whether it is above the threshold level." *Id.* That burden lies solely with YOU, which we know, based upon the available data and our own experience, YOU will not be able to satisfy.

First, in addition to the work done by the Federal EPA and other national agencies, we rely upon the work accomplished by the State of California through OEHHA, the lead agaency for Proposition 65 enforcement. OEHHA has conducted monitoring tests at various outdoor locations, including the outside entrances to commercial properties and businesses. The full report prepared by OEHHA in support of its determination that tobacco smoke (or "ETS") is a "toxic air contaminant" concludes, after full and complete testing of relevant outdoor tobacco smoke exposures, as follows,

> "Non-smokers **are exposed to ETS** in several different environments, such as **outside office buildings, schools, businesses**, airports and amusement parks. The ARB monitored outdoor nicotine (a marker for ETS) concentrations in those environments and found that some of the highest nicotine monitoring results are **comparable to those found in smoker's' homes.**"

Naturally the level of exposure depends, as OEHHA noted, on the number of smokers in the area, the amount of time smokers and non-smokers spend there, the size of the smoking area and weather conditions. However, based on the work done by OEHHA, it is indisputable that there are exposures to ETS in the areas identified in this Notice which result in significant human exposure. We will thus be relying initially upon the data collected and conclusions drawn by the relevant scientific arm of the State of California on the precise issue at hand. YOU of course can hire YOUR own expert to attempt to overcome that data and the conclusions of the lead agency for Proposition 65 enforcement for the State of California.

Second, there is no NOEL or minimum "no significant risk" level, for tobacco smoke. Any competent (and honest) expert will confirm that fact.

Third, there is no way to calculate a NOEL for tobacco smoke (because of the complexity of the chemical compound of constituent chemicals, including arsenic and lead). Any competent (and honest) expert will also confirm that fact.

As such, the "exposure exemption" defense is simply not viable in any action (like the present one) where it will be shown and YOU will have to admit that ETS is present at the business. Because there is and can be no NOEL or minimum "no significant risk level" identified for tobacco smoke, we believe Proposition 65 essentially provides for "strict liability" in any case where a business (with more than nine employees) exposes people to ETS without a warning.

Some defense counsel have informed us they believe they could defend such an action on the grounds that a bank which leases the facility cannot have sufficient "control" over the premises to be liable for the alleged violations.[4] There is no such requirement in the statute. It imposes liability whenever "in the ordinary course of business" a business with more than nine employees exposes people to a Designated Chemical without a warning.

The issue is whether during the ordinary course of business an activity occurs at the

---

[4] Even if "control" were an issue, it is moot for any violator which owns the relevant facility.

business, of which the business operator is aware, which will foreseeably result in an exposure. YOU know that smoking occurs in the Noticed areas and thus, irrespective of whether YOU can "control" that activity, YOU must provide a clear and reasonable warning. Moreover, even if it were an issue, if YOU lease the Facilites YOU indisputably "control" the activities of individuals at the business sufficiently for purposes of the statute. As a lessee YOU are required to maintain a premises liability insurance policy for each area where YOUR business is conducted. The relevant areas include not only the interior but also the outside walkways maintained by YOU as well as the areas in and around the inevitable parking lot. That is why YOUR security guards make their rounds in those areas, and also why security cameras are used (and can be lawfully used) in those noticed areas. That is also why YOU are insured for "slip and falls" which may occur on the walkways around the Facilities, including the entrances and the ATM areas.

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 Action gives notice of the alleged violations to YOU and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Consumer Defense Group Action from information now available to them. CDG will continue to investigate the numerousa other Facilities owned and/or leased by YOU and reserves the right to amend this Notice to include those additional Facilities and/or additional exposures.

If YOU believe YOU have the legal right to impede those investigations please inform CDGA through its counsel immediately and provide legal support for that view.

With the copy of this notice submitted to YOU, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: March 21, 2006

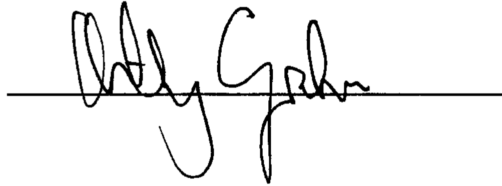
By: 

EXHIBIT A

BANK OF AMERICA

19640 Beach Blvd Huntington Beach, CA 92647	7777 Edinger Ave. Huntington Beach , CA 92647
6791 Westminster Blvd. Westminster, CA 92683	16192 Harbor Blvd. Fountain Valley, CA 92708
2701 Harbor Blvd. Costa Mesa, CA 92626	8850 Bolsa Avenue Westminster, CA 92683
17430 Brookhurst Street Fountain Valley, CA 92708	16811 Algonquin Huntington Beach, CA 92649
4500 Barranca Pkwy Irvine, CA 92604	18622 Mac Arthur Irvine, CA 92612
5812 Edinger Ave. Huntington Beach , CA 92649	6931 La Palma Buena Park, CA 90620

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.

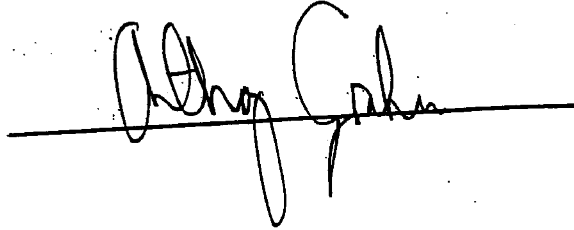
2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing party Consumer Defense Group Action.

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 20, 2006.



LIST OF CARCINOGENS

Acetaldehyde	Acetamide
Acrylonitrile	4-Aminobiphenyl
(4-Aminodiphenyl)	Aniline
Ortho-Anisidine	Arsenic (inorganic arsenic compounds)
Benz[a]anthracene	Benzene
Benzo[b]fluoranthene	Benzo[j]fluoranthene
Benzo[k]fluoranthene	Cadmium
Captan	Chromium (hexavalent compounds)
Chrysene	Dichlorodiphenyltrichloroethane (DDT)
Bibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
1,1-Dimethylhydrazine (UDMH)	Formaldehyde (gas)
Hydrazine	Lead and lead compounds
1-Naphthylamine	2-Naphthylamine
Nickel and certain nickel compounds	2-Nitropropane
N-Nitrosodi-n-butylamine	N-Nitrosodiethanolamine
N-Nitrosodiethylamine	N-Nitrosomethylethylamine
N-Nitrosomorpholine	N-Nitrosonornicotine
N-Nitrosopiperidine	N-Nitrosopyrrolidine
Ortho-Toluidine	Tobacco Smoke
Urethane (Ethyl carbamate)	

LIST OF REPRODUCTIVE TOXINS

Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	

Fact Sheet

Proposed Identification: Environmental Tobacco Smoke as a Toxic Air Contaminant

What is Environmental Tobacco Smoke?

- Environmental Tobacco Smoke (ETS) is a complex mixture of thousands of gases and fine particles emitted by the burning of tobacco products (sidestream smoke) and from smoke exhaled by the smoker (mainstream smoke).
- Many of the gaseous compounds react in the atmosphere within a relatively short period of time. But, under certain conditions, the particulate matter component of ETS has been shown to persist in the atmosphere for hours.

How did ARB identify ETS as a TAC?

- In 1997, the Office of Environmental Health Hazard Assessment (OEHHA), with input from Air Resources Board (ARB) staff, prepared a comprehensive report on the exposure and health effects of ETS that served as a starting point for developing the present toxic air contaminant (TAC) identification report.
- In 2001, the ARB entered ETS into the identification phase of the program.
- In December 2003, the first draft report was released for a 100 day public comment period.
- A public workshop was held in March 2004.
- Four Scientific Review Panel (The SRP is an independent 9-member group of scientific experts who review ARB reports scientific accuracy as required by Health and Safety Code section 39670) meetings were held from November 2004 through June 2005 to discuss and approve the ETS report.

What are the exposure and resulting health effects associated with ETS?

Despite an increasing number of restrictions on smoking and increased awareness of health impacts, exposures to ETS, especially of infants and children, continue to be a public health concern. Approximately 16% of the adult and adolescent California population smoke as compared to 23% for adults and 28% for adolescents, nationwide. ETS exposure is causally associated with a number of health effects, including effects on infants and children. ETS has a number of serious impacts on children's health including sudden infant death syndrome (SIDS), cause and exacerbation of asthma, increased respiratory tract infections, increased middle ear infections, low birth weight, and developmental impacts.

Health Effects that Result from ETS Exposure

- Developmental Effects: fetal growth, sudden infant death syndrome, and pre-term delivery
- Respiratory Effects: Acute lower respiratory tract infections in children (*e.g.*, bronchitis and pneumonia), asthma induction and exacerbation in children and adults, chronic respiratory symptoms in children, eye and nasal irritation in adults, middle ear infections in children
- **Carcinogenic Effects: lung cancer, nasal sinus cancer, breast cancer in younger primarily pre-menopausal women**
- **Cardiovascular Effects:** heart disease mortality, acute and chronic coronary heart disease morbidity, altered vascular properties

Health Impacts of ETS Exposure Each Year in California

- Over 400 additional lung cancer deaths
- Over 3,600 cardiac deaths
- About 31,000 episodes of childrens asthma
- About 21 cases of SIDS
- About 1,600 cases of low birthweight in newborns
- Over 4,700 cases of pre-term delivery

Why is ETS public exposure of concern?

- Several studies have documented indoor levels of ETS. A comparison of studies indicates smokers' homes have indoor nicotine levels averaging about 30 times higher than a non-smokers' home.
- Even higher levels are found in vehicles where average particulate concentrations are up to 10 times higher than the average particulate concentrations found in the homes of smokers.
- Many of the substances found in ETS have already been identified as toxic air pollutants and have known adverse health effects such as 1,3-butadiene, acetaldehyde, acrolein, arsenic, benzene, benzo[a]pyrene, cadmium, hexavalent chromium, and formaldehyde.
- Approximately 40, 365, and 1,900 tons per year of nicotine, respirable particles, and carbon monoxide, respectively, from tobacco smoke, are emitted into California's air each year.
- Non-smokers are exposed to ETS in several different environments, such as outside office buildings, schools, businesses, airports and amusement parks. The ARB monitored outdoor nicotine (a marker for ETS) concentrations in these environments and found that some of the highest nicotine monitoring results are comparable to those found in some smoker's homes.

- Overall, estimated average exposure concentrations for adults and children who live with smokers are several hundred times higher than those who live in non-smoking environments. Such exposures are especially of concern for young children because they are likely to recur daily and may adversely affect their physiological development.

What will happen as a result of identifying ETS as a TAC?

- Upon identification as a TAC, the ARB will develop a risk reduction report on the potential actions to reduce ETS exposures in California.
- The risk reduction report will review state and local anti-smoking programs, public education efforts regarding the effects of exposure, and identify additional opportunities to reduce risk.
- In addition, the ARB will obtain additional data to better characterize the public's exposure to ETS and associated effects.

For More Information

Please contact the ARB toll-free at (800) END-SMOG (California only) or (800) 242-4450 (outside California).

If you are handicapped, you may obtain this document in an alternative format. Contact ARB's ADA Coordinator at: (916) 322-4505 (voice); (916) 324-9531 (TDD, Sacramento area only); or (800) 700-8326 (TDD, outside Sacramento).

The energy crisis facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of sample ways you can reduce demand and cut your energy costs, see our website: http://www.arb.ca.gov

Append

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 Environmen-
tal Health Hazard Assessment, the lead agency for the implementation
of the Safe Drinking Water and Toxic Enforcement Act of 1986 (com-
monly known as "Proposition 65"). A copy of this summary must be in-
cluded 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 guid-
ance on the meaning or application of the law. The reader is directed to
the statute and its implementing regulations (see citations below) for fur-
ther information.

Proposition 65 appears in California law as Health and Safety Code Sec-
tions 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 can-
cer, 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 activi-
ties 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 require-
ment 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. Dis-
charges 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 wa-
ter systems, are exempt.

Businesses with nine or fewer employees. Neither the warning require-
ment nor the discharge prohibition applies to a business that employs a
total of nine or fewer employees.

Exposures that po[illegible] significant risk of cancer. For chemicals that are
listed as known to th[illegible]ate 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 1,00[illegible]
times the level in question.* For chemicals known to the State to caus[illegible]
birth defects or other reproductive harm ("reproductive toxicants"), [illegible]
warning is not required if the business can demonstrate that the exposur[illegible]
will produce no observable effect, even at 1,000 times the level in ques[illegible]
tion. In other words, the level of exposure must be below the "no obser[illegible]
able effect level (NOEL)," divided by a 1,000-fold safety or uncertaint[illegible]
factor. The "no observable effect level" is the highest dose level whic[illegible]
has not been associated with an observable adverse reproductive or de[illegible]
velopmental effect.

*Discharges that do not result in a "significant amount" of the liste[illegible]
chemical entering into any source of drinking water.* The prohibitio[illegible]
from discharges into drinking water does not apply if the discharger [illegible]
able to demonstrate that a "significant amount" of the listed chemical h[illegible]
not, does not, or will not enter any drinking water source, and that the di[illegible]
charge complies with all other applicable laws, regulations, permits, r[illegible]
quirements, or orders. A "significant amount" means any detectab[illegible]
amount, except an amount that would meet the "no significant risk" [illegible]
"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
brought by the Attorney General, any district attorney, or certain city
torneys (those in cities with a population exceeding 750,000). Laws[illegible]
may also be brought by private parties acting in the public interest,
only after providing notice of the alleged violation to the Attorney Ger[illegible]
al, the appropriate district attorney and city attorney, and the business [illegible]
cused of the violation. The notice must provide adequate informatio[illegible]
allow the recipient to assess the nature of the alleged violation. A no[illegible]
must comply with the information and procedural requirements speci[illegible]
in regulations (Title 22, California Code of Regulations, Section 129[illegible]
A private party may not pursue an enforcement action directly u[illegible]
Proposition 65 if one of the governmental officials noted above init[illegible]
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 [illegible]
ness may be ordered by a court of law to stop committing the viol[illegible]

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's
osition 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 Whi[illegible] Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1[illegible]
quires the Governor to publish a list of chemicals formally requ[illegible]
state or federal agencies to have testing for carcinogenicity or re[illegible]
tive toxicity, but that the state's qualified experts have not found
been adequately tested as required [Health and Safety Code 2524[illegible]

Rerum Pt. No.

Readers should note a chemical that alrea[illegible]s 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	repro, onc rat
Petroleum distillates, aromatic	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, "rtox" means reproductive toxicity, "onc" means oncogenicity.

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

* The Toxic Substances Cont[illegible]ection 4 health effects testing programs for cyclohexane and glycidyl methac[illegible]e 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
Chlorflurenol methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cycloate	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop-methyl	onc, tera
Dicrotophos	onc, repro
Dihalodialkylhydantoins	onc, repro, tera
Dimethepin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Dinocap and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchomeronate	repro
Diuron	onc

Chemical	Data Requirements
Dodine	onc, repro, tera
Endothall and salts	onc, repro, tera
Etholumesate	onc
Ethoxyquin	tera
Fenthion	tera
Fenvalerate	onc, repro, tera
Fluvalinate	repro, tera
Hydroxy-methyldithiocarbamate	tera
Imazalil	onc
Inorganic chlorates	onc, repro, tera
Inorganic sulfites	onc, repro, tera
Iodine-potassium iodide	tera
Iprodione	tera
Irgasan	onc, repro, tera
Lamprecide	onc, repro
Magnesium phosphide	onc
Malathion	onc
Maneb	onc, tera
MCPB and salts	tera
Mefluidide and salts	tera
Mepiquat chloride	tera
Metaldehyde	onc, tera
Methoxychlor	onc, repro, tera
Methyl isothiocyanate	tera
Methyl parathion	tera
Methyldithiocarbamate	repro
MGK 264	tera
Molinate	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
Propanil	onc, repro
Propetamphos	tera
Propiconazole	onc
Propylene oxide	tera
Pyrazon	onc, repro
Pyrethrin and derivatives	onc, tera
Pyrimidinone	onc, tera
Sethoxydim	onc
Siduron	onc, repro, tera
Sodium fluoride	tera
Sulfometuron-methyl	onc, tera
TBT-containing compounds	onc, tera
TCMB	onc, repro, tera
Temephos	onc, tera
Tetrachlorovinphos	onc
Tetramethrin	onc
Thiabendazole and salts	onc, repro, tera
Thidiazuron	onc, repro, tera
Thiodicarb	tera
Thiophanate-methyl	onc, tera
Thiram	onc
Triadimefon	onc, repro
Triclopyr and salts	onc
Vernolate	onc, repro

Revised: January 1, 1998

HISTORY

1. New section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Cod section 11343.8 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Cod section 11343.8 (Register 91, No. 17).
4. Editorial correction of subsection (d) (Register 91, No. 31).
5. Editorial correction of printing error (Register 91, No. 43).
6. Editorial correction instituting inadvertently omitted amendment. Submitted OAL for printing only pursuant to Government Code section 11343.8 (Regis 93, No. 20).
7. Editorial correction of printing errors (Register 93, No. 45).
8. Amendment of subsection (d) filed 8-1-94. Submitted to OAL for printing on (Register 94, No. 31).
9. Amendment of subsections (b), (c), and (d) filed 12-23-94. Submitted to O for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Governm Code section 11343.8 (Register 95, No. 52).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to OAL for pr ing only pursuant to Health and Safety Code section 25249.8 (Register 97, 5).
12. Amendment of subsections (b), (c) and (d) filed 2-13-98; operative 2-13- Submitted to OAL for printing only pursuant to Health and Safety Code sec 25249.8 (Register 98, No. 7).

[The next page is 201.]

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, nega[illegible] 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 wit[h] the terms of the approval by the United States Department of Labor of th[e] California Hazard Communication Standard, pertaining to the incorpo[ra]ration of the occupational applications of the California Safe Drinkin[g] and Toxic Enforcement Act (hereinafter Proposition 65), as set forth i[n] 62 Federal Register 31159 (June 6, 1997). This approval specificall[y] placed certain conditions on the enforcement of Proposition 65 with re[-]gard to occupational exposures, including that it does not apply to th[e] conduct of manufacturers occurring outside the State of California. An[y] person proceeding "in the public interest" pursuant to Health and Safe[ty] Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any distri[ct] attorney or city attorney or prosecutor pursuant to Health and Safe[ty] Code § 25249.7(c) (hereinafter "Public Prosecutor"), who alleges the e[x]istence of violations of Proposition 65, with respect to occupational e[x]posures as incorporated into the California Hazard Communication St[an]dard (hereinafter "Supplemental Enforcement Matter"), shall com[ply] with the requirements of this section. No Supplemental Enforcem[ent] Matter shall proceed except in compliance with the requirements of t[his] section.

(b) 22 CCR § 12903, setting forth specific requirements for the cont[ent] and manner of service of sixty–day notices under Proposition 65, in [ef]fect on April 22, 1997, is adopted and incorporated by reference. In ad[di]tion, any sixty–day notice concerning a Supplemental Enforcement M[at]ter shall include the following statement:

"This notice alleges the violation of Proposition 65 with respect to [oc]cupational exposures governed by the California State Plan for Occ[upa]tional Safety and Health. The State Plan incorporates the provisior[ns of] Proposition 65, as approved by Federal OSHA on June 6, 1997. This [ap]proval specifically placed certain conditions with regard to occupati[onal] exposures on Proposition 65, including that it does not apply to the [con]duct of manufacturers occurring outside the State of California. Th[e ap]proval also provides that an employer may use the means of compl[iance] in the general hazard communication requirements to comply with [Prop]osition 65. It also requires that supplemental enforcement is subject [to the] supervision of the California Occupational Safety and Health Adn[minis]tration. Accordingly, any settlement, civil complaint, or substa[ntive] court orders in this matter must be submitted to the Attorney Gen[eral]

(c) A Supplemental Enforcer or Public Prosecutor who comme[nces a] Supplemental Enforcement Matter shall serve a file–endorsed co[py of] the complaint upon the Attorney General within ten days after filin[g with] the Court.

(d) A Supplemental Enforcer or Public Prosecutor shall serve up[on the] Attorney General a copy of any motion, or opposition to a moti[on]

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.) Second 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)*

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 21, 2006
Place of Mailing: Costa Mesa, California

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

Kenneth D. Lewis
Chairman, CEO and President
Bank of America
100 North Tryon Street
Mail Code NC1-007-18-01
Charlotte, NC 28255

California Attorney General
(Proposition 65 Enforcement Division)
1515 Clay Street, 20th Floor
Oakland, CA

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: March 21, 2006