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April 21, 2008

Sixty Day Notice of Intent to Sue Sears Holdings Corporation, Sears Roebuck & Co. and All of Their Operating Affiliates Under Health & Safety Code §25249.6 served by Noticing Party Dr. Richard F. Sowinski

Dr. Richard F. Sowinski, a California resident (hereinafter the "Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5, *et seq* (the "Notice") to Sears Holdings Corporation, Sears Roebuck & Co. and all of their operating affiliates (hereinafter referred to collectively as "SEARS"), as well as the governmental entities on the attached proof of service. The Noticing Party, Dr. Sowinski, lives at 1457 Ramsey Circle, Walnut Creek, CA 94597, telephone number (925) 938-2693. Dr. Sowinski is represented by counsel and requests that he be contacted at the following address: Dr. Richard F. Sowinski, Attn: Anthony G. Graham, Graham & Martin LLP, 950 South Coast Drive, Ste. 220, Costa Mesa, CA 92626, telephone number (714) 850-9390, facsimile number (714) 850-9392.

This Notice is intended to inform SEARS that it is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with California Health & Safety Code Section 25249.5) (hereinafter "Proposition 65"), specifically Section 25249.6. Proposition 65 states that when a party, such as SEARS, an entity with more than ten employees, has been or is knowingly and intentionally exposing its customers and users of products it sells to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemical"), it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of the exposure to the potentially exposed persons (Health & Safety Code § 25249.6).

In October, 2003, Dr. Sowinski filed and served several 60-Day Notices with the violators as well as the Office of the California Attorney General against the gas utilities operating in California noting that, contrary to the assertions of the gas utilities, benzene is not destroyed in the appliance flame and thus the public was not being adequately warned that significant amounts of Benzene bypassed the gas appliance flame unchanged and was being inhaled. In May, 2004, the Office of the California Attorney General requested that Pacific Gas & Electric provide a Proposition 65 Warning which noted that burning natural gas produces chemicals known to the State to cause cancer, birth defects and/or reproductive harm. Within two months all of the utilities complied. Despite these facts, four years later, SEARS, one of the leading natural gas dryer manufacturers, still fails to warn that burning natural gas in their appliances is known to produce a hazardous chemical known to the State to cause cancer and reproductive toxicity.

In the ordinary course of business, SEARS, since at least April 11, 2004 through the present date, manufactures, sells and/or distributes throughout California natural gas clothes drying equipment listed on Exhibit A hereto ("the SEARS Products"). The SEARS Products produce, in the ordinary course of usage, hazardous emissions in significant amounts that poses a serious health risk to unsuspecting people. These gas dryers burn natural gas which produce benzene levels that exceed the allowable threshold exposure level set forth in California Health & Safety Code §25249.6. SEARS now and for at

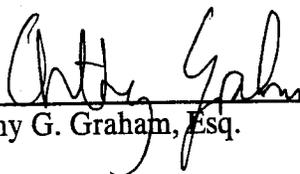
least the four years prior to this Notice has failed to provide its customers with a clear and reasonable warning of this potential exposure to benzene, a chemical known to the State to cause cancer, birth defects and/or reproductive harm.

SEARS has been manufacturing, selling and/or distributing throughout California the natural gas clothes drying equipment listed on Exhibit A hereto as well as other models used throughout the years for at least four years prior to the date of this Notice. Each of these products, when used to dry clothes, emit vapors, gases and particles containing the following Designated Chemical: benzene, a chemical known to the State of California to cause cancer and reproductive toxicity. Persons using the SEARS products will be exposed to this Designated Chemical primarily via inhalation, that is, by breathing in the chemical. SEARS however has not placed on its products nor anywhere on its internet website, a clear and reasonable warning that use of any such SEARS Product will expose the user to the Designated Chemical, Benzene. SEARS is therefore violating Health & Safety Code Section 25249.6.

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

Dated: April 21, 2008

By:



Anthony G. Graham, Esq.

EXHIBIT A

LIST OF PRODUCTS:

Dryer Model Number:

HE5 Steam 7.4 cu. ft. Super Capacity Gas Dryer
Sears item #02697729000 Mfr. model #9772
Sears item #02697731000 Mfr. model #9773
Sears item #02671489000 Mfr. model #WGD9600T
Sears item #02697721000 Mfr. model #9772
Sears item #02609226000 Mfr. model #WGD9400
Sears item #02609227000 Mfr. model #WGD9400
Sears item #02609224000 Mfr. model #WGD9400
Sears item #02603076000 Mfr. model #WGD9600T
Sears item #02697796000 Mfr. model #WGD9400S
Sears item #02678082000 Mfr. model #7808
Sears item #02678092000 Mfr. model #7809
Sears item #02697088000 Mfr. model #9708
Sears item #02697087000 Mfr. model #9708
Sears item #02697792000 Mfr. model #WGD9400S
Sears item #02657896000 Mfr. model #MGD9700S
Sears item #02657555000 Mfr. model #DLG5966
Sears item #02697255000 Mfr. model #DV337AG
Sears item #02697892000 Mfr. model #9789
Sears item #02677087000 Mfr. model #7708
Sears item #02677086000 Mfr. model #7708
Sears item #02609227000 Mfr. model #WGD9400
Sears item #02609224000 Mfr. model #WGD9400
Sears item #02603076000 Mfr. model #WGD9600T
Sears item #02697796000 Mfr. model #WGD9400S
Sears item #02678082000 Mfr. model #7808
Sears item #02678092000 Mfr. model #7809
Sears item #02697088000 Mfr. model #9708
Sears item #02697087000 Mfr. model #9708
Sears item #02697792000 Mfr. model #WGD9400S
Sears item #02657896000 Mfr. model #MGD9700S
Sears item #02657555000 Mfr. model #DLG5966
Sears item #02697255000 Mfr. model #DV337AG
Sears item #02697892000 Mfr. model #9789
Sears item #02677087000 Mfr. model #7708
Sears item #02677086000 Mfr. model #7708
Sears item #02678092000 Mfr. model #7809
Sears item #02697088000 Mfr. model #9708
Sears item #02697087000 Mfr. model #9708
Sears item #02697792000 Mfr. model #WGD9400S

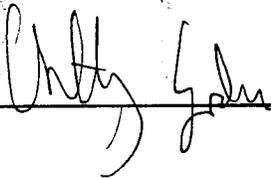
CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

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 notice 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 Dr. Richard F. Sowinski.
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 April 17, 2008.



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 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 exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" "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 be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 129). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates 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 business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 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 Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to be adequately tested as required (Health and Safety Code 25249.5).

Readers should note a chemical that already has 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
Chloronch	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, "tox" means reproductive toxicity, "onc" means oncogenicity.

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

* The Toxic Substances Control Act section 4 health effects testing programs for cyclohexane and glycidyl methacrylate 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 reformulated 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
Benzisothiazolin-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Busan 77	repro
Chlorfuretol methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cyclonic	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop-methyl	onc, tera
Dicrotophos	onc, repro
Dihalodialkylhydantoins	onc, repro, tera
Dimethipin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Dibocap and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchomeronic acid	repro
Diuron	onc

Chemical	Data Requirements
Dodine	onc, repro, lera
Endothal and salts	onc, repro, lera
Ethofumesate	onc
Ethoxyquin	lera
Fenthion	lera
Fenvalerate	onc, repro, lera
Fluralinate	repro, lera
Hydroxy-methylthiocarbamate	lera
Imazalil	onc
Inorganic chlorates	onc, repro, lera
Inorganic sulfites	onc, repro, lera
Iodine-potassium iodide	lera
Iprodione	lera
Irgason	onc, repro, lera
Lampricide	onc, repro
Magnesium phosphide	onc
Malathion	onc
Maneb	onc, lera
MCPB and salts	lera
Melthiodide and salts	lera
Mequiquat chloride	lera
Metalddehyde	onc, lera
Methoxychlor	onc, repro, lera
Methyl isothiocyanate	lera
Methyl parathion	lera
Methylthiocarbamate	repro
MGK 264	lera
Molinate	repro
Naphthalene	onc
Naphthaleneacetic acid	onc, repro
Naphthensulfate salts	lera
Napropamide	repro
Niclosamide	onc, lera
Nicotine and derivatives	onc, lera
Nitrapyrin	onc, lera
4-Nitrophenol	onc, repro, lera
Oethflinone	lera
Oil of Pennyroyal	lera
Ornadine salts	onc, repro, lera
Oxadiazon	repro
Oxyfluorfen	onc
Pebulate	lera
Perfludone	lera
Phenmedipham	onc
Phenol and salts	lera
2-Phenylphenol and salts	onc, lera
Pinc oils	lera
Piperonyl butoxide	lera
Poly (hexamethylene biguanide)	onc, repro
Polyethoxylated aliphatic alcohols	onc, repro, lera
Prometon	lera
Propachlor	onc

Chemical	Data Requirements
Propanil	onc, repro
Propetamphos	lera
Propiconazole	onc
Propylene oxide	lera
Pyrazon	onc, repro
Pyrethrin and derivatives	onc, lera
Pyrimidinone	onc, lera
Sethoxydim	onc
Siduron	onc, repro, lera
Sodium fluoride	lera
Sulfometuron-methyl	onc, lera
TBT-containing compounds	onc, lera
TCMB	onc, repro, lera
Temephos	onc, lera
Tetrachlorovinphos	onc
Tetramethrin	onc
Thiabendazole and salts	onc, repro, lera
Thidiazuron	onc, repro, lera
Thiodicarb	lera
Thiophanate-methyl	onc, lera
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 19, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Code 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 to OAL for printing only pursuant to Government Code section 11343.8 (Register 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 OAL for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 52).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 97, No. 5).
12. Amendment of subsections (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to OAL for printing only pursuant to Health and Safety Code section 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, negative 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 with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31159 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. An person proceeding "in the public interest" pursuant to Health and Safety Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code § 25249.7(c) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR § 12903, setting forth specific requirements for the content and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

"This notice alleges the violation of Proposition 65 with respect to occupational exposures 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. This approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substitute court orders in this matter must be submitted to the Attorney General.

(c) A Supplemental Enforcer or Public Prosecutor who commences a Supplemental Enforcement Matter shall serve a file-endorsed copy of the complaint upon the Attorney General within ten days after filing with the Court.

(d) A Supplemental Enforcer or Public Prosecutor shall serve upon the Attorney General a copy of any motion, or opposition to a motion,

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

I SERVED THE FOLLOWING:

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

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: April 21, 2008
Place of Mailing: Costa Mesa, California

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

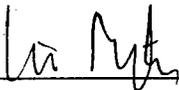
W. Bruce Johnson, President
Sears Holdings Corporation
3333 Beverly Rd.
Hoffman Estates, IL 60179

W. Bruce Johnson, President
Sears Roebuck & Co.
3333 Beverly Rd.
Hoffman Estates, IL 60179

And all entities on the attachment hereto

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

Dated: April 21, 2008



SERVICE LIST

Public Enforcers:

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Alameda County District Attorney
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Oakland, CA 94612

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Alpine County District Attorney
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The Honorable Todd Riebe
Amador County District Attorney
708 Court Street, #202
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San Andreas, CA 95249

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Lakeport, CA 95453

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Susanville, CA 96130

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The Honorable Dennis J. Herrera
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The Honorable Richard Doyle
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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