

## NOTICE OF VIOLATION

California Safe Drinking Water  
and Toxic Enforcement Act

Lead Exposures from Whistles

May 15, 2008

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health ("CEH"), 528 61<sup>st</sup> Street, Suite A, Oakland, CA 94609, (510) 594-9864. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Michael Green is the Executive Director of and a responsible individual within CEH.

### Description of Violation:

- Violator: The names and addresses of the violators are attached hereto as Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least May 15, 2005, and are ongoing.
- Provision of Proposition 65: This Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemicals involved in these violations are lead and lead compounds ("Lead"). Exposures to Lead occur from use of the products identified in this notice.
- Type of Exposure: The specific type of product causing these violations is whistles. These whistles are made of and contain Lead. A list of non-exclusive examples of this specific type of product is attached hereto as Exhibit 2.
- Description of Exposure: Use of the products identified in this notice results in human exposures to Lead. The whistles are made of metal that contain lead. The route of exposure for the violations is direct ingestion when consumers place the products in their mouths to blow the whistles, ingestion via hand to mouth contact after consumers touch, handle or use the products, and dermal absorption directly through the skin when consumers touch, handle or use the products. These exposures occur outdoors, in homes, workplaces and everywhere else throughout California where these products are used. No clear

and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Lead.

**Resolution of Noticed Claims:**

- Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against the alleged violator unless such violator enters into a binding written agreement to: (1) recalling products already sold; (2) remove the Lead from the product identified in this notice; (3) provide clear and reasonable warnings to all consumers of the product identified in this notice; and (4) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this notice to CEH and its counsel Eric S. Somers at Lexington Law Group, LLP, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111, [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com).

**Exhibit 1: List of Violators  
May 15, 2008, Notice of Violation  
Lead in Whistles**

Aspen Pet Products, Inc.  
4735 N. Florence St.  
Denver, CO 80238

Doskocil Manufacturing Co., Inc.  
4209 Barnett Blvd.  
Arlington, TX 76017

PETCO Animal Supplies Stores, Inc.  
9125 Rehco Rd.  
San Diego, CA 92121

Petsmart, Inc.  
19601 N. 27<sup>th</sup> Avenue  
Phoenix, AZ 85027

**EXHIBIT 2: Non-Exclusive Examples of the Products**

<b>Responsible Parties</b>	<b>Non-Exclusive Examples of the Products</b>	<b>Item or SKU # or Further Description</b>
Aspen Pet Products, Inc.  Dorskocil Manufacturing Co., Inc.  PETCO Animal Supplies Stores, Inc.	Aristo Silent Dog Whistle	PETCO Item ID # 000154857
Dorskocil Manufacturing Co., Inc.  Petsmart, Inc.	Top Paw Silent Whistle, Big Silent Dog Whistle	Receipt ID # 73725709865  Petsmart ID # 3120584

**CERTIFICATE OF MERIT**  
**Health & Safety Code § 25249.7(d)**

I, Eric S. Somers, hereby declare:

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

2. I am an attorney with the Lexington Law Group, LLP, and I represent the noticing party, the Center for Environmental Health ("CEH").

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiff's case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the 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 & Safety Code §25249.7(h)(2), i.e. (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

May 15, 2008



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Eric S. Somers  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## PROOF OF SERVICE BY MAIL

I declare that:

I am employed in San Francisco County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1627 Irving Street, San Francisco, California 94122.

On May 15, 2008, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;** and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisks).

I placed a true copy of this paper in an envelope addressed to:

*See Attached Service List.*

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I placed the envelope containing the above-mentioned documents for collection and mailing on May 15, 2008, following the ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on May 15, 2008, at San Francisco, California.

Signed:

  
Lindsay Fleece

## SERVICE LIST

District Attorney of Alameda  
County  
1225 Fallon Street, Room 900  
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District Attorney of Colusa  
County  
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District Attorney of Del Norte  
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Napa, CA 94559

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San Bernardino, CA 92415

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San Diego, CA 92101

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County  
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Riverside, CA 92501

District Attorney of San  
Francisco County  
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San Francisco, CA 94103

District Attorney of Sacramento  
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901 "G" Street  
Sacramento, CA 95814

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San Luis Obispo, CA 93408

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Hollister, CA 95023

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Santa Barbara, CA 93101

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Santa Cruz, CA 95060

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200 N. Main Street  
Los Angeles, CA 90012

San Diego City Attorney's  
Office  
1200 3rd Avenue #1620  
San Diego, CA 92101

San Francisco City Attorney's  
Office  
City Hall, Room 234  
San Francisco, CA 94102

California Attorney General's  
Office  
Attention: Proposition 65  
Coordinator  
1515 Clay Street, Suite 2000  
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Oakland, CA 94612

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