

**NOTICE OF VIOLATION**  
**CONSUMER EXPOSURE TO BROMODICHLOROMETHANE AND CHLOROFORM**  
**IN SAM'S CHOICE PURIFIED DRINKING WATER**

**60-Day Notice of Intent to Sue Under Proposition 65**  
for Failure to Warn Public About Chemicals Listed Under Health and Safety Code Section 25249  
(California Safe Drinking Water and Toxic Enforcement Act)

October 14, 2008

This Notice of Violation is provided to Wal-Mart Stores, Inc. and Wal-Mart Stores East, Inc. (collectively referred to herein as "Wal-Mart") pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). Proposition 65 requires that notice of intent to sue be given to a violator 60 days before the suit is filed. This Notice was served on Wal-Mart as follows:

H. Lee Scott, Jr., President and CEO  
Wal-Mart Stores, Inc.  
702 SW 8th Street  
Bentonville, AR 72716-0215

Current CEO or President  
Wal-Mart Stores East, Inc.  
702 SW 8th Street, MS #0555  
Bentonville, AR 72716-0555

This Notice is provided by the Environmental Working Group ("EWG"), a national non-profit organization whose mission is to utilize the power of public information to protect public health and the environment. Any inquiries regarding this Notice of Violation may be directed to Renee Sharp, *Environmental Working Group*, 1904 Franklin Street, Suite 703, Oakland, CA 94612, (510) 444-0973. Inquiries may also be directed to EWG's legal counsel: James Wheaton, *Environmental Law Foundation*, 1736 Franklin Street, 9<sup>th</sup> Floor, Oakland, CA 94612, (510) 208-4555; or Albert H. Meyerhoff, *Coughlin Stoia Geller Rudman & Robbins, LLP*, 9601 Wilshire Blvd., Suite 501, Los Angeles, CA 90210, (310) 859-3100; or Frank J. Janacek, *Coughlin Stoia Geller Rudman & Robbins, LLP*, 655 West Broadway, Suite 1900, San Diego, CA 92101, (619) 231-1058.

This Notice constitutes notice that Wal-Mart continues to violate the warning provisions of California's Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5, *et. seq.* (commonly referred to as "Proposition 65"). This Notice covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6. This Notice has been served on Wal-Mart and the appropriate governmental authorities.

Wal-Mart exposed and continues to expose consumers to bromodichloromethane and chloroform, both chemicals known to the State of California to cause cancer, without providing a

clear and reasonable warning. Bromodichloromethane and chloroform are found in Wal-Mart's house brand of bottled water, Sam's Choice Purified Drinking Water. Sam's Choice Purified Drinking Water containing bromodichloromethane and chloroform is manufactured, distributed and/or sold by Wal-Mart.

Consumers are exposed to bromodichloromethane and chloroform by drinking bottled Sam's Choice Purified Drinking Water that contains bromodichloromethane and chloroform. The route of exposure for these violations is direct ingestion when consumers drink the bottled water or by hand-to-mouth contact after consumers touch the bottled water and then touch their mouths. These exposures occur in homes, schools, workplaces and everywhere else throughout California where the bottled water is sold and/or consumed. No clear and reasonable warning is provided with the bottled water regarding the carcinogenic hazards of bromodichloromethane. These violations have been occurring since at least January 1, 1990 and are continuing to this day.

Pursuant to Health and Safety Code § 25249.7(d)(1), Environmental Working Group included the attached Certificate of Merit, to wit, that Environmental Working Group has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to bromodichloromethane and chloroform and that, based on that information, Environmental Working Group believes that there is a reasonable and meritorious case. Factual information sufficient to establish the basis of the Certificate of Merit is included with the Notice that is served on the Attorney General and is provided to that office in confidence and is not to be disclosed, except according to law.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, please see the attached Appendix A, entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary", which was prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. (A copy is not provided to the public enforcement agencies which receive this notice.)

Dated: 14 October 2008

by /s/ (original signature on file)  
James Wheaton,  
Environmental Law Foundation  
FOR Environmental Working Group

**CERTIFICATE OF MERIT**

California Health and Safety Code Section 25249.7(d)

I, James Wheaton, hereby declare:

This Certificate of Merit accompanies the attached sixty-day Notice of Violation in which it is alleged that the parties identified in the Notice have violated Health and Safety Code §25249.6 by exposing individuals to a chemical known to the State of California to cause cancer without providing a clear and reasonable warning. This Certificate of Merit is submitted pursuant to and in compliance with California Health and Safety Code §25249.7(d).

I am the Attorney representing the Environmental Working Group, which is the party providing the Notice of Violation. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of this Notice of Violation. Based on the 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.

The copy of the Certificate of Merit that is served on the Attorney General includes 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. This information is provided to that office in confidence and is not to be disclosed, except according to law.

Dated: October 14, 2008

/s/ (original signature on file)  
James Wheaton  
Attorney for Environmental Working Group

**APPENDIX A**  
**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" or "no observable effect" test if an individual were exposed to such an 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, but 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 12903). 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 civil 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.

## SERVICE LIST

District Attorney of Fresno County 2220 Tulare Street, #1000 Fresno, CA 93721	District Attorney of Imperial County 939 Main Street El Centro, CA 92243	District Attorney of Kings County 1400 West Lacey Hanford, CA 93230
District Attorney of Los Angeles County 210 W. Temple Street, Room 345 Los Angeles, CA 90012	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of Modoc County 204 S Court Street Alturas, CA 96101-4020
District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Inyo County P.O. Drawer D Independence, CA 93526
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482
District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Nevada County 201 Church St., Suite 8 Nevada City, CA 95959	District Attorney of Amador County 708 Court Street, #202 Jackson, CA 95642
District Attorney of Colusa County 547 Market Street Colusa, CA 95932	District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Humboldt County 825 5th Street Eureka, CA 95501
District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Lassen County 220 S. Lassen St., Ste 8 Susanville, CA 96130	District Attorney of Marin County 3501 Civic Center Dr., Room 183 San Rafael, CA 94903
District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of Monterey County PO Box 1131 Salinas, CA 93901	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92701
District Attorney of Placer County 11562 "B" Avenue Auburn, CA 95603	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814	District Attorney of San Diego County 330 West Broadway, Suite 1320 San Diego, CA 92112
District Attorney of San Luis Obispo County 1050 Monterey St, Room 450 San Luis Obispo, CA 93408	District Attorney of Santa Clara County 70 West Hedding Street San Jose, CA 95110	District Attorney of Sierra County Courthouse, P.O. Box 457 Downieville, CA 95936

District Attorney of Sonoma County 600 Administration Drive, Room 212J Santa Rosa, CA 95403	District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	District Attorney of Tuolumne County 2 South Green Sonora, CA 95370
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971	District Attorney of San Benito County 419 Fourth Street, 2 <sup>nd</sup> Floor Hollister, CA 95023
District Attorney of San Francisco County 850 Bryant Street, Rm 325 San Francisco, CA 94103	District Attorney of San Mateo County 400 County Ctr, 3 <sup>rd</sup> Fl Redwood City, CA 94063	District Attorney of Santa Cruz County 701 Ocean Street, Room 200 Santa Cruz, CA 95061
District Attorney of Siskiyou County P.O. Box 986 Yreka, CA 96097	District Attorney of Stanislaus County 800 11 <sup>th</sup> Street, Room 200 Modesto, CA 95353	District Attorney of Trinity County P.O. Box 1310 Weaverville, CA 96093
District Attorney of Ventura County 800 South Victoria Ave Ventura, CA 93009	District Attorney of Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012-3210	District Attorney of Riverside County 4075 Main Street, 1st Floor Riverside, CA 92501
District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415-0004	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney of Santa Barbara County 1105 Santa Barbara Street Santa Barbara, CA 93101
District Attorney of Shasta County 1525 Court Street, Third Floor Redding, CA 96001-1632	District Attorney of Solano County 600 Union Avenue Fairfield, CA 94533	District Attorney of Sutter County 446 Second Street Yuba City, CA 95991
District Attorney of Tulare County 221 S. Mooney Ave, Room 224 Visalia, CA 93291	District Attorney of Yolo County 301 Second Street Woodland, CA 95695	San Diego City Attorney San Diego City Attorney's Office 1200 3rd Avenue, 12th Floor San Diego, CA 92101
San Francisco City Attorney San Francisco City Attorney's Office City Hall, Room 234 San Francisco, CA 94102	San Jose City Attorney San Jose City Attorney's Office 151 West Mission Street San Jose, CA 95110	Los Angeles City Attorney Room 1800, City Hall East 200 N. Main Street Los Angeles, CA 90012
Ed Weil, Deputy Atty. General Office of the Attorney General Prop. 65 Reporting Coordinator 1515 Clay Street, Ste. 2000 Post Office Box 70550 Oakland, CA 94612-0550	*H. Lee Scott, Jr., President and CEO Wal-Mart Stores, Inc. 702 Southwest 8th Street Bentonville, AR 72716-0215	*Wal-Mart Stores, Inc. c/o CT Corporation System 818 West 7 <sup>th</sup> Street Los Angeles, CA 90017
*Wal-Mart Stores East, Inc. c/o CT Corporation System 818 West 7 <sup>th</sup> Street Los Angeles, CA 90017	*Current CEO or President Wal-Mart Stores East, Inc. 702 Southwest 8th Street MS #0555 Bentonville, AR 72716-0555	

**CERTIFICATE OF SERVICE BY MAIL**

I, Monica Aguilar-Barriga, declare that:

I am employed in Alameda County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1736 Franklin Street, 9th Floor, Oakland, CA 94612.

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 is deposited with the United States Postal Service the same day in the ordinary course of business.

On October 14, 2008, I served true copies of the following documents on the parties and governmental authorities listed in the attached service list by placing true and correct copies of the same in sealed envelopes with first class postage fully prepaid thereon and deposited in the United States Mail at Los Angeles, California:

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

**CERTIFICATE OF MERIT;**

**APPENDIX A - 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 certify under penalty of perjury that the foregoing is true and correct, and that this certification was executed on October 14, 2008, at Oakland , California.

Signed:           /s/ (original signature on file)            
MONICA AGUILAR-BARRIGA