

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Lead in Vinyl Pencil Pouches

September 25, 2009

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"), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. 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 and may be contacted through counsel for CEH identified below.

Description of Violation:

- Violators: The names and addresses of the violators are listed on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least September 25, 2006, and are continuing to this day.
- 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.
- Types of Product: The specific type of product causing this violation is pencil pouches that are made of or contain vinyl. The products are made of and contain Lead. A non-exclusive example of this specific type of product is listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to Lead. Use of the products identified in this Notice results in human exposures to Lead. The route of exposure for the violations is direct ingestion when consumers (including children) place the products or items that have been stored in the products in their mouths; ingestion via hand to mouth contact after consumers touch or handle the products or items that have been stored in the products; and dermal absorption directly through the skin when consumers touch or handle the products or items that have been stored in the products. 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 each of the alleged violators unless such violator enters into a binding written agreement to: (1) recall products already sold; (2) take effective measures to prevent unwarned Lead exposures from products sold in the future; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any of the alleged violators 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 Howard Hirsch at Lexington Law Group, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111, hhirsch at lexlawgroup.com.

EXHIBIT 1
September 25, 2009 Notice of Violation
Lead in Vinyl Pencil Pouches

Name and Address of Responsible Parties	Non-Exclusive Example of the Products	Item or SKU # or Further Description
<p>A & W Products Co., Inc. 14 Gardner Street Port Jervis, NY 12771</p> <p>CVS Caremark Corporation 1 CVS Drive Woonsocket, RI 02895</p> <p>CVS Pharmacy, Inc. 1 CVS Drive Woonsocket, RI 02895</p>	<p>A&W Zipper Pencil Pouch</p>	<p>Item No. 30019 SKU No. 0-79184-30019-0</p>

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

I, Howard Hirsch, 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.

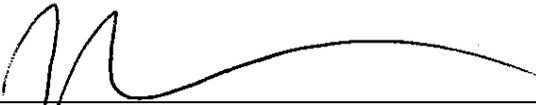
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

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.

September 25, 2009


Howard Hirsch
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

PROOF OF SERVICE BY MAIL

I declare that:

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

On September 25, 2009, 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).

On this date, I deposited fully prepaid and sealed envelopes containing the above-mentioned documents with the United States Postal Service, addressed to the following individuals:

Please see attached service list.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on September 25, 2009, at San Francisco, California.

Signed: _____
Ellen Reed

SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Room 900 Oakland, CA 94612	District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Nevada County 201 Church Street, Ste. 8 Nevada City, CA 95959
District Attorney of Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney of Kings County 1400 West Lacey Blvd. Hanford, CA 93230	District Attorney of Orange County 401 Civic Ctr Drive West Santa Ana, CA 92701
District Attorney of Amador County 708 Court Street, Ste. 202 Jackson, CA 95642	District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Placer County 10810 Justice Ctr Drive, Ste. 240 Roseville, CA 95678
District Attorney of Butte County Administration Building 25 County Center Drive Oroville, CA 95965	District Attorney of Lassen County 220 S. Lassen Street, Ste. 8 Susanville, CA 96130	District Attorney of Plumas County 520 Main Street, Room 404 Quincy, CA 95971
District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Los Angeles County 210 W. Temple Street, Ste. 1800 Los Angeles, CA 90012-3210	District Attorney of Riverside County 4075 Main Street Riverside, CA 92501
District Attorney of Colusa County 547 Market Street, Ste. 102 Colusa, CA 95932	District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814
District Attorney of Contra Costa County 900 Ward Street Martinez, CA 94553	District Attorney of Marin County 3501 Civic Center Drive, Rm. 130 San Rafael, CA 94903	District Attorney of San Benito County 419 Fourth Street, 2 nd Fl. Hollister, CA 95023
District Attorney of Del Norte County 450 H Street, Ste. 171 Crescent City, CA 95531	District Attorney of Mariposa County P.O. Box 730 Mariposa, CA 95338	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415
District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of San Diego County 330 West Broadway, Ste. 1300 San Diego, CA 92101
District Attorney of Fresno County 2220 Tulare Street, Ste. 1000 Fresno, CA 93721	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of San Francisco County 850 Bryant Street, Room 325 San Francisco, CA 94103
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Modoc County 204 S Court Street, Rm. 202 Alturas, CA 96101-4020	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95202
District Attorney of Humboldt County 825 5th Street Eureka, CA 95501	District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93546	
District Attorney of Imperial County 939 Main Street, Ste. 102 El Centro, CA 92243	District Attorney of Monterey County 230 Church Street, Bldg. 2 Salinas, CA 93901	
District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of Napa County 931 Parkway Mall Napa, CA 94559	

District Attorney of San Luis Obispo County
1050 Monterey Street, Room 450
San Luis Obispo, CA 93408

District Attorney of San Mateo County
400 County Ctr, 3rd Fl.
Redwood City, CA 94063

District Attorney of Santa Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

District Attorney of Santa Cruz County
701 Ocean Street, Room 200
Santa Cruz, CA 95060

District Attorney of Shasta County
1525 Court Street, 3rd Fl.
Redding, CA 96001-1632

District Attorney of Sierra County
Courthouse
100 Courthouse Sq., 2nd Fl.
Downieville, CA 95936

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County
675 Texas Street, Ste. 4500
Fairfield, CA 94533

District Attorney of Sonoma County
600 Administration Drive, Rm. 212J
Santa Rosa, CA 95403

District Attorney of Stanislaus County
832 12th Street, Ste. 300
Modesto, CA 95354

District Attorney of Sutter County
446 Second Street
Yuba City, CA 95991

District Attorney of Tehama County
P.O. Box 519
Red Bluff, CA 96080

District Attorney of Trinity County
P.O. Box 310
11 Court Street
Weaverville, CA 96093

District Attorney of Tulare County
221 S. Mooney Avenue, Room 224
Visalia, CA 93291

District Attorney of Tuolumne County
423 North Washington Street
Sonora, CA 95370

District Attorney of Ventura County
800 South Victoria Avenue
Ventura, CA 93009

District Attorney of Yolo County
301 Second Street
Woodland, CA 95695

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Room 800
Los Angeles, CA 90012

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

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

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

California Attorney General's Office
Attn: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550

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