

NOTICE OF VIOLATION

California Safe Drinking Water
and Toxic Enforcement Act

4-methylimidazole (4-MEI)
in Carbonated Soft Drinks Containing Caramel Coloring

January 25, 2012

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, California, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of and a responsible individual within CEH.

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 January 7, 2012, 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 Involved: The name of the listed chemical involved in these violations is 4-methylimidazole ("4-MEI"). Exposures to 4-MEI occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is carbonated soft drinks containing caramel coloring. Non-exclusive examples of this specific type of product are listed on the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to 4-MEI. Consumption of the products identified in this Notice results in human exposures to 4-MEI via ingestion. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards associated with 4-MEI exposure.

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 alleged violator enters into a binding written agreement to remedy the violations alleged herein by: (1) recalling products already sold; (2) reformulating such products to eliminate the 4-MEI exposure or taking appropriate measures to otherwise comply with Proposition 65; and (3) paying 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 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 through its counsel Mark N. Todzo (mtodzo at lexlawgroup.com) at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800.

EXHIBIT 1
January 25, 2012 Notice of Violation
4-methylimidazole (4-MEI)
in Carbonated Soft Drinks Containing Caramel Coloring

Responsible Parties	Non-Exclusive Examples of the Products
Dr. Pepper Snapple Group, Inc. 5301 Legacy Drive Plano, TX 75024	Dr. Pepper
Safeway, Inc. 5918 Stoneridge Mall Road Pleasanton, CA 94588	Refreshe Cola
Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350	Sunny Select Cola
Wal-Mart Stores, Inc. 702 SW 8th Street Bentonville, AR 72716	Diet Sam's Cola Sam's Cola

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

I, Mark N. Todzo, 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.

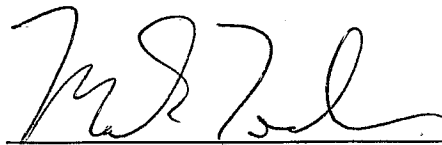
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

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.

January 25, 2012



Mark N. Todzo
Attorney for the CENTER FOR
ENVIRONMENTAL HEALTH

PROOF OF SERVICE BY MAIL AND ELECTRONIC MAIL

I declare that:

I am employed in San Francisco County, California; my business address is 503 Divisadero Street, San Francisco, California 94117. I am over the age of 18 years and not a party to the within cause and my electronic notification address is pcarey@lexlawgroup.com.

On January 25, 2012, 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 asterisk).

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.

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses set forth below at 2:17 p.m. on January 25, 2012:

Lon Wixson, Deputy District
Attorney
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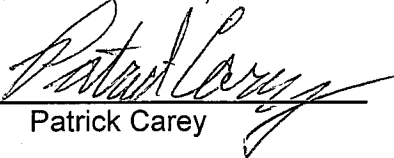
Gregory D. Totten, District Attorney Ventura
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daspecialops@ventura.org

Rod Pacheco, District Attorney
Riverside County
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Riverside, CA 92501
Prop65@rivcoda.org

The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 25, 2012, at San Francisco, California.

Signed: _____



Patrick Carey

SERVICE LIST

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California Attorney General's
Office
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Coordinator and Robert
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