# AMENDED 60 DAY NOTICE OF VIOLATION

## *SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)*

**DATE:** **May 8, 2013**
**To:** Orchard Supply Hardware, and Danco, Inc;
California Attorney General's Office;
District Attorney's Office for 58 Counties; and
City Attorney's Office for Los Angeles, San Diego, San Jose and San Francisco.

**From:** AFS Enterprises LLC

## I. INTRODUCTION

Our name is AFS Enterprises LLC. We are citizens and a Limited Liability Company of the State of California acting in the interest of the general public. We seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve public health and safety by reducing the hazardous substances contained in such items. This Notice is provided to the parties listed above pursuant to California Health & Safety Code §25249.6, et seq. ("Proposition 65"). The violations alleged by this Notice consist of product exposures, routes of exposures, and types of harm that may potentially result from exposures to the toxic chemical ("listed chemical") identified below:

| | |
|---|---|
| **Product Exposure:** | **See Section VII, Exhibit A** |
| **Listed Chemical:** | **Lead and Lead Compounds** |
| **Routes of Exposure:** | **Touch, Oral** |
| **Types of Harm:** | **Carcinogen, Causes Birth Defects and Other Reproductive Toxicity** |

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and which is the subject of this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "products." The sales of these products in California dating at least as far back as **March 19, 2013** are subject to this Notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and responsible warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemical, resulting from contact with the products, California citizenry lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

Through the act of buying, acquiring and using the products, citizens of California are exposed to the listed chemical in homes, workplaces and elsewhere throughout California where these products are used. This includes use of the products in occupational settings, such as the sale, installation, maintenance, and replacement of the products. Exposure to consumers includes, but is not limited to, when handling the product Lead comes off on the hands and is then absorbed through the skin or ingested via inhalation, hand to mouth contact, hand to food to mouth contact, or through hand to cigarette to lung contact. Exposure may continue to occur for a significant period after the initial contact. These activities cause women, pregnant women, and women of child bearing age to be exposed directly through migration of the listed chemical from the products. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that re listed as carcinogens and as reproductive toxins.

## III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's offices at the following address:

Daniel N. Greenbaum, Esq.
1467 South Holt Avenue #2
Los Angeles, CA 90035
Phone: 310.200.2631
Email: danielgreenbaumesq@gmail.com

## IV. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment ("OEHHA") in the Proposition 65 Implementation Office at (916) 445-6900. For the alleged Violator(s), I have attached a copy of "Proposition 65 in Plain Language" which has been prepared by OEHHA.

## V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, I intend to file a citizen enforcement lawsuit against the alleged Violator(s), unless such Violator enters into a binding written agreement to: (1) recall products already sold or undertake best efforts to ensure that the requisite health hazard warnings are provided to those whom have received such products; (2) provide clear and reasonable warnings for products sold in the future, or reformulate such products to eliminate the [name of chemical] exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b).

If the alleged Violator is interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III. It should be noted that neither my counsel nor I can: (1) finalize any settlement until after the 60-day Notice period

elapses; nor (2) speak for the Attorney General or any District Attorney or City Attorney who received this Notice. Therefore, while reaching an agreement that will resolve my claims, such as agreement may not satisfy the public prosecutors.

## VI. ADDITIONAL INFORMATION

| **Product** | **Retailer(s)** | **Manufacturer(s)/Distributor(s)** |
|---|---|---|
| Diverter Stem | Orchard Supply Hardware | Danco, Inc. |

Identified above is a specific example of a product recently purchased and witnesses as being available for purchase or use in California that is within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the example within the category or type of product are also provided below. I believe and allege that he sale of the offending products also has occurred without the requisite Proposition 65 "clear and reasonable warnings" at one or more locations and/or via other means including, but not limited to, transactions made over-the-counter, business to business, through the internet, and/or via catalog by the alleged Violator(s) and other distributors and retailers of the product.

## VII. EXHIBIT A

| **Product Category/Type** | **Specific Product**[1] | **Toxins** |
|---|---|---|
| Plumbing | Diverter Stem UPC 037155153527<br>Hot stem upc 037155158843<br>Cold stem upc 037155170937<br>Hot/cold stem upc 037155147006<br>Hot/cold stem upc 037155156818<br>Diverter stem upc 037155153008<br>Hot/cold stem upc 037155185313<br>Hot/cold stem upc 037155016136<br>Diverter stem upc 037155985517<br>Hot/cold stem upc 037155154203<br>Hot/cold stem upc 037155152506<br>Diverter stem upc 037155153046<br>Diverter stem upc 037155171361 | Lead and Lead Compounds |

[1] The specific example identified above is of the type of product which is the subject of this Notice. I am identifying herein for all recipients' benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example does not represent an exhaustive or comprehensive identification of any or all specific products of the type listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violator(s) are obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the alleged Violator(s)' custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

Hot/cold stem upc 037155153022
Hot/cold stem upc 037155170999
Hot/cold stem upc 037155154005
Hot/cold stem upc 037155174690
Hot/cold stem upc 037155058501
Hot/cold stem upc 037155173358
Hot/cold stem upc 037155157167

# PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this case or action. My business address is:
**1467 S Holt Ave #2 Los Angeles CA 90035**

A true and Correct copy of the foregoing document entitled **60 Day Notice of Violation** will be served or was served in the manner stated below:

I. Interested Parties (Served via Certified Mail): On May 8, 2013, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, postage prepaid, and addressed as follows:

Danco, Inc.
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Danco, Inc. c/o NCH Corporation
Attn: Legal Department
2727 Chemsearch Blvd.
Irving , TX 75062

Orchard Supply Hardware Stores Corporation
c/o CT Corporation System
818 West Seventh Street
Los Angeles, CA 90017

Orchard Supply Hardware Stores Corporation
Attn: Legal
6450 Via Del Oro
San José, CA 95119

II. California Attorney General (via website Portal): On May 8, 2013, I uploaded a true and correct copy thereof as a PDF file via the California Attorney General's website.

III. District and City Attorneys (via U.S. Mail): On May 8, 2013, I served the following persons and/or entities at the last known addresses by placing a true and correct copy thereof in a sealed envelope in the United States Mail, first class, postage prepaid, and addressed as follows

**See attached pages for full service list**

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

| May 8, 2013 | Daniel N. Greenbaum, Esq. | |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |

District Attorney
ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney
ALPINE COUNTY
PO Box 248
Markleeville, CA 96120

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708 Court Street, #202
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25 County Center Drive —
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District Attorney
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891 Mountain Ranch Road
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Fresno, CA 93721

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El Centro, CA 92243

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168 North Edwards
Independence, CA 93526

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Bakersfield, CA 93301

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KINGS COUNTY
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Hanford, CA 93230

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Lakeport, CA 95453

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220 S. Lassen Street, Suite. 8
Susanville, CA 96130

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210 W. Temple Street
Los Angeles, CA 90012

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MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

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3501 Civic Center Drive, Room 130
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Napa, CA 94559

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PLACER COUNTY
10810 Justice Center Drive
Roseville, CA 95678

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PLUMAS COUNTY
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Quincy, CA 95971

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Riverside, CA 92501

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Sacramento, CA 95812

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Hollister, CA 95023

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San Bernardino, CA 92415

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San Francisco, CA 94103

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Stockton, CA 95202

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Redwood City, CA 94063

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446 Second Street, Suite 102
Yuba City, CA 95991

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Weaverville, CA 96093

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Ventura, CA 93009

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San Jose, CA 95113

Dennis J. Herrera
City Attorney
CITY OF SAN FRANCISCO
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

# CERTIFICATE OF MERIT

I, Daniel N. Greenbaum, hereby declare:

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

(2) I am the attorney for the noticing party.

(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 exposure to the listed chemical that is 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.

| May 8, 2013 | Daniel N. Greenbaum, Esq. | |
|---|---|---|
| *Date* | *Printed Name* | *Signature* |