

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

Coconut Oil Diethanolamine Condensate (Cocamide Diethanolamine) in Shampoo

June 24, 2013

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. 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 June 22, 2013, are continuing to this day and will continue to occur as long as the products subject to this Notice of Violation are sold to California consumers.
- 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 name of the listed chemical involved in these violations is coconut oil diethanolamine condensate (cocamide diethanolamine) (hereinafter, "cocamide DEA"). Exposures to cocamide DEA occur from use of the products identified in this Notice of Violation.
- Type of Products: The specific type of products causing this violation is shampoo. 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 cocamide DEA. Use of the products identified in this Notice results in human exposures to cocamide DEA. The products contain cocamide DEA as an intentionally added ingredient. The routes of exposure for the violations include dermal absorption and ingestion by consumers (including children). These exposures occur through the reasonably foreseeable use of the shampoo when, for example, individuals apply the shampoo to their hair and scalp. No clear and reasonable warning is provided with these products regarding the exposures to cocamide DEA caused by ordinary use of the shampoo.

**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 agrees in a binding written instrument to: (1) recall products already sold; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the cocamide DEA exposures; 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 through its counsel Mark N. Todzo (mtodzo@lexlawgroup.com) at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800.

**EXHIBIT 1**  
**June 24, 2013 Notice of Violation**  
**Cocamide DEA in Shampoo**

Names and Addresses of Responsible Parties	Non-Exclusive Examples of the Products	Item or SKU # or Further Description
<p><b>Carol's Daughter Product, LLC</b>            99 Hudson Street, 6<sup>th</sup> Floor            New York, NY 10013</p> <p><b>Carol's Daughter Holdings, LLC</b>            99 Hudson Street, 6<sup>th</sup> Floor            New York, NY 10013</p> <p>960 Atlantic Avenue            Brooklyn, NY 11238</p>	<p>Carols Daughter TUI            Moisturizing Sulfate-Free            Shampoo</p>	<p>UPC No.            8-20645-20332-7</p>
<p><b>Colgate-Palmolive Company</b>            300 Park Avenue            New York, NY 10022</p>	<p>Palmolive Caprice            Especialidades Acti-            Ceramidas Shampoo</p>	<p>UPC No.            0-35000-96531-8</p>
<p><b>Colomer USA Inc.</b>            5344 Overmyer Drive            Jacksonville, FL 32254</p> <p>1515 Wazee Street, Suite 200            Denver, CO 80202</p>	<p>American Crew Classic            Daily Shampoo</p>	<p>UPC No.            0-90174-07201-9</p>
<p><b>Conair Corporation</b>            One Cummings Point Road            Stamford, CT 06902</p> <p>7250 East Oxford Way            Commerce, CA 90040</p>	<p>Rusk Sensories Brilliance            Shampoo</p>	<p>UPC No.            0-90174-13826-5</p>
<p><b>Farouk Systems, Inc.</b>            250 Pennbright Drive            Houston, TX 77090</p>	<p>Biosilk Cleanse Hydrating            Shampoo</p>	<p>UPC No.            8-22142-17071-3</p>

<p><b>Genomma Lab USA, Inc.</b>  4550 Post Oak Place Drive  Suite 326  Houston, TX 77027</p>	<p>Vanart Clasic Herbal  Essence Shampoo</p>	<p>UPC No.  8-42646-02004-8</p>
<p><b>Helen of Troy Limited</b>  1 Helen of Troy Plaza  El Paso, Texas 79912</p> <p><b>Helen of Troy L.P.</b>  1 Helen of Troy Plaza  El Paso, Texas 79912</p>	<p>Infusium 23 Color Defender  Shampoo</p>	<p>UPC No.  8-27755-01166-8</p>
<p><b>Kmart Corporation</b>  3333 Beverly Road  Hoffman Estates, IL 60179</p>	<p>Little Ones Kid's Bubble  Bath</p>	<p>UPC No.  8-83967-29356-8</p>
	<p>Infusium 23 Color Defender  Shampoo</p>	<p>UPC No.  8-27755-01166-8</p>
	<p>Vanart Clasic Herbal  Essence Shampoo</p>	<p>UPC No.  8-42646-02004-8</p>
<p><b>Lake Consumer Products, Inc.</b>  1 Pharmacial Way  Jackson, WI 53037</p> <p><b>Wisconsin Pharmacial Company,  LLC</b>  1 Pharmacial Way  Jackson, WI 53037</p>	<p>MG217 Medicated  Conditioning Shampoo</p>	<p>UPC No.  0-12277-50204-0</p>
<p><b>Midway Importing, Inc.</b>  1807 Brittmoore Road  Houston, TX 77043</p>	<p>Vanart Clasic Herbal  Essence Shampoo</p>	<p>UPC No.  8-42646-02004-8</p>

<p><b>Rite Aid Corporation</b> 30 Hunter Lane Camp Hill, PA 17011</p>	<p>MG217 Medicated Conditioning Shampoo</p>	<p>UPC No. 0-12277-50204-0</p>
<p><b>Save Mart Supermarkets</b> 1800 Standiford Avenue Modesto, CA 95350</p>	<p>Palmolive Caprice Especialidades Acti- Ceramidas Shampoo</p>	<p>UPC No. 0-35000-96531-8</p>
	<p>Mane n' Tail And Body Shampoo</p>	<p>UPC No. 0-71409-54364-1</p>
	<p>Top Care Therapeutic Anti- Dandruff Shampoo</p>	<p>UPC No. 0-36800-11847-8</p>
	<p>Biosilk Cleanse Hydrating Shampoo</p>	<p>UPC No. 8-22142-17071-3</p>
<p><b>Sephora USA, Inc.</b> First Market Tower 525 Market Street, 32<sup>nd</sup> Floor San Francisco, CA 94105</p>	<p>Carols Daughter TUI Moisturizing Sulfate-Free Shampoo</p>	<p>UPC No. 8-20645-20332-7</p>
<p><b>Straight Arrow Products, Inc.</b> 2020 Highland Avenue Bethlehem, PA 18020</p>	<p>Mane n' Tail And Body Shampoo</p>	<p>UPC No. 0-71409-54364-1</p>
<p><b>Todd Christopher International, Inc.</b> 4027 Tampa Road, Suite 3200 Oldsmar, FL 34677</p>	<p>Organix Repairing Awapuhi Ginger Shampoo</p>	<p>UPC No. 0-22796-91683-9</p>

<p><b>Topco Associates, LLC</b>  7711 Gross Point Road  Skokie, IL 60077</p> <p>1209 Orange Street  Wilmington, DE 19801</p>	<p>Top Care Therapeutic Anti-Dandruff Shampoo</p>	<p>UPC No.  0-36800-11847-8</p>
<p><b>Ultimark Products, LLC</b>  2250 Hickory Road, Suite 150  Plymouth Meeting, PA 19462</p>	<p>Prell Classic Clean Shampoo</p>	<p>UPC No.  8-55093-43013-1</p>
<p><b>Walgreen Co.</b>  300 Wilmot Road, MS 3301  Deerfield, IL 60015</p>	<p>Prell Classic Clean Shampoo</p>	<p>UPC No.  8-55093-43013-1</p>
<p><b>Wal-Mart Stores, Inc.</b>  702 SW 8<sup>th</sup> Street  Bentonville, AR 72716</p>	<p>Equate Medicated Dandruff Shampoo</p>	<p>UPC No.  0-67153-94234-2</p>

**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.

June 24, 2013



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Mark N. Todzo  
Attorney for 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 [jbanister@lexlawgroup.com](mailto:jbanister@lexlawgroup.com).

On June 24, 2013, 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 2:39 p.m. on June 24, 2013:

Lon Wixson, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[lwixson@contracostada.org](mailto:lwixson@contracostada.org)

Karyn Sinunu-Towery,  
Assistant District Attorney  
Santa Clara County  
70 West Hedding Street, West Wing  
San Jose, CA 95110  
[epu@da.sccgov.org](mailto:epu@da.sccgov.org)

Birgit Fladager, District Attorney  
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832 12<sup>th</sup> Street, Ste. 300  
Modesto, CA 95354  
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931 Parkway Mall  
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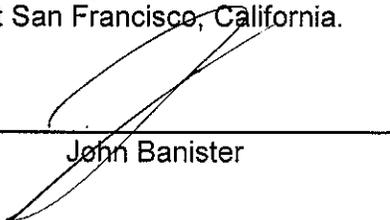
Gregory D. Totten, District Attorney Ventura  
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[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Paul E. Zellerbach, District Attorney  
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4075 Main Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto: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 June 24, 2013, at San Francisco, California.

Signed: \_\_\_\_\_

  
John Banister

## SERVICE LIST

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California Attorney General's Office  
Attention: Proposition 65  
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