

60-DAY NOTICE OF VIOLATION

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

DATE: November 7, 2014

TO: Dramm Corporation, Armstrong Garden Centers, Inc., and the public prosecutors listed on the service list accompanying the attached proof of service.

FROM: Darren Kenny

I. INTRODUCTION

I, Darren Kenny, am a citizen of the State of California acting in the interest of the general public. I am dedicated to protecting the environment, improving human health and the health of ecosystems, and supporting environmentally sound practices. This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). As noted above, notice is also being provided to the violators, Dramm Corporation and Armstrong Garden Centers, Inc. (collectively, the "Violators").

II. NATURE OF THE VIOLATION

- A. Violators: Dramm Corporation, 2000 North 18th Street, Manitowoc, WI 54220; Armstrong Garden Centers, Inc., 2200 E Route 66, Suite 200, Glendora, CA 91740.
- B. Time Period of Exposure: Violations have been occurring since at least November 7, 2013, and continue to occur to this day.
- C. Listed Chemical: Lead.
- D. Types of Harm: Birth defects and other reproductive harm.
- E. Types of Products: The specific types of products causing the violations are brass spray nozzles. A non-exclusive example of this type of product is the Dramm Sweeper Nozzle (Model 22311; 0-36434-22311-1) being sold by Violators throughout California. All products within the type covered by this Notice shall be hereinafter referred to as the "products."
- F. Routes of Exposure: Ingestion and dermal contact.
- G. Description of Exposure: The sales of these products in California dating as far back as November 7, 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 reasonable 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 citizens 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. California consumers, including children,

through the act of buying, acquiring or using the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when California citizens use, drink downstream from, or otherwise handle the products. These actions cause consumers to be exposed directly or indirectly through the routine touching of the parts or portions of the products containing readily available surface amounts of the listed chemical. Additionally, exposure can occur through the routine touching and ingesting of other materials that are contaminated with the listed chemical from the products as a result of these tasks. People likely to be exposed include both children and adults.

III. CONTACT INFORMATION

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

Lucas T. Novak, Esq.
Law Offices of Lucas T. Novak
8335 W Sunset Blvd., Suite 217
Los Angeles, CA 90069
Tel: (323) 337-9015
Email: lucas.nvk@gmail.com

IV. PROPOSITION 65 INFORMATION

For the Violator's reference, attached is a copy of "Proposition 65: A Summary" which has been prepared by Office of Environmental Health Hazard Assessment ("OEHHA"). For more information concerning the provisions of Proposition 65, contact OEHHA at (916) 445-6900.

V. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, the noticing party intends to file a Private Enforcer lawsuit against the alleged Violator 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 who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the lead exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violators are interested in resolving this dispute without resorting to expensive and time-consuming litigation, please feel free to contact counsel identified above. It should be noted that a Private Enforcer cannot: (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the Attorney General or any District or City Attorney who received this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Lucas Novak, Esq. hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health and Safety Code §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 this 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 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 this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and 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).

Dated: November 7, 2014



Lucas Novak, Esq.

PROOF OF SERVICE

I, Lucas Novak, Esq., declare under penalty of perjury:

I am an active member of the California State Bar, a citizen of the United States over the age of 18 years, and not a party to the within action; my business address is 8335 W Sunset Blvd., Suite 217, Los Angeles, CA 90069.

On November 7, 2014, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);

PROPOSITION 65: A SUMMARY (not sent to the public enforcement agencies);

CERTIFICATE OF MERIT; AND

CERTIFICATE OF MERIT ATTACHMENTS (served only on the Attorney General)

by placing a true copy thereof enclosed in a sealed envelope with postage for first class mail thereon fully prepaid in Los Angeles, California, in the United States mail addressed as follows, and to the public prosecutors listed in the attached service list:

Dramm Corporation Attn: Current CEO 2000 North 18th Street Manitowoc, WI 54220	Dramm Corporation Attn: Current CEO P.O. Box 1960 Manitowoc, WI 54221
Armstrong Garden Centers, Inc. Attn: Monte M Enright 2200 E. Route 66, Suite 200 Glendora, CA 91740	

Additionally, on this date, I uploaded the documents listed above to the California Attorney General via its website:

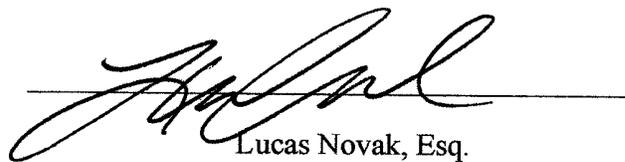
Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612-0550
<http://oag.ca.gov/prop65>

Also on this date, I transmitted via electronic mail the documents listed above to the electronic mail addresses as follows:

Lon Wixson, Deputy District Attorney 900 Ward Street Martinez, CA 94553 costerlund@contracostada.org	Dije Ndreu, Deputy District Attorney PO Box 1131 Salinas, CA 93902 Prop65DA@co.monterey.ca.us	Gary Lieberstein, District Attorney 931 Parkway Mall Napa, CA 94559 CEPD@countyofnapa.org
Paul E. Zellerbach, District Attorney 3072 Orange Street Riverside, CA 92501 Prop65@rivcoda.org	Karyn Sinunu-Towery, Assistant District Attorney 70 W Hedding St San Jose, CA 95110 epu@da.sccgov.org	Stephan R. Passalacqua, District Attorney 600 Administration Dr Sonoma, CA 95403 jbarnes@sonoma-county.org
Phillip J. Cline, District Attorney 221 S Mooney Blvd Visalia, CA 95370 Prop65@co.tulare.ca.us	Gregory D. Totten, District Attorney 800 S Victoria Ave Ventura, CA 93009 daspecialops@ventura.org	Birgit Fladager, District Attorney of Stanislaus County 832 12th Street, Ste 300 Modesto, CA 95354 Prop65@standa.org

The electronic transmissions were reported as sent and without error.

Executed on November 7, 2014, at Los Angeles, California.


Lucas Novak, Esq.

SERVICE LIST

District Attorney of Alameda County 1225 Fallon Street, Rm 900 Oakland, CA 94612	District Attorney of Alpine County 270 Laramie St., P.O. Box 248 Markleeville, CA 96120	District Attorney of Amador County 708 Court Street, Suite 202 Jackson, CA 95642
District Attorney of Butte County Administration Building 25 County Center Drive Oroville, CA 95965	District Attorney of Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney of Colusa County 547 Market Street, Ste 102 Colusa, CA 95932
District Attorney of Del Norte County 450 H Street, Ste 171 Crescent City, CA 95531	District Attorney of El Dorado County 515 Main Street Placerville, CA 95667	District Attorney of Fresno County 2220 Tulare Street, Ste 1000 Fresno, CA 93721
District Attorney of Glenn County P.O. Box 430 Willows, CA 95988	District Attorney of Humboldt County 825 5 th Street Eureka, CA 95501	District Attorney of Imperial County 940 W. Main Street, Ste 102 El Centro, CA 92243
District Attorney of Inyo County P.O. Drawer D Independence, CA 93526	District Attorney of Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney of Kings County 1400 West Lacey Blvd. Hanford, CA 93230
District Attorney of Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney of Lassen County 220 S. Lassen Street, Ste 8 Susanville, CA 96130	District Attorney of Los Angeles County 210 W. Temple Street, Ste 1800 Los Angeles, CA 90012-3210
District Attorney of Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney of Marin County 3501 Civic Center Drive, Rm. 130 San Rafael, CA 94903	District Attorney of Mariposa County 5101 Jones St., P.O. Box 730 Mariposa, CA 95338
District Attorney of Mendocino County P.O. Box 1000 Ukiah, CA 95482	District Attorney of Merced County 2222 "M" Street Merced, CA 95340	District Attorney of Modoc County 204 S. Court Street, Rm. 202 Alturas, CA 96101-4020
District Attorney of Mono County P.O. Box 617 Bridgeport, CA 93517	District Attorney of Nevada County 110 Union Street Nevada City, CA 95959	District Attorney of Orange County 401 Civic Center Drive West Santa Ana, CA 92701
District Attorney of Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	District Attorney of Plumas County 520 Main Street, Rm. 404 Quincy, CA 95971	District Attorney of Sacramento County 901 "G" Street Sacramento, CA 95814
District Attorney of San Benito County 419 Fourth Street, 2 nd Floor Hollister, CA 95023	District Attorney of San Bernardino County 316 N. Mountain View Avenue San Bernardino, CA 92415	District Attorney of San Diego County 330 West Broadway San Diego, CA 92101
District Attorney of San Francisco County 850 Bryant Street, Rm 322 San Francisco, CA 94103	District Attorney of San Joaquin County P.O. Box 990 Stockton, CA 95201	District Attorney of San Luis Obispo County 1050 Monterey Street, Rm 450 San Luis Obispo, CA 93408
District Attorney of San Mateo County 400 County Center, 3 rd Floor Redwood City, CA 94063	District Attorney of Santa Barbara County 1112 Santa Barbara Street Santa Barbara, CA 93101	District Attorney of Santa Cruz County 701 Ocean Street, Rm. 200 Santa Cruz, CA 95060
District Attorney of Shasta County 1355 West Street Redding, CA 96001	District Attorney of Sierra County Courthouse 100 Courthouse Sq., 2 nd Floor 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 Sutter County 446 Second Street Yuba City, CA 95991	District Attorney of Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	District Attorney of Trinity County P.O. Box 310 Weaverville, CA 96093	Los Angeles City Attorney's Office 800 City Hall East 200 N. Main Street Los Angeles, CA 90012
District Attorney of Yolo County 301 Second Street Woodland, CA 95695	District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	San Jose City Attorney's Office 200 East Santa Clara Street San Jose, CA 95113
San Diego City Attorney's Office 1200 Third Avenue, Ste 1620 San Diego, CA 92101	San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	

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 California Office of Environmental Health Hazard Assessment (OEHHA), 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 OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

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 and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies; for example, when exposures are sufficiently low (see below). 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. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

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. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

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. This includes all employees, not just those present in California.

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" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, 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" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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 pass into or probably

² See Section 25501(a)(4)

pass into a source of drinking water, 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" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that 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. 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. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action 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 to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.