

60-DAY NOTICE OF VIOLATION

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

DATE: March 31, 2015

TO: James Brower, Chief Executive Officer – HBC Holdings, LLC
James Brower, Chief Executive Officer – Howard Berger Co. LLC
California Attorney General’s Office;
District Attorney’s Office for 58 Counties; and
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

FROM: Anthony E. Held, Ph.D., P.E.

I. INTRODUCTION

My name is Anthony E. Held. I hold a Doctor of Philosophy degree in Environmental Engineering and I am a registered professional engineer in the State of California. I am a citizen of the State of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. 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 alleged violators, HBC Holdings, LLC and Howard Berger Co. LLC (the “Violators”). The violations covered by this Notice consist of the product exposures, routes of exposure, and type of harm potentially resulting from exposure to the toxic chemicals (“listed chemicals”) identified below, as follows:

Product Exposure: See Section VII. Exhibit A
Listed Chemicals: Di(2-ethylhexyl)phthalate (“DEHP”); Diisononyl phthalate (“DINP”)
Routes of Exposure: Ingestion, Dermal
Types of Harm: Birth Defects and Other Reproductive Harm; Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products that are causing consumer and occupational exposures in violation of Proposition 65, and that are covered by this Notice, are listed under “Product Category/Type” in Exhibit A in Section VII below. All products within the categories covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemicals from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as March 31, 2012 (for DEHP) and December 20, 2014 (for DINP). Without proper warnings regarding the toxic effects of exposures to the listed chemicals 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 listed chemicals from the reasonably foreseeable use of the products.

A. CONSUMER PRODUCT EXPOSURE (DEHP)

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. Women of childbearing age ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. Women of childbearing age are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the products.

B. CONSUMER PRODUCT EXPOSURE (DINP)

California consumers and other individuals, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical. California citizens ingest the listed chemical when they, among other activities, touch the products and transfer the listed chemical from the products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the products stops. California citizens are exposed to the listed chemical through direct dermal contact when they, among other activities, wear, handle, touch or otherwise use the products. People likely to be exposed include both children and adults.

III. CONTACT INFORMATION

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

Anthony E. Held, Ph.D., P.E.
c/o Josh Voorhees
The Chanler Group
Parker Plaza
2560 Ninth Street, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880

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's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" 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 Violators unless such Violators enter 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 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 time-consuming and expensive litigation, please feel free to contact my counsel identified in Section III above. It should be noted that neither my counsel nor I can: (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 this Notice. Therefore, while reaching an agreement with me will resolve my claims, such agreement may not satisfy the public prosecutors.

VI. ADDITIONAL NOTICE INFORMATION

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the categories or types of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the categories or types of products are also provided below. I believe and allege that the sale of the offending products also has occurred without the requisite Proposition 65 “clear and reasonable warning” 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 a catalog by the Violators and other retailers and distributors of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
H.B. Smith Tools Vinyl Electrical Tape, No. 100/2, UPC #0 75877 15234 3	Big Lots, Inc. Placer County, Northern California	HBC Holdings, LLC; Howard Berger Co. LLC
GAM Plus+ 8-Vinyl Gloves, SP-98873, UPC #0 76670 98873 3	HD Supply Repair & Remodel, LLC Sacramento County, Northern California	HBC Holdings, LLC; Howard Berger Co. LLC

VII. EXHIBIT A

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Vinyl/PVC Electrical Tape	H.B. Smith Tools Vinyl Electrical Tape, No. 100/2, UPC #0 75877 15234 3	Di(2-ethylhexyl)phthalate
Vinyl/PVC Gloves	GAM Plus+ 8-Vinyl Gloves, SP-98873, UPC #0 76670 98873 3	Diisononyl phthalate

*The specifically identified examples of the types of products that are subject to this Notice are for the recipients' benefit to assist in their investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product categories/types listed in Exhibit A. It is important to note that these examples are not meant to be an exhaustive or comprehensive identification of each specific offending product of the types listed under "Product Category/Type" in Exhibit A. Further, it is this citizen's position that the alleged Violators are obligated to continue to conduct in good faith an investigation into other specific products within the types or categories described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipients' custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is Parker Plaza, 2560 Ninth Street, Suite 214, Berkeley, CA 94710.

On March 31, 2015, I served the following documents:

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

PROPOSITION 65: A SUMMARY;

CERTIFICATE OF MERIT; AND

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE
ATTORNEY GENERAL)**

on the entities listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entities listed below and providing each envelope to a United States Postal Service Representative:

James Brower, Chief Executive Officer
HBC Holdings, LLC
324A Half Acre Road
Cranbury, NJ 08512

James Brower, Chief Executive Officer
Howard Berger Co. LLC
324A Half Acre Road
Cranbury, NJ 08512

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Electronically Uploaded to the Attorney General's website:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento

A list of addresses for each of these recipients is attached.

Executed on March 31, 2015, at Berkeley, California.



Caroline Pak

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Clifford A. Chanler, 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 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 chemicals 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: March 31, 2015



Clifford A. Chanler

SERVICE LIST

The Honorable Nancy O'Malley
Alameda County District Attorney
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Terese Drabec
Alpine County District Attorney
270 Laramie Street, PO BOX 248
Markleeville, CA 96120

The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95642

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive
Oroville, CA 95965

The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable John Poyner
Colusa County District Attorney
346 Fifth Street
Colusa, CA 95932

The Honorable Mark Peterson
Contra Costa County District Attorney
900 Ward Street
Martinez, CA 94553

The Honorable Dale Trigg
Del Norte County District Attorney
450 H Street, Room 171
Crescent City, CA 95531

The Honorable Vern Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

The Honorable Lisa Smittcamp
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2220 Tulare Street, #1000
Fresno, CA 93721

The Honorable Dwayne Stewart
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The Honorable Maggie Fleming
Humboldt County District Attorney
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The Honorable Gilbert Otero
Imperial County District Attorney
940 West Main Street, Suite 102
El Centro, CA 92243

The Honorable Thomas Hardy
Inyo County District Attorney
168 North Edwards Street
Independence, CA 93526

The Honorable Lisa Green
Kern County District Attorney
1215 Truxtun Avenue
Bakersfield, CA 93301

The Honorable Keith Fagundas
Kings County District Attorney
1400 West Lacey Boulevard
Hanford, CA 93230

The Honorable Donald Anderson
Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453

The Honorable Stacey Montgomery
Lassen County District Attorney
220 South Lassen Street, Ste. 8
Susanville, CA 96130

The Honorable Jackie Lacey
Los Angeles County District Attorney
210 West Temple Street, Suite 18000
Los Angeles, CA 90012

The Honorable David Linn
Madera County District Attorney
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Edward Berberian
Marin County District Attorney
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

The Honorable Thomas Cooke
Mariposa County District Attorney
5101 Jones Street, P.O. Box 730
Mariposa, CA 95338

The Honorable C. David Eyster
Mendocino County District Attorney
100 North State Street, P.O. Box 1000
Ukiah, CA 95482

The Honorable Larry Morse II
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Merced, CA 95340

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Napa, CA 94559

The Honorable Clifford Newell
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The Honorable R. Scott Owens
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Roseville, CA 95678

The Honorable David Hollister
Plumas County District Attorney
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Quincy, CA 95971

The Honorable Michael Hestrin
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Riverside, CA 92501

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Sacramento County District Attorney
901 G Street
Sacramento, CA 95814

The Honorable Candice Hooper
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419 4th Street, Second Floor
Hollister, CA 95203

The Honorable Michael Ramos
San Bernardino County District Attorney
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415-0502

The Honorable Bonnie Dumanis
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The Honorable George Gascon
San Francisco County District Attorney
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San Francisco, CA 94103

The Honorable Tori Verber Salazar
San Joaquin County District Attorney
222 East Weber Avenue, Room 202
Stockton, CA 95201

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San Luis Obispo, CA 93408

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San Mateo County District Attorney
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Redwood City, CA 94063

The Honorable Joyce Dudley
Santa Barbara County District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Jeffrey Rosen
Santa Clara County District Attorney
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San Jose, CA 95110

The Honorable Jeff Rosell
Santa Cruz County District Attorney
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The Honorable Laura Krieg
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The Honorable Jeff Reisig
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The Honorable Patrick McGrath
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San Diego, CA 92101

The Honorable Dennis Herrera
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1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

The Honorable Richard Doyle
Office of the City Attorney, San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550