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**BRODSKY & SMITH, LLC**

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MINEOLA, NY 11501  
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CALIFORNIA OFFICE  
9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212  
877.534.2590

June 26, 2015

Current President/CEO Delta Faucet Company of Tennessee c/o The Corporation Trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	Current President/CEO Delta Faucet Company of Tennessee 21001 Van Born Road Taylor, MI 48180-1340
Current President/CEO Masco Corporation c/o The Corporation Trust Company Corporation trust Center 1209 Orange Street Wilmington, DE 19801	Current President/CEO Ferguson Enterprises, Inc. c/o Corporation Service Company Bank of America Center, 16 <sup>th</sup> Floor 1111 East Main Street Richmond, VA 23219
Current President/CEO Ferguson Enterprises, Inc. 12500 Jefferson Avenue Newport News, VA 23602	

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING  
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.5, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC (“Brodsky Smith”) represents Gabriel Espinosa (“Espinosa”), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Gabriel Espinosa has identified a violation of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. Section 25249.6 of the statute provides that “[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual ...” Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on

whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Gabriel Espinosa sixty (60) days after effective service of this notice unless the public enforcement agencies<sup>1</sup> have commenced and are earnestly prosecuting an action to redress these violations.

**Alleged Violator(s):** The name of the company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") is:

Ferguson Enterprises, Inc.  
Delta Faucet Company of Tennessee  
Masco Corporation

**Product Category/Type:** The specific type of product causing this violation is a hose.

**Consumer Product:** The following is a non-exclusive example of the type of product causing this violation. The specifically identified example of the type of product that is the subject of this Notice is for the recipients benefit to assist in their investigation of, among other things, the magnitude of potential exposures to the listed chemicals from other items within the Product Category/Type. This example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type." Further, it is Espinosa's position that the Violators are obligated to continue to conduct in good faith an investigation into other specific products with the type or category described below that may have been manufactured, distributed, sold, shipped, stored during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase. Identified below is a specific example of a recently purchased product that is within the category or type of product that is the subject of this notice:

**Consumer Product:** The product that is the subject of this notice and the chemicals in this product identified as exceeding allowable levels are:

<i><b>Product</b></i>	<i><b>Retailer(s)</b></i>	<i><b>Manufacturer(s)/Distributor(s)</b></i>
Massage Hand Shower Hose – 4 spray settings UPC#034449670364 59348-PK Ref: 48CPK	Ferguson Enterprises, Inc.	Delta Faucet Company of Tennessee Masco Corporation

**Listed Chemicals:** This violation involves exposure to the chemical Di(2-ethylhexyl) phthalate (DEHP). On January 1, 1988, the State of California listed DEHP as a chemical known to the State to cause cancer. On October 24, 2003, the State of California listed Di(2-ethylhexyl) phthalate (DEHP) as a chemical known to cause developmental male reproductive toxicity. Both additions took place more than twenty (20) months before Espinosa served this Notice.

**Violations:** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di(2-ethylhexyl) phthalate (DEHP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause both cancer and reproductive toxicity, developmental, male.

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<sup>1</sup> The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

**Route of Exposure:** The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption of shower water containing DEHP that has leached from the interior hose, and ingestion of discharged water containing DEHP are possible exposure routes. Dermal exposure is through DEHP that has leached into the shower water passing through the shower cord. This water containing DEHP is discharged from the shower head and can be absorbed through the entire surface area of the user's body. The concentration of DEHP leaching into the water from the shower cord is dependent upon the flow rate of water through the cord and the temperature of the shower water. Elevated water temperatures can be expected during showering that will lead to increased kinetics of DEHP leaching from the shower cord into the shower water. If water is held static inside the pressurized shower cord, levels of DEHP will continue to increase in the water contained within the cord. Finally, while direct mouthing of the product does not seem likely, indirect exposure can occur if discharged water containing DEHP is ingested through activities such as hair and facial washing.

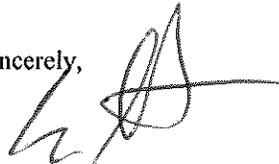
**Duration of the Violations:** Each of these ongoing violations has occurred on every day since at least May 12, 2015; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary" is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Gabriel Espinosa is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Gabriel Espinosa has retained me as legal counsel in connection with this matter. Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



\_\_\_\_\_  
Evan J. Smith

**Attachments**

Certificate of Merit

Certificate of Service

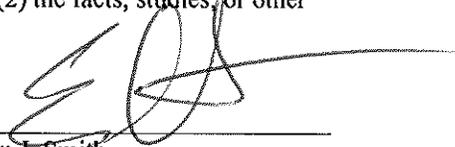
The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

**CERTIFICATE OF MERIT**  
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, 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 & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party, Gabriel Espinosa.
- (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 are the subject of the action.
- (4) Based on the information obtained through these 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 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(s) 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 & 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.

Dated: June 26, 2015

  
\_\_\_\_\_  
Evan J. Smith  
Attorney for Gabriel Espinosa

**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

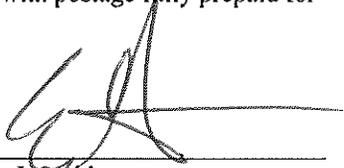
I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On June 26, 2015, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

Current President/CEO Delta Faucet Company of Tennessee c/o The Corporation Trust Company Corporation trust Center 1209 Orange Street Wilmington, DE 19801	Current President/CEO Ferguson Enterprises, Inc. c/o Corporation Service Company Bank of America Center, 16 <sup>th</sup> Floor 1111 East Main street Richmond, VA 23219
Current President/CEO Ferguson Enterprises, Inc. 12500 Jefferson Avenue Newport News, VA 23602	Current President/CEO Delta Faucet Company of Tennessee 21001 Van Born Road Taylor, MI 48180-1340
Current President/CEO Masco Corporation c/o The Corporation trust Company Corporation Trust Center 1209 Orange Street Wilmington, DE 19801	

On June 26, 2015, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on June 26, 2015, in Bala Cynwyd, Pennsylvania.

  
\_\_\_\_\_  
Evan J. Smith

# SERVICE LIST

- The Honorable Nancy O'Malley  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612
- The Honorable Stacey Montgomery  
Lassen County District Attorney  
220 South Lassen Street, Ste. 8  
Susanville, CA 96130
- The Honorable Candice Hooper  
San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203
- The Honorable Gregg Cohen  
Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080
- The Honorable Terese Drabec  
Alpine County District Attorney  
270 Laramie Street, PO BOX 248  
Markleeville, CA 96120
- The Honorable Jackie Lacey  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012
- The Honorable Michael Ramos  
San Bernardino County District Attorney  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502
- The Honorable Eric Heryford  
Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093
- The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street  
Jackson, CA 95642
- The Honorable David Linn  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637
- The Honorable Bonnie Dumanis  
San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101
- The Honorable Tim Ward  
Tulare County District Attorney  
221 South Mooney Boulevard,  
Rm 224  
Visalia, CA 93291-4593
- The Honorable Michael Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, CA 95965
- The Honorable Edward Berberian  
Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903
- The Honorable George Gascon  
San Francisco County District Attorney  
850 Bryant Street, Room 322  
San Francisco, CA 94103
- The Honorable Laura Krieg  
Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370
- The Honorable Barbara Yook  
Calaveras County District Attorney  
891 Mountain Ranch Road  
San Andreas, CA 95249
- The Honorable Thomas Cooke  
Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338
- The Honorable Tori Verber Salazar  
San Joaquin County District Attorney  
222 East Weber Avenue, Room 202  
Stockton, CA 95201
- The Honorable Gregory Totten  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009
- The Honorable John Poyner  
Colusa County District Attorney  
346 Fifth Street  
Colusa, CA 95932
- The Honorable C. David Eyster  
Mendocino County District Attorney  
100 North State Street, P.O. Box 1000  
Ukiah, CA 95482
- The Honorable Dan Dow  
San Luis Obispo County District Attorney  
1035 Palm Street, 4th Floor  
San Luis Obispo, CA 93408
- The Honorable Jeff Relsig  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695
- The Honorable Mark Peterson  
Contra Costa County District Attorney  
900 Ward Street  
Martinez, CA 94553
- The Honorable Larry Morse II  
Merced County District Attorney  
550 W. Main Street  
Merced, CA 95340
- The Honorable Stephen Wagstaffe  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063
- The Honorable Dale Trigg  
Del Norte County District Attorney  
450 H Street, Room 171  
Crescent City, CA 95531
- The Honorable Jordan Funk  
Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101
- The Honorable Joyce Dudley  
Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101
- The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901
- The Honorable Vern Plerson  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667
- The Honorable Tim Kendall  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517
- The Honorable Jeffrey Rosen  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110
- The Honorable Lisa Smittcamp  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721
- The Honorable Dean Filippo  
Monterey County District Attorney  
P.O. Box 1131  
Salinas, CA 93902
- The Honorable Jeff Rosell  
Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060
- The Honorable Dwayne Stewart  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988
- The Honorable Gary Lieberstein  
Napa County District Attorney  
P.O. Box 720  
Napa, CA 94559
- The Honorable Stephen Carlton  
Shasta County District Attorney  
1355 West Street  
Redding, CA 96001
- The Honorable Maggie Fleming  
Humboldt County District Attorney  
825 5th Street, Fourth Floor  
Eureka, CA 95501
- The Honorable Clifford Newell  
Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959
- The Honorable Lawrence Allen  
Sierra County District Attorney  
100 Courthouse Square  
Downsville, CA 95936
- The Honorable Gilbert Otero  
Imperial County District Attorney  
840 West Main Street, Suite 102  
El Centro, CA 92243
- The Honorable Tony Rackauckas  
Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701
- The Honorable James Kirk Andrus  
Siskiyou County District Attorney  
P.O. Box 988  
Yreka, CA 96097
- The Honorable Thomas Hardy  
Inyo County District Attorney  
168 North Edwards Street  
Independence, CA 93526
- The Honorable R. Scott Owens  
Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678
- The Honorable Krishna Abrams  
Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533
- The Honorable Llsa Green  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301
- The Honorable David Hollister  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971
- The Honorable Jill Ravitch  
Sonoma County District Attorney  
600 Administration Drive, Room 212J  
Santa Rosa, CA 95403
- The Honorable Keth Fagundas  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230
- The Honorable Michael Hestrin  
Riverside County District Attorney  
3960 Orange Street  
Riverside, CA 92501
- The Honorable Birgit Fladager  
Stanislaus County District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95354
- The Honorable Donald Anderson  
Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453
- The Honorable Anne Marie Schubert  
Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814
- The Honorable Amanda Hopper  
Sutter County District Attorney  
463 Second Street, Suite 102  
Yuba City, CA 95991

## 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. Please refer to 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.

The text of 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

The "Proposition 65 Governor's List." Under Proposition 65, requires the lead agency (OEHHA) Governor to publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. CThis means that chemicals are

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<sup>1</sup> 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>.

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](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65~~this law~~. Businesses that produce, use, release or otherwise engage in activities involving listed ~~these~~ 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 ~~say~~ ~~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 to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***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 Periods.*** 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 full and part-time employees, not just those present in California.

***Exposures that pose no significant risk of cancer.*** For chemicals that are listed under Proposition 65 as known to the State to cause cancer (“carcinogens”), a warning is not required if the business causing the exposure 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 causing the exposure 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 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 naturally 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 contaminant<sup>2</sup> 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 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”

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<sup>2</sup> See Section 25501(a)(4)

level for chemicals that cause reproductive toxicity, if an individual were exposed to that such an 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 Title 27 ~~the regulations~~ and in ~~Title 11,~~ sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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 of law to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done all of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:

Date: \_\_\_\_\_

Page 1

Name of Noticing Party or attorney for Noticing Party: \_\_\_\_\_

Address: \_\_\_\_\_

Phone number: \_\_\_\_\_

**SPECIAL COMPLIANCE PROCEDURE**

**PROOF OF COMPLIANCE**

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

**PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY**

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

**IMPORTANT NOTES:**

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

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Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;  
 Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR  
 Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative    Date

\_\_\_\_\_  
Name and title of signatory

*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](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.