

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Formaldehyde Exposures Resulting From Use Of Electronic Cigarette Devices

November 19, 2015

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 identified in the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least November 19, 2012, and are continuing to this day.
- 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 formaldehyde. Exposures to formaldehyde occur from use of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is electronic cigarette devices, also known as "tanks" and "vape pens." Non-exclusive examples of this specific type of product are identified in the attached Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to formaldehyde. Use of the device products identified in this Notice results in human exposures to formaldehyde. Formaldehyde is produced when electronic cigarette devices are used in the intended manner. The primary routes of exposure for the violations are inhalation and direct ingestion when consumers inhale the aerosol emitted from electronic cigarette devices. These exposures occur in homes, workplaces and everywhere else throughout California where the products are used. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of formaldehyde.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator 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; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If any alleged violator 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.

Preservation of Relevant Evidence:

This Notice also serves as a demand that each alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to formaldehyde produced through or during use of electronic cigarette devices; actual or potential exposures to formaldehyde from use of such products; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to actual or potential exposures to formaldehyde from use of such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo@lexlawgroup.com.

EXHIBIT 1
November 19, 2015 Notice of Violation
Formaldehyde Exposures Resulting From Use Of Electronic Cigarette Devices

Names and Addresses of Responsible Parties	Electronic Cigarette Devices
<p style="text-align: center;">Eonsmoke LLC 1500 Main Avenue 2nd Floor Clifton, NJ 07011</p>	<p style="text-align: center;">Eonsmoke Nova Battery Pack Mod SKU No. 8-52675-06851-5</p> <p style="text-align: center;">Eonsmoke Eternity Kit with Liquid Tank Replacement Cartridge SKU No. 8-52672-59025-5</p>
<p style="text-align: center;">FIN Branding Group, LLC 14200 Ironwood Drive Grand Rapids, MI 49534</p>	<p style="text-align: center;">FIN Electronic Cigarette Non-Rechargeable in Rich Tobacco Taste 16 mg Nicotine SKU No. 8-48666-01211-7</p>
	<p style="text-align: center;">FIN Advanced Vaping System Starter Kit with E-Cigarette in Bold Menthol SKU No. 8-48666-04136-0</p>
<p style="text-align: center;">Logic Technology Development LLC 2004 NW 25th Avenue Pompano Beach, FL 33069</p>	<p style="text-align: center;">Logic Power Series Platinum Starter Kit with Premium E-Cig SKU No. 8-54384-00456-3 Item No. SKU-PSPLKIT2.4%</p>
<p style="text-align: center;">Rite Aid Corporation 30 Hunter Lane Camp Hill, PA 17011</p>	<p style="text-align: center;">FIN Electronic Cigarette Non-Rechargeable in Rich Tobacco Taste 16 mg Nicotine SKU No. 8-48666-01211-7</p>

Spark Industries, LLC
750 Calle Plano
Camarillo, CA 93012

Vapage UTURN 650
Personal Premium Vaporizer in Black
SKU No.
8-39219-00828-2
Item No. VPK-220

Vapage Barfly Disposable E-Cig
in Red Hot Flavor
18 mg Nicotine
SKU No.
8-39219-00226-6

Cig2o Premium Vapor
ePro Premium Vaporizer Kit with
E-Liquid in Classic Tobacco
18 mg Nicotine
SKU No.
8-39219-00859-6

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.

November 19, 2015



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 cfisher@lexlawgroup.com.

On November 19, 2015, 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 2:45 P.m. on November 19, 2015:

Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Yeng Dang
Supervising Deputy District Attorney
Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110
epu@da.sccgov.org

Gary Lieberstein, District Attorney
Napa County
931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

Stephan R. Passalacqua, District Attorney
Sonoma County
600 Administration Drive, Rm. 212J
Santa Rosa, CA 95403
jbarnes@sonoma-county.org

Phillip J. Cline, District Attorney
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221 S. Mooney Avenue, Rm. 224
Visalia, CA 93291
Prop65@co.tulare.ca.us

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Riverside, CA 92501
Prop65@rivcoda.org

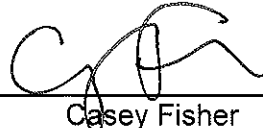
Gregory D. Totten, District Attorney Ventura
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800 South Victoria Avenue
Ventura, CA 93009
daspecialops@ventura.org

Jeff W. Reisig, District Attorney
Yolo County
301 Second Street
Woodland, CA 95695
cfepd@yolocounty.org

Gregory Alker, Assistant District Attorney
732 Brannan Street
San Francisco, CA 94103
gregory.alker@sfgov.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 November 19, 2015, at San Francisco, California.

Signed: 

Casey Fisher

SERVICE LIST

District Attorney of Alameda County
1225 Fallon Street, Rm. 900
Oakland, CA 94612

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court Street, Ste. 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 5th Street
Eureka, CA 95501

District Attorney of Imperial County
939 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

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210 W. Temple Street, Ste. 1800
Los Angeles, CA 90012-3210

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209 West Yosemite Avenue
Madera, CA 93637

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3501 Civic Center Drive, Rm. 130
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P.O. Box 730
Mariposa, CA 95338

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P.O. Box 1000
Ukiah, CA 95482

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2222 "M" Street
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204 S. Court Street, Rm. 202
Alturas, CA 96101-4020

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P.O. Box 617
Bridgeport, CA 93546

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230 Church Street, Bldg. 2 & 3
Salinas, CA 93901
P.O. Box 1131
Salinas, CA 93902

District Attorney of Nevada County
201 Commercial Street
Nevada City, CA 95959

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County
401 Civic Center Drive West
Santa Ana, CA 92701

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10810 Justice Center Drive, Ste.
240
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San Bernardino, CA 92415

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San Luis Obispo, CA 93408

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400 County Center, 3rd Fl.
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Santa Cruz, CA 95060

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Santa Maria, CA 93454

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San Francisco, CA 94102

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1355 West Street
Redding, CA 96001

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

District Attorney of Sierra County
Courthouse
100 Courthouse Sq., 2nd Fl.
Downieville, CA 95936

California Attorney General's Office
Attention: Proposition 65
Coordinator and Robert Thomas
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550

District Attorney of Siskiyou County
P.O. Box 986
Yreka, CA 96097

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