

AMENDED SUPPLEMENTAL 60-DAY NOTICE OF VIOLATION

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

DATE: April 25, 2016

TO: Philip Blake, President – Bayer Corporation
Kenneth Frazier, Chief Executive Officer – MSD Consumer Care, Inc.
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”) and supplements the 60-Day Notice of Violation sent on March 28, 2016 and amends the Supplemental 60-Day Notice of Violation sent on April 18, 2016. As noted above, notice is also being provided to the alleged violators, Bayer Corporation and MSD Consumer Care, Inc. (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 chemical (“listed chemical”) identified below, as follows:

Product Exposure: See Section VI. Exhibit A
Listed Chemical: Benzophenone
Routes of Exposure: Ingestion, Dermal, Inhalation
Type of Harm: Cancer

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer exposures in violation of Proposition 65, and that is covered by this Notice, is listed under “Product Category/Type” in Exhibit A in Section VI below. All products within the category covered by this Notice shall be referred to hereinafter as the “products.” Exposures to the listed chemical from the use of the products have been occurring without the clear and reasonable warning required by Proposition 65, dating as far back as June 22, 2013. 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 listed chemical from the reasonably foreseeable use of the products. California consumers and other individuals, through the act of buying, acquiring, utilizing, applying, or wearing the products, are exposed to the listed chemical. By way of example but not limitation, exposures occur when California citizens use, apply, wear or otherwise handle the products. These acts cause consumers and other individuals to be exposed to the

listed chemical through the routine use of all or a portion of the products containing 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, as well as from inhalation during the application of these products. People likely to be exposed include both children and adults. The California State Plan for Occupational Safety and Health incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

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. EXHIBIT A

Identified below are specific examples of products recently purchased and witnessed as being available for purchase or use in California that are within the category or type of offending product covered by this Notice. Based on publicly available information, the retailers, distributors and/or manufacturers of the examples within the category or type of product 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 manufacturers.

<i>Product Category/ Type</i>	<i>Toxins</i>	<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/ Distributor(s)</i>
Octocrylene-containing Sunscreen (products claiming a Sun Protection Factor)	Benzophenone	Coppertone Sport High Performance Sunscreen UVA/UVB Broad Spectrum SPF 30 (Octocrylene 10%), #0 418871 9	Walgreen Co.; Drugstore.com, Inc. (http://www.drugstore.com)	Bayer Corporation; Bayer HealthCare LLC; MSD Consumer Care, Inc.
		Value Pack Coppertone Sport High Performance Clear Continuous Spray Sunscreen UVA/UVB Broad Spectrum SPF 50 & Coppertone Sunscreen Lotion Oil Free Faces 50+ (Octocrylene 10%), UPC # 0 414461 8, UPC # 0 41100 70728 4	Walgreen Co. Alameda County, California	Bayer Corporation; Bayer HealthCare LLC; MSD Consumer Care, Inc.
		Coppertone Sport Sunscreen Stick 55 (Octocrylene 10%), #37127-02, UPC #0 41100 70373 6	Target Corporation Alameda County, California	Bayer Corporation; Bayer HealthCare LLC; MSD Consumer Care, Inc.
		Coppertone Sunscreen Stick Water Babies 55 (Octocrylene 10%), #37123-02, UPC #0 41100 70363 7	Target Corporation Sacramento County, California	
		Coppertone Sport High Performance Clear Continuous Spray Sunscreen 100+ (Octocrylene 10%), #37591-06, UPC #0 412831 9	Walgreen Co. Alameda County, California	

VI. EXHIBIT A (continued)

<i>Product Category/ Type</i>	<i>Toxins</i>	<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/ Distributor(s)</i>
Octocrylene-containing Sunscreen (products claiming a Sun Protection Factor)	Benzophenone	Bain de Soleil Mega Tan SPF 4 Sunscreen		Bayer Corporation; Bayer HealthCare LLC; MSD Consumer Care, Inc.

*The specifically identified examples of the type of product that is 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 category/type 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 type 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 type or category 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 April 25, 2016, I served the following documents:

AMENDED SUPPLEMENTAL 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:

Philip Blake, President
Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205

Philip Blake, President
Bayer Corporation
P.O. Box 135
Pittsburgh, PA 15230

Kenneth Frazier, Chief Executive Officer
MSD Consumer Care, Inc.
3030 Jackson Avenue
Memphis, TN 38112

Kenneth Frazier, Chief Executive Officer
MSD Consumer Care, Inc.
P.O. Box 219
Memphis, TN 38101

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 April 25, 2016, at Berkeley, California.



Caroline Liang

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 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: April 25, 2016



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
Butte 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
Marin 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
Fresno County District Attorney
2220 Tulare Street, #1000
Fresno, CA 93721

The Honorable Dwayne Stewart
Glenn County District Attorney
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Willows, CA 95988

The Honorable Maggie Fleming
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825 5th Street, Fourth Floor
Eureka, CA 95501

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
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The Honorable Jackie Lacey
Los Angeles County District Attorney
210 West Temple Street, Suite 18000
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The Honorable David Linn
Madera County District Attorney
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Edward Berberian
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The Honorable Thomas Cooke
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The Honorable C. David Eyster
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100 North State Street, P.O. Box 1000
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The Honorable Larry Morse II
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Merced, CA 95340

The Honorable Jordan Funk
Modoc County District Attorney
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The Honorable Tim Kendall
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The Honorable Dean Flippo
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Napa, CA 94559

The Honorable Clifford Newell
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Nevada City, CA 95959

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Orange County District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable R. Scott Owens
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Roseville, CA 95678

The Honorable David Hollister
Plumas County District Attorney
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Michael Hestrin
Riverside County District Attorney
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Riverside, CA 92501

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Sacramento, CA 95814

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419 4th Street, Second Floor
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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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San Diego, CA 92101

The Honorable George Gascon
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850 Bryant Street, Room 322
San Francisco, CA 94103

The Honorable Tori Verber Salazar
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222 East Weber Avenue, Room 202
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The Honorable Jeffrey Rosen
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The Honorable Jeff Rosell
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The Honorable Stephen Carlton
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The Honorable Gregg Cohen
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The Honorable Patrick McGrath
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915 I Street, 4th Floor
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The Honorable Dennis Herrera
Office of the City Attorney, San Francisco
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