

AMENDED NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Acrylamide in Fried or Baked Potato Based Snack Foods

July 27, 2016

This Amended Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d). This Amended Notice supercedes the Notice of Violation previously issued on June 14, 2016 (Attorney General No. 2016-00572).

- 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 Amended Notice of Violation is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 302, Oakland, California, (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:
 - Great American Foods, Inc.**
433 Airport Blvd.
Suite 404
Burlingame, CA 94010
 - Safeway, Inc.**
Tax Division
5918 Stoneridge Mall Road
Pleasanton, CA 94588
- Time Period of Exposure: The violations have been occurring since at least June 14, 2013, and are ongoing.
- Provision of Proposition 65: This Amended Notice of Violation covers the "warning provision" of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical Involved: The name of the listed chemical involved in these violations is acrylamide. Exposures to acrylamide occur from consumption of the products identified in this Amended Notice.
- Type of Product: The specific type of product causing these violations is fried or baked potato based snack foods ("Snack Foods"). Potatoes can be found in the products in various forms, including but not limited to sliced potatoes, dehydrated potatoes, potato flour, potato flakes, and potato starch. A non-exclusive example of this specific type of product is the Pik-Nik Original Shoestring Potatoes, SKU No. 0-74923-40527-3. With respect to Safeway, Inc., the type of product causing these violations is limited to Snack Foods sold by Great

American Foods, Inc.

- Description of Exposure: This Amended Notice addresses consumer exposures to acrylamide. Consumption of the products identified in this Amended Notice results in human exposures to acrylamide. The products contain acrylamide, which is formed during the manufacturing process when the products are cooked at high temperatures. The primary route of exposure for the violations is direct ingestion when consumers eat the products. These exposures occur in homes, workplaces and everywhere else throughout California where the products are consumed. No clear and reasonable warning is provided with these products regarding the carcinogenic hazards of acrylamide.

Resolution of Noticed Claims:

Based on the allegations set forth in this Amended 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 or reformulate such products to eliminate the acrylamide exposures; 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 Amended 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 the presence or potential presence of acrylamide in Snack Foods; purchase and sales information for such products; efforts to comply with Proposition 65 with respect to such products; communications with any person relating to the presence or potential presence of acrylamide in such products; and representative exemplars of each unit of any such products sold by each alleged violator in the year preceding this Amended Notice.

Please direct any inquiries regarding this Amended Notice to CEH's counsel Howard Hirsch at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, hhirsch at lexlawgroup.com.

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Howard Hirsch, 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.

July 27, 2016



Howard Hirsch
Attorney for the 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 July 27, 2016, 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 11:53 A.m. on July 27, 2016:

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
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931 Parkway Mall
Napa, CA 94559
CEPD@countyofnapa.org

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600 Administration Drive, Rm. 212J
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Prop65@rivcoda.org

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gregory.alker@sfgov.org

Dije Ndreu, Deputy District Attorney
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1200 Aguajito Road
Monterey, CA 93940
Prop65DA@co.monterey.ca.us


Anne Marie Schubert, District Attorney
Sacramento County
901 G Street
Sacramento, CA 95814
Prop65@sacda.org

Tori Verber Salazar, District Attorney
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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 July 27, 2016, 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
346 Fifth Street, Suite 101
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

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
P.O. Box 730
Mariposa, CA 95338

District Attorney of Mendocino
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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 93546

District Attorney of Nevada County
201 Commercial 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
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520 Main Street, Rm. 404
Quincy, CA 95971

District Attorney of San Benito
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419 Fourth Street, 2nd Fl.
Hollister, CA 95023

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316 N. Mountain View Avenue
San Bernardino, CA 92415

District Attorney of San Diego
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330 West Broadway, Ste. 1300
San Diego, CA 92101

District Attorney of San Mateo
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400 County Center, 3rd Fl.
Redwood City, CA 94063

District Attorney of Santa Cruz
County
701 Ocean Street, Rm. 200
Santa Cruz, CA 95060

District Attorney of Santa
Barbara County
1112 Santa Barbara Street
Santa Barbara, CA 93101

District Attorney of Shasta
County
1355 West Street
Redding, CA 96001

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

District Attorney of Siskiyou
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Yreka, CA 96097

District Attorney of Solano County
675 Texas Street, Ste. 4500
Fairfield, CA 94533

President*
Great American Foods, Inc.
433 Airport Blvd.
Suite 404
Burlingame, CA 94010

District Attorney of Stanislaus County
832 12th Street, Ste. 300
Modesto, CA 95354

Robert L. Edwards, CEO*
Safeway, Inc.

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Red Bluff, CA 96080

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District Attorney of Tuolumne County
423 N. Washington Street
Sonora, CA 95370

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm. 800
Los Angeles, CA 90012

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

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

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