

AMENDED NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Acrylamide in Hash Brown Potato Products, Including but not
Limited to Hash Browns, Hash Brown Patties, Tater Tots and Tater Puffs

August 26, 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 Notice amends the Notice of Violation previously issued on July 27, 2016 (Attorney General No. 2016-00749).

- 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 identified on the attached Exhibit 1.
- Time Period of Exposure: The violations have been occurring since at least July 27, 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 hash brown potato products, including but not limited to hash browns, hash brown patties, tater tots and tater puffs ("Hash Browns"). Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. With respect to alleged violator Save Mart Supermarkets, the type of product causing these violations is limited to Hash Browns sold by J.R. Simplot Company. With respect to The Kroger Co. and Ralphs Grocery Company, the type of product causing these violations is limited to Hash Browns sold under the Kroger brand name.
- Description of Exposure: This Amended Notice addresses consumer exposures to acrylamide. Consumption of the products subject to this Amended Notice results in human exposures to acrylamide. The products contain acrylamide, which is formed 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 Hash Browns; 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 variety 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.

EXHIBIT 1
August 26, 2016 Amended Notice of Violation
Acrylamide in Hash Brown Potato Products, Including but not
Limited to Hash Browns, Hash Brown Patties, Tater Tots and Tater Puffs

Names and Addresses of Responsible Parties	Further Limitation on Type of Product	Non-Exclusive Examples of the Products
<p>J.R. Simplot Company 999 W. Main Street Suite 1300 Boise, ID 83702</p>	<p>n/a</p>	<p>Lynden Farms Hash Brown Potato Patties SKU No. 0-71179-49190-6</p>
<p>The Kroger Co. 1014 Vine Street Cincinnati, OH 45202</p> <p>Ralphs Grocery Company 1014 Vine Street Cincinnati, OH 45202</p>	<p>Kroger brand</p>	<p>Kroger Seasoned Hash Brown Patties SKU No. 0-11110-87589-1</p>
<p>Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350</p>	<p>Sold by J.R. Simplot Company</p>	<p>Lynden Farms Hash Brown Potato Patties SKU No. 0-71179-49190-6</p>

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.

August 26, 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 August 26, 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 11:51 A.m. on August 26, 2016:

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

Michelle Latimer, Program Coordinator
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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 August 26, 2016, at San Francisco, California.

Signed: _____



Casey Fisher

SERVICE LIST

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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
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District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

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891 Mountain Ranch Road
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346 Fifth Street, Suite 101
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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
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