

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Acrylamide in Fried or Baked Potato or Sweet Potato Based Snack Foods

January 12, 2017

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, 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 January 12, 2014, and are ongoing.
- 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 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 Notice.
- Type of Product: The specific type of product causing these violations is fried or baked potato or sweet potato based snack foods ("Snack Foods"). Potatoes or sweet potatoes can be found in the products in various forms, including but not limited to sliced potatoes, dehydrated potatoes, potato flour, potato flakes, potato starch, sliced sweet potatoes, sweet potato flour, and sweet potato powder. Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. With respect to alleged violator Jet.com, Inc., the type of product causing these violations is limited to Snack Foods sold by Snikiddy, LLC, Utz Quality Foods, Inc., The H. T. Hackney Co., Uncle Rays, LLC, Liway Marketing Corp., or Herr Foods Inc. With respect to Sunflower Farmers Markets, LLC, the type of product causing these violations is limited to Snack Foods sold by Old Lyme Gourmet Company or Wholesome Goodness, LLC. With respect to Target Corporation, the type of product causing these violations is limited to Snack Foods either sold under the Archer Farms or Simply Balanced brand names or sold by Wise Foods, Inc. With respect to Walgreen Co., the type of product causing these violations is limited to Snack Foods sold under the Good & Delish brand.

- Description of Exposure: This Notice addresses consumer exposures to acrylamide. Consumption of the products subject to this 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 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 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 lot of each variety of any such products sold by each alleged violator since one year prior to the date of this Notice.

Please direct any inquiries regarding this 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
January 12, 2017 Notice of Violation
Acrylamide in Fried or Baked Potato or Sweet Potato Based Snack Foods

Names and Addresses of Responsible Parties	Further Limitation on Type of Product	Non-Exclusive Examples of the Products
<p>The H. T. Hackney Co. 502 S. Gay Street, Suite 300 Knoxville, TN 37902</p> <p>Uncle Rays, LLC 502 S. Gay Street, Suite 300 Knoxville, TN 37902</p>	n/a	<p>Uncle Ray's Sour Cream & Onion Flavored Potato Chips SKU No. 6-14156-06021-6</p>
<p>Herr Foods Inc. 20 Herr Drive P.O. Box 300 Nottingham, PA 19362</p>	n/a	<p>Herr's Crisp 'N Tasty Potato Chips SKU No. 0-72600-00574-7</p>
<p>Jet.com, Inc. 221 River Street, Floor 8 Hoboken, NJ 07030</p>	<p>Sold by Snikiddy, LLC, Utz Quality Foods, Inc., The H. T. Hackney Co., Uncle Rays, LLC, Liway Marketing Corp., or Herr Foods Inc.</p>	<p>Snikiddy Baked Fries in Cheddar Cheese SKU No. 8-91803-00174-1</p>
		<p>Uncle Ray's Sour Cream & Onion Flavored Potato Chips SKU No. 6-14156-06021-6</p>
		<p>Oishi Crispy Patata Baked Potato Flavor SKU No. 4-800194-177863</p>
		<p>Herr's Crisp 'N Tasty Potato Chips SKU No. 0-72600-00574-7</p>
<p>Old Lyme Gourmet Company 16 Grove Street Deep River, CT 06417</p>	n/a	<p>Deep River Snacks Original Salted Kettle Cooked Potato Chips SKU No. 8-50668-00081-8</p>
<p>Poppy Industries Canada Inc. 4920 de Maisonneuve Ouest Suite 11 Westmount, QC H3Z 1N1 Canada</p>	n/a	<p>Raley's Purely Made Sweet Potato Tortilla Chips SKU No. 0-46567-02901-6</p>

Sunflower Farmers Markets, LLC 5455 East High Street Suite 111 Phoenix, AZ 85054	Sold by Old Lyme Gourmet Company or Wholesome Goodness, LLC	Deep River Snacks Original Salted Kettle Cooked Potato Chips SKU No. 8-50668-00081-8
		Wholesome Goodness Kettle-Cooked Potato Chips with Sea Salt SKU No. 8-15506-01545-4
Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403	Sold under the Archer Farms or Simply Balanced brands or sold by Wise Foods, Inc.	Archer Farms Black Pepper & Sea Salt Potato Chips SKU No. 0-85239-06856-4
		Simply Balanced Sea Salt Kettle Cooked Potato Chips SKU No. 4-90710-60651-5 Item No. 50592344
		Wise Kettle Cooked 40% Reduced Fat Feta Cheese Flavored Potato Chips SKU No. 0-41262-27173-9 Item No. 51383715
Walgreen Co. 161 Washington Street Suite 1400 Conshohocken, PA 19428	Good & Delish brand	Good & Delish Sea Salt Kettle Cooked Potato Chips SKU No. 0-49022-68532-1
Warnock Food Products, Inc. 20237 Masa Street Madera, CA 93638	n/a	Raley's Purely Made Sweet Potato Tortilla Chips SKU No. 0-46567-02901-6
Wholesome Goodness, LLC 6522 Saddle Ridge Lane Long Grove, IL 60047	n/a	Wholesome Goodness Kettle-Cooked Potato Chips with Sea Salt SKU No. 8-15506-01545-4
Wise Foods, Inc. 228 Raseley Street Berwick, PA 18603	n/a	Wise Kettle Cooked 40% Reduced Fat Feta Cheese Flavored Potato Chips SKU No. 0-41262-27173-9 Item No. 51383715

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.

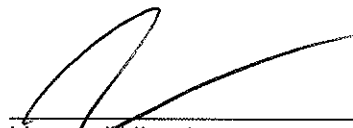
2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

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.

January 12, 2017



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 ckasher@lexlawgroup.com.

On January 12, 2017, 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 2:34 P.m. on January 12, 2017:

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

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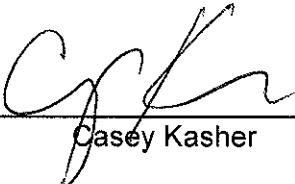
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The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on January 12, 2017, at San Francisco, California.

Signed: 
Casey Kasher

SERVICE LIST

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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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