

60 DAY NOTICE OF VIOLATION

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

DATE: October 23, 2017

To: All Parties Listed On Attachment "A"

and

California Attorney General's Office;
District Attorney's Office for 58 counties;
City Attorney's for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;

From: Ms. Evelyn Wimberley

- I. My name is Evelyn Wimberley. 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 parties listed above pursuant to California Health & Safety Code §25249.6 et seq. ("Proposition 65"). The violations covered by this Notice consist of the product exposures, routes of exposures, and types of harm potentially resulting from exposure to the toxic chemical ("listed chemical") identified below, as follows:

Product Exposure:	See Section VII. Exhibit A
Listed Chemical:	Carbon Monoxide, Soot
Routes of Exposure:	Inhalation, Ingestion
Types of Harm:	Carcinogen, Causes Birth Defects and Other Reproductive Harm

II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer and occupational exposures in violation of Proposition 65, and that is covered by this Notice, is listed under "Product Category/Type" in Exhibit A in Section VII below. All products within the type covered by this Notice shall be referred to hereinafter as the "Products." The sales of these products by ACE Hardware Corporation in California dating at least as far back as October 19, 2017 are subject to this notice. As a result of the sales of these products, exposures to the listed chemical have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals, resulting from use and contact with the products, California citizen lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemical from the reasonably foreseeable use of the products.

California citizens, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemical in homes, workplaces and everywhere else throughout California where these products are used. By way of example but not limitation, exposures occur when consumers use these products and inhale the combustion by-products associated with burning wood or other fuel. These violations occur during foreseeable use of the products and when the product is used as intended. These activities cause men, women, children, pregnant women, and women of child bearing age to be exposed directly to the listed chemicals from the products. People likely to be exposed are women, men, infants and children. These violations and threatened violations pertain to Proposition 65 chemicals that are listed as carcinogens and as reproductive toxins.

III. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address:

Mrs. Evelyn Wimberley
c/o Mr. Stephen Ure
Law Offices of Stephen Ure, PC.
11622 El Camino Real, Suite 100
San Diego, CA 92130
Tel: 619-235-5400

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 Violator's 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 Violator unless such Violator enters 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 whom have received such products; (2) provide clear and reasonable warnings for products sold in the future to eliminate the unknowing exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is interested in resolving this dispute without resort 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. ADDITIONAL INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER TITLE 22 CAL. CODE REGS., §12903 (b)(4).

Identified below is a specific example of a product recently purchased and witnessed as being available for purchase or use in California that is 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 example 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 warnings" 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 catalog by the Violator and other distributors and retailers of the manufacturer.

Product**	Retailer(s)	Manufacturer(s)/Distributor(s)
UPC 862238000128	Ace Hardware Corporation	Black Diamond International Forest
Black Diamond Charwood		Group, LLC

VII. EXHIBIT A

Product Category/Type
Outdoor/Charcoal

Such As*
UPC 862238000128

Toxins
Carbon Monoxide, Soot

*The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category/type listed in Exhibit A. It is important to note that this example is 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 Violator is 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 recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase.

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at:

Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at:

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies; for example, when exposures are sufficiently low (see below). The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: _____ for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in a Food. Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

² See Section 25501(a)(4)

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at Prop65PublicComments@oehha.ca.gov.

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

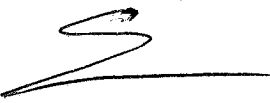
CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Stephen Ure, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has 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 Violator 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: October 23, 2017



Stephen Ure

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 11622 El Camino Real, Suite 100 San Diego, CA 92130.

On October 23, 2017, I served the following documents:

**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 Violator 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 Violator and providing such envelope to a United States Postal Service Representative:

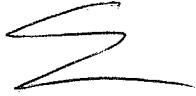
Violators: Those Parties Listed on Attachment "A".

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below and served as follows:

Via Electronic Filing on http://oag.ca.gov/prop65	The Attorney General of the State of California
By placing each envelope in a United States Postal Service Box, first class postage pre-paid	The District Attorneys for each of the 58 California Counties and; The City Attorneys for Los Angeles, San Diego, San Jose, San Francisco, Sacramento

A list of addresses for each of the recipient's is attached.

Executed on October 23, 2017 San Diego, California


Stephen Ure

SERVICE LIST

Alameda County District Attorney 1225 Fallon Street, Room 900 Oakland, CA 94612	Lassen County District Attorney 2950 Riverside Drive, Suite 102 Susanville, CA 96130	San Benito County District Attorney 419 4th Street Hollister, CA 95023	Tehama County District Attorney 444 Oak Street, Room L Red Bluff, CA 96080
Alpine County District Attorney P.O. Box 248 Markleeville, CA 96120	Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	San Bernardino County District Attorney 303 West 3rd Street, 6th Floor San Bernardino, CA 92415-0502	Trinity County District Attorney P.O. Box 310 Weaverville, CA 96093
Amador County District Attorney 708 Court Street Jackson, CA 95642	Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101	Tulare County District Attorney 221 South Mooney Boulevard, Rm 224 Visalia, CA 93291-4593
Butte County District Attorney 25 County Center Drive, Suite 245 Oroville, CA 95965	Marin County District Attorney 3501 Civic Center Drive, Suite 130 San Rafael, CA 94903	San Francisco County District Attorney 850 Bryant Street, Room 322 San Francisco, CA 94103	Tuolumne County District Attorney 423 North Washington Street Sonora, CA 95370
Calaveras County District Attorney 891 Mountain Ranch Road San Andreas, CA 95249	Mariposa County District Attorney P.O. Box 730 Mariposa, CA 95338	San Joaquin County District Attorney P.O. Box 990 Stockton, CA 95201	Ventura County District Attorney 800 South Victoria Avenue, Suite 314 Ventura, CA 93009
Colusa County District Attorney 348 Fifth Street, Suite 101 Colusa, CA 95932	Mendocino County District Attorney P.O. Box 1000 Ukiah, CA 95482	San Luis Obispo County District Attorney 1035 Palm Street, 4th Floor San Luis Obispo, CA 93408	Yolo County District Attorney 301 Second Street Woodland, CA 95695
Contra Costa County District Attorney 900 Ward Street Martinez, CA 94553	Merced County District Attorney 550 W. Main Street Merced, CA 95340	San Mateo County District Attorney 400 County Center Redwood City, CA 94063	Yuba County District Attorney 215 Fifth Street Marysville, CA 95901
Del Norte County District Attorney 450 H Street, Room 171 Crescent City, CA 95531	Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101	Santa Barbara County District Attorney 1112 Santa Barbara Street Santa Barbara, CA 93101	Office of the City Attorney, Los Angeles James K. Hahn City Hall East 200 North Main Street, 8th Floor Los Angeles, CA 90012
El Dorado County District Attorney 515 Main Street Placerville, CA 95667	Mono County District Attorney P.O. Box 617 Bridgeport, CA 93517	Santa Clara County District Attorney 70 West Hedding Street, West Wing San Jose, CA 95110	Office of the City Attorney, Sacramento 915 I Street, 4th Floor Sacramento, CA 95814
Fresno County District Attorney 2220 Tulare Street, Suite 1000 Fresno, CA 93721	The Honorable Dean Flippo Monterey County District Attorney P.O. Box 1131 Salinas, CA 93902	Santa Cruz County District Attorney 701 Ocean Street, Room 200 Santa Cruz, CA 95060	Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1620 San Diego, CA 92101
Glenn County District Attorney P.O. Box 430 Willows, CA 95988	Napa County District Attorney Carthers Building 931 Parkway Mall Napa, CA 94559	Shasta County District Attorney 1355 West Street Redding, CA 96001	Office of the City Attorney, San Francisco City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
Humboldt County District Attorney 825 5th Street, Fourth Floor Eureka, CA 95501	Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959	Sierra County District Attorney P.O. Box 457 Downville, CA 95936	The Honorable Richard Doyle Office of the City Attorney, San Jose 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
Imperial County District Attorney 940 West Main Street, Suite 102 El Centro, CA 92243	Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	Siskiyou County District Attorney 311 4th Street Yreka, CA 96097	
Inyo County District Attorney 188 North Edwards Street Independence, CA 93526	Placer County District Attorney 10810 Justice Center Drive, Suite 240 Roseville, CA 95678	Solano County District Attorney 875 Texas Street, Suite 4500 Fairfield, CA 94533	
Kern County District Attorney 1215 Truxtun Avenue, 4th Floor Bakersfield, CA 93301	Plumas County District Attorney 520 Main Street, Room 404 Quincy, CA 95971	Sonoma County District Attorney 800 Administration Drive, Room 212 J Santa Rosa, CA 95403	
Kings County District Attorney 1400 West Lacey Boulevard Hanford, CA 93230	Riverside County District Attorney 3960 Orange Street Riverside, CA 92501	Stanislaus County District Attorney 832 12th Street, Suite 300 Modesto, CA 95354	
Lake County District Attorney 255 North Forbes Street Lakeport, CA 95453	Sacramento County District Attorney 901 G Street Sacramento, CA 95814	Sutter County District Attorney 463 Second Street, Suite 102 Yuba City, CA 95991	

Attachment “A”

Ace Hardware Corporation John Venhuizen, CEO 2900 Kensington Ct. Oak Brook, IL 60523	Black Diamond International Forest Group, LLC <i>Attn: Rinat Khisyamov, Principal</i> 27 Glen Rd. Newtown, CT 06482 Black Diamond International Forest Group, LLC <i>Attn: Keith W. Wofsey, Agent</i> 48 Union St., Ste 1C Stamford, CT 06906