

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Furfuryl Alcohol in Barbeque-Flavored or Jalapeño-Flavored
Fried or Baked Potato or Sweet Potato Based Snack Foods

December 14, 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, CA 94612, (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 September 30, 2017, 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(s) Involved: The name of the listed chemical involved in these violations is furfuryl alcohol. Exposures to furfuryl alcohol occur from consumption of the products identified in this Notice.
- Type of Product: The specific type of product causing these violations is barbeque-flavored or jalapeño-flavored fried or baked potato or sweet potato based snack foods (“Snack Foods”). Non-exclusive examples of this specific type of product are identified on the attached Exhibit 1. With respect to Pak ‘N Save, Inc., the type of product causing these violations is limited to Snack Foods sold by Pringles, LLC. With respect to Safeway Inc., the type of product causing these violations is limited to Snack Foods sold by Inventure Foods, Inc. With respect to Save Mart Supermarkets, the type of product causing these violations is limited to Snack Foods sold by Pinnacle Foods Group LLC. With respect to Target Corporation, the type of product causing these violations is limited to

Snack Foods sold by Frito-Lay, Inc., Kettle Foods, Inc. or Popchips, Inc., or sold under the Simply Balanced or Archer Farms brands.

- Description of Exposure: This Notice addresses consumer exposures to furfuryl alcohol. Consumption of the products subject to this Notice results in human exposures to furfuryl alcohol. The products contain furfuryl alcohol. 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 furfuryl alcohol.

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 furfuryl alcohol 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 furfuryl alcohol 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 furfuryl alcohol in such products; and representative exemplars of each lot of each variety of any such products sold by each alleged violator since September 30, 2017, through the date of any trial of the claims alleged in 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@lexlawgroup.com.

EXHIBIT 1
December 14, 2017 Notice of Violation
Furfuryl Alcohol in Barbeque-Flavored or Jalapeño-Flavored
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
Frito-Lay, Inc. 7701 Legacy Drive Plano, TX 75024	n/a	Lay's Potato Chips in Barbeque Flavor, Family Size SKU No. 0-28400-64524-9
Inventure Foods, Inc. 5415 E. High Street, #350 Phoenix, AZ 85054	n/a	Boulder Canyon Kettle Cooked Potato Chips in Jalapeño Cheddar SKU No. 7-08163-11833-3
Kettle Foods, Inc. 3125 Kettle Court SE Salem, OR 97301	n/a	Kettle Potato Chips in Backyard Barbeque SKU No. 0-84114-11391-7
Pak 'N Save, Inc. 11555 Dublin Canyon Road Pleasanton, CA 94588	Sold by Pringles LLC	Pringles Potato Crisps in BBQ Flavor SKU No. 0-38000-13854-6
Popchips, Inc. 5510 Lincoln Blvd, Suite 425 Playa Vista, CA 90094	n/a	Popchips Potato Chips in Barbeque SKU No. 0-82666-50090-2
Pinnacle Foods Group LLC 399 Jefferson Road Parsippany, NJ 07054	n/a	Tim's Cascade Style Potato Chips, Jalapeño Seasoned SKU No. 0-11594-10037-3
Pringles LLC One Kellogg Square Battle Creek, MI 49016	n/a	Pringles Potato Crisps in BBQ Flavor SKU No. 0-38000-13854-6
Safeway Inc. 11555 Dublin Canyon Road Pleasanton, CA 94588	Sold by Inventure Foods, Inc.	Boulder Canyon Kettle Cooked Potato Chips in Jalapeño Cheddar SKU No. 7-08163-11833-3

Save Mart Supermarkets 1800 Standiford Avenue Modesto, CA 95350	Sold by Pinnacle Foods Group LLC	Tim's Cascade Style Potato Chips, Jalapeño Seasoned SKU No. 0-11594-10037-3
Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403	Sold by Frito-Lay, Inc., Kettle Foods, Inc., or Popchips, Inc., or sold under the Simply Balanced or Archer Farms brands	Lay's Potato Chips in Barbeque Flavor, Family Size SKU No. 0-28400-64524-9
		Kettle Potato Chips in Backyard Barbeque SKU No. 0-84114-11391-7
		Popchips Potato Chips in Barbeque SKU No. 0-82666-50090-2
		Simply Balanced Organic Potato Chips in Barbeque Flavor SKU No. 4-90710-60634-8
		Archer Farms Potato Chips in Jalapeño SKU No. 0-85239-61818-9
Utz Quality Foods, LLC 900 High Street Hanover, PA 17331	n/a	Simply Balanced Organic Potato Chips in Barbeque Flavor SKU No. 4-90710-60634-8

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.

December 14, 2017



Howard Hirsch
Attorney for 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 medgar@lexlawgroup.com.

On December 14, 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 12:30 p.m. on December 14, 2017:

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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220 S. Lassen Street
Susanville, CA 96130
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Yen Dang
Supervising Deputy District Attorney
Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110
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Sacramento, CA 95814
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Tori Verber Salazar, District Attorney
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222 E. Weber Avenue, Room 202
Stockton, CA 95202
DAConsumer.Environmental@sjcda.org

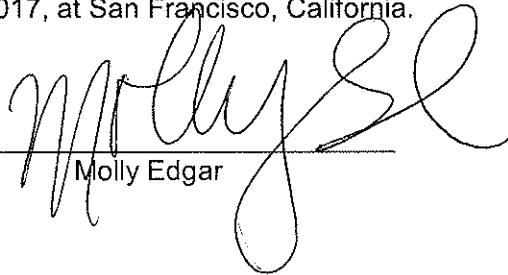
Eric J. Dobroth, Deputy District Attorney
San Luis Obispo County
County Government Center Annex, 4th Floor
San Luis Obispo, CA 93408
edobroth@co.slo.ca.us

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 December 14, 2017, at San Francisco, California.

Signed: _____

Molly Edgar

A handwritten signature in black ink, appearing to read 'Molly Edgar', is written over a horizontal line. The signature is stylized with a large, looping 'M' and a long, sweeping tail.

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

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Colusa, CA 95932

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Fresno, CA 93721

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El Centro, CA 92243

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Independence, CA 93526

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Hanford, CA 93230

District Attorney of Lake County
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Los Angeles, CA 90012-3210

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209 West Yosemite Avenue
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3501 Civic Center Drive, Rm. 130
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Ukiah, CA 95482

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San Bernardino, CA 92415

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District Attorney of Santa Cruz
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Santa Cruz, CA 95060

District Attorney of Santa
Barbara County
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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
County
P.O. Box 986
Yreka, CA 96097

District Attorney of Solano County 675 Texas Street, Ste. 4500 Fairfield, CA 94533	Vivek Sankaran, CEO* Frito-Lay, Inc. 7701 Legacy Drive Plano, TX 75024	President* Pinnacle Foods Group LLC 399 Jefferson Road Parsippany, NJ 07054
District Attorney of Stanislaus County 832 12th Street, Ste. 300 Modesto, CA 95354	Terry McDaniel, CEO* Inventure Foods, Inc. 5415 E. High Street, #350 Phoenix, AZ 85054	Brian Cornell, CEO* Target Corporation 1000 Nicollet Mall Minneapolis, MN 55403
District Attorney of Sutter County 446 Second Street Yuba City, CA 95991	Brian Driscoll, President* Kettle Foods, Inc. 3125 Kettle Court SE Salem, OR 97301	Dylan Lissette, President* Utz Quality Foods, LLC 900 High Street Hanover, PA 17331
District Attorney of Tehama County P.O. Box 519 Red Bluff, CA 96080	Brian Driscoll, President* Kettle Foods, Inc. P.O. Box 32368 Charlotte, NC 28232	Nicole Pesco, CEO* Save Mart Supermarkets 1800 Standiford Ave Modesto, CA 95350
District Attorney of Trinity County P.O. Box 310 11 Court Street Weaverville, CA 96093	David Ritterbush, CEO* Popchips, Inc. 5510 Lincoln Blvd, Suite 425 Playa Vista, CA 90094	Nicole Pesco, CEO* Save Mart Supermarkets P.O. Box 4278 Modesto, CA 95352
District Attorney of Yuba County 215 Fifth Street Marysville, CA 95901	President* Pringles LLC One Kellogg Square Battle Creek, MI 49016	
Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Rm. 800 Los Angeles, CA 90012	President* Pringles LLC c/o The Corporate Company 40600 Ann Arbor Road E Suite 201 Plymouth, MI 48170	
San Diego City Attorney's Office 1200 Third Avenue, Ste. 1620 San Diego, CA 92101	Robert Miller, CEO* Safeway Inc. 11555 Dublin Canyon Road Pleasanton, CA 94588	
San Francisco City Attorney's Office City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102	Robert Miller, CEO* Pak 'N Save, Inc. 11555 Dublin Canyon Road Pleasanton, CA 94588	
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	Pinnacle Foods Finance LLC* As member of Pinnacle Foods Group LLC 399 Jefferson Road Parsippany, NJ 07054	