

craig@bennerboon.com  
brett@bennerboon.com  
[www.bennerboon.com](http://www.bennerboon.com)  
Fax: (619) 365-4926



411 Camino Del Rio South  
Suite 106  
San Diego, CA 92101  
Phone: (619) 358-9779

February 2, 2018

**VIA CERTIFIED MAIL:**

VALLARTA SUPERMARKETS SHOPPING CENTER, LLC ATTN: Enrique Gonzalez 12881 Bradley Ave. Sylmar, CA 91324	COMMODITY FORWARDERS, INC. ATTN: Chris Connell 11101 S. La Cienga Blvd. Los Angeles, CA 90045
--	--

**VIA U.S. MAIL:**

District Attorneys of all California Counties  
and Select City Attorneys  
See Attached Certificate of Service

**VIA ELECTRONIC FILING:**

State of California Department of Justice  
Office of the Attorney General  
Proposition 65 Enforcement Reporting  
Filing Link: [oag.ca.gov/prop65](http://oag.ca.gov/prop65)

**Notice of Violations of  
California Health & Safety Code Section 25249.5 et seq.**

Dear Violators and the Appropriate Public Enforcement Agencies:

We represent The Chemical Toxin Working Group, Inc., a California non-profit corporation ("CTWG"), an organization dedicated to reducing the amount of chemical toxins in consumer products, the promotion of human health, environmental safety, and improvement of worker and consumer safety. David Steinman created CTWG to effectuate his commitments as an environmentalist, journalist, consumer health advocate, publisher and author. His major books include "Diet for a Poisoned Planet" (1990, 2007); "The Safe Shopper's Bible" (1995); "Living Healthy in a Toxic World" (1996); and "Safe Trip to Eden: Ten Steps to Save the Planet Earth from Global Warming Meltdown" (2007), along with his many publications as the publisher of the "Healthy Living Magazine" and its associated websites and periodicals.

Through this Notice of Violation (this "Notice"), CTWG seeks to reduce and/or eliminate exposures to lead and cadmium ingested by consumers from – C.FI. Fresh Frozen Oyster meat - sold at Vallarta Supermarket and distributed by Commodity Forwarders, Inc. ("CFI") in California. This Notice constitutes written notification that Vallarta Supermarket and CFI (collectively the "Noticed Parties") have violated the warning requirements of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (codified at California Health & Safety Code §25249.5, *et seq*). The product subject to this Notice of Violation (the "specified product") and the chemical in the specified product identified as exceeding allowable levels is:

***Fresh Frozen Oyster Meat - Lead and Cadmium***

The Noticed Parties have manufactured, marketed, distributed and/or sold the specified product which has exposed and continues to expose numerous individuals within California to lead and Cadmium.

Lead was listed pursuant to Proposition 65 as a chemical known to the State of California to cause developmental toxicity and reproductive toxicity on February 27, 1987 and as a chemical known to cause cancer on October 1, 1992.

Cadmium was listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer on February 27, 1987 and as a chemical known to cause developmental toxicity and reproductive toxicity on in 1997.

With respect to the specified product listed above, the violation: commenced on the latter of the date that the specified product was first offered for sale in California or the date upon which California law codified the allowable level of the relevant chemical surpassed by the specified product; has continued every day since the relevant date the violation commenced; and will continue every day henceforth until lead is removed from the specified product, reduced to allowable levels, or until a "clear and reasonable" warning is provided to consumers by the Noticed Parties in accordance with the law. The primary route of exposure has been through ingestion but may have also occurred through inhalation and/or dermal contact.

Proposition 65 requires that a "clear and reasonable" warning be provided prior to exposure to certain listed chemicals. The Noticed Parties are in violation of Proposition 65 because the Noticed Parties have failed to provide a warning to consumers that they are being exposed to lead. While in the course of doing business, the Noticed Parties are "knowingly and intentionally" exposing consumers to lead without first providing a "clear and reasonable" warning. See Cal. Health and Safety Code § 25249.6. The method of warning should be a warning that appears on the product's label. See Cal. Code Regs. tit. 27, § 25603.1, subd. (a). The Noticed Parties have not provided any Proposition 65 warnings on the specified product's label or any other appropriate warnings that persons handling, ingesting and/or otherwise using the specified product are being exposed to lead.

craig@bennerboon.com  
brett@bennerboon.com  
[www.bennerboon.com](http://www.bennerboon.com)  
Fax: (619) 365-4926



411 Camino Del Rio South  
Suite 106  
San Diego, CA 92101  
Phone: (619) 358-9779

Proposition 65 requires that notice and intent to sue be provided to a violator 60-days before a suit is filed in connection therewith. With this Notice, CTWG gives written notice of the alleged violation to the noticed party and the appropriate governmental authorities. This Notice of Violation covers all violations of Proposition 65 that are currently known to the noticing party from information now available as related to *C.F.I. Fresh Forzen Oyster Meat*, distributed by CFI and sold at Vallarta Supermarket as well as other retailers and/or distributors. CTWG is continuing its investigation that may reveal further violations.

Pursuant to Title 27, C.C.R. § 25903(b), a copy of "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" is attached hereto for reference by the noticed party, and is referenced as Appendix "A" (provided to noticed party only).

Pursuant to Title 11, C.C.R. § 3100, a "Certificate of Merit" is attached hereto.

CTWG is interested in a prompt resolution of this matter with an enforceable written agreement by the Noticed Parties to (1) eliminate or reduce lead to an allowable level in, or provide appropriate warning on the label of, the specified product; and (2) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures and expensive and time-consuming litigation.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, CTWG is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this Notice to my office on behalf of CTWG.

If you have any questions, please don't hesitate to contact me at your earliest convenience. Thank you in advance for your prompt attention to this matter.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Brett A. Boon". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Brett A. Boon, Esq.

Enclosures: (1) Certificate of Merit;

(2) Certificate of Service, and;

(3) Additional Information Supporting Certificate of Merit (to Attorney General only), and;

(4) Appendix "A" - "The Safe Drinking Water and Toxic Enforcement act of 1986 (Proposition 65): A Summary" (to noticed parties only).

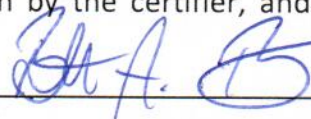
CC: As stated. Also, CTWG.

**CERTIFICATE OF MERIT**

I, Brett A. Boon, hereby declare:

1. This Certificate of Merit (this "Certificate") accompanies the attached Notice of Violation dated February 1, 2018 (the "NOV") in which it is alleged that the party identified in the NOV ("alleged violator") has violated California Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party The Chemical Toxin Working Group, Inc. The NOV alleges that the alleged violator has exposed persons in California to the listed chemical that is the subject of this Certificate. Please refer to the NOV for additional details regarding the product name and alleged violation.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of this Certificate. I have reviewed the laboratory testing results for the chemical subject to the NOV and relied on these results. The testing was conducted by a reputable testing laboratory, and by experienced scientists. The facts, studies and other data derived through this investigation overwhelmingly demonstrate that the alleged violator exposes persons to the listed chemical that is the subject of this Certificate.
4. Based on the information obtained through these consultants and other information in my possession, I believe there is sufficient evidence that the listed product in the NOV exposes people to unlawfully high levels of the specified chemical. Furthermore, 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 plaintiffs case can be established and that 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 served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 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: February 2, 2018

  
\_\_\_\_\_

Brett A. Boon, Esq.  
Attorney for The Chemical Toxin Working Group, Inc.

craig@bennerboon.com  
brett@bennerboon.com  
[www.bennerboon.com](http://www.bennerboon.com)  
Fax: (619) 365-4926



411 Camino Del Rio South  
Suite 106  
San Diego, CA 92101  
Phone: (619) 358-9779

**PROOF OF SERVICE**

I, the undersigned, declare:

I am over the age of 18 and not a party to the above-entitled action. My business address is 411 Camino Del Rio South, Suite 106 in San Diego, CA 92108.

On the date set forth below, I served the document(s) entitled:

1. NOTICE OF VIOLATION
2. CERTIFICATE OF MERIT
3. "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY"

On the alleged violators by serving via certified mail, to the addresses of alleged violators as set forth below:

VALLARTA SUPERMARKETS SHOPPING CENTER, LLC ATTN: Enrique Gonzalez 12881 Bradley Ave. Sylmar, CA 91324	COMMODITY FORWARDERS, INC. ATTN: Chris Connell 11101 S. La Cienga Blvd. Los Angeles, CA 90045
--	--

On the date set forth below, I served the document(s) entitled:

1. NOTICE OF VIOLATION
2. CERTIFICATE OF MERIT AND RELATED CURRIVULUM VITAE
3. ADDITIONAL INFORMATION AND SUPPORTING DOCUMENTATION AS REQUIRED BY TITLE 11, C.C.R. § 3102

On the California Attorney General by filing electronically as permitted though the California Office of the Attorney General via website link at [oag.ca.gov/prop65](http://oag.ca.gov/prop65), true and correct copy thereof, to the addresses as set forth below:

State of California Department of Justice Office of the Attorney General Proposition 65 Enforcement Reporting Filing Link: <a href="http://oag.ca.gov/prop65">oag.ca.gov/prop65</a>
--

///  
///  
///

craig@bennerboon.com  
brett@bennerboon.com  
[www.bennerboon.com](http://www.bennerboon.com)  
Fax: (619) 365-4926



411 Camino Del Rio South  
Suite 106  
San Diego, CA 92101  
Phone: (619) 358-9779

On the date set forth below, I served the document(s) entitled:

1. NOTICE OF VIOLATION
2. CERTIFICATE OF MERIT

On each of the parties on the service list attached hereto (see attached "**Service List**") by placing a true and correct copy thereof in a sealed envelope, addressed to each of the District Attorney and City Attorney offices listed on the attached service list, and depositing it at a United States Postal Service mail box for delivery by First Class Mail, except for the Contra Costa County District Attorney, Lassen County District Attorney, Riverside County District Attorney, Sacramento County District Attorney, San Francisco County District Attorney, Napa County District Attorney, San Joaquin County District Attorney, San Luis Obispo County District Attorney, Santa Clara County District Attorney, Sonoma County District Attorney, Tulare County District Attorney, Ventura County District Attorney, Monterey County District Attorney, and Yolo County District Attorney, which have requested electronic service only via the following email addresses, respectively (as listed on the Service List): [sgrassini@contracostada.org](mailto:sgrassini@contracostada.org); [mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us); [prop65@rivcoda.org](mailto:prop65@rivcoda.org); [prop65@sacda.org](mailto:prop65@sacda.org); [Gregory.alker@sfgov.org](mailto:Gregory.alker@sfgov.org); [cepd@countyofnapa.org](mailto:cepd@countyofnapa.org); [daconsumer.environmental@sjcda.org](mailto:daconsumer.environmental@sjcda.org); [edobroth@co.slo.ca.us](mailto:edobroth@co.slo.ca.us); [epu@da.sccgov.org](mailto:epu@da.sccgov.org); [jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org); [prop65@co.tulare.ca.us](mailto:prop65@co.tulare.ca.us); [daspecialops@ventura.org](mailto:daspecialops@ventura.org); [Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us); and [cfepd@yolocounty.org](mailto:cfepd@yolocounty.org).

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the United States Postal Service on that same day, with postage thereon fully paid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after the date of deposit indicated in the affidavit.

I declare that I am employed in the office of a member of the State Bar of this Court, at whose direction the above service was made. I also declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on the date hereinafter set forth.

Dated: February 7, 2018

/s/ Brett A. Boon, Esq.

\_\_\_\_\_  
Brett A. Boon, Esq.

**SERVICE LIST:**

DISTRICT ATTORNEY - ALAMEDA COUNTY  
1225 FALLON STREET, SUITE 900  
OAKLAND, CA 94612

DISTRICT ATTORNEY - KERN COUNTY  
1215 TRUXTUN AVENUE  
BAKERSFIELD, CA 93301

DISTRICT ATTORNEY- NEVADA COUNTY  
201 COMMERCIAL STREET  
NEVADA CITY, CA 95959

DISTRICT ATTORNEY - ALPINE COUNTY  
P.O. BOX248  
MARKLEEVILLE, CA 96120

DISTRICT ATTORNEY  
ORANGE COUNTY  
1401 WEST CIVIC CENTER DR.  
SANTA ANA, CA 92701

District Attorney  
Mador County  
1708 Court Street, Suite 202  
Jackson, CA 95642

DISTRICT ATTORNEY  
KINGS COUNTY  
400 WEST LACEY BLVD.  
HANFORD, CA 93230

District Attorney  
Lake County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney  
Placer County  
10810 Justice Center Drive, Ste. 240  
Roseville, CA 85678

District Attorney  
Butte County  
25 County Center Drive, Ste. 245  
Oroville, CA 95965

District Attorney  
Lassen County  
20 South Lassen Street, Suite 8  
Susanville, CA 96130

District Attorney  
Plumas County  
520 Main Street, Room 404  
Quincy, CA 95911

District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249

District Attorney  
Los Angeles County  
210 West Temple Street, St.e 18000  
Los Angeles, CA 90012

District Attorney  
Riverside County  
3072 Orange Street  
Riverside, CA 92501

District Attorney  
Calusa County  
46 Fifth Street, Suite 101  
Colusa, CA 95932

District Attorney  
Madera County  
209 West Yosemite Avenue  
Madera, CA 93637

District Attorney  
Sacramento County  
901 "G" Street  
Sacramento, CA 95814

District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553

District Attorney  
Marin County  
350 Civic Center Drive, Rm. 130  
San Rafael, CA 94903

District Attorney  
San Benito County  
1419 4<sup>th</sup> Street  
Hollister, CA 95023

District Attorney  
Del Norte County  
450 H Street, Suite 171  
Crescent City, CA 95531

District Attorney  
Mariposa County  
Post Office Box 730  
Mariposa, CA 95338

District Attorney  
San Bernardino County  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

District Attorney  
El Dorado County  
15 main Street  
Placerville, CA 95667

District Attorney  
Mendocino County  
P.O. Box 1000  
Ukiah, CA 95482

District Attorney  
San Diego County  
330 West Broadway, Suite 1300  
San Diego, CA 92101

District Attorney  
Fresno County  
2220 Tulare Street, Suite 1000  
Fresno, CA 93721



District Attorney  
Merced County  
550 W. Main Street  
Merced, CA 95340

District Attorney  
San Francisco County  
732 Brannan Street  
San Francisco, CA 94103

DISTRICT ATTORNEY  
GLENN COUNTY  
POST OFFICE BOX 430  
WILLOWS, CA 95988

DISTRICT ATTORNEY  
SAN MATEO COUNTY  
1400 COUNTY CTR., 3RD FLOOR  
REDWOOD CITY, CA 94063

DISTRICT ATTORNEY  
SUTTER COUNTY  
446 SECOND STREET  
YUBA CITY, CA 95991

DISTRICT ATTORNEY  
HUMBOLDT COUNTY  
525 5TH STREET 4TH FLOOR  
EUREKA, CA 95501

DISTRICT ATTORNEY  
SANTA BARBARA COUNTY  
1112 SANTA BARBARA STREET  
SANTA BARBARA, CA 93101

DISTRICT ATTORNEY  
TEHAMA COUNTY  
P.O. BOX 519  
RED BLUFF CA 96080

DISTRICT ATTORNEY  
IMPERIAL COUNTY  
40 WEST MAIN STREET, STE 102  
EL CENTRO, CA 92243

DISTRICT ATTORNEY  
SANTA CLARA COUNTY  
70 WEST HEDDING STREET  
SAN JOSE, CA 95110

DISTRICT ATTORNEY  
TRINITY COUNTY  
P. O. BOX 310  
WEAVERVILLE, CA 96093

DISTRICT ATTORNEY  
INYOCOUNTY  
230 W. LINE STREET  
BISHOP, CA 93514

DISTRICT ATTORNEY  
SANTA CRUZ COUNTY  
701 OCEAN STREET. ROOM 200  
SANTA CRUZ, CA 95060

DISTRICT ATTORNEY  
TULARE COUNTY  
1221 S. MOONEY BLVD.  
VISALIA, CA 95370

DISTRICT ATTORNEY  
SIERRA COUNTY  
P.O. BOX457  
DOWNIEVILLE, CA 95936

DISTRICT ATTORNEY  
MODOC COUNTY  
204 S. CONN STREET, ROOM 202  
ALTURAS, CA 96101

SAN FRANCISCO, CITY ATTORNEY  
CITY HALL, ROOM 234  
1 DR. CARLTON B GOODLETT PLACE  
SAN FRANCISCO, CA 94102

DISTRICT ATTORNEY  
MONO COUNTY  
P. O. BOX617  
BRIDGEPORT, CA 93517

DISTRICT ATTORNEY  
NAPA COUNTY  
931 PARKWAY MALL  
NAPA, CA 94559

DISTRICT ATTORNEY  
VENTURA COUNTY  
800 SOUTH VICTORIA AVE, STE 314  
VENTURA, CA 93009

BERKELEY CITY ATTORNEY'S OFFICE  
12180 MILVIA STREET, 4TH FLOOR  
BERKELEY, CA 94704

DISTRICT ATTORNEY  
SISKIYOU COUNTY  
P. O. BOX 986  
YREKA, CA 96097

DISTRICT ATTORNEY  
SAN JOAQUIN COUNTY  
222 E. WEBER AVE., RM. 202  
STOCKTON, CA 95202

DISTRICT ATTORNEY  
SOLANO COUNTY  
675 TEXAS STREET, STE 4500  
FAIRFIELD, CA 94533

LOS ANGELES CITY ATTORNEY'S OFFICE  
CITY HALL EAST  
200 N. MAIN STREET, SUITE 800  
LOS ANGELES, CA 90012

DISTRICT ATTORNEY  
YUBA COUNTY  
215 FIFTH STREET, SUITE 152  
MARYSVILLE, CA 95901

DISTRICT ATTORNEY  
STANISLAUS COUNTY  
83212 STREET, SUITE 300  
MODESTO, CA 95354

DISTRICT ATTORNEY  
SONOMA COUNTY  
600 ADMINISTRATIVE DRIVE  
SONOMA, CA 95403

DISTRICT ATTORNEY  
MONTEREY COUNTY  
1200 AGUAJITOROAD  
MONTEREY, CA 93940

OAKLAND CITY ATTORNEY  
CITY HALL, 6<sup>TH</sup> FLOOR  
1 FRANK OGAWA PLAZA  
OAKLAND, CA 94612

DISTRICT ATTORNEY  
YOLO COUNTY  
1301 Second Street  
WOODLAND, CA 95695

DISTRICT ATTORNEY  
SAN LUIS OBISPO COUNTY  
COUNTY GOVERNMENT CENTER ANNEX  
SAN LUIS OBISPO, CA 93408

SAN DIEGO CITY ATTORNEY'S OFFICE  
1200 3RD AVENUE, SUITE 1620  
SAN DIEGO, CA 92101

## 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. Please refer 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.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. 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

---

<sup>1</sup> 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>.

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. 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. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly say 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 to that chemical. 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 Periods.*** 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 full and part-time employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure 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: <http://www.oehha.ca.gov/prop65/getNSRLs.html> 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 causing the exposure 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 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 naturally occur in foods (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 contaminant<sup>2</sup> 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 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.

---

<sup>2</sup> 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 Title 27, sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement 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.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A private party may not file an action against the alleged violator for these exposures, or recover in a settlement any payment in lieu of penalties or any reimbursement for costs and attorney's fees, if the notice of violation was served on or after October 5, 2013, and the alleged violator has done *all* of the following within 14 days of being served notice:

- Corrected the alleged violation;
- Agreed to pay a civil penalty of \$500 (subject to change as noted below) to the private party within 30 days; and
- Notified the private party serving the notice in writing that the violation has been corrected.

The written notification to the private-party must include a notice of special compliance procedure and proof of compliance form completed by the alleged violator as directed in the notice. On April 1, 2019, and every five years thereafter, the dollar amount of the civil penalty will be adjusted by the Judicial Council based on the change in the annual California Consumer Price Index. The Judicial Council will publish the dollar amount of the adjusted civil penalty at each five-year interval, together with the date of the next scheduled adjustment.

An alleged violator may satisfy these conditions only one time for a violation arising from the same exposure in the same facility or on the same premises. The satisfaction of these conditions does not prevent the Attorney General, a district attorney, a city attorney of a city greater than 750,000 in population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator. The amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator for the same alleged violation to a private-party.

A copy of the notice of special compliance procedure and proof of compliance form is included with this notice and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>. The notice is reproduced here:



Date:

Page 1

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

### SPECIAL COMPLIANCE PROCEDURE

#### PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are violating California Health and Safety Code §25249.6 (Prop. 65).

The Noticing Party may not bring any legal proceedings against you for the alleged violation checked below if:

1. You have actually taken the corrective steps that you have certified in this form.
2. The Noticing Party has received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice.
3. The Noticing Party receives the required \$500 penalty payment from you at the address shown above postmarked within 30 days of your receiving this notice.
4. This is the first time you have submitted a Proof of Compliance for a violation arising from the same exposure in the same facility on the same premises.

#### PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR THE NOTICING PARTY

The alleged violation is for an exposure to: (check one)

Alcoholic beverages that are consumed on the alleged violator's premises to the extent on-site consumption is permitted by law.

A chemical known to the state to cause cancer or reproductive toxicity in a food or beverage prepared and sold on the alleged violator's premises for immediate consumption on or off premises to the extent: (1) the chemical was not intentionally added; and (2) the chemical was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination.

Environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises.

Chemicals known to the State to cause cancer or reproductive toxicity in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking noncommercial vehicles.

#### IMPORTANT NOTES:

1. You have no potential liability under California Health and Safety Code §25249.6 if your business has nine (9) or fewer employees.
2. Using this form will NOT prevent the Attorney General, a district attorney, a city attorney, or a prosecutor in whose jurisdiction the violation is alleged to have occurred from filing an action

over the same alleged violations, and that in any such action, the amount of civil penalty shall be reduced to reflect any payment made at this time.

Date :

Page 2

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

**PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED REPRESENTATIVE**

**Certification of Compliance**

Accurate completion of this form will demonstrate that you are now in compliance with California Health and Safety Code §25249.6 for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of completion of this notice, a civil penalty of \$500 to the Noticing Party only and certify that I have complied with Health and Safety Code §25249.6 by (check only one of the following):

- Posting a warning or warnings about the alleged exposure that complies with the law, and attaching a copy of that warning and a photograph accurately showing its placement on my premises;
- Posting the warning or warnings demanded in writing by the Noticing Party, and attaching a copy of that warning and a photograph accurately showing its placement on my premises; OR
- Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

**Certification**

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65).

\_\_\_\_\_  
Signature of alleged violator or authorized representative      Date

\_\_\_\_\_  
Name and title of signatory

*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 [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: May 2014

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.