



Matthew M. Maclear  
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415.568.5200

March 9, 2018

**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.  
(PROPOSITION 65)**

Dear Alleged Violators and the Appropriate Public Enforcement Agencies:

Aqua Terra Aeris (ATA) Law Group represents the Center for Advanced Public Awareness, Inc. (CAPA), 180 Promenade Circle, Suite 300, Sacramento, CA 95834; CAPA is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, fostering and increasing the public awareness of chemicals used to manufacture consumer products, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

CAPA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code section 25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violators identified below failed to provide required clear and reasonable warnings with these products. Section 25249.6 of the statute provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the State to cause cancer or reproductive toxicity without first providing a clear and reasonable warning to such individual." Without proper warnings regarding the toxic effects of exposures to this listed chemical that results from contact with this product, California citizens lack the information necessary to make an informed decision on whether and/or how to eliminate (or reduce) their risk of exposure to the listed chemical from the reasonably foreseeable use of the product.

This letter serves as a notice of these violations to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Health and Safety Code section 25249.7(d), CAPA intends to file a private enforcement action in the public interest sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**Certificate of Merit and General Information about Proposition 65.** Pursuant to Title 11, California Code of Regulations section 3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. section 25903(b), a copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is enclosed with this letter served to the alleged Violators identified below.

**Alleged Violator.** The name(s) of the company covered by this notice that violated Proposition 65 (hereinafter the "Violator," individually, or "Violators," collectively) are:

- **JVCKenwood USA Corporation**
- **Kenwood Technologies USA, Inc.**
- **JVC America, Inc.**
- **Zetron, Inc.**



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**Consumer Products and Listed Chemical.** The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

- **JVC Lightweight On-Ear Headphones** – Di-isononyl phthalate (DINP)  
**Approximate Dimension: 2.2 X 6.7 X 8.1 inches**  
**UPC-A No.: 0 46838 07057 0**  
**EAN-13: 0 046838 070570**

On December 20, 2013, the State of California listed DINP as a chemical known to the State to cause cancer. The addition took place more than twenty (20) months before CAPA served this Notice.

**Violations.** The alleged Violators knowingly and intentionally have exposed and continue to knowingly and intentionally expose consumers within the State of California to Di-isononyl phthalate (DINP) at levels that, upon reasonable use of the product, exceed the No Significant Risk Level and/or the Maximum Allowable Dose Level without providing clear and reasonable warning of this exposure. In particular, the product does not warn that it contains chemicals known to the State of California to cause cancer.

The No Significant Risk Level (“NSRL”) for DINP is 146 µg/day. The NSRL is calculated based on a body weight of 70 kg for the general population. (Cal. Code Regs. tit. 27, § 25703(a)(8)). The overall exposure estimate from the JVC Lightweight On-Ear Headphones exceeds NSRL with only 2.5 hours of using product as intended. This exposure level significantly exceeds the NSRL set by the California Office of Environmental Health Hazard Assessment. As a result, the JVC Lightweight Headphones needs a clear a reasonable warning under Proposition 65.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, a primary route of exposure to these chemicals is through dermal exposure. Significant dermal exposure will occur with the scalp and ear skins through standard usage. Consumers and other individuals, are exposed to the listed chemical through reasonably foreseeable direct dermal contact when they handle, touch, or otherwise use the JVC Lightweight On-Ear Headphones. The potential exists for dermal exposure of DINP through direct contact with the user’s scalp, ears, skin, or hands, when the headphones are used as intended.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least November 1, 2016, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced via reformulation to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violators committed Proposition 65 because it failed to provide persons handling and/or using these products with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, CAPA is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violators to: (1) reformulate the product to reduce/ eliminate further DINP exposures (2) pay an appropriate civil penalty; and (3) provide clear and



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reasonable warnings compliant with Proposition 65 for products sold in the future. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time consuming litigation.

CAPA has retained ATA Law Group as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violation to my attention at the law office address and telephone number indicated herein.**

Dated: March 9, 2018

Very truly yours,

A handwritten signature in blue ink, appearing to read "Matt Maclear", is written over a light-colored rectangular background.

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for Center for Advanced Public  
Awareness

Attachments

Certificate of Merit  
Certificate of Service  
OEHHA Summary (to JVCKenwood USA Corporation, Kenwood Technologies USA, Inc., JVC  
America, Inc., and Zetron, Inc.)  
Additional Supporting Information for Certificate of Merit (to AG only)



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### CERTIFICATE OF MERIT

**Re: Center for Advanced Public Awareness, Inc.’s Notice of Proposition 65 Violations by JVCKenwood USA Corporation, Kenwood Technologies USA, Inc., JVC America, Inc., and Zetron, Inc.**

I, Matthew Maclear, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged that the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

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 exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California 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: March 9, 2018

A handwritten signature in blue ink that reads "Matthew C. Maclear".

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Matthew C. Maclear  
AQUA TERRA AERIS LAW GROUP  
Attorney for Center for Advanced Public  
Awareness



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**CERTIFICATE OF SERVICE**

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within entitled action. My business address is 828 San Pablo Avenue, Suite 115B, Albany, CA 94706. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Albany, California.

On March 9, 2018, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or Chief of Executive Officer  
JVCKenwood USA Corporation  
2201 E. Dominguez Street  
Long Beach, CA 90810

Agent for Service of Process:  
Megan Bretz  
2710 Gateway Oaks Drive, Ste 150N  
Sacramento, CA 95833-3505

Current President or Chief Executive Officer  
Kenwood Technologies USA, Inc.  
2201 E. Dominguez Street  
Long Beach, CA 90810

Agent for Service of Process:  
CT Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

Current President or Chief Executive Officer  
JVC America, Inc.  
1 JVC Road  
Tuscaloosa, AL 35405

Agent for Service of Process:  
CT Corporation System  
818 West Seventh Street, Suite 930  
Los Angeles, CA 90017

Brent Dippie, Chief Executive Officer  
Zetron, Inc.  
PO Box 97004  
Redmond, WA 9870

Agent for Service of Process:  
Megan Bretz  
2710 Gateway Oaks Drive, Ste 150N  
Sacramento, CA 95833-3505

On March 9, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.7(d)(1)** were served on the following party when a true and correct copy thereof was uploaded on the California Attorney General’s website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>:

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000



Notice of Violation of California Health & Safety Code § 25249.5 *et seq.*  
March 9, 2018

Oakland, CA 94612-0550

On March 9, 2018, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was **sent via electronic mail** to the party listed below:

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
[sgrassini@contracostada.org](mailto:sgrassini@contracostada.org)

Michelle Latimer, Program Coordinator  
District Attorney, Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
[mlatimer@co.lassen.ca.us](mailto:mlatimer@co.lassen.ca.us)

Dije Ndreu, Deputy District Attorney  
District Attorney, Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
[Prop65DA@co.monterey.ca.us](mailto:Prop65DA@co.monterey.ca.us)

Gregory Alker, Assistant District Attorney  
District Attorney, San Francisco County  
732 Brannan Street  
San Francisco, CA 94103  
[gregory.alker@sfgov.org](mailto:gregory.alker@sfgov.org)

Yen Dang, Supervising Deputy District Attorney  
District Attorney, Santa Clara County  
70 W Hedding St  
San Jose, CA 95110  
[EPU@da.sccgov.org](mailto:EPU@da.sccgov.org)

Stephan R. Passalacqua, District Attorney  
District Attorney, Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
[jbarnes@sonoma-county.org](mailto:jbarnes@sonoma-county.org)

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

Christopher Dalbey, Deputy District Attorney  
1112 Santa Barbara St  
Santa Barbara, CA 93101  
[DAProp65@co.santa-barbara.ca.us](mailto:DAProp65@co.santa-barbara.ca.us)

Gary Lieberstein, District Attorney  
Napa County  
931 Parkway Mall  
Napa, CA 94559  
[CEPD@countyofnapa.org](mailto:CEPD@countyofnapa.org)

Paul E. Zellerbach  
District Attorney, Riverside County  
3072 Orange Street  
Riverside, CA 92501  
[Prop65@rivcoda.org](mailto:Prop65@rivcoda.org)

Anne Marie Schubert  
District Attorney, Sacramento County  
901 G Street  
Sacramento, CA 95814  
[Prop65@sacda.org](mailto:Prop65@sacda.org)

Phillip J. Cline, District Attorney  
District Attorney, Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
[Prop65@co.tulare.ca.us](mailto:Prop65@co.tulare.ca.us)

Gregory D. Totten  
District Attorney, Ventura County  
800 S Victoria Ave  
Ventura, CA 93009  
[daspecialops@ventura.org](mailto:daspecialops@ventura.org)

Jeff W. Reisig,  
District Attorney, Yolo County  
301 Second Street  
Woodland, CA 95695  
[cfepd@yolocounty.org](mailto:cfepd@yolocounty.org)

Tori Verber Salazar  
District Attorney, San Joaquin County  
222 E. Weber Avenue, Rm 202  
Stockton, CA 95202  
[DAConsumer.Environmental@sjcda.org](mailto:DAConsumer.Environmental@sjcda.org)

Jeffrey S. Rosell, District Attorney  
701 Ocean St  
Santa Cruz, CA 95060  
[Prop65DA@santacruzcounty.us](mailto:Prop65DA@santacruzcounty.us)



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On March 9, 2018, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE § 25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by U.S. First Class Mail.

Executed on March 9, 2018, in Albany California.

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Esmeralda Bustos

**Service List**

District Attorney, Alameda County 1225 Fallon Street, Suite 900 Oakland, CA 94612	District Attorney, Los Angeles County 210 West Temple Street, Suite 18000 Los Angeles, CA 90012	District Attorney, Shasta County 1355 West Street Redding, CA 96001
District Attorney, Alpine County P.O. Box 248 Markleeville, CA 96120	District Attorney, Madera County 209 West Yosemite Avenue Madera, CA 93637	District Attorney, Sierra County PO Box 457 Downieville, CA 95936
District Attorney, Amador County 708 Court Street Jackson, CA 95642	District Attorney, Marin County 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	District Attorney, Siskiyou County Post Office Box 986 Yreka, CA 96097
District Attorney, Butte County 25 County Center Drive, Suite 245 Oroville, CA 95965	District Attorney, Mariposa County Post Office Box 730 Mariposa, CA 95338	District Attorney, Solano County 675 Texas Street, Ste 4500 Fairfield, CA 94533
District Attorney, Calaveras County 891 Mountain Ranch Road San Andreas, CA 95249	District Attorney, Mendocino County Post Office Box 1000 Ukiah, CA 95482	District Attorney, Stanislaus County 832 12th Street, Suite 300 Modesto, CA 95354
District Attorney, Colusa County 346 Fifth Street Suite 101 Colusa, CA 95932	District Attorney, Merced County 550 W. Main Street Merced, CA 95340	District Attorney, Sutter County 446 Second Street Yuba City, CA 95991
District Attorney, Del Norte County 450 H Street, Room 171 Crescent City, CA 95531	District Attorney, Modoc County 204 S Court Street, Room 202 Alturas, CA 96101-4020	District Attorney, Tehama County Post Office Box 519 Red Bluff, CA 96080





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District Attorney, El Dorado County 515 Main Street Placerville, CA 95667	District Attorney, Mono County Post Office Box 617 Bridgeport, CA 93517	District Attorney, Trinity County Post Office Box 310 Weaverville, CA 96093
District Attorney, Fresno County 2220 Tulare Street, Suite 1000 Fresno, CA 93721	District Attorney, Nevada County 201 Commercial Street Nevada City, CA 95959	District Attorney, Tuolumne County 423 N. Washington Street Sonora, CA 95370
District Attorney, Glenn County Post Office Box 430 Willows, CA 95988	District Attorney, Orange County 401 West Civic Center Drive Santa Ana, CA 92701	District Attorney, Yuba County 215 Fifth Street, Suite 152 Marysville, CA 95901
District Attorney, Humboldt County 825 5th Street 4th Floor Eureka, CA 95501	District Attorney, Placer County 10810 Justice Center Drive, Ste 240 Roseville, CA 95678	Los Angeles City Attorney's Office City Hall East 200 N. Main Street, Suite 800 Los Angeles, CA 90012
District Attorney, Imperial County 940 West Main Street, Ste 102 El Centro, CA 92243	District Attorney, Plumas County 520 Main Street, Room 404 Quincy, CA 95971	San Diego City Attorney's Office 1200 3rd Avenue, Ste 1620 San Diego, CA 92101
District Attorney, Inyo County 230 W. Line Street Bishop, CA 93514	District Attorney, San Benito County 419 Fourth Street, 2nd Floor Hollister, CA 95023	San Francisco, City Attorney City Hall, 234 1 Dr. Carlton B Goodlett PL San Francisco, CA 94102
District Attorney, Kern County 1215 Truxtun Avenue Bakersfield, CA 93301	District Attorney, San Bernardino County 303 West 3 <sup>rd</sup> Street, 6 <sup>th</sup> Floor San Bernardino, CA 92415-0502	San Jose City Attorney's Office 200 East Santa Clara Street, 16th Floor San Jose, CA 95113
District Attorney, Kings County 1400 West Lacey Boulevard Hanford, CA 93230	District Attorney, San Diego County 330 West Broadway, Suite 1300 San Diego, CA 92101	Sacramento City Attorney's Office 915 I Street, 4 <sup>th</sup> Floor Sacramento, CA 95814
District Attorney, Lake County 255 N. Forbes Street Lakeport, CA 95453	District Attorney, San Mateo County 400 County Ctr., 3rd Floor Redwood City, CA 94063	



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**Appendix A**  
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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

Barclays Official California Code of Regulations [Currentness](#)  
Title 27. Environmental Protection  
Division 4. Office of Environmental Health Hazard Assessment  
Chapter 1. Safe Drinking Water and Toxic Enforcement Act of 1986  
Article 9. Miscellaneous

27 CCR Appendix A

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 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 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 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 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 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 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 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.

#### 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 and 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 copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

*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 2017

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<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>.

<sup>2</sup> See Section 25501(a)(4).

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.

### HISTORY

1. New Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).
3. Change without regulatory effect renumbering title 22, section 12903 and Appendix A to title 27, section 25903 and Appendix A, including amendment of appendix, filed 6-18-2008 pursuant to section 100, title 1, California Code of Regulations (Register 2008, No. 25).
4. Amendment filed 11-19-2012; operative 12-19-2012 (Register 2012, No. 47).
5. Amendment of appendix and Note filed 11-19-2014; operative 1-1-2015 (Register 2014, No. 47).
6. Amendment of Appendix A filed 8-23-2017; operative 10-1-2017 (Register 2017, No. 34).

This database is current through 2/16/18 Register 2018, No. 7

27 CCR Appendix A, 27 CA ADC Appendix A

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**END OF DOCUMENT**

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