

# 60-DAY NOTICE OF VIOLATION

(Pursuant to California Health & Safety Code §§ 25249.5, *et seq.*)

May 29, 2018

To:

Randolph Vandam, President  
D & R Sports Center, Inc.  
8178 West Main Street  
Kalamazoo, MI 49009

James Hagale, President/COO  
Bass Pro Outdoor World, L.L.C.  
c/o CT Corporation System  
818 W. Seventh St., Ste. 930  
Los Angeles, CA 90017

Edward Stack, CEO  
Dick's Sporting Goods, Inc.  
c/o CSC –Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

James A. Hagale, President  
Cabela's LLC  
c/o CSC-Lawyers Incorporating Service Company  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

Mike Platti, CEO  
Tackle Box Direct LLC  
140 7th Avenue, Unit 12  
Little Egg Harbor Twp., NJ 08087

CC: California Attorney General's Office;  
District Attorney's Offices for All California Counties; and  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento, and Los Angeles

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## I. INTRODUCTION

Safe Products for Californians, LLC ("SPFC") is the noticing entity, acting in the interest of the general public. It seeks to reduce or eliminate the presence of hazardous substances in consumer products sold in California, and to ensure that California consumers are aware of the presence of such substances in consumer goods so that they can make an educated effort to limit their own exposure where deemed necessary.

This Notice is provided to the public agencies listed above pursuant to California Health & Safety Code §§ 25249.6, *et seq.* ("Proposition 65"). As noted above, notice is also being provided to the violators, D & R Sports Center, Inc.; Bass Pro Outdoor World, L.L.C.; Dick's Sporting Goods, Inc.; Cabela's LLC; and Tackle Box Direct LLC (the "Violators"). The violations covered by this Notice consist of the product

exposures, routes of exposure, 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:	Diisononyl phthalate (“DINP”) Diisodecyl phthalate (“DIDP”)
Routes of Exposure:	Ingestion, Dermal
Types of Harm:	Cancer Birth Defects and Other Reproductive Harm

## II. NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type of product that is causing consumer 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 in California dating back to at least August 3, 2017 are subject to this Notice. As a result of 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 chemical, resulting from contact with the products, California citizens 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 consumers are exposed to the listed chemical through the act of buying, acquiring or utilizing the products. By way of example but not limitation, direct exposures occur when people (including children) place the product, or a portion thereof, into their mouth or otherwise chew, lick, and/or bite the product, thereby allowing the listed chemical to leach out of the substrate. Citizens can be exposed to the listed chemical through the routine handling of the products through readily available amounts of the listed chemical on the surface of the product that will rub off on the user’s fingers and hands, then ingested by way of subsequent hand-to-mouth activity.

## III. CONTACT INFORMATION

Please direct all questions concerning this notice to SPFC at the following address:

Tanya E. Moore, Esq.  
MISSION LAW FIRM, A.P.C.  
332 North Second Street  
San Jose, CA 95112  
Telephone (408) 298-2000  
Email: [service@mission.legal](mailto:service@mission.legal)

## 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 Violators' reference, attached is 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, SPFC intends to file a citizen enforcement lawsuit against the alleged Violators unless such Violators enter 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 who have received such products; (2) provide clear and reasonable warnings for products sold in the future or reformulate such products to eliminate the exposure of California citizens to the listed chemical(s); and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b). If the alleged Violators are interested in resolving this dispute without resorting to time-consuming and expensive litigation, please feel free to contact SPFC's counsel identified in Section III above. It should be noted that neither SPFC's counsel nor SPFC 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 SPFC will resolve its claims; such agreement may not satisfy the public prosecutors.

**VI. ADDITIONAL NOTICE INFORMATION**

(THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 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. SPFC believes and alleges 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 a catalog by the Violators and other distributors and retailers of the manufacturer.

<i>Product*</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Lunker City Slug-Go UPC# 725442610104	D & R Sports Center, Inc. Bass Pro Outdoor World, L.L.C. Tackle Box Direct LLC	D & R Sports Center, Inc. Bass Pro Outdoor World, L.L.C. Tackle Box Direct LLC
Lunker City Slug-Go UPC# 725442645106	Cabela's LLC	Cabela's LLC
Lunker City Slug-Go UPC# 725442936082	Dick's Sporting Goods, Inc.	Dick's Sporting Goods, Inc.

**VII. EXHIBIT A**

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Soft Plastic Baits	Lunker City Slug-Go UPC# 725442610104	Diisononyl phthalate (“DINP”) Diisodecyl phthalate (“DIDP”)
	Lunker City Slug-Go UPC# 725442645106	Diisononyl phthalate (“DINP”) Diisodecyl phthalate (“DIDP”)
	Lunker City Slug-Go UPC# 725442936082	Diisononyl phthalate (“DINP”)

\*The specifically identified example of the type of product that is subject to this Notice is for the recipients’ benefit to assist in their investigation of, among other things, the magnitude of potential exposures 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 SPFC’s position that the alleged Violators are 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 recipients’ custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

# CERTIFICATE OF MERIT

(Pursuant to California Health & Safety Code § 25249.7(d))

I, Tanya E. Moore, 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 the attorney for the noticing party;
3. I have consulted with one or more persons with relevant and appropriate experience or experience 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 these 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 Violators will be able to establish any of the affirmative defenses set forth in the statute; and
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 & 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: May 29, 2018

*Tanya Moore*

Tanya E. Moore

# CERTIFICATE OF SERVICE BY MAIL

I, Jessica Mendoza, hereby declare:

1. I am, and was at the time of service hereinafter mentioned, a citizen of the United States and a resident of the County of Santa Clara. I am over the age of 18 years and not a party to the within action. My business address is 332 North Second Street, San Jose, California, 95112.
  
2. On June 1, 2018, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Merit
  - “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary”on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery both by First Class Mail and Certified Mail:

Randolph Vandam, President  
D & R Sports Center, Inc.  
8178 West Main Street  
Kalamazoo, MI 49009

James Hagale, President/COO  
Bass Pro Outdoor World, L.L.C.  
c/o CT Corporation System  
818 W. Seventh St., Ste. 930  
Los Angeles, CA 90017

Edward Stack, CEO  
Dick’s Sporting Goods, Inc.  
c/o CSC –Lawyers Incorporating Service  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

James A. Hagale, President  
Cabela’s LLC  
c/o CSC-Lawyers Incorporating Service  
Company  
2710 Gateway Oaks Drive, Suite 150N  
Sacramento, CA 95833

Mike Platti, CEO  
Tackle Box Direct LLC  
140 7th Avenue, Unit 12  
Little Egg Harbor Twp., NJ 08087

3. On June 1, 2018, I served the following documents:
  - 60-Day Notice of Violation
  - Certificate of Meriton 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 United States Postal Service Office for delivery by First Class Mail.

4. On June 1, 2018, I served the following documents:

- 60-Day Notice of Violation
- Certificate of Merit

on the following party by causing a true and correct .PDF copy thereof to be sent via electronic mail to the party listed below, pursuant to Cal. Code Regs., title. 27, § 25903(c)(1):

Contra Costa County District Attorney  
sgrassini@contracostada.org

Lassen County District Attorney  
mlatimer@co.lassen.ca.us

Monterey County District Attorney  
Prop65DA@co.monterey.ca.us

San Luis Obispo County District Attorney  
edobrcth@co.slo.ca.us

Napa County District Attorney  
CEPD@countyofnapa.org

Santa Clara County District Attorney  
EPU@da.sccgov.org

Riverside County District Attorney  
Prop65@rivcoda.org

Sonoma County District Attorney  
jbarnes@sonoma-county.org

Sacramento County District Attorney  
Prop65@sacda.org

Tulare County District Attorney  
Prop65@co.tulare.ca.us

San Francisco County District Attorney  
gregory.alker@sfgov.org

Ventura County District Attorney  
daspecialops@ventura.org

San Joaquin County District Attorney  
DAConsumer.Environmental@sjcda.org

Yolo County District Attorney  
cfepd@yolocounty.org

San Diego County District Attorney  
CityAttyCrimProp65@sandiego.gov

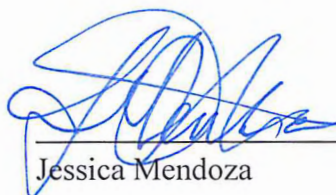
Alameda County District Attorney  
CEPDProp65@acgov.org

Santa Barbara County District Attorney  
DAProp65@co.santa-barbara.ca.us

Santa Cruz County District Attorney  
Prop65DA@santacruzcounty.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: June 1, 2018



\_\_\_\_\_  
Jessica Mendoza

## SERVICE LIST

Alameda County District Attorney  
1225 Fallon Street, Suite 900  
Oakland, CA 94612  
CEPDProp65@acgov.org

Alpine County District Attorney  
P.O. Box 248  
Markleeville, CA 96120

Amador County District Attorney  
708 Court Street #202  
Jackson, CA 95642

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

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

Colusa County District Attorney  
346 Fifth Street, Suite 101  
Colusa, CA 95932

Contra Costa County District Attorney  
900 Ward St  
Martinez, CA 94553  
sgrassini@contracostada.org

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

El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

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

Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

Humboldt County District Attorney  
825 5th Street, 4th Floor  
Eureka, CA 95501

Imperial County District Attorney  
940 West Main Street, Suite 102  
El Centro, CA 92243

Inyo County District Attorney  
P.O. Drawer D  
168 N Edwards St  
Independence, CA 93526

Kern County District Attorney  
1215 Truxtun Avenue, 4th Floor  
Bakersfield, CA 93301

Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

Lake County District Attorney  
255 North Forbes Street  
Lakeport, CA 95453

Lassen County District Attorney  
220 South Lassen Street  
Susanville, CA 96130  
[field\_prop65ctacts\_title]  
mlatimer@co.lassen.ca.us

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

Marin County District Attorney  
3501 Civic Center Drive, Room 130  
San Rafael, CA 94903

Mariposa County District Attorney  
5101 Jones Street, P.O. Box 730  
Mariposa, CA 95338

Mendocino County District Attorney  
100 North State Street, P.O. Box 1000  
Ukiah, CA 95482

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

Modoc County District Attorney  
204 S. Court Street, Suite 202  
Alturas, CA 96101

Mono County District Attorney  
278 Main St  
Bridgeport, CA 93517

Monterey County District Attorney  
1200 Aguajito Rd  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Napa County District Attorney  
1127 First Street, Ste. C  
Napa, CA 94559  
CEPD@countyofnapa.org

Nevada County District Attorney  
201 Commercial Street  
Nevada City, CA 95959

Orange County District Attorney  
401 Civic Center Drive West  
Santa Ana, CA 92701

Placer County District Attorney  
10810 Justice Center Drive, Suite 240  
Roseville, CA 95678

Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

Riverside County District Attorney  
3072 Orange Street  
Riverside, CA 92501  
Prop65@rivcoda.org

Sacramento County District Attorney  
901 G Street  
Sacramento, CA 95814  
Prop65@sacda.org

San Benito County District Attorney  
419 4th Street, Second Floor  
Hollister, CA 95203

San Bernardino County District Attorney  
303 West 3rd Street, 6th Floor  
San Bernardino, CA 92415-0502

San Diego County District Attorney  
330 W. Broadway Street  
San Diego, CA 92101  
CityAttyCrimProp65@sandiego.gov

San Francisco County District Attorney  
732 Brannan St  
San Francisco, CA 94103  
gregory.alker@sfgov.org

San Joaquin County District Attorney  
222 East Weber Avenue, Room 202  
Stockton, CA 95201  
DAConsumer.Environmental@sjcda.org

San Luis Obispo County District Attorney  
1035 Palm Street, 4th Floor  
San Luis Obispo, CA 93408  
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edobroth@co.slo.ca.us

San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

Santa Barbara County District Attorney  
1112 Santa Barbara Street  
Santa Barbara, CA 93101  
DAProp65@co.santa-barbara.ca.us

Santa Clara County District Attorney  
70 W Hedding St  
San Jose, CA 95110  
EPU@da.sccgov.org

Santa Cruz County District Attorney  
701 Ocean Street, Room 200  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Shasta County District Attorney  
1355 West Street  
Redding, CA 96001

Sierra County District Attorney  
100 Courthouse Square  
Downieville, CA 95936

Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

Solano County District Attorney  
675 Texas Street, Suite 4500  
Fairfield, CA 94533

Sonoma County District Attorney  
600 Administration Dr  
Sonoma, CA 95403  
jbarnes@sonoma-county.org

Stanislaus County District Attorney  
832 12th Street, Suite 300  
Modesto, CA 95354

Sutter County District Attorney  
466 Second Street, Suite 102  
Yuba City, CA 95991

Tehama County District Attorney  
444 Oak Street, Room L  
Red Bluff, CA 96080

Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

Tulare County District Attorney  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

Tuolumne County District Attorney  
423 North Washington Street  
Sonora, CA 95370

Ventura County District Attorney  
800 S Victoria Ave  
Ventura, CA 93009  
daspecialops@ventura.org

Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695  
cfepd@yolocounty.org

Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

Office of the City Attorney, Los Angeles  
800 City Hall East  
200 North Main Street  
Los Angeles, CA 90012

Office of the City Attorney, Sacramento  
915 I Street, 4th Floor  
Sacramento, CA 95814

Office of the City Attorney, San Diego  
1200 Third Avenue, Suite 1620  
San Diego, CA 92101

Office of the City Attorney,  
San Francisco  
1 Dr. Carlton B. Goodlett Place,  
Room 234  
San Francisco, CA 94102

Office of the City Attorney, San Jose  
200 East Santa Clara Street, 16th Floor  
San Jose, CA 95113



## 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

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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>.

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.

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<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.