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July 6, 2020

esmith@brodskysmith.com

President/CEO SEAC USA Corp. c/o Marco Maestri 7855 NW 12 th St., Suite 219 Miami, FL 33126	President/CEO Seac Sub S.P.A. Via Domenico Norero. 29 I 16040 San Colombano Certenoli (Genova) - ITALY
President/CEO Target Corporation c/o CT Corporation System 1010 Dale Street N St. Paul, MN 55117-5603	President/CEO Target Brands, Inc. c/o CT Corporation System 1010 Dale Street N St. Paul, MN 55117-5603

AND THE PUBLIC PROSECUTORS LISTED ON THE DISTRIBUTION LIST ACCOMPANYING
THE ATTACHED CERTIFICATE OF SERVICE

Re: Notice of Violation of California Health & Safety Code §25249.6, *et seq.*

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents Anthony Ferreiro ("Ferreiro"), a citizen of the State of California acting in the interest of the general public to promote awareness of exposures to toxic chemicals in products sold in California and to improve human health by reducing hazardous substances contained in such items.

With respect to the product identified below, Ferreiro has identified a violation of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at Cal. Health & Safety Code §25249.5, *et seq.* This violation has occurred and continues to occur because the alleged Violator(s) identified below failed to provide required clear and reasonable warnings with this product. 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.

Please allow this letter to serve as notice of this violation to the alleged Violators and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Brodsky Smith intends to file a private enforcement action on behalf of Ferreiro sixty (60) days after effective service of

this notice unless the public enforcement agencies¹ have commenced and are earnestly prosecuting an action to redress these violations.

Alleged Violator(s): The name of the company's covered by this notice that Violated Proposition 65 (hereinafter "the Violators") are:

SEAC USA Corp,
Seac Sub S.P.A.
Target Corporation
Target Brands, Inc.

Product Category/Type: The specific type of product causing this violation is:

<i>Product²</i>	<i>Retailer(s)</i>	<i>Manufacturer(s)/Distributor(s)</i>
Seac 5L Dry Bag UPC# 887728097228 EAN 8002908382525 0920018009000A 0920018/5 P2521700177145 S/N 16.3466 Target Order# 1066289432970	Target Corporation Target Brands, Inc.	SEAC USA Corp. Seac Sub S.P.A.

Listed Chemicals: This violation involves exposure to the chemical Diisononyl phthalate (DINP). On December 20, 2013, the State of California listed Diisononyl phthalate (DINP) as a chemical known to cause cancer. This addition took place more than twelve (12) months before Ferreiro 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 Diisononyl phthalate (DINP) 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.

Route of Exposure: The exposures that are the subject of this notice result from the purchase, acquisition, handling and recommended use of the product. Consequently, the primary route of exposure to these chemicals is through dermal absorption. Users can be exposed to DINP by dermal absorption through direct skin contact with the red plastic during routine use when handled with bare hands. Concentrations of DINP can be expected to build within the interior of the bag. This DINP can absorb to the surface of interior contents that are subsequently handled, worn, mouthed, or ingested by the user. If the bag is stored or transported in a carrier, DINP that leaches from the item may contaminate other articles contained within these closed spaces are subsequently handled, worn, mouthed, or consumed. Finally, while mouthing of the product does not seem likely, some amount of exposure through ingestion can occur by touching the product with subsequent touching of the user's hand to mouth.

¹ The public enforcement agencies that have been served with copies of this notice of violations are identified in the attached distribution list accompanying the Certificate of Service.

² The specifically identified example of the type of product that is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposures to the listed chemical from other items within the product category. 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." Further, it is Ferreiro's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings were and are provided to California citizens prior to purchase.

Duration of the Violations: Each of these ongoing violations has occurred on every day since at least February 12, 2020; as well as every day since the product was introduced to the California marketplace and following the one-year anniversary date of the listing at issue; and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is removed from the product.

Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto. Pursuant to Title 27, C.C.R. §25903(b), a copy of “The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary” is also enclosed.

Consistent with the public interest goals of Proposition 65 and desire to have these ongoing violations of California law quickly rectified, Ferreiro is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation.

Anthony Ferreiro has retained me as legal counsel in connection with this matter. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Evan J. Smith

Attachments

Certificate of Merit

Certificate of Service

The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary

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 action. My business address is 2 Bala Plaza, Suite 510, Bala Cynwyd, Pennsylvania. I am employed in Montgomery County where the mailing occurred.

On July 6, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on the following entities and individuals listed below by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Certified Mail:

President/CEO SEAC USA Corp. c/o Marco Maestri 7855 NW 12 th Street, Suite 219 Miami, FL 33126	President/CEO SEAC Sub S.P.A. Domenico Norero, 29 1 16040 San Colombano Certenoli (Geneva) ITALY
President/CEO Target Corporation c/o CT Corporation System 1010 Dale Street N St. Paul, MN 55117-5603	President/CEO Target Brands, Inc. c/o CT Corporation System 1010 Dale Street N St. Paul, MN 55117-5603

On July 6, 2020, I served the following documents: **Notice of Violation of California Health & Safety Code §25249.5, et seq.; Certificate of Merit; The Safe Drinking Water and Toxic Enforcement Action of 1986 (Proposition 65): A Summary** on each of the individuals on the service list attached hereto as Appendix B by placing a true and correct copy thereof in a sealed envelope, addressed to the person or entity listed below and depositing it in a US Postal Service Office with postage fully prepaid for delivery by Priority Mail.

Executed on July 6, 2020, in Bala Cynwyd, Pennsylvania.



Evan J. Smith

CERTIFICATE OF MERIT
Health & Safety Code Section 25249.7(d)

I, Evan J. Smith, hereby declare:

- (1) This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice have violated Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
- (2) I am the attorney for the noticing party Anthony Ferreiro.
- (3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the alleged exposure to the listed chemicals that are the subject of the 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 private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator(s) will be able to establish any of the affirmative defenses set forth in the statute.
- (5) The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health & 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: July 6, 2020



Evan J. Smith
Attorney for Anthony Ferreiro

SERVICE LIST

The Honorable Nancy J. White Alameda County District Attorney 1206 Fulton Street, Room 900 Oakland, CA 94612	The Honorable Steven Weintraub Lassen County District Attorney 200 South Lassen Street, Ste. 4 Susanville, CA 96150	The Honorable Thomas W. Brown San Benito County District Attorney 449 W. Central Expressway Merced, CA 95359	The Honorable Gregg Green Tulare County District Attorney 444 Oak Street, Room 1 Reed Bluff, CA 96880
The Honorable Thomas J. Ryan Alameda County District Attorney 270 Lakeside Street, P.O. Box 345 Berkeley, CA 94702	The Honorable Jackie Lacey Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	The Honorable Michele Rappin San Bernardino County District Attorney 301 West 1st Street, 5th Floor San Bernardino, CA 92401	The Honorable Ian Heyford Butte County District Attorney P.O. Box 310 Weaverville, CA 96093
The Honorable Todd Reibe Alameda County District Attorney 708 Court Street Jackson, CA 95647	The Honorable David Linn Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	The Honorable Bonnie Dymonis San Diego County District Attorney 330 W. Broadway Street San Diego, CA 92101	The Honorable Tim Ward Tulare County District Attorney 221 South Moneey Boulevard, Rm. 204 Visalia, CA 93291 4593
The Honorable Michael Ramsey Butte County District Attorney 45 County Center Drive Orville, CA 95955	The Honorable Edward Robertson Main County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903	The Honorable Sergio Lopez San Francisco County District Attorney 140 Bryant Street, Suite 100 San Francisco, CA 94103	The Honorable Laura Kneig Tulare County District Attorney 423 North Washington Street Sonora, CA 95370
The Honorable Barbara Cook Calaveras County District Attorney 991 Mountain Ranch Road San Andreas, CA 95249	The Honorable Thomas Conroy Mariposa County District Attorney 5101 Jonas Street, P.O. Box 750 Mariposa, CA 95338	The Honorable Tom Verbal Salazar San Joaquin County District Attorney 222 East Weber Avenue, Room 302 Stockton, CA 95201	The Honorable Gregory Totten Ventura County District Attorney 800 South Victoria Avenue Ventura, CA 93009
The Honorable John Poyner Colusa County District Attorney 348 Fish Street Colusa, CA 95932	The Honorable John David Eyster Mendocino County District Attorney 100 North State Street, P.O. Box 100 Ukiah, CA 95482	The Honorable Dan Cow San Luis Obispo County District Attorney 1035 Main Street, 4th Floor San Luis Obispo, CA 93401	The Honorable Jeff Reiss Yuba County District Attorney 301 Second Street Woodland, CA 95695
The Honorable Matt Peterson Colusa County District Attorney 1000 1st Street Woodland, CA 95692	The Honorable John Walsh Merced County District Attorney 350 W. Main Street Merced, CA 95354	The Honorable Steven Wagoner San Mateo County District Attorney 1000 California Street, Suite 1000 San Francisco, CA 94108	The Honorable Mark Tabor Office of the City Attorney, San Jose 450 California Street 200 North Main Street City of San Jose, CA 95110
The Honorable Dan Tigg Colusa County District Attorney 1000 1st Street Woodland, CA 95692	The Honorable David Cook Yuba County District Attorney 204 E. 7th Street, Suite 100 Marysville, CA 95901	The Honorable Steven Wagoner San Mateo County District Attorney 1000 California Street, Suite 1000 San Francisco, CA 94108	The Honorable Mark Tabor Office of the City Attorney, San Jose 450 California Street 200 North Main Street City of San Jose, CA 95110
The Honorable John Poyner Colusa County District Attorney 348 Fish Street Colusa, CA 95932	The Honorable Jill Austin Yuba County District Attorney P.O. Box 1 Marysville, CA 95901	The Honorable Jeffrey Cooper Santa Clara County District Attorney 70 West Madison Street, 9th Floor San Jose, CA 95110	The Honorable James Sanchez Office of the City Attorney, Sacramento 315 Street, 9th Floor Sacramento, CA 95814
The Honorable John Poyner Colusa County District Attorney 348 Fish Street Colusa, CA 95932	The Honorable Dean Farris Yuba County District Attorney P.O. Box 1 Marysville, CA 95901	The Honorable Jeff Hesse Santa Clara County District Attorney 70 West Madison Street, 9th Floor San Jose, CA 95110	The Honorable Jan Grudman Office of the City Attorney, San Diego 1200 Third Avenue, Suite 1670 San Diego, CA 92101
The Honorable John Poyner Colusa County District Attorney 348 Fish Street Colusa, CA 95932	The Honorable Steven Wagoner San Mateo County District Attorney 1000 California Street, Suite 1000 San Francisco, CA 94108	The Honorable Stephen D'Amico Shasta County District Attorney 1355 West Street Redding, CA 96001	The Honorable Dennis Herrera Office of the City Attorney, San Francisco 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102
The Honorable Maggie Fleming Humboldt County District Attorney 325 5th Street, Fourth Floor Eureka, CA 95501	The Honorable Clifford Newell Nevada County District Attorney 201 Commercial Street Nevada City, CA 95959	The Honorable Lawrence Green Santa Clara County District Attorney 60 Court House Square Sunnyvale, CA 95098	The Honorable Richard Goyen Office of the City Attorney, San Jose 260 East Santa Clara Street, 15th Floor San Jose, CA 95113
The Honorable Gabriel Ojeda Orange County District Attorney 400 West Main Street, Suite 100 Orlando, CA 92701	The Honorable Tony Hackstock Orange County District Attorney 401 Civic Center Drive West Santa Ana, CA 92701	The Honorable James W. Brown Santa Clara County District Attorney 60 Court House Square Sunnyvale, CA 95098	Office of the California Attorney General Prosecution & Enforcement, Reading ATTN: Prsg 151 Sacramento 1515 City Street, Suite 2000 Oakland, CA 94612 9530
The Honorable John Thomas Galt Butte County District Attorney 1000 1st Street Orville, CA 95955	The Honorable R. Scott Swans Placer County District Attorney 10816 Justice Center Drive, Suite 400 Roseville, CA 95678	The Honorable Virginia Abram Sonoma County District Attorney 915 Taylor Street, Suite 450 Fairfield, CA 94513	
The Honorable Lisa Green Yuba County District Attorney 1213 Duane Avenue Bakersfield, CA 93301	The Honorable David Heister Plumas County District Attorney 520 Main Street, Room 104 Quincy, CA 95471	The Honorable Jill Ravitch Sonoma County District Attorney 901 Administration Drive, Room 200 Santa Rosa, CA 95401	
The Honorable Keith Fagundes Alameda County District Attorney 1100 West 12th Street, Suite 100 Oakland, CA 94612	The Honorable Michael Hester Riverside County District Attorney 3960 Orange Street Riverside, CA 92503	The Honorable Rini Fladogg Stanislaus County District Attorney 432 12th Street, Suite 100 Modesto, CA 95354	
The Honorable Donald Anderson San Joaquin County District Attorney 154 Northgrades Street Woodstock, CA 95253	The Honorable Anthony G. Brown Sacramento County District Attorney 1019 Street Sacramento, CA 95811	The Honorable Amanda Temple Santa Clara County District Attorney 953 Second Street, Suite 102 Fremont, CA 94534	

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 27001.¹ 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

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

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.

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 contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

² See Section 25501(a)(4).

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of 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.

Revised: May 2017

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.

APPENDIX B

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): SPECIAL COMPLIANCE PROCEDURE

This Appendix B contains the notice of special compliance procedure and proof of compliance form 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"). Under the Act, a private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. These exposures are:

- 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.

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 any reimbursement for costs and attorney's fees, if 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 in 2019 and every five years thereafter) to the private party within 30 days; and

- Notified the private party serving the notice in writing that the violation has been corrected.

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 of greater than 750,000 population, or any full-time city prosecutor with the consent of the district attorney, from filing an enforcement action against an alleged violator.

When a private party sends a notice of alleged violation that alleges one or more of the exposures listed above, the notice must include a notice of special compliance procedure, and a proof of compliance form to be completed by the alleged violator as directed in the notice.

The notice and proof of compliance form is reproduced here

Date:
Name of Noticing Party or attorney for Noticing Party
Address:
Phone number:

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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:

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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 P65PublicComments@oehha.ca.gov.

Revised: May 2017

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.