

SIXTY-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

DATE: November 1, 2022

To: John S. Venhuizen, President/CEO – Ace Hardware Corporation
California Attorney General's Office
District Attorneys and Certain City Attorneys Throughout California

FROM: Laurence Vinocur

My name is Laurence Vinocur. I am a citizen of the State of California acting in furtherance of the public interest. I seek to promote awareness of exposures to certain toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. 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, this letter is also being provided to the alleged violator, Ace Hardware Corporation, which is a person in the course of doing business in California (Violator). The violations covered by this notice consist of the product exposure, routes of exposure and types of harm potentially resulting from exposure to the hazardous substance identified below (listed chemical), as follows:

Products:	Soldering Wire Containing Lead Including Kits Containing Such Items. ¹
Listed Chemical:	Lead
Routes of Exposure:	Inhalation, Ingestion and Dermal
Types of Harm:	Birth Defects and Other Reproductive Harm

I. NATURE OF ALLEGED VIOLATION (CONSUMER PRODUCT EXPOSURE)

Lead-based solder wire that are causing consumer exposures, in violation of Proposition 65, and that are covered by this letter shall be referred to hereinafter as the “Products.” Exposures to the listed chemical from the use of the Products have been occurring without the “clear and reasonable warning” required by Proposition 65, dating as far back as November 1, 2018. Without proper warnings regarding the toxic effects of exposures to the listed chemical resulting from the use of 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 identified toxicant.

¹ The products covered by this 60-day notice are limited to those items which demonstrate the Violator knows that a reasonably foreseeable use of the items will expose a consumer to the toxicant “lead” such as a specific reference the chemical or its element symbol, Pb, including common lead alloy soldering wire mixtures of “60/40” and “63/37” in: (i) the product’s name; (ii) the product description or information referenced prominently near the online display of the price and photograph for the item when offered for sale on the internet; (iii) the search “filter,” if any, used to market the products online; (iv) the product packaging or container; or (v) in any other conspicuous manner likely to be read by the online purchaser before payment without considerable effort.

California citizens, through the act of buying, acquiring, receiving or utilizing the Products, are exposed to the listed chemical. By way of example, consumers, other individuals, including women of childbearing age, ingest the listed chemical when they, among other activities, touch the Products and transfer the listed chemical from the Products to their mouths through hand-to-mouth activities that may continue to occur for a significant period after one or more contacts with the Products ceases.

Additionally, consumers, workers and other individuals, including women of childbearing age, are exposed to the listed chemical through direct dermal contact when they, among other activities, handle, touch or otherwise use the Products. Further, there are reasonably foreseeable uses of the Products that result in direct ingestion and inhalation.

The California State Plan for Occupational Safety and Health incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California so long as they are based in the United States. The approval also provides that a United States employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be subject to the supervision of the California Occupational Safety and Health Administration.

Any settlement, civil complaint or substantive court orders in this matter must be submitted to the state Attorney General. It is important to note that the sale of the Products through online means of transaction must provide the customer with a clear and reasonable warning for the risk of reproductive toxicity pursuant to Proposition 65 and its implementing regulations, even if the Violator's role is construed to be limited to that of a distributor or an online retailer.

II. CONTACT INFORMATION

Please direct all questions concerning this notice to me through my counsel's office at the following address, email and/or telephone number:

Laurence Vinocur
c/o Steven Y. Chen
Steven Y. Chen, APLC
2650 River Avenue, Unit A
Rosemead, CA 91770-4609
schen@schenlaw.com
Telephone: (626) 782-5017

Laurence Vinocur
c/o Clifford A. Chanler
Chanler, LLC
72 Huckleberry Hill Road
New Canaan, CT 06840-3801
clifford@chanlerllc.com
Telephone: (203) 594-9246

III. 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 Violator's reference, I have attached a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" which has been prepared by OEHHA.

IV. POTENTIAL RESOLUTION OF NOTICED CLAIMS

Based on the assertions set forth in this notice, I intend to file a citizen enforcement action against the Violator unless we enter into a binding written agreement (and/or upstream merchants enter into one or more agreements with me resolving the products at issue) to: (a) 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 or offer refunds; (b) provide "clear and reasonable warnings" for Products to be sold in the future or, preferably, reformulate such Products to eliminate potential exposures to lead (or undertake best efforts to ensure upstream selling entities in the chain of commerce such as manufacturers, exporters, importers or distributors do so); and (c) pay an appropriate civil fine, if any, based on the factors enumerated in California Health & Safety Code §25249.7(b). If the alleged Violator is particularly interested in resolving this dispute without resorting to litigation, please feel free to contact my counsel identified in Section II above. It should be noted that neither my counsel nor I can finalize any settlement with the Violator until after the statutory sixty-day notice period has expired for the covered products; nor speak for the state Attorney General, any state district attorney or the five city attorneys who received this notice.

V. ADDITIONAL NOTICE INFORMATION

Examples of Products that were recently purchased and/or available for purchase or use in California covered by this notice are identified on Exhibit A. Based on publicly available information, any other vendor, supplier, seller, exporter, importer or other person in the course of doing business for each exemplar that was identified, if any, is also listed on Exhibit A. I allege that the sale of the offending Products has also occurred without the requisite Proposition 65 "clear and reasonable warning" including, but not limited to, transactions made through the internet.^{2 3}

Such examples on the attachments are for the recipient's benefit to assist in its investigation of, among other things, a computer search of the Products offered for sale on its (or third party) websites as well as the magnitude of potential exposures to the listed chemical from items within the definition of Products.

² If a manufacturer, other distributor and/or importer of one or more of the Products does not have a known agent for process of service in California or employs less than ten people as defined by the operative regulation, then the online retail seller is alleged to have heightened regulatory responsibilities beyond 27 CCR §25600.2(d) especially if such entity is also a distributor or importer for the Products.

³ In accordance with 27 CCR §25600.2(g), please "promptly" answer the questions on **Exhibit B**, and return with receipt confirmation to Laurence Vinocur c/o Clifford Chanler, Chanler, LLC, 72 Huckleberry Hill Road, New Canaan, CT 06840, or via email to clifford@chanlerllc.com on or before **November 16, 2022**.

These exemplars are not meant to be a comprehensive identification of each specific offending Product. Further, Mr. Vinocur's position is that the alleged Violator is obligated to continue to conduct a good faith investigation into other lead-based solder wire described above that may have been manufactured, imported, distributed, facilitated for sale, sold, shipped, stored, or was otherwise within the notice recipient's custody or control during the relevant period so as to ensure that the requisite toxic warnings were and continue to be provided to California citizens prior to purchase, especially if the upstream or downstream vendor (i.e., party with whom the Violator entered into a contract to sell the products at issue) or downstream customer is exempt from a duty to warn or enforcement under Proposition 65.

Exhibit A

<i>Products</i>	<i>Item #</i>
Alpha Fry Electrical Repair Solder 40/60 Rosin Flux Core, 4 oz., #31406, UPC 0 31427 31406 7	24637
Alpha Fry 8 oz. Acid Core Wire Solder 0.125 in. Dia, Tin/Lead 40/60, #22406, UPC 0 31427 22406 9	24643
Alpha Fry 4 oz Rosin Core Solder Wire 0.03 in. D Tin/Lead 60/40, #31605	28973
Alpha Fry 4 oz Acid Core Wire Solder 0.125 in. D Tin/Lead 40/60, #32406	24642
Alpha Fry 16 oz Acid Core Wire Solder 0.125 in. D Tin/Lead 40/60, #12406	24644
Alpha Fry 3/4 oz Repair Solder 0.05 in. D Tin/Lead 60/40, #13460	24636
Alpha Metals 8 oz Solid Wire Solder Tin/Lead 40/60, #23406	2017400
Alpha Fry 16 oz Rosin Core Solder Wire 0.09 in. D Tin/Lead 40/60, #11406	24640
Alpha Fry 0.5 oz Repair Solder 0.03 in. D Tin/Lead 60/40, #13461	28972
Alpha Fry 4 oz Solid Wire Solder Tin/Lead 40/60, #33406	2017366
Forney 8 oz Solid Wire Solder 0.13 in. D Tin/Lead 40/60, #38102	2018639
Forney 8 oz Solid Wire Solder 0.13 in. D Tin/Lead 50/50, #38110	2018642
Forney 16 oz Solid Wire Solder 0.13 in. D Tin/Lead 40/60 1 pc, #38106	2018640
Forney 16 oz Solid Wire Solder 0.13 in. D Tin/Lead 50/50 1 pc, #38111	2018643
Forney 4 oz Solid Wire Solder 0.13 in. D Tin/Lead 50/50 1 pc, #61538	2018741
Forney 16 oz Rosin Core Solder Wire 1/8 in. D Lead/Tin/Antimony, #38070	2485167
Forney 0.75 oz Rosin Core Solder Wire 0.06 in. D Tin/Lead 60/40 1 pc, #61473	2018673
Forney 4 oz Rosin Core Solder Wire 0.03 in. D Tin/Lead 60/40 1 pc, #61426	2018657
Forney 4 oz Rosin Core Solder Wire 0.06 in. D Tin/Lead 60/40 1 pc, #61535	2018693
Forney 4 oz Rosin Core Solder Wire 0.06 in. D Tin/Lead 40/60 1 pc, #61534	2018692

<i>Products</i>	<i>Item #</i>
Forney 4 oz Acid Core Wire Solder 0.13 in. D Tin/Lead 40/60 1 pc, #61536	2018698
Alpha Fry 8 oz Rosin Core Solder Wire 0.09 in. D Tin/Lead 40/60 1 pc, #21406	24639
Forney 0.3 oz Rosin Core Solder Wire 1/32 in. D Tin/Lead 60/40 1 pc, #61430	2018661
Forney 0.3 oz Rosin Core Solder Wire 1/20 in. D Tin/Lead 60/40 1 pc, #61429	2018659
Alpha Solder and Flux Kit 1 pc, #AM59201	2692077

Exhibit B

As it relates to *each* of the Products, including those identified on **Exhibit A**, provide the full legal entity name and any known contact information (on or before **November 16, 2022**) for:

- (a) Any and all manufacturers
- (b) Any and all producers
- (c) Any and all packagers
- (d) Any and all direct vendors
- (e) Any and all exporters
- (f) Any and all shippers, and
- (g) Any and all sellers

Please email (or send via overnight delivery) the above-requested information to the address provided in Section II. Thank you.

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years and not a party to the within action. I am a resident or employed in the county where the mailing occurred. My business address is 72 Huckleberry Hill Road, New Canaan, CT 06840.

On **November 1, 2022**, I caused to be served the following documents:

**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH
HEALTH & SAFETY CODE § 25249.7(d);**

CERTIFICATE OF MERIT; AND

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF
1986 (PROPOSITION 65): A SUMMARY**

XXXX **By First Class Certified Mail** through the United States Postal Service by placing true and correct copies of the above documents in a sealed envelope, addressed to each alleged violator listed below and providing such envelope to a United States Postal Service Representative.

John S. Venhuizen, President
Ace Hardware Corporation
2200 Kensington Ct
Oak Brook, IL 60523

On **November 1, 2022**, I caused to be served the following documents:

**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH
HEALTH & SAFETY CODE § 25249.7(d); AND**

CERTIFICATE OF MERIT

XXXX **By First Class Mail** I placed a true and correct copy of the foregoing document(s) in a sealed envelope addressed to each interested party as set forth below. I placed each such envelope, with postage thereon fully prepaid, for collection and mailing in one of the United States Post Office Boxes located at 18 Locust Avenue, New Canaan, Connecticut.

The Honorable Mike Feuer
Los Angeles City Attorney
City Hall East, Suite 800
Los Angeles, CA 90012

Manuel Garcia, Jr.
Head Deputy District Attorney
County of Los Angeles
211 W. Temple St., Suite 1000
Los Angeles, CA 90012

On **November 1, 2022**, I caused to be served the following documents:

**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH
HEALTH & SAFETY CODE § 25249.7(d); AND**

CERTIFICATE OF MERIT

XXXX **By Electronic Mail** by sending true and correct copies of the above documents to the electronic notification (Email) address(es) on the attached “Email Service List” and “Mail Service List.”

On **November 1, 2022**, I caused to be served the following documents:

**SIXTY-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH
HEALTH & SAFETY CODE § 25249.7(d);**

CERTIFICATE OF MERIT; AND

CERTIFICATE OF MERIT ATTACHMENTS

XXXX **By Electronic Upload** by causing true and correct copies of the above documents to be uploaded to the California Attorney General’s website at the web address on the attached “Electronic Upload Service List.”

Executed on **November 2, 2022**, in New Canaan, Connecticut.



Lorent Guimaraes


CERTIFICATE OF MERIT

California Health & Safety Code Section 25249.7(d)

I, Clifford A. Chanler, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and 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 expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemical that is the subject of this action and/or the listed chemical in substantially similar products and exposes individuals through the same potential routes;
4. Based on the information obtained through those 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 Violator 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 under Health and Safety Code §25249.7(h)(2) including (i) the identity of the persons consulted with and relied on by the certifier, and (ii) certain facts, studies, or other data reviewed by those persons.

Dated: November 1, 2022



Clifford A. Chanler