

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH
Cal. Health & Safety Code § 25249.5, et seq.
("Proposition 65")

DATE: January 29, 2024

TO: **Benestar Brands LLC; Evans Food Group Ltd.; Evans Food Products Co Inc.; Highlander Partners, L.P.**

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

FROM: Consumer Rights Advocates, LLC

I. INTRODUCTION

Consumer Rights Advocates, LLC ("CRA") is a private enforcer acting in the public interest with the sole mission of protecting the public from environmental health hazards and toxic exposures by bringing an enforcement action to eliminate or reduce the presence of carcinogen and hazardous substances in food and consumer products sold in California, as well as encouraging corporate responsibility.

CRA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified in California Health & Safety Code § 25249.5 et seq., with respect to the products identified below. CRA serves this Notice of Violation ("Notice") upon BENESTAR BRANDS LLC; EVANS FOOD GROUP LTD.; EVANS FOOD PRODUCTS CO INC.; HIGHLANDER PARTNERS, L.P. ("Violators"), and the appropriate public enforcement agencies pursuant to California Health & Safety Code § 25249.6 et seq. CRA intends to pursue a private enforcement action in the public interest 60 days after the effective service of this Notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify this violation.

This Notice consists of a summary of Proposition 65, a statement of violation, the number and duration of the violations, the product's information, carcinogen or toxin causing the exposure ("Listed Chemical"), routes of exposure, type of harm resulting from exposure to the Listed Chemical, and demand for preservation of evidence.

Product Exposure:	See Sections VI. and VII.
Listed Chemical:	Lead
Routes of Exposure:	Ingestion and Dermal Absorption
Type of Harm:	Birth Defect and other Reproductive Harm

II. PROPOSITION 65 INFORMATION – SUMMARY

A summary of Proposition 65 and its implementing regulations, prepared by the Office of Environmental Health Hazard Assessment, the lead agency designated under Proposition 65, is enclosed as Appendix A and served on the Violators. For more 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.

III. STATEMENT OF VIOLATIONS

The Exemplar Product that is causing consumer exposure in violation of Proposition 65 is listed under section VI ("Covered Product"). The specific toxin causing the exposure is set forth in section VII. Exposures to the Listed Chemical from the ordinary and foreseeable use of the Covered Product have been occurring without the "clear and reasonable warning" required by Proposition 65. Without proper warnings regarding the toxic effects and implications of exposure to the Listed Chemical, California citizens lack the information necessary to make informed decisions as to whether and how to eliminate or reduce the risk of being exposed to the Listed Chemical.

The Violators knowingly disregarded this toxic chemical exposure and knowingly and intentionally continued to place this product in the stream of commerce in California, thereby exposing consumers within the State of California to the Listed Chemical, a chemical known to the State of California to cause cancer, birth defects, and other reproductive harm, without first giving clear and reasonable warning of this exposure. The Violators failed to provide a clear and reasonable warning to consumers that the Covered Product exposes consumers to the Listed Chemical and the type of harm.

IV. NUMBER AND DURATION OF VIOLATIONS

Each and every sale of a Covered Product to a consumer in California without a clear and reasonable warning is a violation, including transactions made over-the-counter, through the internet, or via catalog. These violations have been occurring since at least January 29, 2023, as well as every day since the Covered Product was first introduced and sold in the State of California. These violations will continue until “clear and reasonable warnings” are provided prior to exposing California consumers to the Listed Chemicals.

V. ROUTE OF EXPOSURE

California consumers are exposed to the Listed Chemical through the ordinary and foreseeable use and consumption of the Covered Product. Consumers ingest the Listed Chemical by eating the Covered Product or when they touch and handle the Covered Product, transfer the Listed Chemical from the Covered Product onto their fingers and hands, and transfer the Listed Chemical from their fingers and hands to their mouths through hand-to-mouth activities that may continue to occur for a significant period after contact with the Covered Product.

For example, exposures occur when California citizens use the Covered Product as an ingredient, eat, sample, or otherwise ingest the product. These acts cause consumers to be exposed to the Listed Chemical through the routine consumption of all or a portion of the product containing the Listed Chemical. People likely to be exposed include both children and adults, including women of childbearing age.

VI. COVERED PRODUCT

Identified below is a specific example of the product recently purchased and witnessed as being available for purchase in California (the “Exemplar Product”). Based on publicly available information, information regarding the retailers, distributors, importers, and/or manufacturers of the Exemplar Product is also provided.

The Exemplar Product is identified for the Notice Recipient’s benefit to assist in their investigation of the allegations set forth in this Notice. The Exemplar Product is not meant to be an exhaustive or comprehensive identification of products falling within the specific category of the Covered Product. The Exemplar Product is a representative of a class of products called “**CAZO DE ORO WHEAT SNACK**”. It is the CRA’s position that the Violators are obligated to conduct a good-faith investigation into other products falling within the category of the Covered Product, including variations thereof, which have been manufactured, imported, distributed, shipped, stored, or sold in the State of California.

<u>Exemplar Product</u>	<u>Violator(s)</u>
Las Ricas Wheat Snack Cuadritos Chile Flavor UPC No.: 0-7349760079-4 Cazo De Oro Brand – 60079B Lot No. 23137	BENESTAR BRANDS LLC EVANS FOOD GROUP LTD. EVANS FOOD PRODUCTS CO INC. HIGHLANDER PARTNERS, L.P.

VII. EXHIBIT A – LISTED CHEMICAL

<u>Product Category</u>	<u>Carcinogen</u>
Wheat Snacks	Lead

VIII. RESOLUTION OF NOTICED CLAIMS

Consistent with the goals of Proposition 65 and a desire to have these violations corrected, CRA is interested in seeking a resolution of this matter that includes a binding written agreement by the Violators to (1) recall any 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) reformulate the Covered Product so as to eliminate further exposures to the Covered Chemical(s) or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposure to the Listed Chemical, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired, or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement with CRA will resolve its claims, such an agreement may not satisfy the public prosecutors.

Proposition 65 requires that notice of intent to sue be given to the Violators sixty (60) days before the suit is filed. Cal. Health & Safety Code § 25249.7(d)(1). With this letter, CRA gives notice of the violations to the Violators and the appropriate governmental authorities. In the absence of any action by the appropriate governmental authorities within sixty (60) calendar days of the sending of this notice, CRA may file an enforcement

action. See *Cal. Code Civ. Proc.* § 1013; *Cal. Health & Safety Code* § 25249.7(d)(1); and *Cal. Code Regs.* Tit. 27 § 25903(d)(1). Per *Cal. Code Regs.* Tit. 27, § 25600.2(g) (2018), the retail seller noticed on this 60-Day Notice is hereby requested to promptly provide the names and contact information for the manufacturer(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s) of the Covered Product in this Notice.

IX. PRESERVATION OF EVIDENCE

This Notice also serves as a demand that the Notice Recipients preserve and maintain all relevant evidence, including all electronic documents and data, pending the resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to the presence of the Listed Chemicals in the Covered Product; purchase and sales information for Covered Product (i.e., purchasers, suppliers; quantity; the identity of the manufacturer(s), producer(s), packager(s), importer(s), supplier(s), and/or distributor(s), quantity per transaction, as well as the suppliers of the raw material, the current inventory of the Covered Product in California); efforts to comply with Proposition 65 with respect to the Covered Product; communications with any person relating to the presence or potential presence of the Listed Chemical in Covered Product.

This demand applies to all relevant evidence related to the Covered Product offered for sale in the State of California as far back as January 29, 2023, through the date of any trial of the claims in this Notice.

X. CERTIFICATE OF MERIT

Pursuant to Health & Safety Code §25249.6 and Title 11, California Code of Regulations, section 3100, a Certificate of Merit is attached hereto. A second copy of the entire notice and Certificate of Merit is served on the Attorney General with all supporting documentation required by section 3102 attached hereto.

XI. CONTACT INFORMATION

CRA identifies Faraz Adjnasian as a responsible individual with the entity; 856 S. Robertson Blvd. Los Angeles, CA 90035; (424) 355-8505. Mr. Adjnasian requests all communication be directed to CRA's attorney, Davar Danialpour, at Cornerstone Law Firm, PC.

Pursuant to the public health and welfare objectives of Proposition 65, CRA remains dedicated to finding a constructive resolution in this matter. We invite violators to consider an early settlement, which would not only mitigate ongoing consumer exposure to the Listed Chemical but also circumvent the need for judicial intervention and protracted litigation.

Please direct all communications pertaining to this Notice to:

Davar Danialpour, Esq.
Cornerstone Law Firm, PC
357 S. Robertson Blvd. 2ND Floor
Beverly Hills, CA 90211
Telephone: (310) 444-0055
Facsimile: (310) 444-0066
Email: David@davarlaw.com

Sincerely,



Davar Danialpour, Esq.
CORNERSTONE LAW FIRM, PC
Attorneys for Consumer Rights Advocates, LLC

Dated: 01/29/2024

Attachments:

- Certificate of Merit;
- Certificate of Service;
- The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary;
- Confidential Information in Support of Certificate of Merit (Attorney General Only)

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Davar Danialpour, 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 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 exposure to the Listed Chemical that is the subject of this action;
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 Violators 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 and 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: January 29, 2024



Davar Danialpour

CERTIFICATE OF SERVICE PURSUANT TO 27 CCR § 25903

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 over the age of 18 and not a party to this case. I am a resident or employed in the county where the mailing occurred. My business address is 357 S. Robertson Blvd. 2ND Floor Beverly Hills, CA 90211.

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail

Attn: Legal Department Benestar Brands LLC Evans Food Group Ltd. Evans Food Products Co. 4118 S. Halsted St. Chicago, IL 60609-2612	Attn: Legal Department Evans Food Group Ltd. Evans Food Products Co Inc. Highlander Partners, L.P. 615 N. Great Southwest Pkwy Arlington, TX 76011-5424
Attn: Legal Department Highlander Partners, L.P. 300 Crescent Court, Suite 550 Dallas, TX 75201	Lawyers Incorporating Services Evans Food Group Ltd. 2710 Gateway Oak Drive Sacramento, CA 95833

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary
- 3) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)
- 4) Supporting Factual Information Sufficient to establish the basis for Certificate of Merits

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/prop65/60-day-notice-search>:

Office of the California Attorney General

Proposition 65 Enforcement
1515 Clay Street, Suite 2000
Oakland, CA 94612-0550

Additionally,

ON THE DATE SHOWN BELOW, I SERVE THE FOLLOWING DOCUMENTS:

- 1) 60-Day Notice of Violation of Health & Safety Code § 25249.5, *ET SEQ.*
- 2) Certificate of Merit pursuant to Health & Safety Code § 25249.7(d)

on each of the parties on the "Distribution List" attached, and depositing it at a U.S. Postal Service office with postage fully prepaid for delivery by First Class Mail, and on each of the parties listed on the "Electronic Service" when a true and correct copy thereof was sent via electronic mail.

Executed on January 29, 2024, in Beverly Hills, California.


Azadeh Amanollahi

Distribution List

Honorable Robert Priscaro Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Honorable Susan J. Kronos Lake County District Attorney 255 N. Forbes Street Lakeport, CA 95453	Honorable Nora Frimann San Jose City Attorney's Office 200 East Santa Clara Street, 16 th Floor San Jose, CA 95113
Honorable Todd Riebe Amador County District Attorney 708 Court Street, Suite 202 Jackson, CA 95642	Honorable George Gascon Los Angeles County District Attorney 211 West Temple Street, Suite 1200 Los Angeles, CA 90012	Honorable Clint Curry Yuba County District Attorney 215 Fifth Street, Suite 152 Marysville, CA 95901
Honorable Michael L. Ramsey Butte County District Attorney 25 County Center Drive Oroville, CA 95965	Honorable Hydee Feldstein Soto Los Angeles City Attorney's Office 200 N. Main Street Suite 800 Los Angeles, CA 90012	Honorable Stephanie A. Bridgett Shasta County District Attorney 1355 West Street Redding, CA 96001
Honorable Brendan Farrell Colusa County District Attorney 346 Fifth Street Suite 101 Colusa, CA 95932	Honorable Sally O. Moreno Madera County District Attorney 209 West Yosemite Avenue Madera, CA 93637	Honorable Sandra Groven Sierra County District Attorney PO Box 457 Downieville, CA 95936
Honorable Katherine Nell Micks Del Norte County District Attorney 450 H Street, Suite 171 Crescent City, CA 95531	Honorable Cassandra Jenecke Tuolumne County District Attorney 423 N. Washington Street Sonora, CA 95370	Honorable Kirk Andrus Siskiyou County District Attorney PO Box 986 Yreka, CA 96097
Honorable David M. Brady Trinity County District Attorney PO Box 310 Weaverville, CA 96093	Honorable David C. Eyster Mendocino County District Attorney PO Box 1000 Ukiah, CA 95482	Honorable Krishna A. Abrams Solano County District Attorney 675 Texas Street, Suite 4500 Fairfield, CA 94533
Honorable Dwayne R. Stewart Glenn County District Attorney PO Box 430 Willows, CA 95988	Honorable Cynthia Louise Campbell Modoc County District Attorney 204 S. Court Street, Suite 202 Alturas, CA 96101	Honorable Jeff Laugero Stanislaus County District Attorney 832 12 th Street, Suite 300 Modesto, CA 95354
Honorable Stacey Eads Humboldt County District Attorney 825 5 th Street 4 th Floor Eureka, CA 95501	Honorable Jason Anderson San Bernardino County District Attorney 303 West Third Street San Bernardino, CA 92415	Honorable Jennifer Dupre-Tokos Sutter County District Attorney 463 Second Street Yuba City, CA 95991
Honorable George Marques Imperial County District Attorney 940 West Main Street Suite 102 El Centro, CA 92243	Honorable Tim Kendall Mono County District Attorney PO Box 617 Bridgeport, CA 93517	Honorable Matt Rogers Tehama County District Attorney PO Box 519 Red Bluff, CA 96080
Honorable Cynthia Zimmer Kern County District Attorney 1215 Truxtun Avenue, 4 th Floor Bakersfield, CA 93301	Honorable Todd Spitzer Orange County District Attorney PO Box 808 Santa Ana, CA 92702	Honorable Farimah Faiz Brown Berkeley City Attorney's Office 2180 Milvia St, 4 th Floor Berkeley, CA 94704
Honorable Eric Gonzalez Kings County District Attorney 1400 West Lacey Boulevard, Building # 4 Hanford, CA 93230	Honorable Joel Buckingham San Benito County District Attorney 419 Fourth Street, 2 nd Floor Hollister, CA 95023	Honorable Barbara J. Parker Oakland City Attorney's Office 1 Frank Ogawa Plaza 6 th FL Oakland, CA 94612

Electronic Service

Honorable Pamela Y. Price Alameda County District Attorney CEPDProp65@acgov.org	Honorable Allison Haley Napa County District Attorney CEPD@countyofnapa.org	Honorable Eric J. Dobroth San Luis Obispo Deputy District Attorney edobroth@co.slo.ca.us
Honorable Barbara Yook Calaveras County District Attorney Prop65Env@co.calaveras.ca.us	Honorable Clifford H. Newell Nevada District Attorney DA.Prop65@co.nevada.ca.us	Honorable Christopher Dalbey Santa Barbara Deputy District Attorney DAProp65@co.santa-barbara.ca.us
Honorable Stacey Grassini Contra Costa Deputy District Attorney sgrassini@contracostada.org	Honorable Morgan Briggs Gire Placer County District Attorney Prop65@placer.ca.gov	Honorable Nora V. Frimann Santa Clara City Attorney Proposition65notices@sanjoseca.gov
Honorable James Clinchard El Dorado District Attorney EDCDAPROP65@edcda.us	Honorable David Hollister Plumas County District Attorney davidhollister@countyofplumas.com	Honorable Bud Porter Santa Clara Supervising Deputy District Attorney EPU@da.sccgov.org
Honorable Lisa A. Smittcamp Fresno District Attorney consumerprotection@fresnocountyca.gov	Honorable Paul E. Zellerbach Riverside County District Attorney Prop65@rivcoda.org	Honorable Jeffrey S. Rosell Santa Cruz County District Attorney Prop65DA@santacruzcounty.us
Honorable Thomas L. Hardy Inyo County District Attorney inyoda@inyocounty.us	Honorable Anne Marie Schubert Sacramento County District Attorney Prop65@sacda.org	Honorable Jill Ravitch Sonoma District Attorney Jeannie.Barnes@sonoma-county.org
Honorable Devin Chandler Lassen County Program Coordinator DChandler@co.lassen.ca.us	Honorable Summer Stephan San Diego County District Attorney SanDiegoDAProp65@sdcda.org	Honorable Phillip J. Cline Tulare District Attorney Prop65@co.tulare.ca.us
Honorable Lori E. Frugoli Marin County District Attorney consumer@marincounty.org	Honorable Mark Ankcorn San Diego Deputy City Attorney CityAttyProp65@sandiego.gov	Honorable Gregory D. Totten Ventura County District Attorney daspecialops@ventura.org
Honorable Walter W. Wall Mariposa County District Attorney mcda@mariposacounty.org	Honorable Henry Lifton San Francisco Deputy City Attorney Prop65@sfcityatty.org	Honorable Jeff W. Reising Yolo County District Attorney cfepd@yolocounty.org
Honorable Kimberly Lewis Merced County District Attorney Prop65@countyofmerced.com	Honorable Alexandra Grayner San Francisco Assistant District Attorney alexandra.grayner@sfgov.org	Honorable Stephen M. Wagstaffe San Mateo District Attorney Prop65@smcgv.org
Honorable Jeannine M. Pacioni Monterey County District Attorney Prop65DA@co.monterey.ca.us	Honorable Tori Verber Salazar San Joaquin District Attorney DAConsumer.Environmental@sjcda.org	

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.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute 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 "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. This means that 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.

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.

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>.

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 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.

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.

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.

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

² See Section 25501(a)(4).