

# 60-DAY NOTICE OF VIOLATION

Cal. Health & Safety Code § 25249.5, et seq. (Proposition 65)

**DATE:** December 19, 2024

**TO:** **EcoFish, Inc.; Walmart Inc.; Wal-Mart Stores, Inc.; Wal-Mart.com USA, LLC.**  
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 an organization dedicated to protecting the public from environmental health hazards and toxic exposures. Acting in the public interest, CRA seeks to safeguard the health of Californians, protect the environment and consumer rights, and hold corporations accountable. CRA has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), codified in California Health & Safety Code § 25249.5 et seq., with respect to the product(s) specified below.

CRA serves this Notice of Violation ("Notice") on ECOFISH, INC.; WALMART INC.; WAL-MART STORES, INC.; WAL-MART.COM USA, LLC. ("Alleged Violators"), and the appropriate public enforcement agencies pursuant to California Health & Safety Code § 25249.6 et seq. CRA intends to bring a citizen enforcement lawsuit 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 redress these violations.

Product Exposure:	See Sections VI
Listed Chemical:	Lead & Cadmium
Routes of Exposure:	Ingestion
Type of Harm:	Birth Defect, Developmental Toxicity, 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 Alleged 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.

On point with this notice, on February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental and reproductive toxicity (California Health & Safety Code § 25249.8). Lead became subject to the Act's "clear and reasonable warning" requirements 12 months after its listing, on February 27, 1988 (California Health & Safety Code § 25249.10(b)). Lead is referred to hereinafter as the "Listed Chemical."

## III. STATEMENT OF VIOLATIONS

The Exemplar Product, which causes consumer exposure in violation of Proposition 65, is identified in Section VI ("Covered Product"), along with the specific toxin or carcinogen listed therein. Consumers have been subjected to exposure to the Listed Chemical without receiving the "clear and reasonable warning" required by Proposition 65. In the absence of such warnings, California consumers are deprived of their right to make informed decisions regarding the reduction or elimination of their exposure to the Listed Chemical.

## IV. NUMBER AND DURATION OF VIOLATIONS

Every sale of the Covered Product in California, whether in-store, online, or through catalogs, constitutes a violation in the absence of a clear and reasonable warning. These violations have occurred daily since at least December 19, 2023, and will continue until such warnings are provided before exposing California consumers to the Listed Chemicals. It should be noted that CRA may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

## V. ROUTE OF EXPOSURE

The consumer exposures outlined in this Notice stem from the intended use of the product. The primary route of exposure to the Listed Chemical has been and continues to be through ingestion.

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## VI. COVERED PRODUCT

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The product identified below (“Exemplar Product”) was recently purchased and observed as available for sale in California. Publicly available information regarding its retailers, distributors, importers, and/or manufacturers is provided. The Exemplar Product is intended to assist the Notice recipients in investigating the allegations made in this Notice. It is not an exhaustive list of all products within the category of the Covered Product but represents the class of products known as “FRESHÉ GOURMET TUNA MEAL.”

<u>Exemplar Product</u>	<u>Carcinogens/Toxins</u>	<u>Alleged Violators</u>
Freshé Gourmet Tuna Meal Sicilian Caponata UPC No. 8-1241000060-6 Lot No. L229M	Lead & Cadmium	ECOFISH, INC. WALMART INC.; WAL-MART STORES, INC.; WAL-MART.COM USA, LLC.

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## VII. NOTICE OF DUTY TO PRESERVE EVIDENCE

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“The duty to preserve evidence is triggered when litigation is pending or reasonably foreseeable, at which time a party is required to preserve all relevant evidence and put into place a litigation hold to preserve relevant documents.” *Net-Com Servs. v. Eupen Cable USA, Inc.*, 2013 U.S. Dist. LEXIS 109810, at \*6-7 (C.D. Cal. Aug. 5, 2013) (citations omitted).

We accordingly notify the Alleged Violators of their duty to preserve evidence relevant to the potential litigation our client may initiate if the Alleged Violators do not undertake the steps demanded herein. This includes but is not limited to, documents, tangible things, and electronically stored information (ESI) that are potentially relevant to the anticipated lawsuit, as well as efforts to comply with Proposition 65 from December 19, 2023, through the date of any trial on the claims alleged in this Notice.

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## VIII. DEMAND TO IDENTIFY MANUFACTURER, PRODUCER, PACKAGER, IMPORTER, SUPPLIER, AND DISTRIBUTOR

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Pursuant to 27 C.C.R. 25600.2(g), “[t]he retail seller of a product that may cause a consumer product exposure shall promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, and distributor of the product to ... [a]ny person who has served notice under Section 25249.7(d)(1) of the Act alleging that the consumer product causes an exposure that requires a warning under the Act.” This notice includes the description of the specific product type that is subject to this notice, as well as one or more specific examples of the product in Section VI.

**Please accept this Notice as a formal demand for any non-manufacturing seller or distributor receiving this notice to promptly provide the name and contact information for the manufacturer, producer, packager, importer, supplier, promoter, and distributor of the Covered Product.**

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## IX. RESOLUTION OF NOTICED CLAIM

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Based on the allegations outlined in this Notice, CRA intends to bring a citizen enforcement lawsuit against the Alleged Violators unless the Alleged Violators agree, in a binding written instrument, to (1) either reformulate the Covered Product to eliminate exposure to the Listed Chemical, or if reformulation is not possible or feasible, to provide clear and reasonable warnings for the Listed Product sold or otherwise provided to California consumers in the future, and (2) pay an appropriate civil penalty and costs based on the factors enumerated in California Health and Safety Code Section 25249.7(b). Should the Alleged Violators wish to resolve this matter without engaging in costly and protracted litigation, please contact CRA through its counsel, identified below.

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## X. PARTIES CONTACT INFORMATION

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The entity giving this Notice is Consumer Rights Advocates, LLC, with a principal address at 856 S. Robertson Blvd. Los Angeles, CA 90035; (424) 355-8505. CRA identifies Faraz Adjnasian as a responsible individual within the entity and requests that all communications be directed to CRA’s attorneys at Cornerstone Law Firm, PC.

Consistent with Proposition 65’s public interest objectives of eliminating or reducing exposure to the Listed Chemical, CRA is committed to pursuing a constructive and amicable resolution to address these ongoing violations of California Law. If you have any questions or wish to discuss the resolution of this matter, please contact me at [david@davarlaw.com](mailto:david@davarlaw.com) and include [clerks@davarlaw.com](mailto:clerks@davarlaw.com) in the email.

Sincerely,



Davar Danialpour, Esq.  
CORNERSTONE LAW FIRM, PC

**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: 12/19/2024

  
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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. 2<sup>ND</sup> 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 by Certified Mail:

Attn: Legal Dept. EcoFish, Inc. 340 Central Ave, Suite 303 Dover, NH 03820-3770 gayle@ecofish.com	Lisa Marie Lovejoy EcoFish, Inc. 78 Market St. Suite 3 Portsmouth, NH 03801-7715	Doug C McMillon, CEO WALMART, INC. 702 SW 8 <sup>th</sup> Street Bentonville, AR 72716-6209
Henry Webster Lovejoy, Registered Agent EcoFish, Inc. 340 Central Ave S305 Dover, NH 03820-3700 henry@ecofish.com	WALMART INC. c/o CT Corporation System 330 N. Brand Blvd. Glendale, CA 91203-2336	WAL-MART.COM USA, LLC c/o CT Corporation System 330 N. Brand Blvd. STE 700 Glendale, CA 91203-2336
Attn: Legal Dept. WAL-MART.COM USA, LLC 850 Cherry Ave. San Bruno, CA 94066-3031		

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 at: <https://oag.ca.gov/prop65/add-60-day-notice>

**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 12/19/2024 in Beverly Hills, California.

  
Davar Danialpour

## Distribution List

Honorable Robert Priscaro Alpine County District Attorney PO Box 248 Markleeville, CA 96120	Honorable Susan J. Kroner 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 <sup>th</sup> 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 300 S. G Street, Suite 300 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 <sup>th</sup> Street, Suite 300 Modesto, CA 95354
Honorable Stacey Eads Humboldt County District Attorney 825 5 <sup>th</sup> Street 4 <sup>th</sup> 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 <sup>th</sup> 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 <sup>th</sup> 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 <sup>nd</sup> Floor Hollister, CA 95023	Honorable Barbara J. Parker Oakland City Attorney's Office 1 Frank Ogawa Plaza 6 <sup>th</sup> FL Oakland, CA 94612
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 Carla Rodriguez Sonoma District Attorney ECLD@sonoma-county.org
Honorable Devin Chandler Lassen County Program Coordinator DChandler@co.lassen.ca.us	Honorable Summer Stephan San Diego County District Attorney SanDiegoDAProp65@sdcca.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 500 County Center 3rd Floor Redwood City, CA 94063
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 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. These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>

#### WHAT DOES PROPOSITION 65 REQUIRE?

**The "Proposition 65 List."** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical unless an exemption applies. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

**Grace Period.** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

**Governmental agencies and public water utilities.** All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "No Significant Risk Levels" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level" divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getMADLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in Food.** Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to 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 [P65PublicComments@oehha.ca.gov](mailto:P65PublicComments@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.