

1 WILLIAM F. WRAITH, SBN 185927  
WRAITH LAW  
2 25361 Commercentre Drive, Ste 150  
3 Lake Forest, CA 92630  
Tel: (949) 452-1234  
4 Email: bill@wraithlaw.com  
5 Attorney for Plaintiff Environmental Research Center, Inc.

6 GEORGE SALMAS, SBN 62616  
7 MICHAEL HAMBLY, SBN 119834  
THE FOOD LAWYERS®  
8 1880 Century Park E, Ste 611  
Los Angeles, Ca 90067  
9 Telephone: (310) 556-0721  
10 Email: george.salmas@thefoodlawyers.com  
michael.hambly@thefoodlawyers.com  
11  
12 Attorneys for Defendant Body Ecology, Inc.

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **COUNTY OF ALAMEDA**

16 **ENVIRONMENTAL RESEARCH**  
17 **CENTER, INC., a non-profit California**  
18 **corporation,**  
19 **Plaintiff,**  
20 **v.**  
21 **BODY ECOLOGY, INC. and DOES 1-100,**  
22 **Defendants.**

**CASE NO. 22CV012294**

**[PROPOSED] STIPULATED  
CONSENT JUDGMENT**

Health & Safety Code § 25249.5 *et seq.*

Action Filed: June 6, 2022

Trial Date: None set

24  
25 **1. INTRODUCTION**

26 **1.1** On June 6, 2022, Plaintiff Environmental Research Center, Inc. (“ERC”), a non-  
27 profit corporation, as a private enforcer and in the public interest, initiated this action by filing  
28 a Complaint for Injunctive and Declaratory Relief and Civil Penalties pursuant to the

1 provisions of California Health and Safety Code section 25249.5 *et seq.* (“Proposition 65”),  
2 against Body Ecology, Inc. (“Body Ecology”) and Does 1-100. Subsequently, on July 27,  
3 2022, a First Amended Complaint was filed. A Second Amended Complaint was filed on  
4 January 20, 2023 (the operative Complaint, hereinafter referred to as “Complaint”). In this  
5 action, ERC alleges that a number of products manufactured, distributed, or sold by Body  
6 Ecology contain lead, a chemical listed under Proposition 65 as a carcinogen and reproductive  
7 toxin, and expose consumers to this chemical at a level requiring a Proposition 65 warning.  
8 These products (referred to hereinafter individually as a “Covered Product” or collectively as  
9 “Covered Products”) are: (1) Body Ecology Digestive Care Multi, (2) Body Ecology Probiotic  
10 Protein Shake Creamy and Delicious!, and (3) Body Ecology Ancient Earth Minerals Organic.

11 **1.2** ERC and Body Ecology are hereinafter referred to individually as a “Party” or  
12 collectively as the “Parties.”

13 **1.3** ERC is a 501 (c)(3) California non-profit corporation dedicated to, among other  
14 causes, helping safeguard the public from health hazards by reducing the use and misuse of  
15 hazardous and toxic chemicals, facilitating a safe environment for consumers and employees,  
16 and encouraging corporate responsibility.

17 **1.4** For purposes of this Consent Judgment, the Parties agree that Body Ecology is a  
18 business entity that has employed ten or more persons at all times relevant to this action and  
19 qualifies as a “person in the course of doing business” within the meaning of Proposition 65.  
20 Body Ecology manufactures, distributes, and/or sells the Covered Products.

21 **1.5** The Complaint is based on allegations contained in ERC’s Notices of Violation  
22 dated March 24, 2022, May 17, 2022, and August 4, 2022 that were served on the California  
23 Attorney General, other public enforcers, and Body Ecology (“Notices”). True and correct  
24 copies of the 60-Day Notices dated March 24, 2022, May 17, 2022, and August 4, 2022 are  
25 attached hereto as **Exhibits A, B, and C** and each is incorporated herein by reference. More  
26 than 60 days have passed since the Notices were served on the Attorney General, public  
27 enforcers, and Body Ecology and no designated governmental entity has filed a Complaint  
28 against Body Ecology with regard to the Covered Products or the alleged violations.

1           **1.6**     ERC’s Notices and Complaint allege that use of the Covered Products by  
2 California consumers exposes them to lead without first receiving clear and reasonable  
3 warnings from Body Ecology, which is in violation of California Health and Safety Code  
4 section 25249.6. Body Ecology denies all material allegations contained in the Notices and  
5 Complaint.

6           **1.7**     The Parties have entered into this Consent Judgment in order to settle,  
7 compromise, and resolve disputed claims and thus avoid prolonged and costly litigation.  
8 Nothing in this Consent Judgment nor compliance with this Consent Judgment shall constitute  
9 or be construed as an admission by any of the Parties or by any of their respective officers,  
10 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,  
11 franchisees, licensees, customers, suppliers, distributors, wholesalers, or retailers of any fact,  
12 issue of law, or violation of law.

13           **1.8**     Except as expressly set forth herein, nothing in this Consent Judgment shall  
14 prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in  
15 any current or future legal proceeding unrelated to these proceedings.

16           **1.9**     The Effective Date of this Consent Judgment is the date on which it is entered  
17 as a Judgment by this Court.

## 18     **2.     JURISDICTION AND VENUE**

19           For purposes of this Consent Judgment and any further court action that may become  
20 necessary to enforce this Consent Judgment, the Parties stipulate that this Court has subject matter  
21 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
22 over Body Ecology as to the acts alleged in the Complaint, that venue is proper in Alameda  
23 County, and that this Court has jurisdiction to enter this Consent Judgment as a full and final  
24 resolution of all claims up through and including the Effective Date that were or could have been  
25 asserted in this action based on the facts alleged in the Notices and Complaint.

## 26     **3.     INJUNCTIVE RELIEF, REFORMULATION, TESTING AND WARNINGS**

27           **3.1**     Beginning on the Effective Date, Body Ecology shall be permanently enjoined  
28 from manufacturing for sale in the State of California, “Distributing into the State of

1 California,” or directly selling in the State of California, any Covered Product that exposes a  
2 person to a “Daily Lead Exposure Level” of more than 0.5 micrograms of lead per day unless it  
3 meets the warning requirements under Section 3.2.

4 **3.1.1** As used in this Consent Judgment, the term “Distributing into the State  
5 of California” shall mean to directly ship a Covered Product into California for sale in  
6 California or to sell a Covered Product to a distributor that Body Ecology knows or has reason  
7 to know will sell the Covered Product in California.

8 **3.1.2** For purposes of this Consent Judgment, the “Daily Lead Exposure  
9 Level” shall be measured in micrograms, and shall be calculated using the following formula:  
10 micrograms of lead per gram of product, multiplied by grams of product per serving of the  
11 product (using the largest serving size appearing on the product label), multiplied by servings  
12 of the product per day (using the largest number of recommended daily servings appearing on  
13 the label), which equals micrograms of lead exposure per day. If the label contains no  
14 recommended daily servings, then the number of recommended daily servings shall be one.

### 15 **3.2 Clear and Reasonable Warnings**

16 If Body Ecology is required to provide a warning pursuant to Section 3.1, the following  
17 warning must be utilized (“Warning”):

18 **WARNING:** Consuming this product can expose you to chemicals including lead which is  
19 known to the State of California to cause [cancer and] birth defects or other reproductive  
20 harm. For more information go to [www.P65Warnings.ca.gov/food](http://www.P65Warnings.ca.gov/food).

21 Body Ecology shall use the phrase “cancer and” in the Warning if Body Ecology has  
22 reason to believe that the “Daily Lead Exposure Level” is greater than 15 micrograms of lead as  
23 determined pursuant to the quality control methodology set forth in Section 3.4 or if Body  
24 Ecology has reason to believe that another Proposition 65 chemical is present at a level requiring a  
25 cancer warning. If there is a chemical present at a level that requires a cancer warning, the  
26 chemical requiring use of the phrase “cancer and” in the Warning shall always be identified.

27 The Warning shall be securely affixed to or printed upon the label of each Covered  
28 Product and it must be set off from other surrounding information and enclosed in a box. In

1 addition, for any Covered Product sold over the internet, the Warning shall appear on the  
2 checkout page when a California delivery address is indicated for any purchase of any Covered  
3 Product. An asterisk or other identifying method must be utilized to identify which products on  
4 the checkout page are subject to the Warning. In no event shall any internet or website Warning  
5 be contained in or made through a link.

6 The Warning shall be at least the same size as the largest of any other health or safety  
7 warnings also appearing on the website or on the label and the word “**WARNING**” shall be in all  
8 capital letters and in bold print. No statements intended to or likely to have the effect of  
9 diminishing the impact of the Warning on the average lay person shall accompany the Warning.  
10 Further, no statements may accompany the Warning that state or imply that the source of the listed  
11 chemical has an impact on or results in a less harmful effect of the listed chemical.

12 Body Ecology must display the above Warning with such conspicuousness, as compared  
13 with other words, statements or designs on the label, or on its website, if applicable, to render the  
14 Warning likely to be read and understood by an ordinary individual under customary conditions  
15 of purchase or use of the product. Where a sign or label used to provide the Warning for a  
16 Covered Product includes consumer information about the Covered Product in a language other  
17 than English, the Warning must also be provided in that language in addition to English.

18 For purposes of this Consent Judgment, the term “label” means a display of written,  
19 printed or graphic material that is printed on or affixed to a Covered Product or its immediate  
20 container or wrapper.

### 21 **3.3 Conforming Covered Products**

22 A Conforming Covered Product is a Covered Product for which the “Daily Lead Exposure  
23 Level” is no greater than 0.5 micrograms of lead per day as determined by the exposure  
24 methodology set forth in Section 3.1.2 and the quality control methodology described in Section  
25 3.4, and that is not known by Body Ecology to contain other chemicals that violate Proposition  
26 65’s safe harbor thresholds.

### 27 **3.4 Testing and Quality Control Methodology**

28 **3.4.1** Beginning within one year of the Effective Date, Body Ecology shall

1 arrange for lead testing of the Covered Products at least once a year for a minimum of five  
2 consecutive years by arranging for testing of three (3) randomly selected samples of each of  
3 the Covered Products, in the form intended for sale to the end-user, which Body Ecology  
4 intends to sell or is manufacturing for sale in California, directly selling to a consumer in  
5 California or “Distributing into the State of California.” If tests conducted pursuant to this  
6 Section demonstrate that no Warning is required for a Covered Product during each of five  
7 consecutive years, then the testing requirements of this Section will no longer be required as to  
8 that Covered Product. However, if during or after the five-year testing period, Body Ecology  
9 changes ingredient suppliers for any of the Covered Products and/or reformulates any of the  
10 Covered Products, Body Ecology shall test that Covered Product annually for at least four (4)  
11 consecutive years after such change is made.

12 **3.4.2** For purposes of measuring the “Daily Lead Exposure Level,” the highest  
13 lead detection result of the three (3) randomly selected samples of the Covered Products will  
14 be controlling.

15 **3.4.3** All testing pursuant to this Consent Judgment shall be performed using a  
16 laboratory method that complies with the performance and quality control factors appropriate  
17 for the method used, including limit of detection and limit of quantification, sensitivity,  
18 accuracy and precision that meets the following criteria: Inductively Coupled Plasma-Mass  
19 Spectrometry (“ICP-MS”) achieving a limit of quantification of less than or equal to 0.005  
20 mg/kg.

21 **3.4.4** All testing pursuant to this Consent Judgment shall be performed by an  
22 independent third party laboratory certified by the California Environmental Laboratory  
23 Accreditation Program or an independent third-party laboratory that is registered with the  
24 United States Food & Drug Administration.

25 **3.4.5** Nothing in this Consent Judgment shall limit Body Ecology’s ability to  
26 conduct, or require that others conduct, additional testing of the Covered Products, including  
27 the raw materials used in their manufacture.

28 **3.4.6** Within thirty (30) days of ERC’s written request, Body Ecology shall

1 deliver lab reports obtained pursuant to Section 3.4 to ERC. Body Ecology shall retain all test  
2 results and documentation for a period of five years from the date of each test.

3 **3.4.7** The testing requirements of Section 3.4 do not apply to any Covered  
4 Product for which Body Ecology has provided the Warning specified in Section 3.2  
5 continuously and uninterrupted after the Effective Date; however, in the event Body Ecology  
6 ceases to provide the Warning specified in Section 3.2, Body Ecology shall be required to  
7 comply with the testing requirements of this Section 3.4 beginning immediately after the date  
8 the Warning ceases to be provided or one year after the Effective Date, whichever date is later.

9 **3.4.8** The testing requirements of this Section 3.4 do not apply to a Covered  
10 Product during any period in which Body Ecology has ceased production of that Covered  
11 Product and is not manufacturing the Covered Product for sale in the State of California,  
12 Distributing the Covered Product into the State of California, or directly selling the Covered  
13 Product in the State of California. However, in the event Body Ecology resumes California  
14 sales of the Covered Product or begins manufacturing or distributing the Covered Product for  
15 sale in California (collectively referred to as “California Sales Practices”), Body Ecology shall  
16 be required to begin complying with the testing requirements of Section 3.4 with respect to the  
17 Covered Product within one year after the date that Body Ecology resumes engaging in the  
18 aforementioned California Sales Practices for that Covered Product.

19 **3.5** Nothing in Section 3 of this Consent Judgment shall prevent or preclude ERC  
20 from obtaining and relying upon its own testing for purposes of enforcement, so long as such  
21 testing meets the requirements of Sections 3.4.3 and 3.4.4. Nothing in Section 3.4 of this Consent  
22 Judgment is intended by either party to set a precedent for the level of lead or other chemicals  
23 that is permissible in consumer products under Proposition 65.

#### 24 **4. SETTLEMENT PAYMENT**

25 **4.1** In full satisfaction of all potential civil penalties, additional settlement  
26 payments, attorney’s fees, and costs, Body Ecology shall make a total payment of \$80,000.00  
27 (“Total Settlement Amount”) to ERC in ten periodic payments (the “Periodic Payments”)  
28 according to the following payment schedule (“Due Dates”):

- Payment 1 - \$8,000.00 due on February 1, 2025.
- Payments 2 through 10 - \$8,000.00 each due on the first day of the month following the previous payment Due Date.

Body Ecology shall make these payments by wire transfer to ERC's account, for which ERC will give Body Ecology the necessary account information. The Total Settlement Amount shall be apportioned as follows:

**4.2** \$8,000.00 shall be considered a civil penalty pursuant to California Health and Safety Code section 25249.7(b)(1). ERC shall remit 75% (\$6,000.00) of the civil penalty to the Office of Environmental Health Hazard Assessment ("OEHHA") for deposit in the Safe Drinking Water and Toxic Enforcement Fund in accordance with California Health and Safety Code section 25249.12(c). ERC will retain the remaining 25% (\$2,000.00) of the civil penalty.

**4.3** \$5,506.75 shall be distributed to ERC as reimbursement to ERC for reasonable costs incurred in bringing this action.

**4.4** \$23,826.19 shall be distributed to Wraith Law as reimbursement of ERC's attorney's fees, while \$42,667.06 shall be distributed to ERC for its in-house legal fees. Except as explicitly provided herein, each Party shall bear its own fees and costs.

**4.5** In the event that Body Ecology fails to remit, in full, any of the Periodic Payments owed pursuant to Section 4.1 of this Consent Judgment on or before the applicable Due Date, Body Ecology shall be deemed to be in material breach of its obligations under this Consent Judgment. ERC shall provide written notice of the payment delinquency to Body Ecology via electronic mail. If Body Ecology fails to deliver the delinquent payment within five (5) days from the written notice, the Total Settlement Payment shall immediately become due and payable and shall immediately begin accruing interest at the statutory judgment interest rate provided in the California Code of Civil Procedure section 685.010. Additionally, Body Ecology agrees to pay ERC's reasonable attorney's fees and costs for any efforts to collect any delinquent payment, or portion thereof, due under this Consent Judgment.

## **5. MODIFICATION OF CONSENT JUDGMENT**

**5.1** This Consent Judgment may be modified only as to injunctive terms (i) by



1 written stipulation of the Parties and upon entry by the Court of a modified consent judgment  
2 or (ii) by motion of either Party pursuant to Section 5.3 and upon entry by the Court of a  
3 modified consent judgment.

4 **5.2** If Body Ecology seeks to modify this Consent Judgment under Section 5.1, then  
5 Body Ecology must provide written notice to ERC of its intent (“Notice of Intent”). If ERC  
6 seeks to meet and confer regarding the proposed modification in the Notice of Intent, then ERC  
7 must provide written notice to Body Ecology within thirty (30) days of receiving the Notice of  
8 Intent. If ERC notifies Body Ecology in a timely manner of ERC’s intent to meet and confer,  
9 then the Parties shall meet and confer in good faith as required in this Section. The Parties  
10 shall meet in person, via remote meeting, or by telephone within thirty (30) days of ERC’s  
11 notification of its intent to meet and confer. Within thirty (30) days of such meeting, if ERC  
12 disputes the proposed modification, ERC shall provide to Body Ecology a written basis for its  
13 position. The Parties shall continue to meet and confer for an additional thirty (30) days in an  
14 effort to resolve any remaining disputes. Should it become necessary, the Parties may agree in  
15 writing to different deadlines for the meet-and-confer period.

16 **5.3** In the event that Body Ecology initiates or otherwise requests a modification  
17 under Section 5.1, and the meet and confer process leads to a joint motion or joint application  
18 for a modification of the Consent Judgment, Body Ecology shall reimburse ERC its costs and  
19 reasonable attorney’s fees for the time spent in the meet-and-confer process and filing and  
20 arguing the motion or application.

21 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT**  
22 **JUDGMENT**

23 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify, or  
24 terminate this Consent Judgment.

25 **6.2** If ERC alleges that any Covered Product fails to qualify as a Conforming  
26 Covered Product (for which ERC alleges that no Warning has been provided), then ERC shall  
27 inform Body Ecology in a reasonably prompt manner of its test results, including information  
28 sufficient to permit Body Ecology to identify the Covered Products at issue. Body Ecology

1 shall, within thirty (30) days following such notice, provide ERC with testing information,  
2 from an independent third-party laboratory meeting the requirements of Sections 3.4.3 and  
3 3.4.4, demonstrating Body Ecology’s compliance with the Consent Judgment. The Parties shall  
4 first attempt to resolve the matter prior to ERC taking any further legal action.

5 **7. APPLICATION OF CONSENT JUDGMENT**

6 This Consent Judgment may apply to, be binding upon, and benefit the Parties and their  
7 respective officers, directors, shareholders, employees, agents, parent companies, subsidiaries,  
8 divisions, franchisees, licensees, customers (excluding private labelers), distributors, wholesalers,  
9 retailers, predecessors, successors, and assigns. This Consent Judgment shall have no  
10 application to any Covered Product that is distributed or sold exclusively outside the State of  
11 California and that is not used by California consumers.

12 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

13 **8.1** This Consent Judgment is a full, final, and binding resolution between ERC,  
14 on behalf of itself and in the public interest, and Body Ecology and its respective officers,  
15 directors, shareholders, employees, agents, parent companies, subsidiaries, divisions, suppliers,  
16 franchisees, licensees, customers (not including private label customers of Body Ecology),  
17 distributors, wholesalers, retailers, and all other upstream and downstream entities in the  
18 distribution chain of any Covered Product, and the predecessors, successors, and assigns of any  
19 of them (collectively, “Released Parties”).

20 **8.2** ERC, acting in the public interest, releases the Released Parties from any  
21 and all claims for violations of Proposition 65 up through the Effective Date based on exposure  
22 to lead from the Covered Products as set forth in the Notices of Violation. ERC, on behalf of  
23 itself only, hereby fully releases and discharges the Released Parties from any and all claims,  
24 actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
25 expenses asserted, or that could have been asserted from the handling, use, or consumption of  
26 the Covered Products, as to any alleged violation of Proposition 65 or its implementing  
27 regulations arising from the failure to provide Proposition 65 warnings on the Covered  
28 Products regarding lead to and including the Effective Date.

1           **8.3**           ERC on its own behalf only, and Body Ecology on its own behalf only,  
2 further waive and release any and all claims they may have against each other for all actions or  
3 statements made or undertaken in the course of seeking or opposing enforcement of  
4 Proposition 65 in connection with the Notices and Complaint up through and including the  
5 Effective Date, provided, however, that nothing in Section 8 shall affect or limit any Party's  
6 right to seek to enforce the terms of this Consent Judgment.

7           **8.4**           It is possible that other claims not known to the Parties, arising out of the facts  
8 alleged in the Notices and Complaint, and relating to the Covered Products, will develop or be  
9 discovered. ERC on behalf of itself only, and Body Ecology on behalf of itself only,  
10 acknowledge that this Consent Judgment is expressly intended to cover and include all such  
11 claims up through and including the Effective Date, including all rights of action therefore.  
12 ERC and Body Ecology acknowledge that the claims released in Sections 8.2 and 8.3 above  
13 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to  
14 any such unknown claims. California Civil Code section 1542 reads as follows:

15           A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE  
16           CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO  
17           EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE  
18           AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY  
19           AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED  
20           PARTY.

21 ERC on behalf of itself only, and Body Ecology on behalf of itself only, acknowledge and  
22 understand the significance and consequences of this specific waiver of California Civil Code  
23 section 1542.

24           **8.5**           Compliance with the terms of this Consent Judgment shall be deemed to  
25 constitute compliance with Proposition 65 by any of the Released Parties regarding alleged  
26 exposures to lead in the Covered Products as set forth in the Notices and Complaint.

27           **8.6**           Nothing in this Consent Judgment is intended to apply to any occupational or  
28 environmental exposures arising under Proposition 65, nor shall it apply to any of Body  
Ecology's products other than the Covered Products.

///  
///

1     **9. SEVERABILITY OF UNENFORCEABLE PROVISIONS**

2             In the event that any of the provisions of this Consent Judgment are held by a court to be  
3 unenforceable, the validity of the remaining enforceable provisions shall not be adversely  
4 affected.

5     **10. GOVERNING LAW**

6             The terms and conditions of this Consent Judgment shall be governed by and construed in  
7 accordance with the laws of the State of California.

8     **11. PROVISION OF NOTICE**

9             All notices required to be given to either Party to this Consent Judgment by the other shall  
10 be in writing and sent to the following agents listed below via first-class mail or via electronic  
11 mail where required. Courtesy copies via email may also be sent.

12     **FOR ENVIRONMENTAL RESEARCH CENTER, INC.:**

13 Chris Heptinstall, Executive Director, Environmental Research Center  
14 3111 Camino Del Rio North, Suite 400  
15 San Diego, CA 92108  
16 Ph: (619) 500-3090  
17 Email: [chris.heptinstall@erc501c3.org](mailto:chris.heptinstall@erc501c3.org)

18 With a copy to:  
19 WILLIAM F. WRAITH  
20 WRAITH LAW  
21 25361 Commercentre Drive, Ste 150  
22 Lake Forest, CA 92630  
23 Tel: (949) 452-1234  
24 Email: [bill@wraithlaw.com](mailto:bill@wraithlaw.com)

25     **FOR BODY ECOLOGY, INC.:**

26 Gray Anderson  
27 CEO  
28 78 Folly Road Blvd Ste B9-1017  
Charleston SC 29407  
Ph: 843.794.8847  
Email: [Admin@bodyecology.com](mailto:Admin@bodyecology.com)

///

///

1 With a copy to:  
2 GEORGE SALMAS  
3 MICHAEL HAMBLY  
4 THE FOOD LAWYERS®  
5 1880 Century Park E, Ste 611  
6 Los Angeles, Ca 90067  
7 Telephone: (310) 556-0721  
8 Email: george.salmas@thefoodlawyers.com  
9 michael.hambly@thefoodlawyers.com

## 10 **12. COURT APPROVAL**

11 **12.1** Upon execution of this Consent Judgment by the Parties, ERC shall notice a  
12 Motion for Court Approval. The Parties shall use their best efforts to support entry of this  
13 Consent Judgment.

14 **12.2** If the California Attorney General objects to any term in this Consent Judgment,  
15 the Parties shall use their best efforts to resolve the concern in a timely manner, and if possible  
16 prior to the hearing on the motion.

17 **12.3** If this [Proposed] Stipulated Consent Judgment is not approved by the Court, it  
18 shall be void and have no force or effect. Furthermore, if this [Proposed] Stipulated Consent  
19 Judgment is not approved by the Court and deemed void, nothing contained therein will be  
20 deemed a factual admission for purposes of the case going forward.

## 21 **13. EXECUTION AND COUNTERPARTS**

22 This Consent Judgment may be executed in counterparts, which taken together shall be  
23 deemed to constitute one document. A facsimile or .pdf signature shall be construed to be as valid  
24 as the original signature.

## 25 **14. DRAFTING**

26 The terms of this Consent Judgment have been reviewed by the respective counsel for  
27 each Party prior to its signing, and each Party has had an opportunity to fully discuss the terms  
28 and conditions with legal counsel. The Parties agree that, in any subsequent interpretation and  
construction of this Consent Judgment, no inference, assumption, or presumption shall be drawn,  
and no provision of this Consent Judgment shall be construed against any Party, based on the fact  
that one of the Parties and/or one of the Parties' legal counsel prepared and/or drafted all or any

1 portion of the Consent Judgment. It is conclusively presumed that all of the Parties participated  
2 equally in the preparation and drafting of this Consent Judgment.

3 **15. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

4 If a dispute arises with respect to either Party's compliance with the terms of this Consent  
5 Judgment entered by the Court, the Parties shall meet and confer in person, via remote meeting,  
6 by telephone, and/or in writing and endeavor to resolve the dispute in an amicable manner. No  
7 action or motion may be filed in the absence of such a good faith attempt to resolve the dispute  
8 beforehand.

9 **16. ENFORCEMENT**

10 ERC may, by motion or order to show cause before the Superior Court of Alameda  
11 County, enforce the terms and conditions contained in this Consent Judgment. In any action  
12 brought by ERC to enforce this Consent Judgment, ERC may seek whatever fines, costs,  
13 penalties, or remedies as are provided by law for failure to comply with the Consent Judgment.  
14 To the extent the failure to comply with the Consent Judgment constitutes a violation of  
15 Proposition 65 or other laws, ERC shall not be limited to enforcement of this Consent  
16 Judgment, but may seek in another action whatever fines, costs, penalties, or remedies as are  
17 provided by law for failure to comply with Proposition 65 or other laws.

18 **17. ENTIRE AGREEMENT, AUTHORIZATION**

19 **17.1** This Consent Judgment contains the sole and entire agreement and  
20 understanding of the Parties with respect to the entire subject matter herein, including any and  
21 all prior discussions, negotiations, commitments, and understandings related thereto. No  
22 representations, oral or otherwise, express or implied, other than those contained herein have  
23 been made by any Party. No other agreements, oral or otherwise, unless specifically referred to  
24 herein, shall be deemed to exist or to bind any Party.

25 **17.2** Each signatory to this Consent Judgment certifies that he or she is fully  
26 authorized by the Party he or she represents to stipulate to this Consent Judgment.

27 ///

28 ///

1 **18. REQUEST FOR FINDINGS, APPROVAL OF SETTLEMENT AND ENTRY OF**  
2 **CONSENT JUDGMENT**

3 This Consent Judgment has come before the Court upon the request of the Parties. The  
4 Parties request the Court to fully review this Consent Judgment and, being fully informed  
5 regarding the matters which are the subject of this action, to:

6 (1) Find that the terms and provisions of this Consent Judgment represent a fair and  
7 equitable settlement of all matters raised by the allegations of the Complaint that the matter has  
8 been diligently prosecuted, and that the public interest is served by such settlement; and

9 (2) Make the findings pursuant to California Health and Safety Code section  
10 25249.7(f)(4), approve the Settlement, and approve this Consent Judgment.

11 (3) Retain jurisdiction, pursuant to Section 664.6 of the Code of Civil Procedure, after  
12 the Consent Judgment is entered in order to enforce, modify, or terminate this Consent Judgment.

13 **IT IS SO STIPULATED:**

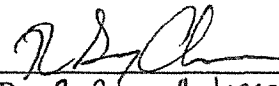
14 Dated: 9/26/, 2024

ENVIRONMENTAL RESEARCH  
CENTER, INC.

15  
16 By:   
17 Chris Heptinstall, Executive Director

18 Dated: 9, 19, 2024

BODY ECOLOGY, INC.

19  
20   
21 By: R. Gray Anderson  
22 Its: CEO

23 ///  
24 ///  
25 ///  
26 ///  
27 ///  
28 ///

1 **APPROVED AS TO FORM:**


2  
3 Dated: September 27, 2024

WRAITH LAW

4  
5 By:   
6 William F. Wraith  
7 Attorney for Plaintiff Environmental  
8 Research Center, Inc.

9 Dated: September 30, 2024

THE FOOD LAWYERS®

10  
11 By:   
12 George C. Salmas  
13 Michael R. Hambly  
14 Attorneys for Body Ecology, Inc.



**ORDER AND JUDGMENT**

Based upon the Parties’ Stipulation, and good cause appearing, this Stipulated Consent Judgment is approved and Judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: \_\_\_\_\_, 2024 \_\_\_\_\_  
Judge of the Superior Court

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

# WRAITH LAW

25361 Commercentre Drive  
Suite 150  
Lake Forest, CA 92630  
Tel (949) 452-1234  
Fax (949) 452-1102

March 24, 2022

## NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 *ET SEQ.* (PROPOSITION 65)

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**Body Ecology, Inc.**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**Body Ecology Digestive Care Multi - Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least March 24, 2019, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC 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,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Body Ecology, Inc. and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Body Ecology, Inc.**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: March 24, 2022



---

William F. Wraith

**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 a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On March 24, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Body Ecology, Inc.  
5042 Wilshire Blvd, #36681  
Los Angeles, CA 90036

Ryan Blaine  
(Registered Agent for Body Ecology,  
Inc.)  
5042 Wilshire Blvd, #366681  
Los Angeles, CA 90036

Current President or CEO  
Body Ecology, Inc.  
7850 Ruffner Ave  
Van Nuys, CA 91406

Donna Gates  
(Registered Agent for Body Ecology,  
Inc.)  
5133 Elpine Way  
Palm Beach Gardens, FL 33418

Current President or CEO  
Body Ecology, Inc.  
10 Catfiddle St  
Charleston, SC 29403

Donna Gates  
(Registered Agent for Body Ecology,  
Inc.)  
10 Catfiddle St  
Charleston, SC 29403

Current President or CEO  
Body Ecology, Inc.  
5133 Elpine Way  
Palm Beach Gardens, FL 33418

On March 24, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On March 24, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O’Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 24, 2022

Page 5

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcca.org

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

March 24, 2022

Page 6

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

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

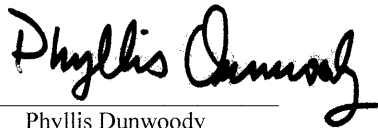
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On March 24, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on March 24, 2022, in Fort Oglethorpe, Georgia.



---

Phyllis Dunwoody



**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

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

District Attorney, El  
Dorado County  
778 Pacific St  
Placerville, CA 95667

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney,  
Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

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

District Attorney, Lake  
County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los  
Angeles County  
Hall of Justice  
211 West Tempe St.,  
Ste 1200  
Los Angeles, CA 90012

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

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

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Modoc  
County  
204 S Court Street,  
Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, Orange  
County  
300 N Flower St  
Santa Ana, CA 92703

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernardino, CA  
92415

District Attorney, San  
Mateo County  
400 County Ctr., 3rd  
Floor  
Redwood City, CA  
94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney,  
Tuolumne County  
423 N. Washington  
Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite  
152  
Marysville, CA 95901

Los Angeles City  
Attorney's Office  
City Hall East  
200 N. Main Street, Suite  
800  
Los Angeles, CA 90012

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 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](mailto: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.

# **EXHIBIT B**

# **WRAITH LAW**

25361 Commercentre Drive  
Suite 150  
Lake Forest, CA 92630  
Tel (949) 452-1234  
Fax (949) 452-1102

May 17, 2022

## **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ. (PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**Body Ecology, Inc.**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**Body Ecology Probiotic Protein Shake Creamy and Delicious! – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.



May 17, 2022

Page 2


**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least May 17, 2019, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC 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,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Body Ecology, Inc. and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Body Ecology, Inc.**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: May 17, 2022



---

William F. Wraith

**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 a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Body Ecology, Inc.  
5042 Wilshire Blvd, #36681  
Los Angeles, CA 90036

Ryan Blaine  
(Registered Agent for Body Ecology,  
Inc.)  
5042 Wilshire Blvd, #36681  
Los Angeles, CA 90036

Current President or CEO  
Body Ecology, Inc.  
7850 Ruffner Ave  
Van Nuys, CA 91406

Donna Gates  
(Registered Agent for Body Ecology,  
Inc.)  
5133 Elpine Way  
Palm Beach Gardens, FL 33418

Current President or CEO  
Body Ecology, Inc.  
10 Catfiddle St  
Charleston, SC 29403

Donna Gates  
(Registered Agent for Body Ecology,  
Inc.)  
10 Catfiddle St  
Charleston, SC 29403

Current President or CEO  
Body Ecology, Inc.  
5133 Elpine Way  
Palm Beach Gardens, FL 33418

Current President or CEO  
Body Ecology, Inc.  
7791 Palmetto Commerce Parkway  
Unit A/N  
Charleston, SC 29420

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF**

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 17, 2022

Page 5

**MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

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

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

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

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

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

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcdca.org

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

May 17, 2022

Page 6

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatty.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

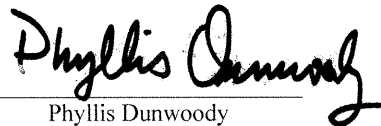
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On May 17, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 *ET SEQ.*; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on May 17, 2022, in Fort Oglethorpe, Georgia.

  
\_\_\_\_\_  
Phyllis Dunwoody

**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

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

District Attorney, El  
Dorado County  
778 Pacific St  
Placerville, CA 95667

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney,  
Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

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

District Attorney, Lake  
County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los  
Angeles County  
Hall of Justice  
211 West Tempe St.,  
Ste 1200  
Los Angeles, CA 90012

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

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

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Modoc  
County  
204 S Court Street,  
Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA  
92415

District Attorney, San  
Mateo County  
400 County Ctr., 3rd  
Floor  
Redwood City, CA  
94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney,  
Tuolumne County  
423 N. Washington  
Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite  
152  
Marysville, CA 95901

Los Angeles City  
Attorney's Office  
City Hall East  
200 N. Main Street, Suite  
800  
Los Angeles, CA 90012

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 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](mailto: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.

# **EXHIBIT C**

# **WRAITH LAW**

25361 Commercentre Drive  
Suite 150  
Lake Forest, CA 92630  
Tel (949) 452-1234  
Fax (949) 452-1102

August 4, 2022

## **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET SEQ. (PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Environmental Research Center, Inc. (“ERC”), 3111 Camino Del Rio North, Suite 400, San Diego, CA 92108; Tel. (619) 500-3090. ERC’s Executive Director is Chris Heptinstall. ERC is a California non-profit corporation dedicated to, among other causes, helping safeguard the public from health hazards by bringing about a reduction in the use and misuse of hazardous and toxic chemicals, facilitating a safe environment for consumers and employees, and encouraging corporate responsibility.

ERC has identified violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), which is codified at California Health & Safety Code §25249.5 *et seq.*, with respect to the product identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with this product. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, ERC intends to file a private enforcement action in the public interest 60 days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

**General Information about Proposition 65.** A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is attached with the copy of this letter served to the alleged Violator identified below.

**Alleged Violator.** The name of the company covered by this notice that violated Proposition 65 (hereinafter the “Violator”) is:

**Body Ecology, Inc.**

**Consumer Product and Listed Chemical.** The product that is the subject of this notice and the chemical in that product identified as exceeding allowable levels is:

**Body Ecology Ancient Earth Minerals Organic – Lead**

On February 27, 1987, the State of California officially listed lead as a chemical known to cause developmental toxicity, and male and female reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer.

It should be noted that ERC may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.


**Route of Exposure.** The consumer exposures that are the subject of this notice result from the recommended use of this product. Consequently, the route of exposure to this chemical has been and continues to be through ingestion.

**Approximate Time Period of Violations.** Ongoing violations have occurred every day since at least August 4, 2019, as well as every day since the product was introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until this known toxic chemical is either removed from or reduced to allowable levels in the product. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemical. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons ingesting this product with appropriate warnings that they are being exposed to this chemical.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, ERC is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) reformulate the identified product so as to eliminate further exposures to the identified chemical, or provide appropriate warnings on the labels of this product; (2) pay an appropriate civil penalty; and (3) provide clear and reasonable warnings compliant with Proposition 65 to all persons located in California who purchased the above product in the last three years. Such a resolution will prevent further unwarned consumer exposures to the identified chemical, as well as an expensive and time-consuming litigation.

ERC 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,



---

William F. Wraith

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Body Ecology, Inc. and its Registered Agents for Service of Process only)

Additional Supporting Information for Certificate of Merit (to AG only)

**CERTIFICATE OF MERIT**

**Re: Environmental Research Center, Inc.’s Notice of Proposition 65 Violations by Body Ecology, Inc.**

I, William F. Wraith, declare:

1. This Certificate of Merit accompanies the attached 60-day notice in which it is alleged the party identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the notice.

4. Based on the information obtained through those consultants, and on 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 that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: August 4, 2022



---

William F. Wraith

**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 a citizen of the United States and over the age of 18 years of age. My business address is 306 Joy Street, Fort Oglethorpe, Georgia 30742. I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at Fort Oglethorpe, Georgia.

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; “THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY”** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current President or CEO  
Body Ecology, Inc.  
5042 Wilshire Blvd, #36681  
Los Angeles, CA 90036

Ryan Blaine  
(Registered Agent for Body Ecology,  
Inc.)  
5042 Wilshire Blvd, #36681  
Los Angeles, CA 90036

Current President or CEO  
Body Ecology, Inc.  
7850 Ruffner Ave  
Van Nuys, CA 91406

Donna Gates  
(Registered Agent for Body Ecology,  
Inc.)  
5133 Elpine Way  
Palm Beach Gardens, FL 33418

Current President or CEO  
Body Ecology, Inc.  
10 Catfiddle St  
Charleston, SC 29403

Donna Gates  
(Registered Agent for Body Ecology,  
Inc.)  
10 Catfiddle St  
Charleston, SC 29403

Current President or CEO  
Body Ecology, Inc.  
5133 Elpine Way  
Palm Beach Gardens, FL 33418

Current President or CEO  
Body Ecology, Inc.  
7791 Palmetto Commerce Parkway  
Unit A/N  
Charleston, SC 29420

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** were served 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/add-60-day-notice> :

Office of the California Attorney General  
Prop 65 Enforcement Reporting  
1515 Clay Street, Suite 2000  
Oakland, CA 94612-0550

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I verified the following documents **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF**



Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

August 4, 2022

Page 5

**MERIT** were served on the following parties when a true and correct copy thereof was sent via electronic mail to each of the parties listed below:

Nancy O'Malley, District Attorney  
Alameda County  
7677 Oakport Street, Suite 650  
Oakland, CA 94621  
CEPDProp65@acgov.org

Barbara Yook, District Attorney  
Calaveras County  
891 Mountain Ranch Road  
San Andreas, CA 95249  
Prop65Env@co.calaveras.ca.us

Stacey Grassini, Deputy District Attorney  
Contra Costa County  
900 Ward Street  
Martinez, CA 94553  
sgrassini@contracostada.org

Lisa A. Smittcamp, District Attorney  
Fresno County  
2100 Tulare Street  
Fresno, CA 93721  
consumerprotection@fresnocountyca.gov

Thomas L. Hardy, District Attorney  
Inyo County  
168 North Edwards Street  
Independence, CA 93526  
inyoda@inyocounty.us

Michelle Latimer, Program Coordinator  
Lassen County  
220 S. Lassen Street  
Susanville, CA 96130  
mlatimer@co.lassen.ca.us

Walter W. Wall, District Attorney  
Mariposa County  
P.O. Box 730  
Mariposa, CA 95338  
mcda@mariposacounty.org

Kimberly Lewis, District Attorney  
Merced County  
550 West Main St  
Merced, CA 95340  
Prop65@countyofmerced.com

Jeannine M. Pacioni, District Attorney  
Monterey County  
1200 Aguajito Road  
Monterey, CA 93940  
Prop65DA@co.monterey.ca.us

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

Clifford H. Newell, District Attorney  
Nevada County  
201 Commercial St  
Nevada City, CA 95959  
DA.Prop65@co.nevada.ca.us

Todd Spitzer, District Attorney  
Orange County  
300 N Flower St  
Santa Ana, CA 92703  
Prop65notice@da.ocgov.com

Morgan Briggs Gire, District Attorney  
Placer County  
10810 Justice Center Drive  
Roseville, CA 95678  
Prop65@placer.ca.gov

David Hollister, District Attorney  
Plumas County  
520 Main St  
Quincy, CA 95971  
davidhollister@countyofplumas.com

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

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

Summer Stephan, District Attorney  
San Diego County  
330 West Broadway  
San Diego, CA 92101  
SanDiegoDAProp65@sdcdca.org

Mark Ankcorn, Deputy City Attorney  
San Diego City Attorney  
1200 Third Avenue  
San Diego, CA 92101  
CityAttyProp65@sandiego.gov

Notice of Violations of California Health & Safety Code §25249.5 *et seq.*

August 4, 2022

Page 6

Alexandra Grayner, Assistant District Attorney  
San Francisco District Attorney's Office  
350 Rhode Island Street  
San Francisco, CA 94103  
Alexandra.grayner@sfgov.org

Valerie Lopez, Deputy City Attorney  
San Francisco City Attorney  
1390 Market Street, 7<sup>th</sup> Floor  
San Francisco, CA 94102  
Valerie.Lopez@sfcityatt.org

Tori Verber Salazar, District Attorney  
San Joaquin County  
222 E. Weber Avenue, Room 202  
Stockton, CA 95202  
DAConsumer.Environmental@sjcda.org

Eric J. Dobroth, Deputy District Attorney  
San Luis Obispo County  
County Government Center Annex, 4<sup>th</sup> Floor  
San Luis Obispo, CA 93408  
edobroth@co.slo.ca.us

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

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

Nora V. Frimann, City Attorney  
San Jose City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 96113  
Proposition65notices@sanjoseca.gov

Jeffrey S. Rosell, District Attorney  
Santa Cruz County  
701 Ocean Street  
Santa Cruz, CA 95060  
Prop65DA@santacruzcounty.us

Jill Ravitch, District Attorney  
Sonoma County  
600 Administration Dr  
Sonoma, CA 95403  
Jeannie.Barnes@sonoma-county.org

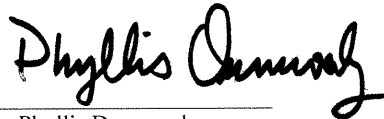
Phillip J. Cline, District Attorney  
Tulare County  
221 S Mooney Blvd  
Visalia, CA 95370  
Prop65@co.tulare.ca.us

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

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

On August 4, 2022, between 8:00 a.m. and 5:00 p.m. Eastern Time, I served the following documents: **NOTICE OF VIOLATIONS, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it at a U.S. Postal Service Office with the postage fully prepaid for delivery by First Class Mail.

Executed on August 4, 2022, in Fort Oglethorpe, Georgia.



Phyllis Dunwoody

**Service List**

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

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

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

District Attorney, Colusa  
County  
310 6<sup>th</sup> St  
Colusa, CA 95932

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

District Attorney, El  
Dorado County  
778 Pacific St  
Placerville, CA 95667

District Attorney, Glenn  
County  
Post Office Box 430  
Willows, CA 95988

District Attorney,  
Humboldt County  
825 5th Street 4<sup>th</sup> Floor  
Eureka, CA 95501

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

District Attorney, Kern  
County  
1215 Truxtun Avenue  
Bakersfield, CA 93301

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

District Attorney, Lake  
County  
255 N. Forbes Street  
Lakeport, CA 95453

District Attorney, Los  
Angeles County  
Hall of Justice  
211 West Tempe St.,  
Ste 1200  
Los Angeles, CA 90012

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

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

District Attorney,  
Mendocino County  
Post Office Box 1000  
Ukiah, CA 95482

District Attorney, Modoc  
County  
204 S Court Street,  
Room 202  
Alturas, CA 96101-4020

District Attorney, Mono  
County  
Post Office Box 617  
Bridgeport, CA 93517

District Attorney, San  
Benito County  
419 Fourth Street, 2nd  
Floor  
Hollister, CA 95023

District Attorney, San  
Bernardino County  
303 West Third Street  
San Bernadino, CA  
92415

District Attorney, San  
Mateo County  
400 County Ctr., 3rd  
Floor  
Redwood City, CA  
94063

District Attorney, Shasta  
County  
1355 West Street  
Redding, CA 96001

District Attorney, Sierra  
County  
Post Office Box 457  
100 Courthouse Square,  
2<sup>nd</sup> Floor  
Downieville, CA 95936

District Attorney,  
Siskiyou County  
Post Office Box 986  
Yreka, CA 96097

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

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

District Attorney, Sutter  
County  
463 2<sup>nd</sup> Street  
Yuba City, CA 95991

District Attorney,  
Tehama County  
Post Office Box 519  
Red Bluff, CA 96080

District Attorney, Trinity  
County  
Post Office Box 310  
Weaverville, CA 96093

District Attorney,  
Tuolumne County  
423 N. Washington  
Street  
Sonora, CA 95370

District Attorney, Yuba  
County  
215 Fifth Street, Suite  
152  
Marysville, CA 95901

Los Angeles City  
Attorney's Office  
City Hall East  
200 N. Main Street, Suite  
800  
Los Angeles, CA 90012

## 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.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

***The "Proposition 65 List."*** Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to

---

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

female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: [http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

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

***Clear and reasonable warnings.*** A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly 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 contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

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

---

<sup>2</sup> See Section 25501(a)(4).

## *HOW IS PROPOSITION 65 ENFORCED?*

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 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](mailto: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.