



November 13, 2007

VIA EMAIL

Carol Monahan-Cummings
Chief Counsel
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, California 95812-4010

Re: Proposition 65 Regulatory Update Project

Dear Carol:

I want to again thank you, Joan, and the staff of OEHHA for the opportunity to present our ideas for regulatory revisions for Proposition 65 implementation at the November 2 workshop.

As Jeff Margulies stated in his remarks, CRA would propose that OEHHA consider the following issues in revisiting the regulations:

1. 60-day notices. I enclose a proposed revision to 22 CCR § 12903, that would address the situation of nonspecific 60-day notices that are served on retailers, as well as a document providing the rationale for the proposed change. We consider this to be a high priority item, given that, according to Prop 65 News, retailers are the top ten recipients of 60-day notices and top ten defendants in Prop 65 enforcement action, despite the fact that most of these enforcement actions are not brought over private label products.

2. In-store warnings. We would like to explore whether a uniform “one-sign” safe harbor warning system can be developed that minimizes the burdens on retailers to keep track of various signs that they currently are required to post, yet still provides “clear and reasonable warning.”

3. Opportunity to cure. We believe that, since a 60-day notice is intended to afford the alleged violator with the opportunity to cure the violation, the regulations should provide incentives for such a cure as a way to avoid unnecessary litigation. Numerous court-approved

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settlements contain “notice and cure” provisions for post-settlement violations (including one recently reached by the Attorney General regarding lead in jewelry), and we believe that providing a streamlined mechanism for avoiding the expense of litigation remains a worthwhile goal and furthers the purposes of Proposition 65.

We support a number of other comments raised at the hearing, and look forward to participating in this regulatory update process.

Please contact me or our counsel, Jeff Margulies (213-892-9286 jmargulies@fulbright.com), if you should have any questions.

Very truly yours,

A handwritten signature in cursive script that reads "Pamela B. Williams". The signature is written in black ink and is centered on the page.

Pamela B. Williams

RATIONALE FOR PROPOSED AMENDMENTS TO 22 CCR § 12903

1. Background

A number of recent enforcement actions against retailers have sought to allow for citizen enforcement over an entire category of products sold by retailers, without concomitant enforcement against the manufacturers and/or distributors of those products. We believe that private enforcers have asserted standing more broadly than allowed by Proposition 65 implementing regulations (22 Cal. Code Regs. § 12903), and that the courts have improperly allowed private enforcers to shift the burden to the retailer of determining which suppliers' products are allegedly in violation of the law.

A typical recent notice served on a retailer identifies a consumer product exposure in a notice of violation that is nearly entirely boilerplate and indistinguishable from every other notice sent by that enforcer's counsel, save for the name of the alleged violator and description of the product that allegedly causes the violation, as follows:

<i>Product Category/Type</i>	<i>Such As*</i>	<i>Toxins</i>
Cosmetic Kits containing a combination of eye shadow, eyeliner and/or lipstick (or lip gloss) containing lead	Color Boutique By Classically Me Gift Set, 603 D1111 C5934	Lead

While this description does clearly identify the Color Boutique cosmetic kit, the notice goes on to state, in reference to the asterisk following "*Such As*":

"The specifically identified example of the type of product which is subject to this Notice is for the recipient's benefit to assist in its investigation of, among other things, the magnitude of potential exposure to the listed chemical from other items within the product category It is important to note that this example is not meant to be an exhaustive or comprehensive identification of each specific offending product of the type listed under "Product Category/Type" Further, it is this citizen's position that the alleged Violator is obligated to continue to conduct in good faith an investigation into other specific products within the type or category described above that may have been manufactured, distributed, sold, shipped, stored (or otherwise within the notice recipient's custody or control) during the relevant period so as to ensure that the requisite toxic warnings are provided to California citizens prior to purchase."

As is the case with many notices of violation served by citizen enforcers, to the extent that the enforcer takes the position that products other than the product specifically identified in the 60-day notice are implicated by the notice, such assertion is inconsistent with the treatment that Proposition 65 contemplates for retailers, as well as with the commercial reality of how retailers purchase products and their relationships with vendors. As described in the next section, this position is also consistent with the notice requirements of both the Act and §12903.

Unfortunately, the courts have, to date, largely allowed citizen enforcers to get their “foot in the door” by noticing one product and forcing retailers to either prove that all products do not violate the law, or enter into a consent judgment assuming the duty to warn if they cannot. This not only is inconsistent with the law, it allows manufacturers and distributors of products not specifically noticed to escape their obligations to ensure product compliance and to honor obligations to defend and indemnify retailers. Therefore, we believe that a relatively minor amendment to § 12903, prescribing specific information required for notices served on retailers, is appropriate to clarify the enforcer’s duty to provide adequate notice to retailers and public prosecutors. This amendment will have no direct impact on the providing of warnings to consumers, and will be consistent with Proposition 65’s direction to minimize the burden to retailers of providing warnings.

2. The Duty to Give Adequate Notice to Retailers

Health & Safety Code Section 25249.7(d) mandates that prior to commencing a private action for alleged violations of Proposition 65, the private enforcer must first give notice of the alleged violation to the proper public prosecutors and the alleged violator. The overarching principle of the notice regulation with regard to the description of the violation is expressed in 22 Cal. Code Regs. § 12903(b)(2), which states: “A notice shall provide adequate information from which to allow the recipient to assess the nature of the alleged violation, as set forth in this paragraph.”

Despite the fact that the exemplar notice does not provide *any* information about products from suppliers other than the noticed product (since it only identifies “Cosmetic Kits . . . containing lead”), the private enforcement bar argues that it is sufficient as to all products within the category because they believe that the notice regulation allows for the description of a “category” of allegedly violative products. While there is language in the regulation that, in isolation, would appear to support that interpretation, we believe it is contrary to the requirement of subsection (b)(2) that requires “adequate information,” as well as to specific requirements applicable to consumer products.

While the regulation does allow that a consumer product notice may include the “name” or “specific type” of consumer product that caused the violation without requiring the model or SKU number, it still requires that the product be identified “with sufficient specificity to inform the recipients of the nature of the items allegedly sold in violation of the law *and to distinguish those products or services from others sold or offered by the alleged violator for which no violation is alleged.*” 22 Cal. Code Regs. § 12903(b)(2)(D) (emphasis added). In the Final Statement of Reasons [to] Adopt § 12903 (“Final Statement of Reasons § 12903”), OEHHA explained the meaning of the term “specific type” in the regulation:

One commenter (C-11) suggested that the phrase “or the category of consumer product or services” and the phrase “of the nature” be deleted from subsection (2)(D). Inclusion of the latter phrase “of the nature” is necessary to assure that the regulation is not interpreted to require identification of the precise items, e.g., the individual cans of paint. *The term “category,” however, may be too broad, because it may be interpreted as allowing extremely general descriptions such as “paints and coatings,” “cosmetics” or other commonly used descriptions of*

broad categories of products. Accordingly, the term “category” has been deleted, and replaced with the term “specific type.” The agency thinks this term will require a somewhat more particular description, e.g., “aerosol spray paint,” “typewriter correction fluid,” or “paint stripper,” without requiring an unnecessarily particular identification of the product.

Final Statement of Reasons § 12903 at 13-14 (emphasis added).

The purpose of deleting the term “category” from the regulations was to prevent uncertainty as to which products were alleged to violate Proposition 65: “The alleged violator must be provided sufficient information to bring itself into compliance because it is compliance with the Proposition 65 requirements that protects the public and the environment.” *Id.* at 3.

Here, the exemplar notice, like thousands more that have been served over the past 20 years, identifies only one specific product, supplied to the retailer by one particular vendor, but apparently seeks to cast a much broader net, by claiming that the product “category/type” causing the violation is “Cosmetic Kits containing a combination of eye shadow, eyeliner and/or lipstick (or lip gloss) containing lead,” and stating the enforcer’s position that the retailer must now investigate whether other products also “contain[] lead.” This contention flatly contravenes Proposition 65’s requirement that a notice include the “name” or “specific type” of product at issue. *See* 22 Cal. Code Regs. § 12903(b)(2)(D). More importantly, even if “Cosmetic Kits containing a combination of eye shadow, eyeliner and/or lipstick (or lip gloss) containing lead” were a “specific type” under subsection (b)(2)(D), since “cosmetic kits” are not labeled by lead content, it is virtually impossible for a retailer, its vendors, or public prosecutors, to know which cosmetic kits the enforcer contends are at issue under this notice. The vague description of the “category/type” of products impedes the very purposes behind the notice requirement: to enable the recipients to distinguish those products for which no violation is alleged, provide the alleged violator with sufficient information to bring itself into compliance and to enable public prosecutors to determine whether to bring an enforcement action. *See* 22 Cal. Code Regs. § 12903(b)(2)(D); Final Statement of Reasons § 12903 at 3; and *Yeroushalmi v. Sheraton Miramar*, 88 Cal. App. 4th at 746. “Since the notice must identify ‘the violation which is the subject of the action,’ other violations that are not adequately described in the notice cannot properly be part of the private action.” Final Statement of Reasons § 12903 at 4.

While this type of notice may be entirely appropriate to send to the manufacturer of the exemplar product, which presumably would know the universe of products that could be implicated by the notice, it is fundamentally unfair to conclude that a retailer would have the same ability to distinguish among different suppliers’ products. As retailers are not in a position to duplicate a manufacturer’s compliance efforts for thousands of different SKUs sold in 50 states, they typically purchase products for resale to consumers from suppliers pursuant to contractual terms that require the suppliers to comply with applicable laws such as Proposition 65. The suppliers also typically are responsible to defend, indemnify and hold harmless the retailers from any claim arising in connection with the products.¹

¹ The contracts typically require the supplier to carry product liability insurance that names the retailer as an additional insured, but this provision is of no help in Proposition 65 actions, which are typically not “occurrences” under product liability policies.

Proposition 65 expressly recognizes that retailers are not in the best position to determine whether warnings are required for particular consumer products:

“In order to minimize the burden on the retail sellers of consumer products including foods, regulations implementing section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.” Health & Safety Code § 25249.11(f).

When it adopted the initial implementing regulations, the Health and Welfare Agency noted that the “apparent purpose” of this requirement “is to encourage the origination of warning materials . . . with the person in the chain of distribution most likely to know the chemical properties of products intended for retail sale to consumers.” Final Statement of Reasons, 22 Cal. Code Regs., § 12601, at 21 (2/16/88). Many enforcement cases involve situations where the retailer has not introduced lead into the products in the notice, and is not likely to know the chemical properties of these products, yet it has received a notice for a “category” or “type” of product, and is left to defend the entire category or type when the enforcer only provides an “example,” but refuses to specify which suppliers’ products are violative and which are not.

Absent knowledge that a Proposition 65 chemical is present in a specific product, and contrary to the assertion in the exemplar notice quoted above, a retailer is under no obligation to determine whether the chemical is in fact present. In responding to a comment that suggested the definition of “knowingly” would require retailers to test their products to determine whether they contained listed chemicals, the Final Statement of Reasons for § 12601 strongly dispelled that notion:

“Nothing requires that each business conduct a scientific analysis of all of its product. Unless a business has reason to know the product contains a chemical, no testing is necessary, no testing is needed, and no warning is required.” Id. at 21.

Proposition 65 requires a private enforcer to include a certificate of merit with its 60-day notice, establishing that there is a reasonable basis for the alleged violations. Health & Safety Code § 25249.7(d)(1). Yet, because the enforcer is not required to produce the factual information supporting the notice to the retailer, the exemplar notice improperly shifts the burden to the retailer to disprove the enforcer’s standing to bring an action against the retailer over products that are not identified within the “category/type,” by requiring the retailer to investigate whether there are other vendors’ products meeting the description of the “category/type,” without (1) plaintiff having developed any evidence to support a certificate of merit to support any direct allegations; and (2) without having provided either the retailer or the Attorney General’s office with sufficient information to allow the recipients of the notice to determine which suppliers’ products are allegedly violative, and which are not.

Moreover, when a retailer receives an exemplar notice, typically suppliers of products within the category or type described in the notice will refuse to defend or indemnify the retailer,

on the basis that their products are not named in the notice, and retailers are often left to defend litigation when the supplier of the identified product has settled with the enforcer, who refuses to release the retailer if there are other suppliers of products within the type identified in the notice. Thus, retailers are not only left to do the enforcer's investigation to determine which products are properly within the suit, they are left to defend the products of suppliers who claim that the notice does not apply to their products. Product manufacturers are, at the least, indispensable parties to enforcement actions seeking to impose civil penalties over alleged past violations and injunctive relief to prevent alleged future violations. (See Code of Civil Procedure § 389). Surely, by seeking to relieve the burden on retailers, the drafters of Proposition 65 did not intend to put retailers in such an impossible position, where the only way out is to agree to injunctive relief that is more appropriately shouldered by the manufacturers.

A 60-day notice that identifies one product as a proxy for an entire category or type is not sufficient to sweep within its scope other products within the category that are not identified. If the enforcer has not tested any products sold by the retailer other than the noticed product, has no certificate of merit for any claim that such product exposes users to a listed chemical without clear and reasonable warning as is required under Proposition 65, and is simply using this notice to get its "foot in the door" as to such products, then the notice regulation should not be read to allow the enforcer to proceed in this situation. If the converse is true, then it would be a simple matter for the enforcer to provide sufficient information to identify such products in the notice, so that the proper vendor(s) may be identified and contacted by the retailer in order that they may be able to respond to the enforcer's claims.

3. The Remedy

We suggest that 22 Cal. Code Regs. § 12903 be amended to clarify the duty to provide adequate notice. Attached is a proposed revision to subsection (b)(2)(D) that creates the following changes:

Subsection (b)(2)(D)1:

- Makes clear that where an enforcer serves a notice that identifies a "specific type" of consumer product, the notice must identify that specific type with sufficient specificity to allow the recipients to determine which products are allegedly in violation.
- Makes clear that, unless the listed chemical is apparent from the product packaging, the identification of the listed chemical is not itself sufficient to meet the requirement that the notice provide sufficient specificity.

Subsection (b)(2)(D)2:

- Requires that notices served on retailers identify the manufacturer and/or distributor of the consumer product, and if that information is not readily apparent from the product labeling or packaging, sufficient information to allow the notice recipients to determine which manufacturers' products are within the scope of the notice and which are not.

- Requires that the manufacturer and/or distributor also be served with the 60-day notice unless that party's identity is not apparent, the entity is exempt from Proposition 65, or the enforcer claims that the retailer is responsible for introducing the listed chemical into the product. This requirement implements the indispensable party requirement of CCP § 389, implicit in Health & Safety Code § 25249.11(f), that retailers retain only secondary liability for alleged consumer products exposures.

§ 12903. Notices of Violation

(a) For purposes of Section 25249.7(d) of the Act, “notice of the violation which is the subject of the action” (hereinafter “notice”) shall mean a notice meeting all requirements of this section. No person shall commence an action to enforce the provisions of the Act “in the public interest” pursuant to Section 25249.7(d) of the Act except in compliance with all requirements of this section.

(b) Contents of Notice.

(1) General Information. Each notice shall include as an attachment a copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” (see Appendix A) prepared by the lead agency. This attachment need not be included in the copies of notices sent to public enforcement agencies. A copy of this attachment may be obtained by writing to the Office of Environmental Health Hazard Assessment at P.O. Box 4010, Sacramento, CA 95812-4010.

(2) Description of Violation. A notice shall provide adequate information from which to allow the recipient to assess the nature of the alleged violation, as set forth in this paragraph. The provisions of this paragraph shall not be interpreted to require more than reasonably clear information, expressed in terms of common usage and understanding, on each of the indicated topics.

(A) For all notices, the notice shall identify:

1. the name, address, and telephone number of the noticing individual or a responsible individual within the noticing entity and the name of the entity;

2. the name of the alleged violator or violators;

3. the approximate time period during which the violation is alleged to have occurred; and

4. the name of each listed chemical involved in the alleged violation;

(B) For notices of violations of Section 25249.5 of the Act, a general identification of the discharge or release and of the source of drinking water into which the discharges are alleged to have occurred, to be occurring or to be likely to occur.

(C) For all notices of violation of Section 25249.6 of the Act, the route of exposure by which exposure is alleged to occur (e.g., by inhalation, ingestion, dermal contact);

(D) For notices of violation of Section 25249.6 of the Act involving consumer product exposures:

1. the name of the consumer product or service, or the specific type of consumer product or services, that cause the violation. A notice that identifies a specific type of consumer

Deleted: .

product must identify the specific type of product with sufficient specificity to inform the recipients of the nature of the items allegedly sold in violation of the law and to distinguish those products or services from others sold or offered by the alleged violator for which no violation is alleged. The identification of a chemical pursuant to subsection (b)(2)(A)4. must be provided for each product or service identified in the notice. The identification of a listed chemical in the product is not itself sufficient to distinguish between products for which a violation is alleged and those for which it is not, unless the presence of the listed chemical is apparent from the packaging or labeling of the product.

Deleted: .

2. if the notice is served on a retail seller of the consumer product:

(i). the notice must identify the manufacturer and/or distributor of the consumer product in addition to the information required by subsection (b)(2)(D)4. If the identity of the manufacturer or distributor of the consumer product is not apparent from the packaging or labeling of the consumer product, the notice must include information from which the retail seller and prosecutorial agencies can distinguish among products sold by different manufacturers or suppliers to determine which manufacturers' and/or distributors' products are subject to the notice and which are not.

(ii) the notice must be served on the manufacturer and/or distributor of the consumer product, unless (1) the identity of the manufacturer or distributor is not apparent from the packaging or labeling of the consumer product; (2) the manufacturer or distributor is not a person in the course of doing business under the Act; or (3) the person giving the notice asserts that the retail seller, and not the manufacturer or distributor, has introduced the listed chemical into the consumer product. If the notice is not served on the manufacturer or distributor, the person giving the notice shall state in the notice the basis for the nonservice under this subsection.

(E) For notices of violation of Section 25249.6 of the Act involving occupational exposures:

1. the general geographic location of the unlawful exposure to employees, or where the exposure occurs at many locations, a description of the occupation or type of task performed by the exposed persons;

2. where the alleged violator is the manufacturer or distributor of the chemical or products causing the exposure, the notice shall identify products in the same manner as set forth for consumer product exposures in subparagraph (b)(2)(D), above;

(F) For notices of violation of Section 25249.6 of the Act involving environmental exposures as defined in subsection 12601(d) of this chapter, the notice shall identify, the location of the source of the exposure. Where numerous sources of the exposure are alleged, the location need not be stated if the notice identifies each facility or source of exposure by stating those common characteristics that result in the allegedly unlawful exposure in a manner sufficient to distinguish those facilities or sources from others for which no violation is alleged. The notice shall state whether the exposure for which a

warning allegedly is required occurs beyond the property owned or controlled by the alleged violators.

(3) Where the alleged violations fall within more than one of the categories described in subparagraph (b)(2)(B) to (b)(2)(F) above, then the notice shall comply with all applicable requirements.

(4) A notice is not required to contain the following information:

(A) The specific retail outlet or time or date at which any product allegedly violating the Act was purchased;

(B) The level of exposure to the chemical in question;

(C) The specific admissible evidence by which the person providing the notice will attempt to prove the violation;

(D) For products, except as provided in subsection (b)(2)(D)2. the UPC number, SKU number, model or design number or stock number or other more specific identification of products;

(E) For geographic areas, the lot, block, or other legal description of the property in question.

(c) Service of Notice.

(1) Notices shall be served by first class mail or in any manner that would be sufficient for service of a summons and complaint under the California Code of Civil Procedure.

(2) A certificate of service shall be attached to each notice listing the time, place, and manner of service and each of the parties upon which the notice was served.

(3) Notices shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred.

(4) Where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons.

(d) Computation of Time.

(1) An action is deemed to have been “commenced more than sixty days after the person has given notice” where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the

provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a “holiday” as defined in Code of Civil Procedure Section 12a, then the “sixtieth day” shall be extended to the next day which is not a “holiday”.

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

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 Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Governor’s List.” Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 735 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

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.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer (“carcinogens”), a warning is not required if the business 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 for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm (“reproductive toxicants”), a warning is not required if the business 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 (NOEL),” divided by a 1,000-fold safety or uncertainty factor. The “no observable effect level” is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a “significant amount” of the listed chemical entering into 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 enter any drinking water source, 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” or “no observable effect” test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an 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 of law to stop committing the violation.

FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment’s Proposition 65 Implementation Office at (916) 445-6900.

§ 14000. Chemicals Required By State Or Federal Law To Have Been Tested For Potential To Cause Cancer Or Reproductive Toxicity, But Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state’s qualified experts have not found to have been adequately tested as required [Health and Safety Code Section 25249.8(c)].

Readers should note that a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the “data gap” may continue to exist, for purposes of the state or federal agency’s requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation