

TITLE 27 CALIFORNIA CODE OF REGULATIONS
STATE OF CALIFORNIA
OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT

ARTICLE 9. MISCELLANEOUS

Proposed Regulatory Amendment

§ 25903. 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, the name of the consumer product or service, or the specific type of consumer product or services, that cause the violation, 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.

(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, 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. In lieu of service as prescribed in the California Code of Civil Procedure, a notice may be served on a district attorney or city attorney by electronic mail if:

(A) the District Attorney or City Attorney has specifically authorized such service and the authorization appears on the Attorney General's Web site;

(B) the Notice and related documents are sent to the electronic mail address specified, and in the format (e.g. Word, Adobe Acrobat) specified.

(C) Service by this method is not effective until the documents are actually received. Notice is actually received when it is acknowledged by the recipient.

(D) Where a document is served electronically, time shall be computed as it would for service by mail within the State of California.

(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.