

AMERICAN ENVIRONMENTAL SAFETY INSTITUTE
555 BRYANT STREET, # 218
PALO ALTO, CALIFORNIA 94301

JUNE 10, 2004

NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND
TOXIC ENFORCEMENT ACT OF 1986
(California Health and Safety Code §25249.5 *et seq.*)

TO THE NOTICED PARTIES LISTED BELOW:

- ◆ THE PROCTER & GAMBLE DISTRIBUTING COMPANY
- ◆ THE PROCTER & GAMBLE MANUFACTURING COMPANY
- ◆ ZOTH, INC.

First Class Mail-Proof of Service Attached

TO THE PARTIES LISTED ON THE
ATTACHED DISTRIBUTION LISTS

Re: Consumer Toothpaste Products

Dear Sir or Madam:

The American Environmental Safety Institute serves this Notice of Violation ("Notice") individually upon each company set forth above (hereinafter together "the Companies") pursuant to and in compliance with California Health and Safety Code ("H&S Code") § 25249.7(d) and 22 California Code of Regulations ("CCR") § 12903. This Notice satisfies a prerequisite for the Noticing Party to commence an action against the Companies to enforce the Safe Drinking Water and Toxic Enforcement Act of 1986 (California H&S Code §25249.5 *et seq.* On information and belief, the violations addressed by this Notice occur in every county and city in California. This Notice is being served upon each violator, the California Attorney General, the district attorney of every California county and the city attorney of every California city with a population (according to the most recent decennial census) of over 750,000. If the Companies have a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel, this Notice is being addressed to, and served upon, one of those persons.

Attached as Exhibit A to this Notice is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." The attached Summary was prepared by the California Environmental Protection Agency and provides general information about the Safe Drinking Water and Toxic Enforcement Act of 1986. Copies of the Summary are not required to be, and are not being, provided to the public enforcement agencies.

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A description of the Noticing Party, the Alleged Violator, and the Alleged Violations Addressed by this Notice follows:

- ◆ The American Environment Safety Institute provides this Notice. The American Environmental Safety Institute (hereinafter "Institute") is a California non-profit corporation and is acting in the public interest pursuant to California Health and Safety Code Section 25249.7(d). The Institute's business address is 555 Bryant Street, #218, Palo Alto, California 94301. Deborah A. Sivas, President of the Institute, is the responsible individual within the Institute.
- ◆ The violator's name and addresses are:

**The Procter & Gamble
Distributing Company**
One Procter & Gamble Plaza
Cincinnati, OH 45201

**The Procter & Gamble
Manufacturing Company**
One Procter & Gamble Plaza
Cincinnati, OH 45201

Zooth, Inc.
3305 Seymour Road
Wichita Falls, TX 76309

- ◆ The violations addressed by this Notice began on or after February 27, 1988, have occurred on numerous occasions each and every day since February 27, 1988, and are ongoing and continuing.
- ◆ This Notice of Violation covers the "warning provision" of Proposition 65, which is found at H&S Code § 25249.6.
- ◆ The names of each chemical that is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 involved in the violations addressed by this Notice are Lead (listed as a reproductive toxin); and Lead and lead compounds (listed as a carcinogen) (collectively the "Listed Chemicals"). The Listed Chemicals are listed (and have been so listed for more than twelve months) by the Governor of the State of California as being a chemical known to the State of California to cause cancer or reproductive toxicity, or both cancer and reproductive toxicity. See Exhibit B attached hereto.
- ◆ The routes of exposure for the violations addressed by this Notice are dermal contact and/or ingestion during use of the Product(s).
- ◆ The type of consumer products causing the exposures addressed by this Notice are toothpaste consumer products ("Products"), including but not limited to the following illustrative product(s):

TABEL A	
PROTER & GAMBLE	ZOOTH, INC.
Crest Fresh Mint Gel with Tartar Protection	Barney Anticavity Flouride Toothpaste
Tarter Protection Crest	
Crest Dual Action Whitening (Fresh Mint)	
Kid's Crest Anti-Cavity Toothpaste	

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- ◆ There are numerous sources of the exposures addressed in this Notice. On information and belief, these exposures occur in homes, the workplace and everywhere else in California where these products are used. These exposures occur principally off the property of the Noticed Company.
- ◆ In the course of doing business, the Companies knowingly and intentionally have exposed, and continues to expose, individuals (especially children and pregnant and post-partum women) to the Listed Chemicals in the Products. No clear and reasonable warning is or has been provided by the Companies to individuals regarding exposure to the Listed Chemicals or regarding the fact that the Listed Chemicals are known to the State of California to be a carcinogen and/or reproductive toxin.
- ◆ These exposures are ongoing and continuing, with some continuing from 1988. The Institute believes and so alleges that each Company has tolled any applicable statute of limitations by failing at any time in the past to disclose the presence of the Listed Chemicals in their Products to those persons that required a warning when they purchased the Products in the stores where the Companies' Products are sold for consumer use in California. The labels on these Products do not include any warning that would meet the definition set forth at 22 CCR § 12601(b)(1)(A) or comply with 22 CCR § 12601(b)(3) and (b)(4)(B).
- ◆ The chemicals contained in the ingredients of the Products, and subject to the warning requirements of H&S Code §25249.6 and more specifically 22 CCR § 12601(b) *et seq.*, are listed below:
 1. Lead (listed as a reproductive toxin)
 2. Lead and lead compounds (listed as a carcinogen)
- ◆ The aforementioned carcinogen and reproductive toxins are on the Governor's list ("Prop 65 List") as set forth at 22 CCR § 12000. These chemicals are known to the State of California to cause carcinogenic and/or reproductive toxicity harm to humans requiring special warning labels and care in handling and use. The concentrations of these toxins in the Products require a warning of the existence of this chemical danger by the Product's manufacturer, distributor and retailer.
- ◆ The principal route of exposure is through a "consumer products exposure" via dermal contact and/or ingestion. These exposures have gone on since February 27, 1988, and are ongoing and continuing at every place in California that the Products listed in TABLE A are offered for sale and use. All references to "exposure" in this notice shall be understood to be exposures to the Products, including but not limited to the specific Product brands in said TABLE and the ingredients of those Products. The sale of these Products constitutes a transfer of a known reproductive and/or carcinogenic chemical to the purchaser as well as the ultimate consuming individual from the normal use of the Products, causing the exposure to occur without a clear and reasonable warning regarding the Listed Chemicals.

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- ◆ The location of these alleged exposures are many and varied, and on information and belief occur within the 58 counties of the state of California, as evidenced by the District Attorneys addressed in the enclosed distribution list. The Institute believes and so alleges that at least one of each Companies' Products were sold within each county by the Companies' wholesale or retail distributor, and that sale caused the utilization of the Products and consumption and subsequent exposure. This purchase and consumption caused exposures in that jurisdiction to the Listed Chemicals in the Products as identified herein, and those exposures by the Companies were allowed to take place without the prerequisite warnings as delineated by the applicable statutes specified in this notice.

Please direct any inquiries regarding this notice to counsel for the American Environmental Safety Institute:

Roger Lane Carrick, Esq.
The Carrick Law Group, P.C.
350 S. Grand Avenue, Suite 2930
Los Angeles, CA 90071
Tel.: (213) 346-7930
Fax: (213) 346-7931
E-mail: roger@carricklawgroup.com

EXHIBIT B
NOTICED PARTIES:

- ◆ **THE PROCTER & GAMBLE DISTRIBUTING COMPANY**
- ◆ **THE PROCTER & GAMBLE MANUFACTURING COMPANY**
- ◆ **ZOOTH, INC.**

List Of Chemicals Contained In The Attached 60-Day Notice of Violation That Are Listed By The Governor Of The State Of California As Being Known To The State Of California To Cause Cancer Or Reproductive Toxicity

CARCINOGENS

<u>Chemical</u>	<u>CAS No.</u>	<u>Date Added to List</u>
Lead and lead compounds	---	October 1, 1992

REPRODUCTIVE TOXINS

<u>Chemical</u>	<u>CAS No.</u>	<u>Date Added to List</u>
Lead	---	February 27, 1987

CERTIFICATE OF MERIT
HEALTH AND SAFETY CODE SECTION 25249.7(d)

- ◆ **LEAD AND LEAD COMPOUNDS**
- ◆ **LEAD**

NOTICED PARTIES:

- ◆ **THE PROCTER & GAMBLE DISTRIBUTING COMPANY**
- ◆ **THE PROCTER & GAMBLE MANUFACTURING COMPANY**
- ◆ **ZOTH, INC.**

I, Roger Lane Carrick, on behalf of American Environmental Safety Institute hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged that the parties identified in the notices have violated California Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party.

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

4. Based upon the information obtained through those consultations, and all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for private action" means that the information provides a credible basis that all the elements of the plaintiffs' case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and safety Code section 24249.7(h)(2), *i.e.*, (1) the identity of the person consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: June 10, 2004

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 350 S. Grand Avenue, Suite 2930, Los Angeles, CA 90071-3406.

On June 10, 2004, I served copies of the documents listed immediately hereafter by first class mail by placing same in sealed envelopes, fully preparing postage thereon, and depositing said envelopes in the U.S. Mail at Los Angeles, California. Said envelopes were addressed as follows:

SEE ATTACHED DISTRIBUTION LISTS

Documents mailed:

1. **NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (California Health and Safety Code §25249.5 et seq.)**
2. **Exhibit A - THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (Government Entities excluded)**
3. **Exhibit B - Details of Relevant Proposition 65 Chemical Listing**
4. **CERTIFICATE OF MERIT – (attachments only sent to California Attorney General's Office)**

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed on June 10, 2004, at Los Angeles, California.

DISTRIBUTION LIST – NOTICED PARTIES
VIA FIRST CLASS U.S. MAIL – Documents Mailed:
(1) 60-Day Notice of Violation; (2) Exhibit A - Summary of Prop. 65;
(3) Exhibit B - Details of Relevant Proposition 65 Chemical Listing;
(4) Certificate of Merit; and (5) Certificate of Service

R. Keith Harrison
President
or Current Pres./CEO/Gen. Counsel
**The Procter & Gamble Manufacturing
Company**
One Procter & Gamble Plaza
Cincinnati, OH 45202

CT Corporation System
Registered Agent for Service of Process
818 W. Seventh Street
Los Angeles, CA 90017

R. Kerry Clark
President-Global Market Development &
Business Operations
or Current Pres./CEO/Gen. Counsel
**The Procter & Gamble Distributing
Company**
One Procter & Gamble Plaza
Cincinnati, OH 45202

On behalf of:
1. **The Procter & Gamble Distributing
Company**
2. **The Procter & Gamble Manufacturing
Company**

Susan L. Harrison
President and Registered Agent
or Current Pres./CEO/Gen. Counsel
Zooth, Inc.
3305 Seymour Road
Wichita Falls, TX 76309

DISTRIBUTION LIST – GOVERNMENT ENTITIES
VIA FIRST CLASS U.S. MAIL – Documents Mailed:
**(1) 60-Day Notice of Violation; (2) Exhibit B - Details of Relevant Proposition 65
Chemical Listing; (3) Certificate of Merit (w/atts. AG's office only); and**
(4) Certificate of Service

CALIFORNIA ATTORNEY GENERAL
CA Department of Justice
PROP. 65 ENFORCEMENT REPORTING
Attn: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

San Francisco City Attorney's Office
City Hall, Room 234
San Francisco, CA 94102

Los Angeles City Attorney's Office
1800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

San Diego City Attorney's Office
Civic Center Plaza
1200 Third Avenue, 3rd Floor
San Diego, CA 92101

Office of the District Attorney of
Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

San Jose City Attorney's Office
151 West Mission Street
San Jose, CA 95110

Office of the District Attorney of
Amador County
708 Court Street, Room 202
Jackson, CA 95642

Office of the District Attorney of
Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

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

Office of the District Attorney of
Colusa County
547 Market Street
Colusa, CA 95932

Office of the District Attorney of
Contra Costa County
PO Box 670
Martinez, CA 94553

Office of the District Attorney of
Calaveras County
County Government Center
891 Mountain Ranch Road
San Andreas, CA 95249

Office of the District Attorney of
El Dorado County
515 Main Street
Placerville, CA 95667

Office of the District Attorney of
Fresno County
2220 Tulare Street, Suite 1000
Fresno, CA 93721

Office of the District Attorney of
Del Norte County
County Courthouse
450 H Street, Suite 171
Crescent City, CA 95531

Office of the District Attorney of
Humboldt County
825 Fifth Street
Eureka, CA 95501

Office of the District Attorney of
Imperial County
County Courthouse, Rm. 202
939 W. Main Street
El Centro, CA 92243

Office of the District Attorney of
Glenn County
P.O. Box 430
Willows, CA 95988

Office of the District Attorney of
Kern County
1215 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

Office of the District Attorney of
Kings County
Government Center
1400 West Lacey Boulevard
Hanford, CA 93230

Office of the District Attorney of
Inyo County
168 N. Edwards Street
P.O. Drawer D
Independence, CA 93526

Office of the District Attorney of
Lassen County
County Courthouse
220 S. Lassen Street, Ste. 8
Susanville, CA 96130

Office of the District Attorney of
Los Angeles County
18000 Criminal Courts Building
210 W. Temple Street
Los Angeles, CA 90012

Office of the District Attorney of
Lake County
255 N. Forbes Street, Ste. 424
Lakeport, CA 95453

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

Office of the District Attorney of
Mariposa County
5089 Bullion Street
P.O. Box 730
Mariposa, CA 95338

Office of the District Attorney of
Madera County
209 W. Yosemite Avenue
Madera, CA 93637

Office of the District Attorney of
Merced County
2222 "M" Street
Merced, CA 95340

Office of the District Attorney of
Modoc County
County Courthouse
204 S. Court Street, Room 202
Alturas, CA 96101

Office of the District Attorney of
Mendocino County
County Courthouse
P.O. Box 1000
Ukiah, CA 95482

Office of the District Attorney of
Monterey County
240 Church Street, Room 101
Salinas, CA 93902

Office of the District Attorney of
Napa County
931 Parkway Mall
Napa, CA 94559

Office of the District Attorney of
Mono County
County Courthouse
P.O. Box 617
Bridgeport, CA 93517

Office of the District Attorney of
Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

Office of the District Attorney of
Placer County
11562 "B" Avenue, DeWitt Center
Auburn, CA 95603

Office of the District Attorney of
Nevada County
Courthouse Annex
201 Church Street, Suite 8
Nevada City, CA 95959-2504

Office of the District Attorney of
Riverside County
4075 Main Street, 1st Floor
Riverside, CA 92501

Office of the District Attorney of
Sacramento County
901 "G" Street
P.O. Box 749
Sacramento, CA 95814

Office of the District Attorney of
Plumas County
520 Main Street, Room 404
P.O. Box 10716
Quincy, CA 95971

Office of the District Attorney of
San Bernardino County
316 N. Mountain View Avenue
San Bernardino, CA 92415-0004

Office of the District Attorney of
San Diego County
330 West Broadway, Ste. 1320
San Diego, CA 92101

Office of the District Attorney of
San Benito County
419 4th Street, 2nd Floor
Hollister, CA 95023-3801

Office of the District Attorney of
San Joaquin County
222 E. Weber, Room 202
P.O. Box 990
Stockton, CA 95201

Office of the District Attorney of
San Luis Obispo County
1050 Monterey Street, Room 450
San Luis Obispo, CA 93408

Office of the District Attorney of
San Francisco County
Hall of Justice
880 Bryant Street, Room 325
San Francisco, CA 94103

Office of the District Attorney of
Santa Barbara County
1105 Santa Barbara Street
Santa Barbara, CA 93101

Office of the District Attorney of
Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110

Office of the District Attorney of
San Mateo County
400 County Center, 3rd Floor
Redwood City, CA 94063

Office of the District Attorney of
Shasta County
1525 Court Street, Third Floor
P.O. Box 1320
Redding, CA 96001-1632

Office of the District Attorney of
Sierra County
County Courthouse
P.O. Box 457
Downieville, CA 95936

Office of the District Attorney of
Santa Cruz County
701 Ocean Street, Ste. 200
Santa Cruz, CA 95060

Office of the District Attorney of
Solano County
600 Union Avenue
Fairfield, CA 94533

Office of the District Attorney of
Sonoma County
Hall of Justice
600 Administration Drive, Room 212-J
Santa Rosa, CA 95403

Office of the District Attorney of
Siskiyou County
P.O. Box 986
Yreka, CA 96097

Office of the District Attorney of
Sutter County
Courthouse Annex Box 1555
446 Second Street
Yuba City, CA 95991

Office of the District Attorney of
Tehama County
County Courthouse
P.O. Box 519
Red Bluff, CA 96080-0519

Office of the District Attorney of
Stanislaus County
800 11th Street, Room 200
P.O. Box 442
Modesto, CA 95354

Office of the District Attorney of
Tulare County
County Civic Center
221 S. Mooney Boulevard, Room 224
Visalia, CA 93291

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

Office of the District Attorney of
Trinity County
P.O. Box 1310
Weaverville, CA 96093

Office of the District Attorney of
Ventura County
800 South Victoria Avenue, Rm. 314
Ventura, CA 93009

Office of the District Attorney of
Yolo County
301 Second Street
Woodland, CA 95695

Office of the District Attorney of
Yuba County
County Courthouse
215 Fifth Street
Marysville, CA 95901

