

## DR. RICHARD F. SOWINSKI

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1457 Ramsay Circle  
Walnut Creek, CA 94597

### Sixty Day Notice of Intent to Sue Xerox Corporation and All of Its Operating Affiliates Under Health & Safety Code Sections 25249.6

Dr. Richard F. Sowinski (hereinafter the "Noticing Party") hereby provides this Notice of Intent to Sue Under Health & Safety Code Section 25249.5, *et seq* (the "Notice") to Ann Mulcahy, Chairman and CEO of Xerox Corporation and all of its operating affiliates (hereinafter referred to collectively as "XEROX") manufacturing and distributing the "XEROX" brand of copiers, as well as the governmental entities on the attached proof of service. The Noticing Party lives at the above address but is represented by counsel and requests that any correspondence or communications be directed to his counsel, Anthony G. Graham, of the law firm of Graham & Martin, LLP, at 950 South Coast Drive, Suite 220, Costa Mesa, CA 92626, Telephone: (714) 850-9390 and Facsimile: (714) 850-9392.

This Notice is intended to inform XEROX that it is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65"), specifically Section 25249.6. Proposition 65 states that when a party, such as XEROX, an entity with more than ten employees, has been or is knowingly and intentionally exposing its customers and users of its products to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemicals"), it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of the exposure to the potentially exposed persons (Health & Safety Code § 25249.6). XEROX manufactures, distributes, sells and markets copiers ("the Consumer Products") in California through retail outlets and through its internet website ([www.XEROX.com](http://www.XEROX.com)), which when operated or used emit detectable levels of Designated Chemicals. The Consumer Products relevant to this Notice are identified on Exhibit A hereto. XEROX however has not placed on the any of the Consumer Products, its packaging or marketing materials, nor anywhere on its internet website a clear and reasonable warning that use of any such Consumer Products will expose the user to a Designated Chemical. XEROX is therefore violating Health & Safety Code Section 25249.6.

In the ordinary course of its business, XEROX manufactures, distributes and offers for sale, both through retail outlets and through its internet website ([www.XEROX.com](http://www.XEROX.com)) in California, the copiers identified on Exhibit A hereto. It has been doing so for at least one year prior to the date of this Notice.

Photocopy machines produce hazardous emissions during their operation which include include Benzene, styrene oxide, Ethylbenzene, Napthalene, toluene, 1,1,2,2, Tetrachlorethane, 1-Nitropyrene, and Trichlorokethylene, chemicals known to the State to cause cancer, birth defects, and/or reproductive harm. These chemicals pose a significant health risk and are emitted without a clear and reasonable warning as required by The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) Health & Safety Code § 25249.6.

A photocopy machine is an electronic duplicator that fuses a reproduced image to plain bond paper. Photocopy machines work as follows:

- A copier drum is given a positive charge.
- The image from the original copy illuminates the charged drum and a latent image is formed.

- Static electricity attracts toner to the drum surface and a visible image is formed.
- Toner on the drum is transferred to paper by positive charging.
- After the image transfer process is completed, the paper is separated from the drum surface.
- Toner on the copy paper is firmly fixed when the paper runs between heat and pressure rollers.
- A cleaning blade wipes off excess toner.
- The drum is exposed by a neon lamp to erase remaining static charge.

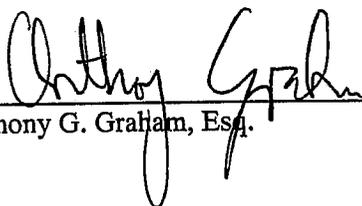
The Consumer Products, when used in the ordinary course of business, emit vapors, gases and particles containing Designated Chemicals. Each of the Consumer Products identified on Exhibit A hereto emit, when in operation or use, the following Designated Chemicals: Benzene, a chemical known to the State of California to cause cancer and reproductive toxicity; styrene oxide, a chemical known to the State of California to cause cancer; Ethylbenzene, a chemical known to the State of California to cause cancer; Napthalene, a chemical known to the State of California to cause cancer; toluene, a chemical known to the State of California to cause reproductive toxicity; 1,1,2,2, Tetrachlorethane, a chemical known to the State of California to cause cancer; 1-Nitropyrene, a chemical known to the State of California to cause cancer and Trichlorokethylene, a chemical known to the State of California to cause cancer.

Persons using the products identified on Exhibit A will be exposed to these Designated Chemicals primarily by inhalation. None of the products identified on Exhibit A hereto have a clear and reasonable warning, as required under Proposition 65, informing persons either purchasing or using the products that use of such products will result in exposures to the identified Designated Chemicals.

Proposition 65 requires that notice and intent to sue be given to XEROX sixty days before a suit is filed. With this letter, Dr. Sowinski gives notice of the alleged violations to XEROX and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to Dr. Sowinski from information now available to him. Dr. Sowinski reserves the right to amend this Notice to inform XEROX of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to XEROX, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: September 2, 2008

By:

  
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Anthony G. Graham, Esq.

# XEROX EXHIBIT A

Model Number:

Xerox iGen3  
DocuColor™ 7000AP/8000AP  
DocuColor 7000AP/8000AP  
DocuColor 6060  
DocuColor 5000  
Xerox Nuvera™ 288 Digital Perfecting System  
DocuTech 6155  
Xerox Nuvera EA Digital Production System  
DocuTech 135  
DocuTech 6135  
DocuTech 6115  
DocuTech 6100  
4112/4127™ Enterprise Printing System  
DocuPrint™ 1050/1050MX Continuous Feed  
DocuPrint 525/525MX Continuous Feed  
Xerox Nuvera™ 288 Digital Perfecting System  
DocuPrint 180/180MX  
DocuPrint 155/155MX  
Xerox Nuvera 144 MX  
Xerox Nuvera EA Digital Production System  
DocuPrint 135/135MX  
Xerox Nuvera 120 MX  
DocuPrint 115/115MX  
Xerox Nuvera 100 MX  
DocuPrint 100/100MX  
4595 Copier/Printer with FreeFlow DocuSP  
4590™ Enterprise Printing System  
DocuPrint 75MX  
DocuTech™ 180 HighLight Color  
DocuTech 155 HighLight Color  
DocuTech 128 HighLight Color  
4112/4127™ Copier/Printer  
4110™ Copier  
4110 Copier/Printer  
4595 Copier/Printer with FreeFlow DocuSP  
4112/4127™ Enterprise Printing System  
Xerox Nuvera™ 288 Digital Perfecting System  
DocuTech™ 180 HighLight Color  
DocuTech 6180  
DocuTech 155 HighLight Color  
Xerox Nuvera EA Digital Production System

DocuTech 128 HighLight Color  
4112/4127™ Enterprise Printing System  
Xerox Nuvera™ 288 Digital Perfecting System  
DocuTech™ 180 HighLight Color  
DocuTech 6180  
DocuTech 6155  
Xerox Nuvera EA Digital Production System  
DocuTech 135  
DocuTech 6135  
DocuTech 128 HighLight Color  
DocuTech 6115  
4110™ Enterprise Printing System  
DocuTech 6100DocuTech 6100  
4590™ Enterprise Printing System  
4112/4127™ Enterprise Printing System  
DocuPrint™ 1050/1050MX Continuous Feed  
DocuPrint 1000 Continuous Feed  
DocuPrint 850 Continuous Feed  
DocuPrint 525/525MX Continuous Feed  
Xerox 495 Continuous Feed Duplex Printer  
DocuPrint 425 Continuous Feed  
DocuPrint 350 Continuous Feed  
DocuPrint 180/180MX  
DocuTech™ 180 HighLight Color  
DocuPrint 155/155MX  
DocuTech 155 HighLight Color  
Xerox Nuvera 144 MX  
Xerox Nuvera EA Digital Production System  
DocuPrint 135/135MX  
DocuTech 128 HighLight Color  
Xerox Nuvera 120 MX  
4110™ Enterprise Printing System  
Xerox Nuvera 100 MX  
DocuPrint 100/100MX  
4590™ Enterprise Printing System  
DocuPrint 75MX  
DocuPrint™ 1050/1050MX Continuous Feed  
DocuPrint 1000 Continuous Feed  
DocuPrint 850 Continuous Feed  
DocuPrint 700 Continuous Feed  
DocuPrint 525/525MX Continuous Feed  
DocuPrint 500 Continuous Feed  
Xerox 495 Continuous Feed Duplex PrinterX  
DocuPrint 425 Continuous Feed  
DocuPrint 350 Continuous Feed

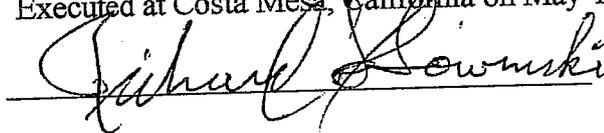
Xerox 3030 Engineering Copier  
Xerox 3040 Engineering Copier  
Xerox 721 Copy System  
Xerox 721 Print System  
Xerox 510 Copy System  
Xerox 510 Print System  
Xerox 6030 Wide Format  
Xerox 6050A™ Wide Format  
Xerox 6050 Wide Format  
Xerox 6204 Wide Format

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Richard F. Sowinski, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notice have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. 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 alleged exposures to the listed chemicals that are the subject of the action.
3. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the 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.
4. 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 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Costa Mesa, California on May 13, 2008.

  
Richard F. Sowinski

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 550 chemicals have been listed as of May 1, 1996. 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 can 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 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, 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 129). 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 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 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 requiring state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to be adequately tested as required (Health and Safety Code 25249.5).

Readers should note 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.

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency. The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, "onc mouse" means oncogenicity in mice, "onc rat" means oncogenicity in rats, "repro" means reproduction, "tera rodent" means teratogenicity in rodents, "tera rabbit" means teratogenicity in rabbits.

Chemical	Testing Needed
Bendiocarb	onc rat, repro, tera rodent
Chloroneb	onc rat, onc mouse, repro, tera rodent, tera rabbit
PCP	repro, onc rat
Petroleum distillates, aromatic	onc rat, onc mouse, repro, tera rodent, tera rabbit

(c) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, "tera" means teratogenicity, "tox" means reproductive toxicity, "onc" means oncogenicity.

Chemical	Testing Needed
Alkyl (C12-13) glycidyl ether	tox, tera
t-Amyl methyl ether	tox, tera
Bisphenol A diglycidyl ether	onc, tox
Cyclohexane*	tox, tera
Glycidyl methacrylate*	tera
1,6-Hexamethylene diisocyanate	tox, tera
N-Methylpyrrolidone	onc, tox, tera
Phenol	tox

\*The Toxic Substances Control Act Section 4 health effects testing programs for cyclohexane and glycidyl methacrylate have been completed and the U.S. Environmental Protection Agency's review of the testing program data is currently underway.

(d) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Pesticide Programs

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their EPA-approved labels.

In 1988, FIFRA was amended to strengthen EPA's pesticide regulatory authority and responsibilities to reregister pesticides registered prior to 1984 to ensure they meet today's stringent scientific and regulatory standards. Reregistration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the reregistration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, reregistration reviews will identify any pesticides where regulatory action may be necessary to deal with unreasonable risks. EPA has been directed to accelerate the reregistration process so that the entire process is completed by 1997. The 1988 amendments set out a five-phase schedule to accomplish this task with deadlines applying to both pesticide registrants and the EPA. These amendments are requiring a substantial number of new studies to be conducted and old studies to be reformulated for EPA review to ensure they are adequate. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, "onc" means oncogenicity, "tera" means teratogenicity, and "repro" means reproductive toxicity.

Chemical	Data Requirements
Acrolein	onc, tera
Alkyl imidazolines	tera
Ametryn	repro, tera
4-Aminopyridine	onc, repro, tera
4-T-Amylphenol	onc, repro
Aquashade	onc, repro, tera
Bensulfide	onc, repro, tera
Benzisothiazoline-3-one	onc, repro, tera
Brodifacoum	repro
Bromonitrostyrene	tera
Busan 77	repro
Chlorfurenol methyl	tera
Chlorophacinone	tera
Chloropicrin	onc, repro
Chromated arsenicals	tera
Cyfluthrin	onc
Cypermethrin	onc, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	tera
Diclofop-methyl	onc, tera
Dicofolophos	onc, repro
Dihalodialkylhydantoinis	onc, repro, tera
Dimethipin	onc, repro, tera
Dimethyldithiocarbamate	onc, repro, tera
Dinocap and its compounds	tera
Diphacinone and salts	onc, repro, tera
Diphenylamine	onc, tera
Dipropyl isocinchomeronic	repro
Diuron	onc

Chemical

Dodine  
 Endothal and salts  
 Ethofumesate  
 Ethoxyquin  
 Fenthion  
 Fenvalerate  
 Fluralinate  
 Hydroxy-methyldithiocarbamate  
 Imazalil  
 Inorganic chlorates  
 Inorganic sulfites  
 Iodine-potassium iodide  
 Iprodione  
 Irgasan  
 Lampricide  
 Magnesium phosphide  
 Malathion  
 Maneb  
 MCPB and salts  
 Melfluidide and salts  
 Mepiquat chloride  
 Metalddehyde  
 Methoxychlor  
 Methyl isothiocyanate  
 Methyl parathion  
 Methyldithiocarbamate  
 MGK 264  
 Molinate  
 Naphthalene  
 Naphthaleneacetic acid  
 Naphthenic salts  
 Napropamide  
 Niclosamide  
 Nicotine and derivatives  
 Nitropryrin  
 4-Nitrophenol  
 Octilinoce  
 Oil of Pennyroyal  
 Oradiazon  
 Oxadiazon  
 Oxyfluorfen  
 Pebulate  
 Perfluidone  
 Phenmedipham  
 Phenol and salts  
 2-Phenylphenol and salts  
 Pine oils  
 Piperonyl botaxide  
 Poly (hexamethylene biguanide)  
 Polyethoxylated aliphatic alcohols  
 Prometon  
 Propachlor

Data Requirements  
 onc, repro, lera  
 onc, repro, lera  
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 onc, repro, lera  
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 onc, repro  
 onc, repro, lera  
 lera  
 onc

Chemical

Propanil  
 Propetamphos  
 Propiconazole  
 Propylene oxide  
 Pyrazon  
 Pyrethrin and derivatives  
 Pyrimidinone  
 Sethoxydim  
 Siduron  
 Sodium fluoride  
 Sulfometuron-methyl  
 TBT-containing compounds  
 TCMB  
 Temephos  
 Tetrachlorovinphos  
 Tetramethrin  
 Thiabendazole and salts  
 Thidiazuron  
 Thiocarb  
 Thiophanate-methyl  
 Thiram  
 Triadimefon  
 Triclopyr and salts  
 Vernolate

Data Requirements

onc, repro  
 lera  
 onc  
 lera  
 onc, repro  
 onc, lera  
 onc, lera  
 onc  
 onc, repro, lera  
 lera  
 onc, lera  
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 onc, repro

Revised: January 1, 1998

History

1. New section submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 89, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 91, No. 17).
4. Editorial correction of subsection (d) (Register 91, No. 31).
5. Editorial correction of printing error (Register 91, No. 43).
6. Editorial correction instituting inadvertently omitted amendment. Submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 93, No. 20).
7. Editorial correction of printing errors (Register 93, No. 45).
8. Amendment of subsection (d) filed 8-1-94. Submitted to OAL for printing only (Register 94, No. 31).
9. Amendment of subsections (b), (c), and (d) filed 12-23-94. Submitted to OAL for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.8 (Register 95, No. 52).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 97, No. 5).
12. Amendment of subsections (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 98, No. 7).

[The next page is 201.]

Animal bioassay data is admissible and generally indicative of potential effects in humans.

For purposes of this regulation, substances are present occupationally when there is a possibility of exposure either as a result of normal work operations or a reasonably foreseeable emergency resulting from workplace operations. A reasonably foreseeable emergency is one which a reasonable person should anticipate based on usual work conditions, a substance's particular chemical properties (e.g., potential for explosion, fire, reactivity), and the potential for human health hazards. A reasonably foreseeable emergency includes, but is not limited to, spills, fires, explosions, equipment failure, rupture of containers, or failure of control equipment which may or do result in a release of a hazardous substance into the workplace.

(b) Administrative Procedure Followed by the Director for the Development of the Initial List. The Director shall hold a public hearing concerning the initial list. The record will remain open 30 days after the public hearing for additional written comment. Requests to exempt a substance in a particular physical state, volume, or concentration from the provisions of Labor Code sections 6390 to 6399.2 may be made at this time. If no comments in opposition to such a request are made at the public hearing or received during the comment period, or if the Director can find no valid reason why the request should not be considered, it will be incorporated during the Director's preparation of the list.

After the public comment period the Director shall formulate the initial list and send it to the Standards Board for approval. After receipt of the list or a modified list from the Standards Board, the Director will adopt the list and file it with the Office of Administrative Law.

(c) Concentration Requirement. In determining whether the concentration requirement of a substance should be changed pursuant to Labor Code section 6383, the Director shall consider valid and substantial evidence. Valid and substantial evidence shall consist of clinical evidence or toxicological studies including, but not limited to, animal bioassay tests, short-term in vitro tests, and human epidemiological studies. Upon adoption, a regulation indicating the concentration requirement for a substance shall consist of a footnote on the list.

(d) Procedures for Modifying the List. The Director will consider petitions from any member of the public to modify the list or the concentration requirements, pursuant to the procedures specified in Government Code section 11347.1. With petitions to modify the list, the Director shall make any necessary deletions or additions in accordance with the procedures herein set forth for establishing the list. The Director will review the existing list at least every two years and shall make any necessary additions or deletions in accordance with the procedures herein set forth for establishing the list.

(e) Criteria for Modifying the List. Petitions to add or remove a substance on the list, modify the concentration level of a substance, or reference when a particular substance is present in a physical state which does not pose any human health risk must be accompanied with relevant and sufficient scientific data which may include, but is not limited to, short-term tests, animal studies, human epidemiological studies, and clinical data. If the applicant does not include the complete content of a referenced study or other document, there must be sufficient information to permit the Director to identify and obtain the referenced material. The petitioner bears the burden of justifying any proposed modification of the list.

The Director shall consider all evidence submitted, including negative and positive evidence. All evidence must be based on properly designed studies for toxicological endpoints indicating adverse health effects in humans, e.g., carcinogenicity, mutagenicity, neurotoxicity, organ damage/effects.

For purposes of this regulation, animal data is admissible and generally indicative of potential effects in humans.

The absence of a particular category of studies shall not be used to prove the absence of risk.

Inherent insensitivities, negative results must be reevaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list or modifying the list in reference to concentration, physical state or volume, so that appropriate information may be provided regarding those positive results. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

NOTE: Authority cited: Section 6380, Labor Code. Reference: Sections 6361, 6380, 6380.5, 6382 and 6383, Labor Code.

#### HISTORY

1. New article 5 (section 337) filed 11-5-81; effective thirtieth day thereafter (Register 81, No. 45).
2. Amendment of subsection (d) filed 1-15-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 87, No. 3).
3. Editorial correction of HISTORY 2. (Register 91, No. 19).

#### § 338. Special Procedures for Supplementary Enforcement of State Plan Requirements Concerning Proposition 65.

(a) This section sets forth special procedures necessary to comply with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31159 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. Any person proceeding "in the public interest" pursuant to Health and Safety Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code § 25249.7(c) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR § 12903, setting forth specific requirements for the content and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following statement:

"This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provision of Proposition 65, as approved by Federal OSHA on June 6, 1997. This provision specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The provision also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substitute court orders in this matter must be submitted to the Attorney General.

(c) A Supplemental Enforcer or Public Prosecutor who commences Supplemental Enforcement Matter shall serve a file-endorsed copy of the complaint upon the Attorney General within ten days after filing the Court.

(d) A Supplemental Enforcer or Public Prosecutor shall serve upon the Attorney General a copy of any motion, or opposition to a motion

**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 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (only sent to violators);
- 3.) Certificate of Merit (supporting papers sent to Attorney General only)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: September 4, 2008  
Place of Mailing: Costa Mesa, California

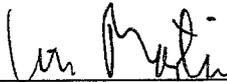
NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Ann Mulcahy, Chariman and CEO Xerox Corporation 45 Glover Ave. Norwalk, CT 06856	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
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And all entities on the attachment hereto

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 4, 2008

  
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## ATTACHMENT TO PROOF OF SERVICE

San Diego City Attorney  
1200 3rd Ave. Ste. 1620  
San Diego, CA 92101

Los Angeles City Attorney  
200 N. Main St. N.E.  
Los Angeles, CA 90012

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Napa, CA 94559

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Bishop, CA 93514

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Lakeport, CA 95453

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Turlock, CA 95380

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204 S Court Street  
Alturas CA 96101

Kern County DA  
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Bakersfield, CA 93305

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Santa Cruz, CA 95061

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1225 Fallon Street  
Oakland, CA 94612

Del Norte County DA  
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Crescent City, CA 95531

Santa Clara DA  
2645 Zanker Rd  
San Jose CA 95134

Solano County DA  
321 Tuolumne St  
Vallejo CA 94590

Glenn County DA  
540 W Sycamore St  
Willows CA 95988

Kings County DA  
1400 W Lacey Blvd  
Hanford CA 93230

Riverside DA  
82675 US Hwy 111 FL4  
Indio CA 92201

Santa Rosa D.A.  
111 N Pythian Rd  
Santa Rosa CA 95409

Monterey County DA  
240 Church St.  
Salinas, CA 93902

Placer County DA  
11562 B Avenue  
Auburn, CA 95603

Fresno County DA  
2220 Tulare Street, #1000  
Fresno, CA 93721

Siskyou County DA  
P.O. Box 986  
Yreka, CA 96097

Tulare County DA  
425 E. Kern  
Tulare, CA 93274

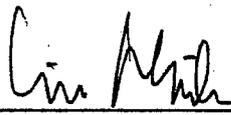
Inyo County DA  
PO Drawer D  
Independence, CA 93526

Mono County DA  
P.O. Box 617  
Bridgeport, CA 93517

Santa Barbara County DA  
1105 Santa Barbara St.  
Santa Barbara, CA 93101

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 4, 2008

  
\_\_\_\_\_