



July 18, 2002

Jeff Stier
Associate Director
American Council on Science and Health
1995 Broadway, 2nd Floor
New York, NY 10023

RE: Proposition 65 Notice Concerning Acrylamide

Dear Mr. Stier:

We have received the sixty-day notice of violation under Proposition 65 sent on behalf of the American Council on Science and Health ("ACSH"), alleging that Whole Foods Market has exposed consumers to acrylamide through the sale of "breads and other carbohydrate-rich foods such as whole wheat bread, organic bread, and non-bromated bread." According to the certificate of service, the notices were mailed on July 11, 2002. Since the addresses at which the alleged violators were served are outside the State of California, ten days must be added to the time before which a suit under Proposition 65 could be filed. (22 CCR § 12903(d)(1).) Thus, the first date on which a complaint could be filed is September 20. This is to advise you that the notice you have provided is legally deficient, for three reasons.

First, according to the certificate of service, the notice was not served on any of the district attorneys for any of the counties in the state. The statute requires that the notice be served on each district attorney "in whose jurisdiction the violations is alleged to occur[.]" (Health and Safety Code § 25249.7(d)(1).)

Second, the statute requires that the notice of violation served on the Attorney General include "[f]actual information sufficient to establish the basis of the certificate of merit[.]" (*Id.*) Your notice includes *no* supporting factual information.

Third, your notice is at least in part invalid in its description of the products for which violations are alleged. Regulations governing the content of notices of violation require that consumer products 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 Reg. § 12903(b)(2)(D).) Your notice identifies the products at issue as "breads and other carbohydrate-rich foods such as whole wheat bread, organic bread, and non-bromated bread when cooked at high heat." We do not think that the description "breads and other carbohydrate-rich foods" is sufficient to meet this requirement.

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Accordingly, we do not think your notice is legally sufficient to permit ACSH to file suit under Proposition 65. Although the statute does not grant the Attorney General authority to preclude a party from filing suit based on our determination, we think you should consider this determination in deciding whether to file a civil action based on your notice.

As you know, there has been substantial publicity concerning the presence of acrylamide in certain cooked foods raises an issue of substantial public importance, which deserves serious attention. The World Health Organization, the U.S. Food and Drug Administration, and others, are investigating this matter. The Attorney General also is investigating the matter. For your reference, I am enclosing with this letter a copy of correspondence in which the Attorney General has addressed some of the issues that may be raised by acrylamide-related Proposition 65 claims.

Sincerely,

EDWARD G. WEIL
Deputy Attorney General

For **BILL LOCKYER**
Attorney General