



November 20, 2015

**VIA US Mail**

Public Prosecutors (See attached service list)	President/CEO LINN Operating, Inc. 5201 Truxton Avenue, Suite 100 Bakersfield, CA 93309
President/CEO LINN Operating, Inc. 600 Travis Street, Suite 5100 Houston, TX 77002	CT Corporation System Agent for Service of Process 818 West Seventh Street, Suite 930 Los Angeles, CA 90017
President/CEO LINN Energy Holdings, LLC 600 Travis Street, Suite 5100 Houston, TX 77002	CT Corporation System Agent for Service of Process 818 West Seventh Street, Suite 930 Los Angeles, CA 90017

***NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5 et seq. AND  
60-DAY NOTICE OF INTENT TO SUE UNDER HEALTH & SAFETY CODE § 25249.5 et seq. (California  
Safe Drinking Water and Toxic Enforcement Act, a.k.a. "Proposition 65")***

Dear Hon. Prosecutors, LINN Energy Holdings, LLC and LINN Operating, Inc.:

This office represents Clean Water Fund and Center for Environmental Health. This Notice of Violation is provided to you pursuant to, and in compliance with, California Health and Safety Code Section 25249.7. This letter serves to provide the public prosecutors, in addition to LINN Operating, Inc. and LINN Energy Holdings, LLC, (collectively, "Violators"), with notice of alleged violations and the intent to sue in the public interest, based thereon.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached Summary provided by California Environmental Protection Agency's Office of Environmental Health Hazard Enforcement. (Note, copies of the same will not be provided to public prosecutors.)

This Notice of Violation ("NOV") is served on behalf of Clean Water Fund ("CWF") and Center for Environmental Health.



CWF is a nonprofit corporation dedicated to ensuring safe clean affordable drinking water, preventing health threatening pollution, and creating environmentally safe jobs and businesses. Miriam Gordon and Andrew Grinberg are the California State Director and Oil and Gas Program Manager, respectively, of and responsible individuals within CWF. CWF brings this action in the public interest, pursuant to Health & Safety Code § 25249.7 (d).

CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Charlie Pizarro is the Associate Director of, and the responsible individual within, CEH. CEH is located at 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH brings this action in the public interest, pursuant to Health & Safety Code § 25249.7 (d).

**Description of Violation:**

**Violator(s):**

**LINN Operating, Inc.**  
5201 Truxton Avenue, Suite 100  
Bakersfield, CA 93309

**LINN Energy Holdings, LLC**  
600 Travis Street, Suite 5100  
Houston, TX 77002

**Time Period of Violation:**

The violations have been occurring since at least October 1, 2014, and are continuing daily to the present, unless wells have been plugged, abandoned or voluntarily relinquished and in such case violations continued through the last date of injection.

**Provisions of Proposition 65:**

This Notice of Violation is brought pursuant to the "Discharge Prohibition" prong of Proposition 65, which can be found at Health and Safety Code Section 25249.5.

Violator(s) is/are a "person[s] in the course of doing business" as defined in Health & Safety Code § 25249.11, who discharge, deposit or release Proposition 65-listed chemicals, contaminated wastewater or produced water into existing and/or present sources of drinking water and/or into underground sources of drinking water designated as municipal drinking water supply/ies under the Water Quality Control Plan for the Tulare Lake Basin ("Basin Plan") and/or the Safe Drinking Water Act of 1974 (42 U.S.C. §300(f) *et seq.*). Violator(s) also discharges these chemicals and hazardous substances onto and/or into land where they probably will pass into sources of drinking water.



Information available to CWF and CEH indicates that the Violators have been and continue to be discharging, releasing or depositing produced water and/or wastewater from oil and gas production operations at or near the Violators' facilities. Information available to CWF and CEH indicates that such produced water and wastewater is knowingly and purposefully discharged or released from Violators' facilities and are consistently discharged in significant amounts, contain significant amounts of Prop. 65-listed chemicals and are not in compliance with all applicable laws, regulations, permits, requirements, and orders. Therefore, Violators knowingly discharged, deposited or released a significant amount of Proposition 65-listed chemicals into existing and/or present drinking water sources, thereby posing carcinogenic and reproductive toxicity threats to the public and its drinking water sources.

**Chemicals Involved:**

The name of the listed chemicals involved in these violations are:

- Arsenic
- Lead
- Toluene
- Naphthalene
- Radionuclides
- Nickel and Nickel compounds
- Soots, tars and mineral oils
- Residual (heavy) fuel oils

All of the chemicals listed above have been on the Proposition 65 list longer than twenty months. (Health & Safety Code § 25249.9(a).) The above-listed Proposition 65 reproductive or developmental toxics and/or carcinogens ("Listed Chemicals") have been knowingly deposited, discharged or released by Violator(s), continue to be knowingly deposited, released or discharged, and are likely to continue to be knowingly deposited, released or discharged by Violators in the future into water or onto or into land where such chemical(s) pass or probably will pass into any source of drinking water. The Violators have been and/or are knowingly discharging, releasing or depositing the Listed Chemicals into groundwater designated as municipal drinking supply, or onto land where they probably will pass into such groundwater. The Violators, through the operations of the Wells (*infra*) and discharges of the Listed Chemicals, violated, violate and threaten to violate the discharge/release prohibition contained in Health & Safety Code § 25249.5.



**Description of Discharge:**

Violator(s), individually and/or collectively and including each owner and/or operator, operate one or more of the following underground water disposal wells (“Wells”):

API Number	Well Name	Field	Lat/Long
02958657	9-2	McKittrick	35.309338, -119.614587
03001169	BW 5	McKittrick	35.308204, -119.609472
03042399	WD 3	McKittrick	35.308917, -119.613344
03048983	WD 11	Midway-Sunset	35.266894, -119.567778
03048984	WD 21	Midway-Sunset	35.266275, -119.569763
03048985	WD 26	Midway-Sunset	35.265894, -119.568479
03048986	WD 35	Midway-Sunset	35.265057, -119.570257
03048987	WD 40	Midway-Sunset	35.264647, -119.568801
03048989	WD 30	Midway-Sunset	35.265375, -119.569211
03048990	WD 36	Midway-Sunset	35.265020, -119.567714
03048991	WD 45	Midway-Sunset	35.264332, -119.569843
03048992	WD 49	Midway-Sunset	35.263857, -119.568372
03051198	WD 29	Midway-Sunset	35.265647, -119.567550
03051199	WD 33	Midway-Sunset	35.265144, -119.568392
03051200	WD 38	Midway-Sunset	35.264861, -119.569447
03051201	WD 43	Midway-Sunset	35.263720, -119.569450
03051202	WD 47	Midway-Sunset	35.264410, -119.567770
03053415	WD 55	Midway-Sunset	35.263812, -119.570014
03053416	WD 56	Midway-Sunset	35.263403, -119.569398
03053417	WD 65	Midway-Sunset	35.261168, -119.568768
03055802	WD 57	Midway-Sunset	35.263245, -119.568621

Violators are “person[s] in the course of doing business” as defined in Health & Safety Code § 25249.11, who discharge, deposit or release Proposition 65-listed chemicals, contaminated injectate or “produced water” into existing and/or present sources of drinking water or into underground sources of drinking water not designated by the Safe Drinking Water Act of 1974 (42 U.S.C. §300(f) *et seq.*) as exempt, including but not limited the aquifer(s) and sources of drinking water under the McKittrick and Midway-Sunset fields, *e.g.* the Tulare (Upper, Air Sands) and Potter (“Aquifers”). The Wells are regulated under permits issued by Division of Oil, Gas, and Geothermal Resources (“DOGGR”). Violator(s) is/are also regulated under the State Water Resources Control Board’s (“SWRCB”) authority to regulate and monitor groundwater sources of drinking water, amongst other agencies with jurisdiction over Violator(s) operations.



On March 4, 2015, the Central Valley Regional Water Quality Control Board issued a Water Code section 13267 Investigation Order to Violator(s) since Violator's Wells have been injecting fluids produced by oil or gas extraction activities into aquifers that may not have been properly designated as exempt aquifers under the federal Safe Drinking Water Act. At least some of the Wells have been identified as "potentially impacting water supply wells" by the SWRCB, insofar the injection zone is shallower than 1,500 feet below ground surface.

Violators are and have been in violation of the Safe Drinking Water Act, its DOGGR permits, SWRCB drinking water program regulations, Proposition 65, and other laws, regulations, permits, requirements, and orders. Violators are subject to enforcement from the SWRCB due to the fact that LINN Operating, Inc. has been injecting Prop. 65-listed chemicals within the last year into potential, present or existing drinking water sources above state and/or federal Maximum Contaminant Levels, Proposition 65 Safe Harbor Limits, OEHHA Public Health Goals, SWRCB Drinking Water Action Levels, and other applicable laws, regulations, permits, requirements, and orders.

Sources of pollutants associated with the industrial activities at the production wells generating the produced water or injectate going into the Well, and ultimately the Aquifer(s), include but are not limited to, oil contaminated water, chemicals used in hydraulic fracturing, enhanced oil recovery waste, partially cleaned-up produced water, cementing and water treatment chemicals. Wastes generated by oil and gas production operations engaged in by Violators include but are not limited to, waste water, produced water, water from enhanced oil recovery, injectate, and other types of contaminated water.

#### **Sources of Drinking Water:**

A "source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional water board as being suitable for domestic or municipal uses. (Health & Safety Code § 25249.11(d).) Moreover, "water" is defined to include both surface and groundwater. (California Code of Regulations, title 27, Section 25102(w).)

The State Water Resources Control Board, Tulare Lake Basin Water Quality Control Plan ("Basin Plan") establishes Water Quality Objectives for Inland Ground Waters, including groundwater. Pursuant to the Sources of Drinking Water Policy, all ground waters in the Basin are designated as municipal unless specifically exempted and approved. (Tulare Lake Basin Plan at p. II-2 ("Due to the "Sources of Drinking Water Policy," all ground waters are designated MUN (the use may be existing or potential) unless specifically exempted by the Regional Water Board and approved



for exemption by the State Water Board.”) Moreover, Groundwater Water Quality Objectives require that all covered waters be maintained free of toxic substances, alone or in combination, in concentrations that produce detrimental physiological responses in human, plant, animal or aquatic life. The Sources of Drinking Water Policy and Water Quality Objectives are intended to protect Beneficial Uses of Ground Waters such as the Aquifer(s).

Therefore, the Violator’s discharges, releases, and/or depositions of the Listed Chemicals into this sources of drinking water, or into or onto land where each passed, passes or probably will pass into a source of drinking water, are violations of Proposition 65’s discharge prohibition.

**Resolution of Noticed Claims:**

Based on the allegations set forth in this Notice, CWF and CEH intend to file a citizen enforcement action against the alleged violators unless the violators agrees in a binding written instrument to remedy the violations alleged herein by ceasing ongoing and future discharges of the identified Proposition 65-listed chemicals, and paying appropriate costs, fees and civil penalties pursuant to Health & Safety Code Section 25249.7, Code of Civil Procedure Sections 1021.5 and 1033.5 *et seq.* CWF and CEH have retained counsel and are represented in this matter. Thus, please direct all communications regarding this notice to their enforcement counsel: Matthew C. Maclear at Aqua Terra Aeris (ATA) Law Group, 7425 Fairmount Ave., El Cerrito, CA 94530, and (415) 568-5200.

Sincerely,

A handwritten signature in black ink, appearing to read "Matt Maclear", is written over a horizontal line.

Matthew C. Maclear  
Aqua Terra Aeris Law Group  
Attorneys for Noticing Parties

Enclosure: Appendix A – Prop. 65 Summary



## 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 California Office of Environmental Health Hazard Assessment (OEHHA), 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 OEHHA's implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. The statute is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. 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 27 of the California Code of Regulations, sections 25102 through 27001.<sup>1</sup> These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

#### *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 and/or reproductive toxicity. This means that chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as

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<sup>1</sup> All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at:

[http://www.oehha.ca.gov/prop65/prop65\\_list/Newlist.html](http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html).

Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving listed 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 unless an exemption applies; for example, when exposures are sufficiently low (see below). 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. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

***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. Some discharges are exempt from this requirement under certain circumstances discussed below.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

***Grace Period.*** Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

***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. This includes all employees, not just those present in California.



**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" (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause reproductive toxicity, 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" divided by a 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

**Exposures to Naturally Occurring Chemicals in a Food.** Certain exposures to chemicals that occur in foods naturally (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant<sup>2</sup> it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

**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 pass into or probably pass into a source of drinking water, 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" level for chemicals that cause cancer or that is 1,000 times below the "no observable effect" level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

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<sup>2</sup> See Section 25501(a)(4)

## *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. 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. The notice must comply with the information and procedural requirements specified in Section 25903 of the regulations and in Title 11, sections 3100-3103. A private party may not pursue an independent enforcement action 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 to stop committing the violation.

## *FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS...*

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at [P65Public.Comments@oehha.ca.gov](mailto:P65Public.Comments@oehha.ca.gov).

Revised: July, 2012

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

**CERTIFICATE OF SERVICE**

I, the undersigned, declare:

I am a citizen of the United States, over the age of 18 years, and am not a party to the within titled Notice of Violation, cause or action. My business address is 7425 Fairmount Ave., El Cerrito, CA 94530.

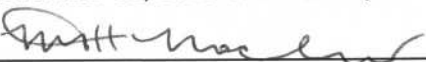
On November 20, 2015, I served the following documents: **NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5 et seq. AND 60-DAY NOTICE OF INTENT TO SUE UNDER HEALTH & SAFETY CODE § 25249.5 et seq. (California Safe Drinking Water and Toxic Enforcement Act, a.k.a. "Proposition 65"); and Appendix A, entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary** on the following parties by placing a true and correct copy thereof in a sealed envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid for delivery by First Class Certified Mail:

President/CEO LINN Operating, Inc. 5201 Truxton Avenue, Suite 100 Bakersfield, CA 93309	CT Corporation System Agent for Service of Process 818 West Seventh Street, Suite 930 Los Angeles, CA 90017
President/CEO LINN Operating, Inc. LINN Energy Holdings, LLC 600 Travis Street, Suite 5100 Houston, TX 77002	CT Corporation System Agent for Service of Process for LINN Operating, Inc. and LINN Energy Holdings, LLC 818 West Seventh Street, Suite 930 Los Angeles, CA 90017

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The Honorable Lisa Green Kern County District Attorney 1215 Truxton Avenue, 4 <sup>th</sup> Floor Bakersfield, CA 93301	The Honorable Kamala Harris Office of the Attorney General Attn: Sue Fiering and Harrison Pollack 1515 Clay Street, 20 <sup>th</sup> Floor Oakland, CA 94612
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I certify under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this certification was executed on November 20, 2015 at El Cerrito, California.

By: 

Matthew Maclear