

ENDORSED  
FILED  
San Francisco County Superior Court

MAY 02 2006

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CASE MANAGEMENT CONFERENCE SET

SEP 29 2006 - 9 @ AM

DEPARTMENT 212

Attorneys for Plaintiffs ENVIRONMENTAL LAW FOUNDATION, and  
OUR CHILDREN'S EARTH FOUNDATION

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN FRANCISCO

ENVIRONMENTAL LAW FOUNDATION, )  
OUR CHILDREN'S EARTH FOUNDATION, )  
and DOES 1 through 100, inclusive, )  
On Behalf of the General Public, )

Plaintiffs,

v.

LIDLAW TRANSIT INC. )  
dba LIDLAW EDUCATION SERVICES )  
and DOES 1 through 100, inclusive, )  
Defendants.

CASE NO. 06C06451832

COMPLAINT FOR CIVIL PENALTIES,  
STATUTORY, EQUITABLE AND  
INJUNCTIVE RELIEF BASED UPON:

(1) Violation of Cal. Health & Safety Code  
§ 25249.6 et seq.

COMPLAINT FOR STATUTORY, EQUITABLE AND INJUNCTIVE RELIEF

Page 1

1 Plaintiffs, by their attorneys, bring this action on behalf of the general public on  
2 information and belief, except those allegations which pertain to the named plaintiffs or to their  
3 attorneys (which are alleged on personal knowledge), and hereby allege as follows:

4 **INTRODUCTION**

5 **(The Hazards of Diesel Engine Exhaust)**

6 1. This action seeks, among other remedies, civil penalties and injunctive relief to  
7 redress the actions of defendants that cause widespread exposure of public school children to  
8 diesel engine exhaust, a chemical known to the State of California to cause cancer in humans.  
9 Specifically, plaintiffs challenge defendants' operation of school buses for school districts in the  
10 State of California that emit diesel engine exhaust, exposing passengers on these buses to a toxic  
11 chemical known to the State of California to cause cancer through inhalation of the diesel engine  
12 exhaust from the buses without prior warning. Defendants' actions, including but not limited to  
13 their failure to provide warnings, violate California Health & Safety Code §§ 25249.6 *et seq.*

14 2. Diesel engine exhaust poses a significant health threat, particularly to children.  
15 Diesel exhaust and the many chemicals, gases and particulates that it contains have been linked  
16 to decreases in lung function, cancer, asthma exacerbations, and premature death. The scientific  
17 evidence associating diesel exhaust and human health problems is quite extensive. In fact, the  
18 excess cancer risk in California from diesel particles is higher than any other Toxic Air  
19 Contaminant identified by California's Office of Environmental Health Hazard Assessment  
20 ("OEHHA").

21 3. Proposition 65 requires that consumers must be warned before they are exposed to  
22 chemicals/metals that cause cancer. (The Safe Drinking Water and Toxic Enforcement Act,  
23 California Health and Safety Code § 25249.6, *et seq.*, also known as "Proposition 65"). On  
24 October 1, 1990, diesel engine exhaust was declared to be a carcinogen subject to Proposition 65.  
25 On October 1, 1991, the warning requirements under Proposition 65 became effective for diesel  
26 engine exhaust. *See* Health and Safety Code § 25249.10(b).

1 4. By exposing school children to diesel engine exhaust without providing any warning,  
2 defendants have violated and will continue to violate Proposition 65. Plaintiffs are therefore  
3 entitled to civil penalties. Additionally, by committing the acts set forth herein, defendants have  
4 violated, and unless enjoined will continue to violate, Proposition 65. Therefore, plaintiffs are  
5 entitled to injunctive relief to compel defendants to comply with the requirements of Proposition  
6 65 in the operation of their diesel buses, including its requirement that the passengers of  
7 defendants' buses be provided with a clear and reasonable warning that defendants' diesel buses  
8 emit a chemical known to the State of California to cause cancer.

9 **PARTIES**

10 5. Plaintiff ENVIRONMENTAL LAW FOUNDATION ("ELF") is a California  
11 nonprofit organization founded on Earth Day in 1991. ELF has a longstanding interest in  
12 reducing health hazards to the public posed by diesel engine exhaust, and particularly to protect  
13 those with the least choice and greatest vulnerability to toxic risks: children and inner city  
14 dwellers. ELF is dedicated to the preservation and enhancement of human health and the  
15 environment. ELF brings this action pursuant to California Health and Safety Code § 25249.7(d)  
16 in the interest of the general public.

17 6. Plaintiff OUR CHILDREN'S EARTH FOUNDATION ("OCE") is a California  
18 nonprofit organization dedicated to protecting the public, especially children, from the harmful  
19 effects of air and water pollution. OCE has an interest in reducing the harmful effects of toxic  
20 air pollution. OCE brings this action pursuant to California Health and Safety Code  
21 § 25249.7(d) in the interest of the general public.

22 7. The true names and capacities of DOE plaintiffs 1 through 100, inclusive, are  
23 presently unknown to plaintiffs ELF and OCE, who therefore refer to these plaintiffs by such  
24 fictitious names. Plaintiffs will seek to amend this Complaint and include these DOE plaintiffs'  
25 true names and capacities when they are ascertained. Each of the fictitiously named plaintiffs  
26 sues on behalf of the general public.

1 8. ELF, OCE and DOE plaintiffs 1 through 100 (collectively, "Plaintiffs") bring this  
2 action in the public interest as allowed under California law, as approved by the voters, in Health  
3 and Safety Code section 25249.7(d). Plaintiffs do not allege, nor have they suffered, an injury  
4 cognizable under Article III of the United States Constitution.

5 9. Laidlaw Transit Inc., doing business as Laidlaw Education Services ("Laidlaw"), is a  
6 Delaware corporation with its principal place of business located at 55 Shuman Boulevard, #400,  
7 Naperville, Illinois 60563. Laidlaw operates diesel school buses for school districts throughout  
8 the State of California that expose riders to diesel engine exhaust.

9 10. The true names and capacities of defendants sued herein under California Code of  
10 Civil Procedure § 474 as DOE defendants 1 through 100, inclusive, are presently unknown to  
11 Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs will seek to  
12 amend this Complaint and include these Doe defendants' true names and capacities when they  
13 are ascertained. Each of the fictitiously named defendants is responsible in some manner for the  
14 conduct alleged herein and for the injuries suffered by the general public.

15 11. Laidlaw and defendants DOES 1 through 100 (collectively, "Defendants") each have  
16 employed ten (10) or more persons at all times relevant to this action.

17 12. In doing the things alleged in the cause of action into which this paragraph is  
18 incorporated by reference, each and every Defendant was acting within the course and scope of  
19 this agency or employment, and was acting with the consent, permission, and authorization of  
20 each of the remaining Defendants. All actions of each Defendant alleged in the causes of action  
21 into which this paragraph is incorporated by reference were ratified and approved by every other  
22 Defendant or their officers or managing agents, and by agreeing to actively conceal the true facts  
23 as alleged herein. Alternatively, Defendants aided, conspired with and/or facilitated the  
24 wrongful conduct of other Defendants.

25 ///

1 **JURISDICTION AND VENUE**

2 13. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
3 California Constitution, Article VI, Section 10, because this case is a cause not given by statute  
4 to other trial courts.

5 14. This Court has jurisdiction over Defendants named herein because Defendants either  
6 are located in this State or are foreign corporations authorized to do business in California and  
7 registered with the California Secretary of State, or who do sufficient business in California,  
8 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of  
9 the markets within California through the operation of their diesel buses for school districts and  
10 the promotion, sale and marketing of their diesel buses for use in California to render the  
11 exercise of jurisdiction by the California courts permissible under traditional notions of fair play  
12 and substantial justice.

13 15. Venue is proper in this Court because the exposure occurred in this County, a  
14 substantial portion of the activities complained of herein occurred here, contracts relating to the  
15 operation of vehicles causing the exposure were entered into, made and were to be performed in  
16 this County, and Defendants have received substantial compensation from the operation of the  
17 vehicles causing the exposure at issue in this County by doing business here and exposing San  
18 Francisco school children to a known carcinogen which had an effect in this County.

19 16. With respect to violations of Health and Safety Code § 25249.6, *et seq.*, on May 16,  
20 2005, pursuant to Health and Safety Code § 25249.7, Plaintiffs mailed appropriate notices of the  
21 violations of section 25249.6 of Proposition 65 by each of the Defendants, as alleged herein.  
22 The “Notices of Violation of Proposition 65” were mailed to each of the Defendants, as well as  
23 to the California Attorney General, the District Attorney of every county in California, and the  
24 City Attorneys of any cities with populations according to the most recent decennial census of  
25 over 750,000. Each notice included a certificate of merit executed by Plaintiffs’ attorneys stating  
26 that the person executing the certificate had consulted with one or more persons with relevant

1 and appropriate experience or expertise who has reviewed the facts, studies or other data  
2 regarding exposure to the listed chemical that is the subject of the notice, and that, based on that  
3 information, the person executing the certificate believes there is a reasonable and meritorious  
4 case for this private action. Factual information sufficient to establish the basis of the certificate  
5 of merit has been attached to the certificate of merit served on the California Attorney General.

6 17. None of these public prosecutors has commenced and is diligently prosecuting an  
7 action against the violations at issue herein, although the notice period provided in § 25249.7 has  
8 elapsed since such notice was provided.

9 **STATUTORY AND REGULATORY BACKGROUND**

10 18. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
11 passed as Proposition 65 by a vote of the People in 1986.

12 19. Proposition 65 provides the circumstances under which persons must be warned  
13 before they are exposed to chemicals that cause cancer, birth defects, or other reproductive harm.  
14 Health and Safety Code § 25249.6 states the warning requirement:

15 No person in the course of doing business shall knowingly and intentionally  
16 expose any individual to a chemical known to the state to cause cancer or  
17 reproductive toxicity without first giving clear and reasonable warning to such  
18 individual, except as provided in section 25249.10.

19 20. Proposition 65 establishes a procedure by which the Governor lists chemicals known  
20 to the state to cause cancer. Health and Safety Code § 25249.8. Pursuant to this authority, on  
21 October 1, 1990 diesel engine exhaust was placed on the list of carcinogens.

22 21. The warning requirements under Proposition 65 for a given chemical go into effect  
23 one year after the Governor places that chemical on the list. Health and Safety Code  
24 § 25249.10(b). Therefore, diesel engine exhaust became subject to a Proposition 65 warning on  
25 October 1, 1991.

1 **FACTS**

2 **What is Diesel Engine Exhaust?**

3 22. Diesel engine exhaust is a complex mixture of gases and fine particles formed by the  
4 combustion of diesel fuel. Many known and potential cancer-causing substances such as arsenic,  
5 benzene, formaldehyde, nickel and polycyclic aromatic hydrocarbons are present in the exhaust  
6 gases, some of which are bound to the surfaces of the diesel-exhaust particles. The exhaust  
7 contains more than 40 substances that California Air Resources Board (“ARB”) has identified as  
8 Toxic Air Contaminants.

9 23. Diesel exhaust particles are small enough (less than 10 microns in diameter, about  
10 one-seventh of the width of a human hair) to be inhaled deep into the lungs, where they can  
11 affect lung performance and cause damage over time.

12 24. The small size of the particles in diesel exhaust and the large number of toxic  
13 chemicals it contains make diesel exhaust a particularly potent threat to the human body.

14 25. Up to 85% of fine particles remain in the lungs 24 hours after initial exposure. This  
15 means that diesel exhaust has easy, long-lasting access to the most sensitive parts of the lungs.

16 **What are the Health Effects of Diesel Engine Exhaust?**

17 26. Numerous human epidemiological studies have demonstrated that diesel exhaust  
18 increases cancer risk. In fact, long-term exposure to diesel exhaust particles poses the highest  
19 cancer risk of any toxic air contaminant evaluated by OEHHA.

20 27. The ARB estimates that about seventy percent (70%) of the cancer risk that the  
21 average Californian faces from breathing toxic air pollutants stems from diesel exhaust particles.

22 28. Diesel exhaust is associated with a wide range of health effects beyond cancer,  
23 including neurological effects, a weakened immune system, respiratory disease and  
24 cardiovascular disease.

25 29. Short-term exposure to diesel exhaust causes inflammation in the bloodstream and  
26 thickening of the blood, symptoms which are associated with cardiovascular disease and heart

1 attacks. Short-term exposure can even have immediate effects like dizziness, headaches, light-  
2 headedness, and nausea. People who inhale diesel exhaust can experience nasal irritation,  
3 breathing difficulties, coughing and chest tightness.

4 30. Long-term exposure to diesel exhaust has been associated with other respiratory  
5 effects including chronic inflammation of lung tissue. Several studies have also linked diesel  
6 exhaust particles to asthma, suggesting that these particles can increase the severity of respiratory  
7 symptoms in individuals with pre-existing conditions like asthma.

8 31. Children, the elderly, individuals with asthma, cardiopulmonary disease and other  
9 lung diseases, and individuals with chronic heart diseases are particularly susceptible to the  
10 effects of diesel exhaust. Evidence continues to mount that children, especially those with  
11 asthma, are exceptionally sensitive to the effects of fine particle pollution, such as diesel exhaust.

12 32. Diesel exhaust affects children more than adults because children inhale more  
13 pollutants per pound of body weight than adults and children have faster rate of respiration,  
14 narrower airways, and a less mature ability to metabolize, detoxify, and excrete toxins.  
15 Exposures that occur in childhood are of special concern because children's developmental  
16 processes can easily be disrupted and the resulting dysfunctions may be irreversible. In addition,  
17 exposures that occur earlier in life appear more likely to lead to disease than do exposures later  
18 in life.

19 33. There is no known safe level of exposure to diesel exhaust for children, especially  
20 those with respiratory illness.

### 21 **How are Children Exposed to Diesel Engine Exhaust?**

22 34. Out of the six million school children in California, approximately one million are  
23 transported by public school buses.

24 35. A recent study concluded that the average school bus is nine years old and emits  
25 nearly two times more pollution per mile than a big rig truck.



1 36. Studies by the ARB and others have established that much of a bus' own diesel  
2 exhaust enters the cabin and exposes passengers through a phenomenon called "self-pollution."

3 37. A child riding inside of a diesel school bus may be exposed to as much as 4 times the  
4 level of toxic diesel exhaust as someone riding in a car traveling on the same route immediately  
5 ahead of it.

6 38. A recent study conducted in the Los Angeles area found that children riding on diesel  
7 fueled school buses inhale roughly one million times more school bus exhaust (by mass) than  
8 non-riders in the general population.

9 39. Children on school buses are exposed to levels of diesel exhaust that are five to ten  
10 times higher than background levels.

11 40. Closing the bus' windows simply makes the situation worse. Concentrations of diesel  
12 vehicle-related pollutants are significantly higher on board a conventional diesel bus when the  
13 windows are closed due to the intrusion of the bus' own exhaust.

14 **Additional Facts**

15 41. Defendants operate their diesel buses for school districts across the State of California  
16 and promote, sell and market their diesel buses for the transportation in California of school-age  
17 children.

18 42. The diesel buses at issue in this Complaint release diesel engine exhaust into the  
19 interior passenger area of the buses, which results in human exposure to the diesel engine  
20 exhaust without prior warning.

21 43. Defendants have not warned or informed the public that their buses expose  
22 passengers to diesel engine exhaust, a chemical known to the State of California to cause cancer.  
23 Defendants have also promoted and marketed their diesel buses for use without any warning  
24 regarding the exposure to diesel engine exhaust. Thus, Defendants have, in the course of doing  
25 business, knowingly and intentionally exposed individuals to a chemical known to the State of  
26 California to cause cancer without providing a clear and reasonable warning, as required by

1 California Health and Safety Code §§ 25249.6 and 25249.11(f). As a direct result of  
2 Defendants’ acts and omissions, the general public in California is being regularly, unlawfully,  
3 and involuntarily exposed to diesel engine exhaust, a known carcinogen, without a clear and  
4 reasonable warning.

5 **FIRST CAUSE OF ACTION**

6 (California Health and Safety Code §§ 25249.6 *et seq.*)

7 (By All Plaintiffs Against All Defendants)

8 44. Plaintiffs incorporate by reference all of the above paragraphs as if fully set forth  
9 herein.

10 45. The people of the State of California have declared in Proposition 65 their right “[t]o  
11 be informed about exposure to chemicals that cause cancer, birth defects or other reproductive  
12 harm.” Proposition 65, § 1(b).

13 46. To carry out those statutory purposes, Proposition 65 requires that a clear and  
14 reasonable warning be given by persons who, in the course of doing business, knowingly and  
15 intentionally expose any individual to a chemical known to the State of California to cause  
16 cancer.

17 47. On October 1, 1990, diesel engine exhaust was listed as a chemical known to the  
18 State of California to cause cancer. No warning needs to be given concerning a chemical so  
19 listed until one year after the chemical first appears on the list. *Id.*, § 25249.10(b). Therefore, on  
20 October 1, 1991, diesel engine exhaust became subject to the warning requirements of  
21 Proposition 65.

22 48. Proposition 65 provides that any person “violating or threatening to violate” the  
23 statute may be enjoined in any court of competent jurisdiction. *Id.*, § 25249.7. In addition,  
24 violators are liable for civil penalties of up to \$2,500 per day per violation, recoverable in a civil  
25 action. *Id.*, § 25249.7(b).

1 49. Defendants have engaged and continue to engage in conduct that violates Health and  
2 Safety Code § 25249.6. This conduct includes the operation of their diesel buses for school  
3 districts and the promotion, sale and marketing of their diesel buses for use in California, the  
4 foreseeable use of which results in exposing the riding public to diesel engine exhaust, known to  
5 the State of California to cause cancer, without first providing a clear and reasonable warning  
6 pursuant to Health and Safety Code §§ 25249.6 and 25249.11(f). Defendants have, therefore, in  
7 the course of doing business, knowingly and intentionally exposed individuals to a chemical  
8 known to the State of California to cause cancer without first providing a clear and reasonable  
9 warning.

10 50. By the above-described acts, Defendants are liable for a civil penalty of up to \$2,500  
11 per day per individual exposure to diesel engine exhaust through the use of Defendants' school  
12 buses, pursuant to Health and Safety Code § 25249.7(b).

13 **THE NEED FOR INJUNCTIVE RELIEF**

14 51. By committing the acts alleged herein, Defendants have caused irreparable harm for  
15 which there is no plain, speedy, or adequate remedy at law. In the absence of equitable relief, the  
16 general public will continue to be unwarned and involuntarily exposed to diesel engine exhaust  
17 by riding Defendants' diesel school buses, which creates a substantial risk of irreparable physical  
18 injury.

19 WHEREFORE, Plaintiffs pray for judgment against Defendants as set forth below.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for the following relief:

22 A. A temporary restraining order, preliminary and permanent injunction enjoining  
23 Defendants, their agents, employees, assigns, and all persons acting in concert or participating  
24 with them from:

- 25 (1) operating their diesel school buses that expose passengers to diesel engine  
26 exhaust in California, without first providing a clear and reasonable warning that the

1 operation of these buses results in exposure to diesel engine exhaust, a chemical known  
2 to the State of California to be a carcinogen;

3 B. An award of statutory penalties of \$2,500 for each violation of Proposition 65  
4 throughout the State of California;

5 C. Reasonable attorneys' fees and costs;

6 D. Such other and further relief as this court may deem necessary and proper.

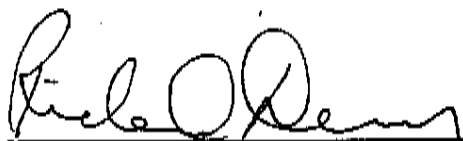
7 Respectfully submitted,

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17 DATED: May 2, 2006



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