

1 Melvin B. Pearlston (SBN 54291)
2 Robert B. Hancock (SBN 179438)
3 PACIFIC JUSTICE CENTER
4 50 California Street, Suite 1500
5 San Francisco, California 94111
6 Tel: (415) 310-1940/Fax: (415) 354-3508
7 Email: rbh@lawyer.com

8 Attorneys for Plaintiff
9 ERIKA MCCARTNEY

10 Howard A. Slavitt (SBN 172840)
11 COBLENTZ PATCH DUFFY & BASS LLP
12 One Ferry Building, Suite 200
13 San Francisco, California 94111-4213
14 Tel: (415) 391-4800/Fax: (415) 989-1663
15 Email: hslavitt@cpdb.com

16 Attorneys for Defendants
17 WEBER-STEPHEN PRODUCTS LLC and
18 WSP HOLDINGS CO.

FILED
Superior Court of California
County of San Francisco

APR 27 2016

CLERK OF THE COURT

BY: *[Signature]*
Deputy Clerk

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

16 ERIKA MCCARTNEY, in the public interest,)

17 Plaintiff,)

18 v.)

19 WEBER-STEPHEN PRODUCTS LLC, a)
20 Delaware limited liability company; WSP)
21 HOLDINGS CO., an Illinois corporation; and)
22 DOES 1 through 500, inclusive,)

23 Defendants.)

CIVIL ACTION NO. CGC-14-543457

**[PROPOSED] STIPULATED CONSENT
JUDGMENT**

[Cal. Health and Safety Code
Sec. 25249.6, *et seq.*]

1 **1. INTRODUCTION**

2 **1.1** This Action arises out of the alleged violations of California’s Safe Drinking Water
3 and Toxic Enforcement Act of 1986, California Health and Safety Code Section 25249.5 et seq.
4 (also known as and hereinafter referred to as “Proposition 65”) regarding the following products:
5 Weber Firespice Mesquite Wood Chips; Weber Firespice Apple Wood Chips; Weber Firespice
6 Cherry Wood Chips; Weber Firespice Hickory Wood Chips; Weber Firespice Pecan Wood Chips;
7 Weber Firespice Beech Wood Chips; Weber Firespice Apple Wood Chunks; Weber Firespice
8 Cherry Wood Chunks; Weber Firespice Hickory Wood Chunks; Weber Firespice Pecan Wood
9 Chunks; and Weber Firespice Mesquite Wood Chunks (hereinafter, collectively the “Covered
10 Products”).
11

12 **1.2** Plaintiff ERIKA MCCARTNEY (“MCCARTNEY”) is a California resident acting
13 as a private enforcer of Proposition 65. MCCARTNEY alleges that she brings this Action in the
14 public interest pursuant to California Health and Safety Code Section 25249. MCCARTNEY
15 asserts that she is dedicated to, among other causes, helping safeguard the public from health
16 hazards by reducing the use and misuse of hazardous and toxic chemicals, facilitating a safe
17 environment for consumers and employees, and encouraging corporate responsibility.
18

19 **1.3** Defendant Weber-Stephen Products LLC, is a Delaware limited liability company,
20 and Defendant WSP Holdings Co., is an Illinois corporation. Defendants Weber-Stephen Products
21 LLC and WSPH Holdings Co. are collectively referred to hereinafter as "WEBER."
22

23 **1.4** MCCARTNEY and WEBER are hereinafter sometimes referred to individually as a
24 “Party” or collectively as the “Parties.”

25 **1.5** WEBER distributes and sells the Covered Products.
26

1 **1.6** On or about October 8, 2014, March 10, 2015, and July 30, 2015, pursuant to
2 California Health and Safety Code Section 25249.7(d)(1), MCCARTNEY served 60-Day Notices
3 of Violations of Proposition 65 (“Notices of Violations”) on the California Attorney General, other
4 public enforcers, and WEBER. True and correct copies of the Notices of Violations are attached
5 hereto as Exhibits A-C.
6

7 **1.7** After more than sixty (60) days passed since service of the Notice of Violation dated
8 October 8, 2014 (Exh. A, hereto), and no designated governmental agency having filed a complaint
9 against WEBER with regard to the Covered Products or the alleged violations, MCCARTNEY
10 filed a complaint (the “Complaint”) for injunctive relief and civil penalties. The Complaint is
11 based on the allegations in the Notice of Violations. After more than sixty (60) days passed since
12 service of the subsequent Notices of Violations, McCartney filed an Amended Complaint (the
13 "Amended Complaint") for injunctive relief and civil penalties, adding the additional products
14 included in the subsequent Notices of Violations to the complaint.
15

16 **1.8** The First Amended Complaint and the Notice of Violations each allege that
17 WEBER manufactured, distributed, and/or sold in California the Covered Products, which
18 allegedly contain wood dust, a substance listed under Proposition 65 as being known by the State of
19 California to cause cancer, requiring a Proposition 65 warning. Further, the Complaint and Notices
20 of Violations allege that use of the Covered Products exposes persons in California to wood dust
21 without first providing clear and reasonable warnings, in violation of California Health and Safety
22 Code Section 25249.6. WEBER generally denies all material and factual allegations of the Notice
23 of Violations and the Complaint, filed an answer asserting various affirmative defenses, and
24 specifically denies that the Plaintiff or California consumers have been harmed or damaged by its
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1 conduct. WEBER and MCCARTNEY each reserve all rights to allege additional facts, claims, and
2 affirmative defenses if the Court does not approve this Consent Judgment.

3 **1.9** The Parties enter into this Consent Judgment in order to settle, compromise and
4 resolve disputed claims and avoid prolonged and costly litigation. Nothing in this Consent
5 Judgment, nor compliance with its terms, shall constitute or be construed as an admission by any of
6 the Parties, or by any of their respective officers, directors, shareholders, employees, agents, parent
7 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, distributors,
8 wholesalers, or retailers, of any fact, conclusion of law, issue of law, violation of law, fault,
9 wrongdoing, or liability, including without limitation, any admission concerning any alleged
10 violation of Proposition 65. Except as expressly set forth herein, nothing in this Consent Judgment
11 shall prejudice, waive, or impair any right, remedy, argument, or defense the Parties may have in
12 any other or future legal proceeding. Provided, however, nothing in this Section shall affect the
13 enforceability of this Consent Judgment.

14 **1.10** The "Effective Date" of this Consent Judgment shall be the date this Consent
15 Judgment is entered as a Judgment.

16 **2. JURISDICTION AND VENUE**

17 The Parties stipulate that this Court has jurisdiction over the subject matter of this Action
18 and personal jurisdiction over the Parties, that venue is proper in this Court, and that this Court has
19 jurisdiction to enter this Consent Judgment pursuant to the terms set forth herein.
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22 **3. INJUNCTIVE RELIEF, REFORMULATION, TESTING, AND WARNINGS**

23 **3.1** Beginning on the Effective Date, WEBER shall be permanently enjoined from
24 offering for sale to a consumer in California, directly selling to a consumer in California, or
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1 “Distributing into California” any of the Covered Products unless the label of the Covered Products
2 contains a Proposition 65 compliant warning, consistent with Section 3.3, below. “Distributing into
3 California” means to ship any of the Covered Products to California for sale or to sell any of the
4 Covered Products to a distributor that WEBER knows or has reason to know will sell the Covered
5 Products in California. Provided, however, that WEBER may manufacture or package and sell
6 Covered Products without providing a Proposition 65 compliant warning so long as such products
7 are only for sale to consumers located outside of California and WEBER does not distribute them
8 into California.
9

10 **3.2** All Covered Products that have been or will have been distributed, shipped, or sold,
11 or otherwise placed in the stream of commerce through and including the Effective Date of this
12 Consent Judgment are exempt from the provisions of Sections 3.1 and 3.3 and are included within
13 the release in Sections 8.1 through 8.4.
14

15 **3.3 Clear and Reasonable Warnings**

16 For the Covered Products that are subject to the warning requirement of Section 3.1,
17 WEBER shall provide the following warning ("Warning") as specified below, or one that has a
18 substantially similar meaning:

19 **[California Proposition 65] WARNING:** This product contains wood dust, which is a
20 substance known to the State of California to cause cancer.

21 The text in brackets in the warning language above is optional.

22 The Warning shall be permanently affixed to or printed on (at the point of manufacture,
23 prior to shipment to California, or prior to distribution within California) the outside packaging or
24 container of each unit of the Covered Products. The Warning shall be displayed with such
25 conspicuousness, as compared with other words, statements designs or devices on the outside
26 packaging or labeling, as to render it likely to be read and understood by an ordinary individual

1 prior to use. If the Warning is displayed on the product packaging or labeling, the Warning shall be
2 at least the same size as the largest of any other health or safety warnings on the product packaging
3 or labeling, and the word "WARNING" shall be in all capital letters and in bold print. If printed on
4 the labeling itself, the Warning shall be contained in the same section of the labeling that states
5 other safety warnings concerning the use of the Covered Products, if any.

6 Without limitation as to other forms of warnings, displaying the Warnings that are in
7 Exhibit D hereto, or substantially similar thereto, on the outside packaging or container of each unit
8 of the Covered Products is deemed to be a clear and reasonable warning under, and to fully comply
9 with, Health & Safety Section 25249.6 and the implementing regulations at Title 27 California
10 Code of Regulations Sections 25601 through 25605.2.

11 4. SETTLEMENT PAYMENT

12 4.1 WEBER shall make a total payment of \$50,000 within ten days of the Effective
13 Date, which shall be in full and final satisfaction of any and all civil penalties, payment in lieu of
14 civil penalties, and attorneys' fees and costs.

15 4.2 The payment will be in the form of separate checks sent to counsel for
16 MCCARTNEY, Robert B. Hancock, Pacific Justice Center, 50 California Street, San Francisco,
17 California 94111. The checks shall be payable to the following parties and the payment shall be
18 apportioned as follows:
19

20 4.3 \$10,000 (ten thousand dollars) as civil penalties pursuant to California Health and
21 Safety Code Section 25249.7(b)(1). Of this amount, \$7,500 (seven thousand, five hundred dollars)
22 shall be payable to the Office of Environmental Health Hazard Assessment ("OEHHA"), and
23 \$2,500 (two thousand, five hundred dollars) shall be payable to MCCARTNEY. (Cal. Health &
24

1 Safety Code § 25249.12(c)(1) & (d)). MCCARTNEY's counsel will forward the civil penalty to
2 OEHHA.

3 **4.4** \$40,000 (forty thousand dollars) payable to Pacific Justice Center as reimbursement
4 of MCCARTNEY's attorneys' fees, costs, investigation and litigation expenses ("Attorney's Fees
5 and Costs").
6

7 **4.5** Any failure by WEBER to remit payment on or before its due date shall be deemed
8 a material breach of this Agreement.

9 **5. MODIFICATION OF CONSENT JUDGMENT**

10 **5.1** This Consent Judgment may be modified only by: (i) Written agreement and
11 stipulation of the Parties and upon having such stipulation entered as a modified Consent Judgment
12 by the Court; or (ii) Upon entry of a modified Judgment by the Court pursuant to a motion by one
13 of the Parties after exhausting the meet and confer process set forth as follows. If either Party
14 requests or initiates a modification, then it shall meet and confer with the other Party in good faith
15 before filing a motion with the Court seeking to modify it. MCCARTNEY is entitled to
16 reimbursement of all reasonable attorneys' fees and costs regarding the Parties' meet and confer
17 efforts for any modification requested or initiated by WEBER. Similarly, WEBER is entitled to
18 reimbursement of all reasonable attorney's fees and costs regarding the Parties' meet and confer
19 efforts for any modification requested or initiated by MCCARTNEY. If, despite their meet and
20 confer efforts, the Parties are unable to reach agreement on any proposed modification the party
21 seeking the modification may file the appropriate motion and the prevailing party on such motion
22 shall be entitled recover its reasonable fees and costs associated with such motion. One basis, but
23 not the exclusive basis, for WEBER to seek a modification of this Consent Judgment is if
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1 Proposition 65 is changed, narrowed, limited, or otherwise rendered inapplicable in whole or in part
2 to the Covered Products or wood dust due to legislative change, a change in the implementing
3 regulations, court decisions, or other legal basis.

4 **6. RETENTION OF JURISDICTION, ENFORCEMENT OF CONSENT JUDGMENT**

5 **6.1** This Court shall retain jurisdiction of this matter to enforce, modify or terminate this
6 Consent Judgment.

7 **6.2** Subject to Section 6.3, any Party may, by motion or application for an order to show
8 cause filed with this Court, enforce the terms and conditions contained in this Consent Judgment.
9 The prevailing party in any such motion or application may request that the Court award its
10 reasonable attorneys' fees and costs associated with such motion or application.

11 **6.3** Before filing a motion or application for an order to show cause, MCCARTNEY
12 shall provide WEBER with 30 (thirty) days written notice of any alleged violations of the terms
13 and conditions contained in this Consent Judgment. As long as WEBER cures any such alleged
14 violations within the 30 (thirty) day period (or if any such violation cannot practicably be cured
15 within 30 days, it expeditiously initiates a cure within 30 days and completes it as soon as
16 practicable) and WEBER provides proof to McCartney that the alleged violation(s) was the result
17 of good faith mistake or accident, then WEBER shall not be in violation of the Consent Judgment.
18 WEBER shall have the ability to avail itself of the benefits of this Section two (2) times per three
19 year period following the Effective Date.
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23 **7. APPLICATION OF CONSENT JUDGMENT**

24 This Consent Judgment shall apply to and be binding upon the Parties and their respective
25 officers, directors, successors and assigns, and it shall benefit the Parties and their respective
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1 officers, directors, shareholders, employees, agents, parent companies, subsidiaries, divisions,
2 affiliates, franchisees, licensees, customers, distributors, wholesalers, retailers, predecessors,
3 successors, and assigns.

4 **8. BINDING EFFECT, CLAIMS COVERED AND RELEASED**

5
6 **8.1** This Consent Judgment is a full, final, and binding resolution between
7 MCCARTNEY, on behalf of herself and in the public interest, and WEBER, of any and all direct
8 or derivative violations (or claimed violations) of Proposition 65 or its implementing regulations
9 for failure to provide Proposition 65 warnings of exposure to wood dust from the handling, use, or
10 consumption of the Covered Products and fully resolves all claims that have been or could have
11 been asserted in this Action up to and including the Effective Date for failure to provide
12 Proposition 65 warnings for the Covered Products regarding wood dust. MCCARTNEY, on behalf
13 of herself and in the public interest, hereby forever releases and discharges, WEBER and its past
14 and present officers, directors, owners, shareholders, employees, agents, attorneys, parent
15 companies, subsidiaries, divisions, affiliates, suppliers, franchisees, licensees, customers,
16 distributors, wholesalers, retailers, and all other upstream and downstream entities and persons in
17 the distribution chain of any Covered Product, and the predecessors, successors and assigns of any
18 of them (collectively, "Released Parties"), from any and all claims and causes of action and
19 obligations to pay damages, restitution, fines, civil penalties, payment in lieu of civil penalties and
20 expenses (including but not limited to expert analysis fees, expert fees, attorney's fees and costs)
21 (collectively, "Claims") arising under, based on, or derivative of Proposition 65 or its implementing
22 regulations up through the Effective Date relating to actual or potential exposure to wood dust from
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1 the Covered Products and/or failure to warn about wood dust, as set forth in the Notice of
2 Violations and the Complaint.

3 **8.2** Compliance with the terms of this Consent Judgment shall be deemed to constitute
4 compliance by any Released Party with Proposition 65 regarding alleged exposures to wood dust
5 from the Covered Products as set forth in the Notice of Violations and the Complaint.
6

7 **8.3** It is possible that other Claims not known to MCCARTNEY arising out of the facts
8 alleged in the Notice of Violations or the Complaint and relating to wood dust in the Covered
9 Products that were manufactured, sold or Distributed into California before the Effective Date will
10 develop or be discovered. MCCARTNEY, on behalf of herself only, acknowledges that the Claims
11 released herein include all known and unknown Claims and waives California Civil Code Section
12 1542 as to any such unknown Claims. California Civil Code Section 1542 reads as follows:
13

14 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
15 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
16 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
OR HER SETTLEMENT WITH THE DEBTOR.”**

17 MCCARTNEY, on behalf of herself only, acknowledges and understands the significance and
18 consequences of this specific waiver of California Civil Code section 1542.

19 **8.4** MCCARTNEY, on one hand, and WEBER, on the other hand, each release and
20 waive all Claims they may have against each other for any statements or actions made or
21 undertaken by them in connection with the Notice of Violations or the Complaint. However, this
22 shall not affect or limit any Party’s right to seek to enforce the terms of this Consent Judgment.
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24 **9. CONSTRUCTION AND SEVERABILITY**
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1 9.1 The terms and conditions of this Consent Judgment have been reviewed by the
2 respective counsel for the Parties prior to its signing, and each Party has had an opportunity to fully
3 discuss the terms and conditions with its counsel. In any subsequent interpretation or construction
4 of this Consent Judgment, the terms and conditions shall not be construed against any Party.
5

6 9.2 In the event that any of the provisions of this Consent Judgment is held by a court to
7 be unenforceable, the validity of the remaining enforceable provisions shall not be adversely
8 affected.

9 9.3 The terms and conditions of this Consent Judgment shall be governed by and
10 construed in accordance with the laws of the State of California.

11 **10. PROVISION OF NOTICE**

12 All notices required to be given to either Party to this Consent Judgment by the other shall
13 be in writing and sent to the following agents listed below by: (a) first-class, registered, (b) certified
14 mail, (b) overnight courier, or (c) personal delivery to the following:
15

16 **For Erika McCartney:**

17 Melvin B. Pearlston
18 Robert B. Hancock
19 PACIFIC JUSTICE CENTER
 50 California Street, Suite 1500
 San Francisco, California 94111

20 **For WEBER:**

21 Howard Slavitt
22 Coblentz Patch Duffy & Bass LLP
23 One Montgomery Street, Suite 3000
 San Francisco, CA 94104

24 **11. COURT APPROVAL**

1 11.1 Upon execution of this Consent Judgment by the Parties, MCCARTNEY shall
2 notice a Motion for Court Approval. The Parties shall use their best efforts to support entry of this
3 Consent Judgment.

4 11.2 If the California Attorney General objects to any term in this Consent Judgment, the
5 Parties shall use their best efforts to resolve the concern in a timely manner, and if possible prior to
6 the hearing on the motion.

7 11.3 If, despite the Parties' best efforts, the Court does not approve this Stipulated
8 Consent Judgment, it shall be null and void and have no force or effect.

9
10 **12. EXECUTION AND COUNTERPARTS**

11 This Stipulated Consent Judgment may be executed in counterparts, which taken together
12 shall be deemed one document. A facsimile or .pdf signature shall be construed as valid and as the
13 original signature.

14
15 **13. ENTIRE AGREEMENT, AUTHORIZATION**

16 13.1 This Consent Judgment contains the sole and entire agreement and understanding of
17 the Parties with respect to the entire subject matter herein, and any and all prior discussions,
18 negotiations, commitments and understandings related hereto. No representations, oral or
19 otherwise, express or implied, other than those contained herein have been made by any Party. No
20 other agreements, oral or otherwise, unless specifically referred to herein, shall be deemed to exist
21 or to bind any Party.

22 13.2 Each signatory to this Consent Judgment certifies that he or she is fully authorized
23 by the Party he or she represents to stipulate to this Consent Judgment. Except as explicitly
24 provided herein, each Party shall bear its own fees and costs.

1 **14. REQUEST FOR FINDINGS AND FOR APPROVAL**

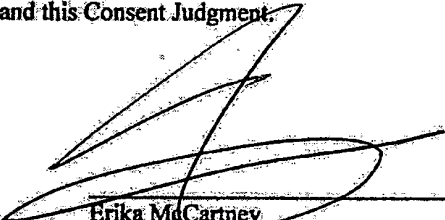
2 **14.1** This Consent Judgment has come before the Court upon the request of the Parties.
3 The parties request the Court to fully review this Consent Judgment and, being fully informed
4 regarding the matters which are the subject of this action, to:

5 (a) Find that the terms and provisions of this Consent Judgment represent a good
6 faith settlement of all matters raised by the allegations of the Complaint, that the matter has been
7 diligently prosecuted, and that the public interest is served by such settlement; and

8 (b) Make the findings pursuant to California Health and Safety Code Section
9 25249.7(f)(4), and approve the Settlement, and this Consent Judgment.

10 **IT IS SO STIPULATED.**

11
12
13 Dated: 4/19/16


14 Erika McCartney

15
16 Dated: 4-18-2016

WEBER-STEPHEN PRODUCTS LLC

17 Name: 

18 Title: General Counsel & Secretary

19
20 Dated: 4-18-2016

WSP HOLDINGS CO.

21 Name: Manajohn. Misch.


22 Title: ASST. CORPORATE SECRETARY

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24 APPROVED AS TO FORM:
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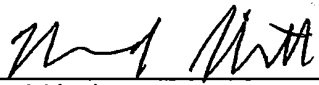
Dated: 4/20, 2016

PACIFIC JUSTICE CENTER

By: 
Robert B. Hancock
Attorneys for Plaintiff
ERIKA MCCARTNEY

Dated: 4/18, 2016

COBLENTZ, PATCH, DUFFY & BASS, LLP

By: 
Howard Slavitt
Attorneys for Defendants WEBER-STEPHEN
PRODUCTS LLC and WSP HOLDINGS CO.

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JUDGMENT

Based upon the Parties' Stipulation, and good cause appearing therefor, this Consent Judgment is approved and judgment is hereby entered according to its terms.

IT IS SO ORDERED, ADJUDGED AND DECREED.

Dated: 4/26, 2016.


Judge of the Superior Court
HAROLD KAHN

EXHIBIT A

Melvin B. Pearlston
Senior Counsel



Pacific Justice
C E N T E R

Of Counsel
Robert B. Hancock

October 8, 2014

**60-DAY NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Weber-Stephen Products LLC
WSP Holdings Co.**

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

Weber Firespice Mesquite Wood Chips – Wood Dust

On December 18, 2009, the State of California officially listed wood dust as a chemical known to cause cancer.

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through inhalation.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least October 8, 2013, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are

50 California Street, Suite 1500, San Francisco, California 94111

Telephone: (415) 310-1940 • Facsimile: (415) 354-3508

October 8, 2014

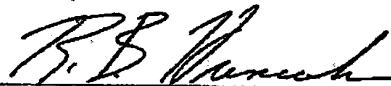
Page 2

provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Erika McCartney has retained me as legal counsel in connection with this matter. Her address is 2124 Lincoln Avenue, #B, Alameda, California, 94501. Her telephone number is 707.502.8635. Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.

Sincerely,



Robert B. Hancock

Attachments

Certificate of Merit

Certificate of Service

OEHHA Summary (to Violators only)

Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations by Weber-Stephen Products LLC and WSP Holdings Co.

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, and on 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 plaintiff's case can be established and that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §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.

Dated: October 8, 2014



Robert B. Hancock

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years of age, and am not a party to the within action.

On October 8, 2014, I served the following documents: **NOTICE OF VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.; CERTIFICATE OF MERIT; "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, addressed to the party listed below and depositing it in a US Postal Service Office with the postage fully prepaid for delivery by Certified Mail:

Current Manager or Managing Member
Weber-Stephen Products LLC
200 E. Daniels Road
Palatine, IL 60067

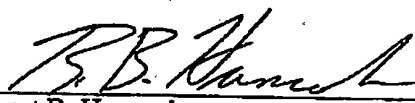
Current President or CEO
WSP Holdings Co.
200 E. Daniels Road
Palatine, IL 60067

On October 8, 2014, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT; ADDITIONAL SUPPORTING INFORMATION FOR CERTIFICATE OF MERIT AS REQUIRED BY CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)(1)** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a Federal Express drop-off box for overnight delivery to:

Office of the California Attorney General
Prop 65 Enforcement Reporting
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, CA 94612-0550

On October 8, 2014, I served the following documents: **NOTICE OF VIOLATION CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; CERTIFICATE OF MERIT** on each of the parties on the Service List attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the Service List attached hereto, and depositing it with the U.S. Postal Service with the postage fully prepaid for delivery by Priority Mail.

Executed under penalty of perjury pursuant to the laws of the State of on October 8, 2014.



Robert B. Hancock

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 27001.¹ 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 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>.

¹ 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>.

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 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 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 contaminant² 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 such an 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. 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 of law to stop committing the violation.

² See Section 25501(a)(4).

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**

EXHIBIT B



Melvin B. Pearlston
Senior Counsel

Of Counsel
Robert B. Hancock

March 10, 2015

**60-DAY NOTICE OF VIOLATIONS OF
CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 ET. SEQ.
(PROPOSITION 65)**

Dear Alleged Violator and the Appropriate Public Enforcement Agencies:

I represent Erika McCartney in this matter. Ms. McCartney has identified violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), which is codified at California Health & Safety Code §25249.5 *et. seq.*, with respect to the products identified below. These violations have occurred and continue to occur because the alleged Violator identified below failed to provide required clear and reasonable warnings with the identified products. This letter serves as a notice of these violations to the alleged Violator and the appropriate public enforcement agencies. Pursuant to Section 25249.7(d) of the statute, Ms. McCartney intends to file a private enforcement action in the public interest 60 days after effective service of the is notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

General Information about Proposition 65. A copy of a summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, is an attachment with the copy of this letter served to the alleged Violator identified below.

Alleged Violator. The name of the companies covered by this notice that violated Proposition 65 (hereinafter "the Violators") are:

**Weber-Stephen Products LLC
WSP Holdings Co.**

Consumer Products and Listed Chemical. The products that are the subject of this notice and the chemical in those products identified as exceeding allowable levels are:

**Weber Firespice Apple Wood Chips – Wood Dust
Weber Firespice Cherry Wood Chips – Wood Dust
Weber Firespice Hickory Wood Chips – Wood Dust
Weber Firespice Pecan Wood Chips – Wood Dust
Weber Firespice Apple Wood Chunks – Wood Dust
Weber Firespice Cherry Wood Chunks – Wood Dust
Weber Firespice Hickory Wood Chunks – Wood Dust
Weber Firespice Pecan Wood Chunks – Wood Dust
Weber Firespice Mesquite Wood Chunks – Wood Dust**

On December 18, 2009, the State of California officially listed wood dust as a chemical known to cause cancer.

50 California Street, Suite 1500, San Francisco, California 94111

Telephone: (415) 310-1940 • Facsimile: (415) 354-3508

It should be noted that Ms. McCartney may continue to investigate other products that may reveal further violations and result in subsequent notices of violations.

Route of Exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, and recommended use of these products. Consequently, the primary route of exposure to these chemicals has been and continues to be through inhalation.

Approximate Time Period of Violations. Ongoing violations have occurred every day since at least March 10, 2014, as well as every day since the products were introduced into the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are either removed from or reduced to allowable levels in the products. Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to the identified chemicals. The method of warning should be a warning that appears on the product label. The Violator violated Proposition 65 because it failed to provide persons using these products with appropriate warnings that they are being exposed to these chemicals.

Consistent with the public interest goals of Proposition 65 and a desire to have these ongoing violations of California law quickly rectified, Ms. McCartney is interested in seeking a constructive resolution of this matter that includes an enforceable written agreement by the Violator to: (1) recall any products already sold, or undertake best efforts to ensure that the requisite health hazard warnings are provided to those who have received such products; (2) reformulate the identified products so as to eliminate further exposures to the identified chemicals, or provide appropriate warnings on the labels of these products; and (3) pay an appropriate civil penalty. Such a resolution will prevent further unwarned consumer exposures to the identified chemicals, as well as expensive and time-consuming litigation. It should be noted that counsel cannot (1) finalize any settlement until after the 60-day notice period has expired; or (2) speak for the California Attorney General or any District or City Attorney who has received this notice. Therefore, while reaching an agreement may satisfy the claims alleged herein, such agreement may not be satisfactory to public prosecutors.

Erika McCartney has retained me as legal counsel in connection with this matter. Her address is 2124 Lincoln Avenue, #B, Alameda, California, 94501. Her telephone number is 707.502.8635. **Please direct all communications regarding this Notice of Violations to my attention at the law office address and telephone number indicated on the letterhead.**

Sincerely,



Robert B. Hancock

Attachments

- Certificate of Merit
- Certificate of Service
- OEHHA Summary (to Violators only)
- Additional Supporting Information for Certificate of Merit (to AG only)

CERTIFICATE OF MERIT

Re: Notice of Proposition 65 Violations

Robert B. Hancock declares:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice violated California Health & Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney for the noticing party.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who have reviewed facts, studies, or other data regarding the exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultants, and on 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 plaintiff's case can be established and that 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. Along with the copy of this Certificate of Merit served on the Attorney General is attached additional factual information sufficient to establish the basis for this certificate, including the information identified in California Health & Safety Code §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.

Dated: March 10, 2015



Robert B. Hancock