



As You Sow

Tel: (415) 391-3212

A Foundation Planting Seeds for Social Change

Fax: (415) 391-3245

A NON-PROFIT CORPORATION
311 California Street, Suite 510
San Francisco, California 94104
www.asyousow.org

ATTORNEY GENERAL COPY: CONTAINS
OFFICIAL INFORMATION PER EVIDENCE
CODE SECTION 1040

February 4, 2003

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

The Sea Turtle Restoration Project (STRP) is a project of Turtle Island Restoration Network, a nonprofit environmental organization organized under California's Non-Profit Public Benefit Corporation Law. STRP fights to protect endangered sea turtle populations in ways that meet the ecological needs of the sea turtles and the oceans and the needs of the local communities who share the beaches and waters with these gentle creatures.

AYS and STRP have documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' and STRP's notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS and STRP intend to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is **COSTCO WHOLESALE CORPORATION** ("Costco").



These violations involve exposures to methyl mercury, methyl mercury compounds, mercury and mercury compounds from the products listed below. On July 1, 1987, the State of California officially listed methyl mercury as a chemical known to cause reproductive toxicity. On May 1, 1996, the State of California officially listed methyl mercury compounds as a chemical known to cause cancer. In addition, on July 1, 1990, the State of California also officially listed mercury and mercury compounds as chemicals known to cause reproductive toxicity. This notice covers the following products:

**SWORDFISH
AHI TUNA**

The consumer exposures that are the subject of this notice result from the consumption of these products (eating the fish). Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route. Each of these ongoing violations has occurred on every day since February 4, 1999, and will continue every day until clear and reasonable warnings are provided or until these deleterious chemicals are removed from the products. Pursuant to Title 11, C.C.R. § 3100, a Certificate of Merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS and STRP are interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' and STRP's counsel in this matter:

Mark S. Pollock, Esq.
1207 Coombs Street
Napa, CA 94559
Telephone: (707) 257-8935

Enclosure

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CERTIFICATE OF MERIT

I, Lawrence E. Fahn, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that COSTCO WHOLESALE CORPORATION has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the Executive Director for As You Sow, one of the noticing parties.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and 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. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §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: 2/3/03

Attachments (Attorney General Copy only)

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, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, California 94104.

On February 4, 2003, I served the following documents:

- Notice of Violation 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 party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Costco Wholesale Corporation
James D. Sinegal, CEO
999 Lake Drive
Issaquah, WA 98027

On February 4, 2003, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Craig Thompson, Deputy Attorney General
California Department of Justice
1300 I Street, Suite 125
Post Office Box 944255
Sacramento, CA 94244-2550

On February 4, 2003, I served the following document(s):

- Notice of Violation of 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 at United States Postal Service mail box for delivery by First Class Mail.

Executed on February 4, 2003, at San Francisco, California.

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 09/23/02)

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE L ALAN TURNER
ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE TODD D RIEBE
AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

THE HONORABLE JEFFREY TUTTLE
CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

THE HONORABLE JOHN POYNER
COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST
COLUSA CA 95932

THE HONORABLE GARY T YANCEY
CONTRA COSTA COUNTY DISTRICT ATTORNEY
PO BOX 670
MARTINEZ CA 94553

THE HONORABLE ROBERT J DROSSEL
DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST
CRESCENT CITY CA 95531

THE HONORABLE GARY L LACY
EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN ST
PLACERVILLE CA 95667

THE HONORABLE EDWARD W HUNT
FRESNO COUNTY DISTRICT ATTORNEY
2220 TULARE ST STE 1000
FRESNO CA 93721

THE HONORABLE ROBERT HOLZAPFEL
GLENN COUNTY DISTRICT ATTORNEY
PO BOX 430
WILLOWS CA 95988

THE HONORABLE TERRY R FARMER
HUMBOLDT COUNTY DISTRICT ATTORNEY
825 FIFTH ST
EUREKA CA 95501

THE HONORABLE GILBERT OTERO
IMPERIAL COUNTY DISTRICT ATTORNEY
939 W MAIN ST
EL CENTRO CA 92243

THE HONORABLE PHILIP MCDOWELL
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE EDWARD R JAGELS
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1215 TRUXTUN AVE
BAKERSFIELD CA 93301

THE HONORABLE RON CALHOUN
KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

THE HONORABLE GARY LUCK
LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

THE HONORABLE ROBERT BURNS
LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

THE HONORABLE STEVE COOLEY
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210 W TEMPLE ST STE 18000
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3501 CIVIC CTR DR RM 130
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UKIAH CA 95482

THE HONORABLE GORDON SPENCER
MERCED COUNTY DISTRICT ATTORNEY
2222 M ST
MERCED CA 95340

THE HONORABLE TOM BUCKWALTER
MODOC COUNTY DISTRICT ATTORNEY
PO BOX 1171
ALTURAS CA 96101

THE HONORABLE GEORGE BOOTH
MONO COUNTY DISTRICT ATTORNEY
PO BOX 617
BRIDGEPORT CA 93517

THE HONORABLE DEAN FLIPPO
MONTEREY COUNTY DISTRICT ATTORNEY
240 CHURCH ST #101
SALINAS CA 93902

THE HONORABLE GARY LIEBERSTEIN
NAPA COUNTY DISTRICT ATTORNEY
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THE HONORABLE MICHAEL FERGUSON
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201 CHURCH ST STE 8
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THE HONORABLE JAMES REICHLER
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520 MAIN ST RM 404
QUINCY CA 95971

THE HONORABLE GROVER C TRASK II
RIVERSIDE COUNTY DISTRICT ATTORNEY
4075 MAIN ST
RIVERSIDE CA 92501

THE HONORABLE JAN SCULLY
SACRAMENTO COUNTY DISTRICT ATTORNEY
901 G ST
SACRAMENTO CA 95814

THE HONORABLE HARRY J DAMKAR
SAN BENITO COUNTY DISTRICT ATTORNEY
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THE HONORABLE DENNIS L STOUT
SAN BERNARDINO COUNTY DISTRICT ATTORNEY
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SAN BERNARDINO CA 92415-0004

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330 W BROADWAY RM 1300
SAN DIEGO CA 92112

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880 BRYANT ST STE 325
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222 E WEBER ST RM 202
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PO BOX 310
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SAN MATEO COUNTY DISTRICT ATTORNEY
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