



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 **THE KROGER CO.** ("Kroger").



On November 14, 2002, AYS and STRP previously noticed Kroger for violations involving exposure to methyl mercury, methyl mercury compounds, mercury and mercury compounds from albacore fillet. By this notice, AYS and STRP notice Kroger for additional violations from a related product.

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**

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

**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 THE KROGER CO. 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:

The Kroger Co.  
Joseph A. Pichler, CEO  
1014 Vine Street  
Cincinnati, OH 45202-1100

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 PHILIP MCDOWELL INYO COUNTY DISTRICT ATTORNEY PO DRAWER D INDEPENDENCE CA 93526	THE HONORABLE DEAN FLIPPO MONTEREY COUNTY DISTRICT ATTORNEY 240 CHURCH ST #101 SALINAS CA 93902
THE HONORABLE L ALAN TURNER ALPINE COUNTY DISTRICT ATTORNEY PO BOX 248 MARKLEEVILLE CA 96120	THE HONORABLE EDWARD R JAGELS KERN COUNTY DISTRICT ATTORNEY 1215 TRUXTUN AVE BAKERSFIELD CA 93301	THE HONORABLE GARY LIEBERSTEIN NAPA COUNTY DISTRICT ATTORNEY 931 PARKWAY MALL NAPA CA 94559
THE HONORABLE TODD D RIEBE AMADOR COUNTY DISTRICT ATTORNEY 708 COURT ST STE 202 JACKSON CA 95642	THE HONORABLE RON CALHOUN KINGS COUNTY DISTRICT ATTORNEY 1400 W LACEY BLVD HANFORD CA 93230	THE HONORABLE MICHAEL FERGUSON NEVADA COUNTY DISTRICT ATTORNEY 201 CHURCH ST STE 8 NEVADA CITY CA 95959
THE HONORABLE MICHAEL RAMSEY BUTTE COUNTY DISTRICT ATTORNEY 25 COUNTY CTR DR OROVILLE CA 95965	THE HONORABLE GARY LUCK LAKE COUNTY DISTRICT ATTORNEY 255 N FORBES ST LAKEPORT CA 95453	THE HONORABLE TONY RACKAUCKAS ORANGE COUNTY DISTRICT ATTORNEY 401 CIVIC CTR DR SANTA ANA CA 92701
THE HONORABLE JEFFREY TUTTLE CALAVERAS COUNTY DISTRICT ATTORNEY 891 MTN RANCH RD SAN ANDREAS CA 95249	THE HONORABLE ROBERT BURNS LASSEN COUNTY DISTRICT ATTORNEY 220 S LASSEN ST STE 8 SUSANVILLE CA 96130	THE HONORABLE BRAD FENOCCHIO PLACER COUNTY DISTRICT ATTORNEY 11562 B AVE AUBURN CA 95603
THE HONORABLE JOHN POYNER COLUSA COUNTY DISTRICT ATTORNEY 547 MARKET ST COLUSA CA 95932	THE HONORABLE STEVE COOLEY LA COUNTY DISTRICT ATTORNEY 210 W TEMPLE ST STE 18000 LOS ANGELES CA 90012-3210	THE HONORABLE JAMES REICHLER PLUMAS COUNTY DISTRICT ATTORNEY 520 MAIN ST RM 404 QUINCY CA 95971
THE HONORABLE GARY T YANCEY CONTRA COSTA COUNTY DISTRICT ATTORNEY PO BOX 670 MARTINEZ CA 94553	THE HONORABLE ERNEST LICALSI MADERA COUNTY DISTRICT ATTORNEY 209 W YOSEMITE AVE MADERA CA 93637	THE HONORABLE GROVER C TRASK II RIVERSIDE COUNTY DISTRICT ATTORNEY 4075 MAIN ST RIVERSIDE CA 92501
THE HONORABLE ROBERT J DROSSEL DEL NORTE COUNTY DISTRICT ATTORNEY 450 H ST CRESCENT CITY CA 95531	THE HONORABLE PAULA FRESCHI KAMENA MARIN COUNTY DISTRICT ATTORNEY 3501 CIVIC CTR DR RM 130 SAN RAFAEL CA 94903	THE HONORABLE JAN SCULLY SACRAMENTO COUNTY DISTRICT ATTORNEY 901 G ST SACRAMENTO CA 95814
THE HONORABLE GARY L LACY EL DORADO COUNTY DISTRICT ATTORNEY 515 MAIN ST PLACERVILLE CA 95667	THE HONORABLE CHRISTINE A JOHNSON MARIPOSA COUNTY DISTRICT ATTORNEY PO BOX 748 MARIPOSA CA 95338	THE HONORABLE HARRY J DAMKAR SAN BENITO COUNTY DISTRICT ATTORNEY 419 FOURTH ST HOLLISTER CA 95023-3801
THE HONORABLE EDWARD W HUNT FRESNO COUNTY DISTRICT ATTORNEY 2220 TULARE ST STE 1000 FRESNO CA 93721	THE HONORABLE NORMAN VROMAN MENDOCINO COUNTY DISTRICT ATTORNEY PO BOX 1000 UKIAH CA 95482	THE HONORABLE DENNIS L STOUT SAN BERNARDINO COUNTY DISTRICT ATTORNEY 316 N MTN VIEW AVE SAN BERNARDINO CA 92415-0004
THE HONORABLE ROBERT HOLZAPFEL GLENN COUNTY DISTRICT ATTORNEY PO BOX 430 WILLOWS CA 95988	THE HONORABLE GORDON SPENCER MERCED COUNTY DISTRICT ATTORNEY 2222 M ST MERCED CA 95340	THE HONORABLE PAUL PFINGST SAN DIEGO COUNTY DISTRICT ATTORNEY 330 W BROADWAY RM 1300 SAN DIEGO CA 92112
THE HONORABLE TERRY R FARMER HUMBOLDT COUNTY DISTRICT ATTORNEY 825 FIFTH ST EUREKA CA 95501	THE HONORABLE TOM BUCKWALTER MODOC COUNTY DISTRICT ATTORNEY PO BOX 1171 ALTURAS CA 96101	THE HONORABLE TERENCE HALLINAN SAN FRANCISCO COUNTY DISTRICT ATTORNEY 880 BRYANT ST STE 325 SAN FRANCISCO CA 94103
THE HONORABLE GILBERT OTERO IMPERIAL COUNTY DISTRICT ATTORNEY 939 W MAIN ST EL CENTRO CA 92243	THE HONORABLE GEORGE BOOTH MONO COUNTY DISTRICT ATTORNEY PO BOX 617 BRIDGEPORT CA 93517	THE HONORABLE JOHN D PHILLIPS SAN JOAQUIN COUNTY DISTRICT ATTORNEY 222 E WEBER ST RM 202 STOCKTON CA 95202

THE HONORABLE GERALD T SHEA  
SAN LUIS OBISPO COUNTY DISTRICT ATTORNEY  
COUNTY GOVERNMENT CTR RM 450  
SAN LUIS OBISPO CA 93408

THE HONORABLE DAVID L CROSS  
TRINITY COUNTY DISTRICT ATTORNEY  
PO BOX 310  
WEAVERVILLE CA 96093

THE HONORABLE JAMES P FOX  
SAN MATEO COUNTY DISTRICT ATTORNEY  
400 COUNTY CTR FL 3  
REDWOOD CITY CA 94063

THE HONORABLE PHILLIP J CLINE  
TULARE COUNTY DISTRICT ATTORNEY  
221 S MOONEY BLVD # 224  
VISALIA CA 93291

THE HONORABLE THOMAS W SNEDDON JR  
SANTA BARBARA COUNTY DISTRICT ATTORNEY  
1105 SANTA BARBARA ST  
SANTA BARBARA CA 93101

THE HONORABLE DONALD I SEGERSTROM  
TUOLUMNE COUNTY DISTRICT ATTORNEY  
2 S GREEN ST  
SONORA CA 95370

THE HONORABLE GEORGE KENNEDY  
SANTA CLARA COUNTY DISTRICT ATTORNEY  
70 W HEDDING ST  
SAN JOSE CA 95110

THE HONORABLE MICHAEL D BRADBURY  
VENTURA COUNTY DISTRICT ATTORNEY  
800 S VICTORIA AVE  
VENTURA CA 93009

THE HONORABLE RONALD L RUIZ  
SANTA CRUZ COUNTY DISTRICT ATTORNEY  
701 OCEAN ST STE 200  
SANTA CRUZ CA 95060

THE HONORABLE DAVID C HENDERSON  
YOLO COUNTY DISTRICT ATTORNEY  
301 SECOND ST  
WOODLAND CA 95695

THE HONORABLE MCGREGOR SCOTT  
SHASTA COUNTY DISTRICT ATTORNEY  
1525 COURT ST FL 3  
REDDING CA 96001

THE HONORABLE PATRICK MCGRATH  
YUBA COUNTY DISTRICT ATTORNEY  
215 FIFTH ST  
MARYSVILLE CA 95901

THE HONORABLE SHARON O SULLIVAN  
SIERRA COUNTY DISTRICT ATTORNEY  
PO BOX 457  
DOWNIEVILLE CA 95936

LOS ANGELES CITY ATTORNEY'S OFFICE  
200 N MAIN ST RM 1800  
LOS ANGELES CA 90012

THE HONORABLE PETER F KNOLL  
SISKIYOU COUNTY DISTRICT ATTORNEY  
PO BOX 986  
YREKA CA 96097

SAN DIEGO CITY ATTORNEY'S OFFICE  
CIVIC CENTER PLAZA  
1200 THIRD AVE STE 1200  
SAN DIEGO CA 92101

THE HONORABLE DAVID W PAULSON  
SOLANO COUNTY DISTRICT ATTORNEY  
600 UNION AVE  
FAIRFIELD CA 94533

SAN JOSE CITY ATTORNEY'S OFFICE  
151 W MISSION ST  
SAN JOSE CA 95110

THE HONORABLE J MICHAEL MULLINS  
SONOMA COUNTY DISTRICT ATTORNEY  
600 ADMINISTRATION DR RM 212  
SANTA ROSA CA 95403

SAN FRANCISCO CITY ATTORNEY'S OFFICE  
CITY HALL, ROOM 234  
SAN FRANCISCO, CA 94102

THE HONORABLE JAMES C BRAZELTON  
STANISLAUS COUNTY DISTRICT ATTORNEY  
PO BOX 442  
MODESTO CA 95353

THE HONORABLE CARL V ADAMS  
SUTTER COUNTY DISTRICT ATTORNEY  
446 SECOND ST  
YUBA CITY CA 95991

THE HONORABLE GREGG COHEN  
TEHAMA COUNTY DISTRICT ATTORNEY  
PO BOX 519  
RED BLUFF CA 96080