



As You Sow

Tel: (415) 391-3212

A Foundation Planting Seeds for Social Change

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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 **ANDRONICO'S MARKETS, INC.** ("Andronico's").



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:

**AHI TUNA STEAK
SWORDFISH STEAK**

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 ANDRONICO'S MARKETS, INC. 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:

Andronico's Markets, Inc.
William J. Andronico, CEO
1109 Washington Avenue
Albany, CA 94706

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
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PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE EDWARD R JAGELS
KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE
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THE HONORABLE TODD D RIEBE
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708 COURT ST STE 202
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THE HONORABLE RON CALHOUN
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1400 W LACEY BLVD
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201 CHURCH ST STE 8
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THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

THE HONORABLE GARY LUCK
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255 N FORBES ST
LAKEPORT CA 95453

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891 MTN RANCH RD
SAN ANDREAS CA 95249

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LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

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11562 B AVE
AUBURN CA 95603

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547 MARKET ST
COLUSA CA 95932

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210 W TEMPLE ST STE 18000
LOS ANGELES CA 90012-3210

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SACRAMENTO CA 95814

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515 MAIN ST
PLACERVILLE CA 95667

THE HONORABLE CHRISTINE A JOHNSON
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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
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UKIAH CA 95482

THE HONORABLE DENNIS L STOUT
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316 N MTN VIEW AVE
SAN BERNARDINO CA 92415-0004

THE HONORABLE ROBERT HOLZAPFEL
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MERCED COUNTY DISTRICT ATTORNEY
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MERCED CA 95340

THE HONORABLE PAUL PFINGST
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SAN DIEGO CA 92112

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880 BRYANT ST STE 325
SAN FRANCISCO CA 94103

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EL CENTRO CA 92243

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