

# JAMES T. DUFOUR

Attorney and Counselor at Law

James T. Dufour, J.D., R.E.A., C.I.H.

Administrative and Employment Law  
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Sacramento Office  
2377 Gold Meadow Way, Suite 220  
Gold River, California 95670  
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August 15, 2003

To: Edward Weil\*  
Deputy Attorney General  
1515 Clay Street, 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

Stephen Passalacqua  
Sonoma County District Attorney  
600 Administration Drive  
Room 212J  
Santa Rosa, CA 95403

Erfert Enterprises, Inc.  
dba Dial-One D.W. Erfert Painting  
and Decorating  
Paulette Erfert  
2500 Sutterville Road  
Sacramento, CA 95820

Northwest Consulting and  
Inspection, Inc.  
Lisa Franko, Vice President  
301 County Airport Road  
Vacaville, CA 95668

John Willis  
dba John's Sandblasting  
18765 Gold Creek Trail  
Volcano, CA 95689

D.M. Figley  
8210 Berry Avenue, #160  
Sacramento, CA 95828

ChemRex, Inc.  
CT Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

Harris Specialty Chemicals, Inc.  
CT Corporation System  
818 West Seventh Street  
Los Angeles, CA 90017

cc: Melinda Guzman Moore  
Goldsberry Freeman Guzman &  
Ditora  
777 12<sup>th</sup> Street, Ste. 250  
Sacramento, CA 95814

cc: George F. Vogt, Jr.  
Hazel M. Bergtholdt  
Herrig, Vogt & Stoll, LLP  
4210 Douglas Blvd., Ste. 100  
Granite Bay, CA 95746-5902

cc: Gary A.T. Williams  
390 Bridgeport Drive  
Half Moon Bay, CA 94109

cc: D.M. Figley  
Janet DiGioia  
10 Kelly Court  
Menlo Park, CA 94025

\*AG's copy contains official information  
pursuant to Evidence code § 1040

**Re: 60-Day Notice of Violation and Intent to Sue Under Proposition 65 for Failure To Warn About Chemicals Listed Pursuant To Health & Safety Code § 25249.5 et seq.**

Dear Sir/Madam:

This firm represents the Catholic Diocese of Sacramento which is a not-for-profit religious organization incorporated under the laws of the State of California and which operates for the benefit of its clergy and parishioners Catholic churches through the state. The offices of Diocese are at 2110 Broadway, Sacramento, CA 95818. However, please be advised that any communication, whether written, oral, electronic, or otherwise, must be directed to the attention of the undersigned at this office only.

**Notification of Violation**

This letter is to serve as notification that the businesses named in this notice (collectively referred to as “violators”) have violated, and continue to violate, the warning requirement of Proposition 65 by using, distributing and/or selling or otherwise causing others to use pre-painting surface preparation materials and practice which knowingly and intentionally expose members of the public to certain chemicals known to the State of California to cause cancer or reproductive toxicity without first proving a clear and reasonable warning pursuant to the Safe Drinking Water and Toxics Enforcement Act of 1986, otherwise known as “Proposition 65” as codified at Health & Safety Code § 25249.6.

**Violators**

The businesses that are subject to this Notice of Violation are:

1. Northwest Consulting and Inspections, Inc., herein “Northwest,” is a corporation under the laws of the State of California, located at 301 County Airport Road, Vacaville, CA 95668.
2. Erfert Enterprises, Inc., herein “Erfert,” is a corporation under the laws of the State of California, doing business as Dial-One-D.W. Erfert Painting and Decorating, located at 2500 Sutterville Road, Sacramento, CA 95820.
3. John Willis doing business as John’s Sandblasting located at 18765 Gold Creek Trail, Volcano, CA 95689. John Willis dba John’s Sandblasting’s form of business is unknown.
4. ChemRex, Inc., 390 Bridgeport Drive, Half Moon Bay, CA 94109, acting by and through its agent and/or employee Gary A. T. Williams. ChemRex, Inc.’s form of business and legal relationship to Gary A.T. Williams is unknown.

5. Harris Specialty Chemicals, 390 Bridgeport Drive, Half Moon Bay, acting by and through its agent and/or employee Gary A.T. Williams. Harris Specialty Chemical's form of business and legal relationship to Gary A.T. Williams is unknown.
6. D.M. Figley, 8210 Berry Avenue, #160, Sacramento, CA 95828. D.M. Figley's form of business is unknown.

The Catholic Diocese of Sacramento is informed and believes and based on such information and belief alleges that the violators are all, each and every one of them subject to Proposition 65 as persons in the course of doing business with at least ten employees and whose activities and/or products caused persons to be exposed to chemicals subject to the Act's warning requirements without first providing warnings as described below. As discovery in this matter is proceeding, any material changes in this allegation will be incorporated into this notice and the parties advised.

### **Facts and Allegations Associated with the Violators**

On or about April 24 through April 27, 2000, the violators engaged in business activities which resulted in the release into the environs surrounding St. Basil's Church at 1200 Tuolumne Street, Vallejo, CA 94590, of crystalline silica, asbestos and lead. The release was proximately caused by the negligent and careless sandblasting of the Church's stucco surfaces which contained both asbestos and lead with common sand by Violator John Willis dba John's Sandblasting under contract to and supervised by Violator Erfert. Violator Northwest was the Church's consultant and project manager for the project, and Violator ChemRex, Inc. and Violator Harris Specialty Chemicals actions through their agent or employee Gary A.T. Williams provided surface preparation recommendations (for the coating materials they were to supply to the project), which included sandblasting which was witnesses and condoned by their agent or employee Gary A.T. Williams. Violator D.W. Figley provided the common sand for purposes of sandblasting to the other violators.

In addition to various violations of Title 8 Safety Orders for Asbestos Containing Building Materials [8 CCR § 1529], Bay Area AQMD Regulation 11, Rule 2 on Asbestos and Regulation 12, Rule 4 on Sandblasting, the Violators did not take any action to notify or otherwise provide a clear and reasonable warning to any person in the area. Exposure to a detectable amount of exposure to any of the following chemicals generated from this project required such warning:

- ✓ Crystalline Silica, contained in the common sand used in the sandblasting, was listed pursuant to Proposition 65 as known to cause cancer on October 1, 1988 [22 CCR § 12000(b)].
- ✓ Asbestos, contained in the St. Basil's Church's existing surfacing materials at concentration of up to 5%, was listed pursuant to Proposition 65 as known to cause cancer on February 27, 1987 [22 CCR § 12000(b)].
- ✓ Lead, contained in St. Basil's Church's existing surfacing materials at a concentration of 1,810 mg/kg, was listed pursuant to Proposition 65 as known to cause reproductive toxicity on February 27, 1987 [22 CCR § 12000(c)], and cancer on April 1, 1988 [22 CCR § 12000(b)].

The persons exposed in the area include employees and volunteers of the Church, teachers and elementary school children at the school and parking lot used as a playground adjacent to the Church, and other members of the public as the release continued an abated for up to three days and it required several additional days to completely decontaminate the affected area.

At no time during, or before, the surface preparation project did any Violator provide a warning as required by Proposition 65. To date, Violators do not admit to any violation or liability for their misconduct, and therefore it is reasonable to conclude that such violations are continuing which warrants and necessitates injunctive relief, in addition to restitution.

**Certificate of Merit**

A Certificate of Merit as required by 11 CCR § 3100 et seq. is attached to this Notice and the copy provided to the Attorney General contains full supporting information. In addition, the Summary of Proposition 65 as required by 22 CCR § 12903 is also attached.

Proposition 65 [HSC § 25249.7(d)] requires that a notice of intent to sue be served upon Violators, the Attorney General, and the District Attorney with jurisdiction over the alleged violation sixty days prior to the filing of a citizen suit. This Notice describes such violations of Proposition 65 that are currently known based available information and meets the requirements for such notices.

Should you have any comments or questions regarding this matter, please do not hesitate to contact my office.

Very truly yours, /

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Edward G. Heidig, hereby declare:

(1) This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

(2) I am the Diocesan Counsel for the Noticing Party.

(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 chemical that is 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 the information did not provide 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 section 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: Aug 14, 2003

**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF SACRAMENTO

I am employed in the County of Sacramento, California. I am over the age of eighteen years and not a party to the within action. My business address is 2377 Gold Meadow Way, Suite 220, Gold River, California 95670.

On August 18, 2003, I served the foregoing document(s) entitled as:

**60-Day Notice Under Proposition 65 for Failure to Warn**

on the parties in this action as follows:

[See attached list.]

**METHOD OF SERVICE**

- (BY OVERNIGHT DELIVERY)**  
I caused such envelope(s) to be delivered to an overnight delivery, fees provided for, addressed to the person(s) on whom it is to be served.
- (BY MAIL)** I deposited such envelope(s) in the mail at Gold River, California. The envelope(s) was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same date in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- (BY PERSONAL SERVICE)** I caused such document(s) to be delivered by hand to the addressee(s) above.
- (BY FAX)** I caused such documents to be transmitted by facsimile to the offices of the addressee(s).. the facsimile machine used complied with California Rules of Court, Rule 2003, and no error was reported by the machine.
- (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.
- (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct. Executed on August 18, 2003, at Gold River, California.

## SERVICE LIST

Edward Weil  
Deputy Attorney General  
1515 Clay Street, 20<sup>th</sup> Floor  
Oakland, CA 94612-1413

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