

ENVIRONMENTAL WORLD WATCH, INC  
8707-D LINDLEY AVENUE, SUITE 124  
NORTHRIDGE, CALIFORNIA 91325

**Oct. 16, 2003**

**NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND  
TOXIC ENFORCEMENT ACT OF 1986  
(California Health and Safety Code §25249.5 *et seq.*)**

**BY  
ELECTRA CRUISES, INC.**

First Class Mail-Proof of Service Attached

TO THE PARTIES LISTED ON THE  
ATTACHED DISTRIBUTION LIST

**Re: Electra CruisesInc.-Carbon Monoxide**

Dear Mr. Randy Goodman, OWNER:

**Environmental World Watch, Inc.** (the "Noticing Party") serves this Notice of Violation ("Notice") upon **Electra Cruises, Inc.** (hereinafter "Luxury Yacht Rental Company") pursuant to and in compliance with California Health and Safety Code ("H&S Code") §25249.7(d) and 22 California Code of Regulations ("CCR") §12903. This Notice satisfies a prerequisite for a Noticing Party to commence an action against Luxury Yacht Rental Company to enforce the Safe Drinking Water and Toxic Enforcement Act of 1986. The violations addressed by this Notice occur in 8 or more counties and cities in California. This Notice is being served upon each violator, the California Attorney General, the district attorney of every California county and the City Attorney of every California city with a population (according to the most recent decennial census) of over 750,000. If Luxury Yacht Rental Company has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel, this Notice is being addressed to, and served upon, one of those persons.

Attached as Exhibit A to this Notice is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." The attached Summary was prepared by the California EPA and provides general information about the Safe Drinking Water and Toxic Enforcement Act of 1986. Copies of the Summary are not required to be, and are not being, provided to the public enforcement agencies.

Description of the Noticing Party, the Alleged Violator, and the Alleged Violations Addressed by this Notice:

- ◆ This Notice is provided by Environmental World Watch, Inc. Environmental World Watch (hereinafter "EWW"), is based in Los Angeles and is registered as a corporation and is acting in the public interest pursuant to H&S Code §25249.7(d), and is dedicated to protecting the environment, improving human health and supporting environmentally sound practices.

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- ◆ The violators' names and addresses are: Electra Cruises, Inc.  
3439 Via Oport  
Newport Beach, Ca. 92663
- ◆ The violations addressed by this Notice began on or after July 1, 1990, have occurred on numerous occasions each and every day since said date, and are ongoing and continuing.
- ◆ This Notice of Violation covers the "warning provision" of Proposition 65, which is found at H&S Code §25249.6.
- ◆ The name of each Chemical that is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986 involved in the violations addressed by this Notice is Carbon Monoxide; (the "Listed Chemical"). The Listed Chemical is listed (and has been so listed for more than twelve months) by the Governor of the State of California as being a Chemical known to the State of California to cause cancer or reproductive toxicity, or both cancer and reproductive toxicity.
- ◆ The route of exposure for the violations addressed by this Notice is inhalation. There is also a danger of a dermal exposure while walking around the stern of the Luxury Yacht.
- ◆ The type of exposures addressed by this Notice are environmental, and occupational including but not limited to, the Chemicals delineated herein.
- ◆ This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.
- ◆ There are numerous sources of the exposures addressed in this Notice. These exposures occur in these Luxury Yachts, on the docks, in and near the parking areas of the Marinas at Newport and San Diego, and everywhere else in California where these Yachts operate, idle and park. These exposures occur principally off the property of the Noticed Company.
- ◆ In the course of doing business, Luxury Yacht Rental Company has knowingly and intentionally exposed, and continue to expose, individuals (especially pregnant and post-partum women) to the Listed Chemical. No clear and reasonable warning is or has been provided by Luxury Yacht Rental Company to individuals regarding exposure to the Listed Chemical and the fact that the Listed Chemical is known to the State of California to be carcinogens, reproductive toxicants, or both carcinogens and reproductive toxicants.
- ◆ These exposures have gone on from 1990 until 2003 as EWW believes and so alleges that Luxury Yacht Rental Company has tolled the statute of limitations by fraudulent concealment of the constituents of the exhaust emissions and or a violation of Civil Code section 1709-1710, to

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the detriment of those persons that required warning in the waters where Luxury Yacht Rental Company operates in California. The guard rails and other bulletin boards are further absent any warning that would meet the definition delineated at title 22 CCR §12601 (c) nor do they comply with section (d) of that regulation.

- ◆ The reproductive toxin in the Luxury Yachts exhaust emissions, and subject to the warning requirements of H&S Code §25249.6 and more specifically 22 CCR §12601(c) *et seq.* are listed herein at Appendix “A”:
- ◆ The aforementioned reproductive toxin is on the Governor’s list (Prop 65 List) as expressed at 22 CCR §12000. These Chemicals are known to the State of California to cause reproductive harm to humans requiring special warnings. The concentrations of these toxins in the subject exhaust waste streams exceed the Maximum Allowable Daily Level (MADL) threshold and require a warning of the existence of this Chemical danger by the Luxury Yacht Rental Company.
- ◆ The principal route of exposure is through a “inhalation exposure” via normal breathing of the ambient air. There is a further danger of contacting these reproductive toxins via a wet or dry deposition as the sea air is extremely humid. This exposure has gone on since July 1, 1990 and through Oct 16, 2003 at every place in California that the Luxury Yachts operate and to the listed Chemical in Appendix A. All references to “exposure” in this notice shall be understood to be exposures to the constituents of diesel exhaust in said Appendix. Traveling, touring on these Luxury Yachts without warnings is a violation of law and an egregious danger to pregnant women at emission concentrations above 5 PPM.
- ◆ The location of these alleged exposures are many and varied while occurring within the 3 counties of the state of California as evidenced by the District Attorneys addressed in the enclosed distribution list. EWW believes and so alleges that at least one of the jurisdictions identified had Luxury Yacht Rental Company Boats operating within its county by the Luxury Yacht Rental Company or its agents and subsequent exposure. Further, that taking tours, trips and attending parties, dinners and weddings by the public and other workers caused these exposures in that jurisdiction to the constituents of the diesel exhaust as identified herein, and those exposures by Luxury Yacht Rental Company were allowed to take place without the prerequisite warnings as delineated by the applicable statutes specified in this notice.

Please direct any inquiries regarding this notice or any communication with the responsible party, William Dunlap, for the noticing entity, Environmental World Watch, to:

**APPENDIX A**

- ◆ **Carbon Monoxide**

**EXHIBIT A**  
**OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT**  
**CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACTION 1986**  
**(PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, 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 its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. 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 22 of the California Code of Regulations, Sections 12000 through 14000.

*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, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 Chemicals have been listed as of May 1, 1996. 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. 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. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the Chemical.

*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. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the Chemical.

*DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. The law exempts:

*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.

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*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.

*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 for more than 250 listed carcinogens.

*Exposures that will produce no observable reproductive effect at 1,000 times the level in question.* For Chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicant"), 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 (NOEL), "divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level that has not been associated with an observable adverse reproductive or developmental effect.

*Discharge 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 list Chemical has not, does not, or will not enter any drinking water source, 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" or "no observable effect" test 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 (those in cities with a population exceeding 750,000). 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. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly 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.

#### FOR FURTHER INFORMATION

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

**CERTIFICATE OF MERIT**  
**HEALTH AND SAFETY CODE SECTION 25249.7(d)**

• **CARBON MONOXIDE**

**NOTICED PARTY:**

**ELECTRA CRUISES, INC.**

I, Robert J. Mandell, on behalf of Environmental World Watch, hereby declare:

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

2. I am the attorney 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 exposure to the listed Chemical(s) that is the subject of this action.

4. Based upon the information obtained through those consultations, and 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 private action" means that the information provides a credible basis that all the elements of the plaintiffs' case can be established and 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 section 24249.7(h)(2), *i.e.*, (1) the identity of the person consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Date: Oct 16, 2003

## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 19400 Business Center Drive, Suite 102, Granada Hills, CA.

On Oct 16 2003, I served copies of the documents listed immediately hereafter by first class mail by placing same in sealed envelopes, fully preparing postage thereon, and depositing said envelopes in the U.S. Mail at Northridge, California. Said envelopes were addressed as follows:

### SEE ATTACHED DISTRIBUTION LIST

*(sent via certified mail with applicable postage to those parties listed with an asterisk)*

Documents mailed:

2. **NOTICE OF VIOLATION OF THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (California Health and Safety Code §25249.5 et seq.)**

**TO: Electra Cruises, Inc.  
3439 Via Oport  
Newport Beach, CA 92663**

3. **THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (only sent to those parties listed with an asterisk)**
4. **CERTIFICATE OF MERIT – (attachments only sent to California Attorney General's Office)**

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct, and that this declaration was executed on Oct 16 2003, at Los Angeles, California.

## DISTRIBUTION LIST

\*Mr Randy Goodman Owner  
Chairman and Chief Executive Officer  
Electra Cruises, Inc.  
3439 Via Oport  
Newport Beach, Ca. 92663

\*Registered Agent for Service of Process  
Mr. Randy Goodman  
Electra Cruises, Inc.  
3439 Via Oport  
Newport Beach, Ca. 92663

Los Angeles City Attorney's Office  
1800 City Hall East  
200 N. Main Street.  
Los Angeles, CA 90012

Office of the District Attorney of  
Los Angeles County  
18000 Criminal Courts Building  
210 W. Temple Street  
Los Angeles, CA 90012

**\*CALIFORNIA ATTORNEY GENERAL**  
CA Department of Justice  
**PROP. 65 ENFORCEMENT REPORTING**  
Attn: Prop 65 Coordinator  
1515 Clay Street, Suite 2000  
Post Office Box 70550  
Oakland, CA 94612-0550

San Diego City Attorney's Office  
Civic Center Plaza  
1200 3rd Avenue, Suite 1200  
San Diego, CA 92101

Office of the District Attorney of  
Orange County  
700 Civic Center Drive West, 2<sup>nd</sup> Floor  
Santa Ana, CA 92702

Office of the District Attorney of  
San Diego County  
330 West Broadway, Ste. 1320  
San Diego, CA 92112