

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

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60 Day Notice of Intent to Sue Lowe's Companies, Inc. Under Health & Safety Code Section 25249.6

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or the "Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5 (the "Notice") to Robert A. Niblock, the President of Lowe's Companies, Inc. (hereinafter referred to as "Lowe's"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice is intended to inform LOWE'S that it has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") by failing and refusing to post clear and reasonable warnings at each of the facilities listed on Exhibit A hereto (which are owned/managed by Lowe's) (hereinafter "the Facilities") that Lowe's, in the ordinary course of business, stores, sells and cuts to order at each of the Facilities highly hazardous lumber infused with the arsenic-containing pesticide CCA.

Proposition 65 provides that when a party, such as Lowe's, has been and is knowingly and intentionally exposing its customers, visitors, employees and the general public to a chemical designated by the State of California to cause cancer and developmental toxicity ("the Designated Chemical") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Arsenic (inorganic arsenic compounds) is a chemical known to the state of California to cause cancer. Arsenic (inorganic oxides) is a chemical known to the State of California to cause developmental reproductive toxicity. Hereinafter, arsenic (inorganic arsenic compounds) and arsenic (inorganic oxides) are referred to as the Designated Chemicals.

During the period from July 12, 2003 through October 3, 2003, persons representing CDG have investigated the activities permitted by LOWE'S at the Facilities (hereinafter referred to as the "Investigation Period"). During that investigations CDG discovered that the Facilities are owned and/or managed by LOWE'S, and that LOWE'S has more than nine employees. Those investigations also showed that LOWE'S has chosen to allow its customers, visitors and employees at each of the Facilities to be exposed to the Designated Chemicals by offering for sale lumber treated with CCA. The standard formulation for CCA used in wood is 22% arsenic. At the Facilities LOWE'S has also chosen to expose its customers (including children) and employees to the Designated Chemicals by cutting the wood to various lengths on site. The areas where the exposures take place at the Facilities are those areas where the CCA-treated wood is stored in inventory, where the lumber stacked for sale on the shop floor and in the areas where the wood is cut. Of course, there are also exposures when the CCA-treated wood is taken home by the customer and used.

In the Facilities and areas noted LOWE'S has chosen to allow its customers, visitors and employees to be exposed to the Designated Chemicals but has specifically chosen to ignore the

requirements of Proposition 65 and has failed to post clear and reasonable warnings at any of the entrances to the Facilities, in the parking areas, in the areas leading into the Facilities from the parking areas, at the entrances to the areas where the wood is stored in inventory, where it is stacked for sale on the shop floor, or in the areas where the wood is cut, so that its customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering any of those areas, they may be exposed to the Designated Chemicals.

It is clear therefore that for the entire period of time that LOWE'S has owned and/or controlled the Facilities prior to the Investigation Period, LOWE'S has failed to post clear and reasonable warning signs at the Facilities in compliance with Proposition 65. Given that the maximum period of potential liability pursuant to Proposition 65 and Business & Professions Code §17200 (which are the operative statutes pursuant to which a complaint will be filed against LOWE'S) is four years, this Notice is intended to inform LOWE'S that it has been in violation of Proposition 65 from the time period from four years prior to the last date of the Investigation Period noted above, for every day upon which LOWE'S owned and/or controlled any Facility listed on Exhibit A.

The written reports prepared by the investigators for CDG, prepared contemporaneously with the investigations conducted during the Initial Investigation Period, together with supporting data, studies and reports, and other evidence from the Facilities, has been provided to the Office of the Attorney General responsible for Proposition 65 enforcement.

Environmental Exposures:

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, LOWE'S has been and is knowingly and intentionally exposing its customers and the public to the Designated Chemicals without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The sources of exposure are (1) CCA-treated wood offered for sale by LOWE'S at the Facilities, and (2) CCA-treated wood cut to order onsite by LOWE'S employees at the Facilities. The areas at the Facilities where customers, visitors and employees are being exposed to the Designated Chemicals are where the CCA-treated wood is stored in inventory, stacked for sale on the shop floor and in the areas where the wood is cut.

Occupational Exposures:

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, LOWE'S has been and is knowingly and intentionally exposing its employees to the Designated Chemicals without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The sources of exposure are (1) CCA-treated wood offered for sale by LOWE'S at the Facilities, and (2) CCA-treated wood cut to order onsite by LOWE'S employees at the Facilities. The areas at the Facilities where LOWE'S employees are being exposed to the Designated Chemicals are where the CCA-treated wood is stored in inventory, where it is stacked for sale on the shop floor and in the areas where the wood is cut. The employees exposed to the Designated Chemicals include those working in the areas in the Facilities where CCA-treated wood is stored in inventory and stacked for sale, the employees working in and around the area where the wood is cut by LOWE'S employees, the employees who do the cutting of the lumber and those handling the wood both prior to sale and who assist customers with the wood at the point of sale and thereafter deliver the wood to the customer's residence or car.

Consumer Product Exposures:

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, LOWE'S has been and is knowingly and intentionally exposing its customers and the public to the Designated Chemicals contained in the CCA treated wood it offers for sale at each of the Facilities without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The sources of exposure are (1) CCA-treated wood offered for sale by LOWE'S at the Facilities, and (2) CCA-treated wood cut to order onsite by LOWE'S employees at the Facilities. The areas at the Facilities where customers, visitors and employees are being exposed to the Designated Chemicals are where the CCA-treated wood is stored in inventory, stacked for sale on the shop floor and in the areas where the wood is cut. Customers are also exposed to the Designated Chemicals when they use the wood after purchase.

The route of exposure for Occupational Exposures, Environmental Exposures and Consumer product Exposures to the Designated Chemicals has been via inhalation, ingestion and dermal contact with the wood and with wood dust from the lumber. In other words, via breathing and contact with the skin of customers, visitors and employees with CCA treated wood and wood dust, and by ingestion through the mouth after touching of the CCA treated wood and wood dust.

Proposition 65 requires that notice and intent to sue be given to LOWE'S sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to LOWE'S and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to them. CDG reserves the right to amend this Notice to inform LOWE'S of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to LOWE'S, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

Dated: October 24, 2003

By:

EXHIBIT A

1. 1500 N. LEMON STREET, ANAHEIM, CA 92801
2. 1951 SOMMERSVILLE ROAD, ANTIOCH, CA 94509
3. 7825 ROSEDALE HIGHWAY, BAKERSFIELD, CA 93308
4. 2000 EMPIRE AVENUE, BURBANK, CA 91504
5. 2350 FOREST AVENUE, CHICO, CA 95928
6. 13251 PEYTON DRIVE, CHINO HILLS, CA 91709
7. 2225 OTAY LAKES ROAD CHULA VISTA, CA 91915
8. 7840 GREENBACK LANE CITRUS HEIGHTS, CA 95610
9. 875 SHAW AVENUE CLOVIS, CA 93612
10. 1285 MAGNOLIA AVENUE CORONA, CA 92879
11. 8369 POWER INN ROAD ELK GROVE, CA 95624
12. 800 EAST BIDWELL STREET FOLSOM, CA 95630
13. 7651 NORTH BLACKSTONE AVENUE FRESNO, CA 93720
14. 7151 CAMINO ARROYO GILROY, CA 95020
15. 2800 120TH STREET HAWTHORNE, CA 90250
16. 13300 JAMBOREE ROAD IRVINE, CA 92602
17. 1380 SOUTH BEACH BOULEVARD LA HABRA, CA 90631
18. 78-865 HIGHWAY 111 LA QUINTA, CA 92253
19. 4255 FIRST STREET LIVERMORE, CA 94550
20. 7300 EAST CARSON STREET LONG BEACH, CA 90808
21. 2840 BELLFLOWER BLVD. LONG BEACH, CA 90815
22. 1750 WEST OLIVE AVENUE MERCED, CA 95348
23. 3801 PELANDALE AVENUE MODESTO, CA 95356
24. 12400 DAY STREET MORENO VALLEY, CA 92553
25. 24701 MADISON AVENUE MURRIETA, CA 92562
26. 14873 CARMENITA ROAD NORWALK, CA 90650
27. 155 OLD GROVE ROAD OCEANSIDE, CA 92056
28. 5201 EAST RAMON ROAD PALM SPRINGS, CA 92264
29. 39500 LOWES DRIVE PALMDALE, CA 93550
30. 8600 WASHINGTON BOULEVARD PICO RIVERA, CA 90660
31. 11399 FOOTHILL BLVD. RANCHO CUCAMONGA, CA 91730
32. 30481 AVENIDA DE LAS FLORES RANCHO SANTA MARGARITA, CA 92688
33. 1725 WEST REDLANDS BLVD. REDLANDS, CA 92373
34. 9851 MAGNOLIA AVENUE RIVERSIDE, CA 92503
35. 10201 FAIRWAY DRIVE ROSEVILLE, CA 95678
36. 1340 EL CAMINO REAL SAN BRUNO, CA 94066
37. 907 AVENIDA PICO SAN CLEMENTE, CA 92673
38. 2318 NORTHSIDE DRIVE SAN DIEGO, CA 92108
39. 633 WEST BONITA AVENUE SAN DIMAS, CA 91773
40. 26415 BOUQUET CANYON ROAD SANTA CLARITA, CA 91350
41. 3645 EAST HAMMER LANE STOCKTON, CA 95212
42. 40390 WINCHESTER ROAD TEMECULA, CA 92591
43. 22255 WESTERN AVENUE TORRANCE, CA 90501

44. 32040 UNION LANDING BLVD. UNION CITY, CA 94587
45. 1659 W. FOOTHILL BLVD UPLAND, CA 91786
46. 151 VISTA VILLAGE DRIVE VISTA, CA 92083
47. 4144 SOUTH MOONEY BOULEVARD VISALIA, CA 93277
48. 8383 TOPANGA CANYON BLVD. WEST HILLS, CA 91304
49. 13225 BEACH BLVD. WESTMINSTER, CA 92683

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing The Consumer Defense Group Action, the "Noticing Party" as to the "60 Day Notice of Intent to Sue" (hereinafter, "the Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.

3. 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 prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus “operates”, the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the “release” of the chemicals set forth in the Notice and such “releases” threaten to pass in sources of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6, or any other sign purporting to comply with the requirements of that section.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on September 23, 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 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators*); and
- 3.) Certificate of Merit;
- 4.) Supporting documents (*only sent to Office of Attorney General*)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: October 28, 2003

Place of Mailing: Irvine, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Robert A. Niblock, President Lowe's Companies, Inc. 1605 Curtis Bridge Rd Wilkesboro, NC 28697	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
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Sacramento County DA
P.O. Box 749
Sacramento, CA 95812

San Diego County DA
330 Broadway
San Diego, CA 92101

San Diego City Attorney
1200 3rd Ave. Ste. 1620
San Diego, CA 92101

Los Angeles City Attorney
200 N. Main St. N.E.
Los Angeles, CA 90012

Humboldt County DA
825 5th Street
Eureka, CA 95501

Shasta County DA
1525 Court Street
Redding, CA 96001-1632

San Mateo District Attorney
1050 Mission Road
South San Francisco, CA 94080

Marin County DA
3501 Civic Center Dr. #130
San Rafael, CA 94903

Riverside County DA
4075 Main St., 1st Fl.
Riverside, CA 92501

Santa Barbara County DA
1105 Santa Barbara St.
Santa Barbara, CA 93101

Sonoma County DA
600 Administrative Dr.
Santa Rosa, CA 95403

San Francisco City Attorney
1390 Market Street
San Francisco, CA 94102

San Jose City Attorney
151 W. Mission St.
San Jose, CA 95110

Yolo County D A
301 2nd Street
Woodland, CA 95695

El Dorado County DA
1360 Johnson Blvd. #105
South Lake Tahoe, CA 96150

Napa County DA
931 Parkway Mall
Napa, CA 94559

Inyo County DA
386 W. Line Street
Bishop, CA 93514

Lake County DA
255 N. Forbes St.
Lakeport, CA 95453

Solano County DA
321 Tuolumne Street
Valejo, CA 94590

Stanislaus County DA
300 Starr Avenue
Turlock, CA 95380

District Attorney
14227 Road 28
Madera, CA 93638

Santa Clara County DA
2645 Zanker Road
San Jose, CA 95134

Mariposa County DA
P.O. Box 748
Mariposa, CA 95338

Nevada County DA
201 Church Street, Suite 8
Nevada City, CA 95959

San Luis Obispo County DA
1050 Monterey Street, Rm. 450
San Luis Obispo, CA 93408

San Bernardino County DA
316 N. Mountain View Av.
San Bernardino, CA 92415

Contra Costa County DA
727 Court Street
Martinez, CA 94553

District Attorney
1430 Freedom Blvd.
Watsonville, CA 95076

Ventura County DA
800 South Victoria Avenue
Ventura, CA 95695

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

San Joaquin DA
225 W. Elm Street #C
Lodi, CA 95240

Mendocino County DA
700 S. Franklin St.
Fort Bragg, CA 94537

Los Angeles County DA
210 W. Temple Street, 18th Floor
Los Angeles, CA 90012

Butte County DA
25 County Center Drive
Oroville, CA 95695

Orange County District Attorney
700 Civic Center Dr. W., 2nd Fl.
Santa Ana, CA 92701

Sutter County DA
446 Second Street
Yuba City, CA 95991

Santa Cruz County DA
701 Ocean Street
Santa Cruz, CA 95061

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

Del Norte County DA
450 H Street
Crescent City, CA 95531

Mono County DA
P.O. Box 617
Bridgeport, CA 93517

Merced County DA
445 I Street
Los Banos CA 93635

Santa Clara DA
2645 Zanker Rd
San Jose CA 95134

Glenn County DA
540 W Sycamore St
Willows CA 95988

Riverside DA
82675 US Hwy 111 FL4
Indio CA 92201

Placer County DA
11562 B Avenue
Auburn, CA 95603

San Francisco County DA
880 Bryant Street
San Francisco, CA 94103

El Dorado DA
515 Main Street
Placerville, CA 95667

Monterey County DA
240 Church Street, #101
Salinas, CA 93901

San Luis Obispo County DA
1050 Monterey Street, Room 450
San Luis Obispo, CA 93408

Mendocino County DA
204 S Court Street
Alturas CA 96101

Solano County DA
321 Tuolumne St
Vallejo CA 94590

Kings County DA
1400 W Lacey Blvd
Hanford CA 93230

Santa Rosa D.A.
111 N Pythian Rd
Santa Rosa CA 95409

Fresno County DA
2220 Tulare Street, #1000
Fresno, CA 93721

Siskiyou County DA
P.O. Box 986
Yreka, CA 96097

Marin County DA
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

Plumas County DA
520 Main Street, Room 404
Quincy, CA 95971

Tulare County DA
221 South Mooney Blvd., Suite 224
Visalia, CA 93291

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: October 28, 2003
