



As You Sow

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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

December 23, 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.

AYS has 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' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends 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.

Alleged violator. The name of the violator covered by this notice is **BOTANICAL LABORATORIES INC. doing business as ZAND HERBAL FORMULAS ("Zand")**.

Chemicals. These violations involve exposures to lead, lead compounds, mercury and mercury compounds from the products listed below. On February 27, 1987, the State of California officially listed lead as a chemical known to cause reproductive toxicity. On October 1, 1992, the State of California officially listed lead and lead compounds as chemicals known to cause cancer. On July 1, 1990, the State of California officially listed mercury and mercury compounds as chemicals known to cause reproductive toxicity

Consumer products. The products that are the subject of this notice are herbs and herbal products, traditional patent medicines, bulk herbs, infusions, extracted powders, tea pills, traditional pills, patent formulas, bulk teas, liquid extracts and/or capsules that are imported, exported, manufactured, packaged, distributed, marketed and/or sold by Zand. The phrase "traditional patent medicines" above is used herein as defined by the California Department of



Health Services: “herbal and patent medicines consisting of single or multiple herbal ingredients, including botanical, mineral and animal products, formulated into tablets, pills, powders and liquids.” The products that are the subject of this notice include but are not limited to the following:

<u>Product</u>	<u>Chemical</u>
Allergy Season Formula	lead and lead compounds mercury and mercury compounds
Astragalus Formula	lead and lead compounds mercury and mercury compounds
Insure Herbal Formula	lead and lead compounds
Thistle Cleanse	lead and lead compounds
Active Herbal Formula	lead and lead compounds
Decongest Herbal	lead and lead compounds
PMS Herbal Formula	lead and lead compounds
Saw Palmetto Formula	mercury and mercury compounds

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of these products as recommended by the manufacturer. Accordingly, the consumer exposures have occurred and continue to occur primarily through the ingestion exposure route, but also may occur through inhalation and/or and dermal contact.

Duration of violations. Each of these ongoing violations has occurred on every day since December 23, 1999, and will continue every day until clear and reasonable warnings are provided or until these known toxic 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 is 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’ counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
294 Page Street
San Francisco, CA 94102
Tel. (415) 431-2970 Fax (415) 431-0410

Enclosure

CERTIFICATE OF MERIT

**(for As You Sow's Notice of Proposition 65 Violation on
BOTANICAL LABORATORIES INC. doing business as ZAND HERBAL FORMULAS)**

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that **BOTANICAL LABORATORIES INC. doing business as ZAND HERBAL FORMULAS** has violated Health & Safety Code §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 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.

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 December 23, 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:

Botanical Laboratories Inc. doing business as Zand Herbal Formulas
Jim Coyne, CEO
P.O. Box 1596
Ferndale, WA 98248

On December 23, 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
P.O. Box 944255
Sacramento, CA 94244-2550

On December 23, 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 December 23, 2003, at San Francisco, California.

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 04/18/03)

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE ARTHUR MAILLET
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE DEAN FLIPPO
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240 CHURCH ST #101
SALINAS CA 93902

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PO BOX 248
MARKLEEVILLE CA 96120

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COLUSA CA 95932

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LA COUNTY DISTRICT ATTORNEY
210 W TEMPLE ST STE 18000
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PLACERVILLE CA 95667

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MARIPOSA CA 95338

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419 FOURTH ST, FL 2
HOLLISTER CA 95023

THE HONORABLE ELIZABETH EGAN
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FRESNO CA 93721

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