

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

3 Park Plaza, Suite 2030

Irvine, CA 92614

Telephone: (949) 474 - 1022

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60 Day Notice of Intent to Sue Costco Wholesale Corp. formerly Costco Companies, Inc., and all of Its Operating Subsidiaries Under Health & Safety Code Sections 25249.5 and 25249.7

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 James D. Sinegal, the President of Costco Wholesale Corp. and all of its operating subsidiaries (hereinafter referred to collectively as "COSTCO"), 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.

Summary of Violation

This Notice is intended to inform COSTCO that it is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65"). Proposition 65 absolutely prohibits any business from contaminating the drinking water supplies of California. COSTCO is in violation of Proposition 65 because it has and is knowingly and intentionally threatening to "release chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water," at each of the facilities listed on Exhibit A hereto (hereinafter "the Facilities"), which are COSTCO branded gasoline stations with underground storage tank systems. Health & Safety Code Section 25249.5 and 25249.7. Proposition 65 provides that when a party, such as COSTCO, an entity with more than ten employees, has been and is knowingly and intentionally threatening to "release chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water," it is violating Health & Safety Code Section 25249.5 and may be enjoined from such conduct pursuant to Health & Safety Code Section 25249.7. The chemicals which COSTCO is threatening to release are benzene and toluene ("the Designated Chemicals"), which are contained in the gasoline and other refined petroleum products which COSTCO markets and stores within underground storage tank systems owned and/or operated by COSTCO located at the Facilities. In order to be in compliance with Proposition 65, COSTCO must effectively contain the Designated Chemicals in a UST system that is "product tight." For these purposes, "product tight" means that the operations must be impervious to the liquid and vapor of the substance ("the Designated Chemicals") that is or are contained or to be contained, in the underground storage tank systems so as to prevent seepage of the Designated Chemicals from the containment and in to or on to the ground where the Designated Chemicals will pass or probably will pass into any source of drinking water.

The Violation

COSTCO markets gasoline and other refined petroleum products (hereinafter referred to as "gasoline") to both consumers and retailers. Gasoline is marketed under the COSTCO trademark directly to motorists at COSTCO branded retail outlets in California and elsewhere. COSTCO owns and/or

operates numerous underground storage tank systems located at the Facilities that are used for the storage of gasoline offered for sale by COSTCO to the general public. The operation by COSTCO of the underground storage tank systems located at the Facilities, as well as the delivery, storage and dispensing of gasoline at the Facilities, as currently controlled and managed by COSTCO, poses a substantial threat of discharge of gasoline and other refined petroleum products “into water or onto or into land where such chemical passes or probably will pass into any source of drinking water”.

All water within the State, including groundwater, is the property of the people of the State of California. California Water Code §§ 102 and 104. As to all water, the Legislature of the State of California (“the Legislature”) has determined that “the people of the State have a primary interest in the conservation, control and utilization of the water resources of the state, and that the quality of all waters of the State shall be protected for use and enjoyment of the people of the state.” California Water Code § 13000. Under Proposition 65 a “source of drinking water” is not confined to existing drinking water supplies. Rather, a “[s]ource of drinking water means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses [and] also includes water identified in a regional board” water quality control plan as being suitable for domestic or municipal uses.” Health & Safety Code §25249.10 (d).

Gasoline contains a number of constituents and additives each of which separately, as well as in combination, present a significant risk to human health, safety and the environment. The gasoline marketed by COSTCO contains the chemicals Benzene and Toluene. Benzene is a clear, colorless, highly reactive flammable liquid derived from petroleum and contained in gasoline. Benzene is a chemical known by the State of California to cause cancer and has been listed as such pursuant to Proposition 65. Toluene is a colorless flammable liquid obtained from coal tar or petroleum and contained in motor vehicle fuels. Toluene is a chemical known by the State of California to cause reproductive toxicity and has been listed as such pursuant to Proposition 65. Hereinafter benzene and toluene are referred to as the “Designated Chemicals”.

The gasoline service station operations undertaken at the Facilities are not “product tight” (i.e. the operations are not impervious to the liquid and vapor of the substance that is contained, or is to be contained, in the underground storage tank systems so as to prevent seepage of the Designated Chemicals from the containment and into the ground) and thus are threatening to cause a discharge of Designated Chemicals. The following are the components of the gasoline service station operations that pose a threat of discharge of Designated Chemicals: the underground tank(s) and underground storage tank system(s); the pipes used in connection with the storage of the Designated Chemicals in the USTs, including connecting pipes, vapor recovery lines, vent lines and associated fittings as well as the associated secondary containment systems; the drainage systems which collect surface water run off from the petroleum dispensing and delivery areas; secondary containment and spill control systems, including but not limited to secondary containment for the underground tank system, pipe, connecting pipe, dispensers and dispenser piping and the petroleum delivery area, as well as for the drainage systems which collected surface water run off from the dispensing and delivery area.

At the Facilities, the gasoline containing Designated Chemicals is stored in one or more underground storage tank(s) and an underground storage tank system (hereinafter referred to collectively as “the USTs”), which includes, but is not limited to, one or more tanks, including the piping connected thereto. The pipes used in connection with the storage of the Designated Chemicals in the USTs includes but is not limited to valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with the pumping units, and metering and delivery stations and fabricated assemblies therein. The pipes used in connection with the storage of the Designated Chemicals in the USTs include

“connecting piping”, such as pipe, valves elbows, joints, flanges and flexible connectors through which the Designated Chemicals flow. The UST system also includes the vapor recovery lines, vent lines and associated fittings as well as the associated secondary containment systems, the drainage systems which collect surface water run off from the petroleum dispensing and delivery areas. Finally, the UST systems include secondary containment and spill control systems including but not limited to secondary containment for the underground tank system, leak detection sensors, pipe, connecting pipe, dispensers and dispenser piping and the petroleum delivery area, as well as for the drainage systems which collect surface water run off from the dispensing and delivery area.

Investigations and reports conducted and prepared for the California State Water Resources Control Board (“SWRCB”)(with the assistance and input of the Environmental Health Divisions and Departments for a number of California counties and Regional Water Quality Control Boards as well as various members of the oil industry), the California Environmental Protection Agency (“CEPA”), Department of Toxic Substances Control (“DTSC”), the Office of Pollution Prevention and Technology Department, as well as testing undertaken by the various city fire departments where the Facilities are located, demonstrate that discharges of petroleum products including the Designated Chemicals occur, and are expected to occur, from the gasoline service station operations at the Facilities on a regular and ongoing basis. The CWRQB Report concluded that 61% of all USTs in operation, at any given time, are discharging/releasing gasoline and other refined petroleum products including the Designated Chemicals into or on to the land. The CWRQB Report also found that the percentage of USTs found to be discharging/releasing gasoline and other refined petroleum products including the Designated Chemicals into or on to the land was not materially different whether the underground storage tank was single or double-walled. COSTCO, as well as the oil industry in general, know of these facts.

Because COSTCO, as well as the oil industry in general, is aware of these facts, COSTCO, along with the oil industry, have in place leak detection sensor systems. The fact that COSTCO uses such a system is an acknowledgement by COSTCO that it knows that the USTs it operates are likely to leak at any given time. The sensors do not inform COSTCO that the USTs are about to release product, only, at best that the USTs have leaked and/or are leaking product, including the Designated Chemicals. Further, the CWRQB Report noted that the leak detection systems in use by the industry only record a discharge from the USTs where the leak is **more** than 0.1 gallons/hour (2.4 gallons a day, or 876 gallons a year per sensor). That is, even under this extremely lax standard, COSTCO does not even record a discharge until an individual tank sensor (of which there are usually more than one in any UST) records a discharge of **greater than 876 gallons a year**. Naturally, the level of non-recorded discharge can be much higher for any individual UST since there may be four or more sensors in any given system **each of which** is failing to record a discharge of slightly less than 876 gallons a year. Finally, a report prepared by the SWRCB Underground Storage Tank Program entitled “Field Evaluation of Underground Storage Tank System Leak Detection Sensors” expressly found that the leak detection sensors systems used by the oil industry, including COSTCO, are not reliable where, as the report noted, the sensors have not been properly installed, programmed, maintained and operated, or when the secondary containment in which they are installed are not working properly. The SWRCB, in analyzing the use of leak detection sensor systems by the oil industry (including COSTCO), specifically noted a number of significant problems which greatly lessened the utility of such sensors including the following: “sensors were raised from the low point of the secondary containment, sensors fail[ed] to alarm when tested, and sensors fail[ed] to shut down the turbine pump in the event of an alarm.” The report went on to note that almost a third of the secondary containment systems had water or product in one or more areas, a fact which would seriously impact the operational effectiveness of the sensor detection systems. Under these circumstances, the sensors will simply not operate effectively, even at the lax warning level used by COSTCO. Further, since such sensors, even when working properly, do not prevent leaks but, at best, simply record them, they are ineffective to avoid liability under Health & Safety Code sections 25249.5 and 25249.7. In order to be in compliance with Proposition 65 COSTCO must therefore effectively contain the Designated Chemicals in a UST system which is “product tight”, as defined above.

The gasoline service operations of COSTCO therefore pose and threaten to pose an imminent threat to human health or safety or the environment and therefore create a substantial probability of harm since there is a substantial likelihood that the majority of the USTs operated and maintained by COSTCO are either currently or likely will shortly discharge/release gasoline and other refined petroleum products into or on to the land. Such a discharge/release of the Designated Chemicals from the USTs at the Facilities "probably will pass into [a] source of drinking water." It is clear therefore that for the entire period of time that COSTCO has owned and/or controlled the USTs located at the Facilities, COSTCO has been and continues to be in violation of Proposition 65. Given that the maximum prior period of potential liability pursuant to Proposition 65, Business & Professions Code §17200 and Fish & Game Code §5650 (which are the operative statutes pursuant to which a complaint will be filed against COSTCO) is four years, this Notice is intended to inform COSTCO that it has been in violation of Proposition 65 from the time period from four years prior to the date of this notice and continues to be in violation, for every day upon which COSTCO owns and/or controls the underground storage tank systems for any Facility listed on Exhibit A.

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

Dated: March 17, 2004

By:

COSTCO WHOLESALE STORES IN CALIFORNIA THAT SELL RETAIL GAS

Alhambra Store 2207 W. Commonwealth Alhambra, CA	Richmond Store 4801 Central Ave. Richmond, CA
Azusa Store 1220 W. Foothill Blvd. Azusa, CA	South Sacramento Store 7981 E. Stockton Blvd. Sacramento, CA
Bakersfield Store 3800 Rosedale Highway Bakersfield, CA	San Bernardino Store 1099 E. Hospitality Lane San Bernardino, CA
Burbank Store 1051 Burbank Blvd. Burbank, CA	San Diego Store 4605 Morena Blvd. San Diego, CA
Cal Expo Store 1600 Expo Pkwy. Sacramento, CA	San Diego (SE) Store 650 Gateway Center Drive San Diego, CA
Carlsbad Store 951 Palomar Airport Road Carlsbad, CA	San Leandro Store 1900 Davis Street San Leandro, CA
Chino Hills Store 13111 Peyton Drive Chino Hills, CA	Santa Clara Store 1601 Coleman Ave. Santa Clara, CA
Chula Vista Store 1144 Broadway Chula Vista, CA	Santa Rosa Store 1900 Santa Rosa Ave. Santa Rosa, CA
City of Industry Store 17550 Castleton Street City of Industry, CA	Santee Store 101 Town Center Pkwy Santee, CA
Clovis Store 380 W. Ashlan Ave. Clovis, CA	Simi Valley Store 2660 Park Center Drive Simi Valley, CA
Coachella Valley Store 72-800 Dinah Shore Drive Coachella Valley, CA	Sunnyvale Store 150 Lawrence Station Road Sunnyvale, CA
Concord Store 2400 Monument Blvd. Concord, CA	Temecula Store 26610 Ynez Road Temecula, CA
Corona Store 480 McKinley Street Corona, CA	Torrance Store 2751 Skypark Drive Torrance, CA
Culver City Store 13463 Washington Blvd. Culver City, CA	Vallejo Store 198 Plaza Drive Vallejo, CA
El Camino Store 1600 El Camino Real South San Francisco, CA	Van Nuys Store 6100 Sepulveda Blvd. Van Nuys, CA
El Centro Store 2030 N. Imperial Ave. El Centro, CA	Victorville Store 14601 Valley Center Drive Victorville, CA
Fairfield Store 5101 Business Center Drive Fairfield, CA	Vista Store 1755 Hacienda Drive Vista, CA

Garden Grove Store 11000 Garden Grove Blvd. Garden Grove, CA	Livermore Store 2800 Independence Drive Livermore, CA
Hawthorne Store 14501 Hindry Ave. Hawthorne, CA	Merced Store 1445 R Street Merced, CA
Irvine Store 115 Technology Drive West Irvine, CA	Mission Valley Store 2345 Fenton Pkwy. Mission Valley, CA
Laguna Niguel Marketplace Store 27220 Heather Ridge Road Laguna Niguel, CA	Modesto Store 3801 Pelandale Ave. Modesto, CA
Montclair Store 9404 Central Ave. Montclair, CA	Rancho Cordova 11260 White Rock Road Rancho Cordova, CA
Moreno Valley Store 12700 Day Street Moreno Valley, CA	Oxnard Store 2001 E. Ventura Oxnard, CA

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*).

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: March 17, 2004
Place of Mailing: Irvine, California

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

James D. Sinegal, President COSTCO WHOLESALE CORP 999 Lake Drive Issaquah, WA 98027	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
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And all entities listed on Attachment to Proof of Service.

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

Dated: March 17, 2004

Attachment to Proof of Service - Additional Entities Noticed.

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

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

San Diego County DA
330 Broadway
San Diego, CA 92101

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

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

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

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

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

Sacramento County DA
P.O. Box 749
Sacramento, CA 95812

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

Humboldt County DA
825 5th Street
Eureka, CA 95501

Shasta County District Attorney
1525 Court Street
Redding, CA 96001-1632

San Mateo DA
1050 Mission Road
South San Francisco, CA 94080

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

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

Ventura County DA
800 South Victoria Avenue
Ventura, CA 95695

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

Contra Costa County DA
727 Court Street
Martinez, CA 94553

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

District Attorney
1430 Freedom Blvd.
Watsonville, CA 95076

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

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

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

Yuba County DA
215 5th Street
Marysville, CA 95901

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

Merced County DA
445 I Street
Los Banos CA 93635

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

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

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

Solano County DA
321 Tuolumne Street
Valejo, CA 94590

Butte County DA
25 County Center Drive
Oroville, CA 95695

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

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

Kings County DA
1400 W Lacey Blvd
Hanford CA 93230

Mendocino County DA
204 S Court Street
Alturas CA 96101

Santa Clara DA
2645 Zanker Rd
San Jose CA 95134

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

Lake County District Atty
6850 Old Highway 53
Clearlake CA 95422

Solano County DA
321 Tuolumne St
Valejo CA 94590

Glenn County DA
540 W Sycamore St
Willows CA 95988

Stanislaus DA
300 Starr Ave
Turlock CA 95380

Yolo County DA
301 2nd Street
Woodland CA 95695

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

Dated: March 17, 2004
