

CONSUMER DEFENSE GROUP ACTION

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Sixty Day Notice of Intent to Sue Cannery Hamilton Properties LLC For Violations of Health & Safety Code Sections 25249.5 and 25249.6

This Sixty Day Notice of Intent to Sue Under Health & Safety Code Section 25249.5 and 25249.6 (“the Notice”) is given by the Consumer Defense Group Action (“the Noticing Party”) to Cannery Hamilton Properties, LLC, its members and Affiliates of the LLC and its members (collectively, “the Violator”), as well as the entities on the attached proof of service. The Noticing Party must be contacted through its legal representative: Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice constitutes notification that the Violator has violated The Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter “Proposition 65”) and that the Noticing Party intends to file suit after the expiration of sixty days from the date of this Notice.

Summary of Violations

Proposition 65 provides that when a party, such as the Violator, has been and is knowingly and intentionally releasing or 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 in violation of Health & Safety Code Section 25249.5. For such a violation, the Violator is liable to be enjoined from such conduct and “shall” also be liable for civil penalties. Proposition 65 also provides that when a party, such as the Violator, has been and is knowingly and intentionally exposing the public and/or its employees to chemicals designated by the State of California to cause cancer and/or reproductive toxicity (“the Designated Chemicals”) it has violated Health & Safety Code Section 25249.6 unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons. For such a violation, the Violator is liable to be enjoined from such conduct and “shall” also be liable for civil penalties.

The Violator has violated, threatens to violate and continues to violate both sections of the Health & Safety Code at the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646, where it is responsible for the clean up of that site. The Violator formerly contaminated that site by the disposal or treatment of hazardous substances, including Designated Chemicals. Further, the Violator has been and presently is, by reason of that conduct, under a duty to prevent the actual and threatened “release” of Designated Chemicals from the site and “exposures” to Designated Chemicals affecting both onsite and offsite persons.

The Factual Basis for this Notice

The Violator owns the Ascon Landfill Site located at 21641 Magnolia Street, Huntington Beach, California 92646 (hereinafter, "the Site"). The Violator, as the owner, is not only responsible for the current dangerous condition of the Site but also under a current duty under Proposition 65 to ensure that the Site is operated in such a manner as to ensure (i) that there are no releases of any Designated Chemicals at or from the Site and (ii) to inform the public that proximity to the Site will result in exposure to Designated Chemicals. The Violator is currently not fulfilling those duties.

As the owner, the Violator is under a duty to prevent on an ongoing basis the actual and threatened "release" of Designated Chemicals from the Site and "exposures" to Designated Chemicals affecting both onsite and offsite persons. According to the Department of Toxic Substances Control ("DTSC"), the actual and threatened "release" of Designated Chemicals from the Site will continue until the Designated Chemicals are effectively contained.. Until the chemicals, including Designated Chemicals (as identified herein) at the Site are effectively contained the Violator will continue to be in violation of California Health & Safety Code § 25249.5, and subject to the remedy set forth in California Health & Safety Code § 25249.7.

As the owner, the Violator has also violated California Health & Safety Code § 25249.6 by failing to provide a clear and reasonable warning at and around the Site to warn employees, visitors and local residents that they may be exposed to chemicals known to the State of California to cause cancer and/or reproductive toxicity (referred to collectively hereinafter as the "Designated Chemicals"). Such exposure will occur by contact by any or all of those persons with those chemicals at or near the Facility.

Further, the Violator by such conduct has also violated California Fish & Game Code 5660 by "permit[ting] to pass into . . . , or plac[ing] where it can pass into the waters of this state any of the following: (a) Any petroleum . . . or residuary product of petroleum, or carbonaceous material or substance, or (b) Any refuse, liquid or solid, from any refinery . . . or any factory of any kind . . . (c) Any substance or material deleterious to fish, plant life or bird life."

The Site consists of approximately 38 acres, and is bounded by Hamilton Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the Huntington Beach flood control channel and an industrial area on the west. It is identified by Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial, recreational and residential area; a community park (Edison Community Park) and a high school (Edison High School) are located directly across the street from the Site.

The Site consists of historic disposal areas, comprising former disposal pits, both covered and uncovered, current "lagoons" and former "lagoon" areas now buried. At present, the Site consists of five waste lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit (Pit F), containing styrene waste and other waste, located in the southeast corner of the Site. There is also at the Site an abandoned oil well which has been poorly maintained and

which exploded on March 18, 2004 spraying chemicals, including benzene and methane (a Designated Chemical) over hundreds of homes within a half-mile radius of the Site and causing hundreds of thousands of dollars of property damage and resulting in numerous complaints by local residents of breathing and irritation problems. The full effects of this actual release are not known at this time.

Although the Site is fenced, the California Environmental Protection Agency (“CEPA”) and DTSC have noted that there is evidence that trespassers have obtained access to the Site on a number of occasions. Investigators for the Noticing Party have noted, between December 12, 2002 and June 4, 2003, that there are beaten pathways leading directly from the various breaks in the chain link fence surrounding the Site obviously suggesting that the Site is regularly “visited” by trespassers.

A Baseline Health Risk Assessment (“BHRA”), which evaluated the potential health impacts associated with human exposure to chemicals released from the waste pits and lagoons at the Site, has specifically found that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies. These potential risks were found to be associated with the volatilization and subsequent inhalation of volatile organic compounds and oral and dermal contact with contaminants in the soil.

Metals detected at the Site, greater than typical background concentrations, include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds, chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and cadmium compounds are Designated Chemicals known to the State of California to cause cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury compounds are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from many of these chemicals may occur primarily by direct contact with soils, ingestion, and dermal exposure.

Pesticides detected at the Site include lindane and chlordane. Lindane and lindane compounds and chlordane are Designated Chemicals known to the State of California to cause cancer. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Semi-volatile organic compounds (“SVOCS”) detected at the Site include benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene, naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated Chemical known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Volatile organic compounds (“VOCS”) detected at the Site include benzene, toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and dichloroethane are Designated Chemicals known to the State of California to cause cancer.

Benzene and toluene are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

The route of exposure for the chemicals noted herein is as follows: (i) volatile waste components present in the lagoons and Pit F may volatilize from the surface and disperse in the atmosphere which may cause exposure to people both onsite and offsite via inhalation; (ii) disturbance of the lagoons or pit will result in the release of vapors or hazardous particulates into the atmosphere where persons may inhale or ingest such substances; (iii) though the Site is fenced, there is evidence that not only that trespassers are regularly onsite, but that, as the Violator knows, for some time during the summer of 2003, a homeless person was living at the Site. There is therefore a potential for direct contact with contaminated soils and accumulated contaminated runoff by persons either legally at the Site (such as investigators or site workers) or by trespassers; (iv) the lagoons have previously overflowed during heavy rains causing hundreds of gallons of overflow to run down the streets offsite. Rainwater runoff which has come into contact with contaminated soils on the Site is likely to lead to offsite contamination by direct contact with persons in the area; and, (v) there is an ongoing potential for direct contact by local residents with Designated Chemicals by explosive discharge of such chemicals from the Site. As noted above, on March 18, 2004 an oil well at the Site exploded resulting in an actual release of Designated Chemicals on local residents, their homes, the Edison High School and on everyone within a half mile of the Site.

According to the DTSC the chemicals at the Site, including the Designated Chemicals, have been and are continuing to be released into the soil and groundwater beneath and adjacent to the Site. The DTSC has also noted in its files relating to the Site that exposure to impacted groundwater may occur "if groundwater is pumped for use or if discharged into a surface water body" and that the potential thus exists for "Site contamination to impact drinking water supplies." This threat will exist until the waste materials at the Site are effectively contained. Further, until effectively contained there exists the potential for future release or discharge of the waste materials (including Designated Chemicals) from the Site to the wetlands through the unlined Huntington Beach flood control channel that currently passes the westerly edge of the Site and flows through the Talbert Marsh wetland.

The DTSC has specifically found that at the Site there have "releases" and that there is presently a "threatened release" of the Designated Chemicals noted herein, as the term "release" is defined by Health & Safety Code section 25320 ["Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment"]. Moreover, the DTSC has specifically found that the actual and threatened release of the Designated Chemicals noted herein presents an imminent and substantial endangerment to the public health or welfare.

Based on all of the facts known to the Noticing Party at this time, the Violator has violated Health & Safety Code section 25249.5 since it has, "in the course of doing business", "knowingly and intentionally released 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, notwithstanding any other provision or authorization

of law except as provided in Section 25249.9". It has done so by failing to effectively contain at the Site the Designated Chemicals it disposed of at the Site and for which it is currently responsible.

At the expiry of the statutory notice period, the Noticing Party will seek an injunction requiring that the Violator immediately take effective action to safely contain the Designated Chemicals at the Site so as to prevent further actual or potential releases, until such time as the clean up required by the Consent Order is completed pursuant to Health & Safety Code section 25249.7. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code section 25249.5.

The Violator has also violated Health & Safety Code section 25249.6 since it has "in the course of doing business" "knowingly and intentionally expose[ed] [persons] to a chemical known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual." Investigators for the Noticing Party visited the Site on December 12, 2002, January 23, 2003, March 15, 2003 and again on June 4, 2003. They examined the entire perimeter fencing of the Site and saw no clear and reasonable warning sign even purporting to comply with the requirements of Health & Safety Code section 25249.6, nor the regulations relating to that code section. Further, agents of the Noticing Party living in Huntington Beach know that there has been no attempt by the Violator to provide a clear and reasonable warning to the local residents living in the area, the children and personnel (teachers, administrators, security and other personnel).at the high school or the users of the local park located next to the Site that physical proximity to the Site may expose them to Designated Chemicals. Significantly, at the time of the March 18, 2004 explosive release from the Site, local newspapers quoted many local residents of having been unaware of the Site, and especially of the dangerous nature of the conditions at the Site and the types of chemicals located therein. The Noticing Party will also therefore seek an injunction requiring that the Violator immediately take effective action to inform all likely affected persons of the likely exposures to Designated Chemicals in a clear and reasonable manner. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code Section 25249.6.

Both as to violations of Health & Safety Code Section 25249.5 and Health & Safety Code Section 25249.6 the Noticing Party will seek civil penalties for the maximum period allowed by law, which the Noticing Party believes is one year prior to the date of this Notice. With this Notice the Noticing Party has also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

If you have any questions or comments, please do not hesitate to contact the undersigned at your earliest convenience.

Dated: March 31, 2004

By:

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.) Sixty Day Notice of Intent to Sue Under Health & Safety Code Sections 24249.5 and 25249.6;
- 2.) Certificate of Merit;
- 3.) Copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" (*sent only to Violators*)
- 4.) Supporting Documents (*sent only 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: March 31, 2004

Place of Mailing: Irvine, California

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

Managers and/or Members of Cannery Hamilton Properties LLC
(As identified by California Secretary of State Records):

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San Ramon, CA 94583

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Ashford
Houston, TX 77079

Agent for Service of Process:

Diane Smith, Esq.
Agent for Service of Process
Cannery Hamilton Properties LLC
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Irvine, CA 92612

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Office of Proposition 65 Enforcement
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Oakland, CA 94612-0550

Orange County District Attorney
401 Civic Center Dr. W.
Santa Ana, CA 92701

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

Dated: March 31, 2004
