

VIA U.S. MAIL

60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6

Environmental World Watch, Inc. [Noticing Party] provides this notice, whose contact for the purpose of this notice is Reuben Yeroushalmi, Esq., Yeroushalmi & Associates, 3700 Wilshire Blvd., Ste. 480, Los Angeles, CA 90010, 213-382-3183. Environmental World Watch believes that **Polar Air Cargo/Atlas Express** (“Violator”) has violated The Safe Drinking Water and Toxic Enforcement Act (Health & Saf. Code, § 25249.5, et seq.) (“Proposition 65”) during the period referenced below.

I. BACKGROUND AND ALLEGATIONS

Violator has exposed persons to jet engine exhaust, which contains the chemicals listed below and designated to cause cancer or reproductive toxicity (“Covered Chemicals”), pursuant to California Code of Regulations, title 22, section 12000, without first giving a clear and reasonable warning of such to the exposed persons pursuant to Proposition 65.

PERIOD OF VIOLATION

From: January 14, 2001 Through January 14, 2005 and continuing thereafter.

Environmental Exposures

During the period referenced above, Violator exposed persons to jet engine exhaust. The exposures occurred when Violator landed its airplanes, during the process of refueling, while Violator maintained the airplanes, while cargo was loaded on or off the airplanes, while the airplanes taxied, and during take-off, and any other time while Violator operated its airplanes on or near the ground. Exposed persons included passengers of other aircraft, children and pregnant women, taxi and shuttle drivers, catering personnel and food service delivery personnel, police and security personnel, airport employees and ground crews, neighborhood residents, and passers-by. Violator exposed these persons to the Covered Chemicals contained in jet engine exhaust without first giving a clear and reasonable warning of such pursuant to Proposition 65. The avenues of exposures included inhalation caused by the exposed persons inhaling and breathing in the ambient air containing jet engine exhaust while traversing runway areas and areas in and around the terminal, and while being in or near the airports listed in Exhibit A. Dermal exposure of the Covered Chemicals in the jet engine exhaust occurred because the particulate matter and other chemical residues in solid and semi gaseous form, from the aircraft exhaust, deposited on exposed surfaces near the runways where the aircraft operated so that affected persons touched these surfaces and absorbed the chemicals through their skin. Exposures occurred at each of the airports listed in Exhibit A. Some of the exposures for which a warning is allegedly required occurred beyond the property owned or controlled by the Violator. Specifically, alleged violations occurred within a two mile radius of the Violator’s terminals at the airports listed in Exhibit A.

Occupational Exposures

During the period referenced above, Violator exposed employees to jet engine exhaust. The exposures occurred when Violator landed its airplanes, during the process of refueling, while the airplanes received maintenance, while cargo was loaded onto the airplanes, while the airplanes taxied, and during take-off, or any other time while Violator operated its airplanes on or near the ground. The exposed employees include maintenance workers, pilots, cleaning personnel, employees who loaded cargo onto Violator’s airplanes, warehouse workers, and all other employees working at the terminal. Violator exposed these employees to the Covered Chemicals contained in jet engine exhaust without first giving clear and reasonable warning of such pursuant to Proposition 65. The sources of exposures included inhalation caused by the exposed employees breathing in the ambient air containing jet engine exhaust while

traversing runway areas, ramps, jet bridges, and all other areas at the airports listed in Exhibit A. Dermal exposure of the Covered Chemicals in the jet engine exhaust occurred because the particulate matter and other chemical residues in solid and semi gaseous form, from the aircraft exhaust, deposited on exposed surfaces near the runways where the aircraft operated so that affected persons touched these surfaces and absorbed the chemicals through their skin.

This notice alleges the violation of Proposition 65 concerning 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 (a.) the conduct of manufacturers occurring outside the State of California; and (b.) employers with less than 10 employees. The approval also provides that an employer may use any means of compliance in the general hazard communication requirements to comply with Proposition 65.* It also requires that supplemental enforcement be 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 California Attorney General.

For each such type and means of exposure, Violator has exposed the above referenced persons to:

CARCINOGENS



Benz[a]anthracene	Chrysene	Benzo[a]pyrene	Indeno[1,2,3-cd]pyrene
Formaldehyde (gas)	Acetaldehyde	Naphthalene	Benzene
Ethylbenzene	Benzo[b]fluoranthene	Benzo[k]fluoranthene	Dibenz[a,h]anthracene
1,3-Butadiene			

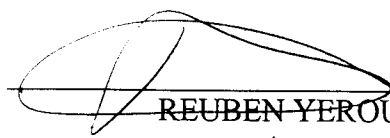
REPRODUCTIVE TOXINS

Toluene	Carbon Monoxide	1,3-Butadiene	Benzene
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Proposition 65 requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, **Environmental World Watch** gives notice of the alleged violations to Violator and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, **Environmental World Watch** may file suit. This notice covers all violations of Proposition 65 that **Environmental World Watch** currently knows of from information now available to it. The copy of this notice submitted to Violators includes a copy of *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary*.

Dated: 1/13/05

By:



REUBEN YEROUSHALMI

Attorney for
Environmental World Watch, Inc.

* One may refer to the Hazard Communication Standard (HCS) requirements.

Appendix 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.

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 toxicants"), 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 which 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.

§14000. Chemicals Required by State or Federal Law to

Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8(c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) has violated 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 at least one person with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is 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 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 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.

Dated: 1-14-05

By: 
REUBEN YEROUSHALMI

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 mail occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
 - 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
 - 3) Certificate of Merit: Health and Safety Code Section 25249.7(d) *Attorney General Copy (only sent to Attorney General)*
 - 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing a true copy of the same, along with an unsigned copy of this declaration, in a sealed envelope addressed to each person shown below and depositing the envelope in the United States mail with the postage fully prepaid.
- Place of Mailing: Los Angeles, CA

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

Polar Air Cargo/Atlas Express
Jeffrey H. Erickson/CEO
100 Ocean Gate 15th Floor
Long Beach, CA 90802

Polar Air Cargo/Atlas Express
Jeffrey H. Erickson/CEO
2000 Westchester Ave.
Purchase, NY 10577

NAME AND ADDRESS OF EACH PUBLIC PROSECUTOR TO WHOM DOCUMENTS WERE MAILED:

Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550
San Mateo County District Attorney 400 County Center Redwood City, CA 94063	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103

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

Dated: 1/14/05

By: 
Silva Albaryan

EXHIBIT A

Los Angeles International Airport
1 World Way
Los Angeles, CA 90045-5830
Airport Latitude: 37-37-08.3000N ESTIMATED
Airport Longitude: 122-22-29.6000W