



# As You Sow

Tel: (415) 391-3212

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

February 25, 2005

## 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** ("BLI/Zand").

**Chemicals.** These violations involve exposures to lead, lead compounds, mercury, mercury compounds, arsenic, cadmium and cadmium 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. On May 1, 1997, the State of California officially listed arsenic (inorganic oxides) as a chemical known to cause reproductive toxicity. On February 27, 1987, the State of California officially listed cadmium and cadmium compounds as chemicals known to cause cancer. On May 1, 1997, the State of California officially listed cadmium as a chemical 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,



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**Exhibit A Final  
Botanical Laboratories, Inc.  
Zand Solid Dose Products  
February 14, 2005**

ZAND Astragalus Formula Tablets  
ZAND Decongest Herbal Capsules  
ZAND PMS Herbal Formula Capsules  
ZAND Cleansing Fiber Capsules and Powder  
ZAND Allergy Season Formula Capsules  
ZAND Insure Herbal Tablets  
ZAND Active Herbal Capsules  
ZAND Saw Palmetto Formula Capsules  
ZAND Cleansing Laxative Tablets  
ZAND Thistle Cleanse Capsules

**CERTIFICATE OF MERIT**

(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 the party in the notice has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

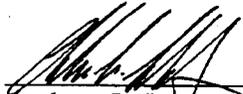
2. I am an attorney for the noticing party.

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.

Dated: February 25, 2005

  
\_\_\_\_\_  
Andrew L. Packard

Attachments (for Attorney General copy only)

## 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 February 25, 2005, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- 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  
1441 West Smith Road  
Ferndale, WA 98248

On February 25, 2005, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- 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:

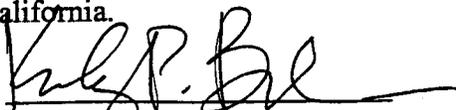
Attn: Craig Thompson, Deputy Attorney General  
California Department of Justice  
P.O. Box 944255  
Sacramento, CA 94244-2550

On February 25, 2005, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- 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 February 25, 2005, at San Francisco, California.

  
Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCIES SERVICE LIST (updated 03/25/04)

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

THE HONORABLE WILLIAM RICHMOND  
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PO BOX 248  
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708 COURT ST STE 202  
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25 COUNTY CTR DR  
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THE HONORABLE JEFFREY TUTTLE  
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PO BOX 670  
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515 MAIN ST  
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PO DRAWER D  
INDEPENDENCE CA 93526

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210 W TEMPLE ST STE 18000  
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THE HONORABLE PAULA FRESCHI KAMENA  
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SAN RAFAEL CA 94903

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MARIPOSA CA 95338

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MENDOCINO COUNTY DISTRICT ATTORNEY  
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UKIAH CA 95482

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MERCED CA 95340

THE HONORABLE JORDAN FUNK  
MODOC COUNTY DISTRICT ATTORNEY  
204 S COURT ST RM 202  
ALTURAS CA 96101-4020

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MONO COUNTY DISTRICT ATTORNEY  
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MONTEREY COUNTY DISTRICT ATTORNEY  
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THE HONORABLE GROVER C TRASK II  
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