

## NOTICE OF VIOLATION

### California Safe Drinking Water and Toxic Enforcement Act

#### Arsenic from Drinking Water Filtration Systems and Replacement Filters

October 20, 2006

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health, 528 61<sup>st</sup> Street, Suite A, Oakland, CA 94609, (510) 594-9864. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Michael Green is the Executive Director of and a responsible individual within CEH.

#### Description of Violation:

- The name and address of the violator is: EcoWater Systems, LLC; 1890 Woodlane Drive, Woodbury, Minnesota 55125-2913.
- The violations have been occurring since at least October 20, 2003 and are continuing to this day.
- This Notice of Violation covers both the "discharge provision" of Proposition 65 and the "warning provision" of Proposition 65, which are found at California Health and Safety Code Sections 25249.5 and 25249.6 respectively.
- The name of the listed chemical involved in these violations is Arsenic. Arsenic, as used herein, refers to arsenic (inorganic arsenic compounds) and arsenic (inorganic arsenic oxides). Discharges of Arsenic and exposures to Arsenic occur from use of the products identified in this notice.
- The specific types of products causing these violations are drinking water filtration systems utilizing activated carbon filters and replacement filters used in such systems. A non-exclusive example of the products subject to this Notice of Violation is EcoWater's Kenmore Premium Taste and Odor Filter Cartridge, Mfr. Model #34373. The Arsenic is contained in the activated carbon filters of these products.
- Discharge Violations: Use of these products results in discharges or releases of Arsenic into a source of drinking water. Specifically, the drinking water filtration systems that are the subject of this Notice of Violation contain sufficient quantities of Arsenic such that Arsenic will leach from the filtration systems into water that passes through them. Arsenic is contained, for example, in the activated carbon used as a filter in these systems. As the products connect to the plumbing system of homes and workplaces before the faucet, they are sources of drinking water under Proposition 65. The water in these filtration systems is a source of drinking water. These discharges occur in homes, workplaces and everywhere else throughout California where these filtration systems are used.
- Warning Violations: Use of the products identified in this notice also results in

human exposures to Arsenic. The filtration systems are constructed of materials that contain Arsenic. Arsenic is contained in the activated carbon used as a filter in these systems. The route of exposure for the violations is ingestion of water discharged through the filters. These exposures occur in homes, workplaces and everywhere else throughout California where these filtration systems are used. No clear and reasonable warning is provided with these products regarding the carcinogenic or reproductive hazards of Arsenic.

Resolution of Noticed Claims:

- Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit unless EcoWater Systems, LLC agrees in a binding written instrument to remedy the violations alleged herein by recall of products already sold, reformulation of products in the future, and to pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If EcoWater Systems, LLC is interested in resolving this dispute without resort to expensive and time-consuming litigation, please contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Please direct any inquiries regarding this notice to counsel for CEH: Eric Somers, Lexington Law Group, LLP, 1627 Irving Street, San Francisco, CA 94122, (415) 759-4111, [esomers@lexlawgroup.com](mailto:esomers@lexlawgroup.com).

## CERTIFICATE OF MERIT

### **Health & Safety Code §25249.7(d)**

I, Howard Hirsch, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the parties identified in the notice have violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, LLP, and I represent the noticing party, the Center for Environmental Health (“CEH”).

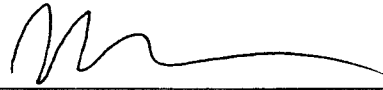
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies or other data regarding the exposures to the listed chemical that is the subject of the action.

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 plaintiff’s case can be established and the information did not prove that the alleged violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the 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 & 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: October 20, 2006

A handwritten signature in black ink, appearing to be 'H. Hirsch', written over a horizontal line.

Howard Hirsch  
Attorney for CENTER FOR  
ENVIRONMENTAL HEALTH

## PROOF OF SERVICE

I declare that:

I am employed in San Francisco County, California. I am over the age of 18 years and not a party to the within cause; my business address is 1627 Irving Street, San Francisco, California 94122.

On October 20, 2006, I served true copies of the following documents:

**NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;**

**CERTIFICATE OF MERIT;** and

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an asterisks).

I placed a true copy of these papers in an envelope addressed to:

*See Attached Service List.*

I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I placed the envelope containing the above-mentioned documents for collection and mailing on October 20, 2006, following the ordinary business practice.

I declare under penalty of perjury that the foregoing is true and correct, and that this declaration was executed on October 20, 2006, at San Francisco, California.

Signed:

  
Lindsay Pleece

## SERVICE LIST

District Attorney of Alameda County  
1225 Fallon Street, Room 900  
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District Attorney of Colusa County  
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