

NOTICE OF VIOLATION OF PROPOSITION 65

60-Day Notice of Intent to Sue Under California's Safe Drinking Water and Toxic Enforcement Act (Health & Safety Code §25249.5 *et. seq.*) (Proposition 65)

December 8, 2006

This Notice of Violation constitutes notice that **Transbay Container Terminal, Inc. ("Transbay")** has violated and continues to violate California's Safe Drinking Water and Toxic Enforcement Act of 1986 (California Health and Safety Code §25249.5, *et. seq.*) (commonly referred to as "Proposition 65"). Specifically, the Environmental Law Foundation ("ELF") alleges that Transbay has violated and continues to violate the warning requirement at § 25249.6 of the California Health and Safety Code, which provides, "No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual"

This Notice of Violation is provided by ELF, a California non-profit organization dedicated to the preservation and enhancement of human health and the environment. ELF has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and for protecting the public from harmful substances. Any inquiries regarding this Notice of Violation may be directed to James Wheaton, President of ELF, 1736 Franklin Street, 9th Floor, Oakland, CA 94612, (510) 208-4555. Inquiries may also be directed to Christopher P. Ridout, Rose, Klein & Marias LLP, 801 South Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645, (213) 626-0571.

This Notice of Violation is provided pursuant to, and in compliance with, California Health and Safety Code § 25249.7(d). Proposition 65 requires that notice of intent to sue be given to a violator 60 days before the suit is filed. This Notice of Violation has been served on Transbay and the appropriate governmental authorities.

Transbay operates diesel-powered ships and a containment terminal for loading and off-loading cargo at the Port of Oakland. The terminal that is subject to this Notice of Violation is located at Transbay Container Terminal, Berths 25-26, 2500 7th Street, Oakland, CA 94607. Operation of this terminal consists of the use of locomotives, on-road heavy duty trucks, and cargo handling equipment including, but not limited to, yard trucks, side-picks, rubber tired gantry cranes, and forklifts. Operation of this equipment causes the release of diesel engine exhaust into the environment. Operation of the diesel-powered ships also causes the release of diesel engine exhaust while the ships are at berth. Diesel engine exhaust is a chemical known to the State of California to cause cancer.

At all relevant times and continuing to the present time, Transbay has exposed and continues to expose individuals who live or work downwind from its berth at the Port of Oakland to high levels of diesel engine exhaust, a known carcinogen. This exposure has occurred, and continues to occur, through inhalation and dermal contact with the diesel engine exhaust released by Transbay. The above referenced exposure occurs beyond the property owned, operated or controlled by Transbay and affects many California individuals who reside, work or are otherwise located in proximity to the property owned, operated, or controlled by Transbay.

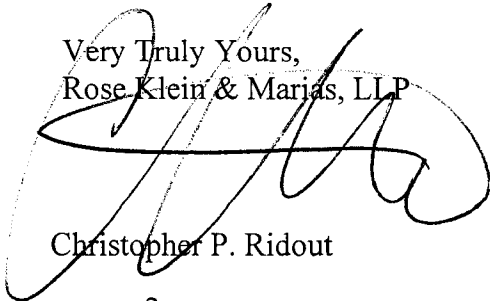
Diesel engine exhaust is listed under Proposition 65 as a chemical known to the State of California to cause cancer. Pursuant to Health and Safety Code § 25249.6, Transbay is required to provide clear and reasonable warnings to all California individuals who they expose, or who they may expose, to diesel engine exhaust. Transbay has failed to provide such warnings, in violation of Health & Safety Code §25249.6. These violations have been occurring since at least October 1, 1991 and are continuing to this day.

Pursuant to Health and Safety Code § 25249.7(d), ELF intends to bring suit in the public interest against Transbay sixty days hereafter to correct the violation occasioned by their failure to warn California residents to the exposure of diesel engine exhaust.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned includes the attached Certificate of Merit certifying that the undersigned consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding exposure to diesel engine exhaust and that, based on that information, the undersigned believes that there is a reasonable and meritorious case. Factual information sufficient to establish the basis of the Certificate of Merit is included with the Notice that is served on the Attorney General and is provided to that office in confidence and is not to be disclosed, except according to law.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, please see the attached Appendix A, entitled "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary", which was prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency. (A copy is not provided to the public enforcement agencies which receive this notice.) 22 California Code of Regulations, §12903(b)(1).

Very Truly Yours,
Rose Klein & Marias, LLP



Christopher P. Ridout

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Christopher P. Ridout, hereby declare:

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

(2) I am the attorney for ENVIRONMENTAL LAW FOUNDATION (“ELF”), a California nonprofit organization, dedicated to the preservation and enhancement of human health and the environment. ELF has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and for protecting the public from harmful substances. Any inquiries regarding this Notice of Violation may be directed to James Wheaton, President of ELF, 1736 Franklin Street, 9th Floor, Oakland, CA 94612, (510) 208-4555. Inquiries may also be directed to Christopher P. Ridout, Rose, Klein & Marias LLP, 801 South Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645, (213) 626-0571.

(3) I have consulted with one or more persons with relevant and appropriate experience or expertise who has/have reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is subject to 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: December 8, 2006

ROSE, KLEIN & MARIAS LLP
801 South Grand Avenue, 11th Floor
Los Angeles, CA 90017-4645
Attorneys on behalf of ENVIRONMENTAL LAW
FOUNDATION, a California nonprofit organization.

CERTIFICATE OF SERVICE BY MAIL

I, Shirley M. Walker, declare that:

I am employed in Los Angeles County, California. I am over the age of 18 years and not a party to the within cause; my business address is 801 South Grand Avenue, Eleventh Floor, Los Angeles, CA 90017-4645.

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 is deposited with the United States Postal Service the same day in the ordinary course of business.

On December 8, 2006, I served true copies of the following documents on the parties and governmental authorities listed in the attached service list by placing true and correct copies of the same in sealed envelopes with first class postage fully prepaid thereon and deposited in the United States Mail at Los Angeles, California:

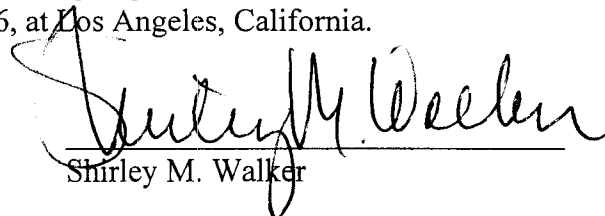
NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT;

CERTIFICATE OF MERIT

APPENDIX A - THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY
[only sent to those on service list marked with an asterisk]

I certify under penalty of perjury that the foregoing is true and correct, and that this certification was executed on December 8, 2006, at Los Angeles, California.

Signed:


Shirley M. Walker

SERVICE LIST

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