

The Law Offices of  
**Dotty E. LeMieux**  
496 B Street, Suite D  
San Rafael, CA 94901  
Telephone: (415) 485-1040  
Facsimile: (415) 485-1044

August 31, 1997

TO: SEE ATTACHED SERVICE LIST

Re: 60-Day Notice for Failure to Warn Public of the Cancer Hazard of Diesel Exhaust, and other Constituent Chemicals Listed Pursuant to California Health and Safety Code Section 25249.6

Dear Prosecutor:

This notice represents As You Sow, a non-profit foundation organized under the laws of the State of California's Non-Profit Public Benefit Corporation Law. As You Sow 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.

This notice constitutes notification that the San Rafael Rock Quarry, Inc., aka Dutra Materials, Inc. and Dutra Group. (hereinafter "San Rafael Rock Quarry"), has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code). The source of the violation stems from airborne particulate emissions from numerous diesel-fueled trucks owned, operated, maintained, managed, controlled and/or operated by the San Rafael Rock Quarry located at 1000 Pt. San Pedro Road, San Rafael, California, 94901.

In particular, this company has exposed, and continues to expose, numerous individuals within the surrounding area to the following chemical subject to Proposition 65: diesel engine exhaust, listed as a carcinogen on October 1, 1990. More specifically, diesel exhaust and its components and constituents which are the subject of these violations include: acetaldehyde, aniline, arsenic, benzene, beryllium compounds, di(2-ethylhexyl) phthalate, 1,3-butadiene, cadmium compounds, chromium compounds, cobalt compounds, polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, formaldehyde, nickel, 4-nitrobiphenyl, POM (including PAH's and their derivatives), lead compounds, 2,3,7,8-tetrachlorodibenzo-para-dioxin, mercury compounds, and toluene (collectively referred to as "diesel engine exhaust").

The route of exposure has been primarily through inhalation of these chemicals; however, additional exposures may arise through dermal contact with, or ingestion of, these chemicals. The general geographic location for the unlawful exposure to the residential and business community covers the area surrounding the quarry. The San Rafael Rock Quarry continues to this day to employ the use of trucks with diesel engines and as such violations are continuous and ongoing.

In the course of doing business, the San Rafael Rock Quarry has in the past, and continues to knowingly and intentionally expose members of the public to Diesel Exhaust without first giving clear and reasonable warning to such persons pursuant to Health & Safety Code Section 25249.6. The routes of exposure are ingestion, inhalation, and dermal contact.

The warned and unlawful exposures to diesel exhaust have been occurring since October 1, 1991. Unwarned and unlawful exposures to the components and constituents of diesel exhaust began one year after each was identified under Proposition 65 as a "chemical known to the state to cause cancer or reproductive toxicity." Therefore, the duration of exposure to each chemical is as follows:

### CARCINOGENS

1.	Arsenic	February 27, 1988
2.	Benzene	February 27, 1988
3.	Chromium Compounds	February 27, 1988
4.	Beryllium Compounds	October 1, 1988
5.	Cadmium Compounds	October 1, 1988
6.	Formaldehyde	January 1, 1989
7.	Di(2-ethylhexyl)phthalate	January 1, 1989
8.	2,3,7,8-tetrachlorodibenzo-para-dioxin	January 1, 1989
9.	Acetaldehyde	April 1, 1989
10.	1,3-Butadiene	April 1, 1989
11.	4-Nitrobiphenyl	April 1, 1989
12.	Nickel	October 1, 1990
13.	Aniline	January 1, 1991
14.	Cobalt Compounds	July 1, 1993
15.	Lead Compounds	October 1, 1993
16.	Polychlorinated dibenzo-p-dioxins	October 1, 1993
17.	Polychlorinated dibenzofurans	October 1, 1993

### REPRODUCTIVE TOXINS

1.	Lead	February 27, 1988
2.	Mercury Compounds	July 1, 1991
3.	Toluene	January 1, 1992
4.	2,3,7,8-tetrachlorodibenzo-para-dioxin	April 1, 1992

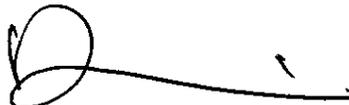
As such, the violations are continuous and ongoing.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. The San Rafael Rock Quarry is in violation of Proposition 65 because it failed to provide an adequate warning to numerous persons in the area surrounding the San Rafael Rock Quarry that they have been and continue to be exposed to diesel engine exhaust. (22 C.C.R. Section 12601), including but not limited to persons residing in homes, apartments, retirement home and/or other structures; employees for consumers and the various commercial establishments; students, staff, teachers and/or administrators employed and/or attending educational institutions; individuals recreating in the parks, on the trails, in the water, and/or walking or biking on the developed and undeveloped paths. While in the course of doing business, the San Rafael Rock Quarry is knowingly and intentionally exposing people to these chemicals, by virtue of the fact that as many as 125 trucks per day are driving in and out of the San Rafael Rock Quarry spewing the listed chemicals onto the homes and businesses located in the immediate vicinity, without first providing clear and reasonable warning. (Health and Safety Code Section 25249.6) Moreover, based on the exposure involved, we believe the method of warning should include, among all other methods, "...a notice mailed or otherwise delivered to each occupant in the affected area. Such notice shall be provided at least once in any three-month period." (2 C.C.R. Section 12601 (d)(1)(B)).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, As You Sow gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to As You Sow from information now available to us. As You Sow is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, has been provided to the noticed party attached herein.

If you have any questions, please contact my office at your earliest convenience.

Very truly yours,



Dotty E. LeMieux, Esq.

SEC/sec  
Enclosures

cc: Larry F., Executive Director, As You Sow  
Karalyne Schner, Staff Attorney, As You Sow

The Law Offices of  
**Dotty E. LeMieux**  
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San Rafael, CA 94901  
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The names and address of the violator referenced in the attached 60 Day Notice for Measure to Warn Public of the Cancer Hazard of Diesel Exhaust, and other Contaminant Chemicals Listed Pursuant to California Health and Safety Code Section 25249.6 is as follows:

The Terra Group, Inc.  
10000 San Pedro Road.  
San Rafael, CA 94901

San Rafael Rock Quarry, Inc.  
10000 San Pedro Road.  
San Rafael, CA 94901

Bill Terra CEO of both

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 99.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

- 1. New section and Appendix A added to Government Code section 11100(d) (Register 97, No. 17).
- 2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

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Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 99.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

HISTORY

- 1. New section and Appendix A added to Government Code section 11100(d) (Register 97, No. 17).
- 2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

Appendix A

ENVIRONMENTAL HEALTH HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY  
THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 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.

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Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.7. 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.

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WHAT DOES PROPOSITION 65 REQUIRE?

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The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 730 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise handle these chemicals must comply with the following:

Proposition 65 requires the Governor to publish a list of chemicals that are known to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 730 chemical listings have been included as of November 16, 2001. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise handle these chemicals must comply with the following:

Clear and reasonable warning. 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 state 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 the person will effectively reach the person before he or she is exposed. Exemptions are provided for discharges that occur less than twenty months after the date of listing of the chemical.

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 state 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 the person will effectively reach the person before he or she is exposed. Exemptions are provided for discharges that occur less than twenty 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.

**Discharges 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 listed 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.

## CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on San Rafael Rock Quarry, Inc., the Dutra Group, and the San Rafael Rock Quarry, Inc., dba Dutra Materials.)

I, Larry P. [REDACTED], Executive Director of Noticing Party As You Sow, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties in the notice have violated Health & Safety Code §25249.01 by failing to provide clear and reasonable warnings to exposed individuals living in San Rafael, California, County of Marin.

2. I am the Executive Director and authorized representative of noticing party As You Sow, a 501 (c) (3) not for profit corporation with its principal place of business in San Francisco, California.

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 against The San Rafael Rock Quarry, Inc., and its affiliated entities, The Dutra Group and San Rafael Rock Quarry, Inc., dba Dutra Materials, collectively the violators. I understand that "reasonable and meritorious case for the private action" means that the information provides a

credible evidence is that all elements of the plaintiffs' case can be established and that 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 this Certificate of Merit served on the Attorney General attaches the following factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code §25249.7(a)(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.

Date: August 15, 2007



Larry Fahn

Attachment (for Attorney General copy only)

**CERTIFICATE OF SERVICE**

I am employed in the County of Marin, State of California. I am over the age of eighteen and am not a party to the within action. My business address is 496 B Street, Suite D, San Rafael, California, 94901.

On <sup>Sept 1, 2007</sup> ~~August 27, 2007~~ I mailed the following documents:

1. 60-Day Notice for Failure to Warn Public of the Cancer Hazard of Diesel Exhaust, and other Constituent Chemicals Listed Pursuant to California Health and Safety Code Section 25249.6.
2. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.
3. Certificate of Merit.
4. Supporting Documents (only sent to the Office of the Attorney General).
5. Certificate of Service

The above documents were sent by enclosing a true copy of the same in a sealed envelope addressed to each person shown below, with the envelope deposited in the United States mail with the postage fully prepaid.

The documents were sent by certified mail to:

California Attorney General Proposition 65 Coordinator Enforcement Division 1515 Clay Street, Suite 2000 Oakland, CA 94612	Mr. Bill Dutra c/o San Rafael Rock Quarry, Inc. 1000 Pt. San Pedro Road San Rafael, CA 94901
The Dutra Company c/o San Rafael Rock Quarry, Inc. 1000 Pt. San Pedro Road San Rafael, CA 94901	The Honorable Edward Berberian Marin County District Attorney 3501 Civic Center Drive, Room 130 San Rafael, CA 94903

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

Dated: Sept 1, 2007

By: [Signature]  
Dott LeMieux