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Thomas H. Clarke, Jr.  
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November 29, 2007

**VIA REGISTERED MAIL  
VIA CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

**RCRA CITIZEN SUIT NOTICE  
CWA CITIZEN SUIT NOTICE  
PROPOSITION 65 DISCHARGE-TO-GROUNDWATER NOTICE  
NOTICE PURSUANT TO AGREEMENT ON ENVIRONMENTAL COMPLIANCE**

Administrator  
U. S. ENVIRONMENTAL PROTECTION  
AGENCY  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

U. S. Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, DC 20530-0001

Executive Director  
CALIFORNIA DEPARTMENT OF TOXIC  
SUBSTANCES CONTROL  
1001 I Street  
Sacramento, CA 95814-2828

Executive Officer  
REGIONAL WATER QUALITY CONTROL  
BOARD  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93402-7906

Attorney General  
CALIFORNIA DEPARTMENT OF JUSTICE  
455 Golden Gate Ave., Ste. 14800  
San Francisco, CA 94102

Regional Administrator  
U. S. ENVIRONMENTAL PROTECTION  
AGENCY, Region 9  
75 Hawthorne Street  
San Francisco, CA 94105

Secretary  
CALIFORNIA ENVIRONMENTAL  
PROTECTION AGENCY  
1001 I Street  
Sacramento, CA 95812-2815

Chair  
CALIFORNIA STATE WATER  
RESOURCES CONTROL BOARD  
1001 I Street  
Sacramento, CA 95814

Chairman & Executive Director  
CALIFORNIA INTEGRATED WASTE  
MANAGEMENT BOARD  
1001 I Street  
Sacramento, CA 95814

District Attorney  
COUNTY OF MONTEREY  
1200 Aguajito Road, Room 301  
Monterey, CA 93940

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Mr. Jack A. Hockema, CEO  
Kaiser Aluminum & Chemical Corporation  
27422 Portola Parkway, Suite 350  
Foothill Ranch, CA92610

Mr. Jack A. Hockema, CEO  
Kaiser Aluminum & Chemical Corporation  
5847 San Felipe St., Suite 2500  
Houston, TX 77057

Mr. Jack A. Hockema, CEO  
Kaiser Aluminum Corporation  
27422 Portola Parkway, Suite 350  
Foothill Ranch, CA92610

Mr. John M. Donnan, V.P. & General Counsel  
Kaiser Aluminum & Chemical Corporation  
27422 Portola Parkway, Suite 350  
Foothill Ranch, CA92610

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Kaiser Aluminum Corporation  
27422 Portola Parkway, Suite 350  
Foothill Ranch, CA92610

Kaiser Aluminum Corporation  
c/o C T Corporation System  
818 W. Seventh Street  
Los Angeles, CA 90017

Kaiser Aluminum & Chemical Corporation  
c/o C T Corporation System  
818 W. Seventh Street  
Los Angeles, CA 90017

**Re: Moss Landing Commercial Park, Moss Landing, California<sup>1</sup>**

To whom it may concern:

NOTICE IS HEREBY GIVEN that on or after the date of this notice, MOSS LANDING COMMERCIAL PARK LLC (hereinafter "MLCP"), owner of real property commonly known as Moss Landing Commercial Park, Moss Landing, California, intends to file suit under the Resource Conservation Recovery Act ("RCRA"), 42. U.S.C. Section 6972(a)(1)(B), against those entities above noted (to wit, Kaiser Aluminum Corporation and Kaiser Aluminum & Chemical Corporation [collectively "KAISER"]) who owned and operated a manufacturing business at the above noted location ("The Site") from approximately 1941 until approximately 1985. Between approximately 1946 and 1981, KAISER created two dumps on said property.<sup>2</sup> A

<sup>1</sup> That real property with improvements thereon located adjacent to Highway 1, Dolan Road, and Moro Cojo Slough, Moss Landing, California. See Exhibit A attached hereto. The property is comprised of approximately 200 acres and is further described by Monterey County Assessor's Parcel Numbers 131-054-008, 133-173-002, 133-172-004, and 133-172-013.

<sup>2</sup> See Exhibit B hereto for a map submitted by KAISER to EPA in 1981 showing the location of the two dumps.

variety of toxic pollutants and contaminants, including hexavalent chromium, antimony, nickel, and lead have been found in the soil, surface water, and groundwater of the property ("The Contamination"). These pollutants and contaminants are being released and discharged by the dumps.

The two dumps created by KAISER contain hazardous wastes within the meaning of "subchapter III" of RCRA (aka Subtitle C of the Act, 42 U.S.C. sections 6921 et seq.) and 42 C.F.R. § 261.3. MLCP further alleges that the wastes contained in the two dumps are California hazardous wastes.

The Contamination at The Site poses an imminent and substantial endangerment to the environment. The endangerment includes a substantial threat to the environment about The Site, including without limitation Monterey Bay, Moss Landing Harbor, Moro Cojo Slough, and the swamplands in and about the property. The Contamination also threatens the beneficial uses of the groundwater beneath and about The Site. Hexavalent chromium levels in various monitoring wells at The Site have varied over time up to a maximum of 673 ppb (micrograms per liter); antimony levels, to a maximum of 51 ppb; nickel levels, to a maximum of 679 ppb; and, lead levels, to a maximum of 58 ppb. The plume of these metals (hexavalent chromium, lead, antimony, and nickel) is moving across The Property from the dumps toward Moss Landing Harbor and the Moro Cojo Slough. Several of the monitoring wells detecting these metals are located just across Highway One from the Moss Landing Harbor.

Waste-containing soils, soils contaminated by the discharge and release of hexavalent chromium and other metals from the dumps, and the waste itself are eroding into nearby surface waters and are moving downward into groundwater and also moving through ditches and channels on the property and off the property to impact nearby surface and ground waters, including Monterey Bay, Moss Landing Harbor, Moro Cojo Slough, and the swamplands in and about The Property.

MLCP is informed and believes that KAISER has undertaken neither timely and appropriate site characterization and closure activities, nor has KAISER characterized or remedied any pollutant or contaminant releases or discharges which may have occurred and adversely impacted the soil, surface waters, and groundwater as described herein. Such impacts have adversely impacted the beneficial uses of said groundwater, and have adversely impacted the natural resources on and about the property. Under the applicable Basin Plan, the groundwater beneath The Site is classified as a potential drinking water resource, and hexavalent chromium, antimony, lead, and nickel are present above the MCLs. These levels thus create an imminent and substantial endangerment to the beneficial use of the groundwater as designated by the Basin Plan.

The full and complete extent of these releases and discharges has not yet been determined.

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The full and complete extent of these releases and discharges has not yet been determined.

Additionally, KAISER has delayed implementation of characterization of and corrective action for The Site, and MLCP believes that the failure of KAISER to so do is likely to continue and/or recur, resulting in further adverse impacts to the environment.

KAISER has been on notice of the potential threat of the dumps to the environment since 1978 when a release of chromium contaminated leachate occurred from one of the dumps and moved across and about the property. KAISER even mentioned this release in a 1981 filing with EPA, and as such clearly appreciated the potential for such releases in the future. KAISER clearly understood the potential for harm from these dumps when, in approximately 1981, it "capped" one dump with asphalt and one with gravel. However, the bottoms of the dumps are not insulated from the environment, and the sides of the dumps are covered merely with dirt. As such, rainwater, surface water, and groundwater can intrude into the dumps and move pollutants and contaminants out of the dumps and into the environment. The releases and discharges are ongoing.

Accordingly, pursuant to 42 U.S.C. § 6972(a)(1)(B) and state and federal law, MLCP will seek judgment requiring KAISER to pay for all costs which MLCP has incurred and will incur henceforth in identifying, characterizing, analyzing, monitoring, and investigating the soil or groundwater contamination on the property. In addition, MLCP will seek declaratory relief and an injunction ordering KAISER to undertake all further characterization and all remediation activities necessary concerning any soil, surface water, or groundwater contamination at, on, beneath and about The Site. MLCP will also seek the imposition of civil penalties and recovery of its costs, according to law.

NOTICE IS FURTHER HEREBY GIVEN that on or after the date of this notice, MLCP, owner of real property commonly known as Moss Landing Commercial Park, Moss Landing, California, intends to file suit under the Clean Water Act, 33 U.S.C. section 1365(a)(1)(A), based on KAISER's failure to obtain an NPDES permit and for thus allowing an unpermitted discharge of toxic pollutants to the waters of the United States in violation of 33 U.S.C. sections 1311(a) and 1342. Hexavalent chromium, lead, antimony, and nickel are each a toxic pollutant within the meaning of 33 U.S.C. sections 1365(b) and 1317(a).

KAISER caused to be installed the two dumps, as noted herein. At the two dumps, KAISER caused to be installed in approximately 1980 drainage pipes that discharge and release toxic pollutants into the environment. Further, the two dumps have been and are partially surrounded by ditches and culverts that carry toxic pollutants into the environment. None of the output of these pipes, ditches, or culverts is captured or treated. On information and belief,

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MLCP alleges that discharges and releases from these pipes, ditches, and culverts have been occurring since at least 1980.

As noted above, the discharges and releases of toxic pollutants have adversely impacted the environment on, beneath, and about the property. The failure of KAISER to capture and treat these discharges and releases and to obtain the requisite NPDES permit has contributed to the adverse environmental impacts noted herein.

Accordingly, pursuant to 33 U.S.C. § 1365(a)(1)(A) and state and federal law, MLCP will seek judgment requiring KAISER to pay for all costs which MLCP has incurred and will incur henceforth in identifying, characterizing, analyzing, monitoring, and investigating the soil, surface water, and groundwater contamination on the property. In addition, MLCP will seek declaratory relief and an injunction ordering KAISER to obtain an NPDES permit and to undertake all further characterization and all remediation activities necessary concerning any soil or groundwater contamination at, on, beneath and about The Site. MLCP will also seek the imposition of civil penalties and recovery of its costs, according to law.

NOTICE IS FURTHER HEREBY GIVEN that KAISER is in violation of California's Proposition 65 (which can be found at Sections 25249.5 et seq. of the Health & Safety Code). Attached to this letter is a copy of "Proposition 65: A Summary", which has been prepared by the State of California, Office of Environmental Health Hazard Assessment ("OEHHA"). OEHHA may be contacted at 916-445-6900. OEHHA's web site pertaining to Proposition 65 may be found at: <http://www.oehha.ca.gov/prop65.html>.

MLCP hereby gives notice that KAISER has been, is currently, and threatens to be in violation of California Health & Safety Code § 25249.5; this sixty-day notice is sent to KAISER in compliance with § 25249.7(d) California Health & Safety Code. MLCP is a private enforcer of Proposition 65, as provided by California Health & Safety Code § 25249.7(d). KAISER may contact MLCP at the above listed address and telephone number for its counsel; I am counsel for and represent MLCP in this matter.

The above-referenced violations occur when discharges and releases occur from the two dumps located on the property. The discharges and releases are ongoing. The Basin Plan classifies the impacted groundwater beneath the property as a potential drinking water resource. The discharges and releases contain hexavalent chromium, lead, and nickel, chemicals known to the State of California to cause cancer and reproductive toxicity.

These violations have occurred every day for at least the last 2½ decades, and will continue every day until the discharges and releases are terminated. The Proposition 65 violations noted herein occur in Monterey County.

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NOTICE IS FURTHER HEREBY GIVEN pursuant to the Agreement on Environmental Compliance that discharges and releases of toxic pollutants and contaminants from the two dumps, as described herein, are occurring, and that these releases and discharges pose an imminent and substantial endangerment to the environment of the property and Monterey Bay, Moss Landing Harbor, Moro Cojo Slough, and the swamplands in and about the property.

Pursuant to Para. 2.5 of the Agreement, KAISER is requested to undertake and fund all corrective action necessary to characterize the pollutants and contamination, and to remediate the adverse environmental effects of the two dumps, including removing these source zones from the property.

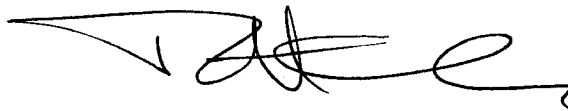
In conclusion, KAISER and the federal, state and local governmental entities noticed above are hereby placed on written notice of MLCP's intention to forthwith commence suit upon this matter. MLCP's action will seek all RCRA, CWA, Proposition 65, statutory, equitable, and common law remedies available against KAISER.

The address and telephone number for MLCP is as follows:

P.O. Box 310  
Moss Landing, CA 95039  
(831) 594-9711

MLCP may be contacted through its counsel, Thomas H. Clarke, Jr., Ropers, Majeski, Kohn & Bentley, 201 Spear Street, Suite 1000, San Francisco, CA 94105; (415) 543-4800.

Sincerely,



Thomas H. Clarke, Jr.

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EXHIBIT A

AERIAL OF THE FORMER KAISER FACILITY AT MOSS LANDING





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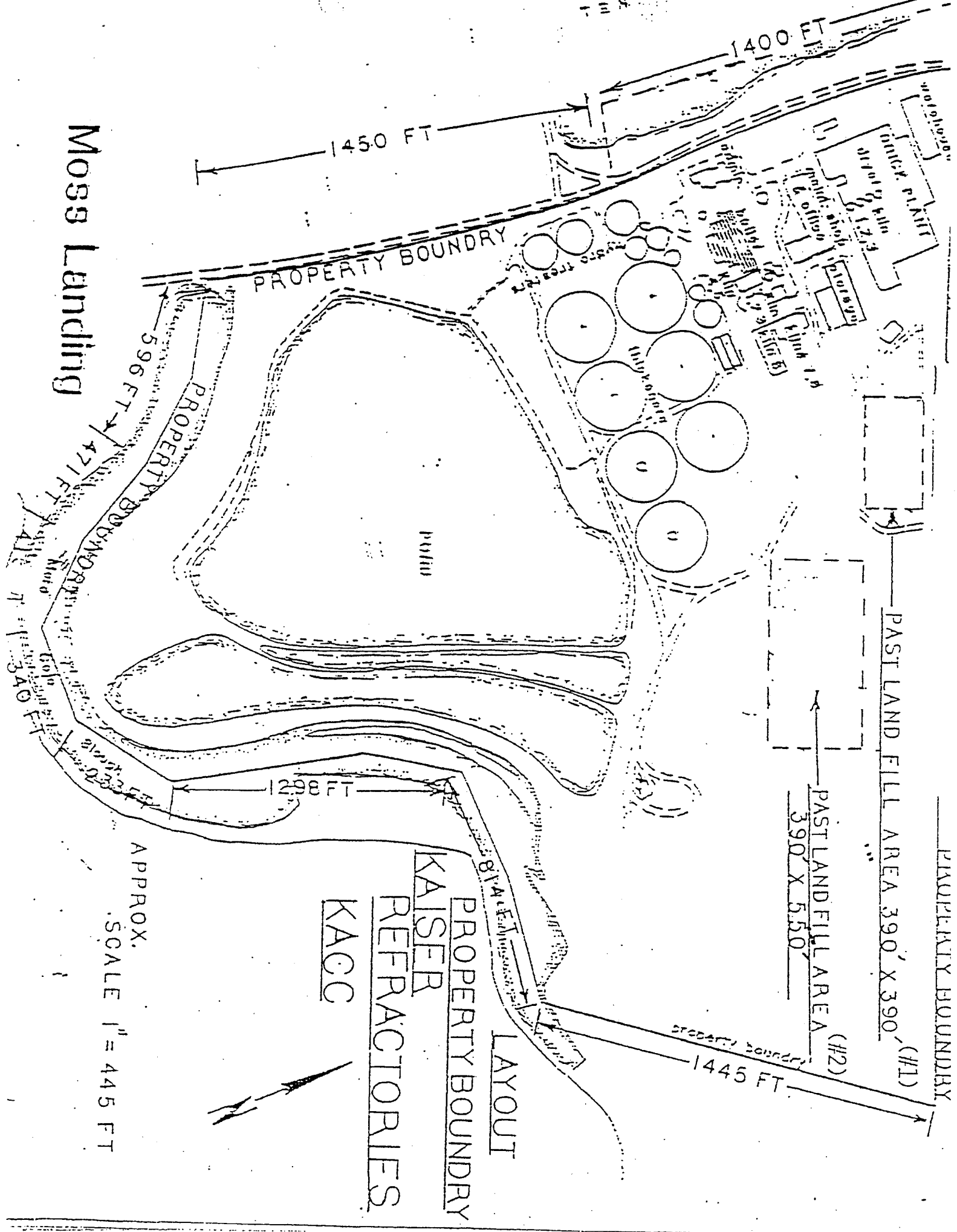
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EXHIBIT B

MAP SHOWING LOCATION OF THE TWO DUMPS

(FROM 1981 FILING WITH EPA BY KAISER)

Moss Landing



APPROX. SCALE 1" = 445 FT

KAISER REFRACTORIES KAACC

LAYOUT

PAST LAND FILL AREA 390' X 390' (#1)

PAST LAND FILL AREA 390' X 550' (#2)

1445 FT

1298 FT

PROPERTY BOUNDARY 596 FT

PROPERTY BOUNDARY 1450 FT

1400 FT

PROPERTY BOUNDARY 471 FT

340 FT

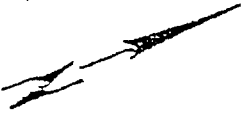


EXHIBIT C

OEHHA INFORMATION BOOKLET RE PROPOSITION 65

**Office of 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.

Proposition 65 appears in California law as Health & 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 735 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 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.

***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.