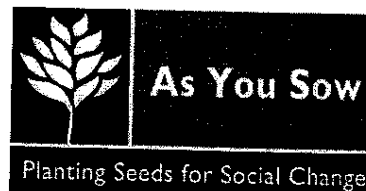


February 1, 2008

**Attorney General Copy: Contains Official Information  
Pursuant to Evidence Code § 1040**

By Certified Mail, Return Receipt Requested to Violators  
By First Class U.S. Mail to Public Enforcement Agencies



311 California St, Suite 510  
San Francisco, CA 94104  
T 415-391-3212  
F 415-391-3245  
[www.asyousow.org](http://www.asyousow.org)

Dear Public Enforcement Agencies / Violators:

As You Sow ("AYS") gives you notice that, since at least February 1, 2005, the businesses listed on Attachment A have been, and continue to be, in violation of California Health & Safety Code §25249.6. AYS is a private enforcer of Proposition 65 which may be contacted through our counsel, Law Offices of Brian Gaffney at the address and telephone number listed below, and I am a responsible individual with AYS.

The above referenced violations occur when California residents apply, use, pour, handle, touch, ingest and/or inhale cleaning products which contain ethylbenzene at levels which pose a significant risk assuming lifetime exposure.<sup>1</sup> Examples of particular cleaning products manufactured, sold, distributed and/or marketed by the violators are attached as Attachment B.

Cleaning products sold by these businesses expose consumers and workers to ethylbenzene via the dermal, ingestion, inhalation and subcutaneous routes. When people apply, handle, pour, touch or otherwise use these cleaning products for the purposes intended, ethylbenzene that is in the cleaning products comes off on their hands. This ethylbenzene is then ingested through hand-to-mouth, hand-to-food-to-mouth, and hand-to-cigarette-to-mouth-to-lungs behavior. When people apply, handle, pour, touch or otherwise use these cleaning products for the purposes intended, ethylbenzene is also absorbed through the skin, enters the body via cuts and abrasions, and through mucous membranes when people with ethylbenzene on their hands touch these mucous membranes. When people apply, handle, pour, touch or otherwise use these cleaning products for the purposes intended, the ethylbenzene in the cleaning products is also inhaled in the normal course of use.

In addition, exposures in the environmental context occur in the homes, businesses and public locations where the cleaning products are used. The environmental exposure for which a warning is required occurs beyond the property owned or controlled by the violators. Exposures to ethylbenzene occur within the consumer, environmental, and occupational contexts. AYS, does not, however, allege occupational exposures as to cleaning products manufactured outside of California, except as to the workplaces that these businesses maintain in California.

The businesses listed on Attachment A do not provide clear and reasonable warnings to people who apply, use, pour, handle, touch, ingest and/or inhale the cleaning products, that the cleaning products will expose them to chemicals known to cause cancer.

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<sup>1</sup> On June 11, 2004, Ethylbenzene was listed under the statute as a chemical known to the State of California to cause cancer.

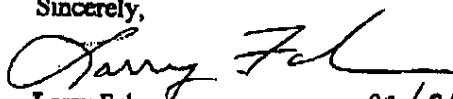
These violations and threatened violations will continue to occur everyday until these businesses either provide clear and reasonable warnings, reformulate their cleaning products so as not to contain ethylbenzene, or stop selling these cleaning products in California. These violations occur in all of California's 58 counties, both on and off of these businesses' properties.

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 is located at 311 California Street, Suite 510, San Francisco, CA 94104.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

**Brian Gaffney**  
**LAW OFFICES OF BRIAN GAFFNEY**  
605 Market Street, Suite 505  
San Francisco, CA 94105  
(415) 442 - 0711 Phone / (415) 442 - 0713 Fax

Sincerely,

  
Larry Fahn 02/01/08

Enclosure to Violators "The Safe Drinking Water and Toxic Enforcement Act of 1986: A Summary"

**Attachment A**

The Valspar Corporation  
W.L. Mansfield, CEO  
1101 S. Third Street  
Minneapolis, MN. 55415

Ace Hardware Corporation  
Ray A. Griffith, CEO  
2200 Kensington Court  
Oak Brook, IL. 60523

Mark's Paint Mart  
Anthony J. Rago, CEO  
4211 Telegraph Ave.  
Oakland, CA 94609

Benjamin Moore & Co.  
Yvan Dupuy, CEO  
101 Paragon Drive  
Montvale, NJ 07645

**Attachment B**

<u>Proposition 65 Violators</u>	<u>Products Manufactured, Sold, Distributed and/or Marketed</u>	<u>Prop 65 Chemical</u>
The Valspar Corporation Mark's Paint Mart Benjamin Moore & Co.	Goof Off The Ultimate Remover 1 quart size	Ethylbenzene
The Valspar Corporation Ace Hardware	Goof Off Graffiti Remover 16 oz aerosol spray	Ethylbenzene

**CERTIFICATE OF SERVICE**

I, Brian Gaffney, declare:

If so called, I could and would testify as follows: I am over eighteen. My business address is 605 Market St., Suite 505, San Francisco, CA 94105. On February 1, 2008, I caused the attached 60-DAY NOTICE LETTER, to be served by U.S. Mail on those public enforcement agencies listed on the attached SERVICE LIST; in addition on the same date and by Certified Mail I caused the attached 60-DAY NOTICE LETTER and PROPOSITION 65: A SUMMARY to be sent by Certified Mail to the private business entities also listed on the attached SERVICE LIST. I deposited copies of these documents in envelopes, postage pre-paid, with the U.S. Postal Service on the day on which the mail is collected. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration was executed on February 1, 2008, at San Francisco, California.

  
Brian Gaffney

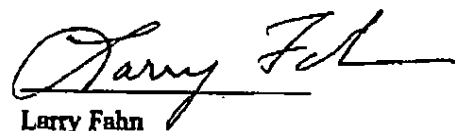
This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporated the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

**CERTIFICATE OF MERIT**

Health and Safety Code Section 25249.7(d)

I, Larry Fahn, hereby declare: This Certificate of Merit accompanies the attached sixty-day notice(s) 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. I am the attorney for the noticing party. 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 alleged exposure to the listed chemical that is the subject of the action. 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. 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.

February 1, 2008

  
Larry Fahn

## SERVICE LIST

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