

April 24, 2009



**NOTICE OF VIOLATION OF  
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET. SEQ.**

311 California Street, Suite 510  
San Francisco, CA 94104  
T 415.391.3212  
F 415.391.3245  
www.asyousow.org

Dear Public Enforcement Agencies:

As You Sow ("AYS") gives notice that, since at least April 24, 2006, the businesses listed on Attachment A have been, and continue to be, in violation of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.*

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 a private enforcer of Proposition 65 which may be contacted at the above listed address and telephone number.

This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific detail of the violations that are the subject of this notice is provided below.

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

Coatings sold by these businesses expose consumers and workers to ethylbenzene via the inhalation, dermal, ingestion and subcutaneous routes. When people spray, brush, apply, handle, pour, touch or otherwise use these coatings for the purposes intended, the ethylbenzene in the coatings is inhaled in the normal course of use. When people spray, brush, apply, handle, pour, touch or otherwise use these coatings for the purposes intended, ethylbenzene that is in the coatings comes off on their hands. This ethylbenzene is then ingested through hand-to-mouth behavior. When people spray, brush, apply, handle, pour, touch or otherwise use the coatings for the purposes intended, ethylbenzene is also absorbed through the skin, enters the body via cuts

<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.



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and abrasions, and through mucous membranes when people with ethylbenzene on their hands touch these mucous membranes.

In addition, exposures in the environmental context occur in the homes, businesses and public locations where the coatings 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 coatings manufactured outside California, except as to the workplaces that those businesses maintain in California.

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

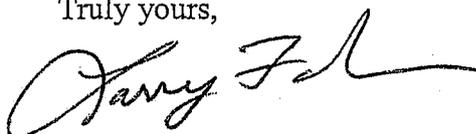
These violations and threatened violations will continue to occur everyday until these businesses either provide clear and reasonable warnings, reformulate their coatings so as to not contain ethylbenzene, or stop selling these coatings in California. These violations occur in all of California's 58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

This notice of violation supplements the previous notice of violation issued by AYS against the violator(s) named in Attachment A on June 27, 2008. Pursuant to Title 11, C.C.R. §3100, a certificate of merit is attached hereto.

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  
LIPPE GAFFNEY WAGNER, LLP  
329 Bryant Street, Suite 3D  
San Francisco, CA 94107  
T 415-777-5600 x 207  
F 415-777-9809  
E [bgaffney@lglawyers.com](mailto:bgaffney@lglawyers.com)

Truly yours,



Larry Fahn  
Executive Director

Enclosures

Attachment A

Richard Hardy, President X I M Products, Inc. 1169 Bassett Road Westlake, OH 44145		
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Attachment B

<i>Proposition 65 Violators</i>	<i>Products Manufactured, Sold, Distributed and/or Marketed</i>	<i>Proposition 65 Chemical</i>
X I M Products, Inc.	XIM 900 Clear Coat XIM 900 Clear Coat Aerosol XIM 400 XIM GON XIM Copper Doc, Clear	Ethylbenzene

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on X I M Products, Inc.)

I, Lawrence E. Fahn, declare:

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

2. I am Executive Director for the noticing party, and a member in good standing with the State Bar of California.

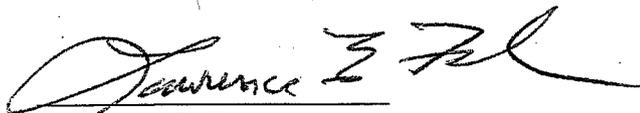
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemicals that are the subject of the action.

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. 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 that 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 §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: \_\_\_\_\_

4/24/09



Lawrence E. Fahn

Attachments (for Attorney General copy only)

## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, CA 94104.

On April 24, 2009, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the parties listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Richard Hardy, President  
X I M Products, Inc.  
1169 Bassett Road  
Westlake, OH 44145

On April 24, 2009, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

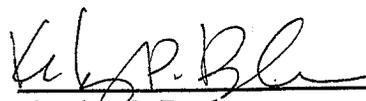
Attn: Ed Weil, Deputy Attorney General  
California Department of Justice  
1515 Clay Street, Suite 2000  
Oakland, CA 94612

On April 24, 2009, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq.
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on April 24, 2009, at San Francisco, California.

  
Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

ALAMEDA COUNTY DISTRICT ATTORNEY  
1225 FALLON ST RM 900  
OAKLAND CA 94612

ALPINE COUNTY DISTRICT ATTORNEY  
PO BOX 248  
MARKLEEVILLE CA 96120

AMADOR COUNTY DISTRICT ATTORNEY  
708 COURT ST STE 202  
JACKSON CA 95642

BUTTE COUNTY DISTRICT ATTORNEY  
25 COUNTY CTR DR  
OROVILLE CA 95965

CALAVERAS COUNTY DISTRICT ATTORNEY  
891 MTN RANCH RD  
SAN ANDREAS CA 95249

COLUSA COUNTY DISTRICT ATTORNEY  
547 MARKET ST STE 102  
COLUSA CA 95932

CONTRA COSTA COUNTY DISTRICT  
ATTORNEY  
725 COURT ST 4TH FLR  
MARTINEZ CA 94553

DEL NORTE COUNTY DISTRICT ATTORNEY  
450 H ST STE 171  
CRESCENT CITY CA 95531

EL DORADO COUNTY DISTRICT ATTORNEY  
515 MAIN ST  
PLACERVILLE CA 95667

FRESNO COUNTY DISTRICT ATTORNEY  
2220 TULARE ST STE 1000  
FRESNO CA 93721

GLENN COUNTY DISTRICT ATTORNEY  
PO BOX 430  
WILLOWS CA 95988

HUMBOLDT COUNTY DISTRICT ATTORNEY  
825 FIFTH ST  
EUREKA CA 95501

IMPERIAL COUNTY DISTRICT ATTORNEY  
940 W MAIN ST  
EL CENTRO CA 92243

INYO COUNTY DISTRICT ATTORNEY  
PO BOX D  
INDEPENDENCE CA 93526

KERN COUNTY DISTRICT ATTORNEY  
1215 TRUXTUN AVE  
BAKERSFIELD CA 93301

KINGS COUNTY DISTRICT ATTORNEY  
1400 W LACEY BLVD  
HANFORD CA 93230

LAKE COUNTY DISTRICT ATTORNEY  
255 N FORBES ST  
LAKEPORT CA 95453

LASSEN COUNTY DISTRICT ATTORNEY  
220 S LASSEN ST STE 8  
SUSANVILLE CA 96130

LA COUNTY DISTRICT ATTORNEY  
210 W TEMPLE ST STE 18000  
LOS ANGELES CA 90012-3210

MADERA COUNTY DISTRICT ATTORNEY  
209 W YOSEMITE AVE  
MADERA CA 93637

MARIN COUNTY DISTRICT ATTORNEY  
3501 CIVIC CTR DR RM 130  
SAN RAFAEL CA 94903

MARIPOSA COUNTY DISTRICT ATTORNEY  
PO BOX 730  
MARIPOSA CA 95338

MENDOCINO COUNTY DISTRICT  
ATTORNEY  
PO BOX 1000  
UKIAH CA 95482

MERCED COUNTY DISTRICT ATTORNEY  
2222 M ST  
MERCED CA 95340

MODOC COUNTY DISTRICT ATTORNEY  
204 S COURT ST RM 202  
ALTURAS CA 96101-4020

MONO COUNTY DISTRICT ATTORNEY  
PO BOX 617  
BRIDGEPORT CA 93517

MONTEREY COUNTY DISTRICT ATTORNEY  
PO BOX 1131  
SALINAS CA 93902

NAPA COUNTY DISTRICT ATTORNEY  
931 PARKWAY MALL  
NAPA CA 94559

NEVADA COUNTY DISTRICT ATTORNEY  
110 UNION ST  
NEVADA CITY CA 95959

ORANGE COUNTY DISTRICT ATTORNEY  
401 CIVIC CTR DR WEST  
SANTA ANA CA 92701

PLACER COUNTY DISTRICT ATTORNEY  
11562 B AVE  
AUBURN CA 95603

PLUMAS COUNTY DISTRICT ATTORNEY  
520 MAIN ST RM 404  
QUINCY CA 95971

RIVERSIDE COUNTY DISTRICT ATTORNEY  
4075 MAIN ST  
RIVERSIDE CA 92501

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

SACRAMENTO COUNTY DISTRICT  
ATTORNEY  
901 G ST  
SACRAMENTO CA 95814

SAN BENITO COUNTY DISTRICT  
ATTORNEY  
419 FOURTH ST, FL 2  
HOLLISTER CA 95023

SAN BERNARDINO COUNTY DISTRICT  
ATTORNEY  
316 N MTN VIEW AVE  
SAN BERNARDINO CA 92415-0004

SAN DIEGO COUNTY DISTRICT ATTORNEY  
330 W BROADWAY  
SAN DIEGO CA 92101

SAN FRANCISCO COUNTY DISTRICT  
ATTORNEY  
850 BRYANT ST RM 325  
SAN FRANCISCO CA 94103

SAN JOAQUIN COUNTY DISTRICT  
ATTORNEY  
PO BOX 990  
STOCKTON CA 95201-0990

SAN LUIS OBISPO COUNTY DISTRICT  
ATTORNEY  
CITY GOVERNMENT CTR, 4TH FLR  
SAN LUIS OBISPO CA 93408

SAN MATEO COUNTY DISTRICT ATTORNEY  
400 COUNTY CTR FL 3  
REDWOOD CITY CA 94063

SANTA BARBARA COUNTY DISTRICT  
ATTORNEY  
1112 SANTA BARBARA ST  
SANTA BARBARA CA 93101

SANTA CLARA COUNTY DISTRICT  
ATTORNEY  
70 W HEDDING ST WEST WING  
SAN JOSE CA 95110

SANTA CRUZ COUNTY DISTRICT  
ATTORNEY  
701 OCEAN ST RM 200  
SANTA CRUZ CA 95060

SHASTA COUNTY DISTRICT ATTORNEY  
1525 COURT ST FL 3  
REDDING CA 96001

SIERRA COUNTY DISTRICT ATTORNEY  
PO BOX 457  
DOWNEVILLE CA 95936

SISKIYOU COUNTY DISTRICT ATTORNEY  
PO BOX 986  
YREKA CA 96097

SOLANO COUNTY DISTRICT ATTORNEY  
675 TEXAS ST STE 4500  
FAIRFIELD CA 94533

SONOMA COUNTY DISTRICT ATTORNEY  
600 ADMINISTRATION DR RM 212-J  
SANTA ROSA CA 95403

STANISLAUS COUNTY DISTRICT  
ATTORNEY  
PO BOX 442  
MODESTO CA 95353

SUTTER COUNTY DISTRICT ATTORNEY  
446 SECOND ST  
YUBA CITY CA 95991

TEHAMA COUNTY DISTRICT ATTORNEY  
PO BOX 519  
RED BLUFF CA 96080

TRINITY COUNTY DISTRICT ATTORNEY  
PO BOX 310  
WEAVERVILLE CA 96093

TULARE COUNTY DISTRICT ATTORNEY  
221 S MOONEY BLVD RM 224  
VISALIA CA 93291

TUOLUMNE COUNTY DISTRICT ATTORNEY  
423 N WASHINGTON ST  
SONORA CA 95370

VENTURA COUNTY DISTRICT ATTORNEY  
800 S VICTORIA AVE  
VENTURA CA 93009

YOLO COUNTY DISTRICT ATTORNEY  
301 SECOND ST  
WOODLAND CA 95695

YUBA COUNTY DISTRICT ATTORNEY  
215 FIFTH ST  
MARYSVILLE CA 95901

LOS ANGELES CITY ATTORNEY'S OFFICE  
800 CITY HALL EAST  
200 N MAIN ST  
LOS ANGELES CA 90012

SAN DIEGO CITY ATTORNEY'S OFFICE  
CIVIC CENTER PLAZA  
1200 THIRD AVE STE 1620  
SAN DIEGO CA 92101

SAN JOSE CITY ATTORNEY'S OFFICE  
200 E SANTA CLARA ST FL 6  
SAN JOSE CA 95113

SAN FRANCISCO CITY ATTORNEY'S  
OFFICE  
CITY HALL RM 234  
SAN FRANCISCO, CA 94102