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OF COUNSEL

JAMIE L. CROOK
FELLOW

Via First Class Certified Mail
Return Receipt Requested

September 25, 2009

CEO or President
Drs. Foster & Smith, Inc.
P.O. Box 100
Rhinelander, WI 54501

Dear CEO or President:

I represent the Natural Resources Defense Council ("NRDC"), a national nonprofit organization dedicated to safeguarding the Earth: its people, its plants and animals, and the natural systems on which all life depends. NRDC has a long history of advocating for strict regulation of the use of harmful chemicals in consumer products.

This letter constitutes notice that the entity listed below has violated and is violating the provisions of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65"), Cal. Health & Safety Code § 25249.5 *et seq.* Specifically, this entity has violated and is violating Section 25249.6, which provides that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer . . . without first providing a clear and reasonable warning to such individual . . . ."

Alleged Violator: Drs. Foster & Smith, Inc.

Flea collars, including but not limited to Bio Spot Flea & Tick Collar For Puppies and Bio Spot Flea & Tick Collar For Small Dogs, which are produced, distributed, and/or sold by this entity, contain propoxur, a chemical known to the State of California to cause cancer. Since August 11, 2007 and continuing to the present, this entity has knowingly and intentionally exposed and continues knowingly and intentionally to expose consumers within the State of California to propoxur at levels that exceed the No Significant Risk Level without providing a clear and reasonable warning of this exposure. Exposure occurs, *inter alia*, via dermal contact with animals wearing flea collars containing propoxur and hand-to-mouth contact following such dermal contact.

Pursuant to California Code of Regulations Title 27, §25903(b)(1), attached is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary,"

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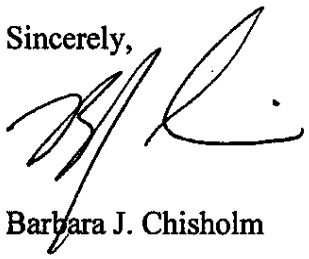
prepared by the Office of Environmental Health Hazard Assessment and the California Environmental Protection Agency. Pursuant to Section 25249.7(d)(1) of the Health and Safety Code, also attached is a Certificate of Merit pertaining to the noticing party's allegations.

Although violations are occurring throughout the State of California, at this time the noticing party lacks sufficient knowledge whether violations are occurring in each of California's 58 counties. The noticing party is therefore providing this notice to the California Attorney General, the District Attorney for each California county, and the City Attorney for the Cities of Los Angeles, San Diego, San Francisco, and San Jose, pursuant to California Code of Regulations Title 27, §25903(c)(3).

The noticing party is NRDC, which is located at 111 Sutter Street, 20th Floor, San Francisco, California, 94108, tel.: 415-875-6100. A responsible individual within NRDC is Michael Wall, a staff attorney at NRDC. If you wish to contact me, my contact information is below.

Barbara J. Chisholm
Altshuler Berzon LLP
177 Post Street, Suite 300
San Francisco, CA 94108
Telephone: (415) 421-7151
Facsimile: (415) 362-8064

Sincerely,



Barbara J. Chisholm

Enclosures

cc: Attorney General (without "Proposition 65: A Summary" attachment) (with confidential factual information supporting Certificate of Merit)
District Attorneys for California's 58 Counties (see list attached to Certificate of Service) (without "Proposition 65: A Summary" attachment)
City Attorneys for the Cities of Los Angeles, San Diego, San Francisco, and San Jose (see list attached to Certificate of Service) (without "Proposition 65: A Summary" attachment)

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

I, Barbara J. Chisholm, hereby declare:

I am an attorney in good standing with the California Bar and represent the noticing party, the Natural Resources Defense Council.

This Certificate of Merit accompanies the attached 60-day notice, which alleges that the noticed entity or entities have violated and are violating Section 25249.6 of the Health and Safety Code by, in the course of doing business, knowingly and intentionally exposing individuals to propoxur, which has been designated as a chemical known to the State of California to cause cancer, without a clear and reasonable warning.

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 chemical that is the subject of the action.

Based on the information that I have obtained through these consultations, I believe that 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 I have obtained (1) establishes a reasonable basis for concluding that this entire action has merit and that the noticing party will be able to prevail on each element for which it bears the burden of proof, and (2) does not prove that any affirmative defense set forth in Section 25249.5, *et seq.* of the Health and Safety Code has merit.

Attached to the copy of the Certificate of Merit that has been served on the Attorney General is factual information sufficient to establish the basis for this certificate, including the information required by Section 25249.7(h)(2) of the Health and Safety Code.

Dated: September 21, 2009

Barbara J. Chisholm
Attorney for Natural Resources Defense Council

CERTIFICATE OF SERVICE

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to the within action; my business address is 177 Post Street, San Francisco, California 94108.

On **September 25, 2009**, I served the following document(s):

Sixty-Day Notice of Violations of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Consumers to Propoxur in Flea-and-Tick Collars Without Warning

on the entity listed below and the individuals identified in the list attached hereto as Appendix A, by placing true copies thereof in sealed envelopes addressed for service to the address(es) indicated below and in Appendix A, by enclosing them in an envelope, and by placing the envelope for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing.

CEO or President
Drs. Foster & Smith, Inc.
P.O. Box 100
Rhinelander, WI 54501

and

Individuals identified in list attached as Appendix A

I declare under penalty of perjury under laws of the State of California that the foregoing is true and correct. Executed this **September 25, 2009,** at San Francisco, California.

Lorraine Bailey

Appendix A

Edmund G. Brown, Jr.
Attorney General for the State of California
PO Box 944255
Sacramento, CA 94244

The Honorable Candice Hooper-Mancino,
District Attorney, SAN BENITO COUNTY
419 4th Street
Hollister, CA 95023-3801

The Honorable Donald Segerstrom, Jr.,
District Attorney, TUOLUMNE COUNTY
423 No. Washington Street
Sonora, CA 95370

The Honorable Arthur Maillet
District Attorney, INYO COUNTY
PO Box D
Independence, CA 93526

The Honorable Gary Lieberstein, District
Attorney, NAPA COUNTY
Carithers Building
931 Parkway Mall
Napa, CA 94559

The Honorable Clifford Newell
District Attorney, NEVADA COUNTY
110 Union Street
Nevada City, California 95959

The Honorable Dean Flippo, District
Attorney, MONTEREY COUNTY
PO BOX 1131
Salinas, CA 93902

The Honorable Dennis Herrera
Office of the City Attorney
City Hall, Room 234
San Francisco, CA 94102

The Honorable Bob Lee
District Attorney, SANTA CRUZ COUNTY
701 Ocean Street, Room 200
Santa Cruz, CA 95060

The Honorable Bonnie Dumanis
District Attorney, SAN DIEGO COUNTY
330 W. Broadway, Suite 1300
San Diego, CA 92101

The Honorable Dolores Carr
District Attorney, SANTA CLARA
COUNTY
70 West Hedding Street, West Wing
San Jose, CA 95110

The Honorable Carl Adams, District
Attorney, SUTTER COUNTY
446 2nd Street
Yuba City, CA 95991

The Honorable Carmen A. Trutanich
City Attorney
800 City Hall East
200 North Main Street
Los Angeles, CA 90012

The Honorable Christie Stanley, District
Attorney, SANTA BARBARA COUNTY
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Edward Berberian
District Attorney, MARIN COUNTY
3501 Civic Center Drive, Room 130
San Rafael, CA 94903

The Honorable David Paulson, District
Attorney, SOLANO COUNTY
675 Texas Street, Ste. 4500
Fairfield, CA 94533

The Honorable Edward Jagels, District Attorney, KERN COUNTY
1215 Truxtun Avenue
Bakersfield, CA 93301

The Honorable Elizabeth Egan
District Attorney, FRESNO COUNTY
2220 Tulare Street, Ste. 1000
Fresno, CA 93721

The Honorable George Booth
District Attorney, MONO COUNTY
P.O. Box 617
Bridgeport, CA 93517

The Honorable Gerald Shea
District Attorney, SAN LUIS OBISPO COUNTY
1035 Palm Street
San Luis Obispo, CA 93408

The Honorable Gregg Cohen
District Attorney, TEHAMA COUNTY
444 Oak Street, Room L
Red Bluff, CA 96080

The Honorable James Fox,
District Attorney, SAN MATEO COUNTY
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable James Willett, District Attorney
SAN JOAQUIN COUNTY
PO BOX 990
Stockton, CA 95202

The Honorable Bradford Fenocchio
District Attorney, PLACER COUNTY
10810 Justice Center Drive Suite #240
Roseville, CA 95678

The Honorable Jeff Cunan
District Attorney, PLUMAS COUNTY
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Gary Woolverton
District Attorney, MODOC COUNTY
204 S. Court Street, Room 202
Alturas, CA 96101

The Honorable Gerald Benito
District Attorney, SHASTA COUNTY
1525 Court Street, Third Floor
Redding, CA 96001-1632

The Honorable Gilbert Otero
District Attorney, IMPERIAL COUNTY
940 West Main Street, Ste. 102
El Centro, CA 92243

The Honorable Gregory Totten
District Attorney, VENTURA COUNTY
800 South Victoria Avenue
Ventura, CA 93009

The Honorable James Kirk Andrus
District Attorney, SISKIYOU COUNTY
PO BOX 986
Yreka, CA 96097

The Honorable Jan Goldsmith
Office of the City Attorney
1200 Third Ave., Suite 1620
San Diego, CA 92101

The Honorable Jan Scully
District Attorney, SACRAMENTO COUNTY
901 G Street
Sacramento, CA 95814

The Honorable Birgit Fladager
District Attorney, STANISLAUS COUNTY
832 12th Street, Suite 300
Modesto, CA 95354

The Honorable John Poyner
District Attorney, COLUSA COUNTY
547 Market Street, Ste. 102
Colusa, CA 95932

The Honorable Jeffrey Tuttle
District Attorney, CALAVERAS COUNTY
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable Jon Hopkins
District Attorney, LAKE COUNTY
255 N. Forbes Street
Lakeport, CA 95453

The Honorable Larry Morse II
District Attorney, MERCED COUNTY
650 W. 20th Street
Merced, CA 95340

The Honorable Meredith Lintott
District Attorney, MENDOCINO COUNTY
PO BOX 1000
Ukiah, CA 95482

The Honorable Michael Harper
District Attorney, TRINITY COUNTY
PO Box 310
11 Court St.
Weaverville, CA 96093

The Honorable Michael Ramsey
District Attorney, BUTTE COUNTY
25 County Center Drive - Administration Building, Oroville, CA 95965

The Honorable Nancy O'Malley
District Attorney, ALAMEDA COUNTY
1225 Fallon Street, Room 900
Oakland, CA 94612

The Honorable Paul Gallegos
District Attorney, HUMBOLDT COUNTY
825 5th Street, 4th Floor
Eureka, CA 95501

The Honorable Kamala Harris
District Attorney, SAN FRANCISCO COUNTY
850 Bryant Street, Room 325
San Francisco, CA 94103

The Honorable Lawrence Allen
District Attorney, SIERRA COUNTY
100 Courthouse Square, Second Floor
Post Office Box 457
Downieville, CA 95936

The Honorable Michael R. Keitz
District Attorney, MADERA COUNTY
209 West Yosemite Avenue
Madera, CA 93637

The Honorable Michael Ramos
District Attorney, SAN BERNARDINO COUNTY
316 N. Mountain View Avenue
San Bernardino, CA 92415

The Honorable Michael Riese
District Attorney, DEL NORTE COUNTY
450 H Street, Room 171
Crescent City, CA 95531

The Honorable Patrick McGrath
District Attorney, YUBA COUNTY
215 Fifth Street, Ste. 152
Marysville, CA 95901

The Honorable Phillip Cline
District Attorney, TULARE COUNTY
221 South Mooney Blvd., Suite 224
Visalia, CA 93291

The Honorable Robert Brown
District Attorney, MARIPOSA COUNTY
5101 Jones St.
P.O. Box 730
Mariposa, CA 95338

The Honorable Richard Doyle
Office of the City Attorney
City of San Jose
200 East Santa Clara Street, 16th Floor
San Jose, CA 95113- 1905

The Honorable Robert Burns
District Attorney, LASSEN COUNTY
220 S. Lassen Street, Ste. 8
Susanville, CA 96130

The Honorable Robert Kochly
District Attorney, CONTRA COSTA COUNTY
900 Ward Street
Martinez, CA 94553

The Honorable Ronald Calhoun
District Attorney, KINGS COUNTY
1400 West Lacey Blvd
Hanford, CA 93230

The Honorable Steve Cooley
District Attorney's Office, LOS ANGELES COUNTY
210 West Temple Street, Suite 18000
Los Angeles, CA 90012-3210

The Honorable Tony Rackauckas
District Attorney, ORANGE COUNTY
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable Robert Holzapfel
District Attorney, GLENN COUNTY
PO Box 430
Willows, CA 95988

The Honorable Rodric Pacheco
District Attorney, RIVERSIDE COUNTY
4075 Main Street
Riverside, CA 92501

The Honorable Stephan Passalacqua
District Attorney, SONOMA COUNTY
600 Administration Drive, Room 212J
Santa Rosa, CA 95403

The Honorable Todd Riebe, District Attorney,
AMADOR COUNTY
708 Court Street #202
Jackson, CA 95642

The Honorable Vernon Pierson
District Attorney, EL DORADO COUNTY
515 Main Street
Placerville, CA 95667

The Honorable William Richmond
District Attorney, ALPINE COUNTY
270 Laramie Street
P.O. Box 248
Markleeville, CA 96120

The Honorable Jeff Reisig
District Attorney, YOLO COUNTY
301 Second Street
Woodland, CA 95695