

# JACKSON & TUERCK

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June 10, 2010

*(See attached Certificate of Service)*

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

Dear Public Enforcement Agencies and Mr. Matz:

This office represents the California Sportfishing Protection Alliance ("CSPA"), a California non-profit public benefit corporation with over 2,000 members. CSPA is dedicated to the preservation, protection, and defense of the environment, wildlife and natural resources of California's waters, including the Feather River, the Sacramento River, the Sacramento-San Joaquin Delta and their tributaries.

CSPA has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986, codified at Health & Safety Code §25249.5 *et seq.* (also referred to as "Proposition 65"). This letter serves to provide you and the Violator with CSPA's notification of these violations. Pursuant to §25249.7(d) of the statute, CSPA intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies commence and diligently prosecute an action against 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 details of the violations that are the subject of this notice are provided below.

The name of the violator covered by this notice is RECOLOGY OF BUTTE COLUSA COUNTIES (hereinafter referred to as "Recology"). These violations involve the discharge of lead and lead compounds. These Proposition 65-listed toxins have been discharged, and are likely to continue to be discharged, by Recology from the facility located at 2720 S. Fifth Avenue, in Oroville, California ("the Facility") to the Feather River, which flows to the Sacramento River. The Feather River and the Sacramento River are designated as sources of drinking water in the "Water Quality Control Plan for the Sacramento River and San Joaquin River Basins," generally referred to as the "Basin Plan."

Information available to CSPA indicates that these ongoing unlawful discharges have been occurring since at least approximately 2005. As part of its public interest mission and to rectify these ongoing violations of California law, CSPA is interested in resolving these violations expeditiously, without the necessity of costly and protracted litigation.

Notice of Violation, Health & Safety Code §25249.5 *et seq.*

May 20, 2010

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CSPA's address is 3536 Rainier Avenue, Stockton, CA 95204. The name and telephone number of the noticing individual within CSPA is Bill Jennings, Executive Director, (209) 464-5067. CSPA has retained legal counsel to represent it in this matter. Therefore, please direct all communications regarding this notice to CSPA's outside counsel in this matter:

Robert J. Tuerck  
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Bob@jacksontuerck.com

Very Truly Yours,



Robert J. Tuerck  
JACKSON & TUERCK  
Attorneys for Plaintiff  
California Sportfishing Protection Alliance

cc: (see attached Certificate of Service)

**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 of age, and am not a party to the within entitled action. My business address is 429 Main Street, Suite C, Quincy, California 95971.

On June 10, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.; "THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986: A SUMMARY"** on the following parties by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below and depositing it in a U.S. Postal Service Office for delivery by Certified Mail:

Mr. Joe Matz, General Manager  
Recology of Butte Colusa Counties  
2720 S. Fifth Avenue  
Oroville, CA 95965

Mr. Joe Matz, General Manager  
Recology of Butte Colusa Counties  
P.O. Box 1512  
Oroville, CA 95965

Roxanne L. Frye, Agent for Service for  
Recology Butte Colusa Counties  
50 California St., 24<sup>th</sup> Floor  
San Francisco CA 94111

Proposition 65 Enforcement Reporting  
California Attorney General's Office  
1515 Clay Street, Ste. 2000  
Oakland, CA 94612

On June 10, 2010, I served the following documents: **NOTICE OF VIOLATION, CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.;** on the following parties by placing a true and correct copy thereof in a sealed envelope, and depositing it in a U.S. Postal Service Office for delivery by First Class Mail:

Michael L. Ramsey  
Butte County District Attorney  
25 County Center Drive  
Oroville, California 95965

Executed on June 10, 2010, in Petaluma, California.

  
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Robert J. Tuerck

**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 and 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 550 chemicals have been listed as of May 1, 1996. 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.