

SHUTE, MIHALY  
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102  
T: 415 552-7272 F: 415 552-5816  
www.smwlaw.com

ELLISON FOLK  
Attorney  
folk@smwlaw.com

February 21, 2013

**ATTORNEY GENERAL COPY: CONTAINS OFFICIAL  
INFORMATION PER EVIDENCE CODE § 1040**

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

Dear Public Enforcement Agencies:

Shute, Mihaly & Weinberger LLP ("Firm") represents As You Sow ("AYS"), a 501 (c) (3) non-profit corporation dedicated to, among other causes, the protection of the environment, toxics reduction, the promotion of and improvement of human health, the improvement of worker and consumer rights, environmental education and corporate accountability. As You Sow is based in San Francisco, California and was incorporated in 1992 under the laws of the State of California.

This firm and AYS have documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 et seq. This letter serves to provide this Firm's and AYS' notification of these violations to the public enforcement agencies. Pursuant to §25249.7(d) of the statute, this Firm intends to bring an enforcement action on behalf of AYS 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 details of the violations that are the subject of this notice are provided below.

Alleged violators. The name of the violator covered by this notice is Rust-Oleum Corporation.

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**Chemicals.** These violations involve exposures to ethylbenzene (EB) from the products listed below. On June 11, 2004, the State of California officially listed EB as a chemical known to cause cancer.

**Consumer products.** The products that are the subject of this notice are Rust-Oleum Professional Primer (Gray), Rust-Oleum Painter's Touch Primer – Ultra Cover 2x (White), Rust-Oleum Professional High Performance Enamel (Machine Gray), Rust-Oleum Stops Rust Clean Metal Primer, Rust-Oleum Specialty Metallic Finish (Metallic Silver), Rust-Oleum Specialty Camouflage (Earth Brown), and Rust-Oleum Specialty Ultra High Heat (Aged Copper), manufactured, sold, and/or distributed by Rust-Oleum Corporation in California.

**Route of exposure.** Use of the product identified in this notice results in human exposures to EB. The routes of exposure include ingestion via hand to mouth contact after consumers touch or handle the product; dermal absorption directly through the skin and eyes when consumers touch or handle the product; inhalation when consumers breathe near the products; and direct ingestion. No clear and reasonable warning is provided with this product regarding the carcinogenic hazards of EB.

**Duration of violations.** Each of these ongoing violations has occurred on every day since at least February 21, 2013, as well as every day since the products were introduced in the California marketplace, and will continue every day until clear and reasonable warnings are provided to product purchasers and users or until these known toxic chemicals are removed from the products.

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. You may communicate directly with As You Sow to discuss an early resolution of this matter by contacting Danielle Fugere, President, 1611 Telegraph Avenue, Suite 1450, Oakland, CA 94612, (510) 735-8158. You may also contact AYS' counsel:

Ellison Folk  
Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
PH: 415.552.7272; Fax: 415.552.5816  
Email: folk@smwlaw.com

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& WEINBERGER LLP

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Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP

A handwritten signature in blue ink, appearing to be 'E. Folk', written in a cursive style.

Ellison Folk

446562.1

CERTIFICATE OF MERIT

(Notice of Proposition 65 Violation on Rust-Oleum Corporation)

I, Ellison Folk, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party in the notice has violated section 25249.6 of the Health and Safety Code by failing to provide clear and reasonable warnings.
2. I am an attorney for the noticing party.
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 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 plaintiff's 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 section 25249.7(h)(2) of the Health and Safety Code, 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: 2-21-13

  
\_\_\_\_\_  
Ellison Folk

Enclosure (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: 396 Hayes Street, San Francisco, CA 94102.

On February 21, 2013, 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 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:

Michael D. Tello, Chairman, Chief Executive Officer  
Rust-Oleum Corporation  
11 Hawthorn Parkway  
Vernon Hills, IL 60061

On February 21, 2013, 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 electronic service of the Attorney General’s Proposition 65 60 Day Notice Filing system.

On February 21, 2013, 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 February 21, 2013, at San Francisco, California.

---

Sean Mulligan

THE HONORABLE NANCY E. O'MALLEY  
ALAMEDA COUNTY DISTRICT ATTORNEY  
1225 FALLON ST RM 900  
OAKLAND CA 94612

THE HONORABLE ROBERT J. MALONEY  
GLENN COUNTY DISTRICT ATTORNEY  
PO BOX 430  
540 WEST SYCAMORE STREET  
WILLOWS CA 95988

THE HONORABLE EDWARD BERBERIAN  
MARIN COUNTY DISTRICT ATTORNEY  
3501 CIVIC CTR DR RM 130  
SAN RAFAEL CA 94903-4164

THE HONORABLE TERESE DRABEC  
ALPINE COUNTY DISTRICT ATTORNEY  
PO BOX 248  
MARKLEEVILLE CA 96120

THE HONORABLE PAUL GALLEGOS  
HUMBOLDT COUNTY DISTRICT ATTORNEY  
825 FIFTH ST, 4<sup>TH</sup> FLOOR  
EUREKA CA 95501

THE HONORABLE ROBERT BROWN  
MARIPOSA COUNTY DISTRICT ATTORNEY  
PO BOX 730  
5101 JONES STREET  
MARIPOSA CA 95338

THE HONORABLE TODD D RIEBE  
AMADOR COUNTY DISTRICT ATTORNEY  
708 COURT ST STE 202  
JACKSON CA 95642

THE HONORABLE GILBERT OTERO  
IMPERIAL COUNTY DISTRICT ATTORNEY  
939 W MAIN ST, SUITE 102  
EL CENTRO CA 92243

THE HONORABLE C. DAVID EYSTER  
MENDOCINO COUNTY DISTRICT ATTORNEY  
100 NORTH STATE STREET  
PO BOX 1000  
UKIAH CA 95482

THE HONORABLE MICHAEL RAMSEY  
BUTTE COUNTY DISTRICT ATTORNEY  
25 COUNTY CTR DR #245  
OROVILLE CA 95965-3370

THE HONORABLE ARTHUR MAILLET  
INYO COUNTY DISTRICT ATTORNEY  
P.O. DRAWER U  
INDEPENDENCE CA 93526-0604

THE HONORABLE LARRY MORSE II  
MERCED COUNTY DISTRICT ATTORNEY  
550 W., 20<sup>TH</sup> STREET  
MERCED CA 95340

THE HONORABLE BARBARA YOOK  
CALAVERAS COUNTY DISTRICT ATTORNEY  
891 MTN RANCH RD  
SAN ANDREAS CA 95249

THE HONORABLE LISA GREEN  
KERN COUNTY DISTRICT ATTORNEY  
1215 TRUXTUN AVE  
BAKERSFIELD CA 93301

THE HONORABLE GARY WOOLVERTON  
MODOC COUNTY DISTRICT ATTORNEY  
204 S COURT ST RM 202  
ALTURAS CA 96101-4020

THE HONORABLE JOHN POYNER  
COLUSA COUNTY DISTRICT ATTORNEY  
346 5<sup>TH</sup> STREET  
COLUSA CA 95932

THE HONORABLE GREG STRICKLAND  
KINGS COUNTY DISTRICT ATTORNEY  
1400 W LACEY BLVD  
HANFORD CA 93230

THE HONORABLE GEORGE BOOTH  
MONO COUNTY DISTRICT ATTORNEY  
PO BOX 617  
BRIDGEPORT CA 93517

THE HONORABLE MARK A. PETERSON  
CONTRA COSTA COUNTY DIST. ATTORNEY  
900 WARD STREET  
MARTINEZ CA 94553

THE HONORABLE DON A. ANDERSON  
LAKE COUNTY DISTRICT ATTORNEY  
255 N FORBES ST  
LAKEPORT CA 95453

THE HONORABLE DEAN FLIPPO  
MONTEREY COUNTY DISTRICT ATTORNEY  
PO BOX 1131  
SALINAS CA 93902

THE HONORABLE JON ALEXANDER  
DEL NORTE COUNTY DISTRICT ATTORNEY  
450 H ST STE 171  
CRESCENT CITY CA 95531

THE HONORABLE ROBERT BURNS  
LASSEN COUNTY DISTRICT ATTORNEY  
220 S LASSEN ST STE 8  
SUSANVILLE CA 96130

THE HONORABLE GARY LIEBERSTEIN  
NAPA COUNTY DISTRICT ATTORNEY  
931 PARKWAY MALL  
NAPA CA 94559

THE HONORABLE VERN PIERSON  
EL DORADO COUNTY DISTRICT ATTORNEY  
515 MAIN ST  
PLACERVILLE CA 95667

THE HONORABLE STEVE COOLEY  
L A COUNTY DISTRICT ATTORNEY  
210 W TEMPLE ST ROOM 18-709  
LOS ANGELES CA 90012

THE HONORABLE CLIFFORD NEWELL  
NEVADA COUNTY DISTRICT ATTORNEY  
110 UNION STREET  
NEVADA CITY CA 95959

THE HONORABLE ELIZABETH EGAN  
FRESNO COUNTY DISTRICT ATTORNEY  
2220 TULARE ST STE 1000  
FRESNO CA 93721

THE HONORABLE MICHAEL R. KEITZ  
MADERA COUNTY DISTRICT ATTORNEY  
209 W YOSEMITE AVE  
MADERA CA 93637

THE HONORABLE TONY RACKAUCKAS  
ORANGE COUNTY DISTRICT ATTORNEY  
401 CIVIC CTR DR WEST  
SANTA ANA CA 92701

THE HONORABLE R. SCOTT OWENS  
PLACER COUNTY DISTRICT ATTORNEY  
10810 JUSTICE CENTER DRIVE, #240  
ROSEVILLE CA 95678

THE HONORABLE STEPHEN M. WAGSTAFFE  
SAN MATEO COUNTY DISTRICT ATTORNEY  
400 COUNTY CTR FL 3  
REDWOOD CITY CA 94063

THE HONORABLE CARL V ADAMS  
SUTTER COUNTY DISTRICT ATTORNEY  
446 SECOND ST, #102  
YUBA CITY CA 95991

THE HONORABLE DAVID HOLLISTER  
PLUMAS COUNTY DISTRICT ATTORNEY  
520 MAIN ST RM 404  
QUINCY CA 95971

THE HONORABLE JOYCE E. DUDLEY  
SANTA BARBARA COUNTY DIST. ATTORNEY  
1112 SANTA BARBARA ST  
SANTA BARBARA CA 93101

THE HONORABLE GREGG COHEN  
TEHAMA COUNTY DISTRICT ATTORNEY  
PO BOX 519  
RED BLUFF CA 96080

PAUL ZELLERBACH  
RIVERSIDE COUNTY DISTRICT ATTORNEY  
3972 ORANGE STREET  
RIVERSIDE CA 92501

THE HONORABLE JEFFREY F. ROSEN  
SANTA CLARA COUNTY DIST. ATTORNEY  
70 W HEDDING ST WEST WING  
SAN JOSE CA 95110

THE HONORABLE MICHAEL HARPER  
TRINITY COUNTY DISTRICT ATTORNEY  
PO BOX 310  
WEAVERVILLE CA 96093

THE HONORABLE JAN SCULLY  
SACRAMENTO COUNTY DIST. ATTORNEY  
901 G ST  
SACRAMENTO CA 95814

THE HONORABLE BOB LEE  
SANTA CRUZ COUNTY DIST. ATTORNEY  
701 OCEAN ST RM 200  
SANTA CRUZ CA 95060

THE HONORABLE PHILLIP J CLINE  
TULARE COUNTY DISTRICT ATTORNEY  
221 S MOONEY BLVD RM 224  
VISALIA CA 93291

THE HONORABLE CANDICE HOOPER  
SAN BENITO COUNTY DISTRICT ATTORNEY  
419 FOURTH ST  
HOLLISTER CA 95023

THE HONORABLE STEPHEN S. CARLTON  
SHASTA COUNTY DISTRICT ATTORNEY  
1355 WEST STREET  
REDDING, CA 96001

THE HON. DONALD I SEGERSTROM, JR  
TUOLUMNE COUNTY DIST. ATTORNEY  
423 N WASHINGTON ST  
SONORA CA 95370

THE HONORABLE MICHAEL RAMOS  
SAN BERNARDINO COUNTY  
DISTRICT ATTORNEY  
316 N MTN VIEW AVE  
SAN BERNARDINO CA 92415-0004

THE HONORABLE LAWRENCE ALLEN  
SIERRA COUNTY DISTRICT ATTORNEY  
PO BOX 457  
DOWNIEVILLE CA 95936

THE HONORABLE GREG TOTTEN  
VENTURA COUNTY DISTRICT ATTORNEY  
800 S VICTORIA AVE  
VENTURA CA 93009

THE HONORABLE BONNIE DUMANIS  
SAN DIEGO COUNTY DISTRICT ATTORNEY  
330 W BROADWAY, SUITE 1300  
SAN DIEGO CA 92101

THE HONORABLE J. KIRK ANDRUS  
SISKIYOU COUNTY DISTRICT ATTORNEY  
PO BOX 986  
YREKA CA 96097

THE HONORABLE JEFF REISIG  
YOLO COUNTY DISTRICT ATTORNEY  
301 SECOND ST  
WOODLAND CA 95695

THE HONORABLE GEORGE GASCÓN  
SAN FRANCISCO COUNTY  
DISTRICT ATTORNEY  
850 BRYANT ST RM 322  
SAN FRANCISCO CA 94103

THE HONORABLE DONALD A. DU BAIN  
SOLANO COUNTY DISTRICT ATTORNEY  
675 TEXAS ST STE 4500  
FAIRFIELD CA 94533

THE HONORABLE PATRICK MCGRATH  
YUBA COUNTY DISTRICT ATTORNEY  
215 FIFTH ST, #152  
MARYSVILLE CA 95901

THE HONORABLE JAMES WILLETT  
SAN JOAQUIN COUNTY DIST. ATTORNEY  
PO BOX 990  
STOCKTON CA 95201-0990

THE HONORABLE JILL RAVITCH  
SONOMA COUNTY DISTRICT ATTORNEY  
600 ADMINISTRATION DR RM 212-J  
SANTA ROSA CA 95403

LOS ANGELES CITY ATTORNEY'S OFFICE  
200 N MAIN ST, FLOOR 8  
LOS ANGELES CA 90012

THE HONORABLE GERALD T SHEA  
SAN LUIS OBISPO COUNTY  
DISTRICT ATTORNEY  
COURTHOUSE ANNEX 4<sup>TH</sup> FLOOR  
SAN LUIS OBISPO CA 93408

THE HONORABLE BIRGIT FLADAGER  
STANISLAUS COUNTY DISTRICT ATTORNEY  
832 12<sup>TH</sup> STREET, SUITE 300  
MODESTO CA 95354

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  
SAN JOSE CA 95113

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