

60 - DAY NOTICE OF VIOLATION

**SENT IN COMPLIANCE WITH
CALIFORNIA HEALTH & SAFETY CODE § 25249.7(d)**

DATE: December 6, 2018

TO: Woodbridge Village Association
California Attorney General's Office;
District Attorney's Office for 58 Counties; and
City of Irvine, Office of City Attorney

FROM: Clean Air OC, LLC, through its counsel,
Kent J. Schmidt, Dorsey & Whitney LLP

I. INTRODUCTION

We represent Clean Air OC, LLC ("Clean Air"), an organization which exists to promote awareness of airborne toxic chemicals to which California residents are exposed and to improve human health by reducing hazardous substances and improving air quality for California residents.

This Notice is being provided to the alleged violator, Woodbridge Village Association (the "Violator"), pursuant to 27 Cal. Code of Regulations § 25903(b)(2)(A)(2).¹ Enclosed with the Violator's copy of this Notice is the publication, *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary*. (Section 25903(b)(1).) The Notice is also being provided to the above-referenced public enforcers in the State of California. (Section 25903(c).)

II. NATURE OF ALLEGED VIOLATION AND EXPOSURE

The exposures alleged in this Notice relate to soot and other Listed Chemicals in smoke emanating from ground level wood burning open fire pits without chimneys ("Fire Pits").

The burning of wood in the fire pits releases into the air chemicals that are known to the State of California to be cancer-causing and/or reproductive toxins ("Listed Chemicals") as further specified below.

The immediate sources of the exposure are the Fire Pits built and maintained by the Violator at its Properties and thus under the control of the Violator. The Violator sanctions and facilitates the

¹ All "Section" references refer to Title 27 of the Cal. Code of Regulations.

burning of firewood in the Fire Pits by guests and residents. The Violator has thus chosen to allow its members, visitors, guests and employees at the Violator's North Lake Beach Club, and South Lake Beach Club, noted above (hereinafter, the "Properties"), to be exposed to Listed Chemicals without providing requisite warnings and has created conditions that expose others (e.g., those living in homes in close proximity) to be similarly exposed. The exposure requiring a warning occurs on the property owned or controlled by the Violator (e.g., the common areas and walkways) but extends to and "occurs beyond the property owned or controlled" by Violator (e.g., homes in close proximity). (Section 25903(b)(2)(F).)

Proposition 65 requires that when a party, such as the Violator, has been or is knowingly and intentionally exposing its customers, members, the public and/or its employees to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that exposure to the potentially exposed persons (Health & Safety Code § 25249.6).

III. CHEMICAL EXPOSURES

The Listed Chemicals released into the ambient air when firewood is burned in the Fire Pits includes soot, carbon monoxide, 1,3,-butadiene, arsenic, benzene, cadmium, formaldehyde, nickel, lead, tetrachloroethylene, acetaldehyde, benzo[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, dibenzo(a,h)pyrene benzo[k]fluoranthene, carbozole, chromium, chrysene, chloroform, furan, lead, naphthylene, nickle, toluene, dichloromethane, ethylbenzene, indeno[1,2,3-cd]pyrene.

These exposures are environmental, airborne in particular, and are therefore not spatially limited to the bounds of the Properties, but also intrude into public and private areas in the vicinity of the Properties. Members of the general public, residents, and local homeowners are additionally exposed to the Listed Chemicals.

Soot, one of the Listed Chemicals, is broadly defined as a carbonaceous substance produced during combustion of wood or coal which rises in fine particles and is conveyed in the atmosphere to other locations.

IV. FURTHER INFORMATION ON THE EXPOSURE AND FAILURE TO WARN

A. Location of Exposure

The Properties containing the Fire Pits are located at North Lake Beach Club, 10 Stone Creek S., Irvine, CA 92604 and South Lake Beach Club at 2 Blue Lake S., Irvine, CA 92614.

B. Frequency of Use, Time Period, and Resulting Extent of Exposures

The Fire Pits are provided for the burning of wood for recreational purposes, and members of the Woodbridge Village Association community are permitted to do so between the hours of 10:00 a.m. and 10:00 p.m., 6 days per week, and 2:30 p.m. to 10:00 p.m. the other 1 day per week, for a total of 113.5 hours per week of potential exposure. The Fire Pits have been in operation near

continuously since 1975, representing over 180,000 potential hours of exposure to Californians from each of the Fire Pits. While the number of Fire Pits has fluctuated minimally over that time, there are currently 6 fire pits in operation and they are regularly used throughout the entire calendar year.

C. Sufficiency of Warning

This is an environmental exposure within the meaning of Section 25601(d) which provides: “Environmental exposure warnings must be provided in a conspicuous manner and under such conditions as to make the warning likely to be seen, read, and understood by an ordinary individual in the course of normal daily activity.” No warning is posted.

D. Routes of Exposure and Physical Impact

Exposures to Listed Chemicals occur at the Violator's Properties through several bodily routes, including inhalation (breathing of designated chemicals in gaseous, vapor or particulate form), dermal contact and absorption from skin and/or clothing and ingestion directly but also indirectly due to touching of contaminated surfaces and subsequent hand to-mouth contact.

E. Knowledge of Violator

Violator has been aware of the potential health consequences of these exposures since at least 2010, when members of the community began to complain and provide educational materials from professional medical publications. Despite knowledge of such exposures, and their potential harmful effects, the Violator has failed to provide clear and reasonable warnings as required by Proposition 65, so that its customers, visitors, guests and employees, who may not wish to be exposed are warned prior to exposure that they may be exposed to Listed Chemicals.

The extent of the exposure is significant in terms of its danger to the health of Californians who become exposed. The magnitude of exposure for any given person will depend on the distance they are from an operating fire pit, as well as wind direction and patterns. Children and pregnant women will be more susceptible.

Hundreds of Californians may be utilizing the facility at any given time. The Properties are bounded largely by vertical bar style fencing that allows unobstructed movement of Listed Chemical laden air to travel from Fire Pits to areas within and adjacent to the Properties, including areas open to the public and private residences. There is a heavily used walking and bike path adjacent to the North Lake Beach Club facility where hundreds of persons may pass each hour. These Californians are unwillingly exposed to Listed Chemicals. Some are running or biking, causing them to breathe more deeply and to further magnify their exposure and its potential impact on their health.

Measurements of carbon particulate matter (soot) taken outside the North Lake Beach Club at a nearby residence, 130 feet from one of the fire pits, and across the Beach Club adjacent walkway (which is less than 100 feet from a Fire Pit), reveals remarkably elevated levels of exposure to

soot. Particulate matter (soot) measures also provide a proxy for exposure levels of other Listed Chemicals.

F. Occupational Exposure

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 incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures 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." 8 CCR § 338; 27 CCR § 25903(b)(2)(E)(3).

The employees of the Violator including maintenance workers, security personnel, managers of the locations, and lifeguards assigned to the Beach Clubs are reasonably expected to be exposed during working hours.

V. CONTACT INFORMATION

Pursuant to Section 25903(b)(2)(A), the name, address and telephone number of the noticing individual or a responsible individual within the noticing entity and the name of the entity is as follows: Clean Air OC, LLC, John Sanderson, (949) 302-1437. Clean Air OC, LLC may be contacted through its counsel, Kent J. Schmidt, Dorsey & Whitney LLP, 600 Anton. Blvd. Suite 2000, Costa Mesa, CA 92626, Telephone: (714) 800-1445.

VI. PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's ("OEHHA") Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, and as required by Section 25903(b)(1), attached is a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

VII. RESOLUTION OF NOTICED CLAIMS

Based on the allegations set forth in this Notice, we intend to file a citizen enforcement lawsuit against the alleged Violator unless such Violator enters into a binding written agreement to: (1) suspend the wood burning fire pits; (2) provide clear and reasonable warnings; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health & Safety Code § 25249.7(b).

If the alleged Violator is interested in resolving this dispute apart from litigation, please contact counsel identified in Section IV, above.

We cannot (1) finalize any settlement until after the 60-day notice period has expired or (2) speak for the Attorney General or any district or city attorney who received this Notice.

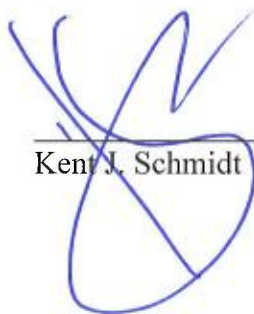
CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Kent J. Schmidt, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that the party identified in the notice has violated Health and Safety Code § 25249.6 by failing to provide clear and reasonable warnings;
2. I am the 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 the alleged exposure to the listed chemical that is the subject of this 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 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 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: December 6, 2018



Kent J. Schmidt

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am over the age of 18 years, and not a party to the within action; my business address is 600 Anton Blvd., Suite 2000, Costa Mesa, CA 92691.

On December 6, 2018, I served the following documents:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(d);

THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY (SERVED ONLY ON THE VIOLATOR)

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

on the entity listed below via First Class Certified Mail through the United States Postal Service by placing a true and correct copy in a sealed envelope, addressed to the entity listed below and providing such envelope to a United States Postal Service Representative:

Woodbridge Village Association
31 Creek Road
Irvine, CA 92604

With Courtesy Copy to:

Evan A. Berman, Esq.
Howard Smith, Esq.
Arlene N. Olson, Esq.
BERMAN, BERMAN, BERMAN, SCHNEIDER & LOWARY LLP
11900 W. Olympic Boulevard, Suite 600
Los Angeles, CA 90064

as well as by providing copies of the above documents electronically uploaded to the public enforcers according to directions from their respective offices, and/or by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

| | |
|---|--|
| <i>Electronically Uploaded to the Attorney General's website:</i> | The Attorney General of the State of California; |
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| <i>By placing each envelope in a United States Postal Service mailbox, postage prepaid:</i> | The District Attorney for Each of the 58 counties in California; and City of Irvine, City Attorney |
|---|---|

A list of addresses for each of these recipients is attached.

Executed on December 6, 2018, at Costa Mesa, California.



Maria Santos

SERVICE LIST

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

The Honorable Michael Atwell
Alpine County District Attorney
P.O. Box 248
Markleeville, CA 96120

The Honorable Todd Riebe
Amador County District Attorney
708 Court Street
Jackson, CA 95642

The Honorable Michael Ramsey
Butte County District Attorney
25 County Center Drive, Suite 245
Oroville, CA 95965

The Honorable Barbara Yook
Calaveras County District Attorney
891 Mountain Ranch Road
San Andreas, CA 95249

The Honorable Matthew R. Beauchamp
Colusa County District Attorney
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Colusa, CA 95932

The Honorable Mark Peterson
Contra Costa County District Attorney
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Martinez, CA 94553

The Honorable Dale Trigg
Del Norte County District Attorney
450 H Street, Room 171
Crescent City, CA 95531

The Honorable Vern Pierson
El Dorado County District Attorney
515 Main Street
Placerville, CA 95667

The Honorable Lisa Smittcamp
Fresno County District Attorney
2220 Tulare Street, Suite 1000
Fresno, CA 93721

The Honorable Dwayne Stewart
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Willows, CA 95988

The Honorable Maggie Fleming
Humboldt County District Attorney
825 5th Street, Fourth Floor
Eureka, CA 95501

The Honorable Gilbert Otero
Imperial County District Attorney
940 West Main Street, Suite 102
El Centro, CA 92243

The Honorable Thomas Hardy
Inyo County District Attorney
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Independence, CA 93526

The Honorable Lisa Green
Kern County District Attorney
1215 Truxtun Avenue, 4th Floor
Bakersfield, CA 93301

The Honorable Keith Fagundes
Kings County District Attorney
1400 West Lacey Boulevard
Hanford, CA 93230

The Honorable Donald Anderson
Lake County District Attorney
255 North Forbes Street
Lakeport, CA 95453

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2950 Riverside Drive, Suite 102
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The Honorable Jackie Lacey
Los Angeles County District Attorney
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Madera County District Attorney
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The Honorable Edward Berberian
Marin County District Attorney
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The Honorable Thomas Cooke
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Mariposa, CA 95338

The Honorable C. David Eyster
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Monterey County District Attorney
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The Honorable Allison Haley
Napa County District Attorney
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Napa, CA 94559

The Honorable Clifford Newell
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Nevada City, CA 95959

The Honorable Tony Rackaukas
Orange County District Attorney
401 Civic Center Drive West
Santa Ana, CA 92701

The Honorable R. Scott Owens
Placer County District Attorney
10810 Justice Center Drive, Suite 240
Roseville, CA 95678

The Honorable David Hollister
Plumas County District Attorney
520 Main Street, Room 404
Quincy, CA 95971

The Honorable Michael Hestrin
Riverside County District Attorney
3960 Orange Street
Riverside, CA 92501

The Honorable Anne Marie Schubert
Sacramento County District Attorney
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Sacramento, CA 95814

The Honorable Candice Hooper
San Benito County District Attorney
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Hollister, CA 95023

The Honorable Michael Ramos
San Bernardino County District Attorney
303 West 3rd Street, 6th Floor
San Bernardino, CA 92415-0502

The Honorable Bonnie Dumanis
San Diego County District Attorney
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San Diego, CA 92101

The Honorable George Gascon
San Francisco County District Attorney
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San Francisco, CA 94103

The Honorable Tori Verber Salazar
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Stockton, CA 95201

The Honorable Dan Dow
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San Luis Obispo, CA 93408

The Honorable Stephen Wagstaffe
San Mateo County District Attorney
400 County Center
Redwood City, CA 94063

The Honorable Joyce Dudley
Santa Barbara County District Attorney
1112 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable Jeffrey Rosen
Santa Clara County District Attorney
70 West Hedding Street, West Wing
San Jose, CA 95110

The Honorable Jeff Rosell
Santa Cruz County District Attorney
701 Ocean Street, Room 200
Santa Cruz, CA 95060

The Honorable Stephanie Bridgett
Shasta County District Attorney
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The Honorable Lawrence Allen
Sierra County District Attorney
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Yreka, CA 96097

The Honorable Krishna Abrams
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The Honorable Amanda Hopper
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444 Oak Street, Room L
Red Bluff, CA 96080

The Honorable Eric Heryford
Trinity County District Attorney
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Weaverville, CA 96093

The Honorable Tim Ward
Tulare County District Attorney
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Rm 224
Visalia, CA 93291-4593

The Honorable Laura Krieg
Tuolumne County District Attorney
423 North Washington Street
Sonora, CA 95370

The Honorable Gregory Totten
Ventura County District Attorney
800 South Victoria Avenue, Suite 314
Ventura, CA 93009

The Honorable Jell Reisig
Yolo County District Attorney
301 Second Street
Woodland, CA 95695

The Honorable Patrick McGrath
Yuba County District Attorney
215 Fifth Street
Marysville, CA 95901

City of Irvine
Office of City Attorney
1 Civic Center Plaza
Irvine, CA 92606-5207

Office of the California Attorney General
Proposition 65 Enforcement Reporting
ATTN: Prop 65 Coordinator
P.O. Box 70550
Oakland, CA 94612-0550