

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

Styrene Exposures Resulting From Plastics Processing

January 25, 2019

This Notice of Violation is provided to you pursuant to and in compliance with California Health and Safety Code Section 25249.7(d).

- For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached summary provided by the California EPA (copies not provided to public enforcement agencies).
- This Notice of Violation is provided by the Center for Environmental Health (“CEH”), 2201 Broadway, Suite 302, Oakland, CA 94612, (510) 655-3900. CEH is a nonprofit corporation dedicated to protecting the environment, improving human health and supporting environmentally sound practices. Caroline Cox is the Senior Scientist of and a responsible individual within CEH.

Description of Violation:

- Violator: The name and address of the violator is:

Xerxes Corporation
7901 Xerxes Avenue S, Ste 201
Minneapolis, MN 55431

- Time Period of Exposure: The violations have been occurring since at least April 22, 2017, and are continuing up through the present. There is a substantial threat of ongoing and future violations unless and until the alleged violator abates the threat of additional styrene exposures from ongoing and future operations.
- Provision of Proposition 65: This Notice of Violation covers the “warning provision” of Proposition 65, which is found at California Health and Safety Code Section 25249.6.
- Chemical Involved: The name of the listed chemical involved in these violations is styrene. Styrene is a chemical that is known to cause cancer. Exposures to styrene are occurring at the location described below.
- Location of the Exposures: The specific location of the exposures is the neighborhood surrounding Xerxes Corporation’s facility located at 1210 North Tustin Avenue, Anaheim, CA 92807 (the “Facility”). The exposures occur at all locations within a 0.30 mile radius of the Facility.
- Description of Exposure: This Notice addresses environmental exposures to styrene. These exposures are caused by the Facility’s operations, which process

and treat plastics using a variety of methods. The Facility's operations release styrene into the air, exposing residents living and working within the Anaheim neighborhood described above to styrene. The primary route of exposure for the violations is inhalation when residents inhale the air that has been contaminated with the styrene released from the Facility operated by the alleged violator. No clear and reasonable warning is provided regarding the carcinogenic hazards of styrene.

Resolution of Noticed Claims:

Based on the allegations set forth in this Notice, CEH intends to bring a citizen enforcement lawsuit against the alleged violator unless such violator agrees in a binding written instrument to: (1) provide clear and reasonable warnings; (2) immediately abate the threat of additional styrene exposures; and (3) pay an appropriate civil penalty based on the factors enumerated in California Health and Safety Code Section 25249.7(b). If the alleged violator is interested in resolving this dispute without resort to expensive and time-consuming litigation, please feel free to contact CEH through its counsel identified below. It should be noted that CEH cannot: (1) finalize any settlement until after the 60-day notice period has expired; nor (2) speak for the Attorney General or any District or City Attorney who received CEH's 60-day Notice. Therefore, while reaching an agreement with CEH will resolve its claims, such agreement may not satisfy the public prosecutors.

Preservation of Relevant Evidence:

This Notice also serves as a demand that the alleged violator preserve and maintain all relevant evidence, including all electronic documents and data, pending resolution of this matter. Such relevant evidence includes but is not limited to all documents relating to styrene releases from the alleged violator's operations, actual or potential exposures to styrene from the alleged violator's operations, efforts to comply with Proposition 65, and communications with any person relating to actual or potential exposures to styrene from the alleged violator's operations since April 22, 2016, through the date of any trial of the claims alleged in this Notice.

Please direct any inquiries regarding this Notice to CEH's counsel Mark N. Todzo at Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 913-7800, mtodzo@lexlawgroup.com.

CERTIFICATE OF MERIT
Health & Safety Code § 25249.7(d)

I, Mark N. Todzo, 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 & Safety Code § 25249.6 by failing to provide clear and reasonable warnings.

2. I am an attorney with the Lexington Law Group, and I represent the noticing party, the Center for Environmental Health.

3. Members of my firm and 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 exposures to the listed chemical that is the subject of the action.

4. Based on the information obtained through those consultations, and on 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 violators will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of the 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 & 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.

January 25, 2019



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

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3 **PROOF OF SERVICE**

4 I, Alexis Pearson, declare:

5 I am a citizen of the United States and employed in the County of San Francisco, State of
6 California. I am over the age of eighteen (18) years and not a party to this action. My business
7 address is 503 Divisadero Street, San Francisco, CA 94117 and my email address is
8 apearson@lexlawgroup.com.

9 On January 25, 2019, I served the following document(s) on all interested parties in this
10 action by placing a true copy thereof in the manner and at the addresses indicated below:

11 **NOTICE OF VIOLATION OF CALIFORNIA SAFE DRINKING WATER AND
12 TOXIC ENFORCEMENT ACT;**

13 **CERTIFICATE OF MERIT; and**

14 **THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986
15 (PROPOSITION 65): A SUMMARY** (only sent to those on service list marked with an
16 asterisk).

17 **BY MAIL:** I am readily familiar with the firm's practice for collecting and processing mail
18 with the United States Postal Service ("USPS"). Under that practice, mail would be deposited
19 with USPS that same day with postage thereon fully prepaid at San Francisco, California in the
20 ordinary course of business. On this date, I placed sealed envelopes containing the above
21 mentioned documents for collection and mailing following my firm's ordinary business practices.

22 *Please see attached service list.*

23 **BY FACSIMILE:** I caused all pages of the document(s) listed above to be transmitted via
24 facsimile to the fax number(s) as indicated and said transmission was reported as complete and
25 without error.

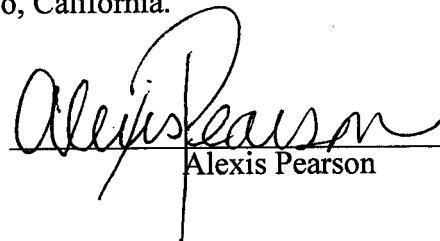
26 **BY ELECTRONIC MAIL:** I transmitted a PDF version of the document(s) listed above via
27 email to the email address(es) indicated on the attached service list [or noted above] before 5 p.m.
28 on the date executed.

29 **BY PERSONAL DELIVERY:** I placed all pages of the document(s) listed above in a sealed
30 envelope addressed to the party(ies) listed above, and caused such envelope to be delivered by
31 hand to the addressee(s) as indicated.

32 **BY OVERNIGHT DELIVERY:** I deposited such document(s) in a box or other facility
33 regularly maintained by FedEx, or delivered such document(s) to a courier or driver authorized by
34 FedEx, with delivery fees paid or provided for, and addressed to the person(s) being served.

35 I declare under penalty of perjury under the laws of the State of California that the
36 foregoing is true and correct.

37 Executed on January 25, 2019 at San Francisco, California.

38 
39 Alexis Pearson

SERVICE LIST

District Attorney of Los Angeles County
Hall of Justice
211 W. Temple Street, Ste. 1200
Los Angeles, CA 90012-3210

Los Angeles City Attorney's Office
City Hall East
200 N. Main Street, Rm. 800
Los Angeles, CA 90012

California Attorney General's Office
Attention: Proposition 65 Coordinator and Robert
Thomas
1515 Clay Street, Ste. 2000
P.O. Box 70550
Oakland, CA 94612-0550

Thomas Tietjen, CEO*
Xerxes Corporation
7901 Xerxes Avenue S, Ste 201
Minneapolis, MN 55431