

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

PFOA in Ski Wax

March 27, 2020

This Notice of Violation (the "Notice") 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 is provided by the Center for Environmental Health ("CEH"), 2201 Broadway, Suite 508, 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 Associate Director of and a responsible individual within CEH.

Description of Violation:

- Violators: The names and addresses of the violators are attached hereto as Exhibit 1.
- Time Period of Violation: The violations have been occurring since at least March 27, 2017, and are continuing to this day.
- Provisions of Proposition 65: This Notice of Violation covers both the "discharge prohibition" of Proposition 65, which is found at California Health and Safety Code Section 25249.5, and the "warning provision" of Proposition 65, which is found at Health and Safety Code Section 25249.6.
- Chemical(s) Involved: The names of the listed chemical involved in these violations is perfluorooctanoic acid ("PFOA"). Exposures to, and discharges of PFOA occur from use of the Products supplied by the violators listed on Exhibit 1.
- Description of Exposure: This Notice addresses consumer exposures to PFOA as to all of the alleged violators listed on the attached Exhibit 1. Use of the ski wax supplied by the violators listed on Exhibit 1 (the "Products") results in human exposures to PFOA. PFOA is contained in the Products that are supplied by the alleged violators. Consumers of the Products are exposed to PFOA when they use the Products. The route of exposure for the violations is primarily inhalation, when the Products are applied and heated and individuals breath the PFOA emitted from the Products during hearing. Individuals are also exposed to the PFOA from the Products by ingestion via hand to mouth contact and dermal absorption directly through the skin when individuals touch or handle the Products supplied by the violators listed on Exhibit 1.

- Identification of Discharge and Sources of Drinking Water: Ordinary use of the Products supplied by the alleged violators results in discharges or releases of PFOA into water or onto land where PFOA passes or probably will pass into a source of drinking water. Specifically, the Products that are the subject of this Notice of Violation is made with and contains PFOA. The PFOA-containing Products are supplied by the alleged violators and is released when individuals use snow equipment finished with the Products. The PFOA from the Products is discharged into snow that touches skis and other snow equipment finished with the Products. PFOA from the Products then passes or probably will pass into sources of drinking water through the ordinary snow melt. The PFOA that is released into the snow passes or probably will pass into sources of drinking water including, but not limited to, the sources of drinking water identified on Exhibit 2, and also onto the ground surrounding the ski resorts identified on Exhibit 2 where it passes into groundwater and sources of drinking water adjacent to the ski resorts including, but not limited to, the sources of drinking water identified on Exhibit 2.

Resolution of Noticed Claims:

- Based on the allegations set forth in this Notice, CEH intends to file a citizen enforcement lawsuit against each alleged violator unless the alleged violator agrees in a binding written instrument to remedy the violations alleged herein by: (a) ceasing use of all PFOA-containing Products in order to cease the discharge of PFOA alleged herein; (b) taking remedial action to clean the PFOA from the source of drinking water identified on Exhibit 1; and (c) paying an appropriate civil penalty in accordance with the factors set forth in Health and Safety Code Section 25249.7. If any of the alleged violators is interested in resolving this dispute without resorting to expensive and time-consuming litigation, please 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.

Please direct any inquiries regarding this notice to counsel for CEH: Mark N. Todzo, Lexington Law Group, 503 Divisadero Street, San Francisco, CA 94117, (415) 759-4111.

EXHIBIT 1
March 27, 2020 Notice of Violation
PFOA in Ski Wax

Names and Addresses of Responsible Parties	Non-Exclusive Exemplar
<p data-bbox="375 562 683 646">Gear West Ski & Bike, Inc 1786 W Wayzata Blvd Long Lake, MN 55356</p> <p data-bbox="402 701 656 816">Swix Sport USA, Inc. 60 Newark Street Haverhill, MA 01832 Long Lake, MN 55356</p>	<p data-bbox="850 562 1289 617">Toko-Swix Top Finish Wax Powder 2.0 JetStream</p> <p data-bbox="915 646 1224 701">UPC No. 4-250423-602640 Art. No.: 5503013</p>

EXHIBIT 2
March 27, 2020 Notice of Violation
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Municipal Drinking Water Source	Associated Winter Resort
Bear Creek	Alpine Meadows
Heavenly Valley Creek	Heavenly Valley
Madden Creek	Homewood Mountain Resort
Martis Creek	Northstar California Resort
Squaw Creek	Squaw Valley Resort

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 parties identified in the notice have 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.

March 27, 2020



Mark N. Todzo
Attorney for CENTER FOR
ENVIRONMENTAL HEALTH

1 **PROOF OF SERVICE**

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3 I, Alexis Pearson, declare:

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

8 On March 27, 2020, I served the following document(s) on all interested parties in this
9 action by placing a true copy thereof in the manner and at the addresses indicated below:

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

12 **CERTIFICATE OF MERIT;** and

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

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

21 *Please see attached service list.*

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

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

28 Stacey Grassini, Deputy District Attorney
Contra Costa County
900 Ward Street
Martinez, CA 94553
sgrassini@contracostada.org

Yen Dang
Supervising Deputy District Attorney
Santa Clara County
70 West Hedding Street, West Wing
San Jose, CA 95110
epu@da.sccgov.org

Michelle Latimer, Program Coordinator
Lassen County
220 S. Lassen Street
Susanville, CA 96130
mlatimer@co.lassen.ca.us

Allison Haley, District Attorney
Napa County
1127 First Street, Suite C
Napa, CA 94559
CEPD@countyofnapa.org

1	Stephan R. Passalacqua, District Attorney Sonoma County	Mara W. Elliott, City Attorney City of San Diego
2	600 Administration Drive, Rm. 212J	1200 Third Ave, Suite 700
3	Santa Rosa, CA 95403 jbarnes@sonoma-county.org	San Diego, CA 92101 CityAttyCrimProp65@sandiego.gov
4	Phillip J. Cline, District Attorney Tulare County	Gregory D. Totten, District Attorney Ventura County
5	221 S. Mooney Avenue, Rm. 224	800 South Victoria Avenue
6	Visalia, CA 93291 Prop65@co.tulare.ca.us	Ventura, CA 93009 daspecialops@ventura.org
7	Paul E. Zellerbach, District Attorney Riverside County	Gregory Alker, Assistant District Attorney San Francisco County
8	4075 Main Street	732 Brannan Street
9	Riverside, CA 92501 Prop65@rivcoda.org	San Francisco, CA 94103 gregory.alker@sfgov.org
10	Jeff W. Reisig, District Attorney Yolo County	Anne Marie Schubert, District Attorney Sacramento Country
11	301 Second Street	901 G Street
12	Woodland, CA 95695 cfepd@yolocounty.org	Sacramento, CA 95814 Prop65@sacda.org
13	Dije Ndreu, Deputy District Attorney Monterey County	Eric J. Dobroth, Deputy District Attorney San Luis Obispo County
14	1200 Aguajito Road	County Government Center Annex, 4th Floor
15	Monterey, CA 93940 Prop65DA@co.monterey.ca.us	San Luis Obispo, CA 93408 edobroth@co.slo.ca.us
16	Tori Verber Salazar, District Attorney San Joaquin County	Jeffrey S. Rosell, District Attorney Santa Cruz County
17	222 E. Weber Avenue, Room 202	701 Ocean Street
18	Stockton, CA 95202 DAConsumer.Environmental@sjcda.org	Santa Cruz, CA 95060 Prop65DA@santacruzcounty.us
19	Christopher Dalbey, Deputy District Attorney, Santa Barbara County	Nancy O'Malley, District Attorney Alameda County
20	1112 Santa Barbara Street	7776 Oakport Street, Suite 650
21	Santa Barbara, CA 93101 DAProp65@co.santa-barbara.ca.us	Oakland, CA 94621 CEPDProp65@acgov.org
22	San Francisco City Attorney's Office City Hall, Room 234	Office of the District Attorney Calaveras County
23	1 Dr. Carlton B. Goodlett Place	891 Mountain Ranch Road
24	Valerie.lopez@sfcityatty.org	San Andreas, CA 95249
25	San Francisco, CA 94102	Prop65Env@co.calaveras.ca.us
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27		
28		

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

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

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

6 Executed on March 27, 2020 at San Francisco, California.

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9 Alexis Pearson

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SERVICE LIST

District Attorney of Alpine County
P.O. Box 248
Markleeville, CA 96120

District Attorney of Amador County
708 Court Street, Ste. 202
Jackson, CA 95642

District Attorney of Butte County
Administration Building
25 County Center Drive
Oroville, CA 95965

District Attorney of Colusa County
346 Fifth Street, Suite 101
Colusa, CA 95932

District Attorney of Del Norte County
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Crescent City, CA 95531

District Attorney of El Dorado County
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Placerville, CA 95667

District Attorney of Fresno County
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District Attorney of Humboldt County
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Eureka, CA 95501

District Attorney of Imperial County
939 Main Street, Ste. 102
El Centro, CA 92243

District Attorney of Inyo County
P.O. Drawer D
Independence, CA 93526

District Attorney of Kern County
1215 Truxtun Avenue
Bakersfield, CA 93301

District Attorney of Kings County
1400 West Lacey Blvd.
Hanford, CA 93230

District Attorney of Lake County
255 N. Forbes Street
Lakeport, CA 95453

District Attorney of Los Angeles County
Hall of Justice
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Los Angeles, CA 90012-3210

District Attorney of Madera County
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Madera, CA 93637

District Attorney of Marin County
3501 Civic Center Drive, Rm. 130
San Rafael, CA 94903

District Attorney of Mariposa County
P.O. Box 730
Mariposa, CA 95338

District Attorney of Mendocino County
P.O. Box 1000
Ukiah, CA 95482

District Attorney of Merced County
2222 "M" Street
Merced, CA 95340

District Attorney of Modoc County
204 S. Court Street, Rm. 202
Alturas, CA 96101-4020

District Attorney of Mono County
P.O. Box 617
Bridgeport, CA 93546

District Attorney of Nevada County
201 Commercial Street
Nevada City, CA 95959

District Attorney of Orange County
401 Civic Center Drive West
Santa Ana, CA 92701

District Attorney of Placer County
10810 Justice Center Drive, Ste. 240
Roseville CA 95678-6231

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San Bernardino, CA 92415

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San Diego, CA 92101

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Redwood City, CA 94063

District Attorney of Shasta County
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Redding, CA 96001

District Attorney of Sierra County
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Downieville, CA 95936

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Yreka, CA 96097

District Attorney of Solano County
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Fairfield, CA 94533

District Attorney of Stanislaus County
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Modesto, CA 95354

District Attorney of Sutter County
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Yuba City, CA 95991

District Attorney of Tehama County
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Red Bluff, CA 96080

District Attorney of Trinity County
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11 Court Street
Weaverville, CA 96093

District Attorney of Tuolumne County
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Sonora, CA 95370

District Attorney of Yuba County
215 Fifth Street
Marysville, CA 95901

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

San Jose City Attorney's Office
200 East Santa Clara Street
San Jose, CA 95113

Phillip J. Cline, District Attorney
Tulare County
221 S. Mooney Avenue, Rm. 224
Visalia, CA 93291

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

Jan L. Knutson, CEO*
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