



## ENVIRONMENTAL

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May 8, 2024

***NOTICE OF VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE § 25249.5, et seq. AND 60-DAY NOTICE OF INTENT TO SUE UNDER CALIFORNIA HEALTH & SAFETY CODE § 25249.5, et seq. (California Safe Drinking Water and Toxic Enforcement Act, a.k.a. "Proposition 65")***

***Re: Discharges or Releases of Pentachlorophenol, Dioxins, and Associated Listed Chemicals Into Sources of Drinking Water Resulting From Operations at 1054 Northcrest Drive, Crescent City, CA 95531.***

Dear Hon. Prosecutors, Cindy A. Crane (Chief Executive Officer of PacifiCorp), Ryan Flynn (President Pacific Power), Stefan A. Bird (former President and Chief Executive Officer of Pacific Power), PacifiCorp, and Pacific Power:

This Notice of Violation ("NOV") is provided by Ecological Rights Foundation ("EcoRights") pursuant to and in compliance with California Health & Safety Code § 25249.7(d). EcoRights is represented by Environmental Advocates.

EcoRights is a non-profit public benefit corporation organized under the laws of California, with its main office at 2011 Sunset Ridge Rd., Blocksburg, CA 95514. EcoRights' telephone number is (707) 845-8888. Linda Sherby is EcoRights' Executive Director and is the responsible individual within EcoRights. EcoRights' purposes include educating the public about industrial practices that cause harm to human health, the environment, and other natural resources and seeking redress from those harms through litigation or alternative dispute resolution. EcoRights represents citizens in protecting California's waterways from pollution and securing the multitude of benefits that flow from clean, vibrant waters: safe drinking water; abundant and diverse wildlife populations; healthy recreational opportunities; and economic prosperity from commercial fishing, tourism, and

other commercial activities that depend on clean water. To further its goals, EcoRights actively seeks federal and state agency implementation of environmental and water quality laws, including California Health & Safety Code §§ 25249.5, *et seq.* (“Proposition 65”), and as necessary, directly initiates enforcement actions on behalf of itself and its members.

For general information regarding the California Safe Drinking Water and Toxic Enforcement Act, see the attached Summary provided by California Environmental Protection Agency’s Office of Environmental Health Hazard Enforcement.

**Violators:**

***PacifiCorp***

C/O Cindy A. Crane (Chief Executive Officer of PacifiCorp)  
825 NE Multnomah St., Ste. 2000  
Portland, OR 97232

***Pacific Power, a division of PacifiCorp***

C/O Ryan Flynn (President Pacific Power) and Stefan A. Bird  
(former President and Chief Executive Officer of Pacific  
Power)  
825 NE Multnomah St., Ste. 2000  
Portland, OR 97232

This NOV serves to provide PacifiCorp and Pacific Power, a division of PacifiCorp (collectively “Violators”), and the public prosecutors, with notice of violations of California’s Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), codified at California Health & Safety Code §§ 25249.5, *et seq.*, concerning the discharges or releases identified below. This Notice of Violation is brought pursuant to Proposition 65’s “Discharge Prohibition,” California Health & Safety Code § 25249.5, which states:

No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

Both PacifiCorp and Pacific Power are “person[s] in the course of doing business” as defined in California Health & Safety Code § 25249.11.

The violations have occurred and continue to occur because PacifiCorp discharges or releases pentachlorophenol, pentachlorophenol and the by-products of pentachlorophenol synthesis (complex mixture), polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD), and Hexachlorodibenzodioxin (collectively, “Listed Chemicals”), all of which are Proposition 65-listed chemicals, onto land and into storm water and wastewater at and from their facility located at 1054 Northcrest Drive, Crescent City, California 95531 (the “Facility”).

The Listed Chemicals involved in these violations are:

<b>Proposition 65-Listed Chemical</b>	<b>Toxicity</b>	<b>Date of Listing</b>
Pentachlorophenol	cancer	1-Jan-90
Pentachlorophenol and by-products of its synthesis (complex mixture)	cancer	21-Oct-16
Polychlorinated dibenzo-p-dioxins	cancer	1-Oct-92
Polychlorinated dibenzofurans	cancer	1-Oct-92
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	cancer	1-Jan-88
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	developmental	1-Apr-91
Hexachlorodibenzodioxin	cancer	1-Apr-88

All of the Chemicals listed above have been on the Proposition 65 list longer than twenty months. California Health & Safety Code § 25249.9(a).

The Violators own and operate the Facility. The Facility is regularly used to store wood utility poles and crossarms that have been treated with wood preserving chemicals, including pentachlorophenol (“Treated Wood Products”). The Facility is also regularly used to store or dispose of wood wastes derived from those treated wood products, including poles or segments of poles that have been removed from service, as well as sawdust, shavings, and splintered pieces of treated utility poles and crossarms (“Treated Wood Waste” or “TWW”). The Violators’ Treated Wood Products and TWW are sources of the Listed Chemicals, including pentachlorophenol and chemicals associated with pentachlorophenol, including byproducts of its synthesis. The associated chemicals include polychlorinated dibenzo-p-dioxins, polychlorinated dibenzofurans, 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD), and Hexachlorodibenzodioxin (collectively “Dioxins”). Dioxins are a class of highly persistent chemicals made up of numerous congeners, several of which have half-lives measured in decades. Dioxins are the toxic chemicals that were present in the infamous defoliant “Agent Orange” that have caused cancer and birth defects in multiple generations of Vietnamese citizens, and well documented deaths of exposed U.S. soldiers.

The Violators store Treated Wood Products and TWW outdoors where they are exposed to wind and rain. The Listed Chemicals spill, leak, discharge, and/or drip from the Treated Wood Products and TWW, contaminate the Facility grounds, and subsequently leave the Crescent City Facility in storm water and wastewater, by wind, and by tracking from vehicles and/or foot traffic. Every time Listed Chemicals are knowingly discharged or released from Treated Wood Products or TWW into water or onto or into land where those Listed Chemicals pass or probably will pass into a source of drinking water is a discharge or release of Listed Chemicals in violation of Proposition 65.

The Listed Chemicals are also discharged or released from the Facility by sweeping, power washing, and when Treated Wood Products and TWW are handled by forklifts or other mechanical processes. Every time Listed Chemicals are knowingly discharged or released from the Facility by these means into water or onto or into land where those Listed Chemicals pass or probably will

pass into a source of drinking water is a discharge or release of Listed Chemicals in violation of Proposition 65.

The Violators' also discharge or release Listed Chemicals from the Facility's oil/water separator vault(s) (confined spaces designed to hold, treat, and release storm water). The oil/water separator vaults at the Facility discharge Listed chemicals onto Marshall Street, East Harding Avenue, and Northcrest Drive, where they are then transported in storm water to Elk Creek and/or its tributaries, or into local groundwater, all of which are designated sources of drinking water. The Violators' discharges of Listed Chemicals from the Facility's oil/water separator vault(s) are knowing discharges or releases of Listed Chemicals into water or into or onto land where they will pass or probably will pass into a source of drinking water and thus are a discharge or release of Listed Chemicals in violation of Proposition 65.

The Violator's also discharge or release Listed Chemicals from the Facility in storm water that flows directly off the Facility without passing through an oil/water separator. The Facility itself is a confined space graded to collect, channel, and discharge storm water. The Violators' discharges or releases of Listed Chemicals from the Facility in storm water are knowing discharges or releases of Listed Chemicals into water or into or onto land where they will pass or probably will pass into a source of drinking water and thus are a discharge or release of Listed Chemicals in violation of Proposition 65.

Information available to EcoRights indicates that the Violators have been and continue to knowingly discharge and/or release significant amounts of the Listed Chemicals into water or into or onto land where they will pass or probably will pass into a source of drinking water in the course of doing business at the Crescent City Facility, and that the discharges or releases are not in compliance with all applicable laws, regulations, permits, requirements, and orders. The Violators discharges or releases of Listed Chemicals are knowing within the meaning of Proposition 65 because the Violators know or should know that they are releasing or discharging Listed Chemicals from the Facility for numerous reasons including: (1) EcoRights previously sent the Violators a citizen suit notice letter under the Resource Conservation and Recovery Act and Clean Water Act on or about June 7, 2023 notifying the Violators of their release or discharge of the Listed Chemicals off-site from the Facility, (2) EcoRights has sent the Violators laboratory reports documenting the presence of the Listed Chemicals in stormwater runoff from the Facility, (3) it is common knowledge in the utility industry that utility poles and crossarms treated with pentachlorophenol leach, drip, and ooze pentachlorophenol and Dioxins onto the ground and into stormwater runoff from areas where pentachlorophenol treated utility poles and crossarms are stored and the Violators are well aware that they are storing pentachlorophenol treated utility poles and crossarms outdoors where the Poles and crossarms are exposed to rainfall, and 4) During each rain event there is clear evidence of the discharges or releases from the Facility, including sheen from wood treatment chemical oil mixtures.

The storm water, wastewater, soils, sediments, and Treated Wood Wastes that the Violators are discharging or releasing from the Crescent City Facility contain high concentrations of the Listed Chemicals. Once the Violators discharge or release the Listed Chemicals from their Facility, the Listed Chemicals pass or probably will pass into one or more existing, present, and/or suitable sources of drinking water, including Elk Creek and its tributaries, and/or into underground sources

of drinking water designated as municipal drinking water supply/ies under the Water Quality Control Plan for the North Coast Basin (“Basin Plan”). PacifiCorp also discharges or releases the Listed Chemicals onto and/or into land where they pass or probably will pass into surface water and groundwater sources of drinking water. The Violators’ inadequate or improper housekeeping and waste management practices at the Facility result in additional discharges or releases of Listed Chemicals, including Treated Wood Waste and soils containing Listed Chemicals, where they pass or probably will pass into sources of drinking water.

A “source of drinking water” means either a present source of drinking water or water that is identified or designated in a water quality control plan adopted by a regional water board as being suitable for domestic or municipal uses. California Health & Safety Code § 25249.11(d). Moreover, “water” is defined to include both surface and groundwater. California Code of Regulations, title 27, Section 25102(w). In the Water Quality Control Plan for the North Coast Region (“Basin Plan”), the North Coast Regional Water Quality Control Board has determined that beneficial uses for the Smith River Plain Hydrologic Subarea, which includes Elk Creek and its tributaries surrounding the Crescent City Facility, include municipal water supply.<sup>1</sup> Further, in the Basin Plan the North Coast Regional Water Quality Control Board has listed municipal supply as an existing beneficial use of all groundwater in the region.

According to California Health & Safety Code § 25249.11(d), therefore, waters of all types that are considered “suitable” for “domestic” or “municipal” use in these regional water quality control plans are “sources of drinking water” within the meaning of Proposition 65. *See People ex rel. Lungren v. Superior Court*, 926 P.2d 1042, 1046-47 (Cal. 1996). One of the predominant purposes of Proposition 65, as stated in the preamble, ballot summary, and arguments, was to protect drinking water from toxic contamination. Considering that purpose, the term “source of drinking water” was expansively defined to include *any* water currently destined to be used as drinking water, as well as any water officially designated as suitable for drinking water. *People ex rel. Lungren*, 14 Cal. 4th at 307.

The violations described in this NOV have been occurring since at least May 6, 2019, and are continuing. There is a substantial threat of ongoing and future violations unless and until the Violators abate the threat of additional Listed Chemicals discharges or releases from ongoing and future operations at the Crescent City Facility.

Unless a public prosecutor has commenced and is diligently prosecuting an action to abate these violations, or the Violators agree in a binding written settlement to remedy the violations alleged herein by ceasing ongoing and future discharges of the identified Listed Chemicals, and paying appropriate costs, attorneys’ fees, and civil penalties pursuant to California Health & Safety Code Section 25249.7 and Code of Civil Procedure Sections 1021.5 and 1033.5 *et seq.*, EcoRights intends to file a private enforcement action in the public interest 60 days after effective service of this NOV. EcoRights has retained counsel and is represented in this matter. Thus, please direct all

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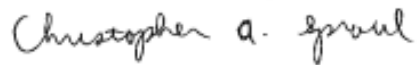
<sup>1</sup> The Basin Plan is available at:

[https://www.waterboards.ca.gov/northcoast/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documents/](https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan_documents/).

communications regarding this notice to their enforcement counsel: Christopher Sproul at Environmental Advocates, 5135 Anza Street, San Francisco, CA 94121, and (415) 533-3376.

This NOV also serves as a demand that the Violators 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 discharge or release of the Listed Chemicals from the Crescent City Facility; actual or potential discharges of the Listed Chemicals from the Crescent City Facility; efforts to comply with Proposition 65 or any other law with respect to discharge or release of the Listed Chemicals from the Crescent City Facility; and communications with any person relating to actual or potential discharge or release of the Listed Chemicals from the Crescent City Facility from May 7, 2019 through the date of any trial of the claims alleged in this NOV.

Sincerely,



Christopher Sproul  
Environmental Advocates  
Counsel for Ecological Rights Foundation

Encl.: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

Additionally served on:

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