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June 10, 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: (1) 701 National Ave., Tahoe Vista CA 96148; (2) 799 Deer Street, Kings Beach, CA 96143; and (3) 933 Eloise Ave., South Lake Tahoe, CA 96150

Dear Hon. Prosecutors, President or CEO of Liberty Utilities (Calpeco Electric) LLC, President or CEO of Liberty Utilities (California Payco) LLC, and President or CEO of Liberty Utilities Co.:

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

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.

I. NOTICING PARTY

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 and the responsible individual is Fredric Evenson, evenson@ecologylaw.com. 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.

II. VIOLATORS

As defined in Health & Safety Code Section 25249.11(b), the violators identified herein are "person[s] in the course of doing business." Section 25249.11(a) defines "[p]erson" as "an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association."

Violators:

Liberty Utilities (Calpeco Electric) LLC
C/O President or CEO
701 National Avenue
Tahoe Vista, California, 96148

Liberty Utilities (California Payco) LLC
C/O President or CEO
701 National Avenue
Tahoe Vista, California, 96148

Liberty Utilities Co.
C/O President or CEO
14920 W. Camelback Road
Litchfield Park, AZ 85340

Liberty Utilities is a private electric utility company that provides electricity to areas on the north and south shores of Lake Tahoe, California, as well as some additional surrounding rural areas. Liberty Utilities (Calpeco Electric) LLC (also known as CalPeco Electric System) and Liberty Utilities (California Payco) LLC own and/or operate Liberty Utilities. Both have the principal and mailing addresses of 701 National Avenue, Tahoe Vista, California, 96148, and are California Limited Liability Companies. The named Managers or Members of Liberty Utilities (Calpeco Electric) LLC are: Arun Banskota, Brian Thomas, Virginia L. Grebbien, C. Robert

Strump, and Johnny Johnston. The named Manager or Member of Liberty Utilities (California Payco) LLC is Liberty Utilities Co. Both Liberty Utilities (Calpeco Electric) LLC and Liberty Utilities (California Payco) LLC own, operate, and/or maintain all the facilities to which this NOV pertains.

Liberty Utilities Co., also known as Liberty Utilities (Luning Holdings) LLC, is a Delaware Limited Liability Company and has a principal and mailing address of 14920 West Camelback Road, Litchfield Park, AZ 85340. The named Manager or Member of Liberty Utilities Co. is Algonquin Power Corporation, Inc., with the same address of 14920 West Camelback Road, Litchfield Park, AZ 85340. Algonquin Power & Utilities Corp. is the parent company of Liberty. Algonquin is an international generation, transmission, and distribution utility.

III. LEGAL BACKGROUND

A. California Proposition 65

Proposition 65 (“Prop 65”), also known as the Safe Drinking Water and Toxic Enforcement Act, was enacted by California voters as a ballot initiative on November 4, 1986. *See* Cal. Health & Safety Code §§ 25249.5-25249.14. Prop 65 protects California citizens and the State’s drinking water sources from chemicals known to cause cancer, birth defects, or other reproductive harm, and informs citizens about exposures to such chemicals. *Id.* Prop 65 requires the Governor of California to publish a “list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this chapter” at least once per year (“Prop 65 List”). Cal. Health & Safety Code §§ 25249.8(a). The Prop 65 List is implemented by the California Office of Environmental Health Hazard Assessment (“OEHHA”). Cal. Health & Safety Code § 25249.12(a). OEHHA provides a version of the Prop 65 List online. *See* California Office of Environmental Health Hazard Assessment, The Proposition 65 List, available at <https://oehha.ca.gov/proposition-65/proposition-65-list> (last accessed May 21, 2024).

Prop 65 states that “[n]o 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.” Cal. Health & Safety Code § 25249.5. The prohibition on knowing releases of Prop 65-listed chemicals does not apply to any discharge or release that takes place less than twenty (20) months subsequent to the list of the chemical in question on the Prop 65 List. *Id.* § 25249.9(a). In addition, the prohibition does not apply if it meets the following two criteria: (1) the discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water; and (2) the discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order. *Id.* § 25249.9(b). The defendant bears the burden of showing that a discharge or release meets both criteria for an exception to the prohibition in any action brought to enforce section 25249.5. *Id.*

B. Citizen Enforcement of Proposition 65

In addition to enforcement by government officials, any individual acting in the public interest may enforce compliance with Prop 65 by filing a lawsuit against a business alleged to be in violation of this law. Cal. Health & Safety Code § 25249.7(d). The private citizen enforcement provision was included in the statute to enhance enforcement of Prop 65 and deter violations. *See Yeroushalmi v. Miramar Sheraton*, 106 Cal. Rptr. 2d 332, 339 (Cal. Ct. App. 2001) (analyzing Historical and Statutory notes of the statute). Prior to filing any enforcement action, that person must give sixty (60) days' notice of the alleged violation of Section 25249.5 or 25249.6 to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. Cal. Health & Safety Code § 25249.7(d)(1). In addition, citizens may enforce Prop 65 only if “[n]either the Attorney General, a district attorney, a city attorney, nor a prosecutor has commenced and is diligently prosecuting an action against the violation.” *Id.* § 25249.7(d)(2).

A person who violates Section 25249.5 or 25249.6 may be enjoined and subject to civil penalties. Cal. Health & Safety Code § 25249.7(a), (b). Penalties for violating Prop 65 can be as high as \$2,500 per violation per day. Cal. Health & Safety Code § 25249.7(b)(1).

IV. PROPOSITION 65 VIOLATIONS

This NOV serves to provide Liberty Utilities (Calpeco Electric) LLC, Liberty Utilities (California Payco) LLC, and Liberty Utilities Co. (collectively, “Liberty”), and the public prosecutors, with notice of violations of Proposition 65 concerning the discharges or releases identified below. This NOV 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.

Liberty is a “person[s] in the course of doing business” as defined in California Health & Safety Code § 25249.11.

A. Proposition 65-Listed Chemicals at Your Facilities.

The violations have occurred and continue to occur because Liberty 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 where those Listed Chemicals pass or probably will pass into sources of drinking water, including Lake Tahoe, at and from the following facilities (“Facilities”):

- 701 National Ave., Tahoe Vista, California 96148

- 933 Eloise Ave., South Lake Tahoe, CA 96150
- 799 Deer Street, Kings Beach, CA 96143

The Listed Chemicals involved in these violations are:

Proposition 65-Listed Chemical	Toxicity	Date of Listing
Pentachlorophenol	cancer	Jan. 1, 1990
Pentachlorophenol and by-products of its synthesis (complex mixture)	cancer	Oct. 16, 2021
Polychlorinated dibenzo-p-dioxins	cancer	Oct. 1, 1992
Polychlorinated dibenzofurans	cancer	Oct. 1, 1992
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	cancer	Jan. 1, 1988
2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)	developmental	April 1, 1991
Hexachlorodibenzodioxin	cancer	April 1, 1988

All the Listed Chemicals identified above have been on the Proposition 65 list for more than twenty (20) months. Cal. Health & Safety Code § 25249.9(a). The Chemicals identified above are reproductive or developmental toxics and/or carcinogens.

B. Liberty Discharges and/or Releases Proposition 65-Listed Chemicals From Facilities that Liberty Owns and Operates.

Liberty owns and operates the Facilities. The Facilities are regularly used to store wood utility poles and crossarms that have been treated with wood preserving chemicals, including pentachlorophenol (“Treated Wood Products”). Liberty also regularly uses the Facilities for storing or disposing 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”). Liberty’s 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.

Liberty stores 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 Facilities’ grounds, and subsequently leave the Facilities 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 Facilities 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 Facilities 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.

Liberty also discharges or releases Listed Chemicals from the Facility at 701 National Ave. via storm water and snowmelt. The 701 National Ave. Facility's site slopes towards the southwest direction at approximately 2 to 3 percent. Storm water and snowmelt discharges from the Treated Wood Products storage area and TWW storage areas at the Facility via sheet flows through the site to an onsite underground storm water conveyance system. The storm water drainage system includes inlets throughout the Facility that capture and channel storm water and snow melt. The 701 National Ave. Facility also has a sand oil receptor that collects discharges from the Facility. From there, the 701 National Ave. Facility then discharges Listed Chemicals onto Shelter Road and National Avenue and adjacent gutters and ditches, where the Listed Chemicals are then transported in storm water and/or snowmelt to Lake Tahoe or onto and into the ground and local groundwater. The Listed Chemicals are transported to receiving waters over the surface of land or other conveyances or through the relevant Municipal Separate Storm Sewer System ("MS4"). The 701 National Ave. Facility's certified 2019 Construction General Permit states that receiving waters for discharges from the 701 National Ave. Facility are Lake Tahoe and any tributary stream or any storm drainage system connected directly to Lake Tahoe. The receiving waters for the 701 National Ave. Facility include but are not limited to Lake Tahoe, adjacent wetlands, and the valuable wetland, shore, and upland areas adjacent to those waters. Liberty's discharges of Listed Chemicals from the 701 National Ave. Facility's sand oil receptor and storm water conveyance system 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 discharges or releases of Listed Chemicals in violation of Proposition 65.

The 799 Deer Street Facility discharges storm water and snowmelt from the Treated Wood Products storage areas and TWW storage areas to receiving waters including Griff Creek which runs along the western perimeter of the Facility and an unnamed tributary of Griff Creek that runs along the northern perimeter of the Facility. Griff Creek flows into and is a tributary of Lake Tahoe. The 799 Deer Street Facility's certified April, 2020 Notice of Intent for a Construction General Permit identifies Griff Creek and Lake Tahoe as the receiving waters for its discharges. The 799 Deer Street Facility also discharges storm water and snowmelt from the Treated Wood Products storage areas and TWW storage areas to Deer Street, Specked Ave., and surrounding areas, which then direct storm water and snowmelt runoff to Griff Creek and Lake Tahoe as well as surrounding upland areas. The receiving waters for the 799 Deer Street Facility include but are not limited to Griff Creek and its tributary, Lake Tahoe, adjacent wetlands, and the valuable wetland, shore, and upland areas adjacent to those waters. Liberty's discharges and releases of Listed Chemicals from the 799 Deer Street Facility in storm water and snowmelt that

flows directly off the Facility 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 933 Eloise Facility discharges storm water and snowmelt from the Treated Wood Products and TWW storage areas at the Facility to an unnamed tributary along the western perimeter of the Facility, which then runs in a culvert under Patricia Lane north to Tahoe Keys Lagoon and Lake Tahoe. The 933 Eloise Facility also discharges storm water and snowmelt and tracks solid waste from the Treated Wood Products and TWW storage areas to Dunlap Drive and Patricia Lane, which then direct storm water and snowmelt runoff to the unnamed tributary to Tahoe Keys Lagoon and Lake Tahoe. The receiving waters for the 933 Eloise Facility include but are not limited to the unnamed tributary, Tahoe Keys Lagoon, Lake Tahoe, adjacent wetlands including Pope Marsh, and the valuable wetland, shore, and upland areas adjacent to those waters. Liberty's discharges and releases of Listed Chemicals from the 933 Eloise Facility in storm water and snowmelt that flows directly off the Facility 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.

C. Liberty's Discharges and/or Releases of Listed Chemicals from the Facilities Impact Sources of Drinking Water.

Lake Tahoe and groundwater surrounding the Facilities are sources of drinking water. Health & Safety Code Section 25249.11(d) defines a "[s]ource of drinking water" as "either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses." Moreover, "water" is defined to include both surface water and groundwater. California Code of Regulations, Title 27, Section 25102(w). In the Water Quality Control Plan for the Lahontan Region ("Lahontan Basin Plan"), the Lahontan Regional Water Quality Control Board has determined that beneficial uses for Lake Tahoe include municipal water supply including but not limited to drinking water supply. *See* Water Quality Control Plan for the Lahontan Region ("Lahontan Basin Plan") at page 2-17, *available at* https://www.waterboards.ca.gov/lahontan/water_issues/programs/basin_plan/ (last accessed June 7, 2024). The Lahontan Regional Water Quality Control Board also determined that beneficial uses for Pope Marsh/Wetlands include municipal water supply including but not limited to drinking water supply. *Id.* Further, the Lahontan Regional Water Quality Control Board listed municipal supply including but not limited to drinking water supply as an existing beneficial use for all groundwater in the region, including Tahoe Valley South and Tahoe Valley North. *Id.* at 2-48 (Table 2-2).

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.

D. Liberty Knowingly Discharges and/or Releases Listed Chemicals.

Information available to EcoRights indicates that Liberty has been and continues 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 Facilities, and that the discharges or releases are not in compliance with all applicable laws, regulations, permits, requirements, and orders. Liberty's discharges or releases of Listed Chemicals are knowing within the meaning of Proposition 65 because Liberty knows or should know that it is releasing or discharging Listed Chemicals from the Facilities. EcoRights previously sent Liberty a citizen suit notice letter under the Resource Conservation and Recovery Act and Clean Water Act on or about May 15, 2024, notifying Liberty of its releases or discharges of the Listed Chemicals off-site from the Facilities. 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 storm water runoff from areas where pentachlorophenol treated utility poles and crossarms are stored and Liberty is well aware that it is storing pentachlorophenol treated utility poles and crossarms, and TWW, outdoors where those materials are exposed to rainfall and snow. During each rain event there is likely clear evidence of the discharges or releases from the Facilities, including the sheen from wood treatment chemical oil mixtures.

The storm water, wastewater, snowmelt, soils, sediments, and TWW that Liberty is discharging or releasing from the Facilities contain high concentrations of the Listed Chemicals. Once Liberty discharges or releases the Listed Chemicals from its Facilities, the Listed Chemicals pass or probably will pass into one or more existing, present, and/or suitable sources of drinking water, including Lake Tahoe and its tributaries including but not limited to Griff Creek, Pope Marsh, and/or into underground sources of drinking water designated as municipal drinking water supply/ies under the Lahontan Basin Plan. Liberty 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. Liberty's inadequate or improper housekeeping and waste management practices at the Facilities result in additional discharges or releases of Listed Chemicals, including TWW and soils containing Listed Chemicals, where they pass or probably will pass into sources of drinking water.

E. Dates of Violations.

The violations described in this NOV have been occurring since at least June 10, 2020, and are continuing. There is a substantial threat of ongoing and future violations unless and until Liberty abates the threat of additional Listed Chemicals discharges or releases from ongoing and future operations at the Facilities.

V. CONCLUSION

Unless a public prosecutor has commenced and is diligently prosecuting an action to abate these violations, or Liberty agrees 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 communications regarding this notice to their enforcement counsel: Marla Fox at Environmental Advocates, 5135 Anza Street, San Francisco, CA 94121, and (651) 434-7737.

This NOV also serves as a demand that Liberty 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 the discharge or release of the Listed Chemicals from the Facilities; actual or potential discharges of the Listed Chemicals from the Facilities; efforts to comply with Proposition 65 or any other law with respect to discharge or release of the Listed Chemicals from the Facilities; and communications with any person relating to actual or potential discharge or release of the Listed Chemicals from the Facilities from June 10, 2020 through the date of any trial of the claims alleged in this NOV.

Sincerely,



Marla Fox
Environmental Advocates
Counsel for Ecological Rights Foundation

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

APPENDIX A

OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

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

The following summary has been prepared by the California Office of Environmental Health Hazard Assessment (OEHHA), the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as “Proposition 65”). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute OEHHA implementing regulations (see citations below) for further information.

FOR INFORMATION CONCERNING THE BASIS FOR THE ALLEGATIONS IN THE NOTICE RELATED TO YOUR BUSINESS, CONTACT THE PERSON IDENTIFIED ON THE NOTICE.

The text of Proposition 65 (Health and Safety Code Sections 25249.5 through 25249.13) is available online at: <http://oehha.ca.gov/prop65/law/P65law72003.html>. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 27 of the California Code of Regulations, sections 25102 through 27001.¹ These implementing regulations are available online at: <http://oehha.ca.gov/prop65/law/P65Regs.html>.

WHAT DOES PROPOSITION 65 REQUIRE?

The “Proposition 65 List.” Under Proposition 65, the lead agency (OEHHA) publishes a list of chemicals that are known to the State of California to cause cancer and/or reproductive toxicity. Chemicals are placed on the Proposition 65 list if they are known to cause cancer and/or birth defects or other reproductive harm, such as damage to female or male reproductive systems or to the developing fetus. This list must be updated at least once a year. The current Proposition 65 list of chemicals is available on the OEHHA website at: http://www.oehha.ca.gov/prop65/prop65_list/Newlist.html.

Only those chemicals that are on the list are regulated under Proposition 65. Businesses that produce, use, release or otherwise engage in activities involving listed chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before “knowingly and intentionally” exposing that person to a listed chemical unless an exemption applies. The warning given must be “clear and reasonable.” This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed to that chemical. Some exposures are exempt from the warning requirement under certain circumstances discussed below.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Some discharges are exempt from this requirement under certain circumstances discussed below.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

¹ All further regulatory references are to sections of Title 27 of the California Code of Regulations unless otherwise indicated. The statute, regulations and relevant case law are available on the OEHHA website at: <http://www.oehha.ca.gov/prop65/law/index.html>.

Yes. You should consult the current version of the statute and regulations (<http://www.oehha.ca.gov/prop65/law/index.html>) to determine all applicable exemptions, the most common of which are the following:

Grace Period. Proposition 65 warning requirements do not apply until 12 months after the chemical has been listed. The Proposition 65 discharge prohibition does not apply to a discharge or release of a chemical that takes place less than 20 months after the listing of the chemical.

Governmental agencies and public water utilities. All agencies of the federal, state or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees. This includes all employees, not just those present in California.

Exposures that pose no significant risk of cancer. For chemicals that are listed under Proposition 65 as known to the State to cause cancer, a warning is not required if the business causing the exposure can demonstrate that the exposure occurs at a level that poses “no significant risk.” This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific “No Significant Risk Levels” (NSRLs) for many listed carcinogens. Exposures below these levels are exempt from the warning requirement. See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of NSRLs, and Section 25701 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause reproductive toxicity, a warning is not required if the business causing the exposure can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the “no observable effect level” divided by 1,000. This number is known as the Maximum Allowable Dose Level (MADL). See OEHHA's website at: <http://www.oehha.ca.gov/prop65/getNSRLs.html> for a list of MADLs, and Section 25801 *et seq.* of the regulations for information concerning how these levels are calculated.

Exposures to Naturally Occurring Chemicals in Food. Certain exposures to chemicals that naturally occur in foods (i.e., that do not result from any known human activity, including activity by someone other than the person causing the exposure) are exempt from the warning requirements of the law. If the chemical is a contaminant² it must be reduced to the lowest level feasible. Regulations explaining this exemption can be found in Section 25501.

Discharges that do not result in a “significant amount” of the listed chemical entering any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a “significant amount” of the listed chemical has not, does not, or will not pass into or probably pass into a source of drinking water, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A “significant amount” means any detectable amount, except an amount that would meet the “no significant risk” level for chemicals that cause cancer or that is 1,000 times below the “no observable effect” level for chemicals that cause reproductive toxicity, if an individual were exposed to that amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any

² See Section 25501(a)(4).

district attorney, or certain city attorneys. Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. The notice must comply with the information and procedural requirements specified in Section 25903 of Title 27 and sections 3100-3103 of Title 11. A private party may not pursue an independent enforcement action under Proposition 65 if one of the governmental officials noted above initiates an enforcement action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court to stop committing the violation.

A private party may not file an enforcement action based on certain exposures if the alleged violator meets specific conditions. For the following types of exposures, the Act provides an opportunity for the business to correct the alleged violation:

- An exposure to alcoholic beverages that are consumed on the alleged violator's premises to the extent onsite consumption is permitted by law;
- An exposure to a Proposition 65 listed chemical in a food or beverage prepared and sold on the alleged violator's premises that is primarily intended for immediate consumption on- or off-premises. This only applies if the chemical was not intentionally added to the food, and was formed by cooking or similar preparation of food or beverage components necessary to render the food or beverage palatable or to avoid microbiological contamination;
- An exposure to environmental tobacco smoke caused by entry of persons (other than employees) on premises owned or operated by the alleged violator where smoking is permitted at any location on the premises;
- An exposure to listed chemicals in engine exhaust, to the extent the exposure occurs inside a facility owned or operated by the alleged violator and primarily intended for parking non-commercial vehicles.

If a private party alleges that a violation occurred based on one of the exposures described above, the private party must first provide the alleged violator a notice of special compliance procedure and proof of compliance form.

A copy of the notice of special compliance procedure and proof of compliance form is included in Appendix B and can be downloaded from OEHHA's website at: <http://oehha.ca.gov/prop65/law/p65law72003.html>.

FOR FURTHER INFORMATION ABOUT THE LAW OR REGULATIONS:

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900 or via e-mail at P65Public.Comments@oehha.ca.gov.

NOTE: Authority cited: Section 25249.12, Health and Safety Code. Reference: Sections 25249.5, 25249.6, 25249.7, 25249.9, 25249.10 and 25249.11, Health and Safety Code.

CERTIFICATE OF SERVICE

I, Marla Fox, declare:

I am a citizen of the United States, I am over the age of eighteen (18) years, and I am not a party to this action. My business address is 5135 Anza Street, San Francisco, CA 94121 and my email address is mfox@enviroadvocates.com.

On June 10, 2024, I served the following documents on all interested parties in this action:

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”); and

THE SAFE DRINKING AND TOXIC ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY.

I served the above-referenced documents on all interested parties in this action by the following methods.

BY MAIL: On June 10, 2024, I submitted the documents identified above to the internet mailing service available at the url www.onlinecertifiedmail.com causing those documents to be mailed via certified mail to the following addresses:

Liberty Utilities (CalPeco Electric) LLC
C/O President or CEO
701 National Ave.
Tahoe Vista, CA 96148

Liberty Utilities (California Payco), LLC
C/O President or CEO
701 National Ave.
Tahoe Vista, CA 96148

Liberty Utilities Co.
C/O President or CEO
14920 W. Camelback Road
Litchfield Park, AZ 85340

Liberty Utilities
PO Box 107
Tahoe Vista, CA 96148

1505 Corporation, Registered Corporate Agent

C T Corporation System
330 N. Brand Blvd.
Glendale, CA 91203

Rob Bonta, California Attorney General
Office of the Attorney General
1300 "I" Street
Sacramento, CA 95814

ONLINE: On June 10, 2024, I served the documents identified above by uploading them to the California Attorney General's website, which can be accessed at <https://oag.ca.gov/prop65/add-60-day-notice>. This online method of service was used to serve:

California Attorney General Proposition 65 Coordinator
1515 Clay Street, Suite 2000
P.O. Box 70550
Oakland, CA 94612

BY EMAIL: On June 10, 2024, I submitted the documents identified above via email to the following parties, causing those documents to be emailed to the addresses listed below. Pursuant to title 27 of the California Code of Regulations, section 25903(c) (Service of Notice), a notice may be served on a district attorney or city attorney by electronic mail in lieu of service as prescribed in the California Code of Civil Procedure. The email addresses are:

Morgan Briggs Gire, Placer County District Attorney
10810 Justice Center Drive
Roseville, CA 95678
Phone: (916) 543-8000
Email: prop65@placer.ca.gov

James Clinchard, El Dorado County Assistant District Attorney
778 Pacific Street
Placerville, CA 95667
Email: EDCDAPROP65@edcda.us

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

Executed on June 10, 2024 in the United States of America.



Marla Fox
Environmental Advocates
Counsel for Ecological Rights Foundation