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June 12, 2024

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Trinity County District Attorney  
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John Orellana  
Karen Orellana  
3371 Trinity Dam Blvd.  
Lewiston, CA 96052

Allen E. Toney, President  
RTA Construction, Inc.  
9614 Tanqueray Court  
Redding, CA 96003

Mel Deardorff, President  
Lewiston CSD  
P.O. Box 164  
Lewiston, CA 96052

RE: Prop 65 Notice; Demand to Remove Contaminated Dirt From 3371 Trinity Dam Blvd,  
Lewiston, CA 96052

Dear Mr. Bonta, Mr. Brady, Mr. Orellana, Mrs. Orellana, Mr. Toney, RTA Construction, Inc., Mr. Deardorff, and the Lewiston CSD,

This office represents Stan White and Staci Woodward, the owners and residents of 479 Mountain View Dr, Lewiston, CA 96052 ("my clients"). Please consider this letter my clients' notice

pursuant to Health & Safety Code § 25249.7(d). My client's prior notice dated June 3, 2024 is hereby withdrawn and replaced by this notice.

My clients allege that Mr. and Mrs. Orellana, RTA Construction, and the Lewiston CSD ("Defendants") have violated, since September 2023, and are continuing to violate Health & Safety Code § 25249.5 by discharging listed chemicals into land where such chemicals pass or probably will pass into my clients' drinking water. I will begin by discussing the facts of this matter.

## **FACTUAL BACKGROUND**

My clients own and reside at 479 Mountain View Dr., Lewiston, CA 96052 ("my clients' Property"). Their neighbors, John Orellana and his wife, Karen, own the adjoining property located at 3371 Trinity Dam Blvd, Lewiston, CA 96052 ("Orellana's Property"). Orellana's Property is where dirt contaminated with TPH – Diesel (FFP), THP – Motor Oil, Arsenic, Beryllium, Cadmium, Chromium, and Lead was intentionally placed by the Orellana's, RTA Construction, Inc., and the Lewiston CSD. Each of these substances are known to the State of California to cause cancer or reproductive toxicity.

The Orellana's Property, including the contaminated area, drains storm water and subsurface water onto my clients' Property, where it settles into the ground. My clients' Property draws its drinking water from a shallow well located upon it. This is the only source of my clients' drinking water.

The dirt placed on Orellana Property came from the Lewiston Community Services District's ("Lewiston CSD") Water Distribution System Replacement and Well 8 Project ("Project"). That Project involved the excavation of buried water pipes within the main subdivision in the town of Lewiston, California, and the placement of larger pipes into the ground. The excess dirt from that activity is the dirt that was placed on Orellana Property. The Lewiston CSD contracted with RTA Construction, Inc. to perform this Project.

Neither Mr. and Mrs. Orellana, RTA Construction, nor the Lewiston CSD ever analyzed the contaminated dirt before placing it on Orellana Property. The contaminated dirt was placed on Orellana Property sometime around September 2023 when Mr. and Mrs. Orellana made a written agreement with RTA Construction, Inc. to allow for the same. Mr. and Mrs. Orellana were paid \$5,000 for that agreement. Since the contaminated dirt was placed on my clients' Property, they and their pets have experienced strange and inexplicable health consequences, including the deaths of their pets.

My clients observed the dirt being taken from the Project, and its subsequent placement on Orellana Property. During these observation my clients noticed the truck driver lubing the bed of the dump truck with diesel, or some other fuel or oil. My clients later noticed an oil sheen on their pond where the storm water from Orellana Property settles and infiltrates into the ground.

My clients then reported this to Trinity County Environmental Health. This resulted in Trinity County Environmental Health staff performing a site inspection and collecting soil samples in January 2024. At that time, Trinity County Environmental Health officials noticed the smell of petroleum hydrocarbons. At the same time, my clients collected water samples from their pond on my clients' Property, where storm water from Orellana Property infiltrates into the ground.

Trinity County's soil samples revealed the presence of "TPH – Diesel (FFP)" and "THP – Motor Oil." My clients' water samples revealed the presence of "Arsenic," "Beryllium," "Cadmium," "Chromium," and "Lead." Each of these substances are known to the State of California to cause cancer or reproductive toxicity.

On January 23, 2024, Kristy Anderson, Director of Environmental Health, sent an email stating:

"Here are the test results from the 3371 Trinity Dam Blvd, Lewiston, CA spill. We have confirmation of not only an unreported diesel spill but a significant unreported motor oil spill, taken from the sample collected from 01/04/2024 (grab sample taken over 2 weeks from the initial complaint to a separate entity, with porous soils, combined with a significant amount of rainfall). As I stated before, not only do we need a plan of sampling and remediation, but we now need to test the downstream drinking water source, that originally reported the sheen in their drinking water pond, all of which will be billed to the responsible party. See the attached Petroleum Fact Sheet for your information in the future, and failure to report an oil spill and diesel spill has several violations to be mentioned, including but not limited to HSC §25515.3 and Prop 65 violations are also a concern with failure to report, especially as it pertains to drinking water."

On May 7, 2024, my clients reported the contaminated dirt, and otherwise inexplicable health symptoms they and their pets have experienced since the contaminated dirt was placed on Orellana Property, to the North Coast Regional Water Quality Control Board and the California Department of Toxic Substances Control.

On May 16, 2024, Cody Walker, of the North Coast Regional Water Quality Board, responded that "further investigation is being planned. PACE Engineering is coordinating this work and they have hired Lawrence & Associates out of Redding to proceed with this additional investigation. Results of the additional sampling will improve the characterization of the soil placed at 3371 Trinity Dam Boulevard and further evaluate the potential environmental threat, including for your clients at the adjacent property (479 Mountain View Drive, Lewiston, California)."

**DEMAND**

My clients will not wait for the Regional Water Quality Control Board or RTA Construction, Inc. to complete their investigation and analysis. Based upon the foregoing, Mr. Orellana, Mrs. Orellana, RTA Construction, Inc., and the Lewiston CSD (“Defendants”) are violating Health & Safety Code § 25249.5. Defendants are violating Section 25249.5 by discharging or releasing chemicals known to the State of California into my clients’ Property where such chemicals pass or probably will pass into my clients’ drinking water. These chemicals include soots, tars, and mineral oils (untreated and mildly treated oils and used engine oils), Arsenic, Beryllium, Cadmium, Chromium, and Lead. Defendants’ receipt of this notice constitutes their knowledge that they are violating Health & Safety Code § 25249.5. (*Lee v. Amazon.com, Inc.* (2022) 76 Cal.App.5th 200, 240 [291 Cal.Rptr.3d 332]). A copy of “The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary” is attached to this notice. A certificate of service is also attached.

These violations expose Defendants to a civil penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each violation, costs, and attorney’s fees. Health & Safety Code § 25249.7.

My clients demand that Defendants cease and desist violating Health & Safety Code § 25249.5 by immediately causing the removal of the contaminated dirt they caused to be placed on Orellana Property. Failure to comply will result in their being sued by either the appropriate public prosecutors, or my clients as private prosecutors.

## CONCLUSION

My clients are presently being evaluated for any damages from this conduct. Assuming Defendants are willing to remove the dirt to an appropriate landfill, my clients would entertain a release of any damages in exchange. I strongly anticipate Mr. Bonta’s office cooperating with such a settlement. Defendants will otherwise be sued.

I look forward to your response.

Regards,



MICHAEL L. RICKS

MLR/lw

Enclosures: The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A  
Summary  
Certificate of Service

## 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 and 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. [FN1] 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](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 say 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?***

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 Periods.*** 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 full and part-time 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 contaminant [FN2] 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 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](mailto:P65Public.Comments@oehha.ca.gov). Revised: May 2017 [FN1]

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>. [FN2]

See Section 25501(a)(4).

### CERTIFICATE OF SERVICE

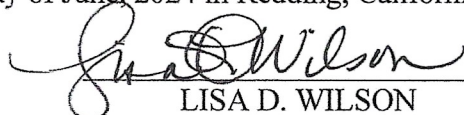
I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where mailing occurred. My business address is 1600 West St., Redding, CA 96001. On June 13, 2024 I served, by first class mail, the following:

1. Prop 65 Notice; Demand to Remove Contaminated Dirt From 3371 Trinity Dam Blvd, Lewiston, CA 96052;
2. The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary, which is attached to the Prop 65 Notice; Demand to Remove Contaminated Dirt From 3371 Trinity Dam Blvd, Lewiston, CA 96052;
3. This Certificate of Service, which is attached to the Prop 65 Notice; Demand to Remove Contaminated Dirt From 3371 Trinity Dam Blvd, Lewiston, CA 96052

to each of the persons and entities at the addresses identified below:

1. Rob Bonta  
California Attorney General  
P.O. Box 944255  
Sacramento, CA 94244-2550
2. David M. Brady  
Trinity County District Attorney  
P.O. Box 310  
11 Court Street  
Weaverville, CA 96093
3. John Orellana  
Karen Orellana  
3371 Trinity Dam Blvd.  
Lewiston, CA 96052
4. Allen E. Toney, President  
RTA Construction, Inc.  
9614 Tanqueray Court  
Redding, CA 96003
5. Mel Deardorff, President  
Lewiston CSD  
P.O. Box 164  
Lewiston, CA 96052

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 13<sup>th</sup> day of June, 2024 in Redding, California.

  
LISA D. WILSON