



ENVIRONMENTAL

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July 25, 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 600 Standard Veneer Road, Crescent City, CA 95531.

Dear Hon. Prosecutors; Cindy A. Crane (Chief Executive Officer of PacifiCorp); Ryan Flynn (President Pacific Power); PacifiCorp; Pacific Power; Hemmingsen Contracting Co., Inc.; Steven Jay Hemmingsen; Denise Jane Hemmingsen; and Steven Hemmingsen Jr.:

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

Hemmingsen Contracting Co., Inc.

1841 Northcrest Drive
Crescent City, CA 95531

Steven Jay Hemmingsen and Denise Jane Hemmingsen

205 Norma Court
Crescent City, CA 95531

Steven Hemmingsen Jr.

165 Norma Court
Crescent City, CA 95531

This NOV serves to provide PacifiCorp; Pacific Power, a division of PacifiCorp; Hemmingsen Contracting Co, Inc.; Steven Jay Hemmingsen; Denise Jane Hemmingsen; and Steven Hemmingsen Jr. (collectively “Violators”), and the public prosecutors, with notice of violations of Proposition 65, codified at California Health & Safety Code §§ 25249.5, *et seq.*, 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.

All Violators 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 Violators discharge or release 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 600 Standard Veneer Road, Crescent City, California 95531 (the “Facility”).

The Listed Chemicals involved in these violations are:

Proposition 65-Listed Chemical	Toxicity	Date of Listing
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, operate, and/or direct certain actions at 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, flakes, 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 confined spaces designed to hold, treat, and/or release storm water. The Violators' discharges of Listed Chemicals from the Facility's confined spaces 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 Violators also discharge or release Listed Chemicals from the Facility in storm water that flows directly off the Facility. 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.

These discharges or releases of Listed Chemicals go into wetlands, streams, and/or groundwater where they are then transported to Lake Earl and/or its tributaries and/or into local groundwater, all of which are designated sources of drinking water.

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 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 July 23, 2024 notifying the Violators of their release or discharge of the Listed Chemicals off-site from the Facility; (2) EcoRights has sent certain of the Violators laboratory reports documenting the presence of the Listed Chemicals in storm water runoff, sediment, and soil from the nearby facility located at 1054 Northcrest Drive, Crescent City CA 95531, which is owned and operated

by PacifiCorp and Pacific Power and which show extensive pollution from the same activities that they have sought to partially relocate to the Facility at issue here; (3) it is common knowledge 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 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 rain events 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, chemicals, and Treated Wood Wastes that the Violators are discharging or releasing from the 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 into wetlands, streams, and/or groundwater where they are then transported to Lake Earl and/or its tributaries and/or into local groundwater, all of which are designated sources of drinking water designated as municipal drinking water supply/ies under the Water Quality Control Plan for the North Coast Basin (“Basin Plan”). Violators also discharge or release 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 Basin Plan, the North Coast Regional Water Quality Control Board has determined that beneficial uses for the Smith River Plain Hydrologic Subarea, which includes Lake Earl’s tributaries and all waters surrounding Facility, include municipal water supply.¹ Further, in the Basin Plan the North Coast Regional Water Quality Control Board has listed municipal supply as an existing beneficial use of Lake Earl and 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.

¹ The Basin Plan is available at:

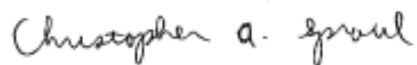
https://www.waterboards.ca.gov/northcoast/water_issues/programs/basin_plan/basin_plan_documents/.

The violations described in this NOV have been occurring since at least July 24, 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 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 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 Facility; actual or potential discharges of the Listed Chemicals from the Facility; efforts to comply with Proposition 65 or any other law with respect to discharge or release of the Listed Chemicals from the Facility; all documents relating to utility poles, crossarms, and/or pieces thereof, whether treated or allegedly not treated, including, but not limited to, documents relating to deliveries, removal, and/or movement of the same around the Facility; and communications with any person relating to actual or potential discharge or release of the Listed Chemicals from the Crescent City Facility from July 24, 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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