

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

3 Park Plaza, Suite 2030

Irvine, CA 92614

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60 Day Notice of Intent to Sue 84 Lumber Company Under Health & Safety Code Section 25249.6

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or the "Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5 (the "Notice") to Maggie Hardy Magerko, the President of 84 Lumber Company (hereinafter referred to as "84 Lumber"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice is intended to inform 84 LUMBER that it has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") by failing and refusing to post clear and reasonable warnings at each of the facilities listed on Exhibit A hereto (which are owned/managed by 84 Lumber) (hereinafter "the Facilities") that 84 Lumber, in the ordinary course of business, stores, sells and cuts to order at each of the Facilities highly hazardous lumber infused with the arsenic-containing pesticide CCA.

Proposition 65 provides that when a party, such as 84 Lumber, has been and is knowingly and intentionally exposing its customers, visitors, employees and the general public to a chemical designated by the State of California to cause cancer and developmental toxicity ("the Designated Chemical") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Arsenic (inorganic arsenic compounds) is a chemical known to the State of California to cause cancer. Arsenic (inorganic oxides) is a chemical known to the State of California to cause developmental reproductive toxicity. Hereinafter, arsenic (inorganic arsenic compounds) and arsenic (inorganic oxides) are referred to as the Designated Chemicals.

During the period from August 25, 2003 through October 12, 2003, persons representing CDG have investigated the activities permitted by 84 LUMBER at the Facilities (hereinafter referred to as the "Investigation Period"). During that investigations CDG discovered that the Facilities are owned and/or managed by 84 LUMBER, and that 84 LUMBER has more than nine employees. Those investigations also showed that 84 LUMBER has chosen to allow its customers, visitors and employees at each of the Facilities to be exposed to the Designated Chemicals by offering for sale lumber treated with CCA. The standard formulation for CCA used in wood is 22% arsenic. At the Facilities 84 LUMBER has also chosen to expose its customers (including children) and employees to the Designated Chemicals by cutting the wood to various lengths on site. The areas where the exposures take place at the Facilities are those areas where the CCA-treated wood is stored in inventory, where the lumber stacked for sale on the shop floor and in the areas where the wood is cut. Of course, there are also exposures when the CCA-treated wood is taken home by the customer and used.

In the Facilities and areas noted 84 LUMBER has chosen to allow its customers, visitors and employees to be exposed to the Designated Chemicals but has specifically chosen to ignore the

requirements of Proposition 65 and has failed to post clear and reasonable warnings at any of the entrances to the Facilities, in the parking areas, in the areas leading into the Facilities from the parking areas, at the entrances to the areas where the wood is stored in inventory, where it is stacked for sale on the shop floor, or in the areas where the wood is cut, so that its customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering any of those areas, they may be exposed to the Designated Chemicals.

It is clear therefore that for the entire period of time that 84 LUMBER has owned and/or controlled the Facilities prior to the Investigation Period, 84 LUMBER has failed to post clear and reasonable warning signs at the Facilities in compliance with Proposition 65. Given that the maximum period of potential liability pursuant to Proposition 65 and Business & Professions Code §17200 (which are the operative statutes pursuant to which a complaint will be filed against 84 LUMBER) is four years, this Notice is intended to inform 84 LUMBER that it has been in violation of Proposition 65 from the time period from four years prior to the last date of the Investigation Period noted above, for every day upon which 84 LUMBER owned and/or controlled any Facility listed on Exhibit A.

The written reports prepared by the investigators for CDG, prepared contemporaneously with the investigations conducted during the Initial Investigation Period, together with supporting data, studies and reports, and other evidence from the Facilities, has been provided to the Office of the Attorney General responsible for Proposition 65 enforcement.

Environmental Exposures:

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, 84 LUMBER has been and is knowingly and intentionally exposing its customers and the public to the Designated Chemicals without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The sources of exposure are (1) CCA-treated wood offered for sale by 84 LUMBER at the Facilities, and (2) CCA-treated wood cut to order onsite by 84 LUMBER employees at the Facilities. The areas at the Facilities where customers, visitors and employees are being exposed to the Designated Chemicals are where the CCA-treated wood is stored in inventory, stacked for sale on the shop floor and in the areas where the wood is cut.

Occupational Exposures:

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, 84 LUMBER has been and is knowingly and intentionally exposing its employees to the Designated Chemicals without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The sources of exposure are (1) CCA-treated wood offered for sale by 84 LUMBER at the Facilities, and (2) CCA-treated wood cut to order onsite by 84 LUMBER employees at the Facilities. The areas at the Facilities where 84 LUMBER employees are being exposed to the Designated Chemicals are where the CCA-treated wood is stored in inventory, where it is stacked for sale on the shop floor and in the areas where the wood is cut. The employees exposed to the Designated Chemicals include those working in the areas in the Facilities where CCA-treated wood is stored in inventory and stacked for sale, the employees working in and around the area where the wood is cut by 84 LUMBER employees, the employees who do the cutting of the lumber and those handling the wood both prior to sale and who assist customers with the wood at the point of sale and thereafter deliver the wood to the customer's residence or car.

Consumer Product Exposures:

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, 84 LUMBER has been and is knowingly and intentionally exposing its customers and the public to the Designated Chemicals contained in the CCA treated wood it offers for sale at each of the Facilities without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The sources of exposure are (1) CCA-treated wood offered for sale by 84 LUMBER at the Facilities, and (2) CCA-treated wood cut to order onsite by 84 LUMBER employees at the Facilities. The areas at the Facilities where customers, visitors and employees are being exposed to the Designated Chemicals are where the CCA-treated wood is stored in inventory, stacked for sale on the shop floor and in the areas where the wood is cut. Customers are also exposed to the Designated Chemicals when they use the wood after purchase.

The route of exposure for Occupational Exposures, Environmental Exposures and Consumer product Exposures to the Designated Chemicals has been via inhalation, ingestion and dermal contact with the wood and with wood dust from the lumber. In other words, via breathing and contact with the skin of customers, visitors and employees with CCA treated wood and wood dust, and by ingestion through the mouth after touching of the CCA treated wood and wood dust.

Proposition 65 requires that notice and intent to sue be given to 84 LUMBER sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to 84 LUMBER and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to them. CDG reserves the right to amend this Notice to inform 84 LUMBER of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to 84 LUMBER, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: October 26, 2003

By:

EXHIBIT A

84 Lumber Company
1019 Route 519
Eighty Four, PA 15330
CEO Joseph A. Hardy Sr.
President Maggie Hardy Magerko

- 350 E 1st Street, Beaumont, Ca 92223
- 101 Ming Avenue, Bakersfield, Ca 93307
- 3600 S Higuera Street, San Luis Obispo, Ca 93401
- 800 Gettysburg Avenue, Clovis, Ca 93612
- 8284 Murray Avenue, Gilroy, Ca 95020
- 2901 Us 59 North, Merced, Ca 95340
- 1910 Fairway Drive, San Leandro, Ca 94577
- 5777 Scarlett Court, Dublin, Ca 94568
- 8440 Florin Dr, Sacramento, Ca 95828
- 3950 Grass Valley Highway, Auburn, Ca 95602
- 705 Stony Point Road, Santa Rosa, Ca 95407
- 3625 Old 44 Dr, Redding, Ca 96003

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing The Consumer Defense Group Action, the “Noticing Party” as to the “60 Day Notice of Intent to Sue” (hereinafter, “the Notice”) served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General’s office as required by the regulations promulgated under Proposition 65.

3. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that “reasonable and meritorious case for the private action” means that the information provides a credible basis that all elements of the plaintiffs’ case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus “operates”, the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the “release” of the chemicals set forth in the Notice and such “releases” threaten to pass in sources of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6, or any other sign purporting to comply with the requirements of that section.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on October 27, 2003.

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 the mailing occurred. My business address is 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators*); and
- 3.) Certificate of Merit;
- 4.) Supporting documents (*only sent to Office of Attorney General*)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: October 28, 2003

Place of Mailing: Irvine, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

CEO Joseph A. Hardy Sr. President Maggie Hardy Magerko 84 Lumber Company 1019 Route 519 Eighty Four, PA 15330	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
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Humboldt County DA
825 5th Street
Eureka, CA 95501

Shasta County DA
1525 Court Street
Redding, CA 96001-1632

Merced County DA
445 I Street
Los Banos CA 93635

San Mateo District Attorney
1050 Mission Road
South San Francisco, CA 94080

Marin County DA
3501 Civic Center Dr. #130
San Rafael, CA 94903

Placer County DA
11562 B Avenue
Auburn, CA 95603

Sonoma County DA
600 Administrative Dr.
Santa Rosa, CA 95403

Solano County DA
321 Tuolomne Street
Valejo, CA 94590

Fresno County DA
2220 Tulare Street, #1000
Fresno, CA 93721

San Jose City Attorney
151 W. Mission St.
San Jose, CA 95110

Contra Costa County DA
727 Court Street
Martinez, CA 94553

Sacramento County DA
P.O. Box 749
Sacramento, CA 95812

Napa County DA
931 Parkway Mall
Napa, CA 94559

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

Mono County DA
P.O. Box 617
Bridgeport, CA 93517

Inyo County DA
386 W. Line Street
Bishop, CA 93514

San Joaquin DA
225 W. Elm Street #C
Lodi, CA 95240

San Bernardino County DA
316 N. Mountain View Av.
San Bernardino, CA 92415

Stanislaus County DA
300 Starr Avenue
Turlock, CA 95380

Butte County DA
25 County Center Drive
Oroville, CA 95695

Del Norte County DA
450 H Street
Crescent City, CA 95531

Nevada County DA
201 Church Street, Suite 8
Nevada City, CA 95959

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

San Luis Obispo County DA
1050 Monterey Street, Rm. 450
San Luis Obispo, CA 93408

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

Dated: October 28, 2003
