

JUN 12 2008

John A. Clarke, Executive Officer/Clerk

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BY MARY GARCIA, Deputy

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8 Attorney for Plaintiff
9 Center for Environmental Health

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12
13
14 CENTER FOR ENVIRONMENTAL HEALTH,
15 a California non-profit corporation

CASE NO. **BC392591**

16 Plaintiff

**COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF
AND CIVIL PENALTIES**

17 vs.

18
19 GS ROOFING PRODUCTS COMPANY, INC.
and DOES I-X,

Environmental/Toxic Tort (30)
(Proposition 65, Health & Safety Code
Sections 25249.5 et seq.)

20 Defendants.

21
22
23 Plaintiff, Center for Environmental Health ("CEH") hereby alleges:

24
25 **I**

26 **INTRODUCTION**

27 1. CEH brings this action as a private attorney general on behalf of the People

1 of the State of California and in the public interest pursuant to Health Safety Code section 25249.7
2 (d). Based on the Safe Drinking Water and Toxic Enforcement Act of 1986 (Health and Safety
3 Code section 25249.5 et seq) also known as "Proposition 65," this complaint seeks injunctive and
4 declaratory relief and civil penalties based on GS Roofing Products Company, Inc.'s ("GS Roofing
5 Products") failure to warn residents and workers in and around Wilmington, California, that they
6 have been and continue to be exposed to chemicals known to the State of California to cause cancer
7 and reproductive toxicity. Pursuant to Proposition 65, businesses with ten or more employees must
8 provide persons with a "clear and reasonable warning" prior to exposing them to chemicals listed by
9 the State at or above threshold levels for that chemical.
10
11

12 II

13 PARTIES

14
15 2. Plaintiff CEH is a non-profit California corporation dedicated to environmental
16 protection and enhancement. One of CEH's objectives is to prevent and reduce toxic hazards to
17 human health and the environment, specifically from pollution of air, water and land throughout
18 California. Through CEH's activities, numerous carcinogenic and reproductive chemicals listed
19 pursuant to Proposition 65 that have been present in consumer products and emitted into the air,
20 have been eliminated.
21

22 3. GS Roofing Products is a corporation licensed to do business in the State of California.
23 GS Roofing Products owns and operates an asphalt roofing products plant at 1431 West E Street,
24 Wilmington, California 90744.

25
26 4. Defendants DOES I-X, are named herein under fictitious names, as their true names and
27 capacities are unknown to Plaintiff. CEH is informed and believes, and thereon alleges, that each of
28 said DOES is responsible, in some actionable manner, for the events and happenings hereinafter

1 referred to, either through said GS Roofing Products' conduct, or through the conduct of its agents,
2 servants or employees, or in some other manner, causing the harms alleged by Plaintiff in this
3 complaint. When said true names and capacities of DOES are ascertained, CEH will seek leave to
4 amend this complaint to set forth the same.
5

6 III

7 JURISDICTION AND VENUE

8 5. This Court has jurisdiction pursuant to California Constitution Article VI, section 10.
9

10 6. CEH has performed any and all conditions precedent to the filing of a legal action
11 pursuant to Proposition 65 by mailing a Notice of Violation, dated January 8, 2008, to the Attorney
12 General of the State of California, the Los Angeles County District Attorney, the Los Angeles
13 City Attorney and GS Roofing Products. A true and correct copy of this Notice is attached
14 herein as Exhibit A. More than 60 days have passed since CEH mailed its Notice and no public
15 enforcement entity has filed a complaint in this case.
16

17 7. This Court is the proper venue for the action because the causes of action have arisen in
18 Los Angeles County. Furthermore, this Court is the proper venue under Code of Civil Procedure
19 section 395 and Health and Safety Code section 25249.7.
20

21 IV

22 STATUTORY BACKGROUND

23 A. PROPOSITION 65

24 8. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute
25 passed as "Proposition 65" by an overwhelming majority vote of the people in November of 1986.
26

27 9. The warning requirement of Proposition 65 is contained in Health and Safety Code
28 section 25249.6, which provides:

1 No person in the course of doing business shall knowingly and intentionally expose any
2 individual to a chemical known to the state to cause cancer or reproductive toxicity without first
3 giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

4 10. Implementing regulations for Proposition 65 provide that warnings are required for
5 environmental exposures. Environmental exposures are those which may foreseeably occur as a
6 result of contact with an environmental medium, including ambient air, "through inhalation,
7 ingestion, skin contact or otherwise." 22 CCR section 12601 (d).

8 11. Warnings for environmental exposures must be "provided in a conspicuous manner and
9 under such conditions as to make it likely to be read, seen, or heard and understood by an ordinary
10 individual in the course of normal daily activity." 22 CCR section 12601 (d) (2). The warnings
11 must also be "reasonably associated with the location and source of the exposure." Id.

12 12. Proposition 65 establishes a procedure by which the state is to develop a list of
13 chemicals "known to the State to cause cancer or reproductive toxicity." Health and Safety Code
14 section 25249.8. The requirement to provide a warning shall be provided 12-months after the
15 chemical was published on the state list. Id. section 25249.10(b). 1,3 butadiene was listed as a
16 carcinogen on April 1, 1988 and as a reproductive toxicant (a developmental reproductive toxicant
17 affecting both females and males) on April 16, 2004. Benzene was listed as a carcinogen on
18 February 27, 1987 and as a reproductive toxicant (a developmental reproductive toxicant affecting
19 males) on December 26, 1997. Formaldehyde was listed as a carcinogen on January 1, 1988.

20 13. Proposition 65 may be enforced by any person in the public interest who provides notice
21 sixty days before filing suit to both the violator and designated law enforcement officials. The
22 failure of law enforcement officials to file a timely complaint enables a citizen suit to be filed
23 pursuant to Health and Safety Code section 25249.7 (c).

1 14. Proposition 65 provides that any person "violating or threatening to violate" the statute
2 may be enjoined in any court of competent jurisdiction. Health and Safety Code section 25249.7.
3 To "threaten to violate" is defined to mean "to create a condition in which there is a substantial
4 probability that a violation will occur. Id. section 25249.11(e). Furthermore, Proposition provides
5 that persons in violation of the statute are liable for civil penalties up to \$2,500 per day for each
6 violation. Health and Safety Code section 25249.7(a) (b). Each individual exposure without
7 warning is a separate violation.
8
9

10 V

11 **STATEMENT OF FACTS**

12 15. During the course of operations at its Wilmington facility, GS Roofing Products emits
13 1,3 butadiene, benzene and formaldehyde into the air and surrounding community.
14

15 16. GS Roofing Products has reported its emissions under penalty of perjury to the South
16 Coast Air Quality Management District. The most recent emissions reported by the company for
17 2006-07 disclosed 293 pounds of 1,3 butadiene emissions, 1,768 pounds of formaldehyde emissions
18 and 407 pounds of benzene emissions.
19

20 17. GS Roofing Products has failed to make appropriate operational and process
21 modifications and install emission control technology at its facility that would obviate the need to
22 provide a warning of exposure to the surrounding community.
23

24 18. Nearby residents and workers from GS Roofing Products and other businesses have been
25 and continue to be exposed to 1,3 butadiene, formaldehyde and benzene emissions from the facility.
26 Several homes are located next to the boundary of the facility to the north. A large residential
27 neighborhood consisting of single family homes, apartments and schools is located to the east.
28

1 There is a Head Start School very close to the facility to the east. There are two other schools
2 (Hawaiian Ave. Children's Center and Hawaiian Ave. Elementary School) further to the east.
3

4 19. The Proposition 65 standard to require a warning in California is 10 excess cancer
5 risks per one-million persons. Air dispersion modeling demonstrates that numerous residents
6 and workers have been exposed to levels of 1,3 butadiene, formaldehyde and benzene above
7 Proposition 65 warning thresholds.

8
9 20. GS Roofing Products has not provided clear and reasonable warnings to those
10 residents and workers in the surrounding community who are exposed to 1,3 butadiene,
11 formaldehyde and benzene from its facility as required by Proposition 65.

12 21. GS Roofing Products has knowingly and intentionally exposed residents, including
13 children, situated nearby, as well as workers in the surrounding neighborhood to 1,3 butadiene,
14 formaldehyde and benzene without providing a clear and reasonable Proposition 65 warning. GS
15 Roofing Products has at all times relevant hereto been aware that its operations emit large amounts
16 of these chemicals, and that some operations occur without any emission controls and that process
17 and operation modifications and the installation of better emission control technology exists which
18 would substantially reduce emissions and exposures. GS Roofing Products has always been aware
19 that a residential community and several schools are located nearby its facility. GS Roofing
20 Products has operated its facility with knowledge that exposures to these chemicals have occurred.
21
22

23 FIRST CAUSE OF ACTION

24 25 (Violation of section 25249.6 of the Health and Safety Code, Failure to Provide Clear and 26 Reasonable Warning under Proposition 65)

27 22. CEH refers to paragraphs 1-21, inclusive, and incorporates them herein by this reference.

28 23. GS Roofing Products operates a business, which employs ten or more persons.

1 24. By committing the acts alleged above, GS Roofing Products has, in the course of doing
2 business, knowingly and intentionally exposed individuals to chemicals known to the State of
3 California to cause cancer and reproductive toxicity without first giving clear and reasonable
4 warning to such individuals, within the meaning of Health and Safety Code section 25249.6.
5

6 25. Said violations render GS Roofing Products liable for civil fines up to \$2,500 (two
7 thousand, five hundred dollars) per day, for each such violation.
8

9 26. GS Roofing Products 's continued violation of the law will irreparably harm CEH and
10 the public interest in whose behalf Plaintiff brings this action, for which there is no adequate
11 remedy at law.

12 SECOND CAUSE OF ACTION

13 (Declaratory Relief)

14 27. CEH refers to paragraphs 1-26, inclusive, and incorporates them herein by this
15 reference.
16

17 28. There exists an actual controversy relating to the legal rights and duties of the parties,
18 within the meaning of Code of Civil Procedure section 1060, between Plaintiff and GS Roofing
19 Products concerning:
20

21 a) whether GS Roofing Products has exposed individuals to chemicals known to the State of
22 California to cause cancer and reproductive toxicity without providing clear and reasonable
23 warning.
24

25 VI

26 PRAYER

27 WHEREFORE, CEH prays for relief against GS Roofing Products as follows:
28

1 1. On the First Cause of Action, for civil penalties for each and every violation according to
2 proof;

3
4 2. On the First Cause of Action, and pursuant to Health and Safety Code section 25249.7 (a), for
5 such temporary restraining orders, preliminary and permanent injunctive orders, or other orders,
6 prohibiting GS Roofing Products from exposing persons to 1,3 butadiene, formaldehyde and
7 benzene without providing clear and reasonable warnings;

8
9 3. On the Second Cause of Action, for a declaratory judgment pursuant to Code of Civil
10 Procedure section 1060 declaring:

11 a. that GS Roofing Products has exposed individuals to chemicals known to the State of
12 California to cause cancer and reproductive toxicity without providing clear and reasonable
13 warning; and

14
15 4. On all Causes of Action, for reasonable attorneys' fees pursuant to section 1021.5 of the Code
16 of Civil Procedure or the substantial benefit theory;

17 5. For costs of suit herein; and

18 6. For such other relief as the Court may deem just and proper.

19 Dated: June 11, 2008

20
21 By



22 Michael Freund
23 Attorney for Center for Environmental Health
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January 8, 2008

Jerry Brown, Attorney General
Edward Weil, Supervising Deputy Attorney General
1515 Clay Street, Suite 2000
Oakland, CA 94612-1413

Steve Cooley, District Attorney
Los Angeles District Attorney's Office
210 W. Temple Street
Room 345
Los Angeles, CA 90012

Rockard J. Delgadillo, City Attorney
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Re: Notice of Violation

Dear Prosecutors:

I represent the Center for Environmental Health ("CEH"), a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment. This letter constitutes notification that GS Roofing Products Co., Inc., located at 1431 W. East Street, Wilmington, California 90744, has violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with section 25249.5 of the Health and Safety Code).

In particular, this company has exposed and continues to expose numerous individuals within the surrounding area to the following chemicals subject to Proposition 65: 1,3 butadiene, listed as a carcinogen on April 1, 1988 and as a reproductive toxicant (developmental female, male) on April 16, 2004; benzene, listed as a carcinogen on February 27, 1987 and as a reproductive toxicant (developmental male) on December 26, 1997; and formaldehyde listed as a carcinogen on January 1, 1988. The time period of this violation commenced one year after the listed date above. The route of exposure has been primarily through inhalation of these chemicals; however additional exposures may arise through dermal contact with, or ingestion of, these chemicals. The general geographic location of the unlawful exposure to the residential community and occupational area lies within a radius of approximately .4 miles from the facility.

EXHIBIT A

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. This company is in violation of Proposition 65 because it failed to provide a warning to persons residing and working in the area surrounding the facility that they have been and continue to be exposed to these listed chemicals. (22 C.C.R. section 12601.) While in the course of doing business, the company is knowingly and intentionally exposing people to these chemicals, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.) Moreover, based on the exposure involved, we believe the method of warning should be "... a notice mailed or otherwise delivered to each occupant in the affected area. Such notice shall be provided at least once in any three-month period." (22 C.C.R. section 12601 (d) (1) (B)).

Proposition 65 requires that notice and intent to sue be given to a violator 60-days before the suit is filed. With this letter, CEH gives notice of the alleged violation to the noticed party and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CEH from information now available to us. CEH is continuing its investigation that may reveal further violations. A summary of Proposition 65, prepared by the Office of Environmental Health Hazard Assessment, and referenced as Appendix A, has been provided to the noticed party.

If you have any questions, please contact my office at your earliest convenience.

Sincerely,



Michael Freund

cc: Michael Green, Director, CEH

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7 (d)

I, Michael Freund hereby declare:

1. This Certificate of Merit accompanies the attached Notice of Violation in which it is alleged that the party identified in the Notice has violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party Center for Environmental Health (“CEH”)
3. CEH is a non-profit California corporation whose primary mission is to prevent and reduce toxic hazards to human health and the environment.
4. The Notice of Violation alleges that the party identified has exposed persons in and around Wilmington, California to 1,3 butadiene, benzene and formaldehyde. Please refer to the Notice of Violation for additional details regarding the alleged violations.
5. I have consulted with a scientist with more than 23 years of experience in chemical exposure issues. The consultant has the appropriate experience and expertise regarding the exposure issues in this case. The consultant has reviewed facts, studies or other data regarding the emissions of 1,3 butadiene, benzene and formaldehyde and the location of receptors to the noticed party. These facts, studies or other data overwhelmingly demonstrate that the party identified in the Notice exposes nearby residents and workers to the above chemicals.
6. Based on my consultation with an experienced consultant in this field, it is clear that there is sufficient evidence that human exposures exist from exposure to these chemicals from the noticed party. Furthermore, as a result of the above, I have concluded that 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 plaintiff’s 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.

7. The copy of this Certificate of Merit served on the California Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health & Safety Code Section 25249.7 (h) (2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies or other data reviewed by those persons.

Dated: January 8, 2008



Michael Freund
Attorney for Center for Environmental
Health

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On January 8, 2008 I served the within:

Notice of Violation and Certificate of Merit (Supporting documentation pursuant to 11 CCR section 3102 sent to Attorney General only)

on the parties in said action, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Attorney General's Office
Attn: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Oakland, CA 94612

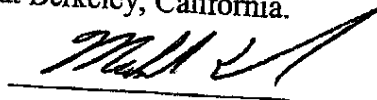
Rockard J. Delgadillo, City Attorney
800 City Hall East
200 N. Main Street
Los Angeles, CA 90012

Steve Cooley, District Attorney
Los Angeles District Attorney's Office
210 West Temple Street
Room 18-709
Los Angeles, CA 90012

Ron Sanders
GS Roofing Products Company, Inc.
1431 W. E Street
Wilmington, CA 90744

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on January 8, 2008 at Berkeley, California.



Michael Freund

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 24, 2008 I served the within:

Complaint for Injunctive and Declaratory Relief and Civil Penalties (Center for Environmental Health v. GS Roofing Products Company, Inc., Los Angeles Case No. BC392591)

on the parties in said action, by facsimile and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Attorney General's Office
Attn: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Oakland, CA 94612

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 24, 2008 at Berkeley, California.



Michael Freund

CERTIFICATE OF SERVICE

I am a citizen of the United States and a resident of the County of Alameda. I am over the age of eighteen years and not a party to the within entitled action; my business address is 1915 Addison Street, Berkeley, California 94704. On June 30, 2008 I served the within:


Complaint for Injunctive and Declaratory Relief and Civil Penalties (Center for Environmental Health v. GS Roofing Products Company, Inc., Los Angeles Case No. BC392591)

on the parties in said action, by facsimile and placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Post Office mail box in Berkeley, California and/or by hand delivery to said parties addressed as follows:

Bob Thomas
Office of the Attorney General
1515 Clay Street, Suite 2000
PO Box 7550
Oakland, CA 94612

I, Michael Freund, declare under penalty of perjury that the foregoing is true and correct.

Executed on June 30, 2008 at Berkeley, California.



Michael Freund