

1 MUSICK, PEELER & GARRETT LLP  
Barry C. Groveman (State Bar No. 082239)  
2 b.groveman@mpglaw.com  
Ryan Hiete (State Bar No. 204614)  
3 r.hiete@mpglaw.com  
Adam D. Wieder (State Bar No. 239369)  
4 a.wieder@mpglaw.com

5 One Wilshire Boulevard, Suite 2000  
Los Angeles, California 90017-3383  
6 Telephone: 213-629-7600  
Facsimile: 213-624-1376

7 Jay F. Goida  
8 Los Angeles Unified School District  
333 S. Beaudry Avenue, 23rd Floor  
9 Los Angeles, California 90017  
Telephone: (213) 241-5140  
10 Facsimile: (888) 605-8603

11  
12 Attorneys for Plaintiff LOS ANGELES UNIFIED SCHOOL DISTRICT

13  
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
15 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16 LOS ANGELES UNIFIED SCHOOL  
17 DISTRICT,

18 Plaintiff,

19 vs.

20 FOREVER GREEN ATHLETIC FIELDS OF  
21 THE WEST, LLC, a Delaware limited liability  
company, FOREVER GREEN ATHLETIC  
22 FIELDS OF THE WEST, L.P., a Pennsylvania  
limited partnership, FOREVER GREEN  
23 ATHLETIC FIELDS, INC., a Pennsylvania  
corporation, AND DOES 1 THROUGH 50,  
24 INCLUSIVE.

25 Defendant.

CASE No.

**BC430526**

**COMPLAINT**

Trial Date:

None Set

26  
27 Plaintiff, LOS ANGELES UNIFIED SCHOOL DISTRICT, by and through its counsel,  
28 hereby alleges:

CONFIRMED COPY  
OF ORIGINAL FILED  
Superior Court of California  
County of Los Angeles

IAN 27 2010

John A. Clarke, Executive Officer/Clerk  
By RUCENA LOPEZ, Deputy

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## I. PRELIMINARY STATEMENT

1. This complaint seeks, among other things, to remedy the failure of Defendant FOREVER GREEN ATHLETIC FIELDS OF THE WEST, LLC ("Forever Green LLC") to warn persons of exposure to lead and carbon black, both chemicals known to the State of California to cause birth defects, or other reproductive harm. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6, also known as "Proposition 65," businesses must provide persons with a "clear and reasonable warning" before exposing individuals to chemicals known to the state to cause cancer or reproductive harm.

2. Further, in providing a defective and dangerous product to Plaintiff (identified below), Forever Green LLC and the two other named Defendants (identified below) are liable to Plaintiff for breach of contract, negligence, and products liability.

## II. PARTIES

### A. Plaintiff

3. Plaintiff is the LOS ANGELES UNIFIED SCHOOL DISTRICT (hereinafter the "District"). Health and Safety Code section 25249.7(d) provides that actions to enforce Proposition 65 may be brought by any person in the public interest if: (1) notice is provided 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" at least 60 days prior to commencing a private action; and, (2) "[n]either the Attorney General, any district attorney, any city attorney, nor any prosecutor has commenced and is diligently prosecuting an action against the violation." Cal. Health & Safety Code § 25249.7(d).

### B. Defendants

4. Defendant Forever Green LLC is a Delaware limited liability company and at all relevant times, was qualified to do business in California (California Secretary of State Number 20022461014 4). Plaintiff is further informed and believes that Forever Green LLC has, or at all times relevant herein had, ten or more employees, and sells, or has, at times relevant to this complaint, sold and/or authorized the manufacture, distribution, or sale of crumb rubber

1 products under the brand name Forever Green and other brand names, that contain lead and carbon  
2 black, for sale within the State of California, without first giving clear and reasonable warning.

3           5.       Plaintiff is informed and believes that at all times herein mentioned,  
4 Defendant FOREVER GREEN ATHLETIC FIELDS OF THE WEST, LP ("Forever Green LP")  
5 was a Pennsylvania limited partnership, and was qualified to do business in California (California  
6 Secretary of State Number 20030460000 7). Plaintiff is further informed and believes that at all  
7 times herein mentioned, Forever Green LP had ten or more employees, and at times relevant to  
8 this Complaint, sold and/or authorized the manufacture, distribution, or sale of crumb rubber  
9 products under the brand name Forever Green and other brand names, that contain lead and carbon  
10 black, for sale within the State of California, without first giving clear and reasonable warning.

11           6.       Plaintiff is informed and believes that at all times herein mentioned,  
12 Defendant FOREVER GREEN ATHLETIC FIELDS OF THE WEST, INC. ("Forever Green  
13 INC") was a Pennsylvania corporation, and was qualified to do business in California (California  
14 Secretary of State Number C2755380). Plaintiff is further informed and believes that at all times  
15 herein mentioned, Forever Green INC had ten or more employees, and at times relevant to this  
16 Complaint, sold and/or authorized the manufacture, distribution, or sale of crumb rubber products  
17 under the brand name Forever Green and other brand names, that contain lead and carbon black,  
18 for sale within the State of California, without first giving clear and reasonable warning.

19           7.       Forever Green LLC, Forever Green LP, and Forever Green INC shall be  
20 referred to collectively as "Defendants."

21           8.       Plaintiff is ignorant of the true names and capacities of the Defendants sued  
22 as DOES 1 through 50, inclusive, and therefore sues said Defendants by such fictitious names and  
23 will ask leave of Court to amend this Complaint to show the true names and capacities of said Doe  
24 Defendants when the same have been ascertained.

25           9.       At all times herein mentioned, each of the Defendants was the agent and  
26 employee of each of its co-defendants and, in doing the things herein mentioned, was acting in the  
27 scope of its authority as agent and employee and with the permission and consent of its co-  
28 defendants.

1 **III. JURISDICTION AND VENUE**

2 10. This Court has jurisdiction pursuant to California Constitution Article VI,  
3 section 10, because this case is a cause not given by statute to other trial courts.

4 11. This Court has jurisdiction over Defendants because Defendants are, or at  
5 all relevant times herein were, business entities that do or did sufficient business, have or had  
6 sufficient minimum contacts in California, or otherwise intentionally avail or availed themselves  
7 of the California market, through the sale, marketing and use of their products in California, to  
8 render the exercise of jurisdiction over them by the California courts consistent with traditional  
9 notions of fair play and substantial justice.

10 12. Venue is proper in this Court because the cause, or part thereof, arises in  
11 Los Angeles County because Defendants' products are sold and consumed in this county.

12 **IV. STATUTORY BACKGROUND**

13  
14 13. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an  
15 initiative statute passed as "Proposition 65" by a vote of the people in November of 1986.

16 14. The warning requirement of Proposition 65 is contained in Health and  
17 Safety Code section 25249.6, which provides: "No person in the course of doing business shall  
18 knowingly and intentionally expose any individual to a chemical known to the state to cause  
19 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
20 individual, except as provided in Section 25249.10."

21 15. An exposure to a chemical in a consumer product is one "which results  
22 from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use  
23 of a consumer good, or any exposure that results from receiving a consumer service." (Cal. Code  
24 Regs., tit. 22, § 12601, subd. (b).)

25 16. Proposition 65 establishes a procedure by which the state is to develop a list  
26 of chemicals "known to the State to cause cancer or reproductive toxicity." (Health & Saf. Code,  
27 § 25249.8.) No warning need be given concerning a listed chemical until one year after the  
28 chemical first appears on the list. (*Id.*, § 25249.10, subd. (b).)



1 the City of Los Angeles, County of Los Angeles, California, and are further described in "Exhibit  
2 A" attached hereto and incorporated herein by reference, which lists the school properties, the  
3 approximate square footage of the artificial turf product, and the laboratory analytical results for  
4 lead obtained for samples taken at such properties.

5           25. From about early 2005 to the present, the District contracted with  
6 Defendants to install artificial turf at the Affected Schools listed on "Exhibit A." Artificial turf  
7 was installed in the playgrounds and playing fields at the Affected Schools. These locations are  
8 used by students between the ages of five and 18 for several hours per day throughout the school  
9 year. These locations are outdoors and exposed to the intense California sunshine and summer  
10 temperatures that oftentimes exceed 100 degrees Fahrenheit. Sunlight and heat contribute to the  
11 break-down of both the artificial turf and crumb rubber infill, and result in increased particulate  
12 and dust generation.

13           26. On or about April 1, 2005, Defendants allegedly sent Plaintiff a facsimile  
14 with three material data safety sheets ("MSDSs") pertaining to the following materials used for the  
15 infill rubber and artificial turf product installed by Defendants at the Affected Schools:  
16 polyethylene fiber, 34 G adhesive, and SBR Rubber, i.e. crumb rubber. The MSDS for the crumb  
17 rubber lists carbon black, a proposition 65 listed chemical, as an ingredient in the crumb rubber.  
18 According to the MSDS, the concentration of carbon black in the crumb rubber is approximately  
19 twenty five percent (25%). Attached hereto as Exhibit "B" and incorporated herein by reference is  
20 a copy of the facsimile and MSDSs allegedly sent by Defendants to Plaintiff in connection with  
21 the materials used by Defendants in the installation of artificial turf at the Affected Schools.

22           27. The District understood that the crumb rubber would be applied only as an  
23 underlayment as a foundational layer beneath the upper artificial grass turf, and that the crumb  
24 rubber would not be used as an "infill" that would have direct human contact. Accordingly, the  
25 District approved the use of crumb rubber as underlayment, and not as infill. Nonetheless,  
26 Defendants installed the crumb rubber as infill between the synthetic grass in a location that  
27 brought it into direct contact with the children playing on the artificial turf.

28           28. The presence of the crumb rubber infill, used in conjunction with the

1 artificial turf product at the Affected Schools, has caused the release of chemicals known to the  
2 State of California to cause cancer and reproductive toxicity that is threatening children and the  
3 Affected Schools. Currently, the identified chemicals of concern are lead and carbon black. The  
4 routes of exposure are dermal absorption, inhalation, and oral ingestion both at the Affected  
5 Schools and potentially at homes, as the children carry and transport the turf and/or rubber dust on  
6 their clothing. The potential health risks for lead are well known and documented in the medical  
7 literature. These risks include cancer, neurological toxicity, decreased IQ and reproductive and  
8 developmental toxicity.

9           29.     The contaminant exposures and potential soil releases have occurred since  
10 at least early 2005 at each of the Affected Schools. The extent of any releases into the air and soil  
11 is not known at this time and may be the subject of future testing.

12           30.     At all times material to this complaint, Defendants have had knowledge that  
13 the crumb rubber infill used in the artificial turf products sold to the District contained lead and  
14 carbon black.

15           31.     At all times material to this complaint, Defendants have had knowledge that  
16 individuals within the State of California handle the crumb rubber infill that contains lead and  
17 carbon black.

18           32.     At all times material to this complaint, Defendants knew that the crumb  
19 rubber infill products were sold throughout the State of California in large quantities, and  
20 Defendants profited from such sales through, among other things, the sale of their crumb rubber  
21 infill for use in artificial turf products, which were then sold in California.

22           33.     Notwithstanding this knowledge, Defendants intentionally authorized and  
23 reauthorized the sale of their crumb rubber infill products, which contained lead and carbon black.

24           34.     At all times material to this complaint, Defendants have knowingly and  
25 intentionally exposed individuals within the State of California to lead and carbon black. The  
26 exposure is knowing and intentional because it is the result of the Defendants' deliberate acts of  
27 authorizing the sale of products known to contain lead and carbon black in a manner whereby  
28 these products were, and would inevitably be, sold to consumers within the state of California, and

1 with the knowledge that the intended use of these products will result in exposures to lead and  
2 carbon black within the State of California.

3 35. Defendants have failed to provide clear and reasonable warnings that the  
4 use of the products in question in California results in exposure to chemicals known to the State of  
5 California to cause cancer, birth defects and other reproductive harm, and no such warning was  
6 provided to those individuals or to the District by any person.

7 **VI. NOTICE**

8 36. On November 10, 2009, the District issued a "60-day Notice of Violation of  
9 the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)" to Gregory L.  
10 Nofeleyer of Forever Green LLC. The notice, sent pursuant to Health and Safety Code Section  
11 25249.7(d)(1), informed Forever Green LLC that the District intended to bring suit against it for  
12 violations of Proposition 65. As required, a copy of the notice was also sent to the California  
13 Attorney General and the Los Angeles City Attorney, among others. A copy of the notice is  
14 attached hereto as "Exhibit C."

15 **VII. FIRST CAUSE OF ACTION**

16 **(Against Defendant Forever Green LLC for Violation of Proposition 65)**

17 37. Paragraphs 1 through 36 are realleged as if fully set forth herein.

18 38. By committing the acts alleged above, Forever Green LLC has, in the  
19 course of doing business, knowingly and intentionally exposed individuals in California to  
20 chemicals known to the State of California to cause cancer or reproductive toxicity without first  
21 giving clear and reasonable warning to such individuals, within the meaning of Health and Safety  
22 Code section 25249.6.

23 39. Said violations render Forever Green LLC liable to Plaintiff for civil  
24 penalties not to exceed \$2,500 per day for each violation, as well as other remedies.

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**VIII. SECOND CAUSE OF ACTION**  
**(Against Defendants Forever Green LLC, Forever Green LP, and Forever Green**  
**INC for Breach of Contract)**

40. Paragraphs 1 through 39 are re-alleged as if fully set forth herein.

41. Defendants contracted with the District for the sale and installation of turf products containing or utilizing crumb rubber. In so contracting, Defendants, through express and implied warranties of merchantability and fitness for a particular purpose, agreed to provide safe artificial turf products to the District for use by children.

42. The District has performed all conditions, covenants and promises required of it in accordance with its sales contracts with Defendants, including payment in full of all amounts due under said contracts.

43. As a result of Defendants' failure to provide the quality, safe product that Defendants agreed to provide, the District had to test the Affected Schools to determine the extent of contamination and remediation needed. In addition, the District has or will incur costs to remove and replace the turf products at the Affected Schools. As a direct and proximate result of Defendants' breach of contract, the District will incur the costs of removal, replacement, testing and remediation in an amount as yet unknown, together with interest thereon at the legal rate from and after the date of the breach.

**IX. THIRD CAUSE OF ACTION**  
**(Against Defendants Forever Green LLC, Forever Green LP, and Forever Green**  
**INC for Products Liability)**

44. Paragraphs 1 through 43 are re-alleged as if fully set forth herein.

45. Defendants designed, manufactured, produced, distributed, and sold turf products containing and utilizing crumb rubber to the District. Defendants knew or should have known that their products contained lead and carbon black. Defendants knew or should have known that their products would be used on school property, and that the specific use of the crumb rubber would result in a very high likelihood of physical contact and inhalation by children and others.

46. On account of the presence of harmful carcinogens in the crumb rubber,

1 including lead and carbon black, Defendants designed, manufactured, produced, distributed, and  
2 sold a defective product.

3           47.     On account of the defect in the product designed, manufactured, produced,  
4 distributed, and sold by Defendants, the District incurred or will incur damages in the form of  
5 costs to test the Affect Schools for contamination, and costs to remove and replace the  
6 contaminated turf products in order to avoid grave harm to the children and others who would be  
7 exposed to the contaminants in Defendants' products. As a direct and proximate result of the  
8 District's purchase of Defendants' defective products, the District will incur the costs of removal,  
9 replacement, testing and remediation in an amount as yet unknown.

10                                   **X.     FOURTH CAUSE OF ACTION**  
11                                   **(Against Defendants Forever Green LLC, Forever Green LP, and Forever Green**  
12                                   **INC for Negligence)**

13           48.     Paragraphs 1 through 47 are re-alleged as if fully set forth herein.

14           49.     Defendants, by voluntarily placing their products into the stream of  
15 commerce and purporting to provide an artificial turf product that would be safe for use on school  
16 grounds by children, bore a duty of care to the District.

17           50.     By providing a contaminated product to the District with a high propensity  
18 to cause toxic harm to children and others using Defendants' products, Defendants breached their  
19 duty of care and caused the District to suffer economic injuries in the form of testing costs,  
20 remediation, and replacement of the contaminated turf products. Such breach constitutes an act of  
21 negligence on the part of Defendants.

22           51.     Said negligence renders Defendants liable to the District for compensatory  
23 damages. As a direct and proximate result of Defendants' negligence, the District has or will incur  
24 the costs of removal, replacement, testing and remediation in an amount as yet unknown.

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**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays that the Court:

1. Pursuant to the First Cause of Action, grant civil penalties against Forever Green LLC for violations of Proposition 65;
2. Pursuant to the Second Cause of Action, compensate Plaintiff for all damages that have been incurred or will be incurred on account of Defendants' breach of contract;
3. Pursuant to the Third Cause of Action, compensate Plaintiff for all damages that have been incurred or will be incurred on account of Defendants' defective design;
4. Pursuant to the Fourth Cause of Action, compensate Plaintiff for all damages that have been incurred or will be incurred on account of Defendants' negligence;
5. Award Plaintiff its cost of suit; and,
6. Grant such other and further relief as the Court deems just and proper.

DATED: January 25, 2010

Respectfully submitted,  
MUSICK, PEELER & GARRETT LLP

By: 

Barry C. Goveman  
K. Ryan Hiete  
Adam D. Wieder  
Attorneys for LOS ANGELES UNIFIED  
SCHOOL DISTRICT

# **EXHIBIT A**

# FOREVER GREEN SCHOOLS

LOC. CODE	SCHOOL	TYPE	SIZE	MANUFACTURER
9592	CANOGA PARK	EBC	12 X 27	FOREVER GREEN
9530	LEMAY	EBC	8 X 21	FOREVER GREEN
9549	PINEWOOD	EBC	8 X 20	FOREVER GREEN
			11 X 16	
9572	VAUGHN	EBC	11 X 26	FOREVER GREEN
9565	SYLVAN PARK	EBC	11 X 25	FOREVER GREEN
9582	FAIR	EBC	14 X 20	FOREVER GREEN
9547	PACOIMA	EBC	22 X 22	FOREVER GREEN
9505	BELEVEDERE	EBC	11 X 11	FOREVER GREEN
9512	DACOTAH	EBC	11 X 17	FOREVER GREEN
9562	SOTO	EBC	9 X 11	FOREVER GREEN
9515	EASTMAN	EBC	10 X 26	FOREVER GREEN
9591	MIKES, WANDA	EBC	29 X 19	FOREVER GREEN
			14 X 19	
9561	66 <sup>TH</sup> STREET	EBC	18 X 26	FOREVER GREEN

**EXHIBIT B**



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**Date: Friday, April 01, 2005**

**To: Los Angeles Unified School District  
Jerry Lazzareschi  
Phone: 213-633-7722  
Fax: 213-633-8442**

**From: Forever Green Athletic Fields  
Barbara Strelan  
Phone: 215-547-1000  
Fax: 215-547-1500**

**Pages: 12**

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**Subject: Playground Installations**

**Dear Mr. Lazzareschi:**

**Per your request, attached are the material safety data sheets for:**

- 1. polyethylene fiber**
- 2. 34 G adhesive**
- 3. SBR Rubber**

**These materials may be hazardous per prop 65.**

**If you have any questions or require additional information, please contact me.**

# Polyloom<sup>3</sup>

Corporation of America

1131 Broadway Street  
 Dayton, TN 37321  
 (423) 775-0798

June 17, 2002  
 Revision 12.0

## A. IDENTITY Material Safety Data Sheet

Chemical Name or Synonyms PE Fibers	Trade Name Thiolen LSR PE Fibers, or Polyloom H&F PE Fibers
Manufacturer's Name Polyloom Corporation of America	Emergency Telephone or Contact (423) 775-0798
Address (Number, Street, City) 1131 Broadway Street, Dayton, Tennessee 37321	

## B. HAZARDOUS INGREDIENTS

This product is considered to be a non-hazardous chemical under the federal Occupational Safety and Health Administration hazard communication Standard 29 CFR 1910.1200.

## C. PHYSICAL DATA

Boiling Point (°C)	N/A	Melting Point (°C)	125±8	Solubility Negligible in water  Appearance, Color, Odor, etc. Odorless, Soft yarn, Various colors.  Other
Vapor Pressure (mm Hg @ temp.)	N/A	Specific Gravity (H <sub>2</sub> O = 1)	0.98 - 0.99	
Molecular Weight	N/A	Percent Volatile by Volume (%)	N/A	
Vapor Density (air = 1)	N/A	Evaporation Rate	N/A	

## D. REACTIVITY DATA

Stability (Thermal, Light, etc.)	Unstable		Conditions to avoid
	Stable	X	None
Incompatibility (materials to avoid): Some hydrocarbons cause swelling at room temperature. Some solvents will dissolve the yarn at elevated temperatures.			
Hazardous Decomposition Products N/A			
Hazardous Polymerization	May Occur		Conditions to avoid
	Will not Occur	X	None

## E. FIRE HAZARD DATA

Flash Point > 600° F	Autoignition Temp (°F) > 575° F	Flammable Limits (% by volume in air)	Let: N/A Uet: N/A
Extinguishing Method Water, Foam, Carbon Dioxide, Dry Chemicals, and Halon.			
Special Fire Fighting Procedures: Use water spray to cool fire-exposed surfaces and to protect personnel. Wear self contained breathing apparatus when fighting fire in confined areas.			
Unusual Fire and Explosion Hazards Some carbon monoxide smoke formation is possible under oxygen-limited conditions.			

N/A - Not Applicable

Page 1 of 3

**F. PHYSIOLOGICAL EFFECTS AND HAZARD DATA** (include literature references if available)

Threshold Limit Values: N/A
Effects from Inhalation: Available LD <sub>50</sub> and Species: No information found.
Effects from Skin Absorption: Available LD <sub>50</sub> and Species: N/A
Effects from Irritation: Available LD <sub>50</sub> and Species: N/A
Skin Irritation and/or Corrosion (species): No information found.
Eye Irritation and/or Injury (species): N/A
Warning Properties (over threshold): Irritation to eyes, nose throat: N/A
Chronic Hazards: No information found.
Industrial and/or Human Experience: No incidents has been reported.
Acute signs and Symptoms of Overexposure: No information found.
Chronic signs and Symptoms of Overexposure: No information found.
Medical Conditions Aggravated by Exposure: No information found.
Primary Routes of Entry: No information found.
OSHA PEL: Not established.
ACGIH TLV: Not established.
Carcinogenicity: Not listed as carcinogen or potential carcinogen by NTP, IARC, or OSHA.

**G. EMERGENCY AND FIRST AID PROCEDURES**

(include antidote or treatment if known)

Eye Contact	Inhalation
Flush with water. Call a physician if needed.	N/A
Skin Contact	Ingestion
N/A	N/A

## H. SPILL OR LEAK PROCEDURES

Steps to be taken in case material is released or spilled	Shut off water source, advise municipal authorities of possible floating non-toxic substance if material enters course of sewer.
Waste Disposal Method	Dispose in accordance with federal, state, and local regulations.

## I. CONTROL MEASURES AND PRECAUTIONS

Eye Protection Not Needed. However, safety glasses or goggles are recommended.	Ventilation Not Needed.
Respiratory Protection (specify type) Not Needed.	Other Precautions Not Needed.
Protective Gloves Not Needed.	Precautions to be taken in handling and storage Do not store near flame, heat, or strong oxidants.
<b>Recommendations for Daily Process</b> If there is a potential to generate carbon fiber dust or mist during processing, we recommend an exposure limit of 2.7 mg/m <sup>3</sup> as TWA. Adequate ventilation and, if needed, dust masks are recommended.	

## J. SECTION 313 SUPPLIER NOTIFICATION

The product contains the following toxic chemicals subject to the reporting requirements of section 313 of the Emergency Planning and Community Right-To-Know Act of 1990 (40 CFR 372):

CAS #	Chemical Name	Percentage by Weight	Percent of Total "Report" Mass
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## K. LEGAL DISCLAIMER

While the information and recommendations set forth herein are believed to be accurate and complete as of the date hereof, Polyloam Corporation of America makes no warranty with respect thereto and disclaims all liability from reliance thereon.

OTHER EMERGENCY PHONE NUMBERS: (800) 233-4883 (800-838-6886) (973-428-0927)

TRADE NAME: NORDOT® Adhesive/Prepolymer #340

CHEMICAL NAME: Polyisocyanate Resin

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## SECTION II - HAZARDOUS INGREDIENTS

INGREDIENTS:	%	TLV (Units)
Polyisocyanate Resin Based on MDI	<67	Not Established
Diphenyl Methane 4,4' Diisocyanate (MDI) - CAS Number 101-68-8	<3	0.63 ppm
Methyl Ethyl Ketone - CAS Number 79-43-8	38	200 ppm

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## SECTION III - PHYSICAL DATA

VAPOR DENSITY: Heavier than air

SOLUBILITY IN WATER: Not soluble

APPEARANCE AND ODOR: Hazy, semi liquid with solvent odor

SPECIFIC GRAVITY (H<sub>2</sub>O=1): 0.90

EVAPORATION RATE: Slower than ether

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## SECTION IV - FIRE AND EXPLOSION HAZARD DATA

FLASH POINT (method used): 21°F. Tag Open Cup

EXTINGUISHING MEDIA: Foam, Dry Chemical, CO<sub>2</sub>

SPECIAL FIRE FIGHTING PROCEDURES: Self-contained breathing apparatus

UNUSUAL FIRE AND EXPLOSION HAZARDS: None

April 18, 1988

NORDDY Adhesive 1348

Page 2

**SECTION V - HEALTH HAZARD DATA****THRESHOLD LIMIT VALUE:** 200 ppm for Methyl Ethyl Ketone, 0.02 ppm for Isocyanate**EFFECTS OF OVEREXPOSURE:****ACUTE:** Causes irritation to eyes, respiratory tract and skin.**CHRONIC:** May cause serious and possibly irreversible pulmonary injury.**EMERGENCY AND FIRST AID PROCEDURES:**

**Eye Contact** - Flush 15 minutes with water. Call a physician.  
**Skin Contact** - Wash with soap and water.  
**Inhalation** - Remove to fresh air and if necessary, use oxygen.

**SECTION VI - REACTIVITY DATA****STABILITY:** Stable . **CONDITIONS TO AVOID:** Contact with moisture and other materials which react with isocyanates.**INCOMPATIBILITY (Materials to avoid):** Avoid contact with water.**HAZARDOUS DECOMPOSITION PRODUCTS:** By fire CO<sub>2</sub>, CO, Oxides of Nitrogen**HAZARDOUS POLYMERIZATION:** Will not occur . **CONDITIONS TO AVOID:** Contact with moisture**SECTION VII - SPILL OR LEAK PROCEDURES****STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED:** Avoid open flames or sparks. Provide adequate ventilation. Absorb with nonsparking compound.**WASTE DISPOSAL METHOD:** Follow practice for disposal of flammable organic solvents and be in accordance with Federal, State and Local regulations regarding environmental control.**SECTION VIII - SPECIAL PROTECTION INFORMATION****RESPIRATOR PROTECTION (Specific types):** Masks (Respirators) - Approved for organic vapors, isocyanates and esters.**VENTILATION - LOCAL EXHAUST:** To maintain vapor concentration below TLV.**PROTECTIVE GLOVES:** Chemically resistant rubber or plastic.**EYE PROTECTION:** Chemical safety goggles**OTHER PROTECTIVE EQUIPMENT:** None**SECTION IX - SPECIAL PRECAUTIONS****PRECAUTIONS TO BE TAKEN IN HANDLING AND STORAGE:** Avoid open flames, sparks, excessive heat. Provide adequate ventilation.**OTHER PRECAUTIONS:** When spraying, use respiratory protection approved for organic vapors, isocyanates and solvents. The TLV for airborne isocyanate is 0.02 ppm.

April 18, 1988

HONDOT Adhesive #348

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**SECTION X**

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**EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT, Section 313**

This product contains the following toxic chemicals subject to the reporting requirements of Section 313 of the Emergency Planning and Community Right-To-Know Act of 1986 and 40 CFR 372.

<u>CAS NUMBER</u>	<u>CHEMICAL NAME</u>	<u>PERCENT BY WEIGHT</u>
78-48-3	Methyl Ethyl Ketone	38
161-82-8	Methylene DTE (Phenyl isocyanate)	<3

This information must be included with all MSDS's that are copied and distributed for this material.

**CRUMB RUBBER  
MATERIAL SAFETY DATA SHEET**

CRM Co., LLC  
15800 South Avalon Boulevard  
Rancho Dominguez, CA 90220

**Emergency Phone Number (310) 538-2222**

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**I. PRODUCT IDENTIFICATION/CHEMICAL & PHYSICAL CHARACTERISTICS**

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<b>PRODUCT NAME:</b> <i>Crumb Rubber</i>	<b>Solubility in Water:</b> <i>Insoluble</i>
<b>APPEARANCE:</b> <i>Black granular particles</i>	<b>ODOR:</b> <i>Smell of vulcanized rubber</i>
<b>SPECIFIC GRAVITY:</b> <i>1.1 to 1.2 g/cc</i>	<b>MELTING POINT:</b> <i>N/A</i>
<b>VAPOR PRESSURE:</b> <i>N/A</i>	<b>VAPOR DENSITY:</b> <i>N/A</i>
<b>EVAPORATION RATE:</b> <i>N/A</i>	<b>BOILING POINT:</b> <i>N/A</i>

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**II. HAZARDOUS INGREDIENTS**

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<b>MATERIAL (CAS)</b>	<b>WT%</b>	<b>OSHA PEL</b>	<b>ACGIH TLV</b>
Napthenic/Aromatic Oil (64742-04-07)	<i>Aprox. 22%</i>		<i>(5.0 mg/m<sup>3</sup>)</i>
Carbon Black (133-86-4)	<i>Aprox. 25%</i>	<i>3.5 mg/m<sup>3</sup></i>	
Talc, respirable dust (14807-9-6)	<i>Less than 5%</i>	<i>2.0 mg/m<sup>3</sup></i>	<i>(2.0 mg/m<sup>3</sup>)</i>
Zinc Oxide, fume (1314-12-2)	<i>Less than 3%</i>	<i>5.0 mg/m<sup>3</sup></i>	<i>(10mg/m<sup>3</sup>)</i>
Zinc Oxide, total dust (1314-12-2)	<i>Less than 3%</i>	<i>10 mg/m<sup>3</sup></i>	
Respirable fraction	<i>Less than 3%</i>		

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### III. FIRE AND EXPLOSION HAZARD DATA

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**FLASH POINT:** Ignition temperature of dust cloud: *320°C (608°F) Approximately*

**LEL:** *0.025 ounce/cubic foot*

**UEL:** *N/A*

**EXTINGUISHING MEDIA:** *Water, Foam, Dry Powder (DO NOT USE HIGH PRESSURE WATER)*

**SPECIAL FIRE FIGHTING PROCEDURES:** *Noxious gases may be formed under fire conditions, wear OSHA approved self-contained breathing apparatus.*

**UNUSUAL FIRE AND EXPLOSION HAZARDS:** *Dust may be explosive if mixed with air in critical proportions and in the presence of an ignition source. The hazard is similar to that of many organic solids\*.*

*\*Estimate is based on data for 200 mesh synthetic and hard natural rubber.*

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### IV. REACTIVITY DATA

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**STABLE:** *YES*

**CONDITIONS TO AVOID:** *Conditions that will cause ignition or burning.*

**INCOMPATIBILITY (material to avoid):** *Avoid strong oxidizing agents.*

**HAZARDOUS DECOMPOSITION OR BY-PRODUCTS:** *Thermal decomposition may produce carbon monoxide, carbon dioxide, fume dust, sulfur dioxide, zinc oxide, liquid and gaseous hydrocarbons.*

**HAZARDOUS POLYMERIZATION:** *Will not occur.*

**CONDITIONS TO AVOID:** *Do not store hot material in hoppers due to the possibility of spontaneous combustion.*

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## V. HEALTH HAZARD DATA

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**ROUTES OF ENTRY:** *Inhalation*

**HEALTH HAZARDS (Acute and Chronic):** *The product contains fine particles and can contain fine fibers that may cause itching. Otherwise, no health hazards are known. This material is generally thought to be a nuisance dust.*

**CARCINOGENICITY:** *Rubber, synthetic or natural, is not listed as a carcinogen.*

**MEDICAL CONDITIONS GENERALLY AGGRAVATED BY EXPOSURE:** *None are known, however, it could potentially aggravate allergies to dust exposure or inhalation.*

**EMERGENCY AND FIRST AID PROCEDURES:** *Normal washing of skin with soap and water, ordinary means of personal hygiene are adequate.*

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## VI. PRECAUTIONS FOR SAFE HANDLING AND USE

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**STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED:** *Sweep or vacuum into disposal containers.*

**WASTE DISPOSAL METHOD:** *Product not defined as a hazardous waste. Dispose of in accordance with federal, state, and local regulations.*

**PRECAUTIONS TO BE TAKEN IN HANDLING AND STORING:** *Do not store near flame or ignition source. Do not store hot material in tubs or containers where spontaneous combustion could occur.*

**OTHER PRECAUTIONS:** *If material burns, oils will be released. These must be disposed of in accordance with federal, state, and local regulations.*

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## VII. CONTROL MEASURES

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**RESPIRATORY PROTECTION (Specify Type):** Use any dust and mist respirator for up to 10 mg/m<sup>3</sup>.

**VENTILATION:** *Yes, if dusty conditions occur.*

**SPECIAL:** *None*

**MECHANICAL:** *Dust collectors and exhaust fans.*

**PROTECTIVE GLOVES:** *Recommended.*

**EYE PROTECTION:** *Use safety goggles to prevent dust entry.*

**OTHER PROTECTIVE CLOTHING OR EQUIPMENT:** *Enough fresh air should flow past the user to prevent exposure to airborne fibers and particles.*

**WORK / HYGIENIC PRACTICES:** *Good personal hygiene, frequent washing with soap and water of exposed areas, remove and clean soiled clothing.*

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The information contained in this MSDS is consistent with the US Department of Labor OSHA form OMB No. 1218-0072. Consult OSHA Hazard Communication Standard 29 CFR 1910.1200 for additional information. To fully understand the use of any material the user should avail themselves to reference material and expert consultation in the fields of fire prevention, ventilation, and toxicology.

# **EXHIBIT C**

**MUSICK, PEELER & GARRETT LLP**  
ATTORNEYS AT LAW

ADAM D. WIEDER  
a.wieder@mpglaw.com  
(805) 418-3114

2801 TOWNSGATE ROAD, SUITE 200  
WESTLAKE VILLAGE, CALIFORNIA 91361

TELEPHONE: (805) 418-3100  
FACSIMILE: (805) 418-3101  
WWW.MUSICKPEELER.COM

LOS ANGELES  
ORANGE COUNTY  
SAN DIEGO  
SAN FRANCISCO  
SANTA BARBARA  
WESTLAKE VILLAGE

FILE NO. 47715.057

November 10, 2009

**VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED**

Forever Green Athletic Fields of the West, LLC  
Attn: Gregory L. Nofeleyer  
Registered Agent for Service of Process  
2185 Station Village Way, #2324  
San Diego, California 92108

Re: 60-Day Notice of Violation of The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)

To Whom It May Concern:

As counsel for the Los Angeles Unified School District (the "District"), I am hereby providing this letter as notification, pursuant to California Health and Safety Code Section 25249.7(d)(1), that the District intends to bring suit against Forever Green Athletic Fields of the West, LLC ("Forever Green") for, among other claims, violations of California Health and Safety Code Section 25249.6 (also known as "Proposition 65"). Section 25249.6 provides:

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

The following discussion will provide you with a greater understanding regarding the location of the exposure, the type of exposure, the method of exposure, and the approximate length of time the District properties at issue have been exposed to Proposition 65 listed contaminants released from and present in crumb rubber infill present in artificial or synthetic turf product located at thirteen (13) schools owned and maintained by the District. The following is intended to provide you with facts sufficient to enable you to undertake a meaningful investigation of the crumb rubber infill component of the synthetic turf product provided by Forever Green to the District, as well as the District's exposed property, and

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ATTORNEYS AT LAW

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hereafter participate in the remedy of any environmental contamination that may have occurred on the premises of the District.

**I. LOCATION OF SOURCE OF EXPOSURE**

The violation covered by this notice consists of the identified presence and potential release of and exposure to lead and carbon black from the crumb rubber infill that was provided by Forever Green and installed at 13 schools, including elementary, middle and high schools, owned and operated by the District (hereinafter the "Affected Schools"). The Affected Schools are located in the City of Los Angeles, County of Los Angeles, California, and are further described in "Exhibit A" attached hereto and incorporated herein by reference, which lists the school properties, the approximate square footage of the artificial turf product, and the date(s) of installation.

Tests performed by the District have shown that the infill rubber used in conjunction with the artificial turf product contains constituents such as styrene butadiene rubber ("SBR") and "crumb rubber." Based on tests conducted by the District, the crumb rubber used in the artificial turf supplied by Forever Green contains lead. Further, based on the District's understanding of similar products, the crumb rubber very likely contains carbon black as well.

**II. NATURE OF EXPOSURE**

A Proposition 65 exposure risk is posed by the lead and carbon black contaminants contained in the crumb rubber infill present and used at the Affected Schools. Lead and carbon black are identified as chemicals known to cause cancer on the State of California's Proposition 65 list. Lead is further identified as a chemical known to cause reproductive and developmental toxicity. These contaminants of concern have been identified as originating in and being present in the crumb rubber infill used in conjunction with the artificial turf product.

The Federal Department of Health and Human Services, Centers for Disease Control and Prevention ("CDC") has issued an official CDC Health Advisory on June 18, 2008, relating to artificial or synthetic turf. The CDC Health Advisory states that as artificial turf ages and weathers, lead is released in dust that can be ingested or inhaled, which increases the risk of harmful exposure. The CDC Health Advisory further states that children under 6 years of age are more likely to be adversely affected by exposure to lead because of the increased air intake in relation to body size, they have increased contact with the surface of the fields and are more prone to engage in hand-to-mouth contact dust ingestion. Children also more readily transport lead and carbon black dust back to their homes on their clothing. Moreover, developing systems of children make them more susceptible to the adverse health effects of lead intake.

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The State of New Jersey Department of Health and Senior Services ("NJDHSS") has also issued a Health Release announcing that "laboratory testing has shown that lead can be dissolved from artificial turf fibers and turf field dust under conditions that simulate the human digestive process, leaving the lead available for the body to absorb." The NJDHSS further stated, "We found that lead does dissolve from artificial turf fibers and turf dust under stomach acid conditions, and is available to be absorbed from the small intestine into the bloodstream." As such, children playing on these artificial surfaces are at risk due to exposure to lead contained in the turf dust, which can be taken up through dust inhalation, dust ingestion, hand-to-mouth contact or dermal skin absorption.

### **III. EXTENT OF THE EXPOSURE**

From in or about January, 2006, the District contracted with Forever Green to install artificial turf manufactured and sold by Forever Green at the Affected Schools listed on Exhibit A. Artificial turf was installed in the playgrounds and playing fields at the Affected Schools. These locations are used by students between the ages of three and six for several hours per day throughout the school year. These locations are outdoors and exposed to the intense California sunshine and summer temperatures that oftentimes exceed 100 degrees Fahrenheit. Sunlight and heat contribute to the break-down of both the artificial turf and crumb rubber infill, and result in increased dust generation.

### **IV. ROUTE OF EXPOSURE AND ITS POTENTIAL HEALTH RISKS**

The presence of the crumb rubber infill, used in conjunction with the artificial turf product, at the Affected Schools has caused the release of chemicals known to the State of California to cause cancer and reproductive toxicity that is threatening children and the Affected Schools. Currently, the identified chemicals of concern are lead and carbon black. (However, as noted herein, additional testing may establish and confirm the presence of other chemicals of concern). The routes of exposure are dermal absorption, inhalation, and oral ingestion both at the Affected Schools and potentially at homes, as the children carry and transport the turf and/or rubber dust on their clothing. The potential health risks for lead are well known and documented in the medical literature. These risks include cancer, neurological toxicity, decreased IQ and reproductive and developmental toxicity.

Carbon black, which is identified as a "hazardous material" and human carcinogen by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA"), is produced by the incomplete combustion of heavy petroleum products. The scientific literature states that, in conjunction with PAHs, the carcinogenic potential of carbon

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black is enhanced. The International Agency for Research on Cancer ("IARC") has also identified carbon black as a possible human carcinogen.

**V. TIME PERIOD DURING WHICH VIOLATION HAS OCCURRED**

The contaminant exposures and potential soil releases have occurred since at least January, 2006 at each of the Affected Schools. The extent of any releases into the air and soil is not known at this time and may be the subject of future testing.

Moreover, during this time period, Forever Green has not provided potentially-exposed individuals with a clear and reasonable warning that the crumb rubber infill poses a risk of exposure to any chemical regulated under Proposition 65. Specifically, Forever Green has failed to provide proper notice or warning that the crumb rubber infill contains lead or carbon black.

**VI. CONCLUSION**

Based upon the foregoing, the District believes that the crumb rubber infill used in conjunction with the artificial turf product has exposed the students, faculty, staff and the property at the Affected Schools to lead and carbon black. Such exposure also poses a potential threat to future students, faculty and staff at the Affected Schools. Moreover, the use of the crumb rubber infill in conjunction with the artificial turf product may also have exposed the students, faculty, staff and the premises of the Affected Schools to a number of other suspected-carcinogens and reproductive toxins that are subject to regulation under Proposition 65. It may be necessary at a later date to conduct additional sampling and testing for potential exposure to other Proposition 65 chemicals, depending upon the results of further investigation and the information provided by Forever Green as a result of this notice.

Attached please find a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986" (Proposition 65), prepared by OEHHA, the lead state agency for the implementation of the Act. ("Exhibit B").

Please direct all questions concerning this notice of violation to the following addressees: Barry C. Groveman, Esq. or Ryan Hiete, Esq., Musick, Peeler & Garrett LLP, One Wilshire Boulevard, 624 South Grand Avenue, Suite 2100, Los Angeles, California 90017-3383, (213) 629-7615 or (213) 629-7718, respectively. Should you require more information regarding the Affected Schools and/or exposure risks, the District will provide you with any available reports.

**MUSICK, PEELER & GARRETT LLP**  
**ATTORNEYS AT LAW**

**Forever Green Athletic Fields of the West, LLC**  
**November 10, 2009**  
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**For general information concerning the provisions of Proposition 65, please  
contact OEHHA, Proposition 65 Implementation Office, at (916) 445-6900.**

**Very truly yours,**



**Adam D. Wieder**  
**MUSICK, PEELER & GARRETT LLP**

**Enclosures**  
**ADW/pw**

**cc: Jay F. Golida, Esq., LAUSD**  
**Barry C. Groveman, Esq., MPG**  
**K. Ryan Hiete, Esq., MPG**

**MUSICK, PEELER & GARRETT LLP**  
**ATTORNEYS AT LAW**

**Forever Green Athletic Fields of the West, LLC**  
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**SERVICE LIST**

**Forever Green Athletic Fields of the West, LLC**  
**Attn: Gregory L. Nofeleyer**  
**Registered Agent for Service of Process**  
**2185 Station Village Way, #2324**  
**San Diego, California 92108**

**Hamid Saebfar, Chief**  
**School Program and Engineering/Geology**  
**Support Division**  
**Department of Toxic Substances Control**  
**9211 Oakdale Avenue**  
**Chatsworth, California 91311**

**Honorable Edmund G. Brown, Jr.**  
**Attorney General**  
**California Department of Justice**  
**P.O. Box 944255**  
**Sacramento, California 94244-2550**

**Wayne Nastri, Administrator**  
**US EPA Region 9**  
**75 Hawthorne Street**  
**San Francisco, California 94105**

**Honorable Carmen Trutanich, City Attorney**  
**City of Los Angeles**  
**800 City Hall East, 8<sup>th</sup> Floor**  
**200 North Main Street**  
**Los Angeles, California 90012**

**Honorable Steve Cooley, District Attorney**  
**County of Los Angeles**  
**210 West Temple Street, Suite 18000**  
**Los Angeles, California 90012-3210**

**William Jones, Division Chief**  
**Health Hazardous Materials Division**  
**Los Angeles County Fire Department**  
**5825 Rickenbacker Road**  
**Commerce, California 90040**

**EXHIBIT A**

# FOREVER GREEN SCHOOLS

LOC. CODE	SCHOOL	TYPE	SIZE	MANUFACTURER
9592	CANOGA PARK	EBC	12 X 27	FOREVER GREEN
9530	LEMAY	EBC	8 X 21	FOREVER GREEN
9549	PINEWOOD	EBC	8 X 20	FOREVER GREEN
			11 X 16	
9572	VAUGHN	EBC	11 X 26	FOREVER GREEN
9565	SYLVAN PARK	EBC	11 X 25	FOREVER GREEN
9582	FAIR	EBC	14 X 20	FOREVER GREEN
9547	PACOIMA	EBC	22 X 22	FOREVER GREEN
9505	BELEVEDERE	EBC	11 X 11	FOREVER GREEN
9512	DACOTAH	EBC	11 X 17	FOREVER GREEN
9562	SOTO	EBC	9 X 11	FOREVER GREEN
9515	EASTMAN	EBC	10 X 26	FOREVER GREEN
9591	MIKES, WANDA	EBC	29 X 19	FOREVER GREEN
			14 X 19	
9561	66 <sup>TH</sup> STREET	EBC	18 X 26	FOREVER GREEN

**EXHIBIT B**

**SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986**  
(Chapter 6.6 added by Proposition 65 1986 General Election)

**25249.3. Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity.** 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.

**25249.4. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity.** No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10.

**25249.7. Enforcement.**

(a) Any person that violates or threatens to violate Section 25249.3 or 25249.6 may be enjoined in any court of competent jurisdiction.

(b) (1) Any person who has violated Section 25249.3 or 25249.6 shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2500) per day for each violation in addition to any other penalty established by law. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

- (A) The nature and extent of the violation.
- (B) The number of, and severity of, the violations.
- (C) The economic effect of the penalty on the violator.
- (D) Whether the violator took good faith measures to comply with this chapter and the time these measures were taken.
- (E) The willfulness of the violator's misconduct.
- (F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.
- (G) Any other factor that justice may require.

(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

(d) Actions pursuant to this section may be brought by any person in the public interest if both of the following requirements are met:

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 25249.3 or 25249.6 that is the subject of the private action 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. If the notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a

certificate of merit executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney. The certificate of merit shall state that the person executing the certificate has consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the exposure to the listed chemical that is the subject of the action, and that, based on that information, the person executing the certificate believes there is a reasonable and meritorious case for the private action. Factual information sufficient to establish the basis of the certificate of merit, including the information identified in paragraph (2) of subdivision (h), shall be attached to the certificate of merit that is served on the Attorney General.

(2) Neither the Attorney General, any district attorney, any city attorney nor any prosecutor has commenced and is diligently prosecuting an action against the violation.

(c) Any person bringing an action in the public interest pursuant to subdivision (d) and any person filing any action in which a violation of this chapter is alleged shall notify the Attorney General that the action has been filed. Neither this subdivision nor the procedures provided in subdivisions (f) to (j), inclusive, shall affect the requirements imposed by the statute or a court decision in existence on January 1, 2002 concerning whether any person filing any action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d).

(f) (1) Any person bringing an action in the public interest pursuant to subdivision (d), any person filing any action in which a violation of this chapter is alleged, or any private person settling any violation of this chapter alleged in a notice given pursuant to paragraph (1) of subdivision (d), shall, after the action or violation is either subject to a settlement or to a judgment, submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case, even if dismissed. At the time of the filing of any judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or any action brought by a private person in which a violation of this chapter is alleged, the plaintiff shall file an affidavit verifying that the report required by this subdivision has been accurately completed and submitted to the Attorney General.

(2) Any person bringing an action in the public interest pursuant to subdivision (d) or any private person bringing an action in which a violation of this chapter is alleged, shall, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the Attorney General a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action.

(3) The Attorney General shall develop a reporting form that specifies the information that shall be reported, including, but not limited to, for purposes of subdivision (e), the date the action was filed, the nature of the relief sought, and for purposes of this subdivision, the amount of the settlement or civil penalty assessed, other financial terms of the settlement, and any other information the Attorney General deems appropriate.

(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

(A) Any warning that is required by the settlement complies with this chapter.

(B) Any award of attorney's fees is reasonable under California law.

(C) Any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.

(6) Neither this subdivision nor the procedures provided in subdivision (e) and subdivisions (g) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on the January 1, 2002 concerning whether claims raised by any person or public prosecutor not a party to the action are precluded by a settlement approved by the court.

(g) The Attorney General shall maintain a record of the information submitted pursuant to subdivisions (e) and (f) and shall make this information available to the public.

(h) (1) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable. However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.

(2) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any defendant, if the trial court determines that there was no actual or threatened exposure to a listed chemical, the court may, upon the motion of that alleged violator or upon the court's own motion, review the basis for the belief of the person executing the certificate of merit, expressed in the certificate of merit, that an exposure to a listed chemical had occurred or was threatened. The information in the certificate of merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, shall be disclosed to the court in an in-camera proceeding at which the moving party shall not be present. If the court finds that there was no credible factual basis for the certifier's belief that an exposure to a listed chemical has occurred or was threatened, then the action shall be deemed frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action. The court shall not find a factual basis credible on the basis of a legal theory of liability that is frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action.

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit on request to any district attorney, city attorney, or prosecutor within whose jurisdiction the violation is alleged to have occurred, or to any other state or federal government agency, but in all other respects the Attorney General shall maintain, and ensure that all recipients maintain, the submitted information as confidential official information to the full extent authorized in Section 1040 of the Evidence Code.

(j) In any action brought by the Attorney General, a district attorney, a city attorney, or a prosecutor pursuant to this chapter, the Attorney General, district attorney, city attorney, or prosecutor may seek and recover costs and attorney's fees on behalf of any party who provides a notice pursuant to subdivision (d) and who renders assistance in that action.

#### 25249.8. List Of Chemicals Known to Cause Cancer Or Reproductive Toxicity.

(a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this

chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d).

(b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of this chapter if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state's qualified experts have not found to have been adequately tested as required.

(d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section.

(e) In carrying out the duties of the Governor under this section, the Governor and his designees shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370.

**25249.9. Exemptions from Discharge Prohibition.**

(a) Section 25249.5 shall not apply to any discharge or release that takes place less than twenty months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(b) Section 25249.5 shall not apply to any discharge or release that meets both of the following 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.

(2) The discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order. In any action brought to enforce Section 25249.5, the burden of showing that a discharge or release meets the criteria of this subdivision shall be on the defendant.

**25249.10. Exemptions from Warning Requirement.** Section 25249.6 shall not apply to any of the following:

(a) An exposure for which federal law governs warning in a manner that preempts state authority.

(b) An exposure that takes place less than twelve months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(c) An exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause

reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.

**25249.11. Definitions.** For purposes of this chapter:

(a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 4010.1.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water.

(d) "Source of drinking water" means 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.

(e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

**25249.12. (a)** The Governor shall designate a lead agency and other agencies that may be required to implement this chapter, including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement this chapter and to further its purpose.

(b) The Safe Drinking Water and Toxic Enforcement Fund is hereby established in the State Treasury. The director of the lead agency designated by the Governor to implement this chapter may expend the funds in the Safe Drinking Water and Toxic Enforcement Fund, upon appropriation by the Legislature, to implement and administer this chapter.

(c) In addition to any other money that may be deposited in the Safe Drinking Water and Toxic Enforcement Fund, all of the following amounts shall be deposited in the fund:

(1) Seventy-five percent of all civil and criminal penalties collected pursuant to this chapter.

(2) Any interest earned upon the money deposited into the Safe Drinking Water and Toxic Enforcement Fund.

(d) Twenty-five percent of all civil and criminal penalties collected pursuant to this chapter shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7, to that person.

**25249.13. Preservation Of Existing Rights, Obligations, and Penalties.** Nothing in this chapter shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.

**25180.7. (a)** Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section §2019, as amended.

(b) Any designated government employee who obtains information in the course of his official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his jurisdiction and who knows that such discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within seventy-two hours, disclose such information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that such disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality afflicted by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years. The court may also impose upon the person a fine of not less than five thousand dollars (\$5,000) or more than twenty-five thousand dollars (\$25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make such information available to the public without delay.

**25192. (a)** All civil and criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be deposited in the Hazardous Substance Account in the General Fund.

(2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

(3) Twenty-five percent shall be paid to the department and used to fund the activity of the CUPA, the local health officer, or other local public officer or agency authorized to enforce the provisions of this chapter pursuant to Section 25180, whichever entity investigated the matter that led to the bringing of the action. If investigation by the local police department or sheriff's office or California Highway Patrol led to the bringing of the action, the CUPA, the

local health officer, or the authorized officer or agency, shall pay a total of 40 percent of its portion under this subdivision to that investigating agency or agencies to be used for the same purpose. If more than one agency is eligible for payment under this paragraph, division of payment among the eligible agencies shall be in the discretion of the CUPA, the local health officer, or the authorized officer or agency.

(b) If a reward is paid to a person pursuant to Section 25191.7, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a).

## **CERTIFICATE OF MERIT**

**Health and Safety Code Section 25249.7(d)**

**I, Adam D. Wieder, hereby declare:**

**1. This Certificate of Merit accompanies the attached sixty-day (60) notice in which it is alleged that the parties identified in the notices have violated California Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.**

**2. I am the attorney for the noticing party, Los Angeles Unified School District (the "District").**

**3. I have consulted with one or more persons with relevant and appropriate experience or expertise, who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemical that is the subject of the action.**

**4. 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 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.**

**5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and 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: November 10, 2009**

**MUSICK, PEELER & GARRETT LLP**

**By:**



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**Adam D. Wieder, Esq.  
Attorneys for Los Angeles Unified School  
District**

## **ATTACHMENT TO CERTIFICATE OF MERIT**

As referenced in the Certificate of Merit and required under California Health and Safety Code Section 25249.7(h)(2), the following information provides a basis for said Certificate. Specifically, the following individuals reviewed the below-described materials and information and made the listed conclusions, among other things:

**Jeffrey Siegel**  
Environmental Health Specialist II  
Office of Environmental Health and Safety  
Los Angeles Unified School District  
333 South Beaudry Avenue 20<sup>th</sup> Floor  
Los Angeles, California 90017  
(213) 241-3199

Mr. Siegel reviewed and analyzed 1) the laboratory analyses and reports for lead conducted by LA Testing Laboratory on samples obtained by the District from the artificial turf and components; and 2) specification documents relating to the artificial turf products and components, including those relating to recycled "crumb rubber" used as infill in the products. Based upon the review of those materials and information, Mr. Siegel concluded that the product and its components contained chemicals regulated under Proposition 65, namely, lead and carbon black, for which no clear and reasonable warning or notice of potential exposure had been provided.

**Daniel Fresquez**  
Environmental Science Advisor  
Musick Peeler & Garrett LLP  
624 South Grand Avenue  
Los Angeles, California 90017  
(213) 629-7894

Mr. Fresquez reviewed and analyzed 1) the laboratory analyses and reports for lead conducted by LA Testing Laboratory on samples obtained by the District from the artificial turf and components; and 2) specification documents relating to the artificial turf products and components, including those relating to recycled "crumb rubber" used as infill in the products, and 3) a District product evaluation memorandum and District product review correspondence. Based upon the review of those materials and information, Mr. Fresquez concluded that the product and its components contained chemicals regulated under Proposition 65, namely, lead and carbon black, for which no clear and reasonable warning or notice of potential exposure had been provided.