

## 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(D)

Date: April 25, 2003

To: California Attorney General's Office; District Attorney's Office for 58 Counties;  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles

Yasuyuki Sudo, President	American Isuzu Motors, Inc.
Steve Simi, Owner / President	Connell Jeep Chrysler Plymouth
Pierre Gagnon, President	Mitsubishi Motor Sales of America, Inc.
Robert Branzuela, President	Veracom Mitsubishi
Mike Murphy, President	Oakland Mitsubishi
B.M. Ahn, President	Kia Motors America, Inc.
Diet Mar Burkhardt, Sr., Owner	Burlingame Saab
Karl Rossman, President	Kia of Huntington Beach
Charles Hughes, President	Mazda North American Operations
Don Strough, Owner / President	Val Strough Chevrolet Mazda
Marvin Benn, President	Diablo Mazda Subaru
Finbarr O'Neill, President	Hyundai Motor America
Dan Jensen, Owner / President	Beach Hyundai

From: Michael DiPirro

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### INTRODUCTION

My name is Michael DiPirro. I am a citizen of California and a private party acting in the interest of the general public who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in or produced by consumer and industrial products. This letter is provided to you pursuant to Health & Safety Code §25249.6 et seq ("Proposition 65"). As required, notice is also being provided to the violators listed above ("Violators"). The violations covered by this notice consist of the types of harm and route of exposure to the following toxic chemical:

<u>CHEMICAL</u>	<u>TYPES OF HARM</u>	<u>ROUTE OF EXPOSURE</u>
Toluene	Birth Defects and Other Reproductive Harm	Inhalation

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### NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific types of products that are causing *consumer* and occupational exposures in violation of Proposition 65 (and are covered by this notice) are listed hereafter in Exhibit A. The Violators' sales of these products have been occurring from April 25, 2000 to the present. As a result of the sale of these products, exposures to the above-referenced chemical have been occurring without adequate warnings. California consumers, through the act of buying, acquiring and utilizing the products, are exposed to the above-referenced Proposition 65 chemical. For example, exposures occur when California citizens paint motorized vehicles with the products. People likely to be exposed include, but are not limited to, motorized vehicle owners and lessees, automobile enthusiasts and persons who do auto body paint and repair.

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▪ **CONSUMER**

California consumers purchase the products at issue and are exposed to the listed chemical contained in the products during application, inspection, cleaning or other use. Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemical contained in the products. In addition, these products are used by sole proprietors and other persons in settings not covered by the OSH Act. Without proper warnings as to the toxic effects of exposures to the listed chemical contained in the products, California citizens lack the information necessary to make informed decisions whether to eliminate or reduce the risk of exposure to the toxic chemical from the use of the products.

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▪ **OCCUPATIONAL**

This notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

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**CONTACT INFORMATION**

Please direct all questions concerning this notice to my attorneys at the following address:

Gregory M. Sheffer, Esq.  
Sheffer & Chanler LLP  
160 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94104-3706  
Tel: (415) 434-9111  
Fax: (415) 434-9115

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**PROPOSITION 65 INFORMATION**

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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**ADDITIONAL INFORMATION**

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 §12903(b)(4).

<i>PRODUCT NAME AND INFORMATION</i>	<i>PRODUCT IS SOLD AND AVAILABLE FOR SALE AT:</i>	<i>PRODUCT IS MANUFACTURED AND/OR DISTRIBUTED BY:</i>
Isuzu Touch-Up Paint Spectra (#2-90046-113-7)	Connell Jeep Chrysler Plymouth in Alameda County, Northern California	American Isuzu Motors, Inc.
Isuzu Touch-Up Paint Ebony Black (#2-90046-001-4)	Connell Jeep Chrysler Plymouth in Alameda County, Northern California	

<b>PRODUCT NAME AND INFORMATION</b>	<b>PRODUCT IS SOLD AND AVAILABLE FOR SALE AT:</b>	<b>PRODUCT IS MANUFACTURED AND/OR DISTRIBUTED BY:</b>
Hyundai Touch-Up Paint Mystic Teal (#00253-10000 MS) Hyundai Touch-Up Paint Cardinal Red (#00253-19000 PU)	Beach Hyundai in Orange County, Southern California Beach Hyundai in Orange County, Southern California	Hyundai Motor America
Kia Touch-Up Paint Midnight (#UA006-AY-50149B) Kia Touch-Up Paint Beet Silver (#UA006-AY-50149B) Kia Touch-Up Paint Pepper Red (#UA006-AY-50149B)	Burlingame Saab in San Mateo County, Northern California Kia of Huntington Beach in Orange County, Southern California Kia of Huntington Beach in Orange County, Southern California	Kia Motors America, Inc.
Genuine Mazda Touch-Up Paint Maroon (#0000-88-0154-13) Genuine Mazda Touch-Up Paint Black (#0000-88-0154-GT) Genuine Mazda Touch-Up Paint Red (#0000-88-0154-SQ)	Val Strough Chevrolet Mazda in Alameda County, Northern California Diablo Mazda Subaru in Contra Costa County, Northern California Diablo Mazda Subaru in Contra Costa County, Northern California	Mazda North American Operations
Authorized Accessories 1 Touch-Up Paint Danube Blu (#AT93PT1L01) Authorized Accessories Touch-Up Paint New Zealand Green (#AT98PT1G01)	Veracom Mitsubishi in San Mateo, Northern California Oakland Mitsubishi in Alameda County, Northern California	Mitsubishi Motor Sales of America, Inc.

## EXHIBIT A

VIOLATOR(S)	PRODUCTS	TOXINS
American Isuzu Motors, Inc.; Connell Jeep Chrysler Plymouth	<p>Touch-Up Paint, Paint Sticks, Paint Pencils and/or Touch-Up Pencils</p> <p><i>Such as:</i></p> <p><i>Isuzu Touch-Up Paint Spectra Red (2-90046-113-7)</i></p> <p><i>Isuzu Touch-Up Paint Ebony Black (2-90046-001-4)</i></p>	Toluene
Hyundai Motor America; Beach Hyundai	<p>Touch-Up Paint, Paint Sticks, Paint Pencils and/or Touch-Up Pencils</p> <p><i>Such as:</i></p> <p><i>Hyundai Touch-Up Paint Mystic Teal (00253-10000 MS)</i></p> <p><i>Hyundai Touch-Up Paint Cardinal Red (00253-19000 PU)</i></p>	Toluene
Kia Motors America, Inc.; Burlingame Saab; Kia of Huntington Beach	<p>Touch-Up Paint, Paint Sticks, Paint Pencils and/or Touch-Up Pencils</p> <p><i>Such as:</i></p> <p><i>Kia Touch-Up Paint Midnight Black (UA006-AY-50149B)</i></p> <p><i>Kia Touch-Up Paint Beet Silver (UA006-AY-50149B)</i></p> <p><i>Kia Touch-Up Paint Pepper Red (UA006-AY-50149B)</i></p>	Toluene
Mazda North American Operations; Val Strough Chevrolet Mazda; Diablo Mazda Subaru	<p>Touch-Up Paint, Paint Sticks, Paint Pencils and/or Touch-Up Pencils</p> <p><i>Such as:</i></p> <p><i>Genuine Mazda Touch-Up Paint Maroon (00000-88-0154-13)</i></p> <p><i>Genuine Mazda Touch-Up Paint Black (00000-88-0154-GT)</i></p> <p><i>Genuine Mazda Touch-Up Paint Red (00000-88-0154-SQ)</i></p>	Toluene
Mitsubishi Motor Sales of America, Inc.; Veracom Mitsubishi; Oakland Mitsubishi	<p>Touch-Up Paint, Paint Sticks, Paint Pencils and/or Touch-Up Pencils</p> <p><i>Such as:</i></p> <p><i>Authorized Accessories 1 Touch- Up Paint Danube Blu (AT93PT1L01)</i></p> <p><i>Authorized Accessories 1 Touch- Up Paint New Zealand Green (AT98PT1G01)</i></p>	Toluene

## PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 160 Sansome Street, 2<sup>nd</sup> Floor, San Francisco, CA 94104-3706.

On April 25, 2003, I served the following document:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE  
§25249.7(d);**

**CERTIFICATE OF MERIT; AND**

**ATTACHMENTS (ONLY SERVED ON THE ATTORNEY GENERAL)**

on the following Violators by placing a true and correct copy thereof in a sealed envelope, first class postage prepaid, via regular mail, addressed to the party or parties listed below, and depositing it in a United States Postal Service mailbox, as follows:

Yasuyuki Sudo, President  
American Isuzu Motors Inc.  
13340 183<sup>rd</sup> Street  
Cerritos, CA 90702

Don Strough, Owner / President  
Val Strough Chevrolet Mazda  
3330 Broadway  
Oakland, CA 94611-5733

Dan Jensen, Owner / President  
Beach Hyundai  
16401 Beach Blvd.  
Huntington Beach, CA 92647

Finbarr O'Neill, President  
Hyundai Motor America  
10550 Talbert Avenue  
Fountain Valley, CA 92728

Don Strough, Owner / President  
Val Strough Chevrolet Mazda  
327 34<sup>th</sup> Street  
Oakland, CA 94611-5733

Karl Rossman, President  
Kia of Huntington Beach  
19232 Beach Blvd.  
Huntington Beach, CA 92647

B. M. Ahn, President  
Kia Motors America, Inc.  
9801 Muirlands Blvd.  
Irvine, CA 92618

Marvin Benn, President  
Diablo Mazda Subaru  
2646 N. Main Street  
Walnut Creek, CA 94597-2798

Robert Branzuela, President  
Veracom Mitsubishi  
790 N. San Mateo Drive  
San Mateo, CA 94401-2224

Charles Hughes, President  
Mazda North American  
Operations  
7755 Irvine Center Drive  
Irvine, CA 92618

Steve Simi, Owner/President  
Connell Jeep Chrysler Plymouth  
2735 Broadway  
Oakland, CA 94612-3109

Mike Murphy, Owner  
Oakland Mitsubishi  
2820 Broadway  
Oakland, CA 94611-5709

Pierre Gagnon, President  
Mitsubishi Motor Sales of  
America, Inc.  
6400 Katella Avenue  
Cypress, CA 90630

Diet Mar Burkhardt, Sr., Owner  
Burlingame Saab  
825 N. San Mateo Drive  
San Mateo, CA 94401-2217

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

Via 2<sup>nd</sup> Day Air Service by placing such envelope in a UPS Drop-Off Box:

1. The Attorney General of the State of California;

By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:

2. The District Attorney for Each of the 58 counties in California; and
3. The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

A list of addresses for each of these recipients is attached.

Executed on April 25, 2003, at San Francisco, California. 

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffer, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties 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.
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 chemicals that are the subject of this 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 plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
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 information identified in Health and Safety Code §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: April 25, 2003