

MICHAEL FREUND
ATTORNEY AT LAW
1915 ADDISON STREET
BERKELEY, CALIFORNIA 94704-1101

TEL 510/540-1992
FAX 510/540-5543
EMAIL FREUND1@AOL.COM

September 23, 2003

Bill Lockyer, Attorney General
Edward Weil, 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 18-709
Los Angeles, CA 90012

Rockard Delgadillo, City Attorney
Los Angeles City Attorney
200 Main Street
Los Angeles, CA 90012

Re: Notice of Violation

Dear Prosecutors:

I represent the Center for Environmental Health, 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 Exide Technologies, located at 5909 Randolph Street, Los Angeles, California 90040-3416 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 chemical subject to Proposition 65: lead, listed as a chemical known to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987 and as a carcinogen on October 1, 1992. 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 lies within a radius of approximately .25 miles from the facility. The general geographic location of the unlawful exposure to the occupational area includes the noticed facility and other businesses situated within a radius of approximately .25 miles from the facility.

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. Exide Technologies is in violation of Proposition 65 because it failed to provide a warning to persons residing and working in the area that they have been and continue to be exposed to lead. (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, the Center for Environmental Health 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 the Center for Environmental Health from information now available to us. The Center for Environmental Health 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.

cc: Michael Green, 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 to those persons exposed to lead in and around its facility.
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 emits lead into the atmosphere such that nearby residences and workers are exposed to the chemical at levels that require a warning pursuant to Proposition 65. Lead was listed as a chemical known to the State of California to cause developmental toxicity, and male and female reproductive toxicity on February 27, 1987 and as a carcinogen on October 1, 1992. Please refer to the Notice of Violation for additional details regarding the alleged violations.
5. I have consulted with a scientist with more than 20 years of regulatory and private-sector experience in air quality 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 exposure to the listed chemical that is the subject of this action. These facts, studies or other data overwhelmingly demonstrate that the party identified in the Notice exposes residents and workers in and around the facility to lead.

6. Based on my consultation with an experienced consultant in this field and especially the results of the exposure assessment, it is clear that there is sufficient evidence that human exposures exist from the emission of lead from the noticed party's facility. 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: September 23, 2003

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 September 24, 2003 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:

Bill Lockyer, Attorney General
Edward Weil, Deputy Attorney General
1515 Clay Street, Suite 2000
Oakland, CA 94612-1413

Richard Delgadillo, City Attorney
Los Angeles City Attorney
200 Main Street
Los Angeles, CA 90012

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

Frank Patton
Exide Technologies
5609 Randolph Street
Los Angeles, CA 90040-3416

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

Executed on September 24, 2003 at Berkeley, California.