

NOTICE OF VIOLATION

California Safe Drinking Water and Toxic Enforcement Act

December 15, 2003

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 the companies set forth in this Notice of Violation have violated the warning requirement of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act, Health and Safety Code §§ 25249.5 et seq.

In particular, these companies have manufactured and/or distributed ceramic tiles as more particularly described herein, that expose numerous individuals, especially small children, 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 hand-to-mouth/ingestion. The following are the names and addresses of the violators along with a description of the tiles:

Responsible Party	Tile Description	Item #
Lowe's Companies, Inc. P.O. Box 1111 Con-8 North Wilkesborro, N.C., 28656-0001	"Sicillian Flor" 4x4 "Provencal Listell"	186886 17992
Tileshop, Inc. 1005 Harrison St Berkeley, CA 94710	2x2 Lanka Series white tile with tomatoes	LAFV/TO22
Country Floors 5670 Wilshire Blvd # 750 Los Angeles, CA 90036	Decorative tile	WND 119D
Cementhai SCT USA Inc 970 W 190th St Ste 330 Torrance, CA 90502	3x8 Milano Almond (BN)	8532800214
Import Tile, Inc. 611 Hearst Ave Berkeley, CA 94710	4x4 Latin Accents decorative tile	Special #2

Ann Sacks Tile & Stone
8120 Ne 33rd Drive
Portland, OR 97211

Brown 4x4

AV-1

The Home Depot, Inc.
2455 Paces Ferry Road
Atlanta, Georgia 30339

3x8 Milano Almond (BN)

8532800214

Proposition 65 requires that a clear and reasonable warning be provided prior to exposure to certain listed chemicals. The companies set forth in this Notice of Violation are in violation of Proposition 65 because they failed to provide a warning to persons who are being exposed to lead. (22 C.C.R. section 12601 (b). While in the course of doing business, the companies are knowingly and intentionally exposing people to this chemical, without first providing clear and reasonable warning. (Health and Safety Code section 25249.6.)

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 parties 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.

Please direct any inquiries regarding this Notice to counsel for the Center for Environmental Health: Michael Freund, Attorney at Law, 1915 Addison Street, Berkeley, CA 94704, (510) 540-1992.

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 companies identified in the Notice have violated Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings to those persons exposed to lead from contact with ceramic tiles.
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 companies identified manufacture and/or distribute ceramic tiles containing lead such that many people are exposed to this 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 an environmental scientist with more than 15 years of experience in the fields of environmental site investigation and remediation, human health and ecological risk assessment and regulatory compliance. The consultant has applied her background in the environmental sciences and public health to projects involving the assessment of human health and ecological effects from exposure to chemicals in soil, groundwater, surface water and air. 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 subject to this action. These facts, studies or other data overwhelmingly demonstrate that the companies identified in the Notice expose people, many of whom are young children to lead.

6. Based on my consultation with an experienced consultant in this field, it is clear that there is sufficient evidence that human exposures exist from the leaching of lead from ceramic tiles containing lead-based glazes. 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 violators 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: December 15, 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 December 16, 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 as addressed herein.

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

Executed on December 16, 2003 at Berkeley, California.

District Attorney of Alameda County
1225 Fallon Street, Room 900
Oakland, CA 94612

District Attorney of Colusa County
547 Market Street
Colusa, CA 95932

District Attorney of Contra Costa County
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San Francisco, CA 94103

District Attorney of Alpine County
P.O. Box 248
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District Attorney of Sacramento County
P.O. Box 749
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District Attorney of San Joaquin County
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District Attorney of Amador County
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1105 Santa Barbara Street
Santa Barbara, CA 93101

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San Jose, CA 95110

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Santa Cruz, CA 95061

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Santa Rosa, CA 95403

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District Attorney of Kings County
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255 N. Forbes Street
Lakeport, CA 95453

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825 5th Street
Eureka, CA 95501

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District Attorney of Lassen County
220 S. Lassen St., Courthouse
Susanville, CA 96130

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Independence, CA 93526

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210 W. Temple Street, Room 345
Los Angeles, CA 90012

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201 Church St., Suite 8
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330 West Broadway, Suite 1320
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1525 Court Street, Third Floor
Redding, CA 96001-1632

District Attorney of Stanislaus County
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510-843-5744

Lowe's Home Improvement Warehouse
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