

Proposition 65 Notices

(re: Asphalt Roofing)

Attorney General Copy: Contains Official Information Pursuant to Evidence Code Section 1040

Submitted by:

**Yeroushalmi & Associates
3700 Wilshire Blvd., Suite 480
Los Angeles, CA 90010
(On behalf of Consumer Advocacy Group, Inc.)**

**JULY 6
~~Thursday, June 10, 2004~~**

VIA U.S. MAIL

60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6

This notice is given by Consumer Advocacy Group, Inc., which must be contacted through the following entity: **Reuben Yeroushalmi, Esq., Yeroushalmi & Associates**; 3700 Wilshire Blvd. Ste. 480 Los Angeles, CA 90010; 213-382-3183. This letter constitutes notification that Consumer Advocacy Group, Inc. believes and alleges that Proposition 65, *The Safe Drinking Water and Toxic Enforcement Act* (commencing with Health & Safety Code Section 25249.5) and California Code of Regulations, title 22, section 12601 has been violated by the following companies and/or entities (hereinafter, “the violators”) and during the time period referenced below:

	PERIOD OF VIOLATION	
From: July 6, 2000	Through July 6, 2004	and continuing thereafter.

Environmental Exposures

While in the course of doing business at, but not limited to:

The locations on the section of the attached Certificate of Service entitled the “name and address of each violator to whom documents were mailed”:

during the time period referenced above, in the normal course of business, during which violators installed, repaired, removed, and replaced roofs, the violators have been and are knowingly and intentionally exposing reasonably foreseeable members of the public, including neighbors and residents, passersby, motorists, and inspectors not in the direct employ of violators and found within a 50 foot radius of the locations at which **roofing** work has been performed, to products containing **Asphalt**, including hot asphalt, and its constituent chemicals as listed below and designated by the State of California to cause **cancer** and **reproductive toxicity**, pursuant California Code of Regulations, title 22, section 12000, without first giving clear and reasonable warning of such to the exposed persons (Health & Safety Code Section 25249.6). The sources of exposures are **Asphalt**, including hot asphalt, and its constituent chemicals as listed below. The locations of the exposures include the areas in and around within a 50 foot radius of the violators’ principal places of business, as referenced above, involving activities including whereby hot asphalt has been heated and mixed, to the area along and within 50 feet of the route traveled between said principal places of business and the addresses at which **roofing** materials have been stored and **roofing** work has been performed, whereby the **Asphalt**, including hot asphalt, has been transported, and the area within a 50 foot radius to such addresses at which such **roofing** work has been performed including the street, sidewalks and pathways within a 50 foot radius to said addresses, the vicinity of work vehicles and the immediately neighboring areas affected by the **Asphalt**, including hot asphalt, and associated fumes and its constituent chemicals that have been breathed in via the ambient air by the exposed persons causing contact with their mouths, throats, esophagi, and lungs. The route of exposure for Environmental exposures, as referenced above, to the chemicals listed below, has been the inhalation contact described above. Said exposures took place in the California counties whose district attorneys received copies of this notice as listed in the attached certificate of service.

Occupational Exposures

While in the course of doing business at, but not limited to:

The locations on the section of the attached Certificate of Service entitled the “name and address of each violator to whom documents were mailed”:

during the time period referenced above, the violators have been and are knowingly and intentionally exposing

employees of the violators to *Asphalt*, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar, and its constituent chemicals as listed below and designated by the State of California to cause cancer and reproductive toxicity, pursuant California Code of Regulations, title 22, section 12000, without first giving clear and reasonable warning of such to the exposed person (Health & Safety Code Section 25249.6). The sources of exposures include *Asphalt*, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar, and its constituent chemicals as listed below.

The employees exposed to said chemicals include *roofing* contractors, drivers, roofing installers, and workers otherwise involved in the installation, repair, and replacement of roofs. Said exposures took place in locations including the storage facilities/garage areas where the *Asphalt*, including where hot asphalt has been prepared and heated, and where "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar have been stored at the violators' principal places of business, as referenced above, on, in and in the vicinity of work vehicles transporting *Asphalt*, including hot asphalt, the addresses where roofing installations have been performed, and the areas along the routes traveled between said principal places of business and the addresses at which *roofing* work has been performed, by which the *Asphalt*, including hot asphalt, has been transported. The route of exposure for occupational exposures to the chemicals listed below, by the affected persons has been from heated *Asphalt*, including hot asphalt, *Asphalt* smoke, and associated fumes, and particulate matter and other airborne constituents, including gaseous emissions, released from "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar by means of removing these products from packaging and tearing out said products from old roofing in preparation of re-roofing, that have been breathed in via the ambient air by the exposed persons (and was a direct result of participating in the process by which *Asphalt* is applied to roofing surfaces, handling roofing materials for storage, application, and transportation, or being in the vicinity of where hot asphalt was mixed, heated, or transported) causing inhalation contact with their mouths, throats, esophagi, and lungs.

Consumer Advocacy Group, Inc. also believes and alleges that the violators are also responsible for a route of exposure of dermal contact due to employees coming in direct contact (e.g. their bare skin touching) with the asphalt, including hot asphalt, while mixing, heating, transporting, and then applying the asphalt, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar, to surfaces at work locations, as well as employees coming in contact with the asphalt by inadvertently allowing their work gloves, which had touched the asphalt, to come in contact with their bare skin. Employees also sustained dermal contact when moving the asphalt, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar, in and out of the storage facilities/garage areas where the *Asphalt* has been stored at the violators' principal places of business, as referenced above. Said exposures took place in the California counties whose district attorneys received copies of this notice as listed in the attached certificate of service.

The roofing products used by employees of the violators that consist of, contain or result in exposure to asphalt or coal tar, and any equipment used in the storage, installation, repair, removal, and transportation of such products whose use may cause persons to be exposed to asphalt or coal tar, include the following: binders, felts, base sheets, Cap sheets, Surfacing materials, Membrane systems, Insulation materials, Substrates, Shingles, Roll roofing, felt underlayments, flashings, coatings, mastics, cements, adhesives, caulking compounds, roofing kettles, tank trucks, vehicles used to tow roofing kettles to, from, and within job sites, torches, hot-air welders, other heating equipment, spreaders, felt-laying machines, roof removal equipment, including but not limited to roof cutters, and hand tools.

This notice alleges the violation of Proposition 65 with respect to occupational exposures 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 (a.) the conduct of manufacturers occurring outside the State of California; and (b.) employers with less than 10 employees. The approval also provides that an employer may use any means of

compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement be 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 California Attorney General.

For each such type and means of exposure, the violators have exposed and are exposing the above referenced persons to:

CARCINOGENS



Benz[a]anthracene	Chrysene	Toluene diisocyanate	Formaldehyde (gas)
5-Methylchrysene	Nickel and Nickel Compounds	Dichloromethane (Methylene Chloride)	Benzene
Lead and lead compounds	Benzo[b]flouranthene	Benzo[k]flouranthene	Benzo[a]pyrene
Indeno[1,2,3-cd]pyrene	Acetaldehyde	Beryllium and Beryllium compounds	Arsenic (inorganic arsenic compounds)
Cadmium and Cadmium compounds	Chromium (hexavalent compounds)	Tetrachloroethylene (Perchloroethylene)	Trichloroethylene
Formaldehyde (gas)	Chrysene	Dibenz[a,h]anthracene	1, 3-butadiene
Carbazole	dibenz[a,j]acridine	dibenz[a,h]anthracene	dibenzo[a,e]pyrene
dibenzo[a,h]pyrene	dibenzo[a,i]pyrene	dibenzo[a,l]pyrene	Silica, Crystalline (airborne particles of respirable size)

REPRODUCTIVE TOXINS



Toluene	Carbon Disulfide	Benzene	Lead
Mercury and Mercury compounds	Arsenic (inorganic oxides)	Cadmium	

Proposition 65 (Health & Safety Code Section 25249.7) requires that notice and intent to sue be given to the violator(s) 60 days before the suit is filed. With this letter, *Consumer Advocacy Group, Inc.* gives notice of the alleged violations to the violators and the appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, *Consumer Advocacy Group, Inc.* may file suit. This notice covers all violations of Proposition 65 that *Consumer Advocacy Group, Inc.* currently knows of from information now available to it. With the copy of this notice submitted to the violators, a copy of the following is attached: *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

Note: *Consumer Advocacy Group, Inc.*, in the interest of the public, is determined to resolve this matter in the least costly manner and one which would be beneficial to all parties involved. In order to encourage the expeditious and proper resolution of this matter, *Consumer Advocacy Group, Inc.* is prepared to forgo all monetary recovery including attorney fees and costs, penalties, and restitution in exchange for a complete elimination of the exposures listed above through the possible reformulation of your products and modification of your business practices.

Dated: 7/6/04

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CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Reuben Yeroushalmi, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the party(s) identified in the notice(s) 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 at least one person 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.
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 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: 7/6/69

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010.

I SERVED THE FOLLOWING:

- 1) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 25249.6
- 2) Certificate of Merit: Health and Safety Code Section 25249.7(d)
- 3) Certificate of Merit: Health and Safety Code Section 25249.7(d) *Attorney General Copy (only sent to Attorney General)*
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing a true copy of the same in a sealed envelope addressed to each person shown below and depositing the envelope in the United States mail with the postage fully prepaid.

Place of Mailing: Los Angeles, CA

NAME AND ADDRESS OF EACH VIOLATOR TO WHOM DOCUMENTS WERE MAILED:

F. Raymond Little	Booth & Little, Inc.	2150 Redwood Highway	Greenbrae	94904	CA
Mark Powers	Excelsior Roofing	55 Elmira St.	San Francisco	94124	CA
Charles Walters	J.P. Witherow Roofing Co.	1001 Morena Blvd. 2550 E. MiraLoma Way, Ste. 100	San Diego	92110	CA
Wayne Wells	Mesa Roofing Corp. R. E. Roofing and Construction, Inc.	941 -- E S. McGlincey Ln. 8721 Magnolia Ave., Suite C	Anaheim	92806	CA
Paul Proctor			Campbell	95008	CA
Glenn Ferraco	Sunset Roofing Co., Inc.		Santee	92071	CA

NAME AND ADDRESS OF EACH PUBLIC PROSECUTOR TO WHOM DOCUMENTS WERE MAILED:

Marin County District Attorney 3501 Civic Center Drive, #130 San Rafael, CA 94903	Orange County District Attorney PO Box 808 Santa Ana, CA 92702	San Jose City Attorney 151 W. Mission St. San Jose, CA 95110
San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	San Francisco County District Attorney 850 Bryant St, Rm 322 San Francisco, CA 94103
San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102	Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 7-6-2004