

## CONSUMER DEFENSE GROUP ACTION

---

950 South Coast Drive, Suite 220

Costa Mesa, CA 92626

Telephone: (714) 850 - 9390

Facsimile: (714) 850 - 9392

### Sixty Day Notice of Intent to Sue ENTERPRISE RENT-A-CAR COMPANY Under Health & Safety Code Sections 25249.5 and 25249.7

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or the "Noticing Party") hereby provides Notice of Intent to Sue Under Health & Safety Code Section 25249.5 (the "Notice") to Andrew C. Taylor, the President and CEO of Enterprise Rent-A-Car Company (hereinafter referred to as "ENTERPRISE") as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through the Responsible Individual at the Noticing Party, Anthony G. Graham, at the above address.

#### Summary of Violation

This Notice is intended to inform ENTERPRISE that it is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65"). Proposition 65 absolutely prohibits any business from contaminating the drinking water supplies of California. ENTERPRISE is in violation of proposition 65 because it has and is knowingly and intentionally threatening to "release chemicals known to the State of California 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," at each of the facilities listed on Exhibit A hereto (hereinafter "the Facilities"), which are ENTERPRISE branded car rental facilities with underground storage tank systems. Health & Safety Code Section 25249.5 and 25249.7. Proposition 65 provides that when a party, such as ENTERPRISE, an entity with more than ten employees, has been and is knowingly and intentionally threatening to "release chemicals known to the State of California 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," it is violating Health & Safety Code Section 25249.5 and may be enjoined from such conduct pursuant to Health & Safety Code Section 25249.7. The chemicals which ENTERPRISE is threatening to release are benzene and toluene ("the Designated Chemicals"), which are contained in the gasoline and other refined petroleum products which ENTERPRISE stores within underground storage tank systems owned and/or operated by ENTERPRISE located at the Facilities. In order to be in compliance with Proposition 65 ENTERPRISE must effectively contain the Designated Chemicals in a UST system that is "product tight." For these purposes, "product tight" means that the operations must be impervious to the liquid and vapor of the substance ("the Designated Chemicals") that is or are contained or to be contained, in the underground storage tank systems so as to prevent seepage of the Designated Chemicals from the containment and in to or on to the ground where the Designated Chemicals will pass or probably will pass into any source of drinking water.

#### The Violation

ENTERPRISE is in the business of renting automobiles at the Facilities, and provides gasoline for refueling of such automobiles at those Facilities. ENTERPRISE owns and/or operates numerous underground storage tank systems located at the Facilities that are used for the storage of gasoline used for refueling of vehicles when they are returned to the rental location after the rental period. The operation by ENTERPRISE of the underground storage tank systems located at the Facilities, as well as the delivery,

storage and dispensing of gasoline at the Facilities, as currently controlled and managed by ENTERPRISE, poses a substantial threat of discharge of gasoline and other refined petroleum products “into water or onto or into land where such chemical passes or probably will pass into any source of drinking water”. The “source of drinking water” includes the aquifers and alluvial basins below the USTs at the locations identified in Exhibit A.

All water within the State, including groundwater, is the property of the people of the State of California. California Water Code §§ 102 and 104. As to all water, the Legislature of the State of California (“the Legislature”) has determined that “the people of the State have a primary interest in the conservation, control and utilization of the water resources of the state, and that the quality of all waters of the State shall be protected for use and enjoyment of the people of the state.” California Water Code § 13000. Under Proposition 65 a “source of drinking water” is not confined to existing drinking water supplies. Rather, a “[s]ource 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 [and] also includes water identified in a regional board” water quality control plan as being suitable for domestic or municipal uses.” Health & Safety Code §25249.10 (d). The groundwater below the USTs at the locations identified in Exhibit A is a “source of drinking water” under this definition.

Gasoline contains a number of constituents and additives each of which separately, as well as in combination, present a significant risk to human health, safety and the environment. The gasoline stored, sold and used by ENTERPRISE contains the chemicals Benzene and Toluene. Benzene is a clear, colorless, highly reactive flammable liquid derived from petroleum and contained in gasoline. Benzene is a chemical known by the State of California to cause cancer and has been listed as such pursuant to Proposition 65. Toluene is a colorless flammable liquid obtained from coal tar or petroleum and contained in motor vehicle fuels. Toluene is a chemical known by the State of California to cause reproductive toxicity and has been listed as such pursuant to Proposition 65. Hereinafter benzene and toluene are referred to as the “Designated Chemicals”.

The UST systems used to provide gasoline at the Facilities are not “product tight” (i.e. the operations are not impervious to the liquid and vapor of the substance that is contained, or is to be contained, in the underground storage tank systems so as to prevent seepage of the Designated Chemicals from the containment and into the ground) and thus are threatening to cause a discharge of Designated Chemicals. The following are the components of the gasoline service station operations that pose a threat of discharge of Designated Chemicals: the underground tank(s) and underground storage tank system(s); the pipes used in connection with the storage of the Designated Chemicals in the USTs, including connecting pipes, vapor recovery lines, vent lines and associated fittings as well as the associated secondary containment systems; the drainage systems which collect surface water run off from the petroleum dispensing and delivery areas; secondary containment and spill control systems, including but not limited to secondary containment for the underground tank system, pipe, connecting pipe, dispensers and dispenser piping and the petroleum delivery area, as well as for the drainage systems which collected surface water run off from the dispensing and delivery area.

At the Facilities, the gasoline containing Designated Chemicals is stored in one or more underground storage tank(s) and an underground storage tank system (hereinafter referred to collectively as “the USTs”), which includes, but is not limited to, one or more tanks, including the piping connected thereto. The pipes used in connection with the storage of the Designated Chemicals in the USTs includes but is not limited to valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with the pumping units, and metering and delivery stations and fabricated assemblies therein. The pipes used in connection with the storage of the Designated Chemicals in the USTs include “connecting piping”, such as pipe, valves elbows, joints, flanges and flexible connectors through which the

Designated Chemicals flow. The UST system also includes the vapor recovery lines, vent lines and associated fittings as well as the associated secondary containment systems, the drainage systems which collect surface water run off from the petroleum dispensing and delivery areas. Finally, the UST systems include secondary containment and spill control systems including but not limited to secondary containment for the underground tank system, leak detection sensors, pipe, connecting pipe, dispensers and dispenser piping and the petroleum delivery area, as well as for the drainage systems which collect surface water run off from the dispensing and delivery area.

Investigations and reports conducted and prepared for the California State Water Resources Control Board ("SWRCB") (with the assistance and input of the Environmental Health Divisions and Departments for a number of California counties and Regional Water Quality Control Boards as well as various members of the oil industry), the California Environmental Protection Agency ("CEPA"), Department of Toxic Substances Control ("DTSC"), the Office of Pollution Prevention and Technology Department, as well as testing undertaken by the various city fire departments where the Facilities are located, demonstrate that discharges of petroleum products including the Designated Chemicals occur, and are expected to occur, from the gasoline service operations at the Facilities on a regular and ongoing basis. The CWRQB Report concluded that 61% of all USTs in operation, at any given time, are discharging/releasing gasoline and other refined petroleum products including the Designated Chemicals into or on to the land. The CWRQB Report also found that the percentage of USTs found to be discharging/releasing gasoline and other refined petroleum products including the Designated Chemicals into or on to the land was not materially different whether the underground storage tank was single or double-walled. ENTERPRISE, as well other users of gasoline, such as the oil, gas, and automobile industry in general, know of these facts.

Because ENTERPRISE is aware of these facts it has in place leak detection sensor systems. The fact that ENTERPRISE uses such a system is an acknowledgement by ENTERPRISE that it knows that the USTs it operates are likely to leak at any given time. The sensors do not inform ENTERPRISE that the USTs are about to release product, only, at best that the USTs have leaked and/or are leaking product, including the Designated Chemicals. Further, the CWRQB Report noted that the leak detection systems in use by the industry only record a discharge from the USTs where the leak is **more** than 0.1 gallons/hour (2.4 gallons a day, or 876 gallons a year per sensor). That is, even under this extremely lax standard, ENTERPRISE does not even record a discharge until an individual tank sensor (of which there are usually more than one in any UST) records a discharge of **greater than 876 gallons a year**. Naturally, the level of non-recorded discharge can be much higher for any individual UST since there may be four or more sensors in any given system **each of which** is failing to record a discharge of slightly less than 876 gallons a year. Finally, a report prepared by the SWRCB Underground Storage Tank Program entitled "Field Evaluation of Underground Storage Tank System Leak Detection Sensors" expressly found that the leak detection sensors systems used by the oil industry, including ENTERPRISE, are not reliable where, as the report noted, the sensors have not been properly installed, programmed, maintained and operated, or when the secondary containment in which they are installed are not working properly. The SWRCB, in analyzing the use of such leak detection sensor systems, specifically noted a number of significant problems which greatly lessened the utility of such sensors including the following: "sensors were raised from the low point of the secondary containment, sensors fail[ed] to alarm when tested, and sensors fail[ed] to shut down the turbine pump in the event of an alarm." The report went on to note that almost a third of the secondary containment systems had water or product in one or more areas, a fact which would seriously impact the operational effectiveness of the sensor detection systems. Under these circumstances, the sensors will simply not operate effectively, even at the lax warning level used by ENTERPRISE. Further, since such sensors, even when working properly, do not prevent leaks but, at best, simply record them, they are ineffective to avoid liability under Health & Safety Code sections 25249.5 and 25249.7. In order to be in compliance with Proposition 65 ENTERPRISE must therefore effectively contain the Designated Chemicals in a UST system which is "product tight", as defined above.

The gasoline service operations of ENTERPRISE therefore pose and threaten to pose an imminent treat to human health or safety or the environment and therefore create a substantial probability of harm since there is a substantial likelihood that the majority of the USTs operated and maintained by ENTERPRISE are either currently or likely will shortly discharge/release gasoline and other refined petroleum products into or on to the land. Such a discharge/release of the Designated Chemicals from the USTs at the Facilities "probably will pass into [a] source of drinking water." It is clear therefore that for the entire period of time that ENTERPRISE has owned and/or controlled the USTs located at the Facilities, ENTERPRISE has been and continues to be in violation of Proposition 65. Given that the maximum prior period of potential liability pursuant to Proposition 65 is four years, this Notice is intended to inform ENTERPRISE that it has been in violation of Proposition 65 from the time period from four years prior to the date of this notice and continues to be in violation, for every day upon which ENTERPRISE owns and/or controls the underground storage tank systems for any Facility listed on Exhibit A.

Proposition 65 requires that notice and intent to sue be given to ENTERPRISE sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to ENTERPRISE and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to it. CDG reserves the right to amend this Notice to inform ENTERPRISE of other violations and/or exposures as it gathers further information. With the copy of this notice submitted to ENTERPRISE, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: August 1, 2005

By:

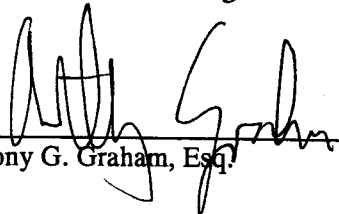
  
\_\_\_\_\_  
Anthony G. Graham, Esq.

EXHIBIT A

BURBANK AIRPORT (ON-SITE)  
2612 N. HOLLYWOOD WAY STE. A  
BURBANK, CA 91505-1020

FRESNO AIRPORT IN-TERM  
5175 EAST CLINTON WAY  
FRESNO, CA 93727-2046

ORANGE COUNTY APT (IN-TERMINAL  
18601 AIRPORT WAY  
SANTA ANA HEIGHTS, CA 92707-5200

LONG BEACH AP (IN-TERM)  
4100 E DONALD DOUGLAS DR  
LONG BEACH, CA 90808-1754

LOS ANGELES AIRPORT (ON-SITE)  
8734 BELLANCA AVE  
LOS ANGELES, CA 90045-4412

MONTEREY AIRPORT (ON-SITE)  
200 FRED KANE DR  
MONTEREY, CA 93940-5353

OAK AP (CONSOLIDATED FACILITY)  
7600 EARHART RD STE 7  
OAKLAND, CA 94621-4518

ONTARIO AIRPORT ON SITE  
3450 E AIRPORT DR STE 400  
ONTARIO, CA 91761-7669

PALM SPRINGS AIRPORT (ON-SITE)  
4041 AIRPORT CENTER DR  
PALM SPRINGS, CA 92264-1215

SAN DIEGO AIRPORT (OFF-SITE)  
1691 HANCOCK STREET  
SAN DIEGO, CA 92101-1117

SFO AP (CONSOLIDATED FACILITY)  
780 MCDONNELL ROAD/SFIA  
SAN FRANCISCO, CA 94128-3114

SACRAMENTO AIRPORT (ON SITE)  
6340 MCNAIR CIR  
SACRAMENTO, CA 95837-1118

SJC AP CONSOLIDATED FAC  
2300 AIRPORT BLVD STE 100  
SAN JOSE, CA 95110-1231

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Anthony G. Graham, hereby declare:

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

2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing party Consumer Defense Group Action.

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 exposures to the listed chemicals that are 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.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Costa Mesa, California on August 5, 2005.

Certifier  
Signature  
Date

Anthony Galan

**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 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators.*)

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

Date of Mailing: August 5, 2005

Place of Mailing: Costa Mesa, California

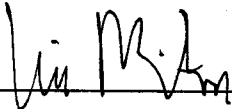
NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Andrew C. Taylor, President and CEO ENTERPRISE Rent- A- Car Company 600 Corporate Park Dr. St. Louis, MO 63105	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
---	---

And all entities listed on Attachment to Proof of Service.

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

Dated: August 5, 2005

  
\_\_\_\_\_



## ATTACHMENT TO PROOF OF SERVICE

San Diego City Attorney  
1200 3rd Ave. Ste. 1620  
San Diego, CA 92101

San Diego County District Attorney  
330 Broadway  
San Diego, CA 92101

Los Angeles City Attorney  
200 N. Main St. N.E.  
Los Angeles, CA 90012

Los Angeles County DA  
210 W. Temple Street, 18th Floor  
Los Angeles, CA 90012

San Francisco City Attorney  
1390 Market Street  
San Francisco, CA 94102

San Francisco County DA  
880 Bryant Street  
San Francisco, CA 94103

Riverside County DA  
4075 Main St., 1<sup>st</sup> Fl.  
Riverside, CA 92501

San Bernardino County DA  
316 N. Mountain View Av.  
San Bernardino, CA 92415

Sacramento County DA  
P.O. Box 749  
Sacramento, CA 95812

Orange County District Attorney  
700 Civic Center Dr. W., 2<sup>nd</sup> Fl.  
Santa Ana, CA 92701

San Jose City Attorney  
151 W. Mission St.  
San Jose, CA 95110

Santa Clara County DA  
2645 Zanker Road  
San Jose, CA 95134

Humboldt County DA  
825 5th Street  
Eureka, CA 95501

Shasta County District Attorney  
1525 Court Street  
Redding, CA 96001-1632

San Mateo District Attorney  
1050 Mission Road  
South San Francisco, CA 94080

Marin County DA  
3501 Civic Center Dr. #130  
San Rafael, CA 94903

Sonoma County DA  
600 Administrative Dr.  
Santa Rosa, CA 95403

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

Yolo County D A  
301 2<sup>nd</sup> Street  
Woodland, CA 95695

District Attorney  
1430 Freedom Blvd.  
Watsonville, CA 95076

El Dorado County DA  
1360 Johnson Blvd. #105  
South Lake Tahoe, CA 96150

Ventura County DA  
800 South Victoria Avenue  
Ventura, CA 95695

Napa County DA  
931 Parkway Mall  
Napa, CA 94559

Inyo County DA  
386 W. Line Street  
Bishop, CA 93514

Lake County DA  
255 N. Forbes St.  
Lakeport, CA 95453

Stanislaus County DA  
300 Starr Avenue  
Turlock, CA 95380

District Attorney  
14227 Road 28  
Madera, CA 93638

Sutter County DA  
446 Second Street  
Yuba City, CA 95991

Mariposa County DA  
P.O. Box 748  
Mariposa, CA 95338

Nevada County DA  
201 Church Street, Suite 8  
Nevada City, CA 95959

San Luis Obispo County DA  
1050 Monterey Street, Rm. 450  
San Luis Obispo, CA 93408

Merced County DA  
445 I Street  
Los Banos CA 93635

Mendocino County DA  
204 S Court Street  
Alturas CA 96101

Kern County DA  
2100 College Avenue  
Bakersfield, CA 93305

San Joaquin DA  
225 W. Elm Street #C  
Lodi, CA 95240

Mendocino County DA  
700 S. Franklin St.  
Fort Bragg, CA 94537

Butte County DA  
25 County Center Drive  
Oroville, CA 95695

Orange County District Attorney  
700 Civic Center Dr. W., 2<sup>nd</sup> Fl.  
Santa Ana, CA 92701

Solano County DA  
321 Tuolumne Street  
Valejo, CA 94590

Santa Cruz County DA  
701 Ocean Street  
Santa Cruz, CA 95061

Alameda County DA  
1225 Fallon Street  
Oakland, CA 94612

Del Norte County DA  
450 H Street  
Crescent City, CA 95531

Santa Clara DA  
2645 Zanker Rd  
San Jose CA 95134

Solano County DA  
321 Tuolumne St  
Vallejo CA 94590

Glenn County DA  
540 W Sycamore St  
Willows CA 95988

Kings County DA  
1400 W Lacey Blvd  
Hanford CA 93230

Riverside DA  
82675 US Hwy 111 FL4  
Indio CA 92201

Santa Rosa D.A.  
111 N Pythian Rd  
Santa Rosa CA 95409

Monterey County DA  
240 Church St.  
Salinas, CA 93902

Placer County DA  
11562 B Avenue  
Auburn, CA 95603

Fresno County DA  
2220 Tulare Street, #1000  
Fresno, CA 93721

Siskyou County DA  
P.O. Box 986  
Yreka, CA 96097

Tulare County DA  
425 E. Kern  
Tulare, CA 93274

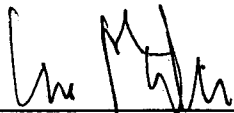
Inyo County DA  
PO Drawer D  
Independence, CA 93526

Mono County DA  
P.O. Box 617  
Bridgeport, CA 93517

Santa Barbara County DA  
1105 Santa Barbara St.  
Santa Barbara, CA 93101

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

Dated: August 5, 2005



---

