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

This notice is given by Consumer Advocacy Group, Inc. ("CAG"). The noticing party must be contacted through the following entity: **Reuben Yeroushalmi, Yeroushalmi & Associates**, 3700 Wilshire Blvd., Ste. 480, Los Angeles, CA 90010; 213-382-3183. This letter constitutes notification that CAG 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 have been violated by the following companies and/or entities (hereinafter, "the violators") and during the time period referenced below:

NAMES OF COMPANIES LISTED ON EXHIBIT A

PERIOD OF VIOLATION

From: 11/04/2001 Through: 11/04/2005 And continuing thereafter

Consumer Product Exposures

While in the course of doing business, each and every day, during the time period referenced above, the violators have been and are knowingly and intentionally manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying and/or using asphalt and/or other products containing asphalt as an ingredient (hereinafter collectively "Asphalt Products" throughout the State of California, and thereby directly and indirectly exposing consumers and the public to various chemicals listed in Exhibit B hereto (the "Covered Chemicals"), each of which has been designated by the State of California as causing cancer and/or reproductive toxicity, without first giving clear and reasonable warning of that fact to such exposed persons either in the violators' Material Safety Data Sheets ("MSDS"), or on or with the Asphalt Products, where applicable, so that the warning could be passed on to persons or entities acquiring, purchasing, storing, handling, using or otherwise being exposed to Asphalt Products and/or the Covered Chemicals.

A "consumer product exposure" is an exposure that results from a person's acquisition, purchase, storage, consumption, or other reasonably foreseeable use of a consumer good, or any exposure that results from receiving a consumer service. Asphalt Products are consumer products. The acquisition, purchase, storage and/or other foreseeable use of Asphalt Products result in exposures through inhalation contact with Asphalt Products and the Covered Chemicals. The violators had control over the decision-making process concerning whether they should manufacture, generate, refine, blend, purchase, sell, distribute, transport, store, handle, apply and/or use the Asphalt Products and whether they should have provided the Proposition 65 warning in connection therewith. The violators manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied, used and/or caused exposures to the Asphalt Products and to Covered Chemicals, but they failed to provide the required warning so that the warning could be passed on. Consequently, the purchasers and users of the violators' Asphalt Products, during their acquisition, purchase, storage, handling, and/or other foreseeable use of them, came into inhalation contact with the Covered Chemicals, which caused contact with their mouths, throats, esophagi, and lungs.

The routes of exposure for the Consumer Product Exposures to the Covered Chemicals have been the inhalation contacts 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: ***ADDRESSES LISTED ON EXHIBIT A***

during the time period referenced above, during which violators manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied and/or used Asphalt Products or engaged in activities relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products, the violators thereby directly and indirectly have been

and are knowingly and intentionally exposing their employees to the Covered Chemicals, which have been designated by the State of California as causing cancer and/or reproductive toxicity, pursuant to California Code of Regulations, title 22, section 12000, without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). The violators also have been exposing employees of other companies throughout California to Asphalt Products and/or the Covered Chemicals because they are not including and have not included the required Proposition 65 warning in their MSDS, or on or with the Asphalt Products, where applicable.

An "occupational exposure" is an exposure in the workplace by the employer causing the exposure of any employee. The violators had control over the decision-making process concerning whether they should manufacture, generate, refine, blend, purchase, sell, distribute, transport, store, handle, apply, use and/or cause exposure to Asphalt Products and/or the Covered Chemicals, or engage in activities causing or relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals, and whether they should have provided the Proposition 65 warning in connection therewith. The violators manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied, used and caused exposures to the Asphalt Products and Covered Chemicals, but they failed to provide the required warning.

The sources of exposures are Asphalt Products and the Covered Chemicals. The employees exposed to said Asphalt Products and Covered Chemicals include, but are not limited to, the violators' employees whose tasks involve working in or near areas within a 50-foot radius of the violators' facility where the Asphalt Products and Covered Chemicals are manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied and/or used, and at an area along and within a 50-foot radius of the routes traveled during the manufacturing, generating, refining, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals within or off of the violators' facility to employees of companies who acquired, purchased, stored, used, handled or were otherwise exposed to violators' Asphalt Products and Covered Chemicals, or who were engaged in activities directly or indirectly relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals.

Said exposures took place in locations ranging from the violators' facilities/garage areas where the Asphalt Products and Covered Chemicals are manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied and/or used at the violators' principal places of business, as referenced below, to the locations of all activities relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying and/or using of Asphalt Products and/or Covered Chemicals, and from, on and in the vicinity of work vehicles transporting Asphalt Products and/or Covered Chemicals within or off the violators' facility, to the facilities/garage areas of other companies directly or indirectly involved in the business of manufacturing, refining, blending, purchasing, selling, distributing, transporting, storing, applying and/or using Asphalt Products throughout California, to other addresses where Asphalt Products and/or Covered Chemicals are manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied and/or used, as well as the areas along and within the routes traveled between the violator's principal places of business and the destination addresses by which the Asphalt Products and/or Covered Chemicals have been transported.

The routes of exposure for Occupational Exposures to the Covered Chemicals of the affected persons have included, but are not limited to, the smoke, dust, and fumes associated with the heating and use of Asphalt Products, and the activities relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying and/or using of Asphalt Products and/or Covered Chemicals, that have been breathed in via the ambient air by the exposed persons causing inhalation contact with their mouths, throats, esophagi, and lungs.

CAG also believes and alleges that the violators are also responsible for a route of exposure of dermal contact due to above-described employees (i.e., those working for violators and any other companies in the business of manufacturing, refining, blending, purchasing, selling, distributing, transporting, storing, handling, applying and/or using the Asphalt Products or Covered Chemicals throughout California) and/or those activities relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying and/or using of Asphalt Products or Covered Chemicals, and coming in direct contact (e.g., their bare skin touching) with the Asphalt Products or Covered Chemicals while mixing, heating, and/or transporting the Asphalt

Products or Covered Chemicals, as well as said employees coming in contact with Asphalt Products or Covered Chemicals by inadvertently allowing their work gloves, which had touched the Asphalt Products or Covered Chemicals, to come in contact with their bare skin. Said employees also sustained dermal contact when moving the Asphalt Products or Covered Chemicals in and out of the storage facilities/garage areas where the Asphalt Products or Covered Chemicals had been stored at the principal places of business of violators and/or any other companies in the business of manufacturing, refining, blending, purchasing, selling, distributing, transporting, storing, applying and/or using Asphalt Products or Covered Chemicals throughout California.

Said exposures took place in the California counties whose district attorneys received copies of this notice as listed in the attached certificate of service.

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. That 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.

Environmental Exposures

While in the course of doing business at, but not limited to: ***ADDRESSES LISTED ON EXHIBIT A***

during the time period referenced above, during which violators manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied, used and/or caused exposure to Asphalt Products and/or the Covered Chemicals, and engaged in activities relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals, the violators have been and are knowingly and intentionally exposing reasonably foreseeable members of the public to Asphalt Products and the Covered Chemicals, which are designated by the State of California to cause cancer and/or reproductive toxicity, pursuant to California Code of Regulations, Title 22, section 12000, without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 25249.6), because the violators have been manufacturing, refining, blending, purchasing, selling, distributing, transporting, storing, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals without providing the required Proposition 65 warning in their MSDS, or on or with the Asphalt Products, where applicable, so that the warning could be passed on to persons who might be exposed thereto by an means of any exposure that is not a "consumer product exposure" or "occupational exposure." The violators had control over the decision-making process concerning whether they should manufacture, generate, refine, blend, purchase, sell, distribute, transport, store, handle, apply, use and/or cause exposure to Asphalt Products and/or the Covered Chemicals, and whether they should have provided the Proposition 65 warning in connection therewith.

The violators manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied, used and/or caused exposure to the Asphalt Products and/or Covered Chemicals, but they failed to provide the required warning so that the warning could be passed on. Reasonably foreseeable members of the public who are allegedly exposed to the violators' Asphalt Products and Covered Chemicals include, but are not limited to, neighbors and residents, passersby, motorists, engineers, and inspectors not in the direct employment of violators, where all such persons are found in an area within a 50-foot radius of the locations at which Asphalt Products and/or Covered Chemicals are being manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied and/or used, including all activities relating to the manufacturing, refining, generating, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals.

The sources of exposures are Asphalt Products and the Covered Chemicals. The locations of the exposures range from the areas in and around within a 50-foot radius of the principal places of business of companies in the business of

manufacturing, refining, blending, purchasing, selling, distributing, transporting, storing, handling, applying, using and/or causing exposure to Asphalt Products and/or Covered Chemicals throughout California to the area along and within a 50-foot radius of the routes traveled between these companies' principal places of business and the addresses at which Asphalt Products and/or Covered Chemicals have been manufactured, generated, refined, blended, purchased, sold, distributed, transported, stored, handled, applied and/or used (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 Products and the Covered 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 Covered Chemicals 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.

* * *

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, CAG gives notice of the alleged violations to the violators and the appropriate governmental authorities. In the absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, CAG may file suit. This notice covers all violations of Proposition 65 that are currently known to CAG 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: CAG, 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, CAG 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: November 4, 2005

By: _____
REUBEN YEROUSHALMI
YEROUSHALMI & ASSOCIATES
Attorneys for ***Consumer Advocacy Group, Inc.***

Appendix A

OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL
PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACTION 1986
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations(see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release, or otherwise engage in activities involving those chemicals must comply with the following:

Clear and Reasonable Warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must:(l) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees.. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharge that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply If the discharger is able to demonstrate that a "significant amount" of the list chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys(those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations(Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to $2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION…

Contact the Office of Environmental Health Hazard Assessment's
Proposition 65 Implementation Office at (916) 445-6900.

§14000. Chemicals Required by State or Federal Law to Have been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which **Have Not Been Adequately Tested As Required.**

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required by state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to have been adequately tested as required [Health and Safety Code 25249.8)c)].

Readers should note a chemical that already has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984(SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients.

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's Office*)
4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing a true copy of the same, along with an unsigned copy of this declaration, 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: November 4, 2005 Place of Mailing: Los Angeles, CA

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

∇

Alleged Violators

The Names and Locations in Exhibit A

∇

Government Agencies

The locations in Exhibit C

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

DATED: November 4, 2005

BY: _____

Brian Keith Andrews

Exhibit A – Names of Companies Receiving Notice

1. Chino Engineering Constructors, Inc.
   16341 Chino Corona Road
   Chino, CA 91710

2. C.M. Peich, Inc.
   12608 Central Avenue
   Chino, CA 91710

3. Peterson Pipeline, Inc.
   1945 Bon View Avenue
   Ontario, CA 91761

4. Miller Blades, Inc.
   2205 Euclid Avenue
   Upland, CA 91784

EXHIBIT B – COVERED CHEMICALS

Carcinogens:

Acetaldehyde;
Arsenic (inorganic arsenic compounds);
Asbestos
Benza[a]anthracene;
Benzene;
Benzo[a]pyrene;
Benzo[b]fluoranthene;
Benzo[j]fluoranthene;
Benzo[k]fluoranthene;
Beryllium and Beryllium Compounds;
Bitumens; extracts of steam-refined and air-refined
1,3 Butadiene;
Cadmium and Cadmium compounds;
Carbazole;
Chromium (hexavalent compounds);
Chrysene;
Cobalt sulfate heptahydrate
Dibenz[a,h]anthracene;
Dibenz[a,j]acridine;
Dibenzo[a,e]pyrene;
Dibenzo[a,h]pyrene;
Dibenzo[a,i]pyrene;
Dibenzo[a,l]pyrene;
Dichloromethane (Methylene Chloride);
Diesel engine exhaust;
Formaldehyde (gas);
Indeno[1,2,3,-cd]pyrene;
Lead and Lead Compounds;
3-Methylcholanthrene;
5-Methylchrysene;
Naphthalene
Nickel and Certain Nickel Compounds;
Silica, Crystalline (airborne particles of respirable size);
Soots, tars and mineral oils (untreated and mildly treated oils and used engine oils);
Tetrachloroethylene (Perchloroethylene);
Toluene Diioscyanate;
Trichloroethylene.

Reproductive toxins:

Arsenic (inorganic oxides);
Benzene;
Cadmium;
Carbon Disulfide;
Carbon Monoxide;
Lead;
Mercury and Mercury Compounds;
Methyl chloride;
Toluene

Exhibit C– Names of Government Agencies Receiving Notice

San Bernardino County District Attorney 316 N. Mountain View Ave San Bernardino, CA 92415-0004	Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	

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 and expertise who has reviewed facts, studies, or other data regarding the exposure to the Covered 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 identify of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

Dated: November 4, 2005

By: _____
REUBEN YEROUSHALMI