

SIXTY-DAY NOTICE OF INTENT TO SUE FOR VIOLATION OF THE SAFE DRINKING WATER
AND TOXIC ENFORCEMENT ACT OF 1986

(Cal. Health & Saf. Code, §§ 25249.5 et seq.) ("Proposition 65")

Ricardo Claro Valdés, Chairman
Compañía Sudamericana de Vapores (CSAV)
99 Wood Avenue South, 9th Floor
Iselin, NJ 08830

November 10, 2005

Re: **Carbon Monoxide**

To Whom It May Concern:

Environmental World Watch, Inc. ("EWW") and **Golan Sassoon** (collectively "EWW & Sassoon") serve this Notice of Violation ("Notice") upon Compañía Sudamericana de Vapores (CSAV) ("CSAV") pursuant to and in compliance with Proposition 65. CSAV may contact EWW & Sassoon concerning this Notice through their entity designated person, their attorney, Reuben Yeroushalmi, Esq., 3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, telephone # 213-382-3183, facsimile # 213-382-3430. This Notice satisfies a prerequisite for EWW & Sassoon to commence an action against CSAV to enforce Proposition 65. The violations addressed by this Notice occurred in the following counties: Alameda, Los Angeles, and San Francisco. EWW & Sassoon are serving this Notice upon each person or entity responsible for the alleged violations, the California Attorney General, the district attorney for every county where alleged violations occurred, and the City Attorney for every city with a population (according to the most recent decennial census) of over 750,000 located within counties where the alleged violations occurred. If CSAV has a current registration with the California Secretary of State, which identifies a Chief Executive Officer, President, or General Counsel, EWW & Sassoon have addressed and served this Notice upon one of those persons.

Attached to this Notice is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary". The summary provides general information about Proposition 65. Copies of the summary are not required to be, and are not being, provided to the public enforcement agencies noted on the attached service list.

- EWW is a registered corporation based in California. Golan Sassoon is an individual. By sending this Notice, EWW & Sassoon are acting in the public interest pursuant to Proposition 65. EWW & Sassoon are dedicated to protecting the environment, improving human health, and supporting environmentally sound practices.
- This Notice concerns violations of the warning prong of Proposition 65, which states that "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual . . ."
- The Chemical known to the state for its reproductive toxicity relevant to this Notice is **Carbon Monoxide** (the "Listed Chemical"). The Governor of California added the Listed Chemical to the list

of chemicals known to the state for its reproductive toxicity more than twelve months before EWW & Sassoon served this Notice.

- The types of exposures addressed by this Notice are environmental and occupational. “An ‘occupational exposure’ is an exposure, in the workplace of the employer causing the exposure, to any employee.” (Cal. Code Regs. tit. 22, § 12601(c).) “An ‘environmental exposure’ is an exposure which may foreseeably occur as the result of contact with an environmental medium, including, but not limited to, ambient air, indoor air, drinking water, standing water, running water, soil, vegetation, or manmade or natural substances, either through inhalation, ingestion, skin contact or otherwise. Environmental exposures include all exposures which are not consumer products exposures, or occupational exposures.” (Cal. Code Regs. tit. 22, § 12601(d).)
- 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 the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is 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 Attorney General.
- The alleged exposures occurred in ships operated, or otherwise controlled, by CSAV, in the harbors in Alameda, Los Angeles, and San Francisco counties, where these ships operate, idle, and/or dock. These exposures occur principally off the property of CSAV. CSAV has caused these exposures by operating the internal combustion engines that power its ships in proximity of its employees and other persons who go near these ships. These internal combustion engines emit exhaust that contains the Listed Chemical. After and while these engines emit said exhaust, its employees and other persons who go near these ships breathe the ambient air near or on these ships and sustain exposures to the Listed Chemical. The principal route of exposure is through “inhalation exposure” via normal breathing of the ambient air. “Dermal exposure” also occurs by persons touching surfaces on or near these ships where the Listed Chemical has deposited onto said surfaces from the air. These exposures have occurred on every business day between November 10, 2001 and November 10, 2005 at harbors in Alameda, Los Angeles, and San Francisco counties. EWW & Sassoon have investigated CSAV and concluded that CSAV does not provide clear and reasonable warnings through signage or other means to its employees, customers, and other persons who go near the vessels that they may sustain exposures to the Listed Chemical through the aforementioned mechanisms before they are exposed. The exposures described above occur at concentrations that exceed any safe harbor level for the Listed Chemical as defined under Proposition 65.
- Therefore, in the course of doing business, CSAV, which on information and belief EWW & Sassoon assert has ten or more employees, has knowingly and intentionally exposed, and continues to expose, individuals to the Listed Chemical without first providing clear and reasonable warnings in violation of Proposition 65.



Reuben Yeroushalmi, Esq.

Yeroushalmi & Associates

3700 Wilshire Boulevard, Suite 480, Los Angeles, CA 90010, 213-382-3183

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: (1) 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)*
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S mail with the postage fully prepaid. Place of Mailing: Los Angeles, CA

Name and address of each violator to whom documents were mailed:

Name	Company	Address	City	State	Zip
Ricardo Claro Valdés	Compañía Sudamericana de Vapores (CSAV)	99 Wood Avenue South, 9th Floor	Iselin	NJ	08830

Name and address of each public prosecutor to whom documents were mailed:

Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012
Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	San Francisco City Attorney # 1 Dr. Carlton B. Goodlett Place, Suite 234 San Francisco, CA 94102	San Francisco County District Attorney 350 Bryant St, Rm 322 San Francisco, CA 94103

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

Dated:

By:

Brian Keith Andrews

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: November 10, 2005

By: 
REUBEN YERUSHALMI