Proposition 65 Notices

(re: Asphalt Paving and Other Asphalt Use)

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

Friday, December 09, 2005

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: 12/09/2001 Through: 12/09/2005 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: Dec 9/05

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

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: Dec 9/05

By: _____
REUBEN YEROUSHALMI

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: December 9, 2005 Place of Mailing: Los Angeles, CA

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

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Alleged Violators

The Names and Locations in Exhibit A

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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: DECEMBER 9, 2005

BY: Brian Keith Andrews

Brian Keith Andrews

Exhibit A – Names of Companies Receiving Notice

1. Cameron Bros. Const. Co., Inc.
   7766 Balboa Avenue
   San Diego, CA 92111

Exhibit C– Names of Government Agencies Receiving Notice

San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803	Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 San Diego, CA 92101