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

***This notice is given by Consumer Advocacy Group, Inc. ("Noticing Party").*** The recipients of this notice may contact Noticing Parties concerning this notice through their designated person within the entity: **Reuben Yeroushalmi, Yeroushalmi & Associates**, 3700 Wilshire Blvd., Ste. 480, Los Angeles, CA 90010; 213-382-3183. This letter constitutes notification that Noticing Parties believe and allege that the following companies and/or entities ("the violator") have violated Proposition 65, *The Safe Drinking Water and Toxic Enforcement Act* (Health & Safe. Code, §§ 25249.5, et seq.) during the time period referenced below:

Allied Grading & Paving Inc
Harry Stephen George
6914 Mission Gorge Rd B
San Diego CA 92120

PERIOD OF VIOLATION

From: 07/27/2002 Through: 07/27/2006 And continuing thereafter

**Consumer Product Exposures**

While doing business on each day during the referenced period, the violator have knowingly and intentionally manufactured, refined, generated, blended, purchased, sold, distributed, transported, stored, handled, applyied and/or used asphalt and/or other products containing asphalt ("Asphalt Products") throughout California, and thereby exposing consumers and the public to various chemicals listed in Exhibit A hereto (the "Covered Chemicals"), which have been designated by the State of California as causing cancer and/or reproductive toxicity pursuant to Cal. Code Regs., tit. 22, § 12000, without first giving clear and reasonable warning of that fact to such exposed persons so that the warning could be passed on to persons 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 violator 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 violator 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 violator' 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 route of exposure for the Consumer Product Exposures to the Covered Chemicals is inhalation as 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 doing business at, but not limited to, 6914 Mission Gorge Rd B San Diego CA 92120 during the referenced period, 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 violator thereby have knowingly and intentionally exposed their employees to the Covered Chemicals without first giving clear and reasonable warning of that fact to the exposed person (Health & Safe. Code, § 25249.6). The violator

also has been exposing employees of other companies in California to Asphalt Products and/or the Covered Chemicals because they have not provided the required Proposition 65 warning.

An "occupational exposure" is an exposure in the workplace by the employer causing the exposure of any employee. The violator 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 violator 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 the violator' employees whose tasks involve working in or near areas within a 50-foot radius of the violator' 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 violator' 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 violator' 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 violator' 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 violator' 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 include 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.

NOTICING PARTY also believes and alleges that the violator is 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 doing business at, but not limited to, 6914 Mission Gorge Rd B San Diego CA 92120 during the referenced period, 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 violator thereby has knowingly and intentionally exposed reasonably foreseeable members of the public to Asphalt Products and the Covered Chemicals, without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safe. Code, § 25249.6), because the violator has manufactured, refined, blended, purchased, shelled, distributed, transported, stored, applied, used and/or caused exposure to Asphalt Products and/or Covered Chemicals without providing the required Proposition 65 warning 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 violator 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 violator 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 violator' 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 exposures took place in the areas 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, NOTICING PARTY gives notice of the alleged violations to the violator 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, NOTICING PARTY may file suit. This notice covers all violations of Proposition 65 currently known to NOTICING PARTY from information now available to them. With the copy of this notice submitted to the violator, a copy of the following is attached: *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

**Note: NOTICING PARTY, in the interest of the public, are determined to resolve this matter in the least costly manner and one most beneficial to all parties involved. In order to encourage the expeditious and proper resolution of this matter, NOTICING PARTY may 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: 07/27/2006

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: 07/27/2006

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) Exhibit A: List of Covered Chemicals
3) Certificate of Merit: Health and Safety Code Section 25249.7(d)
4) Certificate of Merit: Health and Safety Code Section 25249.7(d) *Attorney General Copy* (*only sent to Attorney General's Office*)
5) 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: 07/27/2006 Place of Mailing: Los Angeles, CA

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

| | | |
|---|---|---|
| Office of the Attorney General<br>P.O. BOX 70550<br>Oakland, CA 94612-0550 | Allied Grading & Paving Inc<br>Harry Stephen George<br>6914 Mission Gorge Rd B<br>San Diego CA 92120 | San Diego County District Attorney<br>330 W. Broadway<br>San Diego, CA 92101` |
| San Diego City Attorney<br>City Center Plaza<br>1200 3rd Ave # 1100<br>San Diego, CA 92101 | | |

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

DATED: 07/27/2006 BY: _____

EREZ AHDUT

## EXHIBIT A – 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