60-Day Notice of Violations: Failure to Warn Public About Chemical Listed Under Health & Safety Code Section 25249.6

California Attorney General (Proposition 65 Enforcement Reporting)
ATTENTION: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland California 94612-0550

District Attorney, County of San Diego
Hall of Justice
330 West Broadway
San Diego, California 92101

City Attorney of San Diego
Civic Center Plaza
1200 Third Avenue, Suite 1620
San Diego, California 92101

City Attorney of Lemon Grove
3232 Main Street
Lemon Grove, California 91945

Dear Prosecutors:

I am **ANA M. GUTIÉRREZ** of 1520 Clifftop Avenue, San Marcos, California, 92078, telephone 760-736-8925. This letter constitutes notification, both from me individually as signed below and as a founding member of the **Encanto Gas Holder Victims** (an un-incorporated association that may be reached at 7042 Akins Avenue, San Diego, California, 92114), that **Carter Reese and Associates**, **San Diego Gas and Electric**, and **Sempra Energy** have violated Proposition 65 (1986), the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5). **Violator Carter Reese and Associates** is a real estate developer located at 2250 Fourth Avenue, Suite 300, San Diego, California 92101. **Violator San Diego Gas and Electric** is the former owner of the Encanto Gas Holder facility in Lemon Grove, California, with offices at 8326 Century Park, San Diego, California 92123-4150. **Violator Sempra Energy** is the holding company over San Diego Gas and Electric and admitted agent of San Diego Gas and Electric in the decommissioning and demolition of the Encanto Gas Holder facility during 2000-2001 and has offices located at 101 Ash Street, San Diego, California 92101-0317.

In particular, **Carter Reese and Associates**, **San Diego Gas and Electric**, and **Sempra Energy** have exposed and continue to expose numerous individuals within the Lemon Grove and San Diego neighborhoods immediately adjacent to the facility to friable asbestos that was the result of mechanical stripping processes used on a portion of over 9 miles of unearthed 30-inch diameter pipe that was the gas holding bottle of the facility. The extent of friable asbestos production during the demolition of the site was revealed during court testimony in the matter of ***United States v. San Diego Gas and Electric*** (June and July 2007), a federal environmental crimes case in which the jury reached verdicts of guilty on all counts against **San Diego Gas and Electric** not dismissed before reaching the jury. The initial guilty counts in this matter included the making of false statements to government inspectors prior to and during the site demolition, and several counts of violating applicable work place standards for asbestos abatement. The initially individuals found guilty included the IT Corporation demolition project manager. The period of this violation commenced on or about September 25, 2000, more than one year after the listed date for asbestos and has continued to the present. The route of occupational and environmental exposure to workers, nearby residents and other members of the public has been the inhalation, dermal contact, ingestion and other contact to inadequately-contained friable asbestos both during and after the decommissioning and demolition of the facility and after storm runoff material was allowed to enter the Encanto Branch of Chollas Creek, a federally-protected waterway that has a state-designated use as a drinking water source. A motion for a new trial has been granted in ***United States v. San Diego Gas and Electric*** in part over the validity of adoption of regulations under federal rule-making, but the composition of asbestos sample evidence is not in dispute. 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.

While in the course of doing business, **Carter Reese and Associates**, **San Diego Gas and Electric**, and **Sempra Energy** are knowingly and intentionally exposing people to this chemical

substance which has been designated by the state to cause cancer without first giving clear and reasonable warning to such persons (Health and Safety Code Section 25249.6). The method of warning is specified in the regulation (Title 22, California Code of Regulation Section 12601). The geographic location of the violation is within 1000 feet of the gas holder site (which has subsequently been permitted for development by the City of Lemon Grove as the 78-home Citrus Heights project); other environmental exposures have been located within a reasonable distance from storm runoff material deposited in the Chollas Creek stream bed to at least the intersection of Imperial Avenue and 68th Street in San Diego, including the residential and commercial lots within a distance of 1000 feet from the Encanto Branch of Chollas Creek. Despite being informed directly or indirectly of friable asbestos production by government inspectors from numerous local, state and federal agencies during the 2000-2001 demolition of the gas holder facility, there has been no admission by any aforementioned or subsequent landowning violator of the existence of friable asbestos at the gas holder site, and there is no factual basis for any claim of cleanup or other lawful abatement of the abandoned friable asbestos or RACM at that site. No Material Safety Data Sheet or other required hazardous material documentation for friable asbestos produced during demolition and subsequently transported, disposed or released is on record with any appropriate emergency planning agency or commission. The undersigned maker of this notice allege that the visible quantities of material discharged as storm runoff, resulting in sedimentation within Chollas Creek during the rainy seasons from September 2000 to the present as witnessed by myself and other visitors who met with me on Akins Avenue, do demonstrate the continued existence of such abandoned friable asbestos or RACM at that site, then the Encanto Gas Holder and now the proposed Citrus Heights development project. A presidential request for the United States to invoke the **Comprehensive Environmental Response, Compensation, and Liability Act** (CERLCA or Superfund) over the Encanto Gas Holder site is now under consideration as of February 29, 2008, by Region 9 of the United States Environmental Protection Agency.

Proposition 65 requires that notice and intent to sue be given to a violator a minimum of 60 days before the suit is filed. With this letter, the Encanto Gas Holder Victims association and the undersigned members of the association as individuals hereby give notice of the alleged violations to **Carter Reese and Associates**, **San Diego Gas and Electric**, **Sempra Energy**, and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are known to the Encanto Gas Holder Victims from information now available to us individually and as an association; other members may give individual notice at a later date without affecting this notice with respect to

the association or the undersigned individuals. With the copies of this notice submitted to **Violators Carter Reese and Associates**, **San Diego Gas and Electric**, and **Sempra Energy**, the text is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

If you have any questions, please contact me at the above telephone number or by mail at your earliest convenience.

Sincerely on (date) April 1st 2008

ANA M. GUTIÉRREZ
Encanto Gas Holder Victims
1520 Clifftop Avenue
San Marcos, California 92078

cc: VIOLATOR CARTER REESE AND ASSOCIATES
2250 Fourth Avenue
Suite 300
San Diego, California 92101

VIOLATOR SAN DIEGO GAS AND ELECTRIC
8326 Century Park
San Diego, California 92123-4150

VIOLATOR SEMPRA ENERGY
101 Ash Street
San Diego, California 92101-0317

CALIFORNIA CODE OF REGULATIONS TITLE 22. SOCIAL SECURITY, DIVISION 2. DEPARTMENT OF SOCIAL SERVICES - DEPARTMENT OF HEALTH SERVICES, SUBDIVISION 1. HEALTH AND WELFARE AGENCY, CHAPTER 3. SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986, ARTICLE 9. MISCELLANEOUS - APPENDIX A

Office of Environmental Health Hazard Assessment California Environmental Protection Agency
The Safe Drinking Water and Toxic Enforcement Act of 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 735 chemical listings have been included as of November 16, 2001. 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.

Discharges 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 listed 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.

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, ANA M. GUTIÉRREZ, 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 the noticing party.

(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 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: _____ 4/01/08
(Signature)

PROOF OF SERVICE

I, (printed name) Maria Gutierrez, hereby declare as follows:

I am a citizen of the United States, I am over the age of 18 years, and I am not a party to the within action. My address is 1520 Clifftop Ave San Marcos, CA 92078

On (date) April 1st 2008, I served copies of the attached 60-Day Notice for Failure to Warn Public About Chemicals Listed Pursuant to Health & Safety Code Section 25249.6 on the parties listed below by placing true and correct copies of the same in sealed envelopes with first class postage thereon and deposited in the United States Mail at San Marcos, California:

Edmund G. Brown, Jr.
California Attorney General (Proposition 65 Enforcement Reporting)
ATTENTION: Proposition 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland California 94612-0550

Bonnie M. Dumanis
District Attorney, County of San Diego
Hall of Justice
330 West Broadway
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8326 Century Park
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Donald E. Felsinger
Chairman and Chief Executive Officer
SEMPRA ENERGY
101 Ash Street
San Diego, California 92101-0317

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

4/01/08
Date

Maria Gutierrez
Signature