

**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 **ALEX J. LAZOK** of 1449 El Prado Avenue, Lemon Grove, California, 91945, telephone number 619-466-5425. This letter constitutes notification from me as signed below that **Carter Reese and Associates, San Diego Gas and Electric (SDG&E), and Sempra Energy** have violated Proposition 65 (1986), the Safe Drinking Water and Toxic Enforcement Act (commencing with Health and 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 SDG&E** is the former owner of the Encanto Gas Holder facility at or about 1350 San Altos Place in Lemon Grove, with **SDG&E** having offices at 8326 Century Park, San Diego, California 92123-4150. **Violator Sempra Energy** is the holding company for SDG&E and admitted agent of SDG&E in the decommissioning and demolition of the Encanto Gas Holder facility during 2000-2001, with offices located at 101 Ash Street, San Diego, California 92101-0317.

In particular, **Carter Reese and Associates, SDG&E, and Sempra Energy** have exposed and continue to expose numerous individuals within the Lemon Grove and San Diego neighborhoods

immediately adjacent to and downstream from the decommissioned Encanto Gas Holder facility to friable asbestos, a resulting byproduct of mechanical stripping processes used on a portion of over nine miles of unearthened 30-inch diameter pipe that was the gas holder bottle of the facility. The extent of friable asbestos production was made known to the public generally during court testimony for *United States v. San Diego Gas & Electric* (June and July 2007). The period of this violation commenced on or about August or September 2000, more than one year after the listed date for asbestos, and continues to the present. During testimony for *US v. SDG&E*, asbestos taken from the gas holder demolition as multiple samples by government inspectors was characterized as both over one percent (1%) and rendered friable by mechanical stripping processes used at the facility. The route of occupational and environmental exposures 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 demolition of the gas holder facility, where the mechanical stripping processes used to generate friable asbestos resulted in numerous complaints of noise, dust, and odors from the heated asbestos waste byproducts given off by those pipe-stripping processes, and from the subsequent release of both storm runoff residue into the adjacent Encanto Branch of Chollas Creek and any airborne dust from the old gas holder facility after decommissioning. 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 order in this matter must be submitted to the Attorney General.

While in the course of doing business, Carter Reese and Associates, SDG&E, 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 regulations (Title 22, California Code of Regulations Section 12601). The geographic location of the violation is at and within 1000 feet of the gas holder facility as previously noticed by **Sempra Energy**,

and other environmental exposures have occurred in that area and downstream along the Encanto Branch watershed of Chollas Creek within a corresponding distance from Encanto Branch storm runoff residue emitted from the gas holder facility as stated in the **Sempra Energy** notification to property owners and residents, where the ownership of the lot was and is by **SDG&E, Carter Reese and Associates**, and any subsequent purchaser.

Proposition 65 requires that notice and intent to sue be given to a violator a minimum of sixty days before the suit is filed. With this letter, the undersigned individual hereby gives notice of the alleged violations to **Carter Reese and Associates, SDG&E, and Sempra Energy**, and the appropriate government authorities. This notice covers all violations known to the undersigned individual and members of the Encanto Gas Holder Victims as notice was given in those previous **60-Day Notices** now recorded at the Enforcement Reporting website. With copies of this notice submitted to **Violators Carter Reese and Associates, SDG&E, 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)



5/27/08

ALEX J. LAZOK

cc: VIOLATOR CARTER REESE AND ASSOCIATES

VIOLATOR SDG&E

VIOLATOR SEMPRA ENERGY

**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 on 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, **ALEX J. LAZOK**, 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:  5/27/08
(Signature)

PROOF OF SERVICE

I, (printed name) Daniel McDowell, 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 2663 Calvin Lane El Cajon, CA 92020

On (date) 5/27/08, 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 Lemon Grove, 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
San Diego, California 92101

Reese A. Jarrett
CARTER REESE AND ASSOCIATES
2250 Fourth Avenue
Suite 300
San Diego, California 92101

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

Debra L. Reed
President And CEO
SAN DIEGO GAS AND ELECTRIC
8326 Century Park
San Diego, California 92123-4150

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

Donald E. Felsing
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.

5/27/08
Date

Daniel P. McDowell
Signature