

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 company ("the violator") has violated Proposition 65, *The Safe Drinking Water and Toxic Enforcement Act* (Health & Safe. Code, §§ 25249.5, et seq.) during the period referenced below:

Deena Marie Shaack
No Fault Asphalt, Inc.
2211 Old Middlefield Way
Mountain View, CA 94043

Deena Marie Shaack
No Fault Asphalt, Inc.
PO Box 50877
Palo Alto, CA 94303

From: 7/18/2005 **PERIOD OF VIOLATION** Through: 7/18/2008 And continuing thereafter

Occupational Exposures

While doing business at, but not limited to, 2211 Old Middlefield Way, Mountain View, CA, during the referenced period, violators manufactured, generated, refined, blended, purchased, transported, stored, handled, applied or used Asphalt Products or engaged in activities relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying, using or causing exposure to Asphalt Products. The violator thereby knowingly and intentionally exposed its 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 or the Covered Chemicals by not providing required Proposition 65 warnings.

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 it should manufacture, generate, refine, blend, purchase, transport, store, handle, apply, use or cause exposure to Asphalt Products or the Covered Chemicals, or engage in activities causing or relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying, using or causing exposure to Asphalt Products or Covered Chemicals, and whether it should have provided the Proposition 65 warning in connection therewith. The violator manufactured, generated, refined, blended, purchased, transported, stored, handled, applied, used and caused exposures to the Asphalt Products and Covered Chemicals, but it 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's employees whose tasks involve working in or near areas within a 50-foot radius of the violator's facility where the Asphalt Products and Covered Chemicals are manufactured, generated, refined, blended, purchased, transported, stored, handled, applied or used, and at an area along and within a 50-foot radius of the routes traveled during the manufacturing, generating, refining, blending, purchasing, transporting, storing, handling, applying, using or causing exposure to Asphalt Products or Covered Chemicals within or off of the violator's facility to employees of companies who acquired, purchased, stored, used, handled or were otherwise exposed to violator's Asphalt Products and Covered Chemicals, or who were engaged in activities directly or indirectly relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying, using or causing exposure to Asphalt Products or Covered Chemicals.

Said exposures took place in locations ranging from the violator's facilities/garage areas where the Asphalt Products and Covered Chemicals are manufactured, generated, refined, blended, purchased, transported, stored, handled, applied

or used at the violator's principal places of business, as referenced below, to the locations of all activities relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying or using of Asphalt Products or Covered Chemicals, and from, on and in the vicinity of work vehicles transporting Asphalt Products or Covered Chemicals within or off the violator's facility, to the facilities/garage areas of other companies directly or indirectly involved in the business of manufacturing, refining, blending, purchasing, transporting, storing, applying or using Asphalt Products throughout California, to other addresses where Asphalt Products or Covered Chemicals are manufactured, generated, refined, blended, purchased, transported, stored, handled, applied 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 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, transporting, storing, handling, applying or using of Asphalt Products or Covered Chemicals, that have been inhaled 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, transporting, storing, handling, applying or using the Asphalt Products or Covered Chemicals in California) or those activities relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying 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, 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 violator or any other companies in the business of manufacturing, refining, blending, purchasing, transporting, storing, applying or using Asphalt Products or Covered Chemicals in 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, 1019 3rd Ave., Chula Vista, CA 91911, during the referenced period, violator manufactured, generated, refined, blended, purchased, transported, stored, handled, applied, used or caused exposure to Asphalt Products or the Covered Chemicals, and engaged in activities relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying, using or causing exposure to Asphalt Products 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 or caused exposure to Asphalt Products 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 it should manufacture, generate, refine, blend, purchase, transport, store, handle, apply, use or cause exposure to Asphalt Products or the Covered Chemicals, and whether it should have provided the Proposition 65 warning in connection therewith.

The violator manufactured, generated, refined, blended, purchased, transported, stored, handled, applied, used or caused exposure to the Asphalt Products 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's 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 or Covered Chemicals are being manufactured, generated, refined, blended, purchased, transported, stored, handled, applied or used, including all activities relating to the manufacturing, refining, generating, blending, purchasing, transporting, storing, handling, applying, using or causing exposure to Asphalt Products 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, transporting, storing, handling, applying, using or causing exposure to Asphalt Products or Covered Chemicals throughout California to the area along and within a 50-foot radius of the routes traveled between violator's principal places of business and the addresses at which Asphalt Products or Covered Chemicals have been manufactured, generated, refined, blended, purchased, transported, stored, handled, applied 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 inhaled 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. Exposures took place both on and off violator's premises.

* * *

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 it. 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*.

Dated: July 18, 2008

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

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.

No Fault Asphalt, 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: July 18, 2008

By: _____

REUBEN YERUSHALMI

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 (Attorney General Copy): Factual information sufficient to establish the basis of the certificate of merit (only sent to Attorney General)
- 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 on the date shown below.

Place of Mailing: Los Angeles, California

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

Office of the Attorney General P.O. BOX 70550 Oakland, CA 94612-0550	Deena Marie Shaack No Fault Asphalt, Inc. 2211 Old Middlefield Way Mountain View, CA 94043	Deena Marie Shaack No Fault Asphalt, Inc. PO Box 50877 Palo Alto, CA 94303
Alameda County District Attorney 1225 Fallon St, Room 900 Oakland, CA 94612	Santa Clara County District Attorney 70 W Hedding St. San Jose, CA 95110	San Jose City Attorney 200 E. Santa Clara Street, 16th Floor San Jose, CA 95113- 1905

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

DATED: 7/18/2007

BY: _____

RABIN SAIDIAN

EXHIBIT A – COVERED CHEMICALS

Carcinogens:

Acetaldehyde;
Arsenic (inorganic arsenic compounds);
Asbestos
Benzo[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 Diisocyanate;
Trichloroethylene.

Reproductive toxins:

Arsenic (inorganic oxides);
Benzene;
Cadmium;
Carbon Disulfide;
Carbon Monoxide;
Lead;
Mercury and Mercury Compounds;
Methyl chloride;
Toluene