

VIA U.S. MAIL

Bill Canning  
Rancho Roofing, Ltd.  
11760 Sorrento Valley Rd # K  
San Diego, Ca 92121

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

Consumer Advocacy Group, Inc., who gives this notice, must be contacted through **Reuben Yeroushalmi, Esq., Yeroushalmi & Associates**; 3700 Wilshire Blvd. Ste. 480, Los Angeles, CA 90010; 213-382-3183. This letter constitutes notification that Consumer Advocacy Group, Inc. believes that Rancho Roofing, Ltd. ("Violator") has violated *The Safe Drinking Water and Toxic Enforcement Act* (Health & Saf. Code, § 25249.5, et seq. and Cal. Code Regs., tit. 22, § 12601 ("Proposition 65")) during the period referenced below:

PERIOD OF VIOLATION

From: October 23, 2005 Through October 23, 2008 and continuing thereafter.

**Environmental Exposures**

While in the course of doing business at, but not limited to:

11760 Sorrento Valley Rd  
San Diego, Ca 92121

during the period referenced above, Violator installed, repaired, removed, and replaced roofs. Violator has been and is knowingly and intentionally exposing foreseeable members of the public, including neighbors and residents, passersby, motorists, and inspectors not employed by Violator and found within a 50 foot radius of where Violator performed *roofing* work, to products containing *Asphalt*, including hot asphalt, and its constituent chemicals as listed below and designated to cause **cancer** and **reproductive toxicity**, pursuant Cal. Code Regs., tit. 22, § 12000, without first giving clear and reasonable warning of such to the exposed persons (Proposition 65). The source of exposures is *Asphalt*, including hot asphalt, and its constituent chemicals. The locations of exposures include areas within a 50-foot radius of Violator's places of business, as referenced above, where Violator heated and mixed *Asphalt*, and along and within 50 feet of the route Violator traveled between said places of business and where Violator stored *roofing* materials and performed *roofing* work. The locations of exposures also occurred within a 50-foot radius where Violator performed *roofing* work. Because of these activities, members of the public breathed in via the ambient air, and caused contact with their mouths, throats, esophagi, and lungs, *Asphalt*, including hot asphalt, associated fumes, and its constituent chemicals. The route of exposure for Environmental exposures to the chemicals listed below has been the inhalation contact described above. Said exposures took place in the counties whose district attorneys received copies of this notice as listed in the attached certificate of service. Some of the exposures for which a warning is allegedly required occurred beyond the property owned or controlled by Violator.

**Occupational Exposures**

While in the course of doing business at, but not limited to:

11760 Sorrento Valley  
San Diego, Ca 92121

during the period referenced above, Violator has been and is knowingly and intentionally exposing Violator's employees to *Asphalt*, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and interply layers of asphalt or coal tar, and its constituent chemicals as listed below and designated to cause cancer and

reproductive toxicity, pursuant Cal. Code Regs., tit. 22, § 12000, without first giving clear and reasonable warning of such to the exposed persons (Proposition 65). The source of exposures is *Asphalt*, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar, and its constituent chemicals as listed below.

The employees exposed to said chemicals include roofing contractors, drivers, roofing installers, and workers otherwise involved in the installation, repair, and replacement of roofs. Exposures occurred in storage facilities/garage areas at Violator's places of business, where Violator prepared and heated *Asphalt* and stored "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar. Exposures also occurred where Violator performed roofing installations, and along the routes by which Violator transported *Asphalt* from said places of business to where Violator performed *roofing* work. Exposures were created by heated *Asphalt*, including hot asphalt, *Asphalt* smoke, and associated fumes, and particulate matter and other airborne constituents, including gaseous emissions, released from "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar by removing these products from packaging and tearing out said products from old roofing in preparation of re-roofing. The exposed persons breathed in these materials via the ambient air (which was a direct result of participating in applying *Asphalt* to roofing surfaces, handling roofing materials for storage, application, and transportation, or being near where hot asphalt was mixed, heated, or transported) causing a route of exposure of inhalation contact with their mouths, throats, esophagi, and lungs.

**Consumer Advocacy Group, Inc.** alleges that Violator caused a route of exposure of dermal contact due to employees touching *Asphalt*, while mixing, heating, transporting, and then applying *Asphalt*, including hot asphalt, "cold" asphalt emulsions and adhesives, asphalt shingles, and inter-ply layers of asphalt or coal tar, to surfaces at work locations, and by allowing work gloves, which had touched the asphalt, to touch their skin. Employees also sustained dermal contact when moving asphalt products in and out of the storage facilities/garage areas at Violator's places of business, as referenced above. Exposures took place in the counties whose district attorneys received copies of this notice as listed in the attached certificate of service.

The roofing products used by Violator's employees that contain or result in exposure to asphalt or coal tar, and any equipment used in the storage, installation, repair, removal, and transportation of such products whose use may cause persons to be exposed to asphalt or coal tar, include: binders, felts, base sheets, cap sheets, surfacing materials, membrane systems, insulation materials, substrates, shingles, roll roofing, felt underlayments, flashings, coatings, mastics, cements, adhesives, caulking compounds, roofing kettles, tank trucks, vehicles used to tow roofing kettles to, from, and within job sites, torches, hot-air welders, other heating equipment, spreaders, felt-laying machines, roof removal equipment, including roof cutters, and hand tools.

*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 (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. (Cal. Code Regs., tit. 8, § 338, subd. (b).)

For each such type and means of exposure, Violator has exposed and is exposing persons to:

#### CARCINOGENS

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Benz[a]anthracene	Chrysene	Toluene diisocyanate	Formaldehyde (gas)
5-Methylchrysene	Nickel and Nickel	Dichloromethane	Benzene

	Compounds	(Methylene Chloride)	
Lead and lead compounds	Benzo[b]flouranthene	Benzo[k]flouranthene	Benzo[a]pyrene
Indeno[1,2,3-cd]pyrene	Acetaldehyde	Beryllium and Beryllium compounds	Arsenic (inorganic arsenic compounds)
Cadmium and Cadmium compounds	Chromium (hexavalent compounds)	Tetrachloroethylene (Perchloroethylene)	Trichloroethylene
Formaldehyde (gas)	Chrysene	Dibenz[a,h]anthracene	1, 3-butadiene
Carbazole	dibenz[a,j]acridine	Dibenz[a,h]anthracene	dibenzo[a,e]pyrene
dibenzo[a,h]pyrene	dibenzo[a,i]pyrene	dibenzo[a,l]pyrene	Silica, Crystalline (airborne particles of respirable size)

**REPRODUCTIVE TOXINS**

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Toluene	Carbon Disulfide	Benzene	Lead
Mercury and Mercury compounds	Arsenic (inorganic oxides)	Cadmium	

Proposition 65 (Health & Saf. Code, § 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, **Consumer Advocacy Group, Inc.** gives notice of the alleged violations to Violator and appropriate governmental authorities. In absence of any action by the appropriate governmental authorities within 60 days of the sending of this notice, **Consumer Advocacy Group, Inc.** may file suit. This notice covers all violations of Proposition 65 that **Consumer Advocacy Group, Inc.** currently knows of 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: 10/23/08

YEROUSHALMI & ASSOCIATES

By: \_\_\_\_\_



REUBEN YEROUSHALMI

Attorney 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 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.

#### **§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.

**CERTIFICATE OF MERIT**

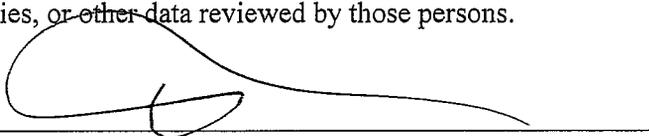
Health and Safety Code Section 25249.7(d)

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 or expertise who has reviewed facts, studies, or other data regarding the 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: 10/23/08

By:

  
REUBEN YEROUSHALMI

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)*
- 4) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary

by enclosing copies of the same in a sealed envelope, along with an unsigned copy of this declaration, addressed to each person shown below and depositing the envelope in the U.S mail with the postage fully prepaid. Place of Mailing: Los Angeles, CA

**Name and address of each violator to whom documents were mailed:**

Rancho Roofing, Ltd.  
Bill Canning  
11760 Sorrento Valley Rd # K  
San Diego, Ca 92121

**Name and address of each public prosecutor to whom documents were mailed:**

Office of the Attorney General P.O. Box 70550 Oakland, CA 94612-0550	Los Angeles City Attorney 200 N Main St Ste 1800 Los Angeles CA 90012	Los Angeles County District Attorney 210 W Temple St, 18th Floor Los Angeles, CA 90012
San Diego County District Attorney 330 W. Broadway, Ste 1300 San Diego, CA 92101-3803	San Diego City Attorney City Center Plaza 1200 3rd Ave # 1100 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: 10-26-2008

By: \_\_\_\_\_

Rabin Saidian