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LOS ANGELES
ORANGE COUNTY
SAN DIEGO
SAN FRANCISCO
SANTA BARBARA
WESTLAKE VILLAGE

FILE NO. 47715.057

November 16, 2009

VIA CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Pathway Surfaces, Inc.
15556 Perkins Road
Baton Rouge, Louisiana 70810

Re: 60-Day Notice of Violation of The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)

To Whom It May Concern:

As counsel for the Los Angeles Unified School District (the "District"), I am hereby providing this letter as notification, pursuant to California Health and Safety Code Section 25249.7(d)(1), that the District intends to bring suit against Pathway Surfaces, Inc. ("Pathway") for, among other claims, violations of California Health and Safety Code Section 25249.6 (also known as "Proposition 65"). Section 25249.6 provides:

"No person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual, except as provided in Section 25249.10."

The following discussion will provide you with a greater understanding regarding the location of the exposure, the type of exposure, the method of exposure, and the approximate length of time the District properties at issue have been exposed to Proposition 65 listed contaminants released from and present in crumb rubber infill present in artificial or synthetic turf product located at two schools owned and maintained by the District. The following is intended to provide you with facts sufficient to enable you to undertake a meaningful investigation of the crumb rubber infill component of the synthetic turf product installed by Pathway, as well as the District's exposed property, and hereafter participate in the remedy of any environmental contamination that may have occurred on the premises of the District.

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I. LOCATION OF SOURCE OF EXPOSURE

The violation covered by this notice consists of the identified presence and potential release of and exposure to lead and carbon black from the crumb rubber infill that was installed by Pathway at Hyde Park Early Education Center, located at 6428 11th Ave., Los Angeles, California and Evergreen Early Education Center, located at 1027 N. Evergreen Ave. Los Angeles, California (hereinafter the "Affected Schools"). According to the District's records, Pathway installed the artificial turf at the Affected Schools in or about September, 2005 and January, 2006.

Tests performed by the District have shown that the infill rubber used in conjunction with the artificial turf product contains constituents such as styrene butadiene rubber ("SBR") and "crumb rubber." Based on tests conducted by the District, the crumb rubber used in the artificial turf installed by Pathway contains lead. Further, based on the District's understanding of similar products, the crumb rubber very likely contains carbon black as well.

II. NATURE OF EXPOSURE

A Proposition 65 exposure risk is posed by the lead and carbon black contaminants contained in the crumb rubber infill present and used at the Affected Schools. Lead and carbon black are identified as chemicals known to cause cancer on the State of California's Proposition 65 list. Lead is further identified as a chemical known to cause reproductive and developmental toxicity. These contaminants of concern have been identified as originating in and being present in the crumb rubber infill used in conjunction with the artificial turf product.

The Federal Department of Health and Human Services, Centers for Disease Control and Prevention ("CDC") has issued an official CDC Health Advisory on June 18, 2008, relating to artificial or synthetic turf. The CDC Health Advisory states that as artificial turf ages and weathers, lead is released in dust that can be ingested or inhaled, which increases the risk of harmful exposure. The CDC Health Advisory further states that children under 6 years of age are more likely to be adversely affected by exposure to lead because of the increased air intake in relation to body size, they have increased contact with the surface of the fields and are more prone to engage in hand-to-mouth contact dust ingestion. Children also more readily transport lead and carbon black dust back to their homes on their clothing. Moreover, developing systems of children make them more susceptible to the adverse health effects of lead intake.

The State of New Jersey Department of Health and Senior Services ("NJDHSS") has also issued a Health Release announcing that "laboratory testing has shown that lead can be dissolved from artificial turf fibers and turf field dust under conditions that simulate the human

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digestive process, leaving the lead available for the body to absorb.” The NJDHSS further stated, “We found that lead does dissolve from artificial turf fibers and turf dust under stomach acid conditions, and is available to be absorbed from the small intestine into the bloodstream.” As such, children playing on these artificial surfaces are at risk due to exposure to lead contained in the turf dust, which can be taken up through dust inhalation, dust ingestion, hand-to-mouth contact or dermal skin absorption.

III. EXTENT OF THE EXPOSURE

In or about September, 2005, the District contracted with Pathway to install artificial turf at the Affected Schools. Artificial turf was installed in the playgrounds and playing fields at the Affected Schools. These locations are used by students between the ages of three and six for several hours per day throughout the school year. These locations are outdoors and exposed to the intense California sunshine and summer temperatures that oftentimes exceed 100 degrees Fahrenheit. Sunlight and heat contribute to the break-down of both the artificial turf and crumb rubber infill, and result in increased dust generation.

IV. ROUTE OF EXPOSURE AND ITS POTENTIAL HEALTH RISKS

The presence of the crumb rubber infill, used in conjunction with the artificial turf product, at the Affected Schools has caused the release of chemicals known to the State of California to cause cancer and reproductive toxicity that is threatening children and the Affected Schools. Currently, the identified chemicals of concern are lead and carbon black. (However, as noted herein, additional testing may establish and confirm the presence of other chemicals of concern). The routes of exposure are dermal absorption, inhalation, and oral ingestion both at the Affected Schools and potentially at homes, as the children carry and transport the turf and/or rubber dust on their clothing. The potential health risks for lead are well known and documented in the medical literature. These risks include cancer, neurological toxicity, decreased IQ and reproductive and developmental toxicity.

Carbon black, which is identified as a “hazardous material” and human carcinogen by the State of California’s Office of Environmental Health Hazard Assessment (“OEHHA”), is produced by the incomplete combustion of heavy petroleum products. The scientific literature states that, in conjunction with PAHs, the carcinogenic potential of carbon black is enhanced. The International Agency for Research on Cancer (“IARC”) has also identified carbon black as a possible human carcinogen.

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V. TIME PERIOD DURING WHICH VIOLATION HAS OCCURRED

The contaminant exposures and potential soil releases have occurred since about September, 2005 at the Affected Schools. The extent of any releases into the air and soil is not known at this time and may be the subject of future testing.

Moreover, during this time period, Pathway has not provided potentially-exposed individuals with a clear and reasonable warning that the crumb rubber infill poses a risk of exposure to any chemical regulated under Proposition 65. Specifically, Pathway has failed to provide proper notice or warning that the crumb rubber infill contains lead or carbon black.

VI. CONCLUSION

Based upon the foregoing, the District believes that the crumb rubber infill used in conjunction with the artificial turf product has exposed the students, faculty, staff and the property at the Affected Schools to lead and carbon black. Such exposure also poses a potential threat to future students, faculty and staff at the Affected Schools. Moreover, the use of the crumb rubber infill in conjunction with the artificial turf product may also have exposed the students, faculty, staff and the premises of the Affected Schools to a number of other suspected carcinogens and reproductive toxins that are subject to regulation under Proposition 65. It may be necessary at a later date to conduct additional sampling and testing for potential exposure to other Proposition 65 chemicals, depending upon the results of further investigation and the information provided by Pathway as a result of this notice.

Attached please find a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986" (Proposition 65), prepared by OEHHA, the lead state agency for the implementation of the Act. ("Exhibit A").

Please direct all questions concerning this notice of violation to the following addressees: Barry C. Groveman, Esq. or Ryan Hiete, Esq., Musick, Peeler & Garrett LLP, One Wilshire Boulevard, 624 South Grand Avenue, Suite 2100, Los Angeles, California 90017-3383, (213) 629-7615 or (213) 629-7718, respectively. Should you require more information regarding the Affected Schools and/or exposure risks, the District will provide you with any available reports.

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For general information concerning the provisions of Proposition 65, please contact OEHHA, Proposition 65 Implementation Office, at (916) 445-6900.

Very truly yours,



Adam D. Wieder
MUSICK, PEELER & GARRETT LLP

Enclosures
ADW/pw

cc: Jay F. Golida, Esq., LAUSD
Barry C. Groveman, Esq., MPG
K. Ryan Hiete, Esq., MPG

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CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Adam D. Wieder, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day (60) notice in which it is alleged that the parties identified in the notices have violated California Health and Safety Code Section 25249.6 by failing to provide clear and reasonable warnings.

2. I am the attorney for the noticing party, Los Angeles Unified School District (the "District").

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 plaintiff's 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: November 16, 2009

MUSICK, PEELER & GARRETT LLP

By: 

Adam D. Wieder, Esq.
Attorneys for Los Angeles Unified School
District