

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

ADAM D. WIEDER
a.wieder@mpglaw.com
(805) 418-3100

2801 TOWNSGATE ROAD, SUITE 200
WESTLAKE VILLAGE, CALIFORNIA 91361

TELEPHONE: (805) 418-3100
FACSIMILE: (805) 418-3101
WWW.MUSICKPEELER.COM

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

FILE NO.: 47715.057

January 22, 2010

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Forever Green Athletic Fields, Inc.
Attention: Keith Day
1961 Hartel St.
Levitown, PA 19057

Capitol Services Inc.
Agent for Service of Process
1225 8th St. Ste. 580
Sacramento, CA 95814

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 Forever Green Athletic Fields, Inc ("Forever Green") 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 thirteen (13) 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

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

Forever Green Athletic Fields, Inc.
Capitol Services Inc.
January 22, 2010
Page 2

provided by Forever Green to the District, 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.

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 provided by Forever Green and installed at 13 schools, including elementary, middle and high schools, owned and operated by the District (hereinafter the "Affected Schools"). The Affected Schools are located in the City of Los Angeles, County of Los Angeles, California, and are further described in "Exhibit A" attached hereto and incorporated herein by reference, which lists the school properties and the approximate square footage of the artificial turf product at each school.

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 supplied by Forever Green contains lead. Further, a material safety data sheet ("MSDS) relating to the crumb rubber used by Forever Green states that the crumb rubber contains carbon black. Attached hereto as "Exhibit B" and incorporated herein by reference is a copy of the MSDS for the crumb rubber used by Forever Green.

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

Forever Green Athletic Fields, Inc.
Capitol Services Inc.
January 22, 2010
Page 3

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 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

From about early 2005, the District contracted with Forever Green to install artificial turf manufactured and sold by Forever Green at the Affected Schools listed on Exhibit A. 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

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

Forever Green Athletic Fields, Inc.
Capitol Services Inc.
January 22, 2010
Page 4

("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.

V. TIME PERIOD DURING WHICH VIOLATION HAS OCCURRED

The contaminant exposures and potential soil releases have occurred since at least early 2005 at each of 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, Forever Green 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, Forever Green 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 Forever Green 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 C").

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.

MUSICK, PEELER & GARRETT LLP
ATTORNEYS AT LAW

Forever Green Athletic Fields, Inc.
Capitol Services Inc.
January 22, 2010
Page 5

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
for MUSICK, PEELER & GARRETT LLP

ADW:lg

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

SERVICE LIST

Forever Green Athletic Fields, Inc.
Attention: Keith Day
1961 Hartel St.
Levitown, PA 19057

Capitol Services Inc.
Agent for Service of Process
1225 8th St. Ste. 580
Sacramento, CA 95814

Honorable Edmund G. Brown, Jr.
Attorney General
California Department of Justice
P.O. Box 944255
Sacramento, California 94244-2550

Honorable Carmen Trutanich, City Attorney
City of Los Angeles
800 City Hall East, 8th Floor
200 North Main Street
Los Angeles, California 90012

Honorable Steve Cooley, District Attorney
County of Los Angeles
210 West Temple Street, Suite 18000
Los Angeles, California 90012-3210

Wayne Nastri, Administrator
US EPA Region 9
75 Hawthorne Street
San Francisco, California 94105

Hamid Saebfar, Chief
School Program and Engineering/Geology
Support Division
Department of Toxic Substances Control
9211 Oakdale Avenue
Chatsworth, California 91311

William Jones, Division Chief
Health Hazardous Materials Division
Los Angeles County Fire Department
5825 Rickenbacker Road
Commerce, California 90040

EXHIBIT A

FOREVER GREEN SCHOOLS

LOC. CODE	SCHOOL	TYPE	SIZE	MANUFACTURER
9592	CANOGA PARK	EEC	12 X 27	FOREVER GREEN
9530	LEMAY	EEC	8 X 21	FOREVER GREEN
9549	PINEWOOD	EEC	8 X 20 11 X 16	FOREVER GREEN
9572	VAUGHN	EEC	11 X 26	FOREVER GREEN
9565	SYLVAN PARK	EEC	11 X 25	FOREVER GREEN
9582	FAIR	EEC	14 X 20	FOREVER GREEN
9547	PACOIMA	EEC	22 X 22	FOREVER GREEN
9505	BELEVEDERE	EEC	11 X 11	FOREVER GREEN
9512	DACOTAH	EEC	11 X 17	FOREVER GREEN
9562	SOTO	EEC	9 X 11	FOREVER GREEN
9515	EASTMAN	EEC	10 X 26	FOREVER GREEN
9591	MIKES, WANDA	EEC	29 X 19 14 X 19	FOREVER GREEN
9561	66 TH STREET	EEC	18 X 26	FOREVER GREEN

**CRUMB RUBBER
MATERIAL SAFETY DATA SHEET**

CRM Co., LLC
15800 South Avalon Boulevard
Rancho Dominguez, CA 90220

Emergency Phone Number (310) 538-2222

I. PRODUCT IDENTIFICATION/CHEMICAL & PHYSICAL CHARACTERISTICS

PRODUCT NAME: *Crumb Rubber* Solubility in Water: *Insoluble*
APPEARANCE: *Black granular particles* **ODOR:** *Smell of vulcanized rubber*
SPECIFIC GRAVITY: *1.1 to 1.2 g/cc* **MELTING POINT:** *N/A*
VAPOR PRESSURE: *N/A* **VAPOR DENSITY:** *N/A*
EVAPORATION RATE: *N/A* **BOILING POINT:** *N/A*

II. HAZARDOUS INGREDIENTS

MATERIAL (CAS)	WT%	OSHA PEL	ACGIH TLV
Napthenic/Aromatic Oil (64742-04-07)	<i>Aprox. 22%</i>		<i>(5.0 mg/m³)</i>
Carbon Black (133-86-4)	<i>Aprox. 25%</i>	<i>3.5 mg/m³</i>	
Talc, respirable dust (14807-9-6)	<i>Less than 5%</i>	<i>2.0 mg/m³</i>	<i>(2.0 mg/m³)</i>
Zinc Oxide, fume (1314-12-2)	<i>Less than 3%</i>	<i>5.0 mg/m³</i>	<i>(10mg/m³)</i>
Zinc Oxide, total dust (1314-12-2)	<i>Less than 3%</i>	<i>10 mg/m³</i>	
Respirable fraction	<i>Less than 3%</i>		

III. FIRE AND EXPLOSION HAZARD DATA

FLASH POINT: Ignition temperature of dust cloud: *320°C (608°F) Approximately*

LEL: *0.025 ounce/cubic foot*

UEL: *N/A*

EXTINGUISHING MEDIA: *Water, Foam, Dry Powder (DO NOT USE HIGH PRESSURE WATER)*

SPECIAL FIRE FIGHTING PROCEDURES: *Noxious gases may be formed under fire conditions, wear OSHA approved self-contained breathing apparatus.*

UNUSUAL FIRE AND EXPLOSION HAZARDS: *Dust may be explosive if mixed with air in critical proportions and in the presence of an ignition source. The hazard is similar to that of many organic solids*.*

**Estimate is based on data for 200 mesh synthetic and hard natural rubber.*

IV. REACTIVITY DATA

STABLE: *YES*

CONDITIONS TO AVOID: *Conditions that will cause ignition or burning.*

INCOMPATIBILITY (material to avoid): *Avoid strong oxidizing agents.*

HAZARDOUS DECOMPOSITION OR BY-PRODUCTS: *Thermal decomposition may produce carbon monoxide, carbon dioxide, fume dust, sulfur dioxide, zinc oxide, liquid and gaseous hydrocarbons.*

HAZARDOUS POLYMERIZATION: *Will not occur.*

CONDITIONS TO AVOID: *Do not store hot material in hoppers due to the possibility of spontaneous combustion.*

V. HEALTH HAZARD DATA

ROUTES OF ENTRY: *Inhalation*

HEALTH HAZARDS (Acute and Chronic): *The product contains fine particles and can contain fine fibers that may cause itching. Otherwise, no health hazards are known. This material is generally thought to be a nuisance dust.*

CARCINOGENICITY: *Rubber, synthetic or natural, is not listed as a carcinogen.*

MEDICAL CONDITIONS GENERALLY AGGRAVATED BY EXPOSURE: *None are known, however, it could potentially aggravate allergies to dust exposure or inhalation.*

EMERGENCY AND FIRST AID PROCEDURES: *Normal washing of skin with soap and water, ordinary means of personal hygiene are adequate.*

VI. PRECAUTIONS FOR SAFE HANDLING AND USE

STEPS TO BE TAKEN IN CASE MATERIAL IS RELEASED OR SPILLED: *Sweep or vacuum into disposal containers.*

WASTE DISPOSAL METHOD: *Product not defined as a hazardous waste. Dispose of in accordance with federal, state, and local regulations.*

PRECAUTIONS TO BE TAKEN IN HANDLING AND STORING: *Do not store near flame or ignition source. Do not store hot material in tubs or containers where spontaneous combustion could occur.*

OTHER PRECAUTIONS: *If material burns, oils will be released. These must be disposed of in accordance with federal, state, and local regulations.*

EXHIBIT C

SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986
(Chapter 6.6 added by Proposition 65 1986 General Election)

25249.5. Prohibition On Contaminating Drinking Water With Chemicals Known to Cause Cancer or Reproductive Toxicity. No person in the course of doing business shall knowingly discharge or release a chemical known to the state to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water, notwithstanding any other provision or authorization of law except as provided in Section 25249.9.

25249.6. Required Warning Before Exposure To Chemicals Known to Cause Cancer Or Reproductive Toxicity. 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.

25249.7. Enforcement.

(a) Any person that violates or threatens to violate Section 25249.5 or 25249.6 may be enjoined in any court of competent jurisdiction.

(b) (1) Any person who has violated Section 25249.5 or 25249.6 shall be liable for a civil penalty not to exceed two thousand five hundred dollars (\$2500) per day for each violation in addition to any other penalty established by law. That civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.

(2) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:

(A) The nature and extent of the violation.

(B) The number of, and severity of, the violations.

(C) The economic effect of the penalty on the violator.

(D) Whether the violator took good faith measures to comply with this chapter and the time these measures were taken.

(E) The willfulness of the violator's misconduct.

(F) The deterrent effect that the imposition of the penalty would have on both the violator and the regulated community as a whole.

(G) Any other factor that justice may require.

(c) Actions pursuant to this section may be brought by the Attorney General in the name of the people of the State of California, by any district attorney, by any city attorney of a city having a population in excess of 750,000, or, with the consent of the district attorney, by a city prosecutor in any city or city and county having a full-time city prosecutor, or as provided in subdivision (d).

(d) Actions pursuant to this section may be brought by any person in the public interest if both of the following requirements are met:

(1) The private action is commenced more than 60 days from the date that the person has given notice of an alleged violation of Section 25249.5 or 25249.6 that is the subject of the private action to the Attorney General and the district attorney, city attorney, or prosecutor in whose jurisdiction the violation is alleged to have occurred, and to the alleged violator. If the notice alleges a violation of Section 25249.6, the notice of the alleged violation shall include a

certificate of merit executed by the attorney for the noticing party, or by the noticing party, if the noticing party is not represented by an attorney. The certificate of merit shall state that the person executing the certificate has consulted with one or more persons 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, and that, based on that information, the person executing the certificate believes there is a reasonable and meritorious case for the private action. Factual information sufficient to establish the basis of the certificate of merit, including the information identified in paragraph (2) of subdivision (h), shall be attached to the certificate of merit that is served on the Attorney General.

(2) Neither the Attorney General, any district attorney, any city attorney nor any prosecutor has commenced and is diligently prosecuting an action against the violation.

(e) Any person bringing an action in the public interest pursuant to subdivision (d) and any person filing any action in which a violation of this chapter is alleged shall notify the Attorney General that the action has been filed. Neither this subdivision nor the procedures provided in subdivisions (f) to (j), inclusive, shall affect the requirements imposed by the statute or a court decision in existence on January 1, 2002 concerning whether any person filing any action in which a violation of this chapter is alleged is required to comply with the requirements of subdivision (d).

(f) (1) Any person bringing an action in the public interest pursuant to subdivision (d), any person filing any action in which a violation of this chapter is alleged, or any private person settling any violation of this chapter alleged in a notice given pursuant to paragraph (1) of subdivision (d), shall, after the action or violation is either subject to a settlement or to a judgment, submit to the Attorney General a reporting form that includes the results of that settlement or judgment and the final disposition of the case, even if dismissed. At the time of the filing of any judgment pursuant to an action brought in the public interest pursuant to subdivision (d), or any action brought by a private person in which a violation of this chapter is alleged, the plaintiff shall file an affidavit verifying that the report required by this subdivision has been accurately completed and submitted to the Attorney General.

(2) Any person bringing an action in the public interest pursuant to subdivision (d) or any private person bringing an action in which a violation of this chapter is alleged, shall, after the action is either subject to a settlement, with or without court approval, or to a judgment, submit to the Attorney General a report that includes information on any corrective action being taken as a part of the settlement or resolution of the action.

(3) The Attorney General shall develop a reporting form that specifies the information that shall be reported, including, but not limited to, for purposes of subdivision (e), the date the action was filed, the nature of the relief sought, and for purposes of this subdivision, the amount of the settlement or civil penalty assessed, other financial terms of the settlement, and any other information the Attorney General deems appropriate.

(4) If there is a settlement of an action brought by a person in the public interest under subdivision (d), the plaintiff shall submit the settlement, other than a voluntary dismissal in which no consideration is received from the defendant, to the court for approval upon noticed motion, and the court may approve the settlement only if the court makes all of the following findings:

(A) Any warning that is required by the settlement complies with this chapter.

(B) Any award of attorney's fees is reasonable under California law.

(C) Any penalty amount is reasonable based on the criteria set forth in paragraph (2) of subdivision (b).

(5) The plaintiff subject to paragraph (4) has the burden of producing evidence sufficient to sustain each required finding. The plaintiff shall serve the motion and all supporting papers on the Attorney General, who may appear and participate in any proceeding without intervening in the case.

(6) Neither this subdivision nor the procedures provided in subdivision (e) and subdivisions (g) to (j), inclusive, shall affect the requirements imposed by statute or a court decision in existence on the January 1, 2002 concerning whether claims raised by any person or public prosecutor not a party to the action are precluded by a settlement approved by the court.

(g) The Attorney General shall maintain a record of the information submitted pursuant to subdivisions (e) and (f) and shall make this information available to the public.

(h) (1) Except as provided in paragraph (2), the basis for the certificate of merit required by subdivision (d) is not discoverable. However, nothing in this subdivision shall preclude the discovery of information related to the certificate of merit if that information is relevant to the subject matter of the action and is otherwise discoverable, solely on the ground that it was used in support of the certificate of merit.

(2) Upon the conclusion of an action brought pursuant to subdivision (d) with respect to any defendant, if the trial court determines that there was no actual or threatened exposure to a listed chemical, the court may, upon the motion of that alleged violator or upon the court's own motion, review the basis for the belief of the person executing the certificate of merit, expressed in the certificate of merit, that an exposure to a listed chemical had occurred or was threatened. The information in the certificate of merit, including the identity of the persons consulted with and relied on by the certifier, and the facts, studies, or other data reviewed by those persons, shall be disclosed to the court in an in-camera proceeding at which the moving party shall not be present. If the court finds that there was no credible factual basis for the certifier's belief that an exposure to a listed chemical has occurred or was threatened, then the action shall be deemed frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action. The court shall not find a factual basis credible on the basis of a legal theory of liability that is frivolous within the meaning of Section 128.6 or 128.7 of the Code of Civil Procedure, whichever provision is applicable to the action.

(i) The Attorney General may provide the factual information submitted to establish the basis of the certificate of merit on request to any district attorney, city attorney, or prosecutor within whose jurisdiction the violation is alleged to have occurred, or to any other state or federal government agency, but in all other respects the Attorney General shall maintain, and ensure that all recipients maintain, the submitted information as confidential official information to the full extent authorized in Section 1040 of the Evidence Code.

(j) In any action brought by the Attorney General, a district attorney, a city attorney, or a prosecutor pursuant to this chapter, the Attorney General, district attorney, city attorney, or prosecutor may seek and recover costs and attorney's fees on behalf of any party who provides a notice pursuant to subdivision (d) and who renders assistance in that action.

25249.8. List Of Chemicals Known to Cause Cancer Or Reproductive Toxicity.

(a) On or before March 1, 1987, the Governor shall cause to be published a list of those chemicals known to the state to cause cancer or reproductive toxicity within the meaning of this

chapter, and he shall cause such list to be revised and republished in light of additional knowledge at least once per year thereafter. Such list shall include at a minimum those substances identified by reference in Labor Code Section 6382(b)(1) and those substances identified additionally by reference in Labor Code Section 6382(d).

(b) A chemical is known to the state to cause cancer or reproductive toxicity within the meaning of this chapter if in the opinion of the state's qualified experts it has been clearly shown through scientifically valid testing according to generally accepted principles to cause cancer or reproductive toxicity, or if a body considered to be authoritative by such experts has formally identified it as causing cancer or reproductive toxicity, or if an agency of the state or federal government has formally required it to be labeled or identified as causing cancer or reproductive toxicity.

(c) On or before January 1, 1989, and at least once per year thereafter, the Governor shall cause to be published a separate list of those chemicals that at the time of publication are required by state or federal law to have been tested for potential to cause cancer or reproductive toxicity but that the state's qualified experts have not found to have been adequately tested as required.

(d) The Governor shall identify and consult with the state's qualified experts as necessary to carry out his duties under this section.

(e) In carrying out the duties of the Governor under this section, the Governor and his designates shall not be considered to be adopting or amending a regulation within the meaning of the Administrative Procedure Act as defined in Government Code Section 11370.

25249.9. Exemptions from Discharge Prohibition.

(a) Section 25249.5 shall not apply to any discharge or release that takes place less than twenty months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(b) Section 25249.5 shall not apply to any discharge or release that meets both of the following criteria:

(1) The discharge or release will not cause any significant amount of the discharged or released chemical to enter any source of drinking water.

(2) The discharge or release is in conformity with all other laws and with every applicable regulation, permit, requirement, and order. In any action brought to enforce Section 25249.5, the burden of showing that a discharge or release meets the criteria of this subdivision shall be on the defendant.

25249.10. Exemptions from Warning Requirement. Section 25249.6 shall not apply to any of the following:

(a) An exposure for which federal law governs warning in a manner that preempts state authority.

(b) An exposure that takes place less than twelve months subsequent to the listing of the chemical in question on the list required to be published under subdivision (a) of Section 25249.8.

(c) An exposure for which the person responsible can show that the exposure poses no significant risk assuming lifetime exposure at the level in question for substances known to the state to cause cancer, and that the exposure will have no observable effect assuming exposure at one thousand (1000) times the level in question for substances known to the state to cause

reproductive toxicity, based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for the listing of such chemical pursuant to subdivision (a) of Section 25249.8. In any action brought to enforce Section 25249.6, the burden of showing that an exposure meets the criteria of this subdivision shall be on the defendant.

25249.11. **Definitions.** For purposes of this chapter:

(a) "Person" means an individual, trust, firm, joint stock company, corporation, company, partnership, limited liability company, and association.

(b) "Person in the course of doing business" does not include any person employing fewer than 10 employees in his or her business; any city, county, or district or any department or agency thereof or the state or any department or agency thereof or the federal government or any department or agency thereof; or any entity in its operation of a public water system as defined in Section 4010.1.

(c) "Significant amount" means any detectable amount except an amount which would meet the exemption test in subdivision (c) of Section 25249.10 if an individual were exposed to such an amount in drinking water.

(d) "Source of drinking water" means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses.

(e) "Threaten to violate" means to create a condition in which there is a substantial probability that a violation will occur.

(f) "Warning" within the meaning of Section 25249.6 need not be provided separately to each exposed individual and may be provided by general methods such as labels on consumer products, inclusion of notices in mailings to water customers, posting of notices, placing notices in public news media, and the like, provided that the warning accomplished is clear and reasonable. In order to minimize the burden on retail sellers of consumer products including foods, regulations implementing Section 25249.6 shall to the extent practicable place the obligation to provide any warning materials such as labels on the producer or packager rather than on the retail seller, except where the retail seller itself is responsible for introducing a chemical known to the state to cause cancer or reproductive toxicity into the consumer product in question.

25249.12. (a) The Governor shall designate a lead agency and other agencies that may be required to implement this chapter, including this section. Each agency so designated may adopt and modify regulations, standards, and permits as necessary to conform with and implement this chapter and to further its purposes.

(b) The Safe Drinking Water and Toxic Enforcement Fund is hereby established in the State Treasury. The director of the lead agency designated by the Governor to implement this chapter may expend the funds in the Safe Drinking Water and Toxic Enforcement Fund, upon appropriation by the Legislature, to implement and administer this chapter.

(c) In addition to any other money that may be deposited in the Safe Drinking Water and Toxic Enforcement Fund, all of the following amounts shall be deposited in the fund:

(1) Seventy-five percent of all civil and criminal penalties collected pursuant to this chapter.

(2) Any interest earned upon the money deposited into the Safe Drinking Water and Toxic Enforcement Fund.

(d) Twenty-five percent of all civil and criminal penalties collected pursuant to this chapter shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action, or in the case of an action brought by a person under subdivision (d) of Section 25249.7, to that person.

25249.13. *Preservation Of Existing Rights, Obligations, and Penalties.* Nothing in this chapter shall alter or diminish any legal obligation otherwise required in common law or by statute or regulation, and nothing in this chapter shall create or enlarge any defense in any action to enforce such legal obligation. Penalties and sanctions imposed under this chapter shall be in addition to any penalties or sanctions otherwise prescribed by law.

25180.7. (a) Within the meaning of this section, a "designated government employee" is any person defined as a "designated employee" by Government Code Section §2019, as amended.

(b) Any designated government employee who obtains information in the course of his official duties revealing the illegal discharge or threatened illegal discharge of a hazardous waste within the geographical area of his jurisdiction and who knows that such discharge or threatened discharge is likely to cause substantial injury to the public health or safety must, within seventy-two hours, disclose such information to the local Board of Supervisors and to the local health officer. No disclosure of information is required under this subdivision when otherwise prohibited by law, or when law enforcement personnel have determined that such disclosure would adversely affect an ongoing criminal investigation, or when the information is already general public knowledge within the locality affected by the discharge or threatened discharge.

(c) Any designated government employee who knowingly and intentionally fails to disclose information required to be disclosed under subdivision (b) shall, upon conviction, be punished by imprisonment in the county jail for not more than one year or by imprisonment in state prison for not more than three years. The court may also impose upon the person a fine of not less than five thousand dollars (\$5000) or more than twenty-five thousand dollars (\$25,000). The felony conviction for violation of this section shall require forfeiture of government employment within thirty days of conviction.

(d) Any local health officer who receives information pursuant to subdivision (b) shall take appropriate action to notify local news media and shall make such information available to the public without delay.

25192. (a) All civil and criminal penalties collected pursuant to this chapter shall be apportioned in the following manner:

(1) Fifty percent shall be deposited in the Hazardous Substance Account in the General Fund.

(2) Twenty-five percent shall be paid to the office of the city attorney, city prosecutor, district attorney, or Attorney General, whichever office brought the action.

(3) Twenty-five percent shall be paid to the department and used to fund the activity of the CUPA, the local health officer, or other local public officer or agency authorized to enforce the provisions of this chapter pursuant to Section 25180, whichever entity investigated the matter that led to the bringing of the action. If investigation by the local police department or sheriff's office or California Highway Patrol led to the bringing of the action, the CUPA, the

local health officer, or the authorized officer or agency, shall pay a total of 40 percent of its portion under this subdivision to that investigating agency or agencies to be used for the same purpose. If more than one agency is eligible for payment under this paragraph, division of payment among the eligible agencies shall be in the discretion of the CUPA, the local health officer, or the authorized officer or agency.

(b) If a reward is paid to a person pursuant to Section 25191.7, the amount of the reward shall be deducted from the amount of the civil penalty before the amount is apportioned pursuant to subdivision (a).

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: January 22, 2010

MUSICK, PEELER & GARRETT LLP

By:



Adam D. Wieder
Attorneys for Los Angeles Unified School
District