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Attorneys for Plaintiff,
LORENZO CASON
ON BEHALF OF THE PEOPLE OF THE STATE OF
CALIFORNIA,

LORENZO CASON,
ON BEHALF OF THE PEOPLE OF THE
STATE OF CALIFORNIA,

Plaintiff,
v.

SAN DIEGO TRANSIT CORPORATION

Defendant

Case No.

NOTICE OF VIOLATION OF CALIFORNIA
HEALTH & SAFETY CODE SECTIONS
25249.5 AND 25249.6
[27 Cal. Code Reg.s § 25903]

D INTRODUCTION

The people of California find that hazardous chemicals pose a serious potential threat to their health and well-being, that state government agencies have failed to provide them with adequate protection, and that these failures have been serious enough to lead to investigations by federal agencies of the administration of California's toxic protection programs. The people have therefore declared their rights by and through the *Safe Drinking Water and Toxic Enforcement Act of 1986*, Cal. Health & Saf. Code Div. 20, Ch. 6.6, § 25492.5, *et seq.*, as follows:

- (a) To protect themselves and the water they drink against chemicals that cause cancer, birth defects, or other reproductive harm.
- (b) To be informed about exposures to chemicals that cause cancer, birth defects, or

1 other reproductive harm.

2 (c) To secure strict enforcement of the laws controlling hazardous chemicals and deter
3 actions that threaten public health and safety.

4 (d) To shift the cost of hazardous waste cleanups more onto offenders and less onto
5 law-abiding taxpayers.

6 SAN DIEGO TRANSIT CORPORATION was created in 1966 under the general
7 nonprofit corporation law. In 1985, when it was acquired by the San Diego Metropolitan Transit
8 Development Board, it chose to continue SAN DIEGO TRANSIT CORPORATION as a
9 separate, legal corporate entity. As such, pursuant to Section 120522 of the California
10 Public Utilities Code:

11 “Whenever the board acquires ownership of existing facilities from a
12 privately or publicly owned corporation or public utility, ... maintains the
13 corporation or utility, ... as a separate, legal corporate entity, the board of directors
14 of the corporation ... shall continue its responsibilities with regard to its
15 employees’ wages, hours, and other terms and conditions of employment,
16 existing labor contracts, and existing pension plans.”

16 Accordingly, SAN DIEGO TRANSIT CORPORATION is required to “continue its
17 responsibilities with regard to its employees’ “wages, hours, and other terms and conditions of
18 employment “as a separate private entity.

19 The Attorney General of the State of California has determined that because SAN DIEGO
20 TRANSIT CORPORATION “does not qualify as a ‘public’ employer, SAN DIEGO TRANSIT
21 CORPORATION’s employees cannot be considered ‘public’ employees.” *Att. Gen. Op. No. 02-*
22 *805 (June 2003).*

23 Indeed, SAN DIEGO TRANSIT CORPORATION has repeatedly used its status as a
24 private employer to limit its employees’ rights: *Harper v. San Diego Transit Corp.* (9th Cir.
25 1985) 764 F.2d 663 [SAN DIEGO TRANSIT CORPORATION’S employees’ claims of wrongful

1 discharge are limited in accordance with the federal Labor-Management Relations Act, which is
2 applicable only to private employers]; *International Brotherhood of Electrical Workers, Local*
3 *465 v. San Diego Trolley, Inc.* (2007) PERB Dec. No. 1909-M, 31 PERC 112 [sister corporation
4 of SAN DIEGO TRANSIT CORPORATION is not bound by the restrictions of the Meyers-
5 Miliias-Brown Act (“Brown Act”), which protects all other public employees, or afforded the
6 access to the Public Employees Relations Board]. Similarly, SAN DIEGO TRANSIT
7 CORPORATION contends that it is not a public employer, generally depriving its employees of
8 the Constitutional due process rights and property interests in their employment afforded to other
9 public employees.

10 The Attorney General for the State of California has established that SAN DIEGO
11 TRANSIT CORPORATION “must be considered a private company with private employees...”
12 *Att. Gen. Op. No. 02-805, supra.* As such, SAN DIEGO TRANSIT CORPORATION must abide
13 by the requirements of *Safe Drinking Water and Toxic Enforcement Act of 1986* like any other
14 private employer, and its employees and the public are entitled to protections from SAN DIEGO
15 TRANSIT CORPORATION like any other private employer.

16
17 **II) NAME OF ALLEGED VIOLATOR**

18 SAN DIEGO TRANSIT CORPORATION
19 100 16th St.
20 San Diego, CA 92112
619-238-0100
Entity Number: C0511662

21 Agent for Service of Process
22 TIFFANY LORENZEN
23 1255 IMPERIAL AVENUE, SUITE 1000
24 SAN DIEGO CA 92101

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III) NOTICING ENTITY

This Notice of Violation is brought by LORENZO CASON, a former employee of SAN DIEGO TRANSIT CORPORATION, on behalf of the PEOPLE OF THE STATE OF CALIFORNIA, by and through their attorney:

Timothy L. Bricton, SBN 174907
BRICTON & COHN
2214 Fifth Avenue,
San Diego CA 92101;
tel. 619.296.9387;
Email: TBricton@BrictonCohn.com.

IV) APPROXIMATE PERIOD OF VIOLATIONS

Since the enactment of the *Safe Drinking Water and Toxic Enforcement Act of 1986*, on January 1, 1987, SAN DIEGO TRANSIT CORPORATION has flaunted the requirements of that Act, in blantant disregard to the health of its employees, its customers, and the citizens of San Diego who live and work near its facilities.

Since the enactment of the *Safe Drinking Water and Toxic Enforcement Act of 1986*, SAN DIEGO TRANSIT CORPORATION has operated diesel and gasoline powered vehicals, that were fueled, maintained, and repaired at its depots. The fueling, running, maintaince and repair of those vehicals has in the past, and continues to this date, to emit carcinogens are listed on the State of California's Environmental Protection Agency's list of hazardous chemicals. In addition, since the enactment of the *Safe Drinking Water and Toxic Enforcement Act of 1986*, SAN DIEGO TRANSIT CORPORATION, has maintained underground storage tanks at its depots that have been known to have leaked causing unauthorized release of diesel since at least 1986. Since 1986, the downtown depot's operated by SAN DIEGO TRANSIT CORPORATION has been under investigation and monitoring by the San Diego County of Environmental Health due to the unauthorized release of carcinogens.

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1 **V) NAME OF EACH LISTED CHEMICAL INVOLVED IN THE ALLEGED**
2 **VIOLATION**

3 SAN DIEGO TRANSIT CORPORATION's depots in downtown San Diego and in
4 Kearny Mesa expose employees, visitors, and neighbors to exhaust and fumes from diesel,
5 gasoline, petroleum products, other chemicals, and the combustion of those items, known to the
6 State of California to cause cancer or reproductive toxicity. Those carcinogens are listed on the
7 State of California's Environmental Protection Agency's list of hazardous chemicals made
8 pursuant to Cal Health & Saf Code § 25249.8, 27 Cal. Code Reg. § 27001(b), 8 Cal. Code Reg. §
9 339, and available at the website of the State of California, [www.oehha.org/prop65/prop65_list/
files/P65single020510.pdf](http://www.oehha.org/prop65/prop65_list/files/P65single020510.pdf).

10 Those carcinogens include but are not limited to:

- 11 • Benzene
- 12 • Diesel engine exhaust
- 13 • Carbon black (airborne, unbound particles of respirable size)
- 14 • Caron monoxide
- 15 • CI Solvent Yellow 14
- 16 • 1-nitropyrene
- 17 • dinitropyrenes
- 18 • formaldehyde gas
- 19 • gasoline engine exhaust
- Soots, tars, and mineral oils

20 *And additional containments*, including those discovered by the San Diego County Department of
21 Environmental Health ("DEH") during its ongoing investigations of northwest corner of 16th
22 Street and Imperial Avenue, the 5-acre lot has operated as a bus fueling yard and maintenance
23 facility for nearly a century.

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VI DESCRIPTION OF VIOLATION

SAN DIEGO TRANSIT CORPORATION is in violation of section 25249.6. Cal. Health & Saf. Code §25249.6. That statute requires the following:

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.

However, those locations do not contain a “clear and reasonable” warning of the risk of exposure to those persons entering those locations, including SAN DIEGO TRANSIT CORPORATIONS employees. SAN DIEGO TRANSIT CORPORATION has **FAILED** to provide the following **REQUIRED WARNING**:

- “a warning that appears on a sign in the workplace posted in a conspicuous place and under conditions that make it likely to be read and understood by employees and other individuals prior to the exposure for which the warning is given”; or
- “warning to the exposed employee about the chemical in question which fully complies with all information, training and labeling requirements of the federal Hazard Communication Standard (29 CFR § 1910.1200, as amended on March 7, 1996), the California Hazard Communication Standard”; or
- “warning that appears on the label or labeling of a product or substance present or used in the workplace. The label or labeling shall be prominently displayed on the product or substance and the product or substance shall be used under circumstances which make it likely that the warnings will be read and understood by employees or other individuals prior to the exposure for which the warning is given.” 27 Cal. Code Reg.s § 25604.1.

Although SAN DIEGO TRANSIT CORP. has posted multiple signs on their exterior fences, SAN DIEGO TRANSIT CORP. has failed and or refused to post any signs that comply with 27 Cal. Code Reg. §25604.2 (b). That statute states:

1 b) For purposes of subparagraph (a)(2) of section 25604.1, the following specific warning
2 messages shall be deemed to clearly communicate that an individual is being exposed to a
3 chemical known to the state to cause cancer, or birth defects or other reproductive harm.

4 (1) For exposure to a chemical known to the state to cause cancer:

5 "WARNING: This area contains a chemical known to the State of California to cause
6 cancer."

7 (2) For exposure to a chemical known to the state to cause reproductive toxicity:

8 "WARNING: This area contains a chemical known to the State of California to cause
9 birth defects or other reproductive harm."

10 Section 25249.7 of the *California Safe Drinking Water and Toxic Enforcement Act of 1986* states:

11 (1) Any person who has violated Section 25249.5 or 25249.6 shall be liable for a civil
12 penalty not to exceed two thousand five hundred dollars (\$2,500) per day for each
13 violation in addition to any other penalty established by law. That civil penalty may be
14 assessed and recovered in a civil action brought in any court of competent jurisdiction.

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

17 (A) The nature and extent of the violation.

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

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

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

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

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

1 (G) Any other factor that justice may require.

2
3 **VII) ROUTE OF EXPOSURE**

4 Exposure to these chemicals occurs to SAN DIEGO TRANSIT CORPORATION's
5 employees through inhalation and dermal contact.

6 At both the Downtown depot and the Kearny Mesa depot the sites include SAN DIEGO
7 TRANSIT CORPORATION bus repair and maintenance facilities and fueling facilities. At the
8 downtown depot there are six Underground Storage Tanks ("UST"s) located in an on-site tan
9 fame: one 20,000 gallon diesel tank, one 20,000 gallon gasoline tank, one 10,000 gallon motor oil
10 tank, one 4,000 motor oil tank, one 4,000 gallon torque oil tank, and one 1,000 gallon coolant
11 tank. The two diesel Underground Storage Tanks utilize a single piping trench that leads to the
12 dispenser islands, located in and adjacent to the fueling facility. The other four Underground
13 Storage Tanks utilize a single piping trench to the dispensing rack located in the repair and
14 maintenance building. There are also two Underground Storage Tanks (one 10,000 gallon
15 gasoline Underground Storage Tank and one 20,000 gallon diesel Underground Storage Tank)
16 that were abandoned in place.

17 The San Diego County Department of Environmental Health ("DEH") currently has open
18 two Unauthorized Release (UAR) cases regarding the Downtown depot. The first Unauthorized
19 Release case (#H01049-001) was first opened beginning in 1986, after a failed tank integrity test.
20 In 1989 the investigation revealed total recoverable hydrocarbons (TRPH) exceeding the DEH
21 action level of 1,000 milligrams per kilogram adjacent to the administrative buildings at the
22 depot. There are extensive records of the cleanup efforts, additional spills, and additional
23 citations, contained in the DEH files between 1986 and December 2009. See Ninyo and Moore,
24 Environmental Site Assessment, dated September 27, 2007, pages 3-21 and 23-28.

25 For example, on January 29, 1990 the DEH issued an Official Notice that corrective
action was required. According to DEH records, during a telephone conversation DEH stated that
the "entire site" is included under the Unauthorized Release case.

In addition, soil testing in 1991 indicated that the soil contained elevated concentrations of

1 diesel (TPH-d), benzene, gasoline (TPH-g)

2 The second Unauthorized Release case (#H01049-002) was first opened in 1994 after a
3 20,000 gallon Underground Storage Tank removal resulted in stained soil, odors, and ponded
4 products, occurring adjacent to the former service building at the Downtown depot.

5 In July 1997 during the removal of one of the Underground Storage Tanks leaking diesel
6 was observed and a hazardous waste manifest for its removal was approved.

7 Continued monitoring and tank removals resulted in the need for the placement of 15
8 Groundwater Monitoring Wells (of which only eight remain) to monitor the spread of the
9 contamination into the groundwater; but, according to the December 3, 2009 email from San
10 Diego County Department of Environmental Health, Site Assessment and Mitigation Division to
11 the Facility Manager, "groundwater monitoring and sampling has never been performed on a
12 regular basis at the site." In a prior letter dated July 10, 2009, the San Diego County Department
13 of Environmental Health advised that the groundwater needed to be tested for petroleum
14 hydrocarbons such as gasoline, diesel, and motor oil, as well as organic compounds and
15 oxygenates. Since that time the San Diego County Department of Environmental Health has
16 consolidated those open cases into one case, #H01049-001 and Global ID #T0607301350.

17 On December 22 and 23 2009, groundwater testing was finally performed. Testing by
18 Ninyo and Moore, Geotechnical and Environmental Consultants (hired and paid for by MTS),
19 showed that the groundwater flowed generally southwest, towards the San Diego Bay.
20 Groundwater testing showed the presence of diesel (TPH-d), gasoline (TPH-g), and motor oil
21 (TPH-m). Benzene was also detected.

22 The chemicals are transmitted to SAN DIEGO TRANSIT CORPORATION's employees
23 through fumes and contact from the fuel, and the gases and fumes emitted into the air while in
24 storage, use, and from their combustion. The chemicals are emitted also as result of unauthorized
25 releases and spills, as well as leaks in the underground storage tanks as documents by the San
26 Diego County Department of Environmental Health's files. In addition, those chemicals continue
27 to remain in the soil and water as documented by the San Diego County Department of
28 Environmental Health's files, despite multiple clean up efforts. Customers, visitors, and

1 neighbors are exposed through inhalation. Leaking underground storage tanks and pipes have
2 periodically discharged diesel fuel, gasoline and oil into the soil and groundwater 10 to 15 feet
3 below the site's surface, in close proximity to the San Diego Bay, exposing the public and users
4 of the Bay to potential contamination.

5 **VIII) GENERAL GEOGRAPHIC LOCATION / OCCUPATION & TASKS EXPOSED**

6 **PERSONS**

7 At both yards, the Downtown Depot, located at along Imperial, 15th Street, and K street, in
8 downtown San Diego, CA 92101, and the Kearny Mesa Depot, in Kearny Mesa in San Diego CA,
9 the exposure occurs to all persons entering the yard, being exposed to the fueling and exhaust of
10 the buses, as well as the materials used in their repair, maintenance, and fueling. Mechanics and
11 bus drivers are those with the highest frequency of exposure. Leaking underground storage tanks
12 and pipes have periodically discharged diesel fuel, gasoline and oil into the soil and groundwater,
13 and their fumes into the air. Continuous exposure occurs due to the failure to clean up prior spills,
14 saturations, and contaminated soils and fixtures.

15 Customers and neighbors close to the depots are exposed to the exhaust and fumes from
16 the locations, as well as any migration of the carcinogens occurring through leaks into the soil and
17 ground water.

18 **IX) THE LOCATION OF THE SOURCE OF THE EXPOSURE**

19 The Downtown Depot and the Kearny Mesa Depot, as described above.

20 **X) WHETHER THE EXPOSURE FOR WHICH A WARNING IS REQUIRED OCCURS**

21 **BEYOND THE PROPERTY OWNED OR CONTROLLED BY THE ALLEGED**

22 **VIOLATORS.**

23 Warnings should be provided for employees of SAN DIEGO TRANSIT
24 CORPORATION, its neighbors, and its customers who enter its facilities. Warnings are required,
25 but not posted, at the entrances to each depot, which is within the property controlled by SAN
DIEGO TRANSIT CORPORATION.

The fumes and exhaust travel beyond the confines of the physical property. The soil has

1 already been determined to be contaminated. Leaking underground storage tanks and pipes have
2 periodically discharged diesel fuel, gasoline and oil into the soil and groundwater 10 to 15 feet
3 below the site's surface. Therefore, clear and reasonable warnings are required, but not provided,
4 to those persons who are in close proximity to the depots.

5 **XI) REQUEST THAT SAN DIEGO TRANSIT CORP.**

6 **WARN ITS EMPLOYEES AND NEIGHBORS**

7 Given the above, we request that SAN DIEGO TRANSIT CORPORATION take
8 corrective action at once, and provide us verifiable details of your corrective action. We ask that
9 SAN DIEGO TRANSIT CORPORATION post the required warnings, and pay all applicable
10 fines, costs, and fees arising from the failure to comply with the *California Safe Drinking Water*
11 *and Toxic Enforcement Act of 1986*.. Attached herewith is Appendix A, a Summary the
12 *California Safe Drinking Water and Toxic Enforcement Act of 1986*.

13 In addition, we request that SAN DIEGO TRANSIT CORPORATION and or its affiliates
14 act in accordance with law, and cease its attempts to interfere with LORENZO CASON's
15 exercise of his civil rights. The administrative office of SAN DIEGO TRANSIT
16 CORPORATION is located in the same building as the San Diego County Department of
17 Environmental Health. LORENZO CASON has been informed and believes that SAN DIEGO
18 TRANSIT CORPORATION and its affiliates have instructed their private security force,
19 Heritage Security, to detain LORENZO CASON in an effort to prevent him from obtaining
20 further evidence that is otherwise part of the public record. Indeed, SAN DIEGO TRANSIT
21 CORPORATION and its parent corporation, MTS, have a history of exploiting its position and
22 using its private security force to deprive citizens of their civil rights. For example, on September
23 5, 2009, Defendant's private security tackled a man for smoking a cigarette while walking
24 through a trolley stop. Three guards struggled with the man who was trying to cooperate, but
25 telling them they were hurting him, with one guard driving his knee into the man's face. Rob

1 Hurlbut videotaped the event, which can be found at <http://www.theworldisraw.com/illegal->
2 [photography](http://www.theworldisraw.com/illegal-). Defendant's private security force further violated others' civil rights by attempting
3 to prevent Mr. Hurlbut from photographing. Mr. Hurlbut advises that he was also threatened by
4 Defendant's private security force, being told: "If you miss the next trolley..." and shrugged.
5 Then added "Do you get what I mean?" Mr. Hurlbut said he'd make "damn sure" he caught the
6 next trolley.

7 Similarly, while gathering information about the toxic exposures, LORENZO CASON is
8 informed and believes that SAN DIEGO TRANSIT CORPORATION instructed its private
9 security force, Heritage Security, to detain LORENZO CASON, and prevent him from going to
10 the San Diego County Department of Environmental Health. LORENZO CASON is informed
11 and believes that Defendant's private security force has distributed and posted a picture of him,
12 indicating that he is somehow a threat or a danger.

13 On March 12, 2010 while going to the DEH, Defendant's private security force physically
14 stopped LORENZO CASON, and began to question him. That security guard stated that he was
15 going to arrest Mr. CASON. Luckily, a San Diego Police Officer happened to be passing by, who
16 Mr. CASON flagged down for assistance. The Police Officer interceded and advised the security
17 guard that he could not arrest Mr. CASON. The security guard instead issued Mr. CASON a
18 citation for loitering.

19 We believe that SAN DIEGO TRANSIT CORPORATION is using these tactics to avoid
20 complying with its obligations. We ask that SAN DIEGO TRANSIT CORPORATION comply
21 with its obligations to warn its employees of the health risks, pay all applicable penalties for
22 failing to post warnings, and cease any further attempts to interfere with the civil rights of its
23 employees, patrons, or neighbors.

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XII) CERTIFICATE OF MERIT

I, Timothy L. Britson, the undersigned, and the attorney for LORENZO CASON, declare under penalty of perjury pursuant to the laws of the State of California, believe that this claim of alleged violation is meritorious. I have consulted with one or more persons with relevant and appropriate experience as to the operation of the facilities. I have also reviewed the reports on file with the San Diego County Department of Environmental Health, which contains additional facts, studies, and data regarding the exposure to the listed chemical that is the subject of the action. I have also consulted with persons with expertise in the area of industrial chemical storage, maintenance, regarding those reports. Based on that information, I believe there is a reasonable and meritorious case for the private action.

I have interviewed LORENZO CASON, a long-term employee of SAN DIEGO TRANSIT CORPORATION as to his and his co-workers' exposure to toxins at work. He has confirmed that each bus depot contains numerous buses, and large repair facilities, that cause exhaust and fumes to emit.

I have also reviewed recent news articles documenting the findings of the San Diego County Environmental Agency that the downtown depot is contaminated.

I have also conducted research to confirm that the chemicals listed are components of exhaust and or used in repair and maintenance, readings several studies by the National Center for Environmental Research, including *Comparison of the Carcinogenicity of Diesel Exhaust and Carbon Black in Rat Lungs*, *How Do Chemicals in Diesel Engine Exhaust Damage DNA?*, *Effects of Formaldehyde on Human Airway Epithelial Cells Exposed in a Novel Culture System*, *Development of Biomarkers to Monitor Carcinogen Exposure*, and *Emissions from Diesel and Gasoline Engines Measured in Highway Tunnels*, all found at <http://cfpub.epa.gov>.

I have also reviewed the files maintained by the San Diego County Department of Health of its ongoing supervision of the attempts to clean up the unauthorized releases, and its soil and groundwater testing.

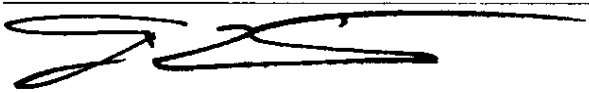
Based on the above, and my legal research, I believe there was actual or threatened

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exposure to a listed chemical to the employees of SAN DIEGO TRANSIT CORPORATION.

LAW OFFICE OF BRICTSON & COHN

Dated: April 17, 2010

BY 
Timothy L. Bricton
Attorneys for Plaintiff

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APPENDIX A
OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
THE SAFE DRINKING WATER AND TOXIC
ENFORCEMENT ACT OF 1986
(PROPOSITION 65): A SUMMARY
[CAL. CODE REG.S § 25903]

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

1 list must be updated at least once a year. Over 735 chemical listings have been included as of
2 November 16, 2001. Only those chemicals that are on the list are regulated under this law.
3 Businesses that produce, use, release or otherwise engage in activities involving those chemicals
4 must comply with the following:

5
6 Clear and reasonable warnings. A business is required to warn a person before "knowingly and
7 intentionally" exposing that person to a listed chemical. The warning given must be "clear and
8 reasonable." This means that the warning must: (1) clearly make known that the chemical
9 involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given
10 in such a way that it will effectively reach the person before he or she is exposed. Exposures are
11 exempt from the warning requirement if they occur less than twelve months after the date of
12 listing of the chemical.

13
14 Prohibition from discharges into drinking water. A business must not knowingly discharge
15 or release a listed chemical into water or onto land where it passes or probably will pass into a
16 source of drinking water. Discharges are exempt from this requirement if they occur less than
17 twenty months after the date of listing of the chemical.

18 **DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?**

19 Yes. The law exempts:

20 Governmental agencies and public water utilities. All agencies of the federal, State or local
21 government, as well as entities operating public water systems, are exempt.

22
23 Businesses with nine or fewer employees. Neither the warning requirement nor the
24 discharge prohibition applies to a business that employs a total of nine or fewer employees.

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Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" tests if an individual were exposed to such an amount in drinking water.

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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 25903). 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.

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PROOF OF SERVICE BY MAIL

STATE OF CALIFORNIA)
)
COUNTY OF SAN DIEGO)

RE: PROPOSITION 65, SDTC

I, Alba Esquivel, am a resident of the County aforesaid. I am over the age of eighteen years and not a party to the within entitled action. My business address 2214 Fifth Avenue, San Diego, CA 92101. Proposition 65 instructs that notices of violation shall be served upon each alleged violator, the Attorney General, the district attorney of every county in which a violation is alleged to have occurred, and upon the city attorneys of any cities with populations according to the most recent decennial census of over 750,000 and in which the violation is alleged to have occurred. Accordingly, on April²⁰, 2010, I served the within NOTICE OF VIOLATION by placing a true copies thereof enclosed in a sealed envelope, RETURN RECEIPT REQUESTED, with postage fully prepaid and addressed as stated below, at San Diego, CA,:

SAN DIEGO TRANSIT CORPORATION
Attention: TIFFANY LORENZEN
1255 Imperial Avenue, #900
San Diego, CA 92101

ATTORNEY GENERAL FOR THE STATE OF CALIFORNIA
Proposition 65 Enforcement Reporting Attention: Prop 65 Coordinator
1515 Clay Street, Suite 2000
Post Office Box 70550
Oakland, California 94612-0550

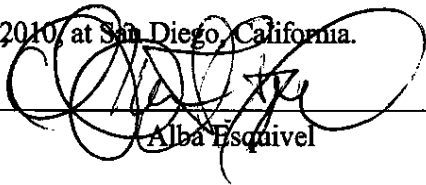
DISTRICT ATTORNEY FOR THE COUNTY OF SAN DIEGO
Hall of Justice
330 W. Broadway
San Diego, CA 92101

CITY ATTORNEY FOR THE CITY OF SAN DIEGO
1200 Third Ave., Suite 1620
San Diego, CA 92101

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

Executed on April 20 2010, at San Diego, California.



Alba Esquivel