

CLAYTON & McEVOY
A Professional Corporation
333 West Santa Clara Street, Suite 950
San Jose, California 95113-1721

William B. Clayton, Jr.
Laurence J. McEvoy
Henry W. Roux
Joshua A. Bennett

Telephone: (408) 293-9100
Facsimile: (408) 293-4172
jab@clayton-mcevoy.com

www.clayton-mcevoy.com

October 14, 2010

Via U.S. First Class Mail

Lehigh Southwest Cement Company
Attn: Henrik Wesseling, Plant Manager
Lehigh Southwest Cement Company
24001 Stevens Creek Boulevard
Cupertino, CA 95014-5659

Lehigh Southwest Cement Company
Corporate Headquarters
Attn: Current CEO or President
Lehigh Hanson, Inc.
300 E. John Carpenter Freeway
Irving, TX 75062

CSC - LAWYERS INCORPORATING SERVICE
C/o: Lehigh Southwest Cement Company
Attn: Henrik Wesseling, Plant Manager or current
CEO or President
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Re: *Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Individuals Present and Residing in Santa Clara County, California, to Arsenic, Benzene and Chromium 6, in the course of producing Type II/V (Low-Alkali), Type III (Hi-Early Strength), Slag Cement, Type I-P, APPC, and TioCem Cements.*

Dear Sir/Madam:

Quarry No is an association of residents residing in Santa Clara County, California, and dedicated to the preservation and enhancement of human health and the environment. Quarry No has a long-standing interest in reducing health hazards to the public posed by toxic chemicals and protecting the public from harmful substances.

Quarry No and Mr. William J. Almon, acting individually and as Quarry No's representative, hereby give you notice that the Lehigh Southwest Cement Company (hereinafter "Lehigh"), doing business at 24001 Stevens Creek Boulevard, Cupertino, CA 95014-5659, has violated and continues to violate provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code §§ 25249.5 et seq. Specifically, that Lehigh has violated and continue to violate the warning

October 14, 2010

Page 2

requirement of § 25249.6 of the California Health and Safety Code, which 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..."

Lehigh's production and sale of Type II/V (Low-Alkali), Type III (Hi-Early Strength), Slag Cement, Type I-P, APPC, and TioCem Cements, among others, has exposed and continues to expose individuals present and residing in Santa Clara, County, California, including Mr. Almon, to harmful levels of Arsenic, Benzene and Chromium 6, through their inhalation, dermal absorption and other bodily contact via Lehigh's industrial processes. These chemicals are known by the State of California to cause reproductive toxicity and cancer.

Because Arsenic, Benzene and Chromium 6 are chemicals listed in Proposition 65 as human carcinogens and reproductive toxins, pursuant to Health and Safety Code § 25249.6, Lehigh was, and is, required to provide clear and reasonable warnings before knowingly and intentionally exposing any individual to those substances in the course of its business. Since June 1, 2007, to the present, Lehigh has exposed and continues to expose individuals present and residing in Santa Clara, County, California, to harmful levels of Arsenic, Benzene and Chromium 6, through its daily industrial processes and without a clear and reasonable warning as required under the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), § 25249.6 of the California Health and Safety Code. These violations will continue to occur until Lehigh provides adequate warnings.

Therefore, pursuant to Health and Safety Code § 25249.7(d), Quarry No and Mr. William J. Almon intend to bring suit in the public interest against Lehigh sixty (60) days hereafter to correct the violation occasioned by Lehigh's failure to warn all those individuals exposed in Santa Clara County, California, to its harmful levels of Arsenic, Benzene and Chromium 6.

Pursuant to 27 California Code of Regulations § 25903(b)(1), attached hereto as Exhibit "1" is a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," a summary of Proposition 65 prepared by the Office of Environmental Health Hazard Assessment of the California Environmental Protection Agency.

Pursuant to Health and Safety Code § 25249.7(d)(1), the undersigned hereby includes with the copy of this Notice to the California Attorney General a confidential Certificate of Merit. Pursuant to 27 California Code of Regulations § 25903(c)(3), the noticing parties are providing this Notice to the California Attorney General, the District Attorney of Santa Clara County and the City Attorneys of the cities of Los Altos, Los Altos Hills, Cupertino, Mountain View and Sunnyvale as evidenced in Exhibit "2" attached hereto.

The noticing parties are represented by Clayton & McEvoy, P.C. All communications concerning this matter should please be directed to:

Joshua A. Bennett
Clayton & McEvoy, P.C.
333 W. Santa Clara St. #950
San Jose, CA 95113-1717

October 14, 2010

Page 3

333 W. Santa Clara St. #950
San Jose, CA 95113-1717
Email: jab@clayton-mcevoy.com
Telephone: (408) 293-9100

Very truly yours,

CLAYTON & McEVOY, P.C.



Joshua A. Bennett
JAB/lc

Enclosures

cc:

✓ Attorney General of California (Confidential factual information supporting
Certificate of Merit attached)
District Attorney of Santa Clara County, California
City Attorney of Los Altos Hills, California
City Attorney of Los Altos, California
City Attorney of Cupertino, California
City Attorney of Sunnyvale, California
City Attorney of Mountain View, California

(See attached Certificate of Service)

EXHIBIT "1"

**OFFICE OF ENVIRONMENTAL HEALTH
HAZARD ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 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 735 chemical listings have been included as of November 16, 2001. 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.

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" 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 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.

EXHIBIT "2"

<p>Attorney General Edmund G. Brown, Jr. California Attorney General's Office 1300 "I" Street P.O. Box 944255 Sacramento, CA 94244-2550</p> <p>(With confidential factual information supporting the Certificate of Merit Included)</p>	<p>Santa Clara County, California District Attorney Dolores Carr 70 W. Hedding Street, West Wing San Jose, CA 95110</p>
<p>City of Los Altos Hills, California City Attorney Steven Mattas Town Hall Offices 26379 Fremont Road Los Altos Hills, CA 94022</p>	<p>City of Los Altos, California City Attorney One North San Antonio Road Los Altos, CA 94022</p>
<p>City of Cupertino, California City Attorney Carol Korade 20410 Town Center Lane #210 Cupertino, CA 95014-3220</p>	<p>City of Sunnyvale, California City Attorney David Kahn 456 W. Olive Ave. Sunnyvale, CA 94086</p>
<p>City of Mountain View, California City Attorney Jannie Quinn 500 Castro Street Mountain View, CA 94039-7540</p>	

CERTIFICATE OF MERIT
[California Health & Safety Code § 25249.7(d)]

I, Joshua A. Bennett, hereby declare:

1. This Certificate of Merit accompanies the attached notice of violation in which it is alleged that the parties identified in the notice have violated California Health & Safety Code § 25249.6, by failing to provide clear and reasonable warnings.

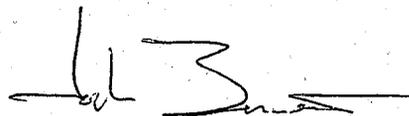
2. I am an attorney representing the Noticing Parties, Quarry No and Mr. William J. Almon.

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 chemicals that are the subject of the action.

4. Based upon 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 underlying 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 upon the California Attorney General attaches to it factual information sufficient to establish the basis for this Certificate, including the information identified in California Health & Safety Code § 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.

Date: October 14, 2010



Joshua A. Bennett
Attorney for Noticing Parties, Quarry No
and Mr. William J. Almon

CERTIFICATE OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SANTA CLARA

I, Linda Childers, hereby declare:

I am a citizen of the United States, over 18 years of age, and not a party to the within action. I am employed in the County of Santa Clara; my business address is 333 W. Santa Clara St., Suite 950, San Jose, CA 95113.

On October 15, 2010, I served the within:

Notice of Violation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65), Section 25249.6 of the California Health and Safety Code, for Exposing Individuals Present and Residing in Santa Clara County, California, to Arsenic, Benzene and Chromium 6, in the course of producing Type II/V (Low-Alkali), Type III (Hi-Early Strength), Slag Cement, Type I-P, APPC, and TioCem Cements;

Proposition 65: A Summary;

Certificate of Merit;

Certificate of Merit Attachments (Served only on the California Attorney General).

on all parties in this action, as addressed below, by causing a true copy thereof to be distributed as follows: *See Attachment 1 - Service List.*

- BY MAIL:** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.
- BY HAND DELIVERY:** I caused such documents to be hand delivered to the stated parties.
- VIA TELEFACSIMILE:** I caused such documents to be transmitted via telefacsimile to the stated parties at their respective facsimile numbers. The facsimile transmission(s) was reported as complete and without error and said transmission report(s) is attached to this proof of service.
- VIA FEDERAL EXPRESS:** I caused such documents to be collected by an agent for Federal Express to be delivered to the offices of the stated parties, next day service/Saturday delivery requested.

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

Dated: October 15, 2010



Linda Childers

Attachment 1 – Service List

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Lehigh Southwest Cement Company
Attn: Henrik Wesseling, Plant Manager
Lehigh Southwest Cement Company
24001 Stevens Creek Boulevard
Cupertino, CA 95014-5659

Lehigh Southwest Cement Company
Corporate Headquarters
Attn: Current CEO or President
Lehigh Hanson, Inc.
300 E. John Carpenter Freeway
Irving, TX 75062

CSC - LAWYERS INCORPORATING SERVICE
c/o: Lehigh Southwest Cement Company
Attn: Henrik Wesseling, Plant Manager or
current CEO or President
2730 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Attorney General Edmund G. Brown, Jr.
Attorney General's Office
1300 "I" Street
P.O. Box 944255
Sacramento, CA 94244-2550

(With confidential factual information
supporting the Certificate of Merit Included)

Santa Clara County, California
District Attorney Dolores Carr
70 W. Hedding Street, West Wing
San Jose, CA 95110

City of Los Altos Hills, California
City Attorney Steven Mattas
Town Hall Offices
26379 Fremont Road
Los Altos Hills, CA 94022

City of Los Altos, California
City Attorney
One North San Antonio Road
Los Altos, CA 94022

City of Cupertino, California
City Attorney Carol Korade
20410 Town Center Lane #210
Cupertino, CA 95014-3220

City of Sunnyvale, California
City Attorney David Kahn
456 W. Olive Ave.
Sunnyvale, CA 94086

City of Mountain View, California
City Attorney Jannie Quinn
500 Castro Street
Mountain View, CA 94039-7540