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5 Attorneys for Plaintiff
6 AS YOU SOW

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 COUNTY OF SAN FRANCISCO

9 AS YOU SOW, a non-profit corporation,) Case No. 462938
10 Plaintiff,)
11 vs.) **CONSENT JUDGMENT**
12 QUABAUG CORPORATION, INC., a) Health & Safety Code §25249.5, *et seq.*
13 corporation,)
14 Defendant.)
15)

16 This Consent Judgment is entered into by and between Plaintiff AS YOU SOW
17 (“AYS”) and Defendant QUABAUG CORPORATION, INC. (“QUABAUG”) to resolve
18 all claims raised in the Complaint filed in the above-captioned action as well as the
19 Motion to Enforce Stipulated Judgment Pursuant to Code of Civil Procedure § 664.6 filed
20 by AYS in the action entitled *As You Sow v. The Sherwin-Williams Company, Quabaug*
21 *Corporation, et al.*, Case Number 954568. This Consent Judgment shall be effective
22 upon entry (the “Effective Date”). AYS and QUABAUG (collectively, where
23 appropriate “the Parties”) agree to the terms and conditions set forth below.

24 **WHEREAS:**

25 A. AYS is a non-profit foundation dedicated to, among other causes, the
26 protection of the environment, the promotion of human health, the improvement of
worker and consumer rights, environmental education, and corporate accountability.

1 AYS is based in San Francisco, California and incorporated under the laws of the State of
2 California.

3 B. QUABAUG is a Massachusetts corporation that distributes and sells
4 "Barge All-Purpose Cement" in various sizes and are comprised of between 45 and 50%
5 toluene, a chemical regulated by the State of California as known to cause reproductive
6 toxicity pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986
7 ("Proposition 65"), California Health and Safety Code §25249.5 et seq.; Title 22,
8 California Code of Regulations, §12000 et seq.

9 C. The specific products covered by this Consent Judgment are: "Barge all-
10 Purpose Cement" in all sizes (the PRODUCTS); no other products are covered by the
11 injunctive provisions or the release of liability set forth herein.

12 D. The Products have been distributed and sold by QUABAUG into
13 California since at least 1992.

14 E. On January 1, 1991, the State of California officially listed the chemical
15 toluene as a chemical known to cause reproductive toxicity, pursuant to California Health
16 and Safety Code §25249.8. Toluene became subject to the warning requirement one year
17 later and was therefore subject to the "clear and reasonable" warning requirements of
18 Proposition 65 beginning on January 1, 1992. (22 California Code of Regulations
19 ("CCR") § 12000, et seq.; H&S Code § 25249.5, et seq.).

20 F. On or about August 31, 1993, Plaintiff AYS filed a complaint in this Court
21 entitled *As You Sow v. The Sherwin-Williams Company, et al.*, (Case No. 954568)
22 alleging that Quabaug, among other defendants, had violated the California Business and
23 Professions Code, and Proposition 65 for failing to provide adequate warnings that
24 certain of its products, including the PRODUCT, contained toluene (the "1993 Lawsuit").
25 On December 30, 1993, six months after the 1993 Lawsuit was filed, the parties entered
26 into a comprehensive settlement agreement of the action arising out of the 1993 Lawsuit

1 (the "Settlement Agreement"). Pursuant to the terms of the Settlement Agreement,
2 QUABAUG agreed to cease sales of the PRODUCT unless the packaging of the
3 PRODUCT contained the following label: "WARNING: This product contains toluene, a
4 chemical known to the State of California to cause birth defects or other reproductive
5 harm." Quabaug also paid \$45,000, and, after Quabaug's commitment to use "best
6 efforts" to reformulate the Products were unavailing, an additional \$40,000 to AYS. In
7 return, AYS waived all rights to institute an action against Quabaug, or its distributors or
8 manufacturers for violation of Proposition 65 or any other statute or common law claim
9 based on Quabaug Corporation's failure to warn product users about exposure to toluene
10 from the PRODUCT so long as Quabaug complied with the terms of the Settlement
11 Agreement. The Settlement Agreement was approved by the Court and entered as a
12 Stipulated Judgment on January 25, 1994 (the "Stipulated Judgment").

13 G. On or about February 16, 2007, AYS sent 60-Day Notices of Proposition
14 65 violations to the requisite public enforcement agencies and to Defendant. These
15 notices provided QUABAUG and the public enforcement agencies with notice that
16 QUABAUG was in violation of Proposition 65 for failing to warn the purchasers and
17 individuals using the Products that the use of the Products exposes them to certain
18 chemicals known to the State of California to cause cancer and/or reproductive toxicity.
19 A copy of this notice is attached hereto as Exhibit A. QUABAUG stipulates for the
20 purpose of this Consent Judgment that the Notice is adequate to comply with Title 22,
21 California Code of Regulations, § 12903.

22 H. On May 1, 2007 AYS filed this action, entitled *As You Sow v. Quabaug*
23 *Corporation, Inc.* (the "Action") in San Francisco Superior Court, alleging violations of
24 Proposition 65. The Action was brought by AYS in the public interest at least sixty (60)
25 days after AYS provided notice of the Proposition 65 violations to QUABAUG and the
26 appropriate public enforcement agencies and none of the public enforcement agencies

1 had commenced and begun diligently prosecuting an action against QUABAUG for such
2 violations.

3 I. Quabaug contends that the Products were inadvertently mislabeled with
4 warnings other than those specified in the Stipulated Judgment in the 1993 Lawsuit.

5 J. Quabaug filed its Answer on August 9, 2007, alleging various legal
6 defenses, including the defense of the covenant not to sue and the releases contained in
7 the Settlement Agreement.

8 K. Thereafter, in the 1993 Lawsuit, AYS filed a Motion to Enforce Stipulated
9 Judgment and Quabaug filed a motion to stay this case, pending resolution of the Motion
10 to Enforce Stipulated Judgment.

11 L. For purposes of this Consent Judgment, the Parties stipulate that this Court
12 has subject matter jurisdiction over the allegations contained in the Complaint.
13 QUABAUG does not contest the exercise of jurisdiction by this Court to enter this
14 Consent Judgment as a full and final resolution of all causes of action pled in the
15 Complaint.
16

17 M. The Parties enter into this Consent Judgment to settle disputed claims
18 between them and to avoid prolonged litigation. By execution of this Consent Judgment,
19 QUABAUG does not admit any violations of Proposition 65 or any other law or standard
20 applicable to warning or disclosure concerning the manufacture, distribution and/or sale
21 of the PRODUCTS. Nothing in this Consent Judgment shall be construed as an
22 admission by QUABAUG of any fact, issue of law, or violation of law, nor shall
23 compliance with this Consent Judgment constitute or be construed as an admission by
24 QUABAUG of any fact, issue of law, or violation of law. Nothing in this Consent
25 Judgment shall prejudice, waive or impair any right, remedy or defense the Parties may
26 have in any other or further legal proceeding. This paragraph shall not diminish or
otherwise affect the obligations, responsibilities, and duties of QUABAUG under this

1 Consent Judgment.

2 **NOW, THEREFORE**, in consideration of the promises, covenants and agreements
3 herein contained and for other consideration, the sufficiency and adequacy of which is hereby
4 acknowledged by the parties:

5 **1. Immediate Provision of Clear and Reasonable Health Hazard Warnings**

6 **For All Products On Or Before October 20, 2007.** On or before October 20, 2007,
7 QUABAUG shall permanently cease and no longer ship (or cause to be shipped) for sale or
8 use in California any of the PRODUCTS unless each individual unit of such PRODUCT on
9 its packaging bears the following warning statement on its individual unit label packaging:

10 **WARNING: THIS PRODUCT CONTAINS TOLUENE, A CHEMICAL**
11 **KNOWN TO THE STATE OF CALIFORNIA TO CAUSE**
12 **BIRTH DEFECTS OR OTHER REPRODUCTIVE HARM.**

13 The warning statement shall be prominent and displayed on the unit packaging of each
14 PRODUCT with such conspicuousness, as compared with other words, statements, or
15 designs, so as to render it likely to be read and understood by an ordinary individual
16 purchasing or using the PRODUCT.

17 **2.** Quabaug has provided to AYS a sample of the above-referenced warning to
18 be used by Quabaug and AYS acknowledges that such warning, if provided in a manner
19 satisfying the provisions of Paragraph 1, satisfies the provisions of this Consent Judgment.

20 **3. Provision of Additional Information Regarding PRODUCTS Sold To**
21 **Intermediaries/Non-End Users.** Within thirty (30) days of the Execution Date of this
22 Agreement (“Execution Date” is used herein to mean the last date upon which the
23 representatives of the Parties sign this Consent Judgment) QUABAUG shall send a
24 Notification Letter to each of its customers who have purchased any of the Products from
25 QUABAUG in the year preceding the Execution Date of this Agreement and who
26 QUABAUG knows or has reason to know re-sell the Products in any fashion (such customers
are hereafter referred to as “Intermediaries/Non-End Users”). This Notification Letter shall

1 notify the Intermediaries/Non-End Users regarding the warning requirements of Proposition
2 65 as they apply to each of the PRODUCTS. The verbatim language of the Notification
3 Letter is attached hereto as Exhibit B. A verbatim copy of the Notification Letter sent in
4 accordance with this Section shall also be mailed to AYS simultaneously with the mailing to
5 the Intermediaries/Non-End Users.

6 **4. Civil Penalties.** QUABAUG shall pay a civil penalty in the amount of \$7,500
7 to AYS, pursuant to Health & Safety Code §25249.7(b). AYS shall remit 75% of this
8 amount to the State of California pursuant to Health & Safety Code §25192.

9 **5. Payment In Lieu of Further Civil Penalties.** QUABAUG shall make a
10 payment in lieu of further civil penalties in the amount of \$46,500 to AYS. AYS shall grant
11 at least one half of these funds to California non-profit groups to reduce exposures to toxic
12 chemicals, and to increase consumer, worker and community awareness of the health hazards
13 posed by toxic chemicals. Any remaining funds shall be deposited in the AYS
14 Environmental Enforcement Fund and shall be used to reduce exposures to toxic chemicals,
15 and to increase consumer, worker and community awareness of the health hazards posed by
16 toxic chemicals. In deciding among the grantee proposals, the As You Sow Board of
17 Directors ("Board") takes into consideration a number of important factors, including: (1) the
18 nexus between the harm done in the underlying case(s), and the grant program work; (2) the
19 potential for toxics reduction, prevention, remediation or education benefits to California
20 citizens from the proposal; (3) the budget requirements of the proposed grantee and the
21 alternate funding sources available to it for its project; and (4) the Board's assessment of the
22 grantee's chances for success in its program work.

23 **6. Reimbursement of Plaintiff's Investigative, Expert and Legal Fees and**
24 **Costs.** QUABAUG shall reimburse AYS in the amount of \$52,000 as partial reimbursement
25 of AYS' reasonable investigative, expert, and legal fees and costs incurred as a result of
26

1 investigating, bringing this matter to QUABAUG's attention, and negotiating a settlement in
2 the public interest.

3 **7. Payment Obligations.** Pursuant to Paragraphs 4, 5 and 6 above, QUABAUG
4 agrees to remit the amount of \$106,000 to AYS, payable to the As You Sow Environmental
5 Enforcement Fund (Employer Identification Number 94-3169008). This payment shall be
6 remitted within thirty (30) days after the Execution Date of this Consent Judgment and held in
7 escrow by AYS until the Effective Date entry of this Consent Judgment.

8 **8. Release of Liability of QUABAUG.** Provided that Quabaug complies with the
9 warning requirements as set forth in Paragraph 1 of this Consent Judgment, AYS waives all
10 rights to institute any form of legal action against QUABAUG, its officers, directors,
11 employees, agents, attorneys, representatives, parents, subsidiaries, affiliates, divisions,
12 subdivisions and customers, under Proposition 65 based upon QUABAUG's alleged failure to
13 warn, within the meaning of Proposition 65 about exposure to toluene contained in any of the
14 PRODUCTS distributed or sold on or before the Effective Date of this Consent Judgment.

15 **9. Release of Liability of AYS.** QUABAUG waives all rights to institute any
16 form of legal action against AYS, its officers, directors, employees, agents, attorneys and
17 representatives (the "AYS Releasees") for all actions or statements made or undertaken by the
18 AYS Releasees in the course of seeking enforcement of Proposition 65 against QUABAUG.

19 **10. Motion To Approve Consent Judgment, Notice to the California Attorney**
20 **General's Office.** Upon execution of this Consent Judgment, Plaintiff shall notice a Motion
21 for Approval & Entry of Consent Judgment in the San Francisco Superior Court pursuant to
22 Title 11, Cal. Code of Regs. §3000, *et seq.* This motion shall be served upon all of the Parties
23 to the Action and upon the California Attorney General's Office. In the event that the Court
24 fails to approve and order entry of the judgment, this Consent Judgment shall become null and
25 void upon the election of any Party as to them and upon written notice to all of the Parties to
26 the Action pursuant to the notice provisions herein. If this Consent Judgment becomes null

1 and void, or is not approved by the Court within one hundred and eighty (180) days of its
2 execution by all Parties, Plaintiff shall refund all sums paid by Defendant hereunder within
3 thirty (30) days of written notice to Plaintiff by Defendant that a refund is due. Defendant and
4 Plaintiff shall use best efforts to support entry of this Consent Judgment in the form submitted
5 to the Office of the Attorney General. If the Attorney General objects in writing to any term in
6 this Consent Judgment, the Parties shall use best efforts to resolve the concern in a timely
7 manner and prior to the hearing on the motion to approve this Consent Judgment. If the Parties
8 cannot resolve an objection of the Attorney General, then Plaintiff and Defendant shall proceed
9 with seeking entry of an order by the court approving this Consent Judgment in the form
10 originally submitted to the Office of the Attorney General. If the Attorney General elects to
11 file a notice or motion with the Court stating that the People shall appear at the hearing for
12 entry of this Consent Judgment so as to oppose entry of the Consent Judgment, then a party
13 may withdraw from this Consent Judgment prior to the date of the hearing, with notice to all
14 parties and the Attorney General, and upon such notice this Consent Judgment shall be null and
15 void. Upon the Execution of this Consent Judgment, AYS shall withdraw its Motion to
16 Enforce Stipulated Judgment filed in the 1993 Lawsuit and Quabaug will withdraw its Motion
17 to Stay this action..

18 **11. Severability.** In the event that any of the provisions of this Consent Judgment
19 are held by a court to be unenforceable, the validity of the enforceable provisions shall not be
20 adversely affected.

21 **12. Enforcement.** In the event that a dispute arises with respect to any of the
22 provisions of this Consent Judgment, the Parties shall meet and confer within 10 days after
23 either Party receives written notice of an alleged violation of this Agreement from the other
24 Party. In the event the Parties cannot resolve the dispute, this Consent Judgment may be
25 enforced pursuant to Code of Civil Procedure §664.6 or any other valid provision of law. The
26 prevailing party in any dispute regarding compliance with the terms of this Consent Judgment

1 shall be awarded its reasonable fees and costs incurred, in addition to any other relief otherwise
2 ordered by the Court, including civil penalties in an amount to be determined by the Court.
3

4 **13. Governing Law.** The terms of this Agreement shall be governed by the laws of
5 the State of California.

6 **14. Notices.** All correspondence and notices required to be provided under this
7 Agreement shall be in writing and shall be sent by first class registered or certified mail
8 addressed as follows. All correspondence to AYS shall be mailed to:

9 Attn: Lawrence E. Fahn
10 Executive Director, As You Sow
11 311 California Street, Suite 510
12 San Francisco, CA 9410

13 **With a copy to:**

14 Andrew L. Packard
15 The Law Offices of Andrew L. Packard
16 319 Pleasant Street
17 Petaluma, CA 94952

18 All correspondence to QUABAUG shall be mailed to:

19 Attn: Kevin Donahue
20 Quabaug Corporation, Inc.
21 18 School Street
22 North Brookfield, MA 01535

23 **With a copy to:**

24 Ken Keller, Esq.
25 Krieg, Keller, Sloan, Reilly & Roman LLP
26 114 Sansome Street, 4th Floor
San Francisco, CA 94104-3803

15. Integration & Modification. This Agreement, together with the Exhibits
hereto which are specifically incorporated herein by this reference, constitutes the entire
agreement between the Parties relating to the rights and obligations herein granted and
assumed, and supersedes all prior agreements and understandings between the Parties.

This Agreement may be modified only upon the written agreement of the Parties.

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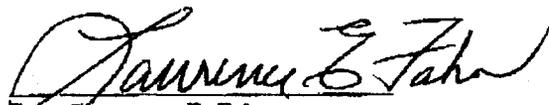
16. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

17. **Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO STIPULATED:

DATED: 9/19/07

AS YOU SOW


By: Lawrence E. Fahn
Executive Director

DATED: _____

QUABAUG CORPORATION, INC.

By: Michael V. Gionfriddo
President

IT IS SO ORDERED:

DATED: _____

Judge of the Superior Court

EXHIBITS

EXHIBIT A: Notice of Proposition 65 Violation

EXHIBIT B: Verbatim Notification Letter

82244

1
2 **16. Counterparts.** This Agreement may be executed in counterparts, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute
4 one and the same document.

5 **17. Authorization.** The undersigned are authorized to execute this
6 Agreement on behalf of their respective parties and have read, understood, and agree to
7 all of the terms and conditions of this Agreement.

8 **IT IS SO STIPULATED:**

9 DATED: _____

AS YOU SOW

10
11
12 By: Lawrence E. Fahn
13 Executive Director

14 DATED: September 20, 2007

QUABAUG CORPORATION, INC.

15
16 Michael V. Gionfriddo
17 By: Michael V. Gionfriddo
18 President

19 **IT IS SO ORDERED:**

20 DATED: _____

21 _____
22 Judge of the Superior Court

23 **EXHIBITS**

24 EXHIBIT A: Notice of Proposition 65 Violation

25 EXHIBIT B: Verbatim Notification Letter

26 82244

EXHIBIT A



February 16, 2007

311 California Street, Suite 510
San Francisco, CA 94104
T 415.391.3212
F 415.391.3245
www.asyousow.org

**NOTICE OF VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE §25249.5 ET SEQ.**

Dear Public Enforcement Agencies:

As You Sow ("AYS") is a non-profit foundation organized under California's Non-Profit Public Benefit Corporation Law. AYS is dedicated to, among other causes, the protection of the environment, the promotion of human health, the improvement of worker and consumer safety, and environmental education.

AYS has documented violations of California's Safe Drinking Water & Toxic Enforcement Act of 1986 ("Proposition 65"), codified at Health & Safety Code §25249.5 *et seq.* This letter serves to provide AYS' notification of these violations to the public enforcement agencies and to the violator. Pursuant to §25249.7(d) of the statute, AYS intends to bring an enforcement action sixty (60) days after effective service of this notice unless the public enforcement agencies have commenced and are diligently prosecuting an action to rectify these violations.

A summary of the statute and its implementing regulations, which was prepared by the lead agency designated under the statute, is enclosed with the copy of this notice served upon the violator. The specific details of the violations that are the subject of this notice are provided below.

Alleged violator. The name of the violator covered by this notice is **QUABAUG CORPORATION** ("Quabaug").

Chemicals. These violations involve exposures to toluene. On January 1, 1991, toluene was identified and listed under the statute as a chemical known to the State of California to cause birth defects or other reproductive harm.

Consumer products. The product that is the subject of this notice is an adhesive named *Barge All Purpose Cement*.

Route of exposure. The consumer exposures that are the subject of this notice result from the purchase, acquisition, handling and use of the product. Accordingly, the consumer exposures have occurred and continue to occur primarily through the inhalation exposure route, but also may occur through dermal contact and ingestion.

The occupational exposures that are the subject of this notice result from the purchase, acquisition, handling and use of the product. Accordingly, the occupational exposures have

Notice of Violation of California Health & Safety Code §25249.5 *et seq.*
February 16, 2007
Page 2

occurred and continue to occur primarily through the inhalation exposure route, but also may occur through dermal contact and ingestion.

This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures outside the State of California. The approval also provided that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

Duration of violations. These ongoing violations have occurred on every day since the products have been sold in California and will continue every day until clear and reasonable warnings are provided or toluene is removed from the product.

Pursuant to Title 11, C.C.R. § 3100, a certificate of merit is attached hereto.

In keeping with its public interest mission and to expeditiously rectify these ongoing violations of California law, AYS is interested in seeking a constructive resolution of this matter without engaging in costly and protracted litigation. Please direct all communications regarding this notice to AYS' counsel in this matter:

Andrew L. Packard, Esq.
Law Offices of Andrew L. Packard
319 Pleasant Street
Petaluma, CA 94952
Tel. (707) 763-7227 Fax (707) 763-9227

Very truly yours,



Larry Fahn
Executive Director

Enclosure

(1) An action is deemed to have been "commenced more than sixty days after the person has given notice" where more than sixty days have elapsed from the date of service of the notice, as that date would be calculated for service of a document pursuant to the provisions of Code of Civil Procedure Section 1013.

(2) Where the sixtieth day after giving notice is a day identified as a "holiday" as defined in Code of Civil Procedure Section 12a, then the "sixtieth day" shall be extended to the next day which is not a "holiday".

(3) Determination of the first and last day shall be made in accordance with Section 12 of the Code of Civil Procedure.

NOTE: Authority cited: Sections 25249.12, Health and Safety Code. Reference: Section 25249.7, Health and Safety Code.

HISTORY

1. New section and Appendix A filed 4-22-97; operative 4-22-97 pursuant to Government Code section 11343.4(d) (Register 97, No. 17).
2. Amendment of section and Appendix A filed 1-7-2003; operative 2-6-2003 (Register 2003, No. 2).

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

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 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

FOR FURTHER INFORMATION. . .

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

CERTIFICATE OF MERIT

(for As You Sow's Notice of Proposition 65 Violation on QUABAUG CORPORATION)

I, Andrew L. Packard, declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged that **QUABAUG CORPORATION** has violated Health & Safety Code §25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
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 exposure to the listed chemicals that are the subject of the action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and that 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 §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: February 16, 2007


Andrew L. Packard

Attachments (for Attorney General Copy only)

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury under the laws of the State of California that the following is true and correct:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is: 311 California Street, Suite 510, San Francisco, California 94104.

On February 16, 2007, I served the following documents:

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- Certificate of Merit
- "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary"

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Quabaug Corporation
Roger E. Varnum, Chairman of the Board
18 School Street
North Brookfield, MA 01535

On February 16, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- Certificate of Merit, including Supporting Documentation Required by Title 11, C.C.R. § 3102

on the following party by placing a true and correct copy thereof in a sealed envelope, addressed to the party listed below, and depositing it at a United States Postal Service Office for delivery by Certified Mail:

Attn: Ed Weil, Deputy Attorney General
California Department of Justice
P.O. Box 70550
Oakland, CA 94612-0550

On February 16, 2007, I served the following document(s):

- Notice of Violation of California Health & Safety Code § 25249.5 et seq., including Exhibit A
- Certificate of Merit

on each of the parties on the service list attached hereto by placing a true and correct copy thereof in a sealed envelope, addressed to each of the parties on the service list attached hereto, and depositing it at United States Postal Service mail box for delivery by First Class Mail.

Executed on February 16, 2007, at San Francisco, California.


Karalyn P. Buchner

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

THE HONORABLE THOMAS J ORLOFF
ALAMEDA COUNTY DISTRICT ATTORNEY
1225 FALLON ST RM 900
OAKLAND CA 94612

THE HONORABLE WILLIAM RICHMOND
ALPINE COUNTY DISTRICT ATTORNEY
PO BOX 248
MARKLEEVILLE CA 96120

THE HONORABLE TODD D RIEBE
AMADOR COUNTY DISTRICT ATTORNEY
708 COURT ST STE 202
JACKSON CA 95642

THE HONORABLE MICHAEL RAMSEY
BUTTE COUNTY DISTRICT ATTORNEY
25 COUNTY CTR DR
OROVILLE CA 95965

THE HONORABLE JEFFREY TUTTLE
CALAVERAS COUNTY DISTRICT ATTORNEY
891 MTN RANCH RD
SAN ANDREAS CA 95249

THE HONORABLE JOHN POYNER
COLUSA COUNTY DISTRICT ATTORNEY
547 MARKET ST
COLUSA CA 95932

THE HONORABLE ROBERT KOCHLY
CONTRA COSTA COUNTY DISTRICT
ATTORNEY
PO BOX 670
MARTINEZ CA 94553

THE HONORABLE MICHAEL RIESE
DEL NORTE COUNTY DISTRICT ATTORNEY
450 H ST STE 171
CRESCENT CITY CA 95531

THE HONORABLE VERNON PIERSON
EL DORADO COUNTY DISTRICT ATTORNEY
515 MAIN ST
PLACERVILLE CA 95667

THE HONORABLE ELIZABETH EGAN
FRESNO COUNTY DISTRICT ATTORNEY
2220 TULARE ST STE 1000
FRESNO CA 93721

THE HONORABLE ROBERT HOLZAPFEL
GLENN COUNTY DISTRICT ATTORNEY
PO BOX 430
WILLOWS CA 95988

THE HONORABLE PAUL GALLEGOS
HUMBOLDT COUNTY DISTRICT ATTORNEY
825 FIFTH ST
EUREKA CA 95501

THE HONORABLE GILBERT OTERO
IMPERIAL COUNTY DISTRICT ATTORNEY
939 W MAIN ST
EL CENTRO CA 92243

THE HONORABLE ARTHUR MAILLET
INYO COUNTY DISTRICT ATTORNEY
PO DRAWER D
INDEPENDENCE CA 93526

THE HONORABLE EDWARD R JAGELS
KERN COUNTY DISTRICT ATTORNEY
1215 TRUXTUN AVE
BAKERSFIELD CA 93301

THE HONORABLE RON CALHOUN
KINGS COUNTY DISTRICT ATTORNEY
1400 W LACEY BLVD
HANFORD CA 93230

THE HONORABLE JON HOPKINS
LAKE COUNTY DISTRICT ATTORNEY
255 N FORBES ST
LAKEPORT CA 95453

THE HONORABLE ROBERT BURNS
LASSEN COUNTY DISTRICT ATTORNEY
220 S LASSEN ST STE 8
SUSANVILLE CA 96130

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LOS ANGELES CA 90012-3210

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MADERA COUNTY DISTRICT ATTORNEY
209 W YOSEMITE AVE
MADERA CA 93637

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SAN RAFAEL CA 94903

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MERCED CA 95340

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MODOC COUNTY DISTRICT ATTORNEY
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ALTURAS CA 96101-4020

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MONO COUNTY DISTRICT ATTORNEY
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BRIDGEPORT CA 93517

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RIVERSIDE CA 92501

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SACRAMENTO CA 95814

THE HONORABLE CANDICE HOOPER
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SAN BERNARDINO CA 92415-0004

PUBLIC ENFORCEMENT AGENCY SERVICE LIST

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400 COUNTY CTR FL 3
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THE HONORABLE DOLORES CARR
SANTA CLARA COUNTY DISTRICT ATTORNEY
70 W HEDDING ST WEST WING
SAN JOSE CA 95110

THE HONORABLE BOB LEE
SANTA CRUZ COUNTY DISTRICT ATTORNEY
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SANTA CRUZ CA 95060

THE HONORABLE GERALD C. BENITO
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MODESTO CA 95353

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YUBA CITY CA 95991

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TRINITY COUNTY DISTRICT ATTORNEY
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200 N MAIN ST
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JOHN REA, ACTING DIRECTOR
DEPARTMENT OF INDUSTRIAL RELATIONS
455 GOLDEN GATE AVE
SAN FRANCISCO, CA 94102

LEN WELSH, ACTING CHIEF
DIV. OF OCCUPATIONAL SAFETY & HEALTH
1515 CLAY ST STE 1901
OAKLAND, CA 94612

EXHIBIT B

EXHIBIT B
[Verbatim Notice Letter]

[QUABUAG LETTERHEAD and DATE]

Dear Customer:

The "Barge All-Purpose Cement" you have purchased from Quabuag Corporation contain levels of toluene that require a reproductive health hazard warning pursuant to California's Proposition 65 (Health & Safety Code §25249.5, et seq.). Pursuant to an agreement of the parties and a subsequent court order, we have begun the process by which warnings will be provided for the products by October 20, 2007 to the extent those products do not already contain an appropriate warning.

The purpose of this letter is to inform you that if you resell you are required to provide a clear and reasonable warning within the meaning of Proposition 65 to the purchasers of the product. Any Barge All-Purpose Cement products sold without the warning required by the Court's order must either be returned to QUABAUG as soon as possible, or must be sold with one of the 100 warning stickers enclosed to be applied to the packaging for each product. Please contact us if you need more warning stickers. Failure to provide these warning may result in you or your company being subject to civil penalties of up to \$2500 per violation and other sanctions. You may want to consult legal counsel concerning your obligations under the law.

The warning must be provided unless you can establish in court that the levels of toluene in the products you sell is below the level causing exposures that are above the levels requiring health hazard warnings. For additional information regarding the requirements of Proposition 65, you should contact the Office of Environmental Health Hazard Assessment at (510) 622-3170, Fax: (510) 622-3218, or on the Internet at www.oehha.ca.gov.

Sincerely,

Kevin Donahue, CEO
Quabaug Corporation

Enclosures