



1515 CLAY STREET, 20TH FLOOR
P.O. BOX 70550
OAKLAND, CA 94612-0550

Public: (510) 622-2100
Telephone: (510) 622-2149
Facsimile: (510) 622-2270
E-Mail: Ed.Weil@doj.ca.gov

January 22, 2002

Kamran Ghalchi
16161 Ventura Blvd. #663
Encino, CA 91436

RE: Citizens for Responsible Business Proposition 65 Notices
(Air Emissions)

Dear Mr. Ghalchi:

The Attorney General recently received approximately 3,000 sixty-day notices from your office, on behalf of your client Citizens for Responsible Business, in which you allege that certain companies have failed to provide required Proposition 65 warnings. These notices were among about 3,500 served on our office between December 21, 2001 and December 31, 2001. This letter concerns a group of about 1,200 of those notices, which appear to allege that certain facilities have failed to provide warnings of chemical exposure to the community surrounding the facility, caused by air emissions.

As you know, the Legislature passed, and the Governor approved, SB 471, which adopted certain changes in Proposition 65. These changes include the new requirement that notices alleging violations of the warning requirement include a certificate of merit, which provides certain information substantiating the claims made in the notice. This requirement took effect for notices served on or after January 1, 2002. The Attorney General supported this legislation, because it helps assure that noticing parties have adequately investigated their claims before providing the notice.

In our experience, we have found that responsible groups doing this type of work had engaged in an investigation similar to that required by SB 471, and therefore would not be especially burdened by the new requirements. Unfortunately, some groups have not always performed sufficient investigation before providing these notices. You have provided a large volume of notices very shortly before the effective date of the new certificate of merit requirements. We certainly hope that this was not done in an effort to avoid conducting the type of investigation that would be necessary to provide an adequate certificate of merit, but the timing and volume of your notices could support that inference. We are particularly concerned about this group of notices, because our examination to date suggests that they involve separate facilities, each of which must be investigated individually in order to determine whether a

violation has occurred.

Although the Certificate of Merit requirement was not in effect on the date of your notices, the provisions of the Code of Civil Procedure and other legal remedies already exist to address an civil actions that are filed without adequate basis to proceed. For example, Code of Civil Procedure section 128.7(b)(3) provides that your signature on a complaint constitutes certification, among other things, that “the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery.” Please be sure that, if any actions are filed pursuant to the notices in question, they meet all applicable legal standards.

Moreover, if actions are filed pursuant to these notices, they will be subject to the newly-required settlement review procedures. Under these provisions, no settlements can be approved unless the court finds that any warning complies with the law, any civil penalty is reasonable, and any award of attorney’s fees is reasonable under California law. Any settlements must be provided to the Attorney General for review, and the Attorney General may appear in court concerning the settlements. In addition, the Attorney General has authority to investigate matters within his jurisdiction through administrative subpoenas promulgated pursuant to Government Code section 11181 et seq.

Accordingly, we have a number of questions concerning the support for the allegations in your notice, the answers to which are important to our ability to evaluate whether the Attorney General should commence enforcement action on them. We trust that you have obtained this information as part of your investigation, and will provide it to us:

1. What evidence do you have that each facility has failed to provide a clear and reasonable warning?
2. What evidence do you have that in fact the alleged violator is exposing persons to chemicals on the Proposition 65 list? Remember, the fact that a company uses a particular chemical does not establish that any detectable human exposure exists.
3. Many facilities have been subject to similar claims in the past, and have been sued and reached settlements in those matters. How many of these companies have been subject to prior litigation on the same issues?

In addition, we have begun to review the notices to determine whether they comply with the regulatory requirements for notices, set forth in the Code of California Regulations, Title 22, section 12903. We have noticed that many of these notices are addressed to “President,” “CEO”

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or some other general title. Section 12903(c)(4) provides that where the alleged violator has a current registration with the California Secretary of State that identifies a Chief Executive Officer, President, or General Counsel of the corporation, the notice shall be addressed to one of those persons. This requires that the individual person be identified by name, not merely by title. If you failed to provide this identification where the names are registered with the Secretary of State, your notice is invalid.

Please remember that Citizens for Responsible Business has no authority to commence any civil action under Proposition 65 until sixty days, plus appropriate time for mail service, has run. In the interim, Citizens for Responsible Business has no authority to represent the public interest or to resolve these matters. Any purported "settlements" reached in the interim would have no effect on anyone other than the parties to the agreements. If any such agreements are made, we still will seek information on those agreements, and analyze them to determine whether they comply with all applicable laws.

This letter should not be considered an exclusive list of our concerns, and the lack of comment on a particular claim should not be construed to imply that the claim, or the discussion of the claim in the notice, is valid.

Finally, we have noted some discrepancies between the alleged violators identified in the electronic list you provide us and the actual copies of notices served on our office. We currently are going through the actual notices to identify which ones actually were served on our office. Of course, if a notice was not actually served on the Attorney General, then it is invalid. Once we have developed our list of the notices actually received in our office, we will provide it to you.

Sincerely,

EDWARD G. WEIL
Deputy Attorney General

For BILL LOCKYER
Attorney General