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September 25, 2002

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RE: Citizens for Responsible Business Proposition 65 Notices
(Auto Dealers)

Dear Messrs. Ghalchi and Ahdoot:

Thank you for providing us with additional information with respect to the notices (“dealer notices”) from your office, on behalf of Citizens for Responsible Business, Inc., in which you allege that certain auto dealerships and repair businesses have failed to provide required warnings under Proposition 65, Health and Safety Code section 25249.5, et seq. (the “Act”). The additional information that you have supplied to us includes: (i) 14 binders of studies addressing the exposures in question; (ii) correspondence from the expert consultant that you have retained; (iii) test data regarding exposure levels inside residential garages and homes with attached garages; (iv) test data regarding exposures at a sample auto dealership; (v) reports prepared by your investigators who apparently visited every noticed dealership for the purposes of determining whether the warnings required by the Act were being provided, and (vi) copies of various relevant pleadings and correspondence.¹ This extensive compilation of information has been helpful to us and we have reviewed it carefully. In light of this review, we provide the following comments with respect to the violations that you have alleged.

1. Occupational Exposures:

You allege occupational exposures at each of the auto repair businesses that has received a notice. We have reviewed the relevant information that you supplied to us, including (i) the test data from a sample auto dealership and (ii) the studies indicating that people who work in auto repair shops suffer from elevated rates of certain types of cancer and reproductive problems.

¹You supplied this information to us pursuant to an agreement that specifies that we may comment on it publicly, but that we will otherwise treat it as confidential, official information pursuant to Evidence Code section 1040.

In order to determine whether employees and others are receiving the warning required by the Act, it appears that your investigators have visited the dealerships in question. Based on your investigators' reports, it also appears that warning signs are not present at a large number of the repair shops. As you know, the recipients of these notices may comply with the occupational warning requirements of the Act by in a variety of ways, which include not only posting signs in the workplace, as allowed by 22 Cal. Code Regs. section 12601(c)(1)(B), but also (1) providing warnings through the methods authorized in the California Hazard Communication Standard (HCS) (8 Cal. Code Regs. §§ 5194 et seq.) or (2) using other appropriate methods that comply with the Act and are reasonably calculated to convey the warning. The recipients of your notices would appear to be in violation of the Act if they are not using one of these methods to provide a warning to employees who are exposed to listed chemicals at levels that require a warning. We make no determination as to whether the exposures that you allege actually reach levels that require a warning.

If you decide to take further action with respect to this alleged violation, we assume you will proceed only against those companies for which you have evidence that no appropriate warning has been provided.

2. Consumer Product Exposure Nos. 1 and 2.

We understand that pursuant to our recent discussions, and in response to the comments we previously provided to you with respect to Consumer Product Exposures 1 and 2, you will not take any further action with respect to these alleged violations.

3. Consumer Product Exposure No. 3.

Your third alleged consumer product exposure applies to exposures to vehicle exhaust, but only to "exposures that occur inside the consumers' automobile or motor vehicle parking garages or lots adjoining or inside their place of residence." You have provided us with (i) studies addressing exposures in parking garages and residences that are adjacent to garages; (ii) test data regarding exposure levels inside such garages and residences, and (iii) correspondence from the expert consultant whom you have retained. This information is offered as support for your contention that exposures occur when vehicle exhaust escapes from residential garages into adjoining houses. This information indicates that you can assert a prima facie case with respect to this alleged violation. We make no determination as to the ultimate legal or factual merits of any such action.

4. Environmental exposures.

We understand that pursuant to our recent discussions, and in response to the comments we previously provided to you with respect to the Environmental Exposure alleged at pages 8-9

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of your dealer notices, you will not take any further action with respect to that alleged violation.

Thank you again for your efforts in providing us with an extremely thorough response to our request for further information. Should you have any questions regarding this matter, please contact me.

Sincerely,

DENNIS A. RAGEN
Deputy Attorney General

For **BILL LOCKYER**
Attorney General

cc: Edward G. Weil