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6 COALITION FOR RESPONSIBLE BUILDING STANDARDS;  
CALIFORNIA STATE PIPE TRADES COUNCIL; and  
7 JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY

8  
9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11  
12 COALITION FOR RESPONSIBLE BUILDING  
STANDARDS, CALIFORNIA STATE PIPE  
13 TRADES COUNCIL; JOINT COMMITTEE  
ON ENERGY AND ENVIRONMENTAL  
14 POLICY; and DOES 1 through 10, inclusive,

15 Petitioners,

16 vs.

17 CALIFORNIA BUILDING STANDARDS  
COMMISSION, a public agency;  
18 CALIFORNIA OFFICE OF STATEWIDE  
HEALTH PLANNING AND  
19 DEVELOPMENT, a public agency; and DOES  
11 through 20, inclusive,

20 Respondents.  
21

Case No.:

**VERIFIED PETITION FOR WRIT OF  
MANDATE**

(California Environmental Quality Act,  
Pub. Resources Code, § 21000 et seq.;  
Code Civ. Proc., § 1085.)

22  
23 Petitioners Coalition for Responsible Building Standards, California State Pipe Trades  
24 Council, and Joint Committee on Energy and Environmental Policy are informed and believe and  
25 on that basis allege as follows:

26 **INTRODUCTION**

27 1. This case involves a remarkably brazen violation of state law. The Respondent state  
28 agencies took action to propose and approve new building standards that may cause significant

1 environmental and public health impacts without conducting any review of the proposed standards  
2 under the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.)  
3 (“CEQA”). Respondents took this action in the face of a record containing overwhelming evidence  
4 of a potential for significant impacts, the Respondents’ own admission that all prior state agency  
5 reviews of such standards have identified significant impacts requiring mitigation, and prior court  
6 decisions holding that Respondents were required to conduct a pre-approval CEQA review of  
7 virtually identical regulatory proposals. This kind of open defiance of express judicial rulings is  
8 exceedingly rare, and we urge this court to send a strong message that such contumacy will not be  
9 tolerated, particularly by state agencies responsible for protecting public health and safety

10       2.       Respondent Office of Statewide Health Planning and Development (“OSHPD”)  
11 regulates building standards in healthcare clinics, hospitals, nursing homes, and other healthcare  
12 facilities. Based on OSHPD developed standards, the California Building Standards Code (the  
13 “State Code”) currently prohibits the installation and use of chlorinated polyvinyl chloride  
14 (“CPVC”) drinking water pipe; and polyvinyl chloride (“PVC”) and acrylonitrile butadene styrene  
15 (“ABS”) plastic drain and waste pipe in all healthcare clinics and other healthcare facilities in  
16 California. The State Code also requires that plumbing vents in OSHPD healthcare clinics be  
17 located at least 25 feet from building air intakes, and mandates that newly installed or repaired  
18 plumbing systems in OSHPD healthcare clinics be flushed and disinfected according to State Code  
19 protocols. These State Code standards provide important environmental benefits, and were  
20 developed and adopted to protect the health and safety of patients, building occupants, construction  
21 workers and the general public.

22       3.       On April 24, 2013, Respondent California Building Standards Commission  
23 (“Commission”) adopted OSHPD-proposed amendments to the State Code that created a new  
24 “OSHPD 3SE” primary care clinic occupancy, and that exempted such clinics from all existing: (a)  
25 prohibitions on CPVC potable water pipe and ABS and PVC drain and waste pipe; (b)  
26 requirements to locate plumbing vents and air intakes at least 25 feet apart; and (c) requirements to  
27 flush and disinfect new or repaired plumbing systems (“Project” or “OSHPD 3SE Amendments”).  
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1 In taking this action, Respondents failed to evaluate the potential impacts that may result from the  
2 Project's reduced protection to the environment and to public health and safety.

3 4. Petitioners challenge Respondents' approval of the OSHPD 3SE Amendments on  
4 the grounds that Respondents failed to first assess the potential environmental impacts of the  
5 Project as required by CEQA and the CEQA Guidelines, Title 14, California Code of Regulations,  
6 Section 15000 et seq. ("CEQA Guidelines"). Petitioners seek issuance of a writ of mandate  
7 directing Respondents to set aside their approval of the OSHPD 3SE Amendments, and to take no  
8 further action to approve or authorize the Project until they have complied with CEQA.

9 5. Respondents refusal to conduct any CEQA review of the Project stands in willful  
10 defiance of prior court decisions involving the same Respondents and the same Petitioners that  
11 have affirmed the applicability of CEQA to the adoption of potentially hazardous or  
12 environmentally damaging building standards. Moreover, the tragic history of lead, asbestos, and  
13 other hazardous building materials entering the marketplace without consideration of their health  
14 and safety effects demonstrates that CEQA review of potentially hazardous building standards is  
15 sound public policy.

16 6. In order to avoid such catastrophes, and as a result of the long-standing advocacy of  
17 Petitioners' members, California now requires a precautionary approach to the adoption of building  
18 standards by requiring CEQA review of the public health and environmental consequences of  
19 potentially hazardous new building materials and methods prior to allowing their use in homes,  
20 offices and other buildings throughout the state. With respect to new plastic drinking water pipe in  
21 particular, this pre-approval review has enabled Californians to escape the health hazards and  
22 disastrous product failures that have occurred elsewhere.

23 7. Over the past twenty-five years, plastic pipe manufacturers and trade associations  
24 have proposed that various types of plastic materials be approved to carry drinking water in  
25 California homes and other buildings. In each case, the manufacturers argued that CEQA review  
26 was unwarranted because their products already met private industry standards intended to regulate  
27 performance and safety. Despite industry assertions that an independent evaluation was  
28 unnecessary, the state agency assessments revealed numerous undisclosed hazards associated with

1 many of the proposed products, including leaching of toxic and carcinogenic chemicals into  
2 drinking water, significant exposure of pipe installers to chemical solvents, and widespread  
3 mechanical failure. As a result of the pre-approval CEQA reviews conducted in California,  
4 manufacturers of some of the approved materials changed their product formulas to reduce  
5 hazardous leaching of chemicals, and the regulatory agencies have imposed restrictions and  
6 conditions on use of these products to protect the health and safety of workers and consumers.  
7 Moreover, as a result of this State's public review process, Californians were spared the millions of  
8 dollars in property damage that occurred when polybutylene ("PB") plastic plumbing pipe failed  
9 across the United States in jurisdictions that did not require a pre-approval health and safety  
10 review.

11 8. During the administrative proceedings on the Project, substantial evidence was  
12 provided to Respondents demonstrating that the OSHPD 3SE Amendments may result in  
13 significant public health, worker safety, and environmental impacts, including: (a) indoor and  
14 outdoor air quality impacts; (b) increased risk of infectious disease spread; (c) contamination of  
15 drinking water; (d) exposure of workers to toxic solvents and cements; (e) increased fire risks; (f)  
16 increased risk of contamination from premature pipe or HVAC system failures; and (g)  
17 Construction waste disposal impacts.

18 9. With respect to the Project's approval of CPVC in particular, Respondents' refusal  
19 to conduct CEQA review directly conflicts with the findings of the related 2007 Environmental  
20 Impact Report that was certified by Respondent California Building Standards Commission on the  
21 approval of CPVC in residential occupancies that fall under the jurisdiction of the Department of  
22 Housing and Community Development ("HCD"). The 2007 CPVC EIR determined that the  
23 installation and use of CPVC in HCD occupancies may result in several significant impacts,  
24 including worker health and safety impacts, water contamination impacts, and air quality impacts.  
25 As a result, the Commission imposed significant mitigation to address and reduce these impacts.  
26 These mitigation measures include: (a) requiring a one-week flushing regimen after installation to  
27 reduce water contamination; (b) requiring compliance with worker safety requirements, including  
28 safety training, ventilation and glove use requirements; and (c) requiring the use of low-VOC one-

1 step cement to reduce air quality impacts. In the present case, however, Respondents not only  
2 failed to conduct a CEQA review of the OSHPD 3SE Amendments, but they also failed to require  
3 even the minimum public health and worker safety mitigation measures that Respondent  
4 Commission had imposed after its review of CPVC in HCD occupancies.

5 10. Respondents' refusal to conduct a CEQA review of the OSHPD 3SE Amendments  
6 was not based upon a determination that CEQA did not apply or that approval of this Project would  
7 not result in any environmental effects. To the contrary, in an internal memorandum discussing  
8 potential CEQA review of CPVC, Respondent OSHPD conceded that "the state has conducted  
9 CEQA reviews of various plastic piping materials since 1982" and "[a]ll such reviews have  
10 concluded that installation of plastic piping has the potential for significant environmental effects  
11 that require mitigation efforts." In its Final Statement of Reasons, OSHPD further conceded that  
12 the "hazards pointed out by the commenter may warrant more study by OSHPD."

13 11. Despite their own prior findings of potentially significant impacts from CPVC  
14 installation and use, Respondents refused to conduct a CEQA review of the proposed Project,  
15 including the approval of CPVC, apparently because, as stated in the same internal memorandum,  
16 the "plastics industry has not exhibited an interest in funding a CEQA undertaking." Lack of  
17 funding from industry is not a valid excuse for ignoring the statutory requirements of CEQA and  
18 failing to ensure protection of public health, worker safety and the environment.

## 19 PARTIES

20 12. Petitioners include the Coalition for Responsible Building Standards, the California  
21 State Pipe Trades Council and the Joint Committee on Energy and Environmental Policy. The  
22 environmental, consumer, public health and labor organizations represented by the Petitioners  
23 include thousands of Californians concerned about the safety and efficacy of plumbing materials  
24 and other building materials and standards. Petitioners and Petitioners' members have a long  
25 history of participating in proceedings of the California Building Standards Commission to  
26 advocate for pre-approval review of environmentally hazardous, potentially unsafe and substandard  
27 plumbing materials. Petitioners' past advocacy has resulted in environmental review of many  
28 plastic plumbing materials. These reviews have demonstrated that many of the proposed materials

1 have presented a danger to the public from toxic chemicals leaching into drinking water and from  
2 their flammability, a health risk to workers from exposure to chemical solvents in the cements and  
3 glues and a hazard to the environment from solvent emissions. They have also shown that some of  
4 the materials fail catastrophically, causing water damage to buildings and economic losses to  
5 building owners.

## 6 PETITIONERS

### 7 Coalition for Responsible Building Standards

8 13. Petitioner Coalition for Responsible Building Standards (“Coalition”) is a coalition  
9 of environmental, consumer, public health, and labor organizations that have long advocated for  
10 effective, safe and environmentally-friendly building standards. The members of The Coalition  
11 include Petitioners the California State Pipe Trades Council, Petitioners the Joint Committee on  
12 Energy and Environmental Policy, and the Center for Environmental Health, along with their  
13 individual members.

14 14. The environmental, consumer, public health, and labor organizations that make up  
15 the Coalition represent thousands of Californians concerned about the safety and effectiveness of  
16 new building standards. Many of these organizations have been parties to prior, related lawsuits  
17 that have resulted in judgments affirming that the environmental and health and safety impacts of  
18 potentially hazardous building standards (such as the expanded approval of plastic plumbing pipe)  
19 must be evaluated under CEQA.

20 15. Coalition member Center for Environmental Health (“CEH”) is a non-profit  
21 California public interest corporation located in Oakland, California. CEH and its members are  
22 dedicated to protecting the public from toxic chemicals and promoting business products and  
23 practices that are safe for public health and the environment. CEH works to hold corporations  
24 accountable for their use of toxic chemicals that endanger public health and to encourage  
25 corporations to lower the toxicity of their consumer products. CEH also advocates for state  
26 policies and legislation that will require companies to prove the safety of their products before they  
27 are allowed on the market. CEH has participated actively in the past state agency health, safety,  
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1 and environmental reviews of new building standards and plumbing materials proposed for  
2 approval in California, both individually and as a member of various coalitions.

3 16. The Coalition was formed by its member organizations to advocate for effective,  
4 safe, and environmentally-friendly building standards, and to seek enforcement of CEQA in the  
5 building standards process.

6 17. The Coalition's members are directly, adversely, and irreparably affected, and will  
7 continue to be prejudiced by the approval of the OSHPD 3SE Amendments, as described herein,  
8 until and unless this Court provides the relief prayed for in this Petition. The personal, aesthetic,  
9 and property interests of the Coalition's members will be directly affected by any adverse  
10 environmental and health impacts that may result from the Project's approval, including potential  
11 solvent exposure impacts during installation, adverse air quality impacts, airborne infectious  
12 disease spread impacts, drinking water contamination impacts, premature pipe and fitting failure  
13 impacts, construction-waste disposal impacts, and fire safety and toxic smoke impacts. The  
14 organizational interest of the Coalition in ensuring that potentially hazardous new building  
15 materials are fully evaluated under CEQA will also be directly, adversely, and irreparably affected  
16 by Respondents' approval of the Project without full compliance with the requirements of CEQA.

17 **California State Pipe Trades Council**

18 18. Petitioner California State Pipe Trades Council ("Council") is an association of  
19 plumbing and pipefitting unions together representing over 30,000 members working in the  
20 plumbing and pipe trades throughout California. The men and women represented by the Council  
21 are all citizens, taxpayers, property owners, and/or electors who live and work in California. The  
22 Council's purposes include advocating for building standards and regulations governing plumbing  
23 materials and installation methods to protect the general public's health and welfare, the health and  
24 welfare of the Council members, and the environment. The Council also advocates for the use of  
25 high quality plumbing materials and installation standards to assure safe and effective performance  
26 in plumbing and sanitation systems, and in order to maintain the reputation and integrity of the  
27 plumbing and piping industry.



1 protecting the integrity, performance and safety of the State Code will also be directly, adversely,  
2 and irreparably affected by Respondents' approval of the Project without full compliance with the  
3 requirements of CEQA.

#### 4 **Joint Committee on Energy and Environmental Policy**

5 22. Petitioner Joint Committee on Energy and Environmental Policy ("JCEEP") is an  
6 advocacy organization that represents the California sheet metal workers' local unions, and more  
7 than 25,000 technicians working for over 600 contractors throughout California. JCEEP's mission  
8 is to promote responsible environmental and indoor air quality and energy policy in California as it  
9 pertains to and affects the HVAC industry. JCEEP's members have over 15 training facilities  
10 throughout the state and thousands of workers being trained daily in HVAC specialties, such as  
11 testing, adjusting and balancing, commissioning, green building design, energy efficiency, sound  
12 and vibration control, and indoor air quality.

13 23. The sheet metal workers' unions have long advocated for and participated in the  
14 development of building standards for mechanical systems in order to safeguard the public health,  
15 achieve energy efficiency and ensure performance and durability of systems. For example, in the  
16 1980's, the sheet metal workers unions and their contractors were among the first to bring attention  
17 to the problem of sick building syndrome, often diagnosed when buildings were made energy  
18 efficient to the detriment of the indoor environment of the building. Sick building syndrome often  
19 results from problems with the installation, maintenance, and performance of HVAC systems.

20 24. JCEEP was established to continue this tradition of advocacy in California. JCEEP  
21 was formed on the premise that air handling systems need to be designed not just to manage  
22 comfort levels of indoor air, but also to protect against contaminants and health threats and to  
23 ensure energy efficiency.

24 25. JCEEP's members are directly, adversely, and irreparably affected, and will  
25 continue to be prejudiced by the approval of the OSHPD 3SE Amendments, as described herein,  
26 until and unless this Court provides the relief prayed for in this Petition. The personal, aesthetic,  
27 and property interests of the JCEEP members will be directly affected by any adverse  
28 environmental and health impacts that may result from the Project's approval, including potential

1 solvent exposure impacts during installation, adverse air quality impacts, airborne infectious  
2 disease spread impacts, drinking water contamination impacts, premature pipe and fitting failure  
3 impacts, construction-waste disposal impacts, and fire safety and toxic smoke impacts. The  
4 JCEEP's organizational interest in ensuring that potentially hazardous new building materials are  
5 fully evaluated under CEQA will also be directly, adversely, and irreparably affected by  
6 Respondents' approval of the Project without full compliance with the requirements of CEQA.

## 7 **RESPONDENTS**

### 8 **California Building Standards Commission**

9 26. Respondent California Building Standards Commission ("Commission") is a state  
10 commission within the State and Consumer Services Agency established pursuant to the California  
11 Buildings Standards Law. The Commission is responsible for approving and adopting the  
12 California Building Standards Code, including any amendments to the State Code proposed by  
13 OSHPD or other "proposing" agencies. In this connection, the Commission is the agency  
14 responsible for preparing environmental documents that describe the Commission's proposed  
15 regulations, evaluate their impacts, and as necessary, evaluate mitigation measures, and/or  
16 alternatives to lessen or avoid any significant environmental impacts associated with its  
17 regulations. The Commission is legally obligated under CEQA to comply with the provisions  
18 alleged to have been violated.

### 19 **California Office of Statewide Health Planning and Development**

20 27. Respondent California Office of Statewide Health Planning and Development is a  
21 department within the California Health and Human Services Agency, a state public agency.  
22 OSHPD is vested by state law with the authority to propose building standards for adoption by the  
23 Commission for application to regulated healthcare facilities. The OSHPD 3SE Amendments at  
24 issue in this action were proposed by OSHPD and adopted by the Commission. OSHPD has  
25 discretionary authority for proposing the Project. OSHPD is legally obligated under CEQA to  
26 comply with the provisions alleged to have been violated herein.

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**Does 1 through 10**

28. Petitioners are unaware of the true names and capacities of Respondents DOES 1 through 10, and therefore name such Respondents by fictitious names. Petitioners are informed and believe, and based on such information and belief, allege that the fictitiously named Respondents are also responsible for the actions described in this Petition. When the true identities and capacities of Does 1 through 10 have been determined, Petitioners will seek leave from the Court to amend this Petition to insert such identities and capacities.

**Does 11 through 20**

29. Petitioners are unaware of the true names and capacities of Real Parties in Interest DOES 11 through 20, and therefore name such Real Parties in Interest by fictitious names. Petitioners are informed and believe, and based on such information and belief, allege that the fictitiously named Real Parties in Interest are also responsible for the actions described in this Petition. When the true identities and capacities of Does 11 through 20 have been determined, Petitioners will seek leave from the Court to amend this Petition to insert such identities and capacities.

**JURISDICTION AND VENUE**

30. This Court has jurisdiction over the matters alleged in this Petition pursuant to Public Resources Code sections 21168, 21168.5 and 21168.9, and Code of Civil Procedure sections 526, 527, 1060, 1085, 1087 and 1094.5.

31. Venue is proper in the County of Alameda under Code of Civil Procedure section 401, because Respondents are agencies of the State of California, and the Attorney General has an office in Alameda County.

32. This Petition is timely filed in accordance with Public Resources Code section 21167, subd. (a), because the County approved the Project without having determined whether the Project may have a significant effect on the environment.

33. Petitioners have complied with the provisions of Public Resources Code sections 21167.6, 21167.7 and Code of Civil Procedure section 388 by mailing a copy of this Petition to the

1 State Attorney General. A true and correct copy of Petitioners' Notice to the Attorney General of  
2 the State of California, with proof of service thereof, is attached hereto as Exhibit "A".

3 34. Petitioners have complied with Public Resources Code section 21167.5 by mailing a  
4 written notice of commencement of this action to each of the Respondents prior to filing this  
5 Petition. A true and correct copy of the notices provided pursuant thereto, with proof of service  
6 thereof, is attached hereto as Exhibit "B".

### 7 EXHAUSTION OF ADMINISTRATIVE REMEDIES

8 35. Petitioners have performed all conditions precedent to this filing and have  
9 participated in the administrative process to the extent notice was provided and such participation  
10 was permitted, and thus have fully exhausted their administrative remedies.

11 36. Petitioners and other interested groups and individuals made timely oral and written  
12 comments during the administrative proceedings in this matter and raised each of the legal  
13 deficiencies asserted in this Petition.

14 37. Respondents have taken final agency action with respect to the subject Project  
15 approvals.

16 38. Respondents have a mandatory duty to comply with CEQA prior to undertaking the  
17 discretionary approvals at issue in this lawsuit.

18 39. Petitioners possess no other remedy to challenge Respondents' abuse of discretion  
19 raised herein other than by means of this lawsuit.

### 20 IRREPARABLE HARM

21 40. Petitioners have no plain, speedy or adequate remedy in the ordinary course of law.  
22 If Respondents' decisions regarding the Project are effectuated, then Petitioner will be irreparably  
23 harmed. No money damages could adequately compensate Petitioner for that harm.

24 41. Petitioners are informed and believe that the OSHPD 3SE Amendments will  
25 become effective throughout California in January 2014. Once the OSHPD 3SE Amendments are  
26 effective, OSHPD, local building departments and other authorities having jurisdiction over  
27 building construction will be required to allow OSHPD 3SE building occupancies to install CPVC,  
28 PVC and ABS pipe without any flushing or disinfection prior to use and to locate plumbing vents

1 within 25 feet of building air intakes. This will irreparably harm the public health and environment  
2 by exposing immune-compromised patients, workers, and the public to airborne pathogens and  
3 contaminated water, by installing plumbing and sewer pipe that may degrade and burst open  
4 prematurely resulting in property damage and exposure to dangerous gases, pathogens and molds,  
5 by exposing workers to hazardous chemicals, by contributing to increased ozone and smog  
6 pollution, and by creating increased fire hazard risks. Furthermore, once installed in a completed  
7 building, it would be expensive and difficult to remove CPVC, PVC or ABS pipe and replace it  
8 with another material, or to relocate plumbing vents or air intakes. A temporary restraining order  
9 and preliminary and permanent injunctions should be issued to set aside and to enjoin enforcement  
10 of the OSHPD 3SE Amendments.

### 11 PUBLIC BENEFIT

12 42. This action involves enforcement of an important right affecting the public interest.  
13 Petitioners seek to enforce important public duties and rights under CEQA. Other members of the  
14 public who will be adversely affected by the Project's impacts would find it financially, practically,  
15 and/or procedurally difficult to protect their rights in the complex administrative and judicial  
16 processes for reviewing the Project and enforcing compliance with State laws. Petitioner will  
17 confer a substantial benefit to the citizens of the State of California, and therefore will be entitled to  
18 an award of reasonable attorneys' fees pursuant to Code of Civil Procedure section 1021.5.

### 19 STATEMENT OF FACTS

#### 20 Project Description

21 43. The specific State Code provisions at issue are the 2013 State Code amendments to  
22 California Plumbing Code sections 217.0, 604.1, 609.9, 701.1.2.1 and 906.2. These Amendments  
23 create a new "OSHPD 3SE" building occupancy that exempts certain healthcare clinics from:

- 24 a) The existing requirement that plumbing vents terminate at least 25 feet away  
25 from any air intake or vent shaft;
- 26 b) The existing requirement to disinfect new or repaired potable water systems  
27 prior to use;
- 28 c) The existing prohibition on the use of CPVC drinking water pipe; and

1 d) The existing prohibition on the use of PVC and ABS plastic drainage pipe.

2 **California Building Standards Code**

3 44. In California, building construction is regulated through the California Building  
4 Standards Code adopted pursuant to the California Building Standards Law. (Health & Safety  
5 Code § 18901 *et seq.*) The State Code is contained in title 24 of the California Code of  
6 Regulations. Title 24 is divided into parts. Part 5 contains the California Plumbing Code.

7 45. State agencies may propose amendments to the State Code for buildings under their  
8 jurisdiction. OSHPD has the authority to develop and propose building standards that apply to  
9 health care clinics and most other healthcare facilities. OSHPD's proposed amendments to the  
10 State Code must be submitted to the California Building Standards Commission for final adoption.

11 46. California Building Standards Law requires the Commission and the proposing  
12 agency to take public comment, to hold a hearing and to make certain specified findings prior to  
13 amending the State Code. (Health and Saf. Code §§ 18930 & 18935.) These discretionary  
14 regulatory decisions are subject to the requirements of CEQA. (*Plastic Pipe and Fittings*  
15 *Association v. California Building Standards Comm.* (2004) 124 Cal.App.4<sup>th</sup> 1390.)

16 **OSHPD 3SE Clinics**

17 47. As part of the Project, Respondents have adopted building standards that create a  
18 special "OSHPD 3SE" clinic occupancy that would be exempt from certain ventilation and  
19 plumbing requirements that currently apply to all OSHPD-regulated healthcare clinics. In the  
20 OSHPD 3SE Amendments, "3SE clinics" are defined as: (a) primary care clinics that do not  
21 include treatment rooms, procedure rooms, or patient treatment spaces that require positive or  
22 negative pressure; (b) rehabilitation clinics; and (c) psychology clinics. The scope of services,  
23 procedures or treatments that may be performed in OSHPD 3SE facilities is not clearly defined, but  
24 would include invasive procedures that do not require positive or negative pressure rooms and  
25 would include providing services to patients with compromised immune systems or impaired  
26 mobility.

1 **Respondents' CEQA Process**

2 48. On October 8, 2012, and again on April 5, 2013, Petitioners submitted written  
3 comments to Respondents alerting Respondents of the requirement to review the potential impacts  
4 of the proposed Project under CEQA.

5 49. Despite Petitioners repeated entreaties requesting a review of the potential impacts  
6 of the Project, Respondents refused to comply with any of the requirements of CEQA. Petitioners  
7 are informed and believe that Respondents did not prepare any Initial Study, Negative Declaration,  
8 Environmental Impact Report, Notice of Exemption or any other CEQA documentation for the  
9 Project.

10 50. When legal counsel for Respondent California Building Standards Commission was  
11 asked at the April 24, 2013 Project hearing whether or not CEQA applied to the approval of the  
12 Project, counsel responded that he *did not know*. No findings were made or other action taken by  
13 Respondents regarding the applicability of CEQA to the Project.

14 **The Administrative Record Contains Substantial Evidence that the Project**  
15 **May Result in Environmental, Worker Safety, and Public Health Impacts**

16 51. During the administrative proceedings on the Project, Petitioners provided  
17 Respondents with substantial evidence that Respondents' approval of the OSHPD 3SE  
18 Amendments may result in reasonably foreseeable indirect physical changes in the environment.  
19 This evidence includes seven volumes of expert comments, reports, and studies that were  
20 submitted by Petitioners to Respondents. These documents included evidence that the OSHPD  
21 3SE Amendments could result in the following public health, worker safety, and environmental  
22 impacts:

23 **Worker Health & Safety Impacts**

24 52. The administrative record for the Project contains substantial evidence that approval  
25 of the Project may result in worker health and safety impacts due to exposure to the chemical  
26 solvents in the primers and cements used to join the pipes. This evidence includes a 1989  
27 California Department of Health Services ("DHS") study that concluded that workers installing  
28 CPVC, PVC and ABS plastic pipe in buildings were regularly exposed to toxic chemicals such as

1 tetrahydrofuran, methyl ethyl ketone, cyclohexanone and acetone at levels exceeding established  
2 workplace standards. In 1998, DHS again reviewed the potential for worker health and safety  
3 impacts from the installation of CPVC, PVC, and ABS plastic pipe and concluded that: "Case  
4 reports point to the likelihood that overexposure related to poor ventilation has already led to  
5 illness in pipe workers." Furthermore, health care facilities generally contain a significantly higher  
6 number of pipe joints than other occupancies, resulting in potential worker exposures to these glues  
7 and solvents at much greater levels than were studied by DHS.

### 8 **Fire Hazard Impacts**

9 53. The record contains substantial evidence that approval of the Project may result in  
10 increased fire risks. The fire hazards associated with CPVC, PVC, and ABS pipe include the off-  
11 gassing of toxic smoke, the formation of cancer-causing dioxins, and more rapid fire spread.

12 54. CPVC, PVC, and ABS pipe are all combustible and can create pathways for smoke,  
13 toxic gases, and fire to spread through a building. CPVC, PVC, and ABS pipe further increase the  
14 risk of fires because they release toxic fumes and chemicals when heated or burned. These  
15 substances include hydrogen chloride, hydrogen cyanide, and dioxin. These substances are  
16 potentially lethal, can burn skin on contact and can cause severe respiratory damage. Furthermore,  
17 CPVC, PVC, and ABS start to smolder and release their toxic fumes, long before they ignite. The  
18 toxic gases generated during this pre-combustion period are particularly dangerous, as they can  
19 travel through ventilation systems to other portions of the building where there is no flame to warn  
20 firefighters and occupants. CPVC and PVC also create cancer-causing dioxins when burned.

21 55. Patients in primary care or rehabilitation clinics are much more likely to have  
22 limited mobility and may not be able to rapidly evacuate during a fire. With such populations, any  
23 increase in the speed of the spread of fire may be deadly. Moreover, such occupants are more  
24 likely to be exposed to hydrogen chloride and hydrogen cyanide offgassing from heated CPVC,  
25 PVC or ABS while awaiting evacuation.

### **Premature Pipe Failure Impacts**

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2       56.     The record contains substantial evidence that approval of the Project may result in  
3 increased risk of premature pipe failures. CPVC, PVC, and ABS pipe may prematurely rupture or  
4 crack when exposed to commonly encountered materials, including isopropyl-alcohol, turpentine,  
5 drain cleaners, termiticides, fungicides, WD-40, antimicrobial coatings containing amines, and  
6 plasticized PVC (electric wire insulation and plastic grommets). Isopropyl-alcohol is particularly  
7 likely to be commonly flushed down drains in health care facilities. CPVC, PVC, and ABS pipe  
8 are also more likely to rupture during earthquake events than PEX or copper pipe, increasing the  
9 risk of water contamination and disease outbreak.

10       57.     Failure of plumbing pipes may result in unsanitary and unsafe conditions that would  
11 pose a particular risk to immune-compromised patients in health care clinics. When drainage pipe  
12 breaks, the walls and occupied space of a building are contaminated by sewage, creating a risk of  
13 infectious disease spread. When water pipe breaks, it may burst resulting in substantial water  
14 damage or may leak slowly and undetected, which may result in the formation of dangerous molds.

### **Drinking Water Contamination**

15  
16       58.     The record contains substantial evidence that approval of the Project may result in  
17 increased risk of contaminated drinking water. When first installed, CPVC pipe leaches chemicals  
18 such as tetrahydrofuran, methyl ethyl ketone, cyclohexanone, acetone, and organotins that may  
19 contaminate drinking water.

20       59.     Even in low doses, these chemicals may pose significant health risks when they  
21 contaminate drinking water. Tetrahydrofuran, for example, is potentially carcinogenic.  
22 Tetrahydrofuran may also cause depression of central nervous system functions. Methyl ethyl  
23 ketone causes irritation and central nervous system depression even in low doses. Subchronic  
24 toxicity studies of methyl ethyl ketone show that it causes liver damage. Methyl ethyl ketone also  
25 potentiates the toxic effects of other common contaminants, including such common primer and  
26 cement leachates as tetrahydrofuran and acetone. Peripheral neuropathy may be caused by the  
27 combined exposure of methyl ethyl ketone and tetrahydrofuran. Furthermore, methyl ethyl ketone  
28 and acetone may cause polyneuropathy when found together.



1 and is a major source of respiratory illness in California. The South Coast Air Quality  
2 Management District, where much of the development of new healthcare facilities is occurring, has  
3 the highest ozone levels in the United States.

4 65. The 2007 CPVC EIR evaluated this issue in detail and concluded that the expanded  
5 approval of CPVC in residential occupancies may have significant adverse impacts on air quality.  
6 The Commission imposed mitigation to reduce this impact, including the use of low-VOC, one-  
7 step cements; yet found that HCD's approval of CPVC would still result in a significant impact  
8 even with the imposed mitigation. As a result, a statement of overriding considerations was  
9 adopted as part of the project approval.

10 66. The OSHPD 3SE Amendments further expand the approved use of CPVC, PVC,  
11 and ABS pipe in the California Plumbing Code, and thus will further exacerbate what has already  
12 found to be a significant impact on the environment.

### 13 **Solid Waste Impacts**

14 67. The record contains substantial evidence that approval of the Project may result in  
15 increased solid waste disposal impacts. CPVC, PVC, and ABS pipes are likely to create  
16 significantly greater quantities of construction waste due to the fact that they are made from virgin  
17 materials, are only marginally recyclable and create disposal difficulties. The metal pipes that  
18 CPVC, PVC, and ABS pipes would generally replace have an almost 100% recycling rate and are  
19 almost entirely made from recycled materials.

20 68. In addition to not being recycled, CPVC, PVC, and ABS pipe also have shorter  
21 lifespans than their copper and cast iron counterparts. The estimated lifespan for CPVC is only 20  
22 to 40 years. Copper pipe, on the other hand, has an estimated lifespan of well over 50 years. PVC  
23 and ABS drainage pipe also have a much shorter lifespan than cast iron drainage pipe. Cast iron  
24 pipe has an estimated lifespan of over 100 years and has been known to last 200 to 400 years. PVC  
25 pipe has an estimated lifespan of 20 to 40 years and ABS has an estimated lifespan of 50 years. On  
26 average, CPVC, PVC, and ABS plastic pipe may need to be replaced twice as often as their copper  
27 pipes and cast iron pipe counterparts, resulting in much greater waste disposal impacts.



1 transmitted much longer distances than 10 feet and have been shown to be transported between  
2 spaces by ventilation systems.

3 73. The FGI *Guidelines for the Design and Construction of Health Care Facilities*,  
4 *ASHRAE 170-2008* and other major national standards and guidelines for healthcare facilities all  
5 require at least a 25 foot distance between HVAC air intakes and plumbing vents due to the greater  
6 likelihood that patients in health care facilities carry infectious diseases, or may be highly  
7 susceptible to exposures of aeroallergens or other toxic or noxious contaminants.

8 **Prior State Reviews Determined that Approval of CPVC, PVC, and ABS Pipe**  
9 **May Result in Significant Environmental and Health and Safety Impacts**

10 74. Numerous prior CEQA reviews of CPVC, PVC, and ABS plastic pipe by the State  
11 of California have determined that approval of these materials may result in significant effects on  
12 the environment. These prior state agency reviews include a 1982 Initial Study, a 1989 California  
13 Department of Health Services technical study, a 1997 Initial Study, a 2000 Mitigated Negative  
14 Declaration, and a 2007 Supplemental EIR. The potential impacts identified in these prior reviews  
15 include contamination of drinking water, worker exposure to toxic solvents, increased air emissions,  
16 manufacturing, solid waste impacts, and increased fire hazards.

17 75. CPVC, PVC, and ABS pipe were first proposed to be included in the State Code in  
18 1982. The proposal was based on the inclusion of CPVC in the 1982 Uniform Plumbing Code, the  
19 privately published model code upon which the California Plumbing Code is based.

20 76. A 1982 Initial Study was then prepared by HCD, which determined that the approval  
21 of CPVC, PVC, and ABS pipe had the potential to result in significant effects on the environment and  
22 thus required the preparation of an EIR. The potentially significant effects identified in the 1982  
23 Initial Study included premature mechanical failure, increased air emissions, deterioration of existing  
24 aquatic habitat, increased fire hazards, contamination of drinking water from chemicals leaching from  
25 CPVC pipe and solvents, and worker health hazards resulting from exposure to chemical solvents  
26 through dermal absorption and inhalation during the manufacture and installation of plastic pipe.

27 77. A Draft EIR on the proposed State Code approval of CPVC, PVC, and ABS plastic  
28 pipe was prepared in 1989, but was never completed. Although the 1989 Draft EIR failed to

1 address a wide range of issues and was deficient in its examination of other impacts, the  
2 preliminary studies prepared in conjunction with the Draft EIR nonetheless identified potentially  
3 significant impacts on human health and the environment with CPVC use. For example, DHS  
4 prepared a study finding that workers installing CPVC, PVC, and/or ABS pipe would be regularly  
5 exposed to toxic substances in excess of legal exposure limits. Preliminary leaching studies also  
6 showed the persistence of toxic and carcinogenic compounds in the drinking water carried by  
7 CPVC pipe.

8 78. Faced with the mounting evidence of potential hazards associated with plastic pipe use  
9 and the need for additional study, the plastic industry withdrew its funding and directed HCD to  
10 terminate all work on the 1989 EIR. As a result of this directive, the 1989 EIR was abandoned and  
11 left incomplete.

12 79. On October 26, 1995, the Department proposed regulations authorizing the  
13 statewide approval of CPVC *without completion* of the previously abandoned 1989 EIR or any  
14 other compliance with CEQA. Despite the objections of numerous stakeholders, the Commission  
15 then adopted HCD's proposed regulations. The Commission's approval of CPVC without  
16 compliance with CEQA was quickly overturned by the court in the case *Cuffe, et al. v. California*  
17 *Building Standards Commission and California Department of Housing and Community*  
18 *Development* (Sup. Ct. San Francisco County, 1997) No. 977657. The court vacated the CPVC  
19 approval and ordered HCD and the Commission to take no further action to approve CPVC without  
20 first completing an Initial Study and either an EIR or a negative declaration.

21 80. In response to the court's order, HCD prepared a new initial study in 1997. The  
22 new initial study again found that statewide approval of CPVC "may have a significant effect on the  
23 environment, and an Environmental Impact Report is required." Based upon the record of the prior  
24 proceedings and other evidence before it, the 1997 Initial Study concluded that the proposed statewide  
25 approval of CPVC would result in potentially significant impacts on air quality, water quality, solid  
26 waste, worker health and safety, public health, and fire hazards.

27 81. In 1998, HCD prepared an EIR for the statewide approval of CPVC and certified the  
28 document. While the 1998 EIR contained almost no new analysis from the abandoned 1989 EIR

1 and was eventually rescinded and deemed incomplete by HCD, the 1998 EIR nonetheless  
2 recognized that CPVC use may have significant effects on human health and the environment.

3 82. In 2006, HCD again proposed expanding the approval of ABS and PVC drainage pipe.  
4 After comments were submitted regarding the requirement for CEQA review, HCD withdrew the  
5 proposal on the grounds that it was “unable to complete an adequate review due to a lack of necessary  
6 information.”

7 83. Eventually, HCD completed, and the Commission certified, two CEQA documents  
8 evaluating the potential impacts of CPVC in residential settings: a Mitigated Negative Declaration  
9 certified in 2000 for the limited approval of CPVC and a 2007 Supplemental EIR on the expanded  
10 approval of CPVC in residential buildings. The 2000 Mitigated Negative Declaration and 2007  
11 Supplemental EIR found that use of CPVC posed potentially significant impacts on worker health  
12 and safety, contaminated drinking water, and air quality impacts. As a result, the Commission  
13 imposed specific mitigation measures to address these impacts as part of its approval of CPVC in  
14 HCD occupancies. Without any explanation or analysis, Respondents have refused to include any  
15 of these mitigation measures as requirements for installation of CPVC in OSHPD 3SE  
16 occupancies.

17 **RESPONDENTS ARE PRECLUDED FROM ASSERTING THAT CEQA DOES NOT**  
18 **APPLY TO BUILDING STANDARDS AND FROM DISPUTING THAT SUBSTANTIAL**  
19 **EVIDENCE EXISTS THAT CPVC APPROVAL MAY AFFECT THE ENVIRONMENT**

20 84. Any assertion by the Commission that CEQA does not apply to the approval of  
21 building standards is precluded under the doctrine of collateral estoppel by the cases: (a) *Cuffe, et*  
22 *al. v. California Building Standards Commission and California Department of Housing and*  
23 *Community Development* (Sup. Ct. San Francisco County, 1997) No. 977657; and (b) *Plastic Pipe*  
24 *and Fitting Association v. California Building Standards Commission* (2004) 24 Cal.App.4<sup>th</sup> 1390.  
25 The Commission was a respondent in the *Cuffe* case, and both the Commission and OSHPD were  
26 respondents in the *Plastic Pipe and Fitting Association* case. Petitioner California State Pipe  
27 Trades Council and other members of Petitioner Coalition for Responsible Building Standards  
28 were petitioners in the *Cuffe* case and filed *amicus curiae* briefs in the *Plastic Pipe and Fitting*  
*Association* case. The applicability of CEQA to the adoption of building standards was at issue in

1 both cases and final judgment was issued in both of these cases. In both of the cases, the Courts  
2 held that CEQA applies to the approval of building standards that may potentially result in  
3 environmental impacts.

4 85. In addition, the Court's judgment in the *Cuffe* case precludes the Commission from  
5 asserting that a fair argument does not exist that the approval of CPVC may result in environmental  
6 impacts requiring review under CEQA. In that case, the Commission asserted that it was not  
7 required to comply with CEQA prior to approving CPVC pipe in the State Code. The Court found  
8 that CEQA did apply because substantial evidence existed of the possibility that CPVC pipe would  
9 affect the environment. The evidence of impacts cited by the Court included the possibility of  
10 chemical solvents leaching into and polluting drinking water, and the potential for chemical  
11 exposures to workers installing CPVC pipe.

12 **CAUSE OF ACTION**  
13 **(Violation of CEQA,**  
14 **Pub. Resources Code § 21000 *et seq.*;**  
15 **Code of Civil Procedure §1085.)**

16 1. Petitioners reallege and incorporate by reference all prior paragraphs of this Petition  
17 as if fully set forth below.

18 2. The Respondents' approval of the OSHPD 3SE Amendments constitutes a  
19 prejudicial abuse of discretion in that Respondents failed to proceed in the manner required by law  
20 and their decisions are not supported by substantial evidence as set forth below. (Pub. Resources  
21 Code § 21168.5; Code Civ. Proc. § 1085.)

22 3. CEQA is "an integral part of any public agency's decision making process." (Pub.  
23 Res. Code § 21006.) Like all public agencies in California, Respondents were at all times under a  
24 clear and present mandatory duty to comply with all requirements of CEQA and the CEQA  
25 Guidelines. (Pub. Resources Code § 21001.1.)

26 4. CEQA was enacted to require public agencies and decisionmakers to document and  
27 consider the environmental implications of their actions before formal decisions are made. (Pub.  
28 Resources Code, §§ 21000, 21001.) This fundamental purpose of CEQA is implemented primarily  
by the requirement that agencies must identify the significant effects on the environment of a

1 project, identify alternatives to the project that may avoid significant effects, and indicate the  
2 manner in which those significant effects can be mitigated or avoided. (Pub. Resources Code, §  
3 21002.1, subd. (a).)

4 5. The adoption of the OSHPD 3SE Amendments is a “project” within the meaning of  
5 Public Resources Code section 21065. An agency action is “project” subject to CEQA if it: (a) is  
6 a discretionary action undertaken by a public agency, and (b) may cause either a direct physical  
7 change in the environment or a reasonably foreseeable indirect physical change in the environment.  
8 (Pub. Resources Code §§ 21065, 21080.)

9 6. The adoption of building standards into the State Code is considered a  
10 “discretionary” act subject to CEQA. (*Plastic Pipe and Fitting Association v. California Building*  
11 *Standards Commission* (2004) 24 Cal.App.4th 1390.) The adoption of the OSHPD 3SE  
12 Amendments into the State Code was a discretionary action by Respondents.

13 7. In reviewing whether a government action may cause a physical change in the  
14 environment, the “fair argument standard” is applied. Under this standard, CEQA review occurs  
15 “whenever it can be fairly argued on the basis of substantial evidence” that the project may cause  
16 either a direct physical change in the environment or a reasonably foreseeable indirect physical  
17 change in the environment.

18 8. Substantial evidence that the approval of the OSHPD 3SE Amendments may result  
19 in reasonably foreseeable indirect physical changes in the environment was presented to  
20 Respondents prior to the Project approval.

21 9. Respondent have a clear, present, and mandatory duty to analyze the potential  
22 environmental effects of the OSHPD 3SE Amendments and to make certain findings as to the  
23 significance of those effects prior to approval of the OSHPD 3SE Amendments. (Pub. Resources  
24 Code § 21080.) If a discretionary agency action is a “project” under CEQA, CEQA imposes a  
25 mandatory duty to either prepare and certify an environmental impact report on the project prior to  
26 approval or conduct an “initial study” to determine whether the project may have a significant  
27 effect on the environment. If the initial study reveals that the project will not have a significant  
28 effect on the environment, the agency may prepare a negative declaration. If the initial study

1 instead concludes that the project may have a significant effect on the environment, the agency  
2 must either prepare a mitigated negative declaration or an environmental impact report. (Cal. Code  
3 Regs., tit. 14, § 15002.)

4 10. Respondents unlawfully approved the OSHPD 3SE Amendments without first  
5 conducting the environmental review and analysis required under CEQA. Respondents did not  
6 prepare any initial study, negative declaration, mitigated negative declaration, or environmental  
7 impact report for the Project. Respondents' failure to conduct the required CEQA analysis of the  
8 Project's potential effects or to make the required findings under CEQA is an abuse of discretion.

9 11. Because Respondents failed to proceed in the manner required by law, the approval  
10 of the OSHPD 3SE Amendments must be set aside.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Petitioners prays for judgment as hereinafter set forth:

13 1. That the Court issue an alternative and/or peremptory writ of mandate directing the  
14 Respondents to:

- 15 a) Vacate and set aside the OSHPD 3SE Amendments and all actions taken  
16 pursuant to the OSHPD 3SE Amendments;
- 17 b) Issue a temporary restraining order and a preliminary and permanent  
18 injunction enjoining Respondents from enforcing the OSHPD 3SE  
19 Amendments until Respondents have prepared and certified a legally  
20 adequate environmental impact report for the Project and filed a return on  
21 the writ demonstrating compliance therewith; and
- 22 c) Issue a temporary restraining order and a preliminary and permanent  
23 injunction enjoining Respondents from approving or adopting any further  
24 regulations or permits (a) allowing the installation of CPVC drinking water  
25 pipe or PVC or ABS drain or waste pipe in OSHPD healthcare facilities, (b)  
26 allowing OSHPD healthcare facilities to locate plumbing vents less than 25  
27 feet away from building air intakes, or (c) allowing the use of new or  
28 repaired potable water systems in OSHPD healthcare facilities without first

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flushing and disinfecting the system, until the Respondents have prepared and certified a legally adequate environmental impact report for such actions and filed a return on the writ demonstrating compliance therewith; and  
d) Comply with all other applicable requirements of CEQA, as directed by this Court, pursuant to Public Resources Code section 21168.9;

- 2. That Petitioners be awarded costs of this proceeding;
- 3. That Petitioners be awarded reasonable attorneys fees for this action pursuant to Code of Civil Procedure section 1021.5, Government Code section 800, and any other applicable provisions of law; and
- 4. That Petitioners be awarded such other and further relief as the Court deems just and proper.

Dated: 5/29/13

ADAMS BROADWELL JOSEPH & CARDOZO

By: Thomas A L  
THOMAS A. ENSLOW  
DANIEL L. CARDOZO  
Attorneys for Petitioners  
COALITION FOR RESPONSIBLE BUILDING STANDARDS; CALIFORNIA STATE PIPE TRADES COUNCIL; and JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY

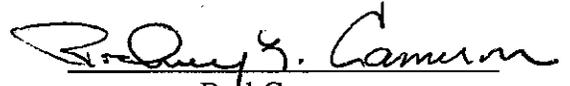
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**VERIFICATION**

I am the Executive Director of Petitioner, the California State Pipe Trades Council, and am authorized to execute this verification on behalf of Petitioner. I have read the foregoing Petition for Writ of Mandate and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and belief, and as to those matters, I believe them to be true.

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

Executed on May 29, 2013 at Sacramento, California.

  
Rod Cameron

## **EXHIBIT A**

### **VERIFIED PETITION FOR WRIT OF MANDATE**

**COALITION FOR RESPONSIBLE BUILDING STANDARDS, CALIFORNIA STATE PIPE TRADES COUNCIL; JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY; and DOES 1 through 10, inclusive, Petitioners.**

**vs.**

**CALIFORNIA BUILDING STANDARDS COMMISSION, a public agency; CALIFORNIA OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT, a public agency; and DOES 11 through 20, inclusive, Respondents.**

1 DANIEL L. CARDOZO (CSB No. 111382)  
THOMAS A. ENSLOW (CSB No. 181755)  
2 ADAMS BROADWELL JOSEPH & CARDOZO  
A Professional Corporation  
3 520 Capitol Mall, Suite 350  
Sacramento, CA 95814  
4 Telephone: (916) 444-6201  
Facsimile: (916) 444-6209  
5  
6 Attorneys for Petitioners  
7 COALITION FOR RESPONSIBLE BUILDING STANDARDS;  
CALIFORNIA STATE PIPE TRADES COUNCIL; and  
8 JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY

9 **SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF ALAMEDA**

11  
12  
13 COALITION FOR RESPONSIBLE BUILDING  
STANDARDS, CALIFORNIA STATE PIPE  
TRADES COUNCIL; JOINT COMMITTEE  
14 ON ENERGY AND ENVIRONMENTAL  
POLICY; and DOES 1 through 10, inclusive,

15 Petitioners,

16 vs.

17 CALIFORNIA BUILDING STANDARDS  
18 COMMISSION, a public agency;  
CALIFORNIA OFFICE OF STATEWIDE  
19 HEALTH PLANNING AND  
DEVELOPMENT, a public agency; and DOES  
20 11 through 20, inclusive,

21 Respondents.

Case No.:

**NOTICE TO ATTORNEY GENERAL**

(Pub. Resources Code, § 21167.7; Code  
Civ. Proc., § 388.)

22  
23 TO THE ATTORNEY GENERAL OF THE STATE OF CALIFORNIA:

24 PLEASE TAKE NOTICE, under Public Resources Code section 21167.7 and Code of Civil  
25 Procedure section 388, that on May 29, 2013, the Coalition for Responsible Building Standards,  
26 California State Pipe Trades Council, and Joint Committee on Energy and Environmental Policy  
27 (“Petitioners”) filed a petition for writ of mandate against the California Building Standards  
28

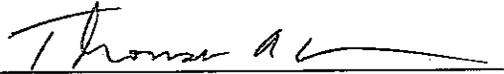
1 Commission and the California Office of Statewide Health Planning and Development  
2 (“Respondents”) in the County of Alameda Superior Court.

3 The Petition alleges that Respondents violated the California Environmental Quality Act  
4 (“CEQA”) (Pub. Resources Code, § 21000 *et seq.*) when, on April 24, 2013, they approved  
5 building standards regulations that created a new “OSHPD 3SE” primary care clinic occupancy  
6 and exempted such clinics from existing: (a) prohibitions on CPVC potable water pipe and ABS  
7 and PVC drain and waste pipe; (b) requirements to locate plumbing vents and air intakes at least 25  
8 feet apart; and (c) requirements to flush and disinfect new or repaired plumbing systems  
9 (“Project”). In taking this action, Respondents failed to evaluate the potential impacts that may  
10 result from the Project’s reduced protection to the environment and to public health and safety.  
11 The April 24, 2013 Project approval was a discretionary act and a “project” within the meaning of  
12 CEQA. (*See* Pub. Resources Code § 21065.)

13 By failing to evaluate the potentially significant impacts associated with the Project  
14 approval through preparation of an initial study and the appropriate CEQA document, Respondents  
15 violated both CEQA and the CEQA Guidelines. A copy of the petition is attached to this notice.  
16

17 Dated: 5/29/13

18 ADAMS BROADWELL JOSEPH & CARDOZO

19  
20 By:   
21 THOMAS A. ENSLOW  
22 Attorney for Petitioners and Plaintiffs  
23 COALITION FOR RESPONSIBLE BUILDING  
24 STANDARDS; CALIFORNIA STATE PIPE  
25 TRADES COUNCIL; and JOINT COMMITTEE  
26 ON ENERGY AND ENVIRONMENTAL POLICY  
27  
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

3 I am employed in the County of Sacramento, California. I am over the age of 18 and not a  
4 party to the within action. My business address is Adams Broadwell Joseph & Cardozo, 520  
5 Capitol Mall, Suite 350, Sacramento, CA 95814.

6 On May 29, 2013, I served the foregoing document(s) described as: **NOTICE TO**  
7 **ATTORNEY GENERAL; VERIFIED PETITION FOR WRIT OF MANDATE** on the  
8 interested parties in this action by transmitting a copy as follows:

9 The Honorable Kamala D. Harris  
10 Attorney General  
11 Department of Justice  
12 Office of the Attorney General  
13 1300 I Street  
14 Sacramento, CA 95814-2919

14  **By UNITED STATES MAIL** (I am readily familiar with the firm's practice of collection  
15 and processing correspondence for mailing. Under that practice it would be deposited with  
16 U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento,  
17 California in the ordinary course of business. I am aware that on motion of the party served,  
18 service is presumed invalid if postal cancellation date or postage meter date is more than one  
19 day after date of deposit for mailing in affidavit.)

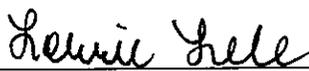
18  **By OVERNIGHT DELIVERY** (by causing such envelope to be delivered to the office of  
19 the addressee by overnight delivery via Federal Express or by other similar overnight  
20 delivery service.)

20  **By FAX TRANSMISSION**

21 (State) I declare under penalty of perjury under the laws of the State of California that the  
22  above is true and correct.

22 (Federal) I declare that I am employed in the office of a member of the bar of this court at  
23 whose direction the service was made.

24 Executed on May 29, 2013, at Sacramento, California.

26   
27 \_\_\_\_\_  
28 **LORRIE LELE**

## **EXHIBIT B**

### **VERIFIED PETITION FOR WRIT OF MANDATE**

**COALITION FOR RESPONSIBLE BUILDING STANDARDS, CALIFORNIA STATE PIPE TRADES COUNCIL; JOINT COMMITTEE ON ENERGY AND ENVIRONMENTAL POLICY; and DOES 1 through 10, inclusive, Petitioners.**

**vs.**

**CALIFORNIA BUILDING STANDARDS COMMISSION, a public agency; CALIFORNIA OFFICE OF STATEWIDE HEALTH PLANNING AND DEVELOPMENT, a public agency; and DOES 11 through 20, inclusive, Respondents.**

ADAMS BROADWELL JOSEPH & CARDOZO

DANIEL L. CARDOZO  
THOMAS A. ENSLOW  
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SO. SAN FRANCISCO OFFICE  
601 GATEWAY BLVD., SUITE 1000  
SO. SAN FRANCISCO, CA 94080  
TEL: (650) 589-1660  
FAX: (650) 588-5062

May 24, 2013

VIA CERTIFIED U.S. MAIL  
RETURN RECEIPT REQUESTED and  
VIA FACSIMILE

Robert P. David, Director  
California Office of Statewide Health  
Planning and Development  
400 R Street  
Sacramento, CA 95811-6213  
Fax: (916) 322-2531

RE: Notice of Commencement of Lawsuit Against the California Office of Statewide Health Planning and Development for Adopting Amendments to California Plumbing Code Sections 217.0, 604.1, 609.9, 701.1.2.1 and 906.2 Without CEQA Review

Dear Mr. David:

PLEASE TAKE NOTICE, pursuant to Public Resources Code section 21167.5, that the Coalition for Responsible Building Standards, California State Pipe Trades Council, and the Joint Committee on Energy and Environmental Policy ("Petitioners") intend to file a lawsuit under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq., against the California Office of Statewide Health Planning and Development ("OSHPD") challenging the April 24, 2013 approval of OSHPD's 2013 State Code amendments to California Plumbing Code sections 217.0, 604.1, 609.9, 701.1.2.1 and 906.2 ("Project"). The Project creates a new "OSHPD 3SE" building occupancy that exempts certain healthcare clinics from:

1. The existing requirement that plumbing vents terminate at least 25 feet away from any air intake or vent shaft.

Robert P. David, Director  
May 24, 2013  
Page 2

2. The existing requirement to disinfect new or repaired potable water systems prior to use;
3. The existing prohibition on the use of chlorinated polyvinyl chloride ("CPVC") drinking water pipe; and
4. The existing prohibition on the use of polyvinyl chloride ("PVC") and acrylonitrile butadene styrene ("ABS") plastic drainage pipe.

The lawsuit is based on OSHPD's failure to comply with CEQA, as discussed more fully in the comments that the Petitioners and all other commentators provided during the administrative process. The exact nature of the allegations and relief sought can be ascertained by reading a copy of the complaint that Petitioners intend to file next week.

Please call me if you have any questions.

ADAMS BROADWELL JOSEPH & CARDOZO



Thomas A. Enslow  
Attorneys for Petitioners

TAE:ljl

ADAMS BROADWELL JOSEPH & CARDOZO

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PAMELA N. EPSTEIN  
TANYA A. GULESSERIAN  
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tenslow@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE  
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TEL: (650) 589-1860  
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May 24, 2013

VIA CERTIFIED U.S. MAIL  
RETURN RECEIPT REQUESTED and  
VIA FACSIMILE

Jim McGowan, Executive Director  
California Building Standards Commission  
2525 Natomas Park Drive, Suite 130  
Sacramento, CA 95833  
Fax: (916) 263-0959

RE: Notice of Commencement of Lawsuit Against the California Building Standards Commission for Adopting Amendments to California Plumbing Code Sections 217.0, 604.1, 609.9, 701.1.2.1 and 906.2 Without CEQA Review

Dear Mr. McGowan:

PLEASE TAKE NOTICE, pursuant to Public Resources Code section 21167.5, that the Coalition for Responsible Building Standards, California State Pipe Trades Council, and the Joint Committee on Energy and Environmental Policy ("Petitioners") intend to file a lawsuit under the provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq., against the California Building Standards Commission ("Commission") challenging the Commission's April 24, 2013 approval of the 2013 State Code amendments to California Plumbing Code sections 217.0, 604.1, 609.9, 701.1.2.1 and 906.2 that were proposed by the Office of Statewide Health Planning and Development ("Project"). The Project creates a new "OSHPD 3SE" building occupancy that exempts certain healthcare clinics from:

1. The existing requirement that plumbing vents terminate at least 25 feet away from any air intake or vent shaft.

Jim McGowan, Executive Director  
May 24, 2013  
Page 2

2. The existing requirement to disinfect new or repaired potable water systems prior to use;
3. The existing prohibition on the use of chlorinated polyvinyl chloride ("CPVC") drinking water pipe; and
4. The existing prohibition on the use of polyvinyl chloride ("PVC") and acrylonitrile butadene styrene ("ABS") plastic drainage pipe.

The lawsuit is based on the Commission's failure to comply with CEQA, as discussed more fully in the comments that the Petitioners and all other commentators provided during the administrative process. The exact nature of the allegations and relief sought can be ascertained by reading a copy of the complaint that Petitioners intend to file next week.

Please call me if you have any questions.

ADAMS BROADWELL JOSEPH & CARDOZO



Thomas A. Enslow  
Attorneys for Petitioners

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF SACRAMENTO**

I am employed in the County of Sacramento, California. I am over the age of 18 and not a party to the within action. My business address is Adams Broadwell Joseph & Cardozo, 520 Capitol Mall, Suite 350, Sacramento, California, 95814.

On May 24, 2013 I served the foregoing document(s) described as:

- 1. **Notice of Commencement of CEQA Lawsuit – California Office of Statewide Health Planning and Development**
- 2. **Notice of Commencement of CEQA Lawsuit –California Building Standards Commission**

on the interested parties in this action by transmitting a copy as follows:

**SEE ATTACHED SERVICE LIST**

**By ELECTRONIC FILING** (I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to counsel denoted on the attached Service List.)

\_\_\_\_\_ **By PERSONAL SERVICE**

- \_\_\_\_\_ by personally delivering such envelope to the addressee.
- \_\_\_\_\_ by causing such envelope to be delivered by messenger to the office of the addressee.

\_\_\_\_\_ **By UNITED STATES 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 U.S. Postal Service on that same day with postage thereon fully prepaid at Sacramento, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.)

**By CERTIFIED U.S. MAIL RETURN RECEIPT REQUESTED**

**By FAX TRANSMISSION**

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

(Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on May 24, 2013, at Sacramento, California.

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*Lorrie Lele*

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LORRIE LELE

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Robert P. David, Director California Office of Statewide Health Planning and Development 400 R Street Sacramento, CA 95811-6213	Jim McGowan, Executive Director California Building Standards Commission J2525 Natomas Park Drive, Suite 130 Sacramento, CA 95833
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