

1 GRAHAM & MARTIN, LLP  
2 Anthony G. Graham (State Bar No.148682)  
3 Michael J. Martin (State Bar No.171757)  
4 3 Park Plaza, Suite 2030  
5 Irvine, California 92614  
6 (949) 474-1022

7 Attorneys For Plaintiff  
8 CONSUMER DEFENSE GROUP  
9 ACTION

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ORANGE  
CENTRAL JUSTICE CENTER

MAR 29 2004

ALAN SLATER, Clerk of the Court

BY M. De MARIA

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF ORANGE

12 CONSUMER DEFENSE GROUP  
13 ACTION

14 Plaintiff,

15 vs.

16 SHELL OIL COMPANY; THE DOW  
17 CHEMICAL COMPANY; BP AMERICA,  
18 INC.; ATLANTIC RICHFIELD  
19 COMPANY; SOUTHERN CALIFORNIA  
20 EDISON; EXXON MOBIL  
21 CORPORATION; NORTHROP  
22 GRUMMAN CORPORATION;  
23 NORTHROP GRUMMAN SPACE &  
24 MISSION SYSTEMS CORP.;  
25 CONOCOPHILIPS; CONOCO, INC.;  
26 PHILIPS PETROLEUM; CHEVRON  
27 TEXACO; CHEVRON  
28 ENVIRONMENTAL MANAGEMENT  
COMPANY; CHEVRON PIPE LINE  
COMPANY; TEXACO, INC. AND DOES  
1-100

Defendants.

CX 105  
03CC00419  
CASE NO. ~~03CC00547~~

SECOND AMENDED COMPLAINT FOR:

- (1) VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5 [THREATENED RELEASE OR DISCHARGE];
- (2) VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.6 [FAILURE TO WARN];
- (3) VIOLATION OF CALIFORNIA FISH AND GAME CODE SECTION 5660;
- (4) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 FOR VIOLATIONS OF CALIFORNIA HEALTH & SAFETY CODE SECTIONS 25249.5 AND 25249.6 [UNFAIR AND/OR UNLAWFUL BUSINESS PRACTICE]; AND,
- (5) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 FOR VIOLATIONS OF CALIFORNIA FISH AND GAME CODE SECTION 5660 [UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICE].

Summons Issued

1 Chemicals located at the Site, and all matters related to the Site itself.

2 7. On information and belief, after entry of the Consent Order in February,  
3 2003, Defendants created a California entity, Cannery Hamilton Properties LLC, which  
4 purchased the Site from its prior owner. Defendants are members and owners of Cannery  
5 Hamilton Properties LLC, and thus owners of the Site. A Sixty Day Notice of Intent to Sue  
6 Cannery Hamilton Properties LLC for violations of California Health & Safety Code § 25249.5  
7 and 25249.6 has been served. Once the notice period has expired Plaintiff will add Cannery  
8 Hamilton Properties LLC as a DOE defendant to this action.

9 8. Moreover, by reason of Defendants current and ongoing work at the Site as well  
10 as their control of all aspects of the current operation of the Site, they are “operators” of the Site  
11 for purposes of California Health & Safety Code § 25249.5, *et seq.*

12 9. Under California Health & Safety Code § 25249.5 an owner of a property is  
13 liable where it threatens to “release chemicals known to the State of California to cause cancer  
14 or reproductive toxicity into water or onto or into land where such chemical passes or probably  
15 will pass into any source of drinking water.” Similarly, an “operator” of a property is liable  
16 where it threatens to “release chemicals known to the State of California to cause cancer or  
17 reproductive toxicity into water or onto or into land where such chemical passes or probably  
18 will pass into any source of drinking water.”

19 10. As owners and operators of the Site Defendants are therefore under a duty under  
20 California Health & Safety Code § 25249.5 to prevent on an ongoing basis the actual and  
21 threatened “release” of Designated Chemicals from the Site and “exposures” to Designated  
22 Chemicals affecting both onsite and offsite persons.

23 11 According to the DTSC, the actual and threatened “release” of Designated  
24 Chemicals from the site will continue until the Designated Chemicals are effectively contained  
25 by the Defendants. Until the chemicals at the Site are effectively contained Defendants will  
26 continue to be in violation of California Health & Safety Code § 25249.5, and subject to the  
27 remedy set forth in California Health & Safety Code § 25249.7. The DTSC however put no  
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1 duty on the Defendants by reason of the Consent Order to effectively contain the chemicals  
2 during the cleanup process. That duty is imposed by Proposition 65 and can be enforced by a  
3 private attorneys general.

4 12. Defendants, as owners and/or operators of the Site, have also violated California  
5 Health & Safety Code § 25249.6 by failing to provide clear and reasonable warnings at and  
6 around the Site to warn employees, visitors and local residents that they may be exposed to  
7 chemicals known to the State of California to cause cancer and/or reproductive toxicity  
8 (referred to collectively hereinafter as the “Designated Chemicals”). Such exposure will occur  
9 by contact by any or all of those persons with those chemicals at or near the Facility. The DTSC  
10 did not put such a duty on the Defendants by reason of the Consent Order. That duty is imposed  
11 by Proposition 65 and can be enforced by a private attorneys general.

12 13. Defendants have also violated California Fish & Game Code 5660 by  
13 “permit[ting] to pass into . . . , or plac[ing] where it can pass into the waters of this state any of  
14 the following: (a) Any petroleum . . . or residuary product of petroleum, or carbonaceous  
15 material or substance, or (b) Any refuse, liquid or solid, from any refinery . . . or any factory of  
16 any kind . . . © Any substance or material deleterious to fish, plant life or bird life.”

17 14. Plaintiff Consumer Defense Group Action further alleges that Defendants’  
18 violations of California Health & Safety Code § 25249.5, 25249.6 and California Fish & Game  
19 Code 5660 constitutes violations of Business & Professions Code Section 17200 *et seq.* as both  
20 unfair and unlawful business practices.

21 15. As to the ongoing violation of California Health & Safety Code § 25249.5,  
22 Plaintiff seeks an injunction under California Health & Safety Code § 25249.7 to require  
23 Defendants to effectively contain the identified Designated Chemicals at the Facility until such  
24 time as Defendants fulfill their obligation to clean up the Site pursuant to the Consent Order.

25 16. As to the ongoing violation of California Fish & Game Code 5660, Plaintiff  
26 seeks an injunction requiring Defendants to effectively contain the identified Designated  
27 Chemicals at the Facility until such time as Defendants fulfill their obligation to clean up the  
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1 Site pursuant to the Consent Order.

2 17. As to the ongoing violations of Business & Professions Code Section 17200 *et*  
3 *seq.*, Plaintiff seeks an injunction requiring Defendants to effectively contain the identified  
4 Designated Chemicals at the Facility until such time as Defendants fulfill their obligation to  
5 clean up the Site pursuant to the Consent Order.

6 18. As to the violation of California Health & Safety Code § 25249.6, Plaintiff seeks  
7 the civil penalties available for violation of that section.

8 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

9 19. Health & Safety Code § 25249.5 *et seq* (also known as "Proposition 65")  
10 provides that when a party, such as the Defendants, have been and are knowingly and  
11 intentionally threatening to "release chemicals known to the State of California to cause cancer  
12 or reproductive toxicity into water or onto or into land where such chemical passes or probably  
13 will pass into any source of drinking water", those Defendants are in violation of Health &  
14 Safety Code Section 25249.5.

15 20. Proposition 65 also provides that when a party, such as the Defendants, have  
16 been and are knowingly and intentionally exposing the public and/or their employees to  
17 chemicals designated by the State of California to cause cancer and/or reproductive toxicity  
18 ("the Designated Chemicals") they have violated Health & Safety Code Section 25249.6 unless,  
19 prior to such exposure, it provides clear and reasonable warning of that potential exposure to  
20 the potentially exposed persons.

21 21. Defendants are violating Health & Safety Code Sections 25249.5 and 25249.6 at  
22 the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646  
23 (hereinafter "the Site"). The Defendants formerly contaminated the Site by the disposal or  
24 treatment of hazardous substances, including Designated Chemicals, and are currently  
25 responsible for the "clean up" of the Site.

26 22. On information and belief, after entry of the Consent Order in February, 2003,  
27 Defendants created a California entity, Cannery Hamilton Properties LLC, which purchased the  
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1 Site from its prior owner. Defendants are members and owners of Cannery Hamilton Properties  
2 LLC, and thus owners of the Site. Moreover, by reason of Defendants current and ongoing  
3 work at the Site as well as their control of all aspects of the current operation of the Site, they  
4 are “operators” of the Site for purposes of California Health & Safety Code § 25249.5, *et seq.*  
5 By reason of their ownership and operation of the Site Defendants are under a current duty to  
6 prevent the actual and threatened “release” of Designated Chemicals from the site and  
7 “exposures” to Designated Chemicals affecting both onsite and offsite persons.

8 23. Defendants are also under a duty to provide a clear and reasonable warning of  
9 those potential exposure to the potentially exposed persons who may be effected both onsite  
10 and offsite.

11 24. In February, 2003 the Defendants were specifically identified by the Department  
12 of Toxic Substances Control (“DTSC”) as a “responsible party” or “liable person”, as defined  
13 in Health & Safety Code section 25323.5.

14 25. Since Defendants are owners and operators of the Site they are not only  
15 responsible for the current dangerous condition of the Site but also under a current duty to  
16 ensure that the Site is operated in such a manner as to ensure (i) that there are no future releases  
17 of any Designated Chemicals at or from the Site and (ii) to inform the public that proximity to  
18 the Site will result in exposure to Designated Chemicals. The Defendants have not and are not  
19 fulfilling either of those duties.

20 26. The Site consists of approximately 38 acres, and is bounded by Hamilton  
21 Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the  
22 Huntington Beach flood control channel and an industrial area on the west. It is identified by  
23 Assessor’s parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is  
24 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial,  
25 recreational and residential area; a community park (Edison Community Park) and a high  
26 school (Edison High School) are located directly across the street from the Site.

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1           27.     The Site consists of historic disposal areas, comprising former disposal pits,  
2 current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste  
3 lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit  
4 ("Pit F"), containing styrene waste and other waste, located in the southeast corner of the Site.  
5 There are also several buried pits containing oily waste material and at least one abandoned oil  
6 well. Although the Site is fenced, the California Environmental Protection Agency ("CEPA")  
7 and DTSC have noted that there is evidence that trespassers have obtained access to the Site on  
8 a number of occasions.

9           28.     A Baseline Health Risk Assessment ("BHRA"), which evaluated the potential  
10 health impacts associated with human exposure to chemicals released from the waste pits and  
11 lagoons at the Site, specifically found that the estimated health risk for adults and children  
12 living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels  
13 considered acceptable by California regulatory agencies. These potential risks were found to be  
14 associated with the volatilization and subsequent inhalation of volatile organic compounds and  
15 oral and dermal contact with contaminants in the soil.

16           29.     Metals detected at the Site, greater than typical background concentrations,  
17 include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds,  
18 chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and  
19 cadmium compounds are Designated Chemicals known to the State of California to cause  
20 cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury  
21 compounds are Designated Chemicals known to the State of California to cause reproductive  
22 toxicity. Significant risks from many of these chemicals may occur primarily by direct contact  
23 with soils, ingestion, and dermal exposure.

24           30.     Pesticides detected at the Site include lindane and chlordane. Lindane and  
25 lindane compounds and chlordane are Designated Chemicals known to the State of California  
26 to cause cancer. Significant risks from these chemicals occur primarily by direct contact with  
27 soils, ingestion and dermal exposure.

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1           31.     Semi-volatile organic compounds (“SVOCS”) detected at the Site include  
2 benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene,  
3 naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals  
4 known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated  
5 Chemical known to the State of California to cause reproductive toxicity. Significant risks  
6 from these chemicals occur primarily by direct contact with soils, ingestion and dermal  
7 exposure.

8           32.     Volatile organic compounds (“VOCS”) detected at the Site include benzene,  
9 toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and  
10 dichloroethane are Designated Chemicals known to the State of California to cause cancer.  
11 Benzene and toluene are Designated Chemicals known to the State of California to cause  
12 reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

13           33.     The route of exposure for the chemicals noted above is as follows: (i) volatile  
14 waste components present in the lagoons and Pit F volatilizes from the surface and disperses in  
15 the atmosphere causing exposure to people both onsite and offsite via inhalation; (ii)  
16 disturbance of the lagoons or Pit F will result in the release of vapors or hazardous particulates  
17 into the atmosphere where persons may inhale or ingest such substances; (iii) the lagoons have  
18 previously overflowed during heavy rains causing hundreds of gallons of overflow to run down  
19 the streets offsite. Rainwater runoff from the Site which has come into contact with  
20 contaminated soils on the Site is likely to lead to offsite contamination by direct contact with  
21 persons in the area; (iv) the Designated Chemicals in the lagoons and Pit F have migrated and  
22 will continue to migrate into the soil and groundwater beneath and adjacent to the Site through  
23 the walls of the lagoons and Pit F. Though the Site is fenced, there is evidence that trespassers  
24 are regularly onsite and there is therefore a potential for direct contact with contaminated soils  
25 and accumulated contaminated runoff by persons either legally at the Site (such as investigators  
26 or site workers) or by trespassers.; and, (iv) the final presently known route of exposure is via  
27 explosive discharge from the Site. On March 18, 2004 the abandoned oil well at the Site  
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1 exploded showering gallons of Designated Chemicals, including but not limited to methane and  
2 benzene, over hundreds of homes within a quarter mile of the Site and causing hundreds of  
3 thousands of dollars in property damage. Further, a number of local residents publicly  
4 complained of chest and throat irritation from the downpour of discharged Designated  
5 Chemicals..

6 34. Evidence from testing by DTSC proves that the Designated Chemicals contained  
7 in the exposed and buried pits and lagoons at the Site have discharged from those containers  
8 and will continue to migrate into the soil and groundwater beneath and adjacent to the Site until  
9 those chemicals are effectively contained at the Site. The DTSC has also noted that exposure to  
10 impacted groundwater may occur if groundwater is pumped for use or if discharged into a  
11 surface water body” and that the potential thus exists for “Site contamination to impact drinking  
12 water supplies.” This threat will exist until the Designated Chemicals at the Site are effectively  
13 contained. Finally, the threat of an explosive discharge of Designated Chemicals will exist  
14 until those Designated Chemicals at the Site are effectively contained.

15 35. The DTSC has specifically found that until effectively contained there exists the  
16 potential for future migration of the waste materials from the Site to the wetlands through the  
17 unlined Huntington Beach flood control channel that currently passes the westerly edge of the  
18 Site and flows through the Talbert Marsh wetland. Similarly, the threat of an explosive  
19 discharge of Designated Chemicals from the Site which could deposit such chemicals in the  
20 Huntington Beach flood control channel that currently passes the westerly edge of the Site and  
21 flows through the Talbert Marsh wetland, or even into the ocean itself, will exist until those  
22 Designated Chemicals at the Site are effectively contained. The Defendants are therefore in  
23 violation of Health & Safety Code § 15249.5 until they, jointly or individually, effectively  
24 contain the chemicals contained in the lagoons and pits at the Site.

25 36. The DTSC has specifically found that at the Site there have been “releases”, and  
26 that there is presently a “threatened release” of the Designated Chemicals, as the term “release”  
27 is defined by Health & Safety Code § 25320. Health & Safety Code § 25320 defines “Release  
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1 as “any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting,  
2 escaping, leaching, dumping, or disposing into the environment”. Moreover, the DTSC has  
3 specifically found that the threatened release of the Designated Chemicals noted herein, as well  
4 as other hazardous chemicals stored onsite present an imminent and substantial endangerment  
5 to the public health or welfare. Further, the explosive discharge of Designated Chemicals from  
6 the oil well at the Site on March 18, 2004 is eloquent evidence of the ongoing threat of actual  
7 releases from the Site.

8           37. More than sixty-five days prior to filing this action Plaintiff mailed to the  
9 President and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to  
10 Sue (hereinafter, “the Notice”) for violations of Proposition 65, the Safe Drinking Water and  
11 Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) by (1)  
12 knowingly and intentionally threatening to “release chemicals known to the State of California  
13 to cause cancer or reproductive toxicity into water or onto or into land where such chemical  
14 passes or probably will pass into any source of drinking water” in violation of Health & Safety  
15 Code § 25249.5 at the Site, and (2) knowingly and intentionally exposing the general public  
16 around and on the Site, and employees, contractors and visitors to the Site to the Designated  
17 Chemicals identified herein and designated by the State of California to cause cancer and  
18 reproductive toxicity without first giving clear and reasonable warning of that fact to the  
19 exposed persons as required by Health & Safety Code § 24249.6. The Notice specifically  
20 identified the chemicals to which each Defendant had exposed the general public around and on  
21 the Site, and employees, contractors and visitors to the Site. The Notice identified the locations  
22 where the exposures had occurred, the time period wherein such exposure had occurred and  
23 continues to occur, and also identified the route of exposure for the chemicals as inhalation,  
24 ingestion and dermal contact. Included with the Notice was a copy of “The Safe Drinking  
25 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.” The Notice fully  
26 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of  
27 1986.

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1           43.     More than sixty days prior to filing this action Plaintiff mailed to the President  
2 and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to Sue  
3 (hereinafter, "the Notice") for violations of Proposition 65, the Safe Drinking Water and Toxic  
4 Enforcement Act (commencing with Health & Safety Code Section 25249.5) by knowingly and  
5 intentionally threatening to "release chemicals known to the State of California to cause cancer  
6 or reproductive toxicity into water or onto or into land where such chemical passes or probably  
7 will pass into any source of drinking water" in violation of Health & Safety Code Section  
8 25249.5 at the Site. The Notice specifically identified the Designated Chemicals which each  
9 Defendant is and was knowingly and intentionally threatening to release at, around and on the  
10 Site. The Notice identified the Site where the violations have and continue to occur, and also  
11 identified the route of exposure for the Designated Chemicals as inhalation, ingestion and  
12 dermal contact. Included with the Notice was a copy of "The Safe Drinking Water and Toxic  
13 Enforcement Act of 1986 (Proposition 65): A Summary." The Notice fully complied with the  
14 requirements of the Safe Drinking Water and Toxic Enforcement Act of 1986. The Notice fully  
15 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of  
16 1986.

17           44.     Copies of the Notices referred to in paragraph 40 were mailed to the California  
18 Attorney General, as well as the Orange County District Attorney (hereinafter referred to  
19 collectively as "the Prosecutors").

20           45.     On information and belief, none of the Prosecutors is prosecuting an action  
21 against any defendant herein for the violations set forth above.

22           46.     This action for injunctive relief and penalties for violation of Health & Safety  
23 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section  
24 25249.7.

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1 by Health & Safety Code Section 24249.6. The Notice specifically identified the Designated  
2 Chemicals to which each Defendant had exposed and continues to expose the general public  
3 around and on the Site, and employees, contractors and visitors to the Site. The Notice  
4 identified the location where the exposures had occurred, the time period wherein such  
5 exposure had occurred, and also identified the route of exposure for the chemicals as inhalation,  
6 ingestion and dermal contact. Included with the Notice was a copy of "The Safe Drinking  
7 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." The Notice fully  
8 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of  
9 1986.

10 51. Copies of the Notices referred to in paragraph 47 were mailed to the California  
11 Attorney General, as well as the Orange County District Attorney (hereinafter referred to  
12 collectively as "the Prosecutors").

13 52. No response was ever received from any of the Prosecutors. None of the  
14 Prosecutors is prosecuting an action against any defendant herein for the violations set forth  
15 above.

16 53. This action for injunctive relief and penalties for violation of Health & Safety  
17 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section  
18 25249.7.

19 **THIRD CAUSE OF ACTION AGAINST EACH NAMED**  
20 **DEFENDANT AND DOES 1-100**

21 **(Violation of California Fish & Game Code Section 5660)**

22 54. Plaintiff Consumer Defense Group Action repeats and incorporates by reference  
23 paragraphs 1 through 53 of this Complaint as though fully set forth herein.

24 55. California Fish & Game Code 5660 makes it unlawful to "deposit in, permit to  
25 pass into, or place where it can pass into the waters of this state any of the following: (a) Any  
26 petroleum . . . or residuary product of petroleum, or carbonaceous material or substance, or (b)  
27 Any refuse, liquid or solid, from any refinery . . . or any factory of any kind . . . © Any  
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1 substance or material deleterious to fish, plant life or bird life.”

2 56. By committing the above acts and those stated in the First Cause of Action, each  
3 Defendant thereby violated California Fish & Game Code 5660. An action for injunctive relief  
4 is specifically authorized by said section.

5 57. Continuing commission by these Defendants of the actions alleged above will  
6 irreparably harm plaintiffs and the public, a harm for which they have no plain, speedy or  
7 adequate remedy at law.

8 58. As a direct and proximate result of each defendants conduct, as set forth herein,  
9 each defendant has received ill-gotten gains, including but not limited to, money and falsely  
10 obtained goodwill of unknowing and misled consumers.

11 **FOURTH CAUSE OF ACTION AGAINST EACH NAMED**  
12 **DEFENDANT AND DOES 1-100**

13 **(Violations of California Business & Professions Code Section 17200 For**  
14 **Violations of Health & Safety Code Section 25249.5 and 25249.6)**

15 **[Unlawful And/or Unfair Business Practice]**

16 59. Plaintiff Consumer Defense Group Action repeats and incorporates by reference  
17 paragraphs 1 through 58 of this Complaint as though fully set forth herein.

18 60. Health & Safety Code Section 25249.5 provides that persons who in the course  
19 of doing business knowingly and intentionally threaten to “release chemicals known to the State  
20 of California to cause cancer or reproductive toxicity into water or onto or into land where such  
21 chemical passes or probably will pass into any source of drinking water” are in violation of  
22 Health & Safety Code Section 25249.5. Persons who in the course of doing business violate  
23 the statute thereby engage in an unlawful and/or unfair business practice constituting unfair  
24 competition in violation of Business & Professions Code Sections 17200, *et seq.*

25 61. Health & Safety Code Section 25249.6 requires that persons who in the course  
26 of doing business knowingly and intentionally expose any individual to a chemical known to  
27 the State of California to cause cancer or reproductive toxicity must provide a clear and  
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1 reasonable warning to any such individual prior to such exposure. Persons who in the course of  
2 doing business do not comply with this requirement violate the statute and engage in an  
3 unlawful and/or unfair business practice constituting unfair competition in violation of Business  
4 & Professions Code Sections 17200, *et seq.*

5 62. By committing the above acts and those stated in the First Cause of Action, each  
6 Defendant engaged in an unlawful and/or unfair practice, acts which constitutes unfair  
7 competition within the meaning of Business & Professions Code Sections 17200, *et seq.* An  
8 action for injunctive relief is specifically authorized by said sections.

9 63. Continuing commission by these Defendants of the actions alleged above will  
10 irreparably harm plaintiffs and the public, a harm for which they have no plain, speedy or  
11 adequate remedy at law.

12 64. As a direct and proximate result of each defendants conduct, as set forth herein,  
13 each defendant has received ill-gotten gains, including but not limited to, money and falsely  
14 obtained goodwill of unknowing and misled consumers.

15 **FIFTH CAUSE OF ACTION AGAINST EACH NAMED**

16 **DEFENDANT AND DOES 1-100**

17 **(Violations of California Business & Professions Code Section 17200 for**  
18 **Violations of Fish & Game Code Section 5660 )**

19 **[Unlawful And/or Unfair Business Practice]**

20 65. Plaintiff Consumer Defense Group Action repeats and incorporates by reference  
21 paragraphs 1 through 64 of this Complaint as though fully set forth herein.

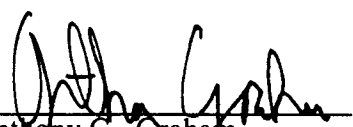
22 66. California Fish & Game Code 5660 makes it unlawful to “deposit in, permit to  
23 pass into, or place where it can pass into the waters of this state any of the following: (a) Any  
24 petroleum . . . or residuary product of petroleum, or carbonaceous material or substance, or (b)  
25 Any refuse, liquid or solid, from any refinery . . . or any factory of any kind . . . © Any  
26 substance or material deleterious to fish, plant life or bird life.” Persons who in the course of  
27 doing business violate this statute engage in an unlawful business practice constituting unfair  
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- residents, homeowners, workers and students who have been and are being effected by Defendants violations of California Health & Safety Code Section 25249.5 and 25249.6;
3. Cost of suit;
  4. Reasonable attorneys fees and costs; and,
  5. Any further relief that the court may deem just and equitable.

Dated: March 26, 2004

GRAHAM & MARTIN, LLP

  
\_\_\_\_\_  
Anthony G. Graham  
Attorneys for Plaintiff  
Consumer Defense Group Action



## CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

1.) Second Amended Complaint

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: March 29, 2004  
Place of Mailing: Irvine, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Counsel for Shell Oil Company:

Michael Leslie, Esq.  
Caldwell, Leslie, Newcombe & Pettit  
1000 Wilshire Blvd., Ste. 600

Market Street, Ste. 3200  
Los Angeles, CA 90017-2463

Counsel for ConocoPhillips Company  
and Chevron Texaco Company:

James L. Arnone, Esq.  
Latham & Watkins  
633 West Fifth Street, Ste. 4000  
Los Angeles, CA 90071-2007

Counsel for Dow Chemical Company:

John J. Allen, Esq.  
Allen, Matkins, Leck, Gamble & Mallory  
515 South Figueroa Street, 7<sup>th</sup> Floor  
Los Angeles, CA 90017-3398

Counsel for BP America, Inc. and ARCO:

Jeffrey M. Hamerling, Esq.  
Steinhart & Falconer  
333

San Francisco, CA 94105

Counsel for ExxonMobil Corporation:

Jeffrey Parker, Esq.  
Sheppard Mullin et al  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, CA 90071-1448

Counsel for Souther California Edison:

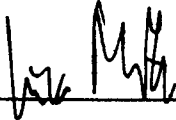
Laura A. Meyerson, Esq.  
Southern California Edison Company  
2244 Walnut Grove Avenue, Suite 331  
Rosemead, CA 91770

Counsel for Northrop Grumman Corporation,  
Northrop Grumman Space & Mission Systems Corporation:

Stanley W. Landfair, Esq.  
McKenna Long & Aldridge  
Spear Tower, Suite 3500  
San Francisco, CA 94105

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

Dated: March 29, 2004



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