

SEP 16 2003

ALAN SLATER, Clerk of the Court

BY: M. TOELUPE, DEPUTY

JUDGE STEPHEN J. SUNDVOLD
DEPT. CX105

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

Attorneys For Plaintiff
CONSUMER DEFENSE GROUP
ACTION

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ORANGE

10 CONSUMER DEFENSE GROUP
11 ACTION

12 Plaintiff,

13 vs.

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

Defendants.

CASE NO. 03CC00419

COMPLAINT FOR:

- (1) VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5;
- (2) VIOLATION OF CALIFORNIA HEALTH & SAFETY CODE SECTION 252459.6;
- (3) 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];
- (4) VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE SECTION 17200 FOR VIOLATIONS OF CALIFORNIA FISH AND GAME CODE SECTION 5660 [UNLAWFUL AND/OR UNFAIR BUSINESS PRACTICE]; AND,
- (5) PUBLIC NUISANCE.

1 As and for its causes of action against defendants SHELL OIL COMPANY; THE DOW
2 CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC RICHFIELD COMPANY;
3 SOUTHERN CALIFORNIA EDISON; EXXON MOBIL CORPORATION; NORTHROP
4 GRUMMAN CORPORATION; NORTHROP GRUMMAN SPACE & MISSION SYSTEMS
5 CORP.; CONOCOPHILIPS; CONOCO, INC.; PHILIPS PETROLEUM; CHEVRON
6 TEXACO; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY; CHEVRON
7 PIPE LINE COMPANY; TEXACO, INC. and DOES 1-100, plaintiff CONSUMER DEFENSE
8 GROUP ACTION alleges as follows:

9 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

10 1. Plaintiff CONSUMER DEFENSE GROUP ACTION is and has been at all
11 relevant times a California corporation in good standing, duly organized and existing under and
12 by virtue of the laws of the State of California, and bring this action in the public interest as
13 defined under Health & Safety Code § 25249.7 (d).

14 2. Defendants SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY;
15 BP AMERICA, INC.; ATLANTIC RICHFIELD COMPANY; SOUTHERN CALIFORNIA
16 EDISON; EXXON MOBIL CORPORATION; NORTHROP GRUMMAN CORPORATION;
17 NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORP.; CONOCOPHILIPS;
18 CONOCO, INC.; PHILIPS PETROLEUM; CHEVRON TEXACO; CHEVRON
19 ENVIRONMENTAL MANAGEMENT COMPANY; CHEVRON PIPE LINE COMPANY;
20 TEXACO, INC. are and at all times mentioned herein have been qualified to do business in the
21 State of California.

22 3. Plaintiff is ignorant of the true names and capacities of defendants sued as
23 DOES 1- 100, inclusive, and therefore sues these defendants by such fictitious names. The
24 fictitious defendants named in this Complaint are sued pursuant to the provisions of C.C.P. §
25 474. Plaintiff is informed and believes, and upon that ground, alleges that each fictitious
26 defendant is in some way responsible for, participated in, or contributed to the matters and
27 things of which Plaintiff complains herein, and in some fashion, has legal responsibility
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1 therefor. When the exact nature and identity of such fictitious defendants' responsibility for,
2 participation in, and contribution to the matters and things alleged herein are ascertained by
3 Plaintiff, Plaintiff will seek to amend this Complaint and all proceedings herein to set forth the
4 same.

5 4. At all times mentioned each of the defendants herein was a person within the
6 meaning of Business & Professions Code § 17201 and a person doing business within the
7 meaning of Health & Safety Code § 25249.11 (a). Plaintiff is informed and believes and
8 thereon alleges that at all times mentioned herein, each defendant has had 10 or more
9 employees.

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

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

22 7. The Defendants have violated, threaten to violate and continue to violate both
23 Health & Safety Code Section 25249.5 and Health & Safety Code Section 25249.6 at the
24 landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646 (hereinafter
25 "the Site"). The Defendants formerly contaminated the Site by the disposal or treatment of
26 hazardous substances, including Designated Chemicals, and are currently responsible for the
27 "clean up" of the Site. By reason of that conduct and the current duty to clean up the Site the
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1 Defendants are under a duty as operators of the Site to prevent the actual and threatened
2 “release” of Designated Chemicals from the site and “exposures” to Designated Chemicals
3 affecting both onsite and offsite persons. The Defendants are also under a duty to provide a
4 clear and reasonable warning of those potential exposure to the potentially exposed persons
5 who may be effected both onsite and offsite.

6 8. In February, 2003 the Defendants were specifically identified by the Department
7 of Toxic Substances Control (“DTSC”) as a “responsible party” or “liable person”, as defined
8 in Health & Safety Code section 25323.5. The Defendants were so identified since they had
9 individually arranged for the disposal or treatment of hazardous substances at the Site. The
10 Defendants are thus responsible for the clean up of the Site. Since Defendants are responsible
11 for such future clean up it is not only responsible for the current dangerous condition of the Site
12 but also under a current duty to ensure that the Site is operated in such a manner as to ensure (i)
13 that there are no releases of any Designated Chemicals at or from the Site and (ii) to inform the
14 public that proximity to the Site will result in exposure to Designated Chemicals. The
15 Defendants have not and are not fulfilling either of those duties.

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

23 10. The Site consists of historic disposal areas, comprising former disposal pits,
24 current “lagoons” and former “lagoon” areas. At present, the Site consists of five waste
25 lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit
26 (“Pit F”), containing styrene waste and other waste, located in the southeast corner of the Site.
27 Although the Site is fenced, the California Environmental Protection Agency (“CEPA”) and
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1 DTSC have noted that there is evidence that trespassers have obtained access to the Site on a
2 number of occasions.

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

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

18 13. Pesticides detected at the Site include lindane and chlordane. Lindane and
19 lindane compounds and chlordane are Designated Chemicals known to the State of California
20 to cause cancer. Significant risks from these chemicals occur primarily by direct contact with
21 soils, ingestion and dermal exposure.

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

2 15. Volatile organic compounds ("VOCS") detected at the Site include benzene,
3 toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and
4 dichloroethane are Designated Chemicals known to the State of California to cause cancer.
5 Benzene and toluene are Designated Chemicals known to the State of California to cause
6 reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

7 16. The route of exposure for the chemicals noted above is as follows: volatile waste
8 components present in the lagoons and Pit F may volatilize from the surface and disperse in the
9 atmosphere which may cause exposure to people both onsite and offsite via inhalation.
10 Moreover, disturbance of the lagoons or pit will result in the release of vapors or hazardous
11 particulates into the atmosphere where persons may inhale or ingest such substances. Though
12 the Site is fenced, there is evidence that trespassers are regularly onsite and there is therefore a
13 potential for direct contact with contaminated soils and accumulated contaminated runoff by
14 persons either legally at the Site (such as investigators or site workers) or by trespassers.
15 Further, the lagoons have previously overflowed during heavy rains causing hundreds of
16 gallons of overflow to run down the streets offsite. Rainwater runoff which has come into
17 contact with contaminated soils on the Site is likely to lead to offsite contamination by direct
18 contact with persons in the area.

19 17. According to the DTSC the chemicals that were disposed of at the Site by the
20 Violator have migrated and will continue to migrate into the soil and groundwater beneath and
21 adjacent to the Site. The DTSC has also noted that exposure to impacted groundwater may
22 occur if groundwater is pumped for use or if discharged into a surface water body" and that the
23 potential thus exists for "Site contamination to impact drinking water supplies." This threat
24 will exist until the waste materials at the Site are effectively contained.

25 18. The DTSC has specifically found that until effectively contained there exists the
26 potential for future migration of the waste materials from the Site to the wetlands through the
27 unlined Huntington Beach flood control channel that currently passes the westerly edge of the
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1 Site and flows through the Talbert Marsh wetland. The Defendants are therefore in violation of
2 health & Safety Code Section 15249.5 until they, jointly or individually, effectively contain the
3 chemicals contained in the lagoons and pits at the Site.

4 19. The DTSC has specifically found that at the Site there have “releases” and that
5 there is presently a “threatened release” of the Designated Chemicals noted above, as the term
6 “release” is defined by Health & Safety Code section 25320. Health & Safety Code section .
7 25320 defines “Release as “any spilling, leaking, pumping, pouring, emitting, emptying,
8 discharging, injecting, escaping, leaching, dumping, or disposing into the environment”.
9 Moreover, the DTSC has specifically found that the actual and threatened release of the
10 Designated Chemicals noted herein, as well as other hazardous chemicals stored onsite present
11 an imminent and substantial endangerment to the public health or welfare.

12 20. More than sixty days prior to filing this action Plaintiff mailed to the President
13 and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to Sue
14 (hereinafter, “the Notice”) for violations of Proposition 65, the Safe Drinking Water and Toxic
15 Enforcement Act (commencing with Health & Safety Code Section 25249.5) by (1) have been
16 and are knowingly and intentionally releasing or threatening to “release chemicals known to the
17 State of California to cause cancer or reproductive toxicity into water or onto or into land where
18 such chemical passes or probably will pass into any source of drinking water” in violation of
19 Health & Safety Code Section 25249.5 at the Site, and (2) knowingly and intentionally
20 exposing the general public around and on the Site, and employees, contractors and visitors to
21 the Site to the Designated Chemicals identified herein and designated by the State of California
22 to cause cancer and reproductive toxicity without first giving clear and reasonable warning of
23 that fact to the exposed persons as required by Health & Safety Code Section 24249.6. The
24 Notice specifically identified the chemicals to which each Defendant had exposed the general
25 public around and on the Site, and employees, contractors and visitors to the Site. The Notice
26 identified the location where the exposures had occurred, the time period wherein such
27 exposure had occurred, and also identified the route of exposure for the chemicals as inhalation,
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1 ingestion and dermal contact. Included with the Notice was a copy of "The Safe Drinking
2 Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." The Notice fully
3 complied with the requirements of the Safe Drinking Water and Toxic Enforcement Act of
4 1986.

5 21. Copies of the Notices referred to in paragraph 20 were mailed to the California
6 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
7 collectively as "the Prosecutors").

8 22. No response was ever received from any of the Prosecutors. None of the
9 Prosecutors is prosecuting an action against any defendant herein for the violations set forth
10 above.

11 23. The Court has jurisdiction over this action pursuant to California Constitution
12 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
13 those given by statute to other trial courts. The statutes under which this action is brought do
14 not specify any other basis of jurisdiction.

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

16 **DEFENDANT AND DOES 1-100**

17 **(Violation of California Health & Safety Code Section 25249.5)**

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

20 25. Plaintiff is informed and believes and thereon alleges that SHELL OIL
21 COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC
22 RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; EXXON MOBIL
23 CORPORATION; NORTHROP GRUMMAN CORPORATION; NORTHROP GRUMMAN
24 SPACE & MISSION SYSTEMS CORP.; CONOCOPHILIPS; CONOCO, INC.; PHILIPS
25 PETROLEUM; CHEVRON TEXACO; CHEVRON ENVIRONMENTAL MANAGEMENT
26 COMPANY; CHEVRON PIPE LINE COMPANY; TEXACO, INC. and DOES 1-100 have
27 been and are knowingly and intentionally releasing or threatening to "release chemicals known
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1 to the State of California to cause cancer or reproductive toxicity into water or onto or into land
2 where such chemical passes or probably will pass into any source of drinking water” in
3 violation of Health & Safety Code Section 25249.5 at the site located at 21641 Magnolia Street,
4 Huntington Beach, California 92646 (“hereinafter “the Site”).

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

21 27. Copies of the Notices referred to in paragraph 26 were mailed to the California
22 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
23 collectively as “the Prosecutors”).

24 28. No response was ever received from any of the Prosecutors. None of the
25 Prosecutors is prosecuting an action against any defendant herein for the violations set forth
26 above.

27 29. This action for injunctive relief and penalties for violation of Health & Safety
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1 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section
2 25249.7.

3 **SECOND CAUSE OF ACTION AGAINST EACH NAMED**
4 **DEFENDANT AND DOES 1-100**

5 **(Violation of California Health & Safety Code Section 25249.6)**

6 30. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
7 paragraphs 1 through 29 of this Complaint as though fully set forth herein.

8 31. Plaintiff is informed and believes and thereon alleges that SHELL OIL
9 COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC
10 RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; EXXON MOBIL
11 CORPORATION; NORTHROP GRUMMAN CORPORATION; NORTHROP GRUMMAN
12 SPACE & MISSION SYSTEMS CORP.; CONOCOPHILIPS; CONOCO, INC.; PHILIPS
13 PETROLEUM; CHEVRON TEXACO; CHEVRON ENVIRONMENTAL MANAGEMENT
14 COMPANY; CHEVRON PIPE LINE COMPANY; TEXACO, INC. and DOES 1-100 have
15 been and are knowingly and intentionally exposing the general public around and on the Site,
16 and employees, contractors and visitors to the Site to Designated Chemicals without first giving
17 clear and reasonable warnings of that fact to the exposed persons prior to exposure as required
18 by Health & Safety Code Section 25249.6.

19 32. The route of exposure for the said chemicals has been inhalation, ingestion and
20 dermal contact. Such exposures have occurred and are likely to occur at the Site and around the
21 Site.

22 33. More than sixty days prior to filing this action Plaintiff mailed to the President
23 and Chief Executive Officer for each Defendant a Sixty (60) Day Notice of Intent to Sue
24 (hereinafter, "the Notice") for violations of Proposition 65, the Safe Drinking Water and Toxic
25 Enforcement Act (commencing with Health & Safety Code Section 25249.5) by have been and
26 are knowingly and intentionally exposing the general public around and on the Site, and
27 employees, contractors and visitors to the Site to the Designated Chemicals identified herein
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1 and designated by the State of California to cause cancer and reproductive toxicity without first
2 giving clear and reasonable warning of that fact to the exposed persons as required by Health &
3 Safety Code Section 24249.6. The Notice specifically identified the Designated Chemicals to
4 which each Defendant had exposed the general public around and on the Site, and employees,
5 contractors and visitors to the Site. The Notice identified the location where the exposures had
6 occurred, the time period wherein such exposure had occurred, and also identified the route of
7 exposure for the chemicals as inhalation, ingestion and dermal contact. Included with the
8 Notice was a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986
9 (Proposition 65): A Summary." The Notice fully complied with the requirements of the Safe
10 Drinking Water and Toxic Enforcement Act of 1986.

11 34. Copies of the Notices referred to in paragraph 33 were mailed to the California
12 Attorney General, as well as the Orange County District Attorney (hereinafter referred to
13 collectively as "the Prosecutors").

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

17 36. This action for injunctive relief and penalties for violation of Health & Safety
18 Code Sections 25249.5, et seq. is specifically authorised by Health & Safety Code Section
19 25249.7.

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

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

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

25 37. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
26 paragraphs 1 through 36 of this Complaint as though fully set forth herein.

27 38. Health & Safety Code Section 25249.5 provides that persons who in the course
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1 of doing business knowingly and intentionally release or threaten to “release chemicals known
2 to the State of California to cause cancer or reproductive toxicity into water or onto or into land
3 where such chemical passes or probably will pass into any source of drinking water” are in
4 violation of Health & Safety Code Section 25249.5. Persons who in the course of doing
5 business do not comply with this requirement violate the statute and engage in an unlawful
6 and/or unfair business practice constituting unfair competition in violation of Business &
7 Professions Code Sections 17200, *et seq.*

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

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

19 41. Continuing commission by these Defendants of the actions alleged above will
20 irreparably harm plaintiffs and the public, a harm for which they have no plain, speedy or
21 adequate remedy at law.

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

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1 **FOURTH CAUSE OF ACTION AGAINST EACH NAMED**

2 **DEFENDANT AND DOES 1-100**

3 **(Violations of California Business & Professions Code Section 17200 for**

4 **Violations of Fish & Game Code Section 5660)**

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

6 43. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
7 paragraphs 1 through 42 of this Complaint as though fully set forth herein.

8 44. California Fish & Game Code 5660 makes it unlawful to “deposit in, permit to
9 pass into, or place where it can pas into the waters of this state any of the following: (a) Any
10 petroleum . . . or residuary product of petroleum, or carbonaceous material or substance, or (b)
11 Any refuse, liquid or solid, from any refinery . . . or any factory of any kind . . . © Any
12 substance or material deleterious to fish, plant life or bird life.” Persons who in the course of
13 doing business violate this statute engage in an unlawful business practice constituting unfair
14 competition in violation of Business & Professions Code Sections 17200, *et seq.*

15 45. By committing the above acts and those stated in the First Cause of Action, each
16 Defendant engaged in an unlawful business practice, an act which constitutes unfair
17 competition within the meaning of Business & Professions Code Sections 17200, *et seq.* An
18 action for injunctive relief is specifically authorized by said sections.

19 46. Continuing commission by these Defendants of the actions alleged above will
20 irreparably harm plaintiffs and the public, a harm for which they have no plain, speedy or
21 adequate remedy at law.

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

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

2 **DEFENDANT AND DOES 1-100**

3 **(Public Nuisance)**

4 48. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
5 paragraphs 1 through 47 of this Complaint as though fully set forth herein.

6 49. The release and threatened release of chemicals known to the State of California
7 to cause cancer or reproductive toxicity into water or onto or into land where such chemical
8 passes or probably will pass into any source of drinking water” in violation of Health & Safety
9 Code Section 25249.5 at the Site constitutes a nuisance. Each release is a continuing nuisance
10 until the Designated Chemicals have been effectively contained at the Site. As the Designated
11 Chemicals are released and migrate away from the source of the release (the pits and lagoons at
12 the Site) into deeper aquifers it becomes far more difficult, if not impossible, to abate the
13 nuisance, thereby changing the nuisance from continuing to permanent.

14 50. At times relevant herein, the Defendants created and/or maintained a public
15 nuisance at the Site where the Designated Chemicals have contaminated, continue to
16 contaminate and threaten to contaminate groundwater and oil in close proximity to groundwater
17 in violations of Civil Code sections 3479 and 3480.

18 51. At times relevant herein, each of the Defendants aided, abetted, assisted and
19 acted in concert with other Defendants in the creation and maintenance of these public
20 nuisances.

21 52. As to releases which contaminate or threaten to contaminate groundwater or
22 drinking water constitutes a separate and continuing nuisance subject to abatement.

23 53. As to releases which have migrated offsite to a location or locations where such
24 contamination is not subject to abatement constitutes a permanent nuisance justifying an award
25 of damages.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, plaintiff requests against each defendant:

3 **ON THE FIRST CAUSE OF ACTION**

- 4 1. A permanent injunction pursuant to California Health & Safety Code Section 25249.7
5 (a), and the equitable powers of the court;
- 6 2. Penalties pursuant to California Health & Safety Code Section 25249.7 (b) in the
7 amount of \$2,500.00 per day per violation against each of the named Defendants;
- 8 3. Cost of suit;
- 9 4. Reasonable attorneys fees and costs; and,
- 10 5. Any further relief that the court may deem just and equitable.

11 **ON THE SECOND CAUSE OF ACTION**

- 12 1. A permanent injunction pursuant to California Health & Safety Code Section 25249.7
13 (a), and the equitable powers of the court;
- 14 2. Penalties pursuant to California Health & Safety Code Section 25249.7 (b) in the
15 amount of \$2,500.00 per day per violation against each of the named Defendants;
- 16 3. Cost of suit;
- 17 4. Reasonable attorneys fees and costs; and,
- 18 5. Any further relief that the court may deem just and equitable.

19 **ON THE THIRD CAUSE OF ACTION**

- 20 1. A permanent injunction pursuant to California Business & Professions Code Section
21 17203, and the equitable powers of the court;
- 22 2. Order to disgorge in an amount to restore to any person in interest any money or
23 property that may have been acquired by means of the violations set forth herein and to
24 prevent defendant's future use of such violations, pursuant to California Business &
25 Professions Code Section 17203, and the equitable powers of the court;
- 26 3. Cost of suit;
- 27 4. Reasonable attorneys fees and costs; and,
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5. Any further relief that the court may deem just and equitable.

ON THE FOURTH CAUSE OF ACTION


- 1. A permanent injunction pursuant to California Business & Professions Code Section 17203, and the equitable powers of the court;
- 2. Order to disgorge in an amount to restore to any person in interest any money or property that may have been acquired by means of the violations set forth herein and to prevent defendant's future use of such violations, pursuant to California Business & Professions Code Section 17203, and the equitable powers of the court;
- 3. Cost of suit;
- 4. Reasonable attorneys fees and costs; and,
- 5. Any further relief that the court may deem just and equitable.

ON THE FIFTH CAUSE OF ACTION

- 1. A permanent injunction pursuant to California Code of Civil procedure Section 731, and the equitable powers of the court;
- 2. Damages according to proof pursuant to Code of Civil procedure Section 731.7 where abatement of contaminated groundwater cannot be achieved and has resulted in the creation of a permanent nuisance;
- 3. Cost of suit;
- 4. Reasonable attorneys fees and costs; and,
- 5. Any further relief that the court may deem just and equitable.

Dated : September 15, 2003

GRAHAM & MARTIN, LLP



 Anthony G. Graham
 Attorneys for Plaintiff
 Consumer Defense Group Action