

SUMMONS *on FIRST Amended*
(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (Aviso a Acusado)
Additional Parties Attachment Form Is Attached

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF:
(A Ud. le está demandando)
CONSUMER DEFENSE GROUP ACTION

<p>You have 30 CALENDAR DAYS after this summons is served on you to file a typewritten response at this court.</p> <p>A letter or phone call will not protect you; your typewritten response must be in proper legal form if you want the court to hear your case.</p> <p>If you do not file your response on time, you may lose the case, and your wages, money and property may be taken without further warning from the court.</p> <p>There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may call an attorney referral service or a legal aid office (listed in the phone book).</p>	<p><i>Después de que le entreguen esta citación judicial usted tiene un plazo de 30 DIAS CALENDARIOS para presentar una respuesta escrita a máquina en esta corte.</i></p> <p><i>Una carta o una llamada telefónica no le ofrecerá protección; su respuesta escrita a máquina tiene que cumplir con las formalidades legales apropiadas si usted quiere que la corte escuche su caso.</i></p> <p><i>Si usted no presenta su respuesta a tiempo, puede perder el caso, y le pueden quitar su salario, su dinero y otras cosas de su propiedad sin aviso adicional por parte de la corte.</i></p> <p><i>Existen otros requisitos legales. Puede que usted quiera llamar a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de referencia de abogados o a una oficina de ayuda legal (vea el directorio telefónico).</i></p>
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The name and address of the court is: *(El nombre y dirección de la corte es)*

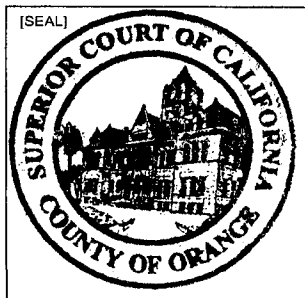
CASE NUMBER: *(Número del Caso)*
03CC0054710

Orange County Superior Court,
740 Civic Centre Drive West
Santa Ana, CA

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es)

Anthony G. Graham, Graham & Martin LLP 3 Park Plaza, Ste. 2030, Irvine CA 92614 (949) 474-1022

DATE: **DEC 22 2003** **ALAN SLATER** Clerk, by *Nestor Beraza*, Deputy
(Fecha) *(Actuario)* **NESTOR BERAZA** *(Delegado)*



NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of *(specify)*:
3. on behalf of *(specify)*:

under: <input type="checkbox"/> CCP 416.10 (corporation)	<input type="checkbox"/> CCP 416.60 (minor)
<input type="checkbox"/> CCP 416.20 (defunct corporation)	<input type="checkbox"/> CCP 416.70 (conservatee)
<input type="checkbox"/> CCP 416.40 (association or partnership)	<input type="checkbox"/> CCP 416.90 (individual)
<input type="checkbox"/> other:	
4. by personal delivery on *(date)*:

SHORT TITLE: <p style="text-align: center;">Consumer Defense v. Shell</p>	CASE NUMBER: <p style="text-align: center;">03CC00547</p>
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INSTRUCTIONS FOR USE

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party):

Plaintiff
 Defendant
 Cross-Complainant
 Cross-Defendant

SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; EXXON MOBIL CORPORATION; NORTHROP GRUMMAN CORPORATION; NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORP.; CONOCOPHILIPS; CONOCO, INC.; PHILIPS PETROLEUM; CHEVRON TEXACO; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY; CHEVRON PIPE LINE COMPANY; TEXACO, INC. AND DOES 1-100

PROOF OF SERVICE — SUMMONS
(Use separate proof of service for each person served)

1. I served the

- a. summons complaint amended summons amended complaint
 completed and blank Case Questionnaires Other (*specify*):

b. on defendant (*name*):

c. by serving defendant other (*name and title or relationship to person served*):

d. by delivery at home at business

- (1) date:
(2) time:
(3) address:

e. by mailing

- (1) date:
(2) place:

2. Manner of service (*check proper box*):

- a. **Personal service.** By personally delivering copies. (CCP 415.10)
- b. **Substituted service on corporation, unincorporated association (including partnership), or public entity.** By leaving, during usual office hours copies in the office of the person served with the person who apparently was in charge and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(a))
- c. **Substituted service on natural person, minor, conservatee, or candidate.** By leaving copies at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing (by first-class mail, postage prepaid) copies to the person served at the place where the copies were left. (CCP 415.20(b)) (**Attach separate declaration or affidavit stating acts relied on to establish reasonable diligence in first attempting personal service.**)
- d. **Mail and acknowledgment service.** By mailing (by first-class mail or airmail, postage prepaid) copies to the person served, together with two copies of the form of notice and acknowledgment and a return envelope, postage prepaid, addressed to the sender. (CCP 415.30) (**Attach completed acknowledgment of receipt.**)
- e. **Certified or registered mail service.** By mailing to an address outside California (by first-class mail postage prepaid, requiring a return receipt) copies to the person served. (CCP 415.40) (**Attach signed return receipt or other evidence of actual delivery to the person served.**)
- f. Other (*specify code section*):
 additional page is attached.

3. The "Notice to the Person Served" (on the summons) was completed as follows (CCP 412.30, 415.10, and 474):

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (*specify*):
- c. on behalf of (*specify*):
under: CCP 416.10 (corporation) CCP 416.60 (minor) other:
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (individual)

d. by personal delivery on (*date*):

4. At the time of service I was at least 18 years of age and not a party to this action.

5. Fee for service: \$

6. Person serving:

- a. California sheriff, marshal, or constable.
- b. Registered California process server.
- c. Employee or independent contractor of a registered California process server.
- d. Not a registered California process server.
- e. Exempt from registration under Bus. & Prof. Code 22350(b).

f. Name, address and telephone number and, if applicable, county of registration and number:

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

(For California sheriff, marshal, or constable use only)
I certify that the foregoing is true and correct.

Date:

Date:

(SIGNATURE)

(SIGNATURE)

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

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

DEC 22 2003

ALAN SLATER, Clerk of the Court

BY: NESTOR PERAZA, DEPUTY

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

10 CONSUMER DEFENSE GROUP)
11 ACTION)
12 Plaintiff,)
13 vs.)
14 SHELL OIL COMPANY; THE DOW)
CHEMICAL COMPANY; BP AMERICA,)
15 INC.; ATLANTIC RICHFIELD)
COMPANY; SOUTHERN CALIFORNIA)
16 EDISON; EXXON MOBIL)
CORPORATION; NORTHROP)
17 GRUMMAN CORPORATION;)
NORTHROP GRUMMAN SPACE &)
18 MISSION SYSTEMS CORP.;)
CONOCOPHILIPS; CONOCO, INC.;)
19 PHILIPS PETROLEUM; CHEVRON)
TEXACO; CHEVRON)
20 ENVIRONMENTAL MANAGEMENT)
COMPANY; CHEVRON PIPE LINE)
21 COMPANY; TEXACO, INC. AND DOES)
1-100)
22 Defendants.)

CASE NO. 03CC00547
419
FIRST
AMENDED 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]; AND,
(4) VIOLATION OF CALIFORNIA
BUSINESS & PROFESSIONS CODE
SECTION 17200 FOR VIOLATIONS OF
CALIFORNIA FISH AND GAME CODE
SECTION 5650 [UNLAWFUL AND/OR
UNFAIR BUSINESS PRACTICE].

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 PARTIES

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 brings 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 SUMMARY OF ALLEGATIONS

11 5. Plaintiff Consumer Defense Group Action Hereby alleges that Defendants have
12 violated California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65")
13 by threatening to "release chemicals known to the State of California to cause cancer or
14 reproductive toxicity into water or onto or into land where such chemical passes or probably
15 will pass into any source of drinking water, at the landfill site located at 21641 Magnolia Street,
16 Huntington Beach, California 92646 (hereinafter, "the Site") and operated by Defendants, in
17 violation of California Health & Safety Code § 25249.5 and § 25249.7.

18 6. As set forth in a Consent Order (Docket Number I&ISE-CO 02/03-007)
19 (hereinafter, the "Consent Order"), the Department of Toxic Substances Control ("DTSC") has
20 specifically identified Defendants as a "responsible party" or "liable person", as defined in
21 Health & Safety Code section 25323.5. According to the Consent Order, as well as the
22 relevant DTSC files, Defendants formerly contaminated the Site by the disposal or treatment of
23 hazardous substances, including Designated Chemicals, and are currently responsible for the
24 "clean up" of the Site.

25 7. By reason of the conduct alleged in Paragraph 6 and the current duty to clean up
26 the Site, Defendants are under a duty, as operators of the Site, to prevent on an ongoing basis
27 the actual and threatened "release" of Designated Chemicals from the Site and "exposures" to
28

1 Designated Chemicals affecting both onsite and offsite persons.

2 8. According to the DTSC, the actual and threatened “release” of Designated
3 Chemicals from the site will continue until the Designated Chemicals are effectively contained
4 by the Defendants. Until the chemicals at the Site are effectively contained Defendants will
5 continue to be in violation of California Health & Safety Code § 25249.5, and subject to the
6 remedies set forth in California Health & Safety Code § 25249.7.

7 9. Defendants have also violated California Health & Safety Code § 25249.6 by
8 failing to provide a clear and reasonable warning at and around the Site to warn employees,
9 visitors and local residents that they may be exposed to chemicals known to the State of
10 California to cause cancer and/or reproductive toxicity (referred to collectively hereinafter as
11 the “Designated Chemicals”). Such exposure will occur by contact by any or all of those
12 persons with those chemicals at or near the Facility. 25249.7.25249.7.

13 10. Defendants have also violated California Fish & Game Code 5650 by
14 “permit[ting] to pass into . . . , or plac[ing] where it can pass into the waters of this state any of
15 the following: (a) Any petroleum . . . or residuary product of petroleum, or carbonaceous
16 material or substance, or (b) Any refuse, liquid or solid, from any refinery . . . or any factory of
17 any kind . . . © Any substance or material deleterious to fish, plant life or bird life.”

18 11. Plaintiff Consumer Defense Group Action further alleges that Defendants’
19 violations of California Health & Safety Code § 25249.5, 25249.6 and California Fish & Game
20 Code 5650 constitutes violations of Business & Professions Code Section 17200 *et seq.* as both
21 unfair and unlawful business practices.

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

26 13. As to the ongoing violation of California Fish & Game Code 5650, Plaintiff
27 seeks an injunction requiring Defendants to effectively contain the identified Designated
28

1 Chemicals at the Facility until such time as Defendants fulfill their obligation to clean up the
2 Site pursuant to the Consent Order.

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

7 15. As to the violation of California Health & Safety Code § 25249.6, Plaintiff seeks
8 the civil penalties available for violation of that section and an injunction to require Defendants
9 to put in place a clear and reasonable warning system to inform the public and Defendant's
10 onsite employees and contractors of the potential exposures at and around the Site.

11 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

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

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

24 18. Defendants are violating Health & Safety Code Sections 25249.5 and 25249.6 at
25 the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646
26 (hereinafter "the Site"). The Defendants formerly contaminated the Site by the disposal or
27 treatment of hazardous substances, including Designated Chemicals, and are currently
28

1 responsible for the “clean up” of the Site.

2 19. By reason of that conduct and the current duty to clean up the Site the
3 Defendants are under a current duty as operators of the Site to prevent the actual and threatened
4 “release” of Designated Chemicals from the site and “exposures” to Designated Chemicals
5 affecting both onsite and offsite persons.

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

9 21. In February, 2003 the Defendants were specifically identified by the Department
10 of Toxic Substances Control (“DTSC”) as a “responsible party” or “liable person”, as defined
11 in Health & Safety Code section 25323.5. The Defendants were so identified since they had
12 individually arranged for the disposal and/or treatment of hazardous substances at the Site. The
13 Defendants are thus responsible for the clean up of the Site.

14 22. Since Defendants are responsible for such future clean up 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 23. 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.

27 24. The Site consists of historic disposal areas, comprising former disposal pits,
28

1 current "containment lagoons" and former "lagoon" areas. At present, the Site consists of five
2 waste containment lagoons filled with oily waste material, covering approximately 30% of the
3 Site, and one pit ("Pit F"), containing styrene waste and other waste, located in the southeast
4 corner of the Site. Although the Site is fenced, the California Environmental Protection Agency
5 ("CEPA") and DTSC have noted that there is evidence that trespassers have obtained access to
6 the Site on a number of occasions.

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

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

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

26 28. Semi-volatile organic compounds ("SVOCS") detected at the Site include
27 benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene,
28

1 naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals
2 known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated
3 Chemical known to the State of California to cause reproductive toxicity. Significant risks
4 from these chemicals occur primarily by direct contact with soils, ingestion and dermal
5 exposure.

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

11 30. The route of exposure for the chemicals noted above is as follows: (i) volatile
12 waste components present in the containment lagoons and Pit F volatilizes from the surface and
13 disperses in the atmosphere causing exposure to people both onsite and offsite via inhalation;
14 (ii) disturbance of the containment lagoons or Pit F will result in the release of vapors or
15 hazardous particulates into the atmosphere where persons may inhale or ingest such substances;
16 (iii) the containment lagoons have previously overflowed during heavy rains causing hundreds
17 of gallons of overflow to run down the local streets offsite. Rainwater runoff from the Site
18 which has come into contact with contaminated soils on the Site is likely to lead to offsite
19 contamination by direct contact with persons in the area; (iv) the Designated Chemicals in the
20 containment lagoons and Pit F have migrated and will continue to migrate into the soil and
21 groundwater beneath and adjacent to the Site through the walls of the containment lagoons and
22 Pit F. Though the Site is fenced, there is evidence that trespassers are regularly onsite and there
23 is therefore a potential for direct contact with contaminated soils and accumulated contaminated
24 runoff by persons either legally at the Site (such as investigators or site workers) or by
25 trespassers.

26 31. According to the DTSC the chemicals that were disposed of at the Site by the
27 Violator have migrated and will continue to migrate into the soil and groundwater beneath and
28

1 adjacent to the Site until those chemicals are effectively contained in the containment lagoons
2 and Pit F. The DTSC has also noted that exposure to impacted groundwater may occur if
3 groundwater “is pumped for use or if discharged into a surface water body” and that the
4 potential thus exists for “Site contamination to impact drinking water supplies.” This threat
5 will exist until the waste materials at the Site are effectively contained.

6 32. The DTSC has specifically found that until effectively contained there exists the
7 potential for future migration of the waste materials from the Site to the wetlands through the
8 unlined Huntington Beach flood control channel that currently passes the westerly edge of the
9 Site and flows through the Talbert Marsh wetland. The Defendants are therefore in violation of
10 Health & Safety Code Section 25249.5 until they, jointly or individually, effectively contain the
11 chemicals contained in the containment lagoons and pits at the Site.

12 33. The DTSC has specifically found that at the Site there have “releases” and that
13 there is presently a “threatened release” of the Designated Chemicals noted above, as the term
14 “release” is defined by Health & Safety Code section 25320. Health & Safety Code section
15 25320 defines “Release as “any spilling, leaking, pumping, pouring, emitting, emptying,
16 discharging, injecting, escaping, leaching, dumping, or disposing into the environment”.
17 Moreover, the DTSC has specifically found that the actual and threatened release of the
18 Designated Chemicals noted herein, as well as other hazardous chemicals stored onsite present
19 an imminent and substantial endangerment to the public health or welfare.

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

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

16 36. None of the Prosecutors is prosecuting an action against any Defendant herein
17 for the violations set forth above.

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

22 **FIRST CAUSE OF ACTION AGAINST EACH NAMED**
23 **DEFENDANT AND DOES 1-100**

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

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

27 39. Plaintiff is informed and believes and thereon alleges that SHELL OIL
28

1 COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC
2 RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; EXXON MOBIL
3 CORPORATION; NORTHROP GRUMMAN CORPORATION; NORTHROP GRUMMAN
4 SPACE & MISSION SYSTEMS CORP.; CONOCOPHILIPS; CONOCO, INC.; PHILIPS
5 PETROLEUM; CHEVRON TEXACO; CHEVRON ENVIRONMENTAL MANAGEMENT
6 COMPANY; CHEVRON PIPE LINE COMPANY; TEXACO, INC. and DOES 1-100 have
7 been and are knowingly and intentionally threatening to “release chemicals known to the State
8 of California to cause cancer or reproductive toxicity into water or onto or into land where such
9 chemical passes or probably will pass into any source of drinking water” in violation of Health
10 & Safety Code Section 25249.5 at the site located at 21641 Magnolia Street, Huntington Beach,
11 California 92646 (“hereinafter “the Site”).

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

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

17 48. Copies of the Notices referred to in paragraph 47 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 49. None of the Prosecutors is prosecuting an action against any defendant herein for
21 the violations set forth above.

22 50. 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 irreparably harm plaintiffs and the public, a harm for which they have no plain, speedy or
2 adequate remedy at law.

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

6 **FOURTH CAUSE OF ACTION AGAINST EACH NAMED**
7 **DEFENDANT AND DOES 1-100**

8 **(Violations of California Business & Professions Code Section 17200 for**
9 **Violations of Fish & Game Code Section 5650)**

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

11 57. Plaintiff Consumer Defense Group Action repeats and incorporates by reference
12 paragraphs 1 through 56 of this Complaint as though fully set forth herein.

13 58. California Fish & Game Code 5650 makes it unlawful to “deposit in, permit to
14 pass into, or place where it can pas into the waters of this state any of the following: (a) Any
15 petroleum . . . or residuary product of petroleum, or carbonaceous material or substance, or (b)
16 Any refuse, liquid or solid, from any refinery . . . or any factory of any kind . . . © Any
17 substance or material deleterious to fish, plant life or bird life.” Persons who in the course of
18 doing business violate this statute engage in an unlawful and/or unfair business practice
19 constituting unfair competition in violation of Business & Professions Code Sections 17200, *et*
20 *seq.*

21 59. By committing the above acts, each Defendant engaged in an unlawful and/or
22 unfair business practice, an act which constitutes unfair competition within the meaning of
23 Business & Professions Code Sections 17200, *et seq.* An action for injunctive relief is
24 specifically authorized by said sections.

25 60. Continuing commission by these Defendants of the actions alleged above will
26 irreparably harm plaintiffs and the public, a harm for which they have no plain, speedy or
27 adequate remedy at law.

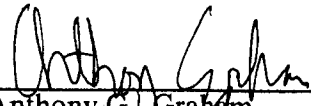
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- 4. Reasonable attorneys' fees and costs; and,
- 5. Any further relief that the court may deem just and equitable.

Dated: December 19, 2003

GRAHAM & MARTIN, LLP



Anthony G. Graham
Attorneys for Plaintiff
Consumer Defense Group Action