

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

GRAHAM & MARTIN, LLP
Anthony G. Graham (State Bar No.148682)
Michael J. Martin (State Bar No. 171757)
950 South Coast Drive, Suite 220
Costa Mesa, California 92626
(714) 850-9390

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUL 07 2003

John A. Clarke, Executive Officer/Clerk

M Garcia
BY MARY GARCIA, Deputy

LAW OFFICES OF THOMAS G. MARTIN
Thomas G. Martin (State Bar No. 195627)
1 World Trade Center, Suite 800
Long Beach, CA, 90831

Attorneys for Plaintiff
DR. THOMAS F. SOWINSKI

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

DR. THOMAS F. SOWINSKI, IN THE
PUBLIC INTEREST,

CASE NO. BC393707

Plaintiff,

vs.

COMPLAINT FOR VIOLATION OF
CALIFORNIA HEALTH & SAFETY CODE
25249.5 *ET SEQ*

BP PRODUCTS NORTH AMERICA, INC.; BP
AMOCO CHEMICAL COMPANY;
CHEVRON PHILLIPS CHEMICAL
COMPANY LP; CONOCOPHILLIPS
COMPANY; SHELL CHEMICAL LP;
TESORO REFINING & MARKETING CO.;
VALERO MARKETING & SUPPLY CO.;
EQUILON ENTERPRISES LLC AND DOES 1
- 500

Defendants.

As and for his cause of action against BP Products North America, Inc.; BP Amoco
Chemical Company; Chevron Phillips Chemical Company LP; ConocoPhillips Company; Shell

1 Chemical LP; Tesoro Refining & Marketing Co.; Valero Marketing & Supply Co.; Equilon
2 Enterprises LLC and DOES 1 - 500, plaintiff Dr. Richard F. Sowinski alleges as follows:

3 ALLEGATIONS INCORPORATED INTO EACH CAUSE OF ACTION

4 A. PARTIES

5 1. Plaintiff Dr. Richard F. Sowinski is and has been at all relevant times a resident of
6 the State of California, and brings this action in the public interest on behalf of the People of the
7 State of California as defined under Health & Safety Code § 25249.7 (d).

8 2. Defendants BP Products North America, Inc.; BP Amoco Chemical Company;
9 Chevron Phillips Chemical Company LP; ConocoPhillips Company; Shell Chemical LP; Tesoro
10 Refining & Marketing Co.; Valero Marketing & Supply Co.; Equilon Enterprises LLC and
11 DOES 1 - 500 (hereinafter referred to collectively as "Defendants") are and at all times
12 mentioned herein have been qualified to do business in the State of California.

13 3. Plaintiff is ignorant of the true names and capacities of defendants sued as DOES
14 1- 500, inclusive, and therefore sue these defendants by such fictitious names. The fictitious
15 defendants named in this Complaint are sued pursuant to the provisions of C.C.P. § 474.
16 Plaintiff is informed and believes, and upon that ground, alleges that each fictitious defendant is
17 in some way responsible for, participated in, or contributed to the matters and things of which
18 Plaintiff complains herein, and in some fashion, has legal responsibility therefor. When the exact
19 nature and identity of such fictitious defendants' responsibility for, participation in, and
20 contribution to the matters and things alleged herein are ascertained by Plaintiff, Plaintiff will
21 seek to amend this Complaint and all proceedings herein to set forth the same.

22 4. At all times mentioned herein each of the Defendants was a person within the
23 meaning of Business & Professions Code § 17201 and a person doing business within the
24 meaning of Health & Safety Code § 25249.11 (a). Plaintiff is informed and believes and thereon
25 alleges that at all times mentioned herein, each of the Defendants has had 10 or more employees.

26 5. The Court has jurisdiction over this action pursuant to California Constitution
27 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except
28

1 those given by statute to other trial courts. The statutes under which this action is brought do not
2 specify any other basis of jurisdiction.

3 **CAUSE OF ACTION AGAINST ALL DEFENDANTS**

4 **AND DOES 1- 500**

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

6 6. Plaintiff repeats and incorporates by reference paragraphs 1 through 5 of this
7 Complaint as though fully set forth herein.

8 7. Plaintiff is informed and believe and thereon allege that Defendants and DOES 1-
9 500 knowingly and intentionally exposed consumers, their customers and/or the general public to
10 chemicals known to the State of California to cause cancer, birth defects and reproductive
11 toxicity, as set forth in Health & Safety Code §§ 25249.5, *et seq.* and 22 California Code of
12 Regulations §§ 12000 through 14000 ("Proposition 65") without giving clear and reasonable
13 warnings of that fact to the exposed persons prior to exposure.

14 8. Proposition 65 states that when parties, such as Defendants, entities with more
15 than ten employees, have been or are knowingly and intentionally exposing their customers and
16 users of the products they sell to a detectable level of any chemical designated by the State of
17 California to cause cancer or reproductive toxicity (the "Designated Chemical"), it has violated
18 the statute unless, prior to such exposure, it provides clear and reasonable warning of the
19 exposure to the potentially exposed persons (Health & Safety Code § 25249.6).

20 9. Defendants knowingly and intentionally exposed consumers, customers, visitors,
21 Employees and/or the general public to chemicals known to the State of California to cause
22 cancer, birth defects and reproductive toxicity, as set forth in Health & Safety Code § 25249.5, *et*
23 *seq.* and 22 California Code of Regulations §§ 12000 through 14000 through the manufacture,
24 production and refinement of propane gas for distribution and sale in California.

25 10. In the ordinary course of business, Defendants, since at least April 11, 2004
26 through the present date, have manufactured, produced and refined for distribution and sale
27 throughout California propane gas for use by consumers in cooking. When propane gas is
28 burned it produces, in the ordinary course of usage, hazardous emissions in significant amounts

1 that pose a serious health risk to unsuspecting people. The burning of propane gas produces
2 benzene levels that exceed the allowable threshold exposure level set forth in California Health
3 & Safety Code § 25249.6. Defendants now and for at least the four years prior to this Notice
4 have failed to provide its customers with a clear and reasonable warning of this potential
5 exposure.

6 11. When propane gas is used for cooking or in clothes dryers it emits vapors, gases
7 and particles containing the following Designated Chemical: benzene, a chemical known to the
8 State of California to cause cancer and reproductive toxicity. Persons using propane gas
9 manufactured, produced and refined by Defendants will be exposed to this Designated Chemical
10 primarily via inhalation, that is, by breathing in the chemical. Defendants have however not
11 provided to those persons a clear and reasonable warning that use of propane gas will expose the
12 user to the Designated Chemical, Benzene. Defendants are therefore violating Health & Safety
13 Code Section 25249.6.

14 12. At all times relevant to this action Defendants knew that their customers,
15 consumers, and/or the general public could be and/or were being exposed, through inhalation and
16 dermal contact, to benzene, a chemical known to the State of California to cause cancer, birth
17 defects and reproductive toxicity, as set forth in Health & Safety Code § 25249.5, *et seq.* and 22
18 California Code of Regulations §§ 12000 through 14000.

19 13. Defendants and DOES 1- 500 knowingly and intentionally exposed their
20 customers, consumers and/or the general public to benzene without providing prior clear and
21 reasonable warnings to those customers, consumer and/or the general public that use of the
22 Product could expose them and others to a chemical known to the State of California to cause
23 cancer, birth defects and reproductive toxicity, as set forth in Health & Safety Code §§ 25249.5,
24 *et seq.* and 22 California Code of Regulations §§ 12000 through 14000.

25 14. The route of exposure for the said chemicals has been primarily through
26 inhalation, that is, via the breathing of the said chemical.

27 15. More than sixty (60) days prior to filing this action Plaintiff mailed to each of the
28 Defendants a Sixty (60) Day Notice of Intent to Sue (hereinafter referred to collectively as "the

1 Notices") for violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act
2 (commencing with Health & Safety Code § 25249.5) by knowingly and intentionally exposing
3 consumers, their customers and/or the general public to benzene, a chemical designated by the
4 State of California to cause cancer, birth defects and reproductive toxicity without first giving
5 clear and reasonable warning of that fact to the exposed persons as required by Health & Safety
6 Code § 24249.6. The Notices specifically identified that the Defendants manufactured, produced
7 and refined propane gas for sale and distribution throughout California and the chemical to which
8 Defendants had exposed consumers, their customers and/or the general public. The Notices
9 identified the time period wherein such exposures had occurred, and also identified the route of
10 exposure for the chemicals as inhalation. Included with the Notices was a copy of "The Safe
11 Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

12 16. Copies of the Notices referred to in paragraph 15 were mailed to the California
13 Attorney General, the relevant County District Attorneys and City Attorneys for each city
14 containing a population of at least 750,000 people (hereinafter referred to collectively as the
15 "Prosecutors") where the Defendants had violated Health & Safety Code §§ 25249.5, *et seq.* and
16 22 California Code of regulations §§ 12000 through 14000.

17 17. No response was ever received from any of the Prosecutors. None of the
18 Prosecutors is prosecuting an action against any Defendant herein for the violations set forth
19 above.

20 18. Individuals exposed to the listed chemicals suffered and continue to suffer harm
21 due to their exposure to said chemicals without prior clear and reasonable warning.

22 19. This action for injunctive relief and penalties for violation of Health & Safety
23 Code §§ 25249.5, *et seq.* is specifically authorized by Health & Safety Code § 25249.7.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs request against Defendants and DOES 1 - 500:

26 1. A permanent injunction pursuant to California Health & Safety Code
27 § 25249.7(a), and the equitable powers of the court;

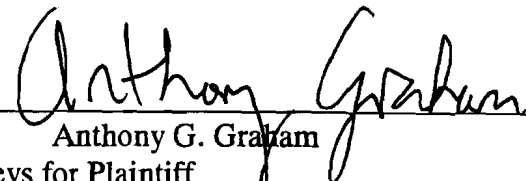
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- 2. Penalties pursuant to California Health & Safety Code § 25249.7(b) in the amount of \$2,500.00 per day per violation at each of the locations listed in Exhibit A;
- 3. Costs of suit;
- 4. Reasonable attorneys fees and costs; and,
- 5. Any further relief that the court may deem just and equitable.

DATED: June 27, 2008

GRAHAM & MARTIN, LLP

By: 
Anthony G. Graham
Attorneys for Plaintiff
DR. RICHARD F. SOWINSKI