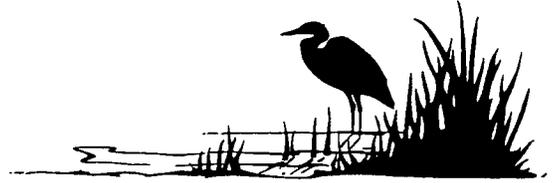


Silver & Silver Law Offices

An association including a professional corporation

902 Stevenson Street Santa Rosa, California 95404
Phone 707-527-8811 Fax 707-527-5443



Paul S. Silver
Professional Corp.

Jack Silver

May 19, 2003

Joseph E. Sparano, President & CEO
Tesoro West Coast Company
3450 S. 344th Way, Suite 100
Auburn, WA 98001-5931

Gary L. Arthur, Jr., President
Ultramar, Inc.
1 Valero Place
San Antonio, TX 78212-3186

Re: Notice of Violations and Intent to File Suit under the Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65")

Dear Sirs:

On behalf of Northern California River Watch (hereafter, "River Watch"), we are providing statutory notification to Tesoro West Coast Company, a subsidiary of Tesoro Petroleum Corporation, (hereafter, "Tesoro") and Ultramar, Inc., (hereafter "Ultramar") of continuing and ongoing violations of California's Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") in conjunction with the hydrocarbon releases at each of the sites listed below.

River Watch hereby notifies Tesoro and Ultramar that at the after the expiration of sixty (60) days from the date of this **Notice**, River Watch intends to commence a civil action against Tesoro and Ultramar on the following grounds:

Release of petroleum contaminants by Tesoro and Ultramar at the sites listed herein has caused the discharge or release of cancer causing chemicals and/or reproductive toxins into water or onto or into land where such chemicals pass or probably will pass into a source of drinking water. (Calif. Health & Safety Code, §§ 25249.5- 25249.13; *People ex rel. Lungren v. Superior Court* (1996) 14 Cal. 4th 294, 298, 926 P.2d 1042.)

**1. Tesoro Gasoline Service Station No. 67108
(Former Beacon Gasoline Service Station No. 3716)
1990 San Ramon Valley, San Ramon, CA**

Under the provisions of certain agreements between Ultramar and Tesoro, on or about May 17, 2002, Tesoro became the "Responsible Party" for purposes of the remediation of this former gasoline station site. Ultramar had owned the former Beacon Service Station # 3716 previously from at least since 1989. This site included three subsurface 10,000 gallon petroleum product tanks which were located at the southern boundary of the property. In 1990 annual tank testing revealed that one of the tanks failed the precision test. The test failure was reported to the Contra Costa County Department of Public Health (hereafter, "CCCDH") and subsequently the tanks were taken out of service and eventually replaced. In March of 1991, the area where these tanks had been was excavated. Soil samples taken at that time reflected levels of petroleum contaminants which required remediation efforts to commence at the site. TPHg levels were found as high as 150,000 ug/l; benzene as high as 10,000 ug/l; toluene as high as 16,000 ug/l; ethylbenzene as high as 1,800 ug/l; and xylenes as high as 12,000 ug/l.

Under the oversight of the CCCDH, Ultramar engaged an engineering firm to install monitoring wells and begin the systematic screening of soil and groundwater samples for petroleum hydrocarbons with the stated intention of remediating the site. By December of 1993, testing was underway to establish the feasibility of vacuum extraction methods of site remediation. Four years later a well water survey was conducted to determine the risk of contamination to local wells and water supplies. An industrial well was found 3,200 feet to the east-southeast, and a municipal well was found 17,000 feet to the southwest. The groundwater in this area flows to the east-northeast.

After a hiatus in testing between March of 1996 and June of 1999, a petroleum sheen was seen on groundwater samples, and the 1999 levels of contaminants found at this site were as follows: TPHg as high as 230,000 ug/l; benzene as high as 48,000 ug/l; toluene as high as 28,000 ug/l; ethylbenzene as high as 7,400 ug/l; xylenes as high as 34,000 ug/l and MTBE as high as 5,700 ug/l. These values were on a par with the last recorded well monitoring analyses in March of 1996, but the absence of interim monitoring at the site has not been explained in available reports.

At the present time the presence of hydrocarbon contaminants remains high at this site despite Ultramar's earlier efforts and Tesoro's current efforts at remediation. At monitoring well MW-2, TPHg is at 120,000 ug/l and MTBE is at 5,300 ug/l. Despite the fact that this site has been monitored for over 12 years for the effects of its petroleum discharges, historical levels of contaminants has reduced only slightly. The site has not been fully characterized as to its linear or vertical extent particularly because the property is bounded by Interstate 680 on the east, and the presence of this obstacle apparently precludes eastward monitoring. Ultramar's engineering firm recommends only that the site's monitoring wells be regularly sampled on a quarterly basis. Active remediation of the site appears to be limited to "natural attenuation." Because of the danger to groundwater in this urban location, River Watch believes that Tesoro must authorize more proactive intervention at this site using the best available technology, so that remediation will not require another decade to accomplish.

**2. Tesoro Gasoline Service Station No. 67061
(Former Beacon Gasoline Service Station No. 3712)
4321 Clayton Road, Concord, CA 94521**

Under the provisions of certain agreements between Ultramar and Tesoro, on or about May 17, 2002, Tesoro became the "Responsible Party" for purposes of the remediation of this former gasoline station site. Ultramar purchased the former Conoco Jet Service Station in July of 1990, at a time when the investigation of a petroleum hydrocarbon release beneath this site was already underway following the replacement of three then-existing underground storage tanks in 1986. Monitoring wells were first installed at this site in 1986, followed by additional wells in 1987. Thereafter, in late 1988 and in March of 1989, free product was discovered in at least one of the monitoring wells. By August of 1990, over 5 feet of floating product was found in monitoring well MW-6, and almost 2 feet in well MW-1, denoting that the petroleum contamination at the site was quite substantial.

Site characterization work was commenced by DuPont Environmental Remediation Services in September of 1990, at the request of Ultramar and the California Regional Water Quality Control Board (hereafter, "RWQCB") which had made a formal request under the California Water Code for progress reports. Thereafter Delta Environmental Consultants issued a proposal for interim remediation of the site. In February and August of 1991, additional monitoring wells were drilled and testing of the system was commenced. Well

sampling results indicated during this period that hydrocarbon concentrations at the site exceeded California Department of Health Services maximum contaminant levels.

Finally in October of 1994, a vapor extraction well was installed at the site to help the remediation of the underground contamination. The vapor extraction system was tested by November of that year, but apparently not introduced into operation until September or October of 1995. This system was discontinued in January of 1997, apparently due to "low influent concentrations." By that time approximately 3,647 pounds of petroleum hydrocarbons had been extracted by the vapor extraction system.

Nonetheless, soil and groundwater sampling analyses revealed that in August of 1997, at least one of the monitoring wells was found with the following concentrations of contaminants: TPHg of 34,000 ppb; benzene of 6,000 ppb; toluene of 1,200 ppb; xylenes of 3,400 ppb and MTBE of 4,000.

By February of 2000, monitoring data indicated that concentrations of TPHg were found as high as 26,000 ppb; benzene as high as 5,200 ppb; toluene as high as 120 ppb; ethylbenzene as high as 750 ppb; xylenes as high as 560 ppb and MTBE as high as 6,200 ppb. In June of 2000, the RWQCB issued another Water Code formal request demanding information about the delineation of the contaminant plume and a plume stability assessment.

As of August of 2002 -- apparently the last available monitoring data for this site -- TPHg levels at the worst well (MW-5) have been pegged at 11,000 ppb; benzene at 4,100 ppb; toluene at <20 ppb; ethylbenzene at 300 ppb; xylenes at 31 ppb and MTBE at 5,500.

There are now a total of 13 monitoring wells, seven onsite and six offsite in the upgradient and downgradient directions. There is some suspicion that the site has been impacted by a groundwater plume migrating from a TransAm gasoline station across the street from the site. In any event the underground plume at this site "may be unabated and expanding" according to Horizon Environmental, the latest consulting firm to be employed at this location.

Over 16 years following the initial releases of contaminants at this site, the pollution of the soil and groundwater remains unremediated. According to the latest documentation from RWQCB files, no vapor Extraction system is in operation, and analytical testing has been reduced to semi-annually only. The contaminant plume has not been adequately characterized, and there is no end

in sight for the engineering work which needs to be done. This is a case for which River Watch must rely upon federal statutory provisions which authorize citizen suits where regulatory agency processes have not resulted in viable and timely solutions to the contaminant problems in our communities. This is another case in which River Watch believes that Tesoro and Ultramar must be compelled to authorize more proactive intervention at this site using the best available technology, so that remediation will not require another decade to accomplish.

Regulatory Standards

Water Quality Objectives exist to ensure protection of the beneficial uses of water. Several beneficial uses of water exist, and the most stringent water quality objectives for protection of all beneficial uses are selected as the protective water quality criteria. Alternative cleanup and abatement actions need to be considered which evaluate the feasibility of, at a minimum: (1) cleanup to background levels, (2) cleanup to levels attainable through application of best practicable technology, and (3) cleanup to protective water quality criteria levels.

Existing and potential beneficial uses of area groundwater include domestic, agricultural, industrial and municipal water supply. The water quality control plan for the north coast region, the "Basin Plan", identifies all ground water as a source of drinking water.

The RWQCB has adopted a Water Quality Control Plan which designates all surface and groundwater within the North Coast region as capable of supporting domestic, agricultural and industrial supply. The RWQCB has adopted Maximum Contaminant Levels ("MCLs") and/or Water Quality Objectives ("WQOs") for petroleum constituents in surface and groundwater within the region of 50 ppb for TPHg, 1 ppb for benzene and 42 ppb for toluene.

Proposition 65 Violations

Petroleum is used and stored at each of these four sites in a manner which has allowed significant quantities of hazardous petroleum constituents to be discharged to soil and groundwater beneath the site and adjacent properties. Between May 19, 2002 and May 19, 2003, at station sites #67108 and #67061, as described above, ground and drinking water

sources in and around each of its two sites has been contaminated with benzene and toluene. Benzene (CAS Registry No. 71432, listed 02/27/87) is a known carcinogen. Toluene (CAS Registry No. 108883, listed 01/01/91) is known to cause reproductive toxicity. Surface and groundwater at these sites are potential sources of drinking water under the RWQCB Water Quality Control Plan. In the course of doing business Tesoro and Ultramar have discharged benzene and toluene to surface and groundwater at these two sites on a daily basis since at least 2002. Under Proposition 65, a violator is subject to a maximum civil penalty of \$2,500.00 per day per violation.

The discharges by Tesoro and Ultramar as alleged in this **Notice** are both knowing and intentional. Petroleum products which are known to contain benzene and toluene are used, stored and sold at these two sites; and, Tesoro and Ultramar intend that such products will be sold to and used by the public. Tesoro has known of the contamination at the Site since at least 2002, and is also aware that failing to remediate the pollution allows the contamination to migrate through soil and groundwater at each of these two sites, and to continually contaminate and re-contaminate actual and potential sources of drinking water.

Violations of Proposition 65 of the type alleged herein are a major cause of the continuing decline in water quality and a continuing threat to existing and future drinking water supplies in Northern California. With every discharge, groundwater supplies are contaminated. These discharges can and must be controlled in order for the groundwater supply to be returned to a safe source of drinking water.

Evidence obtained by River Watch from various sources, including RWQCB files, indicates that the release of these and other petroleum constituents and chemical contaminants will cause significant amounts of these substances to enter ground and/or surface waters, and jeopardize drinking sources in each of the communities where these two gas station sites now exist. In addition, it is the belief of River Watch that none of these releases are in conformity with any applicable laws, regulations, permits or other federal, state or local requirements.

Under Proposition 65 provisions, any person may bring a civil suit against violators of this Act, providing certain notice and reporting requirements are met. Further, pursuant to Proposition 65 penalty provisions, each day of violations subjects the violator to a maximum civil penalty of \$2,500.00 per violation.

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By statute this **Notice** is given to Tesoro, Ultramar, the State Attorney General, the local District Attorney, and any City Attorney for cities with populations exceeding 750,000, in whose jurisdictions the violations are alleged to have occurred. River Watch believes that this **Notice** specifically satisfies statutory directives for providing notice of intent to file suit.

In addition to the violations set forth above, this **Notice** is intended to cover all violations of Proposition 65 as evidenced by information which becomes available to River Watch after the date of this **Notice**.

River Watch is a non-profit corporation dedicated to the protection and enhancement of the waters of the State of California including all rivers, creeks, streams and groundwater in Northern California. River Watch is organized under the laws of the State of California. Its address is 74 Main Street, Suite D., P.O. Box 1360, Occidental, CA, 95465; its telephone number is (707) 874-2579.

The violations of Tesoro and Ultramar as set forth in this **Notice** affect the health and enjoyment of members of River Watch who reside and recreate in the affected watershed areas. The members of River Watch use the watershed for domestic water supply, agricultural water supply, recreation, sports, fishing, swimming, shellfish harvesting, hiking, photography, nature walks and the like. Their health, use and enjoyment of this natural resource is specifically impaired by these violations of Proposition 65.

River Watch has retained legal counsel to represent them in this matter. All communications should be addressed to:

Northern California Environmental Defense Center
c/o Jack Silver, Esq.
Silver & Silver Law Office
902 Stevenson Street
Santa Rosa, CA 95404
Tel. (707) 527-8811
Fax (707) 527-5443

River Watch believes this **Notice** sufficiently states grounds for filing suit under the statutory and regulatory provisions of Proposition 65 as to each of the two sites referenced above. At the close of the notice periods or shortly thereafter, River Watch intends to file

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a suit against Tesoro and Ultramar under Proposition 65 for each of the violations as alleged herein, with respect to the existing conditions at both of the gasoline service station sites referenced above.

During the notice period, however, River Watch is willing to discuss effective remedies for the violations noted in this Notice. If Tesoro or Ultramar wish to pursue such discussions in the absence of litigation, it is suggested that discussions be initiated immediately so that they may be completed before the end of the notice period. River Watch does not intend to delay the filing of a lawsuit if discussions are continuing when the notice period ends.

cc:
Edward Weil, Esq.
State of California
Office of the Attorney General
1515 Clay Street
Oakland, CA 94612

District Attorney's Office
Contra Costa County
Courthouse
Court and Main Streets
Martinez, CA 94553

Tesoro Petroleum, Inc.
c/o C T Corporation System
Registered Agent for Service
818 West Seventh Street
Los Angeles, CA 90017

Tesoro West Coast Company
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Tesoro Petroleum Corporation
c/o Bruce A. Smith, President & CEO
300 Concord Plaza Drive
San Antonio, Texas 78216-6999

Ultramar, Inc.,
c/o C T Corporation System
Registered Agent for Service
818 West Seventh Street
Los Angeles, CA 90017

Ultramar, Inc.
P.O. Box 466
525 W. Third Street
Hanford, CA 93232-0466

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PROOF OF SERVICE

I am employed in the County of Sonoma, State of California. I am over the age of eighteen years and not a party to the within action. My business address is 902 Stevenson Street, Santa Rosa, CA 95404.

On the date listed below, I served the following described document:

Notice of Intent to File Suit Under California Safe Drinking Water and Toxic Enforcement act (Proposition 65) - Dated May 19, 2003

on the following parties by placing a true copy in a sealed envelope, addressed as follows:

Edward Weil, Esq.
State of California
Office of the Attorney General
1515 Clay Street
Oakland, CA 94612

District Attorney's Office
Contra Costa County
Courthouse
Court and Main Streets
Martinez, CA 94553

Tesoro Petroleum, Inc.
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818 West Seventh Street
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c/o Bruce A. Smith, President & CEO
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[X] (BY MAIL) I placed each such envelope, with postage thereon fully prepaid for first-class mail, for collection and mailing at Santa Rosa, California, following ordinary business practices. I am readily familiar with the practices of Northern California Environmental Defense Center for processing of correspondence; said practice being that in the ordinary course of business, correspondence is deposited with the United States Postal Service the same day as it is placed for processing.

I declare under penalty of perjury, under the laws of the State of California, that the foregoing is true and correct, and that this declaration was executed on May 20, 2003 at Santa Rosa, California.