

## BARON & BUDD

FREDERICK M. BARON  
RUSSELL W. BUDD  
BRENT M. ROSENTHAL  
USA A. BLUE, Ph.D.  
MARY E. SKELNIK  
STEVEN D. WOLENS  
MELISSA K. HUTTS  
STEVE BAUGHMAN JENSEN  
ALLEN M. STEWART  
RICHARD I. NEMEROFF  
LISA R. KIVETT  
LEANNE JACKSON  
LAURA BAUGHMAN  
LAURIE J. MEGGESIN  
LADD R. GIBKE  
ALAN B. RICH  
ELLEN A. PRESBY  
SCOTT SUMMY  
MISTY A. FARRIS  
KEVIN D. McHARGUE

JAMES D. PIEL  
S. ANN SAUCER  
LANCE A. POOL

SPECIAL COUNSEL  
CARLOS LOPEZ

DIANE M. ANDREW\*  
SAM T. RICHARD  
CHRISTINA E. MANCUSO  
SCOTT MORRISON  
WESLEY K. YOUNG  
STEPHEN C. JOHNSTON  
WILLIAM K. TAPSCOTT, JR.  
ASHLEY HIGGINS JETER  
BEN K. DUBOSE  
AMY J. SHAHAN  
TAERI IM OH  
ANN TUTOKY HARPER  
CAREN LOCK HANSON

A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS  
SUITE 1100  
3102 OAK LAWN AVENUE  
DALLAS, TEXAS 75219-4281  
(214) 521-3605  
TELECOPIER (214) 520-1181

\*LAWRENCE G. GETTYS  
ALICIA D. BUTLER  
\*PATRICK O'NEAL  
ANDREA S. BOURNE  
VIRGINIA L. ADAMS  
JOYCELL M. HOLLINS  
MARTY A. MORRIS  
LAURA M. CABUTTO  
SCOTT R. FRIELING  
THOMAS M. SIMS  
JOHN J. SPILLANE  
NATALIE F. DUNCAN  
MONTY WADE SULLIVAN  
AMY M. CARTER  
FRANK E. GOODRICH  
CARLA M. BURKE  
SCOTT L. FROST  
TIFFANY NEWLIN  
JACQUELINE MONTEJANO  
JULIANNE J. MAERSCHEL

BRIAN P. MIN  
REY FERNÁNDEZ  
EDMOND L. MARTIN  
DONNA J. BLEVINS  
STEPHANIE N. BROOKS  
DAVID T. RITTER  
CHRIS J. PANATIER  
J. KAMA DAVIS  
ANGELA R. OWENS  
RENÉE MELANÇON  
\*THERESA L. NELSON  
D. CARL MONEY  
CELESTE A. EVANGELISTI  
MICHAEL R. ROSS  
CHAD R. COTTEN  
BRIAN K. PEACOCK  
BRIE D. SHERWIN  
BRIAN A. BOUFFARD  
MONICA WALTERS  
SHAWN E. RAVER

June 19, 2003

\*LICENSED IN STATES OTHER THAN TEXAS

### NOTICE OF VIOLATION OF PROPOSITION 65, CALIFORNIA HEALTH & SAFETY CODE SECTION 25249.5.

- To: Bill Lockyer, Attorney General for the State of California  
Michael A. Ramos, San Bernardino County District Attorney  
The Chairman and Chief Executive Officers of ExxonMobil Corporation and ExxonMobil Oil Corporation and any of their consolidated subsidiaries or related divisions including but not limited to Exxon Corporation, Mobil Oil Corporation, Mobil Oil Refining Corporation, Mobil Corporation, Mobil California Pipeline Company, ExxonMobil Pipeline Company, ExxonMobil Development Company, ExxonMobil Sales and Supply Corporation, and ExxonMobil Global Services Company (hereinafter collectively referred to as "ExxonMobil").
- RE: **Violations of Proposition 65: Discharge of Listed Chemicals into a Source of Drinking Water in and around EXXONMOBIL's Operations**

This 60-day Notice alerts you to violations of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code Section 25249.5. Members of the noticing party include Communities for a Better Environment ("CBE") and Nicole McAdam, an individual (hereinafter collectively referred to as "noticing party"). CBE is an environmental health and justice 501(c)(3) nonprofit organization. CBE has offices in Huntington Park and Oakland, California. With over 20,000 members statewide, CBE has worked effectively throughout California to prevent and reduce pollution and pledges to cooperate with public prosecutors in this matter to ensure that the violations discussed herein are remedied. CBE and its attorneys have extensive experience in prosecuting violators of Proposition 65.

The noticing party intends to bring suit sixty days hereafter to correct these violations, pursuant to Health & Safety Code Section 25249.7(d). The public prosecutors may also do so within the next sixty (60)-days pursuant to Health & Safety Code Section 25249.7(c).

### **Chemicals Discharged**

The specific violations alleged here are past and ongoing discharges or releases of Benzene, CAS Number 71432 and Toluene, CAS Number 108883. Benzene and Toluene are chemicals known by the State of California to cause cancer or reproductive toxicity. 22 California Code of Regulations Section 12000. Benzene has been listed as a human carcinogen or reproductive toxin under Proposition 65 since February 27, 1987. Likewise, Toluene has been listed as a human carcinogen or reproductive toxin since January 1, 1991.

### **Identities of Violator**

The persons who in the course of doing business have committed the violations alleged herein are the employees, officers and directors of ExxonMobil ("Violator"). ExxonMobil has been sent a copy of this 60-day Notice through Federal Express mail (as noted) and/or certified mail, return receipt requested to the addresses and persons listed at the end of this letter.

### **Location of Source of Drinking Water**

The violator named herein has knowingly discharged or released each of the chemicals listed above into water or onto or into land where each chemical has passed, currently passes, or will probably pass into a source, or potential source, of drinking water under and around the facilities listed in Attachment 1 attached hereto.

The discharging and/or releasing of chemicals includes, but is not limited to, the leaching of chemicals listed herein into water or onto or into land where each chemical has passed, currently passes, or will probably pass into a source, or potential source, of drinking water. These discharges and releases have occurred and are occurring through the leaching of chemicals as a result of direct releases from underground storage tanks, and/or gasoline storage, transfer, delivery, and dispensing systems (hereinafter "USTs" or "gasoline systems") into and onto soil and subsurface groundwater surrounding the above mentioned ExxonMobil facilities. These releases from the USTs and gasoline systems enter into surrounding groundwater and soil and migrate toward actual and potential sources of drinking water. Listed chemical discharges also occur through stormwater run-off from the facilities.

A “source of drinking water” means either a present source of drinking water or water that is identified in a water quality control plan as being suitable for domestic or municipal uses. Health & Safety Code Section 25249.11(d).

The groundwater under and around the facilities has been used for domestic and/or municipal purposes and/or has been designated as a potential source of drinking water. The subsurface groundwater into which the violator has and continues to discharge contaminants are potential sources of drinking water, and/or are tributaries to potential sources of drinking water.

Therefore, the violator here named has discharged or released the chemicals here named into water or onto or into land where such chemicals have passed, are passing, and/or will probably pass into a source of drinking water. The violator named herein has violated, is violating, and currently threatens to violate Health & Safety Code Section 25249.5 within the meaning of Section 25249.5 and Section 25249.11(e).

#### **Approximate Time Period of Violations**

The violator has discharged the chemicals listed above in the manner described herein continuously since approximately December 1994. Such violations have been ongoing since that time.

Each and every day during which the violator has discharged or released the chemicals names herein into the groundwater and/or surface water under and around the listed ExxonMobil facility constitutes a separate violation of Health & Safety Code Section 25249.5, and each chemical released or discharged constitutes a separate violation for each day on which each chemical was released or discharged.

**Knowing Discharge of Chemicals**

The violator named herein has known of its discharges or releases of the chemicals listed above. Therefore, the violations here described have been knowing on the part of the violator.

**Identity of Noticing Party**

The name, address, and telephone number of the noticing party is as follows:

Scott R. Summy, Esq.  
Laura Baughman, Esq  
Baron & Budd, P.C.  
3102 Oak Lawn Avenue, Suite 1100  
Dallas, TX 75219  
(214) 521-3605 & (800) 222-2766

Other responsible individuals representing CBE and Nicole McAdam are:

Scott Kuhn, Esq.  
Communities for a Better Environment  
5610 Pacific Boulevard, Suite 203  
Huntington Park, CA 90255  
(323) 826-9771

Edward L. Masry, Esq.  
Nancy Eichler, Esq.  
Law Offices of Masry & Vititoe  
5707 Corsa Avenue, 2<sup>nd</sup> Floor  
Westlake Village, CA 91362

Walter P. Lack, Esq.  
Brian Leinbach, Esq.  
Engstrom, Lipscomb & Lack, P.C.  
10100 Santa Monica Blvd., 16<sup>th</sup> Floor  
Los Angeles, CA 90067

The noticing party would appreciate receiving prompt notification from you as to whether you will pursue action under Health & Safety code Section 25249.7(c) so that we may make our decisions under Health & Safety Code Section 25249.7(d). We pledge to cooperate with you in this matter and look forward to hearing from you in the near future. If you have any

Notice of Intent to Sue EXXONMOBIL  
for Violations of Proposition 65  
Page 5

questions or desire any further information, please contact one of the attorneys listed above at Baron & Budd, P.C., (214) 521-3605 or (800) 222-2766.

With this letter, noticing party gives notice of the alleged violations by your facilities to the Attorney General of California, to the District Attorney for the county of San Bernardino, and to The Chairmen and Chief Executive Officers of ExxonMobil Corporation and ExxonMobil Oil Corporation and any of their consolidated subsidiaries or related divisions including but not limited to Mobil Oil Refining Corporation, Mobil Corporation, Mobil California Pipeline Company, Exxon Corporation, ExxonMobil Pipeline Company, ExxonMobil Development Company, ExxonMobil Sales and Supply Corporation, and ExxonMobil Global Services Company, via service of their attorneys of record. This notice covers all violations of the Act that are known to Plaintiffs from public records now available to us. When filed, this suit may also address such other violations as may occur or become apparent after service of this notice letter.

Enclosures: Appendix A: *The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary.*

Attachment 1: List of sites noticed for violation of Proposition 65

Notice of Intent to Sue EXXONMOBIL  
for Violations of Proposition 65  
Page 6

cc: (Via First Class Certified Mail, Return Receipt Requested and First Class Mail as noted)

Bill Lockyer, Esq. (Via First Class Certified Mail, Return Receipt Requested)  
California Attorney General  
Prop 65 Coordinator  
1515 Clay Street  
Oakland, CA 94612

Tom Sneddon, Esq. (Via First Class Certified Mail, Return Receipt Requested)  
Santa Barbara County  
District Attorney  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

Diana Martin, Esq. (Via First Class Certified Mail, Return Receipt Requested)  
Bingham McCutchen LLP  
355 South Grant Avenue, Suite 4400  
Los Angeles, California 90071-1560  
On Behalf of the following entities:

EXXON MOBIL CORPORATION  
EXXONMOBIL OIL CORPORATION  
EXXON CORPORATION  
MOBIL OIL CORPORATION  
MOBIL OIL REFINING CORPORATION  
MOBIL CORPORATION  
MOBIL CALIFORNIA PIPELINE COMPANY  
EXXONMOBIL PIPELINE COMPANY  
EXXONMOBIL DEVELOPMENT COMPANY  
EXXONMOBIL SALES AND SUPPLY CORPORATION  
EXXONMOBIL GLOBAL SERVICES COMPANY

Edward L. Masry, Esq. (via First Class Mail)  
Nancy Eichler, Esq.  
Law Offices of Masry & Vititoe  
5707 Corsa Avenue, 2<sup>nd</sup> Floor  
Westlake Village, CA 91362

Notice of Intent to Sue EXXONMOBIL  
for Violations of Proposition 65  
Page 7

Walter P. Lack, Esq. (via First Class Mail)  
Brian Leinbach, Esq.  
Engstrom, Lipscomb & Lack, P.C.  
10100 Santa Monica Blvd., 16<sup>th</sup> Floor  
Los Angeles, CA 90067

Scott Kuhn, Esq. (via First Class Mail)  
Communities for a Better Environment  
5610 Pacific Boulevard, Suite 203  
Huntington Park, CA 90255

## APPENDIX A

### OFFICE OF ENVIRONMENTAL HEALTH HAZARD ASSESSMENT CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

#### THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1986 (PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

#### *WHAT DOES PROPOSITION 65 REQUIRE?*

**The "Governor's List."** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### *DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?*

Yes. The law exempts:

**Governmental agencies and public water utilities.** All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.



**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

**Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

#### **HOW IS PROPOSITION 65 ENFORCED?**

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

#### **For Further Information**

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

## ATTACHMENT 1

## SAN BERNARDINO COUNTY

Retail Facility ID	Retail Facility Address	City	State	Zip	County
12497	1600 E MAIN ST	BARSTOW	CA	92311-3232	San Bernardino
10138	12358 S CENTRAL AVE	CHINO	CA	91710-2601	San Bernardino
10871	3295 GRAND AVE.	CHINO	CA	91709	San Bernardino
11453	12895 S MOUNTAIN AVE	CHINO	CA	91710-4556	San Bernardino
12981	4008 GRAND AVE	CHINO	CA	91710-5436	San Bernardino
17908	15960 LOS SERANOS	CHINO	CA	91709	San Bernardino
18838	14220 CHINO HILLS PKWY	CHINO HILLS	CA	91709-4832	San Bernardino
11562	130 W VALLEY BLVD	COLTON	CA	92324-2932	San Bernardino
11572	16925 FOOTHILL BLVD	FONTANA	CA	92335-3504	San Bernardino
12996	16894 VALLEY BLVD	FONTANA	CA	92335-6635	San Bernardino
12717	17003 BEAR VALLEY RD	HESPERIA	CA	92345-1800	San Bernardino
17038	27308 EAST BASELINE	HIGHLAND	CA	92346	San Bernardino
13071	9700 S CENTRAL AVE	MONTCLAIR	CA	91763-2815	San Bernardino
11227	2315 S EUCLID AVE	ONTARIO	CA	91762-6521	San Bernardino
11771	540 N. VINEYARD AVE	ONTARIO	CA	91764-4420	San Bernardino
12030	3015 S ARCHIBALD	ONTARIO	CA	91761-7994	San Bernardino
12453	3445 E SHELBY ST	ONTARIO	CA	91764-4874	San Bernardino
10784	8514 VINEYARD AVE	RANCHO CUCAMONGA	CA	91730-4348	San Bernardino
11454	8477 ARCHIBALD AVE	RANCHO CUCAMONGA	CA	91730-3662	San Bernardino
12009	6539 MILLIKEN	RANCHO CUCAMONGA	CA	91701	San Bernardino
12310	10477 LEMON AVE	RANCHO CUCAMONGA	CA	91737-3762	San Bernardino
12356	9315 BASELINE RD	RANCHO CUCAMONGA	CA	91730-1311	San Bernardino
11363	1325 BROOKSIDE AVE	REDLANDS	CA	92373-4421	San Bernardino
13059	104 W FOOTHILL BLVD	RIALTO	CA	92376-5046	San Bernardino
10358	2742 N DEL ROSA AVE	SAN BERNARDINO	CA	92404-4439	San Bernardino
10416	847 W HIGHLAND AVE	SAN BERNARDINO	CA	92405-3840	San Bernardino
80315	100 W HIGHLAND AVE	SAN BERNARDINO	CA	92405	San Bernardino
80329	25699 EAST BASELINE	SAN BERNARDINO	CA	92346	San Bernardino
11165	204 N EUCLID AVE	UPLAND	CA	91786-6037	San Bernardino
11419	1212 W FOOTHILL	UPLAND	CA	91786-3636	San Bernardino
11444	411 S MOUNTAIN	UPLAND	CA	91786-7034	San Bernardino
12375	14714 BEAR VALLEY RD	VICTORVILLE	CA	92392-9610	San Bernardino
12716	15482 PALMDALE RD	VICTORVILLE	CA	92392-2408	San Bernardino