

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

3 Park Plaza, Suite 2030

Irvine, CA 92614

Telephone: (949) 474 - 1022

Facsimile: (949) 474 - 1217

60 Day Notice of Intent to Sue ROBINSON OIL CORPORATION Under Health & Safety Code Sections 25249.5 and 25249.7

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or the "Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5 (the "Notice") to Thomas L. Robinson, the President of Robinson Oil Corporation, the owner and operator of the "Rotten Robbie" gasoline service station chain (hereinafter referred to as "ROTTEN ROBBIE"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through the following entity: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

Summary of Violation

This Notice is intended to inform ROTTEN ROBBIE that it is in violation of Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65"). Proposition 65 absolutely prohibits any business from contaminating the drinking water supplies of California. ROTTEN ROBBIE is in violation of Proposition 65 because it has and is knowingly and intentionally threatening to "release chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water," at each of the facilities listed on Exhibit A hereto (hereinafter "the Facilities"), which are ROTTEN ROBBIE branded gasoline stations with underground storage tank systems. Health & Safety Code Section 25249.5 and 25249.7. Proposition 65 provides that when a party, such as ROTTEN ROBBIE, an entity with more than ten employees, has been and is knowingly and intentionally threatening to "release chemicals known to the State of California to cause cancer or reproductive toxicity into water or onto or into land where such chemical passes or probably will pass into any source of drinking water," it is violating Health & Safety Code Section 25249.5 and may be enjoined from such conduct pursuant to Health & Safety Code Section 25249.7. The chemicals which ROTTEN ROBBIE is threatening to release are benzene and toluene ("the Designated Chemicals"), which are contained in the gasoline and other refined petroleum products which ROTTEN ROBBIE markets and stores within underground storage tank systems owned and/or operated by ROTTEN ROBBIE located at the Facilities. In order to be in compliance with Proposition 65 ROTTEN ROBBIE must effectively contain the Designated Chemicals in a UST system that is "product tight." For these purposes, "product tight" means that the operations must be impervious to the liquid and vapor of the substance ("the Designated Chemicals") that is or are contained or to be contained in the underground storage tank systems so as to prevent seepage of the Designated Chemicals from the containment and in to or on to the ground where the Designated Chemicals will pass or probably will pass into any source of drinking water.

The Violation

ROTTEN ROBBIE markets gasoline and other refined petroleum products (hereinafter referred to as "gasoline"). The gasoline, which is purchased from one of the five Bay Area refineries (Chevron-

Texaco, Tesoro, Valero, Shell and Conoco-Phillips) is marketed under the ROTTEN ROBBIE trademark directly to buyers at the Facilities. ROTTEN ROBBIE owns and/or operates numerous underground storage tank systems located at the Facilities that are used for the storage of gasoline offered for sale by ROTTEN ROBBIE to the general public. The operation by ROTTEN ROBBIE of the underground storage tank systems located at the Facilities, as well as the delivery, storage and dispensing of gasoline at the Facilities, as currently controlled and managed by ROTTEN ROBBIE, poses a substantial threat of discharge of gasoline and other refined petroleum products “into water or onto or into land where such chemical passes or probably will pass into any source of drinking water”.

All water within the State, including groundwater, is the property of the people of the State of California. California Water Code §§ 102 and 104. As to all water, the Legislature of the State of California (“the Legislature”) has determined that “the people of the State have a primary interest in the conservation, control and utilization of the water resources of the state, and that the quality of all waters of the State shall be protected for use and enjoyment of the people of the state.” California Water Code § 13000. Under Proposition 65 a “source of drinking water” is not confined to existing drinking water supplies. Rather, a “[s]ource of drinking water means either a present source of drinking water or water which is identified or designated in a water quality control plan adopted by a regional board as being suitable for domestic or municipal uses [and] also includes water identified in a regional board” water quality control plan as being suitable for domestic or municipal uses.” Health & Safety Code §25249.10 (d).

Gasoline contains a number of constituents and additives each of which separately, as well as in combination, present a significant risk to human health, safety and the environment. The gasoline marketed by ROTTEN ROBBIE contains the chemicals Benzene and Toluene. Benzene is a clear, colorless, highly reactive flammable liquid derived from petroleum and contained in gasoline. Benzene is a chemical known by the State of California to cause cancer and has been listed as such pursuant to Proposition 65. Toluene is a colorless flammable liquid obtained from coal tar or petroleum and contained in motor vehicle fuels. Toluene is a chemical known by the State of California to cause reproductive toxicity and has been listed as such pursuant to Proposition 65. Hereinafter benzene and toluene are referred to as the “Designated Chemicals”.

The gasoline service station operations undertaken at the Facilities are not “product tight” (i.e. the operations are not impervious to the liquid and vapor of the substance that is contained, or is to be contained, in the underground storage tank systems so as to prevent seepage of the Designated Chemicals from the containment and into the ground) and thus are threatening to cause a discharge of Designated Chemicals. The following are the components of the gasoline service station operations that pose a threat of discharge of Designated Chemicals: the underground tank(s) and underground storage tank system(s); the pipes used in connection with the storage of the Designated Chemicals in the USTs, including connecting pipes, vapor recovery lines, vent lines and associated fittings as well as the associated secondary containment systems; the drainage systems which collect surface water run off from the petroleum dispensing and delivery areas; secondary containment and spill control systems, including but not limited to secondary containment for the underground tank system, pipe, connecting pipe, dispensers and dispenser piping and the petroleum delivery area, as well as for the drainage systems which collected surface water run off from the dispensing and delivery area.

At the Facilities, the gasoline containing Designated Chemicals is stored in one or more underground storage tank(s) and an underground storage tank system (hereinafter referred to collectively as “the USTs”), which includes, but is not limited to, one or more tanks, including the piping connected thereto. The pipes used in connection with the storage of the Designated Chemicals in the USTs includes but is not limited to valves and other appurtenances connected to the pipe, pumping units, fabricated

assemblies associated with the pumping units, and metering and delivery stations and fabricated assemblies therein. The pipes used in connection with the storage of the Designated Chemicals in the USTs include “connecting piping”, such as pipe, valves elbows, joints, flanges and flexible connectors through which the Designated Chemicals flow. The UST system also includes the vapor recovery lines, vent lines and associated fittings as well as the associated secondary containment systems, the drainage systems which collect surface water run off from the petroleum dispensing and delivery areas. Finally, the UST systems include secondary containment and spill control systems including but not limited to secondary containment for the underground tank system, leak detection sensors, pipe, connecting pipe, dispensers and dispenser piping and the petroleum delivery area, as well as for the drainage systems which collect surface water run off from the dispensing and delivery area.

Investigations and reports conducted and prepared for the California State Water Resources Control Board (“SWRCB”) (with the assistance and input of the Environmental Health Divisions and Departments for a number of California counties and Regional Water Quality Control Boards as well as various members of the oil industry), the California Environmental Protection Agency (“CEPA”), Department of Toxic Substances Control (“DTSC”), the Office of Pollution Prevention and Technology Department, as well as testing undertaken by the various city fire departments where the Facilities are located, demonstrate that discharges of petroleum products including the Designated Chemicals occur, and are expected to occur, from the gasoline service station operations at the Facilities on a regular and ongoing basis. The CWRQB Report concluded that 61% of all USTs in operation, at any given time, are discharging/releasing gasoline and other refined petroleum products including the Designated Chemicals into or on to the land. The CWRQB Report also found that the percentage of USTs found to be discharging/releasing gasoline and other refined petroleum products including the Designated Chemicals into or on to the land was not materially different whether the underground storage tank was single or double-walled. ROTTEN ROBBIE, as well as the oil industry in general, know of these facts.

Because ROTTEN ROBBIE, as well as the oil industry in general, is aware of these facts, ROTTEN ROBBIE, along with the oil industry, have in place leak detection sensor systems. The fact that ROTTEN ROBBIE uses such a system is an acknowledgement by ROTTEN ROBBIE that it knows that the USTs it operates are likely to leak at any given time. The sensors do not inform ROTTEN ROBBIE that the USTs are about to release product, only, at best that the USTs have leaked and/or are leaking product, including the Designated Chemicals. Further, the CWRQB Report noted that the leak detection systems in use by the industry only record a discharge from the USTs where the leak is **more** than 0.1 gallons/hour (2.4 gallons a day, or 876 gallons a year per sensor). That is, even under this extremely lax standard, ROTTEN ROBBIE does not even record a discharge until an individual tank sensor (of which there are usually more than one in any UST) records a discharge of **greater than 876 gallons a year**. Naturally, the level of non-recorded discharge can be much higher for any individual UST since there may be four or more sensors in any given system **each of which** is failing to record a discharge of slightly less than 876 gallons a year. Finally, a report prepared by the SWRCB Underground Storage Tank Program entitled “Field Evaluation of Underground Storage Tank System Leak Detection Sensors” expressly found that the leak detection sensors systems used by the oil industry, including ROTTEN ROBBIE, are not reliable where, as the report noted, the sensors have not been properly installed, programmed, maintained and operated, or when the secondary containment in which they are installed are not working properly. The SWRCB, in analyzing the use of leak detection sensor systems by the oil industry (including ROTTEN ROBBIE), specifically noted a number of significant problems which greatly lessened the utility of such sensors including the following: “sensors were raised from the low point of the secondary containment, sensors fail[ed] to alarm when tested, and sensors fail[ed] to shut down the turbine pump in the event of an alarm.” The report went on to note that almost a third of the secondary containment systems had water or product in one or more areas, a fact which would seriously impact the operational effectiveness of the sensor detection systems. Under these circumstances, the sensors will simply not operate effectively, even at the lax warning level used by ROTTEN ROBBIE. Further, since such sensors,

even when working properly, do not prevent leaks but, at best, simply record them, they are ineffective to avoid liability under Health & Safety Code sections 25249.5 and 25249.7. In order to be in compliance with Proposition 65 ROTTEN ROBBIE must therefore effectively contain the Designated Chemicals in a UST system which is "product tight", as defined above.

The gasoline service operations of ROTTEN ROBBIE therefore pose and threaten to pose an imminent treat to human health or safety or the environment and therefore create a substantial probability of harm since there is a substantial likelihood that the majority of the USTs operated and maintained by ROTTEN ROBBIE are either currently or likely will shortly discharge/release gasoline and other refined petroleum products into or on to the land. Such a discharge/release of the Designated Chemicals from the USTs at the Facilities "probably will pass into [a] source of drinking water." It is clear therefore that for the entire period of time that ROTTEN ROBBIE has owned and/or controlled the USTs located at the Facilities, ROTTEN ROBBIE has been and continues to be in violation of Proposition 65. Given that the maximum prior period of potential liability pursuant to Proposition 65, Business & Professions Code §17200 and Fish & Game Code §5650(which are the operative statutes pursuant to which a complaint will be filed against ROTTEN ROBBIE) is four years, this Notice is intended to inform ROTTEN ROBBIE that it has been in violation of Proposition 65 from the time period from four years prior to the date of this notice and continues to be in violation, for every day upon which ROTTEN ROBBIE owns and/or controls the underground storage tank systems for any Facility listed on Exhibit A.

Proposition 65 requires that notice and intent to sue be given to ROTTEN ROBBIE sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to ROTTEN ROBBIE and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to it. CDG reserves the right to amend this Notice to inform ROTTEN ROBBIE of other violations and/or exposures as it gathers further information.

With the copy of this amended notice submitted to ROTTEN ROBBIE, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: September 17, 2003

By:

EXHIBIT A
ROTTEN ROBBIE AND ROBINSON OIL CORPORATION

Rotten Robbie 2305 Story Road, San Jose, CA 95122 (408) 259-4700	Rotten Robbie 1555 Saratoga Avenue, San Jose, CA 95129 (408) 252-1433
Rotten Robbie 1655 Foxworthy Avenue, San Jose, CA 95124 (408) 265-1780	Rotten Robbie 1005 Saratoga Avenue, San Jose, CA 95129 (408) 252-4040
Rotten Robbie 1061 Lincoln Avenue, San Jose, CA 95125 (408) 292-0300	Rotten Robbie 1051 South De Anza Boulevard, San Jose, CA 95129 (408) 253-2406
Rotten Robbie 605 South White Road, San Jose, CA 95127 (408) 926-0740	Rotten Robbie 4250 Williams Road, San Jose, CA 95129 (408) 257-2222
Rotten Robbie 3090 Monterey Highway, San Jose, CA 95111 (408) 226-1464	Rotten Robbie 455 East Julian Street, San Jose, CA 95112 (408) 294-8924
Rotten Robbie 4950 Almaden Expressway, San Jose, CA 95118 (408) 266-3792	Rotten Robbie 370 E. Hamilton Avenue Campbell, CA (408) 378-3611
Rotten Robbie 2140 Winchester Blvd. Campbell, CA (408) 374-2511	Rotten Robbie 1090 Contra Costa Blvd. Concord, CA (925) 689-4060
Rotten Robbie 19030 Stevens Creek Blvd. Cupertino, CA (408) 252-7570	Rotten Robbie 390 Leavesley Road Gilroy, CA (408) 842-3630
Rotten Robbie 27814 Hesperian Blvd. Hayward, CA (510) 782-6993	Rotten Robbie 720 Tennyson Road Hayward, CA (510) 783-6110
Rotten Robbie 15299 Los Gatos Blvd. Los Gatos, CA (408) 356-2536	Rotten Robbie 310 N. Whisman Road Mountain View, CA (650) 965-2609
Rotten Robbie 201 Southwest Blvd. Rohnert Park, CA (707) 795-2044	Rotten Robbie 807 S. Main Street Salinas, CA (831) 758-8186
Rotten Robbie 3471 Lafayette Street Santa Clara, CA	Rotten Robbie 25 Washington Street Santa Clara, CA

(408) 988-5407	(408) 244-1441
Rotten Robbie 1906 Mission Street Santa Cruz, CA (831) 426-7270	Rotten Robbie 12860 S. Highway 33 Santa Nella/Gustine, CA (209) 826-4418
Rotten Robbie 2515 Guernville Road Santa Rosa, CA (707) 526-2891	

CERTIFICATE OF SERVICE

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3 Park Plaza, Suite 2030, Irvine, California 92614.

I SERVED THE FOLLOWING:

- 1.) 60-Day Notice of Intent to Sue Under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary (*only sent to violators.*)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: September 17, 2003

Place of Mailing: Irvine, California

NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Thomas L. Robinson, CEO Robinson Oil Corporation 4250 Williams Road San Jose, CA 95129	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
---	---

San Francisco City Attorney
1390 Market Street
San Francisco, CA 94102

San Francisco County DA
880 Bryant Street
San Francisco, CA 94103

Humboldt County DA
825 5th Street
Eureka, CA 95501

Shasta County District Attorney
1525 Court Street
Redding, CA 96001-1632

San Mateo DA
1050 Mission Road
South San Francisco, CA 94080

Marin County DA
3501 Civic Center Dr. #130
San Rafael, CA 94903

San Jose City Attorney
151 W. Mission St.
San Jose, CA 95110

Contra Costa County DA
727 Court Street
Martinez, CA 94553

Yolo County D A
301 2nd Street
Woodland, CA 95695

District Attorney
1430 Freedom Blvd.
Watsonville, CA 95076

El Dorado County DA
1360 Johnson Blvd. #105
South Lake Tahoe, CA 96150

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

Napa County DA
931 Parkway Mall
Napa, CA 94559

Sonoma County DA
600 Administrative Dr.
Santa Rosa, CA 95403

Inyo County DA
386 W. Line Street
Bishop, CA 93514

San Joaquin DA
225 W. Elm Street #C
Lodi, CA 95240

Lake County DA
255 N. Forbes St.
Lakeport, CA 95453

Yuba County DA
215 5th Street
Marysville, CA 95901

Stanislaus County DA
300 Starr Avenue
Turlock, CA 95380

District Attorney
14227 Road 28
Madera, CA 93638

Santa Clara County DA
2645 Zanker Road
San Jose, CA 95134

Mariposa County DA
P.O. Box 748
Mariposa, CA 95338

Nevada County DA
201 Church Street, Suite 8
Nevada City, CA 95959

San Luis Obispo County DA
1050 Monterey Street, Rm. 450
San Luis Obispo, CA 93408

Mendocino County DA
700 S. Franklin St.
Fort Bragg, CA 94537

Solano County DA
321 Tuolumne Street
Valejo, CA 94590

Butte County DA
25 County Center Drive
Oroville, CA 95695

Mono County DA
P.O. Box 617
Bridgeport, CA 93517

Sutter County DA
446 Second Street
Yuba City, CA 95991

Santa Cruz County DA
701 Ocean Street
Santa Cruz, CA 95061

Alameda County DA
1225 Fallon Street
Oakland, CA 94612

Del Norte County DA
450 H Street
Crescent City, CA 95531

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

Dated: September 17, 2003
