

## BARON & BUDD

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

FREDERICK M. BARON  
RUSSELL W. BUDD  
BRENT M. ROSENTHAL  
LISA 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. PRESSBY  
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

\*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  
RENÉE MELANÇON  
\*THERESA L. NELSON  
D. CARL MONEY  
CELESTE A. EVANGELISTI  
CHAD R. COTTEN  
BRIAN K. PEACOCK  
BRIE D. SHERWIN  
BRIAN M. BOUFFARD  
MONICA WALTERS  
SHAWN E. RAVER  
  
\*LICENSED IN STATES  
OTHER THAN TEXAS

July 15, 2004

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

To: Bill Lockyer, Attorney General for the State of California  
Thomas J. Orloff, Alameda County District Attorney  
The Chairman and Chief Executive Officers of Ultramar, Inc., Valero Refining Company - California, Valero Marketing and Supply Company, its parents, subsidiaries, affiliates, and/or divisions (hereinafter collectively referred to as "Valero").

RE: **Violations of Proposition 65: Discharge of Listed Chemicals into a Source of Drinking Water in and around VALERO'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 Violators**

The persons who in the course of doing business have committed the violations alleged herein are the employees, officers and directors of Valero (“Violator”). Valero 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 include, but are 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 Valero 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 storm water 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 named herein into the groundwater and/or surface water under and around the listed Valero facilities 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 Summy, Esq.  
Laura Baughman, Esq.  
Renée Melançon, 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 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 Alameda, and to The Chairman and Chief Executive Officers of Ultramar, Inc., Valero Refining Company - California, Valero Marketing and Supply 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

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

Thomas J. Orloff (Via First Class Certified Mail, Return Receipt Requested)  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

Rick R. Rothman, Esq. (Via Certified Mail, Return Receipt Requested)  
Stephanie A. Jones, Esq.  
Bingham McCutchen, LLP  
355 South Grand Avenue, Suite 4400  
Los Angeles, California 90071-3106

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

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

Alameda County, California

<b>Station #</b>	<b>Address</b>	<b>City</b>	<b>County</b>
13736	1725 Park Street	Alameda	Alameda
13740	1894 University Ave.	Berkley	Alameda
13743	7840 Amador Valley	Dublin	Alameda
3831	46494 Mission Blvd.	Fremont	Alameda
13762	37635 Blacow	Fremont	Alameda
3558	42245 Fremont Blvd.	Fremont	Alameda
13744	4004 Mowry Avenue	Fremont	Alameda
13767	4995 Mowry Avenue	Fremont	Alameda
13768	39990 Fremont Blvd.	Fremont	Alameda
3546	29705 Mission Blvd.	Hayward	Alameda
3718	438 W. Tennyson	Hayward	Alameda
3818	26978 Hesperian Blvd.	Hayward	Alameda
12386	392 . W. Harder Road	Hayward	Alameda
13737	193 Winton Avenue	Hayward	Alameda
13745	23990 Hesperian Blvd.	Hayward	Alameda
13774	390 West Jackson	Hayward	Alameda
3657	700 Lighthouse (Dismissed)	Monterey	Alameda
13782	5835 Thornton Ave.	Newark	Alameda
3832	3450 35th Avenue	Oakland	Alameda
13748	2225 Telegraph Ave.	Oakland	Alameda
13749	2200 E. 12th Street	Oakland	Alameda
3823	2991 Hopyard Road	Pleasanton	Alameda
3827	3192 Santa Rita Road	Pleasanton	Alameda
3720	1088 Marina Blvd.	San Leandro	Alameda
3721	44 Lewelling Blvd.	San Lorenzo	Alameda
3613	13015 E. Kings Canyon Road	Sanger	Alameda