CONSUMER DEFENSE GROUP ACTION

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Amended 60 Day Notice of Intent to Sue Flying J, Inc. 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 J. Phillip Adams, the President of Flying J, Inc. (hereinafter referred to collectively as "FLYING J"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through its attorney, Anthony G. Graham, of Graham & Martin, LLP, 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

Summary of Violation

This Notice is intended to inform FLYING J 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. FLYING J 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 FLYING J 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 FLYING J, 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 FLYING J is threatening to release are benzene and toluene ("the Designated Chemicals"), which are contained in the gasoline and other refined petroleum products which FLYING J markets and stores within underground storage tank systems owned and/or operated by FLYING J located at the Facilities. In order to be in compliance with Proposition 65, FLYING J 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

FLYING J markets gasoline and other refined petroleum products (hereinafter referred to as "gasoline") to both consumers and retailers. Gasoline is marketed under the FLYING J trademark directly to motorists at FLYING J branded retail outlets in California and elsewhere. FLYING J 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 FLYING J to the general public. The operation by FLYING J 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 FLYING J, 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). The "source of drinking water" into which the Designated Chemicals "probably will pass" are identified on Exhibit B hereto.

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 FLYING J 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.

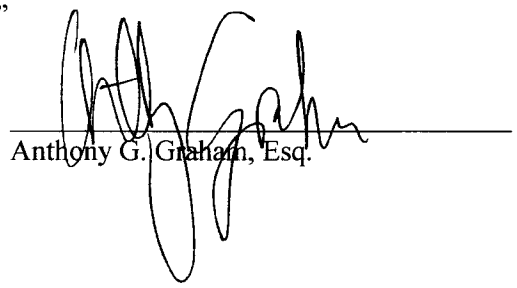
Investigations and reports conducted and prepared for the California State Water Resources Control Board ("SWRCB")(with the assistance and input of the Environmental Health Divisions and Departments for a number of California counties and Regional Water Quality Control Boards as well as various members 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. FLYING J, as well as the oil industry in general, know of these facts.

Because FLYING J, as well as the oil industry in general, is aware of these facts, FLYING J, along with the oil industry, have in place leak detection sensor systems. The fact that FLYING J uses such a system is an acknowledgement by FLYING J that it knows that the USTs it operates are likely to leak at any given time. The sensors do not inform FLYING J 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, FLYING J 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 FLYING J, 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 FLYING J), 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 FLYING J. 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 FLYING J must therefore effectively contain the Designated Chemicals in a UST system which is "product tight", as defined above.

The gasoline service operations of FLYING J 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 FLYING J 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 FLYING J has owned and/or controlled the USTs located at the Facilities, FLYING J 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 FLYING J) is four years, this Notice is intended to inform FLYING J 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 FLYING J 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 FLYING J sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to FLYING J 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 FLYING J of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to FLYING J, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

Dated: March 8, 2005

By: 

Anthony G. Graham, Esq.

EXHIBIT A

FLYING J INC.

Flying J. Inc. Corporate Offices
1104 Country Hills Drive
Ogden, Utah 84403
(801) 624-1660

J. Philip Adams, President

Ripon Location 1501 N. Jack Tone Road Ripon, CA 95366	Barstow Location 2611 Fisher Blvd. Barstow, CA 92311
Thousand Palms Location 72235 Varner Road Thousand Palms, CA 92276	Frazier Park Location 42810 Frazier Mtn. Park Road Frazier Park, CA 93243
Bakersfield Location 17047 Zachery Ave. Bakersfield, CA 93308	Lodi Location 15100 Thornton Road Lodi, CA 95242

EXHIBIT B

FLYING J INC.

Flying J. Inc. Corporate Offices
1104 Country Hills Drive
Ogden, Utah 84403
(801) 624-1660

J. Philip Adams, President

Ripon Location 1501 N. Jack Tone Road Ripon, CA 95366 SAN JOAQUIN VALLEY Water Basin (Sub-Basin # 5-22)	Barstow Location 2611 Fisher Blvd. Barstow, CA 92311 MIDDLE MOJAVE RIVER VALLEY Water Basin (Sub-Basin # 6-41)
Thousand Palms Location 72235 Varner Road Thousand Palms, CA 92276 COACHELLA VALLEY Water Basin (Sub-Basin # 7-21)	Frazier Park Location 42810 Frazier Mtn. Park Road Frazier Park, CA 93243 CUDDY VALLEY Water Basin (Sub-Basin # 5-84)
Bakersfield Location 17047 Zachery Ave. Bakersfield, CA 93308 SAN JOAQUIN VALLEY Water Basin (Sub-Basin # 5-22)	Lodi Location 15100 Thornton Road Lodi, CA 95242 SAN JOAQUIN VALLEY Water Basin (Sub-Basin # 5-22)

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 950 South Coast Drive, Suite 220, Costa Mesa, California 92626.

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: March 11, 2005
Place of Mailing: Costa Mesa, California

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

J. Phillip Adams, President FLYING J, INC. 1104 Country Hills Drive Ogden, UT 84403	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA

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

Kern County DA
2100 College Avenue
Bakersfield, CA 93305

Riverside County DA
4075 Main St., 1st Fl.
Riverside, CA 92501

San Bernardino County DA
316 N. Mountain View Av.
San Bernardino, CA 92415

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

Dated: March 11, 2004