

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP
950 South Coast Drive, Suite 220
Costa Mesa, CA 92626
Telephone: (714) 850-9390
Facsimile: (714) 850-9392

60 Day Notice of Intent to TESORO CORPORATION And All of Its Operating Subsidiaries 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 Bruce A. Smith, the President and CEO of TESORO CORPORATION and all of its operating subsidiaries (hereinafter referred to collectively as "TESORO"), as well as the governmental entities on the attached proof of service. The Noticing Party may be contacted through Anthony G. Graham at the above address.

Summary of Violation

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

TESORO markets gasoline and other refined petroleum products (hereinafter referred to as "gasoline") to both consumers and retailers. Gasoline is marketed under the TESORO trademark directly to motorists at TESORO branded retail outlets in California and elsewhere. TESORO 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 TESORO to the general public. The operation by TESORO 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 TESORO, 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 A hereto as to each of the Facilities.

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 TESORO 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. TESORO, as well as the oil industry in general, know of these facts.

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

is "product tight", as defined above.

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

Dated: June 27, 2005

By:



Anthony G. Graham, Esq.

EXHIBIT A

TESORO Station Locations and Potentially Affected Groundwater Basins/Watersheds

Station Name	Address	Phone
Atascadero Tesoro	6435 Morrow Road, Atascadero, CA 93422 ATASCADERO WATERSHED 39801	(805) 466-6042
Highway 50 Tesoro	3074 Camino Heights Drive, Camino, CA 95709 AMERICAN RIVER - SOUTH FORK AMERICAN - WEBER CREEK WATERSHED 51431	(530) 647-0167
Sierra Station #5	300 N. Canyon Court, Colfax, CA 95713 AMERICAN RIVER - NORTH FORK AMERICAN - CLEMENTINE WATERSHED 51451	(530) 346-6661
Dutch Flat Tesoro	25 Canyon Creek Drive, Dutch Flat, CA 95717 AMERICAN RIVER - NORTH FORK AMERICAN - CLEMENTINE WATERSHED 51451	(530) 389-8251
Keysan Company-Fresno	2429 E. McKinley Avenue, Fresno, CA 93703 SAN JOAQUIN GROUNDWATER BASIN 5-22	(559) 298-1497
Whistle Stop	18372 Rawhide Road, Jamestown, CA 95640 TUOLUMNE RIVER - BIG OAK FLAT - SONORA WATERSHED 53631	(209) 984-5554
Rocklin Tesoro	3800 Rocklin Road, Rocklin, CA 95677 VALLEY-AMERICAN - COON- AMERICAN - LOWER AMERICAN WATERSHED 51921	(916) 632-7381
Rohnert Park Tesoro	5085 Redwood Drive, Rohnert Park, CA 94928 SANTA ROSA VALLEY GROUNDWATER BASIN 1-55	(707) 586-3878

Sierra Food Mart	999 Sunrise Avenue, Roseville, CA 95661 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	(916) 773-6900
Country Club Mart	3501 El Camino Avenue, Sacramento, CA 95821 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	(916) 481-6729
Northgate Tesoro	3120 Northgate Boulevard, Sacramento, CA 95833 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	(916) 925-0684
Ashria LLC	1200 Anderson Dr., Suisun City, CA 94585 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	(707) 423-1956
Vallejo Tesoro/Britton's Mini Mart	640 Broadway Street, Vallejo, CA 94590 NAPA-SONOMA VALLEY GROUNDWATER BASIN 2-2	(707) 647-2723
Holly Oak Grocery & Gas	555 Garden Highway, Yuba City, CA 95991 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	(530) 671-9064
Yuba City Tesoro	525 Colusa Avenue, Yuba City, CA 95991 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	(530) 671-1920

**California Mirastar® Station Locations and
Potentially Affected Groundwater
Basins/Watersheds**

Station Number	Address	Phone
Mirastar 64006	10255 Wicklow Way, Martell, CA 95654 MIDDLE SIERRA - SUTTER CREEK WATERSHED 53240	209-223-4800
Mirastar 64014	625 Montara Rd, Barstow, CA 92311 MIDDLE MOJAVE RIVER VALLEY GROUNDWATER BASIN 6-41	760-252-8790

Mirastar 64015	3120 E. Carson Street, Lakewood, CA 90712 SAN FERNANDO VALLEY GROUNDWATER BASIN (Sub-basin 4-12)	562-420-3842
Mirastar 64034	1730 E. Main Street, Woodland, CA 95776 SACRAMENTO VALLEY GROUNDWATER BASIN 5-21	530-669-3590
Mirastar 64047	1711 E. Avenue J, Lancaster, CA 93535 ANTELOPE VALLEY GROUNDWATER BASIN 6-44	661-723-5188
Mirastar 64048	37120 E. 47th Street, Palmdale, CA 93552 ANTELOPE VALLEY GROUNDWATER BASIN 6-44	661-285-3742

CERTIFICATE OF MERIT
Health and Safety Code Section 25249.7(d)

I, Anthony G. Graham, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

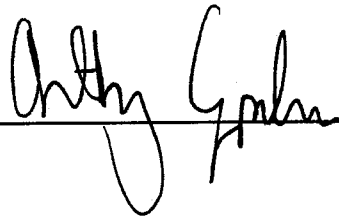
2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing party Consumer Defense Group Action.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding alleged exposures to the listed chemicals that are the subject of the action.

4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Costa Mesa, California on June 27, 2005.



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: June 27, 2005
Place of Mailing: Costa Mesa, California

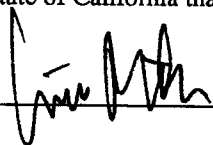
NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:

Bruce A Smith, President TESORO CORPORATION And Operating Subsidiaries 300 Concord Plaza Drive San Antonio, TEXAS 78216-6999	California Attorney General (Proposition 65 Enforcement Division) 1515 Clay Street, 20th Floor Oakland, CA
--	---

And all entities listed on Attachment to Proof of Service.

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

Dated: June 27, 2004



Napa County DA
931 Parkway Mall
Napa, CA 94559

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

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

Merced County DA
445 I Street
Los Banos CA 93635

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

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

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

Solano County DA
321 Tuolomne 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

Kings County DA
1400 W Lacey Blvd
Hanford CA 93230

Mondoc County DA
204 S Court Street
Alturas CA 96101

Santa Clara DA
2645 Zanker Rd
San Jose CA 95134

Siskyou County DA
P.O. Box 986
Yreka, CA 96097

Lake County District Atty
6850 Old Highway 53
Clearlake CA 95422

Solano County DA
321 Tuolumne St
Valejo CA 94590

Glenn County DA
540 W Sycamore St
Willows CA 95988

Stanislaus DA
300 Starr Ave
Turlock CA 95380

Yolo County DA
301 2nd Street
Woodland CA 95695

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

Dated: June 27, 2004

