

SETTLEMENT AGREEMENT

Consumer Defense Group Action (“CDGA”), on behalf of itself and in the public interest pursuant to California Health and Safety Code sections 25249.7(d) – (f), on the one hand, and Southern California Edison (“SCE”), on the other hand, enter into this agreement (“Settlement Agreement”) to settle and fully resolve: (a) the lawsuit entitled *Consumer Defense Group Action v. Exxon Mobil Corporation, et al.*, filed on September 25, 2008, in the Superior Court of California, County of Orange, Case No. 30-2008-00112083 (“Ascon III Lawsuit”); and (b) all alleged violations of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.5, *et seq.* (“Proposition 65”) made in CDGA’s 60-day notices attached hereto as Exhibits A, B, and C (“Notices”).

1.0 Introduction

1.1 CDGA and SCE (hereinafter the “Parties,” or each a “Party”) enter into this Settlement Agreement to settle disputed claims as alleged in the Ascon III Lawsuit and the Notices.

1.2 On June 10, 2003, CDGA sent the Notice contained in Exhibit A to SCE and others alleging violations of Proposition 65 at the Ascon landfill site (described in section 3.1 below). On September 16, 2003, pursuant to the Notice contained in Exhibit A, CDGA commenced the lawsuit entitled *Consumer Defense Group Action v. Shell Oil Company, et al.*, Orange County Superior Court Case No. 03CC00419 (“Ascon I Lawsuit”). The Court entered judgment in the Ascon I Lawsuit in favor of SCE and other defendants on November 4, 2004, and the Court of Appeal upheld that judgment on August 31, 2006.

1.3 On January 13, 2005, CDGA commenced the lawsuit entitled *Consumer Defense Group Action v. Cannery Hamilton Properties LLC*, Orange County Superior Court Case No. 05CC02179 (“Ascon II Lawsuit”). On May 16, 2008, CDGA and Cannery Hamilton Properties (“CHP”) entered into a settlement agreement, which was filed with the court and served on the California Attorney General that same day, wherein CHP agreed to provide various Proposition 65 warnings, among other obligations. The court issued an order approving the settlement and dismissing the Ascon II Lawsuit on July 3, 2008.

1.4 On March 23, 2007, CDGA sent the Notice contained in Exhibit B to SCE and others alleging violations of Proposition 65 at the Ascon landfill.

1.5 On April 15, 2008, CDGA sent the Notice contained in Exhibit C to SCE and others alleging violations of Proposition 65 at the Ascon landfill. On September 25, 2008, CDGA, pursuant to the Notice in Exhibit C, filed the Ascon III Lawsuit.

1.6 The Ascon III Lawsuit and all Notices (Exhibits A through C) allege violations of Proposition 65. SCE denies the material allegations of the Ascon III Lawsuit and the Notices and denies liability for the causes of action alleged in the complaint in the Ascon III Lawsuit and/or that could be alleged in any litigation brought pursuant to any or all of the Notices.

1.7 The Parties recognize that the public policy of the State of California favors resolution of litigation by settlement in order to minimize costs and burdens on the parties and the judicial system as well as to reach a final resolution more expediently. *See In re Marriage of Hatch*, 169 Cal. App. 3d 1213, 1222 [“The public policy of California strongly favors settlement as the primary means of resolving legal disputes.”].)

1.8 By execution of this Settlement Agreement, the Parties do not admit any facts or

conclusions of law, including, but not limited to, any facts or conclusions of law regarding any violation of Proposition 65, or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, including, but not limited to, any admission concerning the meaning of the terms “knowingly discharge” or “knowingly release” as used in Health and Safety Code section 25249.5; nor shall compliance with the Settlement Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing contained in this Settlement Agreement shall constitute or be construed, considered, offered or admitted, in whole or in part, as evidence of an admission or evidence of fault, wrongdoing, liability or violative conduct by SCE, its officers, directors, employees, representatives, consultants, or agents, in any administrative or judicial proceeding or litigation in any court, agency, or other forum.

2.0 SCE’s Obligations

2.1 **Non-Interference With CHP’s Warning Obligations.** The owner of the Ascon landfill, CHP, has committed to undertake the Proposition 65 warning obligations listed below. SCE agrees not to interfere in any way with CHP’s fulfillment of these obligations.

2.1.1 **Proposition 65 Warning Signage Obligations.** CHP shall ensure that the current Proposition 65 warning signage program is maintained, as follows:

- (a) Proposition 65 warning signs shall be posted on the entrance gates;
- (b) Additional Proposition 65 warning signs shall be posted 200 feet apart along the perimeter fencing;
- (c) those Proposition 65 warning signs shall state: “WARNING! THIS AREA CONTAINS ONE OR MORE CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS OR REPRODUCTIVE HARM, PROPOSITION 65 CALIFORNIA HEALTH AND SAFETY CODE 25249.5”;
- (d) monthly site inspections shall occur to check the Proposition 65 warning signs for damage or any unauthorized removal;
- (e) pursuant to those monthly site inspections, any damaged or missing Proposition 65 warning signs shall be repaired or replaced promptly; and
- (f) additional signs shall be posted around the perimeter fencing stating that trespassers are not permitted onto the Property.

2.1.2 **Additional Proposition 65 Warning Obligations.** CHP shall ensure that an internet-based Proposition 65 warning program is established and maintained, as follows:

- (a) at www.ascon-hb.com, a link titled “Proposition 65 Warning” will be added under the Fact Sheets and Flyers submenu, to contain a Proposition 65 warning;
- (b) that Proposition 65 warning shall state: “WARNING! THE ASCON LANDFILL SITE CONTAINS ONE OR MORE CHEMICALS KNOWN TO THE STATE OF CALIFORNIA TO CAUSE CANCER, BIRTH DEFECTS OR REPRODUCTIVE HARM, PROPOSITION 65 CALIFORNIA HEALTH AND SAFETY CODE 25249.5”; and

(c) that web page shall also provide the internet address for the California Office of Environmental Health Hazard Assessment's Proposition 65 website (<http://www.oehha.ca.gov/prop65.html>).

2.2 **Compliance With DTSC Requirements.** SCE shall comply with any final, legally binding requirements of the Department of Toxic Substances Control ("DTSC") related to preventing and/or addressing potential past, present or future pollutant discharges or releases at the Property. This paragraph shall not be construed to limit in any way any SCE's rights to contest, challenge, comment on, or seek modifications to any DTSC requirements, to the full extent allowed by applicable rules and laws.

2.3 **Payment to California League of Conservation Voters Education Fund ("CLCV FUND").** As a payment-in-lieu of penalty, SCE shall pay to the CLCV Fund the sum of \$5,000 for use in its work to support environmental protection and conservation.

3.0 **Release**

3.1 As of the Effective Date of this Settlement Agreement (as defined in section 14.0 below), CDGA, on its own behalf and on behalf of the public to the full extent allowed by law, hereby fully releases and forever discharges SCE, its officers, directors, agents, servants, stockholders, employees, representatives, consultants, agents, affiliates, subsidiary and parent corporations, partners, dealers, assigns and successors from any and all rights, claims and actions related to or arising out of the facts and circumstances that are the subject of the causes of action and alleged violations of law asserted in the Ascon III Lawsuit and/or in the Notices. The scope of this release is intended to cover any and all Claims Covered (as defined in section 4.0 below) as to the property located at 21641 Magnolia Street, Huntington Beach, California 92646, bounded by Hamilton Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the Huntington Beach flood control channel and an industrial area on the west, identified by Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80, commonly known as the Ascon landfill, and consisting of approximately 38 acres ("Property"). The Property is currently subject to remediation efforts regulated by the DTSC, pursuant to the Consent Order, in the matter of Ascon Landfill Site, DTSC docket number I&SE-CO 02/03-007.

3.2 CDGA has been fully advised of the contents of California Civil Code section 1542. CDGA acknowledges that the claims released in section 3.1 above may include unknown claims and CDGA waives section 1542 as to any such unknown claims. Section 1542 reads as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

CDGA acknowledges and understands the significance and consequence of this specific waiver of Civil Code section 1542.

3.3 CDGA hereby covenants never to sue or challenge in any way or in any forum any of SCE's conduct or actions related in any way to the Property, whether based on Proposition 65 or any other legal theory whatsoever, excluding only that CDGA remains free to enforce the terms of this Settlement Agreement.

4.0 **Claims Covered**

4.1 Without in any way limiting the generality and breadth of the releases in section 3.0

above, this Settlement Agreement is specifically understood to be a final and binding release and resolution of the following "Claims Covered":

4.1.1 Any and all Proposition 65 claims that were or could have been asserted in the Ascon III Lawsuit or pursuant to the Notices, or any of them, arising out of the facts and circumstances related to any alleged discharge or release of chemicals set forth in Exhibit D attached hereto, at or from the Property or as otherwise alleged in the Ascon III Lawsuit, including, without limitation, all claims with respect to the continued presence or migration of such Designated Chemicals.

4.1.2 Any and all future Proposition 65 claims that may be asserted by any person on behalf of the public against SCE arising out of any alleged discharge or release of chemicals set forth in Exhibit D, at or from the Property, so long as SCE is in compliance with its obligations to comply with DTSC requirements pursuant to section 2.2 above.

5.0 Attorneys Fees and Costs

5.1 Attorneys Fees and Costs: Within ten (10) business days after the Effective Date (defined in section 14.0 below), SCE shall pay \$20,000 to CDGA's counsel for attorneys' fees and costs. Payment shall be made to Graham & Martin LLP, and sent to the attention of Anthony Graham, Esq. at the address noted below in section 13.0. Except as expressly provided in this section 5.1, the Parties waive any claim to attorneys' fees and costs in connection with the Ascon III Lawsuit, the Notices, the Property, and/or this Settlement Agreement.

6.0 Authority to Enter Into Settlement Agreement

6.1 Each signatory to this Settlement Agreement represents and warrants that he or she is authorized to sign this Settlement Agreement on behalf of the Party for which he or she is signing, and thereby to bind that Party fully to the terms of this Settlement Agreement.

7.0 Attorney General Review

7.1 Settlement of this case is contingent on submittal of this Settlement Agreement to the Attorney General's Office for review. If the Attorney General's Office expresses reservations about this Settlement Agreement, SCE shall not be obligated to proceed with this Settlement Agreement and may void the Settlement Agreement by giving written notice to that effect to CDGA's counsel.

8.0 Execution in Counterparts and by Electronic Media

8.1 This Settlement Agreement may be executed in counterparts which, taken together, shall constitute one and the same agreement. This Settlement Agreement may also be executed and/or delivered by facsimile and/or email transmission and in such event all facsimile and/or email signatures shall be deemed originals for all purposes hereof.

9.0 Approval of Settlement Agreement Required

9.1 Unless SCE determines that it does not want this Settlement Agreement to be submitted to the Court for approval, CDGA shall submit this Settlement Agreement to the Court for consideration as required by Health and Safety Code section 25249.7(f)(4). CDGA shall provide the Court with the necessary information to allow the Court to make the findings required by Health and Safety Code section 25249.7(f)(4).

9.2 This Settlement Agreement shall be null and void and without any force or effect, unless approved by the Court.

10.0 Entire Agreement

10.1 This Settlement Agreement: (a) constitutes the entire agreement between the Parties concerning the subject matter hereof and (b) supersedes any previous oral or written agreements concerning the subject matter hereof.

11.0 Modification and Interpretation of Settlement Agreement

11.1 This Settlement Agreement may only be modified in writing signed by any Party to be bound thereby.

11.2 The terms of this Settlement Agreement are the product of arms-length negotiations between the Parties, through their respective counsel of choice, and no provision shall be construed against the drafter thereof. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of California. The venue for any disputes concerning this Agreement shall be in Orange County.

12.0 Benefited Parties

12.1 Without in any way limiting the generality and breadth of the releases in section 3.0 and the provisions of section 4.0 above, it is understood that this Settlement Agreement shall inure to the benefit of SCE and any other entity related to the foregoing entity, and any of their successors, affiliates, subsidiaries, and assigns, and their officers, employees, or agents.

13.0 Notification Requirements

13.1 Any notice required or permitted hereunder shall be effective only if in writing and delivered in person or sent by telecopy, certified or registered mail return receipt requested, or traceable overnight delivery service, to the following designees:

For CDGA:

Anthony Graham, Esq.
Graham & Martin LLP
950 South Coast Drive, Suite 220
Costa Mesa, CA 92626
Fax: (714) 850-9392

For SCE:

James L. Arnone, Esq.
Latham & Watkins LLP
355 South Grand Ave.
Los Angeles, CA 90071
Fax: (213) 891-8763
Phone: (213) 485-1234

Laura Meyerson
Southern California Edison
2244 Walnut Grove Ave., Suite 331
Rosemead, CA 91770
Fax: (626) 302-6997
Phone: (626) 302-2896

Any Party may change its designee(s) by providing notice of such change pursuant to this section.

14.0 Effective Date

14.1 The "Effective Date" specified in this Settlement Agreement is the date that the Court enters an order approving this Settlement Agreement and dismissing the Ascon III Lawsuit, and that has become final and non-appealable.

14.2 For purposes of section 14.1, any order approving this Settlement Agreement shall be final and non-appealable on the date that all rights to challenge the order on appeal have expired, or, if an appeal of the order is properly filed, on the date when all rights to seek review of an appellate decision upholding the order have expired.

15.0 Continuing Jurisdiction of the Court

15.1 The "Court" specified in this Settlement Agreement is the Superior Court of the State of California in and for the County of Orange. The Court shall retain jurisdiction to enforce the terms of this Settlement Agreement.

AGREED TO AS OF ^{January 28, 2009} ~~DECEMBER~~ __, 2008, MODIFIED AS OF ^{April 2} ~~MARCH~~ __, 2009, SUBJECT TO THE FUTURE EFFECTIVE DATE:

Consumer Defense Group Action
By: _____
Title: _____

Southern California Edison
By: 
Title: Senior Vice President
Safety, Operations Support
Chief Procurement Officer

APPROVED AS TO FORM:
Graham & Martin LLP
By: _____
Anthony G. Graham
Attorneys for Consumer Defense Group Action

Latham & Watkins LLP
By: 
James L. Arnone
Attorneys for Southern California Edison

Laura Meyerson
Southern California Edison
2244 Walnut Grove Ave., Suite 331
Rosemead, CA 91770
Fax: (626) 302-6997
Phone: (626) 302-2896

Any Party may change its designee(s) by providing notice of such change pursuant to this section.

14.0 Effective Date

14.1 The "Effective Date" specified in this Settlement Agreement is the date that the Court enters an order approving this Settlement Agreement and dismissing the Ascon III Lawsuit, and that has become final and non-appealable.

14.2 For purposes of section 14.1, any order approving this Settlement Agreement shall be final and non-appealable on the date that all rights to challenge the order on appeal have expired, or, if an appeal of the order is properly filed, on the date when all rights to seek review of an appellate decision upholding the order have expired.

15.0 Continuing Jurisdiction of the Court

15.1 The "Court" specified in this Settlement Agreement is the Superior Court of the State of California in and for the County of Orange. The Court shall retain jurisdiction to enforce the terms of this Settlement Agreement.

AGREED TO AS OF DECEMBER __, 2008, MODIFIED AS OF MARCH 23, 2009, SUBJECT TO THE FUTURE EFFECTIVE DATE:

Consumer Defense Group Action

By: 

Title: President

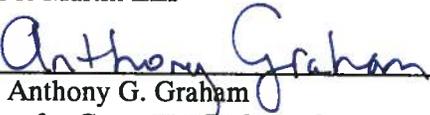
Southern California Edison

By: _____

Title: _____

APPROVED AS TO FORM:

Graham & Martin LLP

By: 

Anthony G. Graham
Attorneys for Consumer Defense Group Action

Latham & Watkins LLP

By: _____

James L. Arnone
Attorneys for Southern California Edison

EXHIBIT

EXHIBIT A

CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

3 Park Plaza, Suite 2030

Irvine, CA 92614

Telephone: (949) 474 - 1022

Facsimile: (949) 474 - 1217

Sixty Day Notice of Intent to Sue Southern California Edison For Violations of Health & Safety Code Sections 25249.5 and 25249.6

This Sixty Day Notice of Intent to Sue Under Health & Safety Code Section 25249.5 and 25249.6 ("the Notice") is given by the Consumer Defense Group Action ("the Noticing Party") to Robert G. Foster, President of Southern California Edison Company (hereinafter, "the Violator"), as well as the entities on the attached proof of service. The Noticing Party must be contacted through its legal representative: Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice constitutes notification that the Violator has violated The Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") and that the Noticing Party intends to file suit after the expiration of sixty days from the date of this Notice.

Summary of Violations

Proposition 65 provides that when a party, such as the Violator, has been and is knowingly and intentionally releasing or 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 in violation of Health & Safety Code Section 25249.5. For such a violation, the Violator is liable to be enjoined from such conduct and "shall" also be liable for civil penalties. Proposition 65 also provides that when a party, such as the Violator, has been and is knowingly and intentionally exposing the public and/or its employees to chemicals designated by the State of California to cause cancer and/or reproductive toxicity ("the Designated Chemicals") it has violated Health & Safety Code Section 25249.6 unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons. For such a violation, the Violator is liable to be enjoined from such conduct and "shall" also be liable for civil penalties.

The Violator has violated, threatens to violate and continues to violate both sections of the Health & Safety Code at the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646, where it is responsible for the clean up of that site. The Violator formerly contaminated that site by the disposal or treatment of hazardous substances, including Designated Chemicals. Further, the Violator has been and presently is, by reason of that conduct, under a duty to prevent the actual and threatened "release" of Designated Chemicals from the site and "exposures" to Designated Chemicals affecting both onsite and offsite persons.

The Factual Basis for this Notice

One of the business activities the Violator engages in, on a regular and ongoing basis, is to clean up former landfill sites which it has contaminated by the disposal or treatment of hazardous substances. At such sites it is also under a duty to prevent the actual and threatened "release" of Designated Chemicals from the site and "exposures" to Designated Chemicals affecting both onsite and offsite persons.

In February, 2003 the Violator entered into a Consent Order (Docket Number I&ISE-CO 02/03-007) (hereinafter, the "Consent Order") wherein the Violator was specifically identified by the Department of Toxic Substances Control ("DTSC") as a "responsible party" or "liable person", as defined in Health & Safety Code section 25323.5. The Violator has been so identified since it arranged for the disposal or treatment of hazardous substances at the Ascon Landfill Site located at 21641 Magnolia Street, Huntington Beach, California 92646 (hereinafter, "the Site"). The Violator, along with other parties, is thus responsible for the clean up of the Site. Since it is responsible for such future clean up it is not only responsible for the current dangerous condition of the Site but also under a current duty to ensure that the Site is operated in such a manner as to ensure (i) that there are no releases of any Designated Chemicals at or from the Site and (ii) to inform the public that proximity to the Site will result in exposure to Designated Chemicals. The Violator is currently not fulfilling either of those duties.

The Site consists of approximately 38 acres, and is bounded by Hamilton Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the Huntington Beach flood control channel and an industrial area on the west. It is identified by Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial, recreational and residential area; a community park (Edison Community Park) and a high school (Edison High School) are located directly across the street from the Site.

The Site consists of historic disposal areas, comprising former disposal pits, current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit (Pit F), containing styrene waste and other waste, located in the southeast corner of the Site. Although the Site is fenced, the California Environmental Protection Agency ("CEPA") and DTSC have noted that there is evidence that trespassers have obtained access to the Site on a number of occasions. Investigators for the Noticing Party have noted, between December 12, 2002 and June 4, 2003, that there are beaten pathways leading directly from the various breaks in the chain link fence surrounding the Site obviously suggesting that the Site is regularly "visited" by trespassers.

A Baseline Health Risk Assessment ("BHRA"), which evaluated the potential health impacts associated with human exposure to chemicals released from the waste pits and lagoons at the Site, has specifically found that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies. These potential risks were found to be associated with the volatilization and subsequent inhalation of volatile organic compounds and oral and

dermal contact with contaminants in the soil.

Metals detected at the Site, greater than typical background concentrations, include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds, chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and cadmium compounds are Designated Chemicals known to the State of California to cause cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury compounds are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from many of these chemicals may occur primarily by direct contact with soils, ingestion, and dermal exposure.

Pesticides detected at the Site include lindane and chlordane. Lindane and lindane compounds and chlordane are Designated Chemicals known to the State of California to cause cancer. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Semi-volatile organic compounds ("SVOCS") detected at the Site include benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene, naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated Chemical known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Volatile organic compounds ("VOCS") detected at the Site include benzene, toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and dichloroethane are Designated Chemicals known to the State of California to cause cancer. Benzene and toluene are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

The route of exposure for the chemicals noted herein is as follows: volatile waste components present in the lagoons and Pit F may volatilize from the surface and disperse in the atmosphere which may cause exposure to people both onsite and offsite via inhalation. Moreover, disturbance of the lagoons or pit will result in the release of vapors or hazardous particulates into the atmosphere where persons may inhale or ingest such substances. Moreover, though the Site is fenced, there is evidence that trespassers are regularly onsite and there is therefore a potential for direct contact with contaminated soils and accumulated contaminated runoff by persons either legally at the Site (such as investigators or site workers) or by trespassers. Further, the lagoons have previously overflowed during heavy rains causing hundreds of gallons of overflow to run down the streets offsite. Rainwater runoff which has come into contact with contaminated soils on the Site is likely to lead to offsite contamination by direct contact with persons in the area.

According to the DTSC that chemicals that were disposed of at the Site by the Violator have migrated and will continue to migrate into the soil and groundwater beneath and adjacent to the Site. The DTSC has also noted that exposure to impacted groundwater may occur if

groundwater is pumped for use or if discharged into a surface water body" and that the potential thus exists for "Site contamination to impact drinking water supplies." This threat will exist until the waste materials at the Site are effectively contained. Further, until effectively contained there exists the potential for future migration of the waste materials from the Site to the wetlands through the unlined Huntington Beach flood control channel that currently passes the westerly edge of the Site and flows through the Talbert Marsh wetland.

The DTSC has specifically found that at the Site there have "releases" and that there is presently a "threatened release" of the Designated Chemicals noted herein, as the term "release" is defined by Health & Safety Code section 25320 ["'Release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment"]. Moreover, the DTSC has specifically found that the actual and threatened release of the Designated Chemicals noted herein (as well as the chemicals listed in Paragraph 2.4 of the Consent Order) presents an imminent and substantial endangerment to the public health or welfare.

Based on all of the facts known to the Noticing Party at this time, the Violator has violated Health & Safety Code section 25249.5 since it has, "in the course of doing business", "knowingly and intentionally released 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, notwithstanding any other provision or authorization of law except as provided in Section 25249.9". It has done so by failing to effectively contain at the Site the Designated Chemicals it disposed of at the Site and for which it is currently responsible.

Upon filing of the Complaint relating to this violation, the Noticing Party will seek an injunction requiring that the Violator immediately take effective action to safely contain the Designated Chemicals at the Site so as to prevent further actual or potential releases, until such time as the clean up required by the Consent Order is completed pursuant to Health & Safety Code section 25249.7. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code section 25249.5.

The Violator has also violated Health & Safety Code section 25249.6 since it has "in the course of doing business" "knowingly and intentionally expose[d] [persons] to a chemical known to the State of California to cause cancer or reproductive toxicity without first giving clear and reasonable warning to such individual." Investigators for the Noticing Party visited the Site on December 12, 2002, January 23, 2003, March 15, 2003 and again on June 4, 2003. They examined the entire perimeter fencing of the Site and saw no clear and reasonable warning sign even purporting to comply with the requirements of Health & Safety Code section 25249.6, nor the regulations relating to that code section. Further, agents of the Noticing Party living in Huntington Beach know that there has been no attempt by the Violator to provide a clear and reasonable warning to the local residents living in the area, the children and personnel (teachers, administrators, security and other personnel) at the high school or the users of the local park located next to the Site that physical proximity to the Site may expose them to Designated Chemicals.

Upon filing of the Complaint relating to this violation the Noticing Party will seek an injunction requiring that the Violator immediately take effective action to inform all likely affected persons of the likely exposures to Designated Chemicals in a clear and reasonable manner. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code Section 25249.6.

Both as to violations of Health & Safety Code Section 25249.5 and Health & Safety Code Section 25249.6 the Noticing Party will seek civil penalties for the maximum period allowed by law, which the Noticing Party believes is one year prior to the date of this Notice. With this Notice the Noticing Party has also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of,1986 (Proposition 65): A Summary."

If you have any questions or comments, please do not hesitate to contact the undersigned at your earliest convenience.

Dated: June 10, 2003

GRAHAM & MARTIN, LLP

By: _____

cc. Consumer Defense Group Action
Attached Service List

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing The Consumer Defense Group Action, the "Noticing Party" as to the "60 Day Notice of Intent to Sue" (hereinafter, "the Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.

3. 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.

4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus "operates", the specific subject property for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the "release" of the chemicals set forth in the Notice and such "releases" threaten to pass in sources of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6, or any other sign purporting to comply with the requirements of that section.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on June 10, 2003.

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.) Sixty Day Notice of Intent to Sue Under Health & Safety Code Sections 24249.5 and 25249.6;
- 2.) Certificate of Merit;
- 3.) Copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" (*sent only to Violators*)
- 4.) Supporting Documents (*sent only to Office of Attorney General*)

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 10, 2003
Place of Mailing: Irvine, California

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

Robert G. Foster, President
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California

California Attorney General
Office of Proposition 65 Enforcement
1515 Clay Street
20th Floor, P.O. Box 70550
Oakland, CA 94612-0550

Orange County District Attorney
401 Civic Center Dr. W.
Santa Ana, CA 92701

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

Dated: June 10, 2003,

EXHIBIT

EXHIBIT B

CONSUMER DEFENSE GROUP ACTION

AMENDED SIXTY DAY NOTICE OF INTENT TO SUE SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; EXXON MOBIL CORPORATION; NORTHROP GRUMMAN CORPORATION; NORTHROP GRUMMAN SPACE & MISSION SYSTEMS CORP.; CONOCOPHILIPS, A DELAWARE CORPORATION, CONOCO, INC., A DELAWARE CORPORATION AND WHOLLY OWNED SUBSIDIARY OF CONOCOPHILIPS, AND PHILIPS PETROLEUM, A DELAWARE CORPORATION AND WHOLLY OWNED SUBSIDIARY OF CONOCOPHILIPS; CHEVRON TEXACO; CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY; CHEVRON PIPE LINE COMPANY; TEXACO, INC. FOR VIOLATIONS OF HEALTH & SAFETY CODE SECTIONS 25249.5 AND 25249.6

This Amended Sixty Day Notice of Intent to Sue Under Health & Safety Code Section 25249.5 and 25249.6 ("the Notice") is given by the Consumer Defense Group Action ("the Noticing Party" or "CDGA") to the Chairman and CEO of each of the entities referenced above (hereinafter referred to collectively as "the Violators"), as well as the entities on the attached proof of service. The name and address of the Chairman and CEO of each of the Violators is provided on the attached Proof of Service. The relevant person inside the Noticing Party for purposes of this Notice is Brian Fagan, President of CDGA, but the Noticing Party should only be contacted through its legal representative: Anthony G. Graham, of Graham & Martin, LLP, 950 South Coast Drive, Suite 220, Costa Mesa, California 92626, telephone number (714) 850-9390, facsimile number (714) 850-9392. This Amended Notice constitutes notification that the Violators have violated The Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") and that the Noticing Party intends to file suit after the expiration of sixty days from the date of this Notice.

SUMMARY OF VIOLATIONS

Proposition 65 provides that when parties, such as the Violators, have been and are knowingly and intentionally releasing or 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", they are in violation of Health & Safety Code Section 25249.5. The term "release" is defined by Health & Safety Code section 25320 ["'Release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment"]. For such a violation, the Violators are liable to be enjoined from such conduct and "shall" also be liable for civil penalties. Proposition 65 also provides that when parties, such as the Violators, have been and are knowingly and intentionally exposing the public and/or its employees to chemicals designated by the State of California to cause cancer and/or reproductive toxicity ("the Designated Chemicals") they have violated Health & Safety Code Section 25249.6 unless, prior to such exposure, they provide clear and reasonable warning of that potential exposure to the potentially exposed persons. For such a violation, the Violators are liable to be enjoined from such conduct and "shall" also be liable for civil penalties.

THE FACTUAL BASIS FOR THIS AMENDED NOTICE

THE SITE

The Violators have violated, threaten to violate and continue to violate both sections of the Health & Safety Code at the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646 ("the Site"). The Site is surrounded by residential housing, schools, a park, a senior citizens center and commercial property.

The Site consists of approximately 38 acres, and is bounded by Hamilton Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the Huntington Beach flood control channel and an industrial area on the west. It is identified by Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial, recreational and residential area; a community park (Edison Community Park) and a high school (Edison High School) are located directly across the street from the Site.

The Site consists of historic disposal areas, comprising former disposal pits, current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit (Pit F), containing styrene waste and other waste, located in the southeast corner of the Site. Although the Site is fenced, the California Environmental Protection Agency ("CEPA") and DTSC have noted that there is evidence that trespassers have obtained access to the Site on a number of occasions. Investigators for the Noticing Party have noted, in December 12, 2002, June 4, 2003, as well as in October 14, 2004 and November 11, 2005, that there are and have beaten pathways leading directly from the various breaks in the chain link fence surrounding the Site obviously suggesting that the Site is regularly "visited" by trespassers. In fact, DTSC have reported that one trespasser was found to have been living on the Site near one of the Pits.

THE VIOLATORS

One of the business activities the Violators engage in, on a regular and ongoing basis, is to clean up former landfill sites which they have contaminated by the illegal disposal of hazardous substances. At such sites the Violators are under a duty pursuant to Proposition 65 to not by their own acts or omissions allow the actual and threatened "release" of Designated Chemicals from the site, as well as to provide a clear and reasonable warning to persons at or near the Site of potential "exposures" to Designated Chemicals affecting such onsite and offsite persons.

Each of the Violators formerly contaminated the Site by illegally disposing and dumping hazardous substances at the Site, including Designated Chemicals. CDGA is in possession of a number of declarations from employees/contractors for the Violators who have admitted illegally dumping toxic chemicals at the Site on behalf of the Violators. Those declarations make clear that each of the Violators over a course of years systematically illegally dumped chemicals at the Site, including Designated Chemicals. The declarations have already been served on the

Violators and provided to the Office of the Attorney General. In addition, each of the Violators is a Responsible Party, as that term is defined by the Department of Toxic Substances Control ("DTSC") and each of the Violators is currently responsible for the clean up and remediation of the mess they made. At the Ascon Site therefore the Violators are not only the entities which illegally dumped the Designated Chemicals but are also the parties responsible for the remediation at the Site.

As "remediators", the Violators are currently operating at the Site and have a duty under Proposition 65 to prevent the actual and threatened "release" of Designated Chemicals (that they had formerly illegally dumped) from the contained areas at the Site. The contained areas at the Site are the Pits and lagoons located there which are bounded by berms which are designed to effectively prevent discharges and releases from those areas during heavy rains. The Violators are also under a duty pursuant to Proposition 65 to prevent and/or provide a clear and reasonable warning about potential "exposures" to Designated Chemicals affecting both onsite and offsite persons. The Violators have been and are failing in those duties under Proposition 65.

First, the Pits and lagoons at the Site are and have been for a number of years surrounded by berms which are intended to and formerly did effectively contain the toxic chemicals contained in those Pits and lagoons and thus prevented their discharge and release out of the Pits and lagoons during heavy rains. However, as would be obvious to anyone, the berms must be maintained and repaired when necessary so that the Designated Chemicals remained safely contained by those berms and so that no discharges or releases can occur through those berms. The Violators have been specifically and repeatedly warned both by the DTSC and by CDGA of the consequences of their refusal to properly and appropriately maintain and repair the berms. Despite these specific warnings, and thus with full knowledge of the effect of their failure to act, the Violators failed to properly maintain or repair the berms, even when cracks appeared in the berms and they were informed of such by their own contractors, the DTSC and later CDGA. As a result of their knowing and intentional failure to act the Violators allowed the berms at the Site to collapse, not once, but twice, between December, 2004 and May 2005. The collapse of the berms resulted in specific releases/discharges of toxic chemicals, including Designated Chemicals, from the Site into or onto the land both onsite and offsite where such chemicals pass or probably will pass into a source of drinking water, as well as into the surrounding streets and neighborhood where the Site is located from December, 2004 - May, 2005.

Second, the Violators knew that there were oil wells at the Site, some of which had been abandoned. The Violators knew that abandoned oil wells must be properly maintained or there would be a very strong likelihood of explosion. Despite knowing that the oil wells were at the Site, that they were old oil wells which did not have modern "caps", the Violators failed and refused to properly (or in fact in any way) maintain those oil wells. As an obvious and inevitable result of the Violators failure to effectively maintain, repair or otherwise render safe those oil wells the Violators knowingly and intentionally created a substantial risk that one of the oil wells would fail and a discharge/release would occur. That is precisely what happened on March 17, 2004, when one of the oil wells exploded and released hundreds of gallons of toxic material over the homes, property and persons in the neighborhood around the Site. Prior to the explosion the toxic chemicals had been effectively contained in the oil well, since there is no evidence of any

prior release or discharge therefrom of which CDGA or the DTSC is aware.

Since the Violators, as the parties who illegally dumped the toxic chemicals and who are also currently legally obligated as remediators at the Site, are responsible for the current dangerous condition of the Site, they are under a current duty pursuant to Health & Safety Code Section 25249.5 *et seq* to ensure that the Site is operated in such a manner as to ensure (i) that there are no new discharges or releases of any Designated Chemicals at or from the Site and (ii) to inform the public that proximity to the Site will result in exposure to Designated Chemicals. The Violators have been and are fulfilling neither of those duties.

THE HEALTH RISK

A Baseline Health Risk Assessment ("BHRA"), which evaluated the potential health impacts associated with human exposure to chemicals released from the waste pits and lagoons at the Site, specifically found that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies. These potential risks were found to be associated with the volatilization and subsequent inhalation of volatile organic compounds and oral and dermal contact with contaminants in the soil. Each of the Violators knew of the BHRA and thus knew and knows that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies.

Despite this knowledge the Violators did not have in place any clear and reasonable warning and did not even consider posting a warning sign until after receipt of CDGA's initial Notices. The warning signs which were thereafter put in place were specifically put in place in response to CDGA's initial notices. Any warnings currently in place at the Site are therefore as a result of the work of CDGA and its counsel. However, even the warning signs which are now in place are still insufficient since they only warn persons at the Site not persons in the surrounding residential neighborhood, park, senior citizens center or school.

The Violators thus knew and know that the families who live in the residential neighborhood, the schoolchildren who attend Edison High School, the senior citizens who use the Senior Citizens Center, the workers at the Site, trespassers on the Site (at least one of whom actually lived on Site next to one of the toxic lagoons for some period of time), as well as assorted passersby, can and are exposed to the chemicals off-site when they breathe such chemical fumes after volatilization, or when they touch the soil contaminated by the discharges from the pits and lagoons which happen during heavy rains, or when the berms collapsed TWICE in the period from December, 2004 - May, 2005, or when an oil well on site explodes. The original Sixty Day Notice sent to the Violators expressly warned that the berms could collapse and the dangerous exposures likely to then occur. The Violators ignored that warning, as well as the warning contained in the first complaint filed by the Noticing Party. The Violators also ignored warnings to them from DTSC regarding the berms.

THE DESIGNATED CHEMICALS

Metals detected at the Site, greater than typical background concentrations, include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds, chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and cadmium compounds are Designated Chemicals known to the State of California to cause cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury compounds are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from many of these chemicals may occur primarily by direct contact with soils, ingestion, and dermal exposure.

Pesticides detected at the Site include lindane and chlordane. Lindane and lindane compounds and chlordane are Designated Chemicals known to the State of California to cause cancer. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Semi-volatile organic compounds ("SVOCS") detected at the Site include benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene, naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated Chemical known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Volatile organic compounds ("VOCS") detected at the Site include benzene, toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and dichloroethane are Designated Chemicals known to the State of California to cause cancer. Benzene and toluene are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

THE ROUTES OF EXPOSURE

The route of exposure for the chemicals noted herein is as follows: volatile waste components present in the lagoons and Pit F may volatilize from the surface and disperse in the atmosphere which may cause exposure to people both onsite and offsite via inhalation. Moreover, disturbance of the lagoons or pit will result in the release of vapors or hazardous particulates into the atmosphere where persons may inhale or ingest such substances. Moreover, though the Site is fenced, the Violators have admitted that trespassers are regularly onsite and there is therefore a potential for direct contact with contaminated soils and accumulated contaminated runoff by persons either legally at the Site (such as investigators or site workers) or by trespassers. Further, the lagoons and Pits, which had been effectively contained by the berms, have, after the Violators knowingly and intentionally allowed those berms to collapse, overflowed during heavy rains causing overflow of toxic chemicals to run down the streets offsite. Rainwater runoff which has come into contact with contaminated soils on the Site of

course inevitably leads to offsite contamination by direct contact with persons in the area. In addition, dozens of persons in the neighborhood have, during the course of 2006, complained to the Violators and DTSC about the strong chemical odors emanating from the Site and being breathed in by those persons, as well as about chemical runoff from the Site to the neighboring streets during rains. .

The Designated Chemicals that were illegally disposed of at the Site by the Violators have, because of the Violators knowing and intentional failure to act on the warnings given to it which inevitably allowed the berms to collapse and the oil well to explode, passed into and will continue to pass into the soil and groundwater beneath and adjacent to the Site. Moreover, as has been noted by the DTSC, persons in the area have been and will be exposed to groundwater contaminated by those hazardous substances, including Designated Chemicals, whenever groundwater is "pumped for use or if discharged into a surface water body". Further, there exists the potential for future passage of the waste materials from the Site to the wetlands through the unlined Huntington Beach flood control channel that currently passes the westerly edge of the Site and flows through the Talbert Marsh wetland.

Based on all of the facts known to the Noticing Party at this time, the Violators have violated Health & Safety Code section 25249.5 since they have, "in the course of doing business", "knowingly and intentionally released 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, notwithstanding any other provision or authorization of law except as provided in Section 25249.9". They have done so by failing to act on specific warnings and knowledge they had during the period they are remediating the Site, when such action would have allowed the continued effective containment at the Site of the Designated Chemicals they illegally dumped at the Site. Upon filing of the Complaint relating to this violation, the Noticing Party will seek an injunction requiring that the Violators immediately take effective action to safely contain the Designated Chemicals at the Site so as to prevent further actual or potential releases, until such time as the clean up required by the Consent Order is completed, pursuant to Health & Safety Code section 25249.7. The Noticing Party will also seek civil penalties against the Violators for their past and ongoing violations of Health & Safety Code section 25249.5.

The Violators have also violated Health & Safety Code section 25249.6 since they have, "in the course of doing business", "knowingly and intentionally expose[ed] [persons] to a chemical known to the State of California to cause cancer or reproductive toxicity without first giving [a] clear and reasonable warning." Prior to the initial notices sent to the Violators by CDGA there were no warnings concerning Proposition 65 at the Site perimeter. Since the initial notices and specifically in response thereto the Violators have placed warning signs which reference Proposition 65 on the Site perimeter fence. However, these warnings are insufficient to provide a clear and reasonable warning to the local residents living in the area, the children and personnel (teachers, administrators, security and other personnel) at the high school or the users of the local park located next to the Site that physical proximity to the Site may expose them to

Designated Chemicals. Upon filing of the Complaint relating to this violation the Noticing Party will seek an injunction requiring that the Violator immediately take effective action to inform all likely affected persons of the likely exposures to Designated Chemicals in a clear and reasonable manner. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code Section 25249.6.

With this Notice the Noticing Party has also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary." If you have any questions or comments, please do not hesitate to contact the undersigned at your earliest convenience.

Dated: March 23, 2007

GRAHAM & MARTIN, LLP

By:


Anthony G. Graham, Esq.

cc. Attached Service List

CERTIFICATE OF MERIT

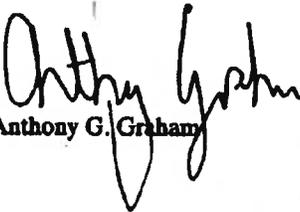
I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing Consumer Defense Group Action, the "Noticing Party" as to the "60 Day Notice of Intent to Sue" (hereinafter, "the Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.
2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.
3. 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.
4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus "operates", the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the "release" of the chemicals set forth in the Notice and such "releases" have passed or threaten to pass into any source of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6.

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 March 23, 2007.


Anthony G. Graham

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").

Proposition 65 appears in California law as Health and Safety Code Sections 25349.5 through 25349.13. 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.

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."

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.

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 a significant risk of cancer. For chemicals that are known 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."

Exposures that pose a significant risk of cancer. For chemicals that are known 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."

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.

Discharges that do not result in a "significant amount" of the listed chemical entering any source of drinking water. The prohibition on discharges into drinking water does not apply if the discharger can demonstrate that a "significant amount" of the listed chemical does not, or will not enter any drinking water source.

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).

A business found to be in violation of Proposition 65 is subject to penalties of up to \$2,500 per day for each violation. In addition, the court 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.

14000. Chemicals Required by State or Federal Law Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally required or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found to be adequately tested as required (Health and Safety Code 2524

Readers should note a chemical the structure of which has been designated as known to the state to cause cancer or reproductive toxicity is not included in the following listing as requiring additional testing for that particular toxicological endpoint. However, the "data gap" may continue to exist, for purposes of the state or federal agency's requirements. Additional information on the requirements for testing may be obtained from the specific agency identified below.

(b) Chemicals required to be tested by the California Department of Pesticide Regulation.

The Birth Defect Prevention Act of 1984 (SB 950) mandates that the California Department of Pesticide Regulation (CDPR) review chronic toxicology studies supporting the registration of pesticidal active ingredients. Missing or unacceptable studies are identified as data gaps. The studies are conducted to fulfill generic data requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), which is administered by the U.S. Environmental Protection Agency. The studies are reviewed by CDPR according to guidelines and standards promulgated under FIFRA. Thus, older studies may not meet current guidelines.

The existence of a data gap for a compound does not indicate a total lack of information on the carcinogenicity or reproductive toxicity of the compound. In some cases, information exists in the open scientific literature, but SB 950 requires specific additional information. A data gap does not necessarily indicate that an oncogenic or reproductive hazard exists. For the purposes of this list, a data gap is still considered to be present until the study is reviewed and found to be acceptable.

Following is a listing of SB 950 data gaps for oncogenicity, reproduction, and teratology studies for the first 200 pesticidal active ingredients. This list will change as data gaps are filled by additional data or replacement studies.

For purposes of this section, "one mouse" means oncogenicity in mice, "one rat" means oncogenicity in rats, "repro" means reproduction, "tera rodent" means teratogenicity in rodents, "tera rabbit" means teratogenicity in rabbits.

Chemical	Testing Needed
Bendiocarb	one rat, repro, tera rodent
Chlorobc	one rat, one mouse, repro, tera rodent, tera rabbit
PCP Permethrin derivatives, aromatic	repro, one rat one rat, one mouse, repro, tera rodent, tera rabbit

(c) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Toxic Substances.

Under Section 4(a) of the Toxic Substances Control Act, testing of a chemical is required when that chemical may present an unreasonable risk, or is produced in substantial quantities and enters the environment in substantial quantities, or may have significant or substantial human exposure.

For purposes of this section, "tera" means teratogenicity, "repro" means reproductive toxicity, "one" means oncogenicity.

Chemical	Testing Needed
Alkyl (C12-13) glycidyl ether	one, tera
n-Alkyl methyl ether	one, tera
Bisphenol A diglycidyl ether	one, repro
Cyclohexane*	one, tera
Glycidyl methacrylate*	one
1,6-Hexamethylene diisocyanate	one, tera
N-Methylmorpholine	one, repro, tera
Phenol	one

*The Toxic Substances Control Act requires health effects testing programs for cyclohexane and glycidyl methacrylate. Testing has been completed and the U.S. Environmental Protection Agency's review of the testing program data is currently underway.

(d) Chemicals required to be tested by the United States Environmental Protection Agency, Office of Pesticide Programs.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). FIFRA requires EPA to register pesticides based on data adequate to demonstrate that they will not result in unreasonable adverse effects to people or the environment when used in accordance with their EPA-approved labels.

In 1988, FIFRA was amended to strengthen EPA's pesticide regulatory authority and responsibilities to register pesticides registered prior to 1984 to ensure they meet today's stringent scientific and regulatory standards. Registration requires registrants to develop up-to-date data bases for each pesticide active ingredient. As part of the registration process, modifications may be made to registrations, labels or tolerances to ensure they are protective of human health and the environment. Also, registration reviews will identify any pesticides whose regulatory action may be necessary to deal with unreasonable risks. EPA has been directed to accelerate the registration process so that the entire process is completed by 1997. The 1988 amendments set out a five-phase schedule to accomplish this task with deadlines applying to both pesticide registrants and the EPA. These amendments are requiring a substantial number of new studies to be conducted and old studies to be reformulated for EPA review to ensure they are adequate. EPA may, in the future, request additional data or information to further evaluate any concerns over the safety of pesticide products.

The chemicals listed below are those for which data are unavailable or inadequate to characterize oncogenicity, teratogenicity, or reproductive effects potential. For purposes of this section, "one" means oncogenicity, "tera" means teratogenicity, and "repro" means reproductive toxicity.

Chemical	Data Requirements
Acaroles	one, tera
Alkyl imidazolines	tera
Azinphos	repro, tera
4-Azinphospyridine	one, repro, tera
4-T-Azinphospyridine	one, repro
Aquasol	one, repro, tera
Benzothiazolone-3-one	one, repro, tera
Brodifacoum	one, repro, tera
Bromobutyltin	tera
Bumam 77	repro
Chlorfenvinphos methyl	tera
Chlorpyrifos	tera
Chlorpyrifos	one, repro
Chromated arsenicals	one
Cyfluthrin	one
Cypermethrin	one, repro, tera
DCNA	repro, tera
Dibromodicyanobutane	one
Dichlorop-methyl	one, tera
Dicrotophos	one, repro
Dihaloalkylhydantoins	one, repro, tera
Dimethipin	one, repro, tera
Dimethylthiocarbamate	one, repro, tera
Disocap and its compounds	one, repro, tera
Diphacinone and salts	one
Diphenyltin	one, repro, tera
Dipropyl isocinchononate	one, tera
Diazin	repro
	one

Chemical	Date Requirements
Dactins	onc, repr, iss
Endothal and salts	onc, repr, iss
Ethohexanate	onc
Ethoxyquin	onc
Fenitlon	onc
Fen valerat	onc, repr, iss
Fluralaner	repr, iss
Hydroxy-methylthiocarbamate	onc
Imazali	onc
Inorganic chlorates	onc, repr, iss
Inorganic sulfites	onc, repr, iss
Iodine-potassium iodide	onc
Iproprions	onc
Irgans	onc, repr, iss
Lanprazole	onc, repr
Magnesium phosphide	onc
Mabathion	onc
Mandib	onc, iss
MCPB and salts	onc
Methidathion and salts	onc
Methidat chloride	onc
Methidathion	onc, iss
Methoxychlor	onc, repr, iss
Methyl isothiocyanate	onc
Methyl parathion	repr
Methylthiocarbamate	onc
MCK 264	repr
Melissin	onc
Naphthalen	onc, repr
Naphthalenetic acid	onc
Naphthalen salts	repr
Nepropamide	onc, iss
Niclosamide	onc, iss
Nicodan and derivatives	onc, iss
Nitropryls	onc, repr, iss
4-Nitrophenol	onc
Oxifluren	onc
Oil of Peppercorn	onc, repr, iss
Oxadiazin	repr
Oxadiazin	onc
Oxyfluorin	onc
Pebolet	onc
Pertholam	onc
Phenacetylphen	onc
Phenol and salts	onc, repr
3-Phenylphenol and salts	onc
Phen salts	onc
Phenoxyl benzoate	onc, repr
Poly (hexamethylene biguanide)	onc, repr, iss
Polyethoxyated aliphatic alcohols	onc
Proximate	onc
Propachlor	onc

Chemical	Date Requirements
Propachlor	onc, repr
Propachlor	onc
Propachlor	onc
Propachlor	onc
Pyrazin	onc, repr
Pyridin and derivatives	onc, iss
Pyridinone	onc, iss
Selenylin	onc
Selenin	onc, repr, iss
Selenin dioxide	onc
Selenosulfon-methyl	onc, iss
TET-containing compounds	onc, iss
TCMB	onc, repr, iss
Tenocypol	onc, repr
Tetrahydrothiophen	onc
Tetraurethol	onc
Thiobenzothiazole and salts	onc, repr, iss
Thiobenzothiazole	onc, repr, iss
Thiobenzothiazole	onc
Thiobenzothiazole-methyl	onc, iss
Thiobenzothiazole	onc
Thiobenzothiazole	onc, repr
Thiobenzothiazole	onc
Veratrin	onc, repr

Revised: January 1, 1998

History

1. New section submitted to OAL for printing only pursuant to Government Code section 11343.5 (Register 89, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.5 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.5 (Register 91, No. 17).
4. Editorial correction of subsection (d) (Register 91, No. 31).
5. Editorial correction of subsection (d) (Register 91, No. 43).
6. Editorial correction including inadvertently omitted amendment submitted to OAL for printing only pursuant to Government Code section 11343.5 (Register 91, No. 20).
7. Editorial correction of printing errors (Register 92, No. 45).
8. Amendment of subsection (d) filed 8-1-94. Submitted to OAL for printing on (Register 94, No. 81).
9. Amendment of subsection (b), (c), and (d) filed 12-23-94. Submitted to OAL for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.5 (Register 95, No. 2).
11. Amendment filed 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.3 (Register 97, No. 7).
12. Amendment of subsection (b), (c) and (d) filed 2-13-98; operative 2-13-98. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.3 (Register 98, No. 7).

(The next page is 201.)

Animal bioassay data is admissible and generally indicative of potential effects in humans.

For purposes of this regulation, substances are present occupationally when there is a possibility of exposure either as a result of normal work operations or a reasonably foreseeable emergency resulting from workplace operations. A reasonably foreseeable emergency is one which a reasonable person should anticipate based on usual work conditions, a substance's particular chemical properties (e.g., potential for explosion, fire, reactivity), and the potential for human health hazards. A reasonably foreseeable emergency includes, but is not limited to, spills, fires, explosions, equipment failure, rupture of containers, or failure of control equipment which may or do result in a release of a hazardous substance into the workplace.

(b) Administrative Procedure Followed by the Director for the Development of the Initial List. The Director shall hold a public hearing concerning the initial list. The record will remain open 30 days after the public hearing for additional written comment. Requests to exempt a substance in a particular physical state, volume, or concentration from the provisions of Labor Code sections 6390 to 6399.2 may be made at this time. If no comments in opposition to such a request are made at the public hearing or received during the comment period, or if the Director can find no valid reason why the request should not be considered, it will be incorporated during the Director's preparation of the list.

After the public comment period the Director shall formulate the initial list and send it to the Standards Board for approval. After receipt of the list or a modified list from the Standards Board, the Director will adopt the list and file it with the Office of Administrative Law.

(c) Concentration Requirement. In determining whether the concentration requirement of a substance should be changed pursuant to Labor Code section 6383, the Director shall consider valid and substantial evidence. Valid and substantial evidence shall consist of clinical evidence or toxicological studies including, but not limited to, animal bioassay tests, short-term in vitro tests, and human epidemiological studies. Upon adoption, a regulation indicating the concentration requirement for a substance shall consist of a footnote on the list.

(d) Procedures for Modifying the List. The Director will consider petitions from any member of the public to modify the list or the concentration requirements, pursuant to the procedures specified in Government Code section 1347.1. With petitions to modify the list, the Director shall make any necessary deletions or additions in accordance with the procedures herein set forth for establishing the list. The Director will review the existing list at least every two years and shall make any necessary additions or deletions in accordance with the procedures herein set forth for establishing the list.

(e) Criteria for Modifying the List. Petitions to add or remove a substance on the list, modify the concentration level of a substance, or reference when a particular substance is present in a physical state which does not pose any human health risk must be accompanied with relevant and sufficient scientific data which may include, but is not limited to, short-term tests, animal studies, human epidemiological studies, and clinical data. If the applicant does not include the complete content of a referenced study or other document, there must be sufficient information to permit the Director to identify and obtain the referenced material. The petitioner bears the burden of justifying any proposed modification of the list.

The Director shall consider all evidence submitted, including negative and positive evidence. All evidence must be based on properly designed studies for toxicological endpoints indicating adverse health effects in humans, e.g., carcinogenicity, mutagenicity, neurotoxicity, organ damage/effects.

For purposes of this regulation, animal data is admissible and generally indicative of potential effects in humans.

The absence of a particular category of studies shall not be used to prove the absence of risk.

whereas toxicological, in vivo results must be re-evaluated in light of the limits of sensitivity of each study, its test design, and the protocol followed.

In evaluating different results among proper tests, as a general rule, positive results shall be given more weight than negative results for purposes of including a substance on the list or modifying the list in reference to concentration, physical state or volume, so that appropriate information may be provided regarding those positive results. In each case, the relative sensitivity of each test shall be a factor in resolving such conflicts.

NOTE: Authority cited: Section 6380, Labor Code. Reference: Sections 6361, 6360, 6380.3, 6362 and 6363, Labor Code.

HISTORY

1. New article 5 (article 337) filed 11-5-81; effective thirtieth day thereafter (Register 81, No. 43).
2. Amendment of subsection (d) filed 1-15-87; effective upon filing pursuant to Government Code section 11346.2(d) (Register 87, No. 3).
3. Editorial correction of HISTORY 2. (Register 91, No. 19).

1338. Special Procedures for Supplementary Enforcement of State Plan Requirements Concerning Proposition 65.

(a) This section sets forth special procedures necessary to comply with the terms of the approval by the United States Department of Labor of the California Hazard Communication Standard, pertaining to the incorporation of the occupational applications of the California Safe Drinking and Toxic Enforcement Act (hereinafter Proposition 65), as set forth in 62 Federal Register 31159 (June 6, 1997). This approval specifically placed certain conditions on the enforcement of Proposition 65 with regard to occupational exposures, including that it does not apply to the conduct of manufacturers occurring outside the State of California. A person proceeding "in the public interest" pursuant to Health and Safety Code § 25249.7(d) (hereinafter "Supplemental Enforcer") or any district attorney or city attorney or prosecutor pursuant to Health and Safety Code § 25249.7(e) (hereinafter "Public Prosecutor"), who alleges the existence of violations of Proposition 65, with respect to occupational exposures as incorporated into the California Hazard Communication Standard (hereinafter "Supplemental Enforcement Matter"), shall comply with the requirements of this section. No Supplemental Enforcement Matter shall proceed except in compliance with the requirements of this section.

(b) 22 CCR § 12903, setting forth specific requirements for the form and manner of service of sixty-day notices under Proposition 65, in effect on April 22, 1997, is adopted and incorporated by reference. In addition, any sixty-day notice concerning a Supplemental Enforcement Matter shall include the following summary:

"This notice alleges the violation of Proposition 65 with respect to occupational exposures governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provision Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirements to comply with Proposition 65, it also requires that supplemental enforcement is subject to supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or subpoena orders in this matter must be submitted to the Attorney General.

(c) A Supplemental Enforcer or Public Prosecutor who commences Supplemental Enforcement Matter shall serve a file-entitled or the complaint upon the Attorney General within ten days after filing the Court.

(d) A Supplemental Enforcer or Public Prosecutor shall serve upon Attorney General a copy of any motion, or opposition to a motion

EXHIBIT

EXHIBIT C

GRAHAM & MARTIN, LLP

- ATTORNEYS AT LAW

950 S COAST DRIVE, SUITE 220
COSTA MESA, CALIFORNIA 92626

TELEPHONE (714) 850-9390
FACSIMILE (714) 850-9392

AMENDED SIXTY DAY NOTICE OF INTENT TO SUE SHELL OIL COMPANY; THE DOW CHEMICAL COMPANY; BP AMERICA, INC.; ATLANTIC RICHFIELD COMPANY; SOUTHERN CALIFORNIA EDISON; AND EXXON MOBIL CORPORATION FOR VIOLATIONS OF HEALTH & SAFETY CODE SECTIONS 25249.5 AND 25249.6

This Amended Sixty Day Notice of Intent to Sue Under Health & Safety Code § 25249.5 and § 25249.6 ("the Notice") is given by the Consumer Defense Group Action ("the Noticing Party" or "CDGA") to the Chairman and CEO of each of the entities referenced above (hereinafter referred to collectively as "the Violators"), as well as the entities on the attached proof of service. The name and address of the Chairman and CEO of each of the Violators is provided on the attached Proof of Service. The relevant person inside the Noticing Party for purposes of this Notice is Brian Fagan, President of CDGA, who may be contacted at the following address: Brian Fagan, President of CDGA, Attn: Anthony G. Graham, of Graham & Martin, LLP, 950 South Coast Drive, Suite 220, Costa Mesa, California 92626, telephone number (714) 850-9390, facsimile number (714) 850-9392. This Amended Notice constitutes notification that the Violators have violated The Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") and that the Noticing Party intends to file suit after the expiration of sixty days from the date of this Notice.

SUMMARY OF VIOLATIONS

Proposition 65 provides that when parties, such as the Violators, have been and are knowingly and intentionally releasing or 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", they are in violation of Health & Safety Code Section 25249.5. The term "release" is defined by Health & Safety Code section 25320 ["'Release' means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment"]. For such a violation, the Violators are liable to be enjoined from such conduct and "shall" also be liable for civil penalties. Proposition 65 also provides that when parties, such as the Violators, have been and are knowingly and intentionally exposing the public and/or its employees to chemicals designated by the State of California to cause cancer and/or reproductive toxicity ("the Designated Chemicals") they have violated Health & Safety Code Section 25249.6 unless, prior to such exposure, they provide clear and reasonable warning of that potential exposure to the potentially exposed persons. For such a violation, the Violators are liable to be enjoined from such conduct and "shall" also be liable for civil penalties.

THE FACTUAL BASIS FOR THIS AMENDED NOTICE

THE SITE

The Violators have violated, threaten to violate and continue to violate both sections of the Health & Safety Code at the landfill site located at 21641 Magnolia Street, Huntington Beach, California 92646 ("the Site"). The Site is surrounded by residential housing, schools, a park, a senior citizens center and commercial property.

The Site consists of approximately 38 acres, and is bounded by Hamilton Avenue on the north, Magnolia Street on the east, an oil storage tank area on the south, and the Huntington Beach flood control channel and an industrial area on the west. It is identified by Assessor's parcel numbers 114-150-75, 114-150-78, 114-150-79, and 114-150-80. The Site is 0.25 miles from the Pacific Ocean, and located within a mixed commercial/industrial, recreational and residential area; a community park (Edison Community Park) and a high school (Edison High School) are located directly across the street from the Site.

The Site consists of historic disposal areas, comprising former disposal pits, current "lagoons" and former "lagoon" areas. At present, the Site consists of five waste lagoons filled with oily waste material, covering approximately 30% of the Site, and one pit (Pit F), containing styrene waste and other waste, located in the southeast corner of the Site. Although the Site is fenced, the California Environmental Protection Agency ("CEPA") and DTSC have noted that there is evidence that trespassers have obtained access to the Site on a number of occasions. Investigators for the Noticing Party have noted, in December 12, 2002, June 4, 2003, as well as in October 14, 2004 and November 11, 2005, that there are and have beaten pathways leading directly from the various breaks in the chain link fence surrounding the Site obviously suggesting that the Site is regularly "visited" by trespassers. In fact, DTSC have reported that one trespasser was found to have been living on the Site near one of the Pits.

THE VIOLATORS

One of the business activities the Violators engage in, on a regular and ongoing basis, is to clean up former landfill sites which they have contaminated by the illegal disposal of hazardous substances. At such sites the Violators are under a duty pursuant to Proposition 65 to not, by their own acts or omissions, allow the actual and threatened "release" of Designated Chemicals from the site, as well as to provide a clear and reasonable warning to persons at or near the Site of potential "exposures" to Designated Chemicals affecting such onsite and offsite persons.

Each of the Violators formerly contaminated the Site by illegally disposing and dumping hazardous substances at the Site, including Designated Chemicals. CDGA is in possession of a number of declarations from employees/contractors for the Violators who have admitted illegally dumping toxic chemicals at the Site on behalf of the Violators over the course of many years. Those declarations make clear that each of the Violators over a course of years systematically

illegally dumped chemicals at the Site, including Designated Chemicals. The declarations have already been served on the Violators and provided to the Office of the Attorney General. In addition, each of the Violators is a Responsible Party, as that term is defined by the Department of Toxic Substances Control ("DTSC") and each of the Violators is currently responsible for the clean up and remediation of the toxic mess they made. At the Ascon Site therefore the Violators are not only the entities which illegally dumped the Designated Chemicals but are also the parties responsible for the remediation at the Site.

As "remediators", the Violators are currently operating at the Site and have a duty under Proposition 65 to prevent the actual and threatened "release" of Designated Chemicals (that they had formerly illegally dumped) from the contained areas at the Site. The contained areas at the Site are the Pits and lagoons located there which are bounded by berms which are designed to effectively prevent discharges and releases from those areas during heavy rains. The Violators are also under a duty pursuant to Proposition 65 to prevent and/or provide a clear and reasonable warning about potential "exposures" to Designated Chemicals affecting both onsite and offsite persons. The Violators have been and are failing in those duties under Proposition 65.

First, the Pits and lagoons at the Site are and have been for a number of years surrounded by berms which are intended to and formerly did effectively contain the toxic chemicals contained in those Pits and lagoons and thus prevented their discharge and release out of the Pits and lagoons during heavy rains. However, as would be obvious to anyone, the berms must be maintained and repaired when necessary so that the Designated Chemicals remained safely contained by those berms and so that no discharges or releases can occur through those berms. The Violators have been specifically and repeatedly warned both by the DTSC and by CDGA of the consequences of their refusal to properly and appropriately maintain and repair the berms. As to CDGA these warnings took the form of prior Sixty Day Notices as well as filed complaints.

Despite these specific warnings, and thus with full knowledge of the effect of their failure to responsibly act, the Violators failed to properly maintain or repair the berms, even when cracks appeared in the berms and they were informed of such by their own contractors, the DTSC and later CDGA. As a result of their knowing and intentional failure to act the Violators allowed the berms at the Site to collapse, not once, but twice, between December, 2004 and May 2005. The collapse of the berms resulted in specific releases/discharges of toxic chemicals, including Designated Chemicals, from the Site into or onto the land both onsite and offsite where such chemicals pass or probably will pass into a source of drinking water, as well as into the surrounding streets and neighborhood where the Site is located from December, 2004 - May, 2005. There is now and continues to be an ongoing risk of further collapse of the berms as well as overflow and discharge from the pits as a result of the berm collapse or fracture, or by reason of rainfall overflowing the pits.

Second, the Violators knew that there were and are oil wells at the Site, some of which had been abandoned. The Violators, because of the nature of their primary business, knew that abandoned oil wells must be properly maintained or there would be a very strong likelihood of explosion. Despite knowing that the oil wells were at the Site, that they were old oil wells which did not have modern "caps", the Violators failed and refused to properly (or in fact in any way)

maintain those oil wells in a safe manner. As an obvious and inevitable result of the Violators failure to effectively maintain, repair or otherwise render safe those oil wells the Violators knowingly and intentionally created a substantial risk that one of the oil wells would fail and a discharge/release would occur. That is precisely what happened on March 17, 2004, when one of the oil wells exploded and released hundreds of gallons of toxic material over the homes, property and persons in the neighborhood around the Site causing hundreds of thousands of dollars of damage. Prior to the explosion the toxic chemicals had been effectively contained in the oil well, since there is no evidence of any prior release or discharge therefrom of which CDGA or the DTSC is aware. There is now and continues to be an ongoing risk of further explosive discharges from abandoned oil wells at the Site and such risk will continue until such time as the oil wells are properly capped or otherwise rendered safe.

Since the Violators, as the parties who illegally dumped the toxic chemicals and who are also currently legally obligated as remediators at the Site, are responsible for the current dangerous condition of the Site, they are under a current duty pursuant to Health & Safety Code §25249.5 *et seq* to ensure that the Site is operated in such a manner as to ensure (i) that there are no new discharges or releases of any Designated Chemicals at or from the Site and (ii) to inform the public that proximity to the Site will result in exposure to Designated Chemicals. The Violators have been and are fulfilling neither of those duties.

THE HEALTH RISK

A Baseline Health Risk Assessment ("BHRA"), which evaluated the potential health impacts associated with human exposure to chemicals released from the waste pits and lagoons at the Site, specifically found that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies. These potential risks were found to be associated with the volatilization and subsequent inhalation of volatile organic compounds and oral and dermal contact with contaminants in the soil. Each of the Violators knew of the BHRA and thus knew and knows that the estimated health risk for adults and children living in the immediate vicinity of the Site, onsite workers, and trespassers, exceeds levels considered acceptable by California regulatory agencies.

Despite this knowledge the Violators did not have in place any clear and reasonable warning and did not even consider posting a warning sign until **after** receipt of CDGA's initial Notices. The warning signs which were thereafter put in place were specifically put in place in response to CDGA's initial notices. This fact is made clear in the written minutes of a meeting between the Violators in which CDGA's former Notice is discussed and the decision is made to consider putting in place Proposition 65 warnings. Any warnings currently in place at the Site are therefore as a result of the work of CDGA and its counsel. However, even the warning signs which are now in place are still insufficient since they only warn persons at the Site not persons in the surrounding residential neighborhood, park, senior citizens center or school.

The Violators thus knew and know that the families who live in the residential neighborhood, the schoolchildren who attend Edison High School, the senior citizens who use the Senior Citizens Center, the workers at the Site, trespassers on the Site (at least one of whom actually lived on Site next to one of the toxic lagoons for some period of time), as well as assorted passersby, can and are exposed to the chemicals off-site when they breathe such chemical fumes after volatilization, or when they touch the soil contaminated by the discharges from the pits and lagoons which happen during heavy rains, or when the berms collapsed twice in the period from December, 2004 - May, 2005, or when an oil well on site explodes. The original Sixty Day Notice sent to the Violators expressly warned that the berms could collapse and the dangerous exposures likely to then occur. The Violators ignored that warning, as well as the warning contained in the first complaint filed by the Noticing Party. The Violators also ignored warnings to them from DTSC regarding the berms and the oil wells.

THE DESIGNATED CHEMICALS

Metals detected at the Site, greater than typical background concentrations, include arsenic, lead, chromium, cadmium, mercury, and thallium. Lead and lead compounds, chromium (hexavalent compounds), arsenic (inorganic arsenic compounds), and cadmium and cadmium compounds are Designated Chemicals known to the State of California to cause cancer. Arsenic (inorganic arsenic compounds), lead, cadmium, mercury and mercury compounds are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from many of these chemicals may occur primarily by direct contact with soils, ingestion, and dermal exposure.

Pesticides detected at the Site include lindane and chlordane. Lindane and lindane compounds and chlordane are Designated Chemicals known to the State of California to cause cancer. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Semi-volatile organic compounds ("SVOCS") detected at the Site include benzo(a)pyrene, naphthalene, benzidine, and polychlorinated biphenyl. Benzo(a)pyrene, naphthalene, benzidine (and its salts), and polychlorinated biphenyls are Designated Chemicals known to the State of California to cause cancer. Polychlorinated biphenyls is a Designated Chemical known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by direct contact with soils, ingestion and dermal exposure.

Volatile organic compounds ("VOCS") detected at the Site include benzene, toluene, styrene, chloroform, and dichloroethane. Benzene, styrene oxide, chloroform, and dichloroethane are Designated Chemicals known to the State of California to cause cancer. Benzene and toluene are Designated Chemicals known to the State of California to cause reproductive toxicity. Significant risks from these chemicals occur primarily by inhalation.

THE ROUTES OF EXPOSURE

The route of exposure for the chemicals noted herein is as follows: volatile waste components present in the lagoons and Pit F may volatilize from the surface and disperse in the atmosphere which may cause exposure to people both onsite and offsite via inhalation. Moreover, disturbance of the lagoons or pit will result in the release of vapors or hazardous particulates into the atmosphere where persons may inhale or ingest such substances. Moreover, though the Site is fenced, the Violators have admitted that trespassers are regularly onsite and there is therefore a potential for direct contact with

contaminated soils and accumulated contaminated runoff by persons either legally at the Site (such as investigators or site workers) or by trespassers. Further, the lagoons and Pits, which had been effectively contained by the berms, have, after the Violators knowingly and intentionally allowed those berms to collapse, overflowed during heavy rains causing overflow of toxic chemicals to run down the streets offsite. Rainwater runoff which has come into contact with contaminated soils on the Site of course inevitably leads to offsite contamination by direct contact with persons in the area. In addition, dozens of persons in the neighborhood have, during the course of 2006, complained to the Violators and DTSC about the strong chemical odors emanating from the Site and being breathed in by those persons, as well as about chemical runoff from the Site to the neighboring streets during rains. .

The Designated Chemicals that were illegally disposed of at the Site by the Violators have, because of the Violators knowing and intentional failure to act on the warnings given to it which inevitably allowed the berms to collapse and the oil well to explode, passed into and will continue to pass into the soil and groundwater beneath and adjacent to the Site. Moreover, as has been noted by the DTSC, persons in the area have been and will be exposed to groundwater contaminated by those hazardous substances, including Designated Chemicals, whenever groundwater is "pumped for use or if discharged into a surface water body". Further, there exists the potential for future passage of the waste materials from the Site to the wetlands through the unlined Huntington Beach flood control channel that currently passes the westerly edge of the Site and flows through the Talbert Marsh wetland.

Based on all of the facts known to the Noticing Party at this time, the Violators have violated Health & Safety Code § 25249.5 since they have, "in the course of doing business", "knowingly and intentionally released 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, notwithstanding any other provision or authorization of law except as provided in § 25249.9." They have done so by failing to act on specific warnings and knowledge they had during the period when they have control of the Site, they are responsible for remediating the Site, and when such action would have allowed the continued effective containment at the Site of the Designated Chemicals they illegally dumped at the Site. Upon filing of the Complaint relating to this violation, the Noticing Party will seek an injunction pursuant to Health & Safety Code § 25249.7 requiring that the Violators immediately take effective action to safely contain the Designated Chemicals at the Site so as to prevent further actual or potential releases, until such time as the clean up required by the Consent Order is completed, pursuant to Health & Safety Code § 25249.7. The Noticing Party will also seek civil penalties against the Violators for their past and ongoing violations of Health & Safety Code § 25249.5 as well as reimbursement of its legal fees and costs.

The Violators have also violated Health & Safety Code § 25249.6 since the have, "in the course of doing business", "knowingly and intentionally expose[ed] [persons] to a chemical known to the State of California to cause cancer or reproductive toxicity without first giving [a] clear and reasonable warning." Prior to the initial notices sent to the Violators by CDGA there were no warnings concerning Proposition 65 at the Site perimeter. Since the initial notices and specifically in response thereto the Violators have placed warning signs which reference Proposition 65 on the Site perimeter fence. However, these warnings are insufficient to provide a clear and reasonable warning to the local residents living in the area, the children and personnel (teachers, administrators, security and other personnel) at the high school or the users of the local park located next to the Site that physical proximity to the Site may expose them to Designated Chemicals. Upon filing of the Complaint relating to this violation the Noticing Party will seek an injunction requiring that the Violator immediately take effective action to inform all likely affected persons of the likely exposures to Designated Chemicals in a clear and

reasonable manner. The Noticing Party will also seek civil penalties against the Violator for its past and ongoing violations of Health & Safety Code Section 25249.6.

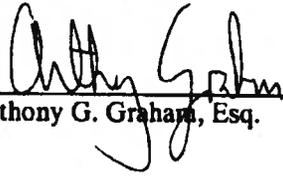
With this Notice the Noticing Party has also included a copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary."

If you have any questions or comments, please do not hesitate to contact the undersigned at your earliest convenience.

Dated: April 15, 2008

GRAHAM & MARTIN, LLP

By:



Anthony G. Graham, Esq.

cc. Attached Service List

CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing Consumer Defense Group Action, the "Noticing Party" as to the "Amended 60 Day Notice of Intent to Sue" (hereinafter, "the Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.

3. 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.

4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus "operates", the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the "release" of the chemicals set forth in the Notice and such "releases" have passed or threaten to pass into any source of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6.

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 April 15, 2008.


Anthony G. Graham

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 2030, Costa Mesa, California 92626.

I SERVED THE FOLLOWING:

- 1.) Amended Sixty Day Notice of Intent to Sue Under Health & Safety Code Sections 24249.5 and 25249.6;
- 2.) Certificate of Merit;
- 3.) Copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary" (*sent only to Violators*);
- 4.) Supporting Documents (*sent only to Office of Attorney General*)

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: April 15, 2008
Place of Mailing: Costa Mesa, California

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

Rex W. Tillerson
Chairman and CEO
Exxon Mobil Corporation
5959 Las Colinas Blvd.
Irving, TX 75039-2298

Andrew N. Liveris
President/CEO
The Dow Chemical Company
2030 Dow Center
Midland, MI 48674

John D. Hofmeister, President
Shell Oil Company
One Shell Plaza
Houston, TX 77002

John R. Fielder, President
Southern California Edison Company
2244 Walnut Grove Avenue
Rosemead, California

Peter Sutherland, Chairman
BP America Inc.
Atlantic Richfield Company
200 E Randolp Dr
Chicago, IL 60601

Peter Sutherland, Chairman
BP America Inc.
Atlantic Richfield Company
4101 Winfield Road
Warrenville, IL 60555

California Attorney General
Office of Proposition 65 Enforcement
1515 Clay Street
20th Floor, P.O. Box 70550
Oakland, CA 94612_0550

Orange County District Attorney
401 Civic Center Dr. W.
Santa Ana, CA 92701

Courtesy Copies to Counsel of Record:

John J. Allen, Esq.
Allen Matkins et al.
515 South Figueroa Street, 7th Floor
Los Angeles, CA 90071-3398

Richard Coffin
Barg Coffin Lewis & Trapp
One Market
Stuart Tower, Suite 2700
San Francisco, CA 94105-1475

Jeffrey M. Hamerling
DLA Piper Rudnick Gray Cary US LLP
153 Townsend Street, Ste. 800
San Francisco, CA 94107-1957

Michael Leslie, Esq.
Caldwell, Leslie, Newcombe & Pettitt
1000 Wilshire Blvd., Ste. 600
Los Angeles, CA 90017

Jeffrey Parker, Esq.
Sheppard Mullin
333 South Hope Street, 48th Floor
Los Angeles, CA 90071-1448

Laura Meyerson, Esq.
Souther California Edison
2244 Walnut Grove Avenue, Ste. 331
Rosemead, CA 91770

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

Dated: April 15, 2008



EXHIBIT

EXHIBIT D

EXHIBIT D

Proposition 65 Designated Chemicals¹

Arsenic and inorganic arsenic compounds
Benzene
Benzidine and its salts
Benzo(a)pyrene
Cadmium and cadmium compounds
Chlordane
Chloroform
Chromium and hexavalent compounds
Dichloroethane
Lead and lead compounds
Lindane and lindane compounds
Mercury and mercury compounds
Naphthalene
Polychlorinated biphenyl
Styrene oxide
Thallium
Toluene

LA\1929255.4

¹ As set forth in the Notices