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rel. the State Water Resources Control Board

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12
13 IN AND FOR THE COUNTY OF ALAMEDA
14
15

16 **PEOPLE OF THE STATE OF**
17 **CALIFORNIA *EX REL.* THE STATE**
18 **WATER RESOURCES CONTROL**
19 **BOARD**

20 Plaintiff,

21 v.

22 **TRAVELCENTERS OF AMERICA LLC;**
23 **TA OPERATING CORP.; TA**
24 **OPERATING LLC; HPT TA PROPERTIES**
25 **TRUST; HOSPITALITY PROPERTIES**
26 **TRUST; PETRO STOPPING CENTER**
27 **L.P.; PETRO TRAVEL PLAZA LLC;**
28 **EAST TRAVEL PLAZA LLC; PETRO**
TRAVEL CENTERS HOLDING LLC;
TEJON RANCH CO; TEJON
INDUSTRIAL CORPORATION; AND
DOES 1-50, INCLUSIVE

Defendants.

ENDORSED
FILED
ALAMEDA COUNTY

MAY 12 2010

CLERK OF THE SUPERIOR COURT
[Signature]
Deputy

Case No. *10* 10514799

**COMPLAINT FOR CIVIL PENALTIES,
PERMANENT INJUNCTION, AND
OTHER EQUITABLE RELIEF**

1 Plaintiff, People of the State of California *ex rel.* the State Water Resources Control Board, is
2 informed and believes, and based thereon, alleges as follows:

3 **PLAINTIFF**

4 1. Plaintiff, People of the State of California *ex rel.* State Water Resources Control
5 Board (“State Water Board”), bring this action by and through Edmond G. Brown Jr., Attorney
6 General of the State of California (“Attorney General”) on behalf of the State Water Board.

7 2. Pursuant to Water Code section 13000 *et seq.*, the Legislature established the State
8 Water Board to ensure comprehensive protection of California’s waters.

9 3. Under Chapter 6.7 of Division 20 of the Health and Safety Code (“Chapter 6.7”),
10 the State Water Board is required to adopt regulations implementing the laws governing the
11 construction, maintenance, testing, and operation of underground storage tank (“UST”) systems.

12 4. Under Government Code section 12511, the Attorney General has charge of all
13 legal matters in which the State is involved. The Attorney General also has the express power to
14 protect the environment and natural resources of the State of California pursuant to Government
15 Code section 12600 *et seq.*

16 5. Pursuant to Health and Safety Code section 25299 *et seq.*, the Attorney General
17 may bring an action for civil penalties and injunctive relief in the name of the People of the State
18 of California for violations of state law dealing with the underground storage of hazardous
19 substances, as set forth in Chapter 6.7.

20 6. Chapter 6.7 was promulgated to protect the environment and the public health and
21 safety by requiring that underground storage tanks be properly maintained, inspected, tested, and
22 upgraded.

23 7. The People bring this action without prejudice to any other action or claims which
24 they may have based on separate, independent, and unrelated violations of Chapters 6.7 by the
25 Defendants and/or on facts which are not alleged in this Complaint.

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DEFENDANTS

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2 8. Travelcenters of America LLC, TA Operating Corp., TA Operating LLC, HPT TA
3 Properties Trust, Hospitality Properties Trust, Petro Stopping Center L.P., Petro Travel Plaza
4 LLC, East Travel Plaza LLC, Petro Travel Centers Holding LLC, Tejon Ranch Co, and Tejon
5 Industrial Corporation (“Defendants”) are business entities which currently do or have done
6 business within the State of California during the period of time applicable to this lawsuit.
7 During the period of time at issue in this lawsuit, Defendants owned and/or operated underground
8 tank systems at six locations in Merced and Kern Counties (“the Service Centers”). These
9 facilities are located at 27769 Lagoon Drive, Buttonwillow, California, 5800 Wheeler Ridge
10 Road, Arvin, California, 5821 Dennis McCarthy Drive (This Service Center has the additional
11 street addresses: 5855 Dennis McCarthy Drive, 5818 Dennis McCarthy Drive, 5938 Dennis
12 McCarthy Drive, 6434 Laval Road, and 6460 Laval Road), Lebec, California, 435 Winton
13 Parkway, Livingston, California, 12310 South Highway 33, Santa Nella, California, and 28991
14 West Gonzaga Road, Los Banos, California.

15 9. Defendants are, or at all times relevant to the claims in this Complaint were,
16 legally responsible for compliance with the provisions of the Health and Safety Code, including
17 Chapters 6.7, at the Service Centers.

18 10. When reference is made in this Complaint to any act of the Defendants, such
19 allegations shall be deemed to mean that the officers, directors, agents, employees, or
20 representatives of said Defendants did, or authorized, such acts or failed and omitted to
21 adequately or properly supervise, control, or direct their employees, contractors, representatives,
22 or agents with respect to such acts and did so while acting in the scope of their employment or
23 agency.

24 11. The names and capacities, whether individual, corporate, or otherwise, of
25 Defendants named herein as Does 1 through 50, inclusive, are unknown at this time to the People,
26 who therefore sue said Defendants by such fictitious names. The People will amend this
27 Complaint to show their true names and capacities when the same have been ascertained.

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1 **ALTER-EGO, AGENTS, AIDERS, ABETTORS, AND CO-CONSPIRATORS**

2 12. At all times mentioned herein, a unity of interest and ownership existed among
3 Travelcenters of America LLC, TA Operating Corp., TA Operating LLC, HPT TA Properties
4 Trust, Hospitality Properties Trust, Petro Stopping Center L.P., Petro Travel Plaza LLC, East
5 Travel Plaza LLC, and Petro Travel Centers Holding LLC such that the separateness of these
6 Defendants from each other never existed.

7 13. Defendants at all relevant times, acted as the principal, agent, or representative of
8 each of the other Defendants, and in doing the acts alleged, each defendant was acting within the
9 course and scope of the agency relationship with each of the other Defendants.

10 14. Each defendant intended to, and did, encourage, facilitate, or assist in the
11 commission of the acts alleged and thereby aided and abetted the other Defendants in the
12 unlawful conduct. The unlawful acts alleged in this Complaint were those acts Defendants
13 intended to and did facilitate or were the natural and reasonable consequences of the acts
14 Defendants intended to and did facilitate.

15 15. Defendants have engaged in a conspiracy, common enterprise, and common
16 course of conduct, the purpose of which is and was to engage in the violations of law alleged in
17 this Complaint. The conspiracy, common enterprise, and common course of conduct continue to
18 the present.

19 **GENERAL ALLEGATIONS**

20 16. The State Water Board investigated Defendants' compliance with the statutes and
21 regulations governing the maintenance, inspection, testing, and operation of the underground
22 storage tank systems at the Service Centers. During the course of the investigation, the State
23 Water Board discovered numerous violations of the law.

24 17. The State Water Board's investigation revealed that Defendants have violated the
25 Health and Safety Code, including Chapter 6.7, at the Service Centers. Defendants' violations
26 include, but are not limited to, the following representative actions:

- 27 a. Failed to install and/or maintain automatic line leak detectors on underground
28 pressurized piping in violation of Health and Safety Code sections 25290.1(h),

1 25290.2(g), 25291(f), and 25292(e)(1) and California Code of Regulations, Title 23,
2 section 2636(f)(2).

3 b. Failed to annually test and certify UST monitoring equipment in violation of
4 California Code of Regulations, Title 23, 2638.

5 c. Failed to maintain evidence of financial responsibility for taking corrective action
6 and for compensating third parties in violation of Health and Safety Code section
7 25292.2(a) and California Code of Regulations, Title 23, section 2711(a)(11),

8 d. Failed to promptly remove liquid from under-dispenser containment systems
9 resulting in failure to detect releases at the earliest possible opportunity in violation of
10 Health and Safety Code section 25291(e) and California Code of Regulations, Title 23,
11 sections 2630(d), 2631(d)(4), 2632(d)(2), and 2641(a).

12 e. Failed to operate and maintain USTs to prevent spills by failing to remove liquid
13 and/or debris from spill containment structures, as required by Health and Safety Code
14 section 25292.1(a) and California Code of Regulations, Title 23, sections 2635(b)(1)(B)
15 and 2665.

16 f. Failed to maintain functional secondary containment systems in violation of
17 Health and Safety Code sections 25290.1(c)(2), 25290.2(c)(2), 25291(a)(2), and 25292
18 (e) and California Code of Regulations, Title 23, section 2662.

19 g. Failed to test secondary containment systems in violation of California Code of
20 Regulations, Title 23, section 2637.

21 h. Failed to maintain functional primary containment systems in violation of Health
22 and Safety Code sections 25290.1, 25290.2, and 25291.

23 i. Failed to perform enhanced leak detection testing in violation of Health and Safety
24 Code sections 25292.4 and 25292.5 and California Code of Regulations, Title 23,
25 sections 2640(e) and 2644.1(a).

26 j. Failed monitor piping and under-dispenser containment in violation of Health and
27 Safety Code sections 25290.1(d), 25290.2(d), 25291(b), and 25292(a) and California
28 Code of Regulations, Title 23, sections 2630(d), 2636(f)(1), and 2641(a).

- 1 k. Failed to maintain USTs in a manner to prevent releases due to spills during
2 product delivery in violation of Health and Safety Code section 252291(c) and (d) and
3 California Code of Regulations, Title 23, sections 2635(b)(1) and 2665.
- 4 l. Failed to have functional overfill prevention systems in violation of Health and
5 Safety Code sections 25290.1(f), 25290.2(e), 25291(c), 25292(d), and 25299(b)(5) and
6 California Code of Regulations, Title 23, sections 2635(b) and 2665.
- 7 m. Failed to notify local regulatory agencies of the qualified designated underground
8 storage tank operator in violation of California Code of Regulations, Title 23, section
9 2715(a).
- 10 n. Failed to ensure that a qualified designated underground storage tank operator
11 performed a visual inspection of every underground storage tank system every month in
12 violation of California Code of Regulations, Title 23, section 2715(c).
- 13 o. Failed to have operational audible/visual alarm systems connected for continuous
14 monitoring in violation of California Code of Regulations, Title 23, sections
15 2632(c)(2)(B) and 2636(f)(1).
- 16 p. Failed to maintain monitoring and maintenance records in violation of Health and
17 Safety Code section 25293 and California Code of Regulations, Title 23, section 2712(b).
- 18 q. Failed to maintain copies of the monthly inspection records in violation of
19 California Code of Regulations, Title 23, section 2715(e).
- 20 r. Failed to have approved monitoring plans in violation of California Code of
21 Regulations, Title 23, sections 2632(b), 2632(d), 2634(d), and 2641(h).
- 22 s. Failed to have unauthorized release response plans in violation of California Code
23 of Regulations, Title 23, sections 2632(d)(2), 2634(e), and 2641(h).
- 24 t. Failed to conduct annual pipeline integrity tests in violation of Health and Safety
25 Code sections 25290.2(b), 25291(f), and 25292(e) and California Code of Regulations,
26 Title 23, section 2636(f)(4).
- 27 u. Failed to timely test and/or maintain cathodic protection systems and/or failed to
28 provide or maintain testing records for cathodic protection system in violation of Health

1 and Safety Code sections 25292.1(b) and 25293 and California Code of Regulations,
2 Title 23, sections 2635(a)(2)(A) and 2662(c).

3 v. Failed to conduct employee training and/or maintain training records in violation
4 of California Code of Regulations, Title 23, section 2715(f).

5 w. Failed to timely report unauthorized releases in violation of Health and Safety
6 Code section 25295(a)(1) and California Code of Regulations, Title 23, sections 2650,
7 and 2652.

8 x. Failed to have owner/operator agreements in violation of Health and Safety Code
9 section 25284(c) and California Code of Regulations, Title 23, section 2620(b).

10 **FIRST CAUSE OF ACTION**

11 18. Plaintiff realleges and incorporates by reference Paragraphs 1 through 17,
12 inclusive, as if fully set forth here.

13 19. Defendants, as operators of the underground tank systems at the Service Centers,
14 are strictly liable for civil penalties as set forth in Health and Safety Code section 25299(a) for
15 each daily violation of the rules, regulations, standards, or requirements applicable to each
16 underground storage tank as set forth above which occurred within five years after discovery of
17 the facts constituting grounds for commencing the action on these claims.

18 20. Defendants, as operators of the underground tank systems, must be immediately
19 and permanently enjoined from further violations of Chapter 6.7.

20 **SECOND CAUSE OF ACTION**

21 21. Plaintiff realleges and incorporates by reference Paragraphs 1 through 17,
22 inclusive, as if fully set forth here.

23 22. Defendants, as owners of the underground tank systems at the Service Centers, are
24 strictly liable for civil penalties as set forth in Health and Safety Code section 25299(b) for each
25 daily violation of the rules, regulations, standards, or requirements applicable to each
26 underground storage tank as set forth above which occurred within five years after discovery of
27 the facts constituting grounds for commencing the action on these claims.

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1 23. Defendants, as owners of the underground tank systems, must be immediately and
2 permanently enjoined from further violations of Chapter 6.7.

3 **PRAYER**

4 WHEREFORE, the People of the State of California ex rel. State Water Resources Control Board
5 pray for judgment as follows:

6 1. Civil penalties according to proof against Defendants pursuant to Health and
7 Safety Code section 25299 at the statutory maximum of five thousand dollars (\$5,000) for each
8 underground storage tank system violation for each day of each violation;

9 2. A permanent injunction requiring Defendants to comply with the specific
10 requirements of Health and Safety Code, Division 20, Chapter 6.7 as alleged in the Complaint;


11 3. Grant the People of the State of California ex rel. State Water Resources Control
12 Board their cost of inspection, investigation, attorneys fees, enforcement, prosecution, and suit,
13 including but not limited to, such costs as are authorized for reimbursement pursuant to Code of
14 Civil Procedure section 1021.8; and

15 4. Grant such other and further relief as the Court deems just and proper.
16

17 Dated: May 6, 2010

18 Respectfully submitted,

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22 Supervising Deputy Attorney General
23 EDWARD OCHOA
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California ex rel. the State Water Resources
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