. 1	EDMUND G. BROWN JR. ATTORNEY GENERAL OF THE STATE OF CALIFORNIA	[Exempt from fees pursuant to Government Code section 6103]	
2	RICHARD J. MAGASIN Supervising Deputy Attorney General MARILYN H. LEVIN, State Bar No. 92800	CONFORMED COPY OF ORIGINAL FILED Los Angeles Superior Court	
4	Deputy Attorney General 300 South Spring Street, 11th Floor-North Los Angeles, California 90013	JAN 21 2010	
5 6	Telephone: (213) 897-2612 Fax: (213) 897-2802 E-mail: Marilyn.Levin@doj.ca.gov	John An Clarke, Executive Officer/Clerk By A.E. LaFLEUR-CLAYTON	
7 8	ATTORNEYS FOR PLAINTIFF, PEOPLE OF THE STATE OF CALIFORNIA EX REL. STATE WATER RESOURCES CONTROL BOARD		
9	IN THE SUPERIOR COURT OF THE S	TATE OF CALIFORNIA	
10	FOR THE COUNTY OF LOS ANGELES		
11		BC430178	
12	PEOPLE OF THE STATE OF CALIFORNIA EX	Case No.	
13	REL. STATE WATER RESOURCES CONTROL BOARD	COMPLAINT FOR CIVIL	
14	Plaintiff,	PENALTIES AND INJUNCTIVE RELIEF	
15	<b>v.</b>		
16	CITY OF LONG BEACH, A MUNICIPAL CORPORATION AND DOES 1-20 INCLUSIVE.	(Health & Saf. Code, Div. 20, Chapter 6.7.)	
17			
18	Defendants.		
19			
20	PLAINTIFF, PEOPLE OF THE STATE OF CALIFORNIA, ex rel. STATE WATER		
21	RESOURCES CONTROL BOARD, is informed and believes and based on such information an		
22	belief alleges as follows:		
23	PLAINTIFF		
24	1. Plaintiff, People of the State of California ex rel. State Water Resources Control		
25	Board ("State Water Board" or "Plaintiff") brings its action by and through Edmund G. Brown		
26	Jr., Attorney General of the State of California ("Attorney General") on behalf of the State Water		
27	Board.		
28	Board.		

- 2. Pursuant to Health and Safety Code section 25299.02, the Attorney General may bring a civil action for violations of state law dealing with the underground storage of hazardous substances, as set forth in Chapter 6.7 of Division 20 of the California Health and Safety Code (hereinafter "Chapter 6.7").
- 3. Pursuant to California Health and Safety Code section 25299.01, the Attorney General may apply to a superior court for an injunction or an order directing compliance against any person who has engaged in, is engaged in, or is about to engage in any acts or practices which violate Chapter 6.7.
- 4. Plaintiff brings this action without prejudice to any other action or claims which it may have based on separate, independent and unrelated violations of Chapter 6.7 by the City of Long Beach and/or on facts which are not alleged in this Complaint.

#### **DEFENDANT**

- 5. Defendant City of Long Beach (hereinafter "Long Beach") is a California municipal corporation located in the County of Los Angeles. Long Beach owns over 40 facilities (hereinafter "Covered Facilities") where underground storage tanks (hereinafter "USTs") owned and/or operated by Long Beach are located. (A list of the Covered Facilities is attached hereto as Exhibit A.) The USTs are used to store petroleum-based fuels, including unleaded gasoline and diesel fuel. The City's municipal corporate address is 333 W. Ocean Blvd., Long Beach, California 90802.
- 6. Long Beach is or, at all times relevant to the claims in this complaint, was legally responsible for compliance with the provisions of the California Health and Safety Code, including Chapter 6.7, at its Covered Facilities.
- 7. In this Complaint, when reference is made to an act of Long Beach, such reference shall mean that the City Council, City Manager, City Departments, City employees, or contractors, representatives, and/or agents of Long Beach did such act, or that Long Beach authorized such act, or that Long Beach negligently failed and omitted to adequately or properly supervise, control or direct its employees, contractors, representatives, and/or agents with respect to such act.

8. Plaintiff is ignorant of the names of those defendants identified as Does 1 through 20, who are therefore sued under fictitious names. When the true names of these defendants have been ascertained, Plaintiff will amend the complaint to substitute the true names of each Doe defendant in place of the fictitious names.

#### VENUE

9. Venue is proper in this county pursuant to California Health and Safety Code section 25299.03 in that the violations of Chapter 6.7 alleged in the Complaint occurred in the County of Los Angeles.

# **GENERAL ALLEGATIONS**

- and regulations governing the operation and maintenance of UST systems at Defendant's Covered Facilities in the City of Long Beach, County of Los Angeles, California on or before January 2008. Nothing in this Complaint relates to or pertains to any claims or causes of action arising out of unknown past UST violations, future UST violations, or releases of hazardous substances from UST systems caused or contributed to by Long Beach that may have occurred or may occur at Defendant's Covered Facilities, and such causes or claims, if any, are reserved.
- 11. Plaintiff is informed and believes and thereupon alleges that Long Beach has engaged in the following acts at one or more of the Covered Facilities. Long Beach's violations include, but are not limited to, the following representative actions:
- a. Failed to perform secondary containment testing as required by California Code of Regulations, title 23, section 2637.
- b. Failed to meet secondary containment design and/or upgrade construction requirements (evidenced by failure to pass secondary containment test and/or failure to repair secondary containment structures following testing failure), as required by Health and Safety Code sections 25290.1(c)(2), 25290.2(c)(2), 25291(a)(2) and 25292(e) and California Code of Regulations, title 23, section 2662.
- c. Failed to perform annual spill containment structure testing as required by Health and Safety Code section 25284.2.

- d. Failed to equip and/or maintain USTs in a manner to prevent releases due to spills during product delivery (evidenced by failure to pass spill containment structure test and/or to include spill bucket equipment meeting requirements), as required by Heath and Safety Code sections 25291(c) and 25292(d), and California Code of Regulations, title 23, sections 2635(b) and 2665.
- e. Failed to operate and maintain USTs to prevent spills by failing to remove liquid and debris from spill containment structures, as required by Health and Safety Code section 25292.1(a) and California Code of Regulations, title 23, sections 2635(b)(1)(B) and 2665.
- f. Failed to design, construct, and install under-dispenser containment or an under-dispenser containment and control system as required under California Code of Regulations, title 23, sections 2636(g) and 2666(e).
- g. Failed to remove liquid from under-dispenser containment resulting in failure to detect releases at the earliest possible opportunity, in violation of Health and Safety Code section 25291(e), and California Code of Regulations, title 23, sections 2630(d), 2631(d)(4), 2632(d)(2) and 2641(a).
- h. Failed to monitor piping and under-dispenser containment in compliance with the provisions of Health and Safety Code sections 25290.1(d), 25290.2(d), 25291(b) and 25292(a), and California Code of Regulations, title 23, sections 2630(d), 2636(f)(1) and 2641(a).
- i. Failed to annually test and certify UST monitoring equipment, as required under California Code of Regulations, title 23, section 2638.
- j. Failed to install and/or maintain automatic line leak detectors on underground pressurized piping in accordance with the requirements of Health and Safety Code sections 25290.1(h), 25290.2(g), 25291(f) and 25292(e)(1), and California Code of Regulations, title 23, section 2636(f)(2).
- k. Failed to maintain functional overfill prevention systems, as required by Health and Safety Code sections 25290.1(f), 25290.2(e), 25291(c) and 25292(d), and California Code of Regulations, title 23, sections 2635(b) and 2665.

25.

- 1. Failed to perform monthly visual inspections of UST systems and record monthly inspection reports, as required under California Code of Regulations, title 23, sections 2715(c) and 2715(e).
- m. Failed to report unauthorized releases to the designated local agency as required by Health and Safety Code section 25295 and California Code of Regulations, title 23, sections 2650 and 2652.
- 12. Defendant's noncompliance threatened and continues to threaten public health and safety, and the environment.

## FIRST CAUSE OF ACTION

- 13. Plaintiff realleges and incorporates by reference as though fully set forth herein all allegations contained in Paragraphs 1 through 12, inclusive.
- 14. Long Beach, as operator of the underground tank systems at the Covered Facilities, is liable for civil penalties as set forth in California Health and Safety Code section 25299(a) for each daily violation of the rules, regulations, standards or requirements of Chapter 6.7, or adopted pursuant to Chapter 6.7, as to each underground storage tank at the Covered Facilities and as set forth above which occurred within five years prior to January 1, 2008. The statutes of limitation for the claims and causes of action that are the subject of this action were tolled by agreement of the parties during the period from January 1, 2008 to January 30, 2010.
- 15. Long Beach, as the operator of the underground tank systems, must immediately and permanently be enjoined from further violations of Chapter 6.7.

### SECOND CAUSE OF ACTION

- 16. Plaintiff realleges and incorporates by reference as though fully set forth herein all allegations contained in Paragraphs 1 through 11, inclusive.
- 17. Long Beach, as the owner of the underground tank systems at the Covered Facilities, is liable for civil penalties as set forth in California Health and Safety Code section 25299(b) for each daily violation of the rules, regulations, standards or requirements of Chapter 6.7, or adopted pursuant to Chapter 6.7, as to each underground storage tank at the Covered Facilities and as set forth above which occurred within five years prior to January 1, 2008. The statutes of limitation

for the claims and causes of action that are the subject of this action were tolled by agreement of the parties during the period from January 1, 2008 to January 30, 2010.

18. Long Beach, as the owner of underground tank systems, must immediately and permanently be enjoined from further violations of Chapter 6.7.

# WHEREFORE, PLAINTIFF PRAYS FOR THE FOLLOWING RELIEF:

- 1. A preliminary and permanent injunction requiring Defendant to comply with the specific requirements of California Health and Safety Code, Division 20, Chapter 6.7, as alleged in this Complaint;
- 2. Civil penalties according to proof against Long Beach pursuant to California Health and Safety Code section 25299(a) at the statutory maximum of five thousand dollars (\$5,000) for each underground storage tank system violation for each day of violation.
- 3. Civil penalties according to proof against Long Beach pursuant to California Health and Safety Code section 25299(b) at the statutory maximum of five thousand dollars (\$5,000) for each underground storage tank system violation for each day of violation.
- 4. Plaintiff's costs of inspection, investigation, attorneys fees, enforcement, prosecution, and suit herein pursuant to Code of Civil Procedure section 1021.8, and all other authority; and
  - 5. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

Dated: January 4, 2010

EDMUND G. BROWN JR.

Attorney General of the State of California

MARILYN H. LEVIN
Deputy Attorney Gener

Deputy Attorney General

Man, h. H. Veven

By:

MARILYN H. LEVIN

Attorneys for Plaintiff

People of the State of California ex rel. State

Water Resources Control Board

# EXHIBIT A to COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF-Covered Facilities

	UST FACILITY ADDRESS	TYPE OF UST	NAME OF FACILITY (TYPE OF FACILITY)
1	2475 Adriatic Ave.	Fuel Dispensing	Fire Station (#13)
2	2249 Argonne Ave.	Fuel Dispensing	Fire Station (Training Center)
3	400 West Broadway	Fuel Dispensing	Police Department (Downtown)
4	3501 Lakewood Blvd.	Fuel Dispensing	Police Department (Heliport)
5	160 Market St.	Fuel Dispensing	Fire Station (#11)
6	4320 Olympic Plaza	Fuel Dispensing	Maintenance Yard (#54)
7	1417 Peterson Ave.	Fuel Dispensing	Fire Station (#10)
8	1725 San Francisco Ave.	Fuel Dispensing	Maintenance Yard (Public Works)
9	1835 Santa Fe Ave.	Fuel Dispensing	Police Department (West #39)
10	700 East Shoreline Dr.	Fuel Dispensing	Shoreline Marina Fueling Dock
11	2400 East Spring St.	Fuel Dispensing	Long Beach Gas Department
		1	Maintenance Yard (Parks and Recreation -
12	2760 Studebaker Rd.	Fuel Dispensing	El Dorado Park)
13	1800 East Wardlow Rd.	Fuel Dispensing	Maintenance Yard (Water Department)
14	2890 East Wardlow Rd.	Fuel Dispensing	Fire Station (#16)
15	6204 East 2nd St.	Fuel Dispensing	Park and Recreation (Alimitos Bay)
			Maintenance Yard (Parks and Recreation -
16	4600 Pasadena Ave.	Fuel Dispensing	Scherer Park)
17	3150 St. Louis Ave.	Fuel Dispensing	Maintenance Yard (Long Beach Airport)
18	4891 North Atlantic Ave.	Fuel Dispensing	Police Department (North)
19	5200 Eliot St.	Fuel Dispensing	Fire Station (#14)
	(	Fuel Dispensing &	
		Emergency	
20	2950 Redondo Ave.	Generator	Water Treatment Plant
		Emergency	
21	333 West Ocean Blvd.	Generator	City Hall
		Emergency	
22	4105 East Donald Douglas Dr.	Generator	Long Beach Airport
,		Emergency	
23	2990 Redondo Ave.	Generator	Police 911 Call Center
		Fuel Dispensing &	
		Emergency	F: 5 / ///O)
24	1475 Peterson Ave.	Generator	Fire Department (HQ)
25_	6101 Appian Way	Waste Oil	Alimitos Bay Marina
26	160 East Shoreline Dr	Waste Oil	Shoreline Marina
27	250 East Shoreline Dr.	Waste Oil	Shoreline Marina
28	300 East Shoreline Dr.	Waste Oil	Shoreline Marina
29	350 East Shoreline Dr.	Waste Oil	Shoreline Marina
30	400 East Shoreline Dr.	Waste Oil	Shoreline Marina
31	500 East Shoreline Dr.	Waste Oil	Shoreline Marina
32	207 Marina Dr.	Waste Oil	Alimitos Bay Marina
33	221 Marina Dr.	Waste Oil	Alimitos Bay Marina
34	235 East Marina Dr.	Waste Oil	Alimitos Bay Marina
35	237 East Marina Dr.	Waste Oil	Alimitos Bay Marina
36	6201 Marina Dr.	Waste Oil	Alimitos Bay Marina
37	6460 East Marina Dr.	Waste Oil	Alimitos Bay Marina
38	6530 East Marina Dr.	Waste Oil	Alimitos Bay Marina
39	6610 East Marina Dr.	Waste Oil	Alimitos Bay Marina
40	6264 Pacific Coast Hwy.	Waste Oil	Alimitos Bay Marina