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8 *California ex rel. State Water Resources Control*
Board

[Exempt from fees pursuant to
Government Code section 6103]

ENDORSED
FILED
Superior Court of California
County of San Francisco

JUL 06 2015

CLERK OF THE COURT
BY: ROSSALY DE LA VEGA
Deputy Clerk

CGC-15-546708

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN FRANCISCO

13 **THE PEOPLE OF THE STATE OF CALIFORNIA**
14 **EX REL. STATE WATER RESOURCES CONTROL**
BOARD

15 **PLAINTIFF,**

16 **v.**

17 **CITY AND COUNTY OF SAN FRANCISCO, A**
18 **MUNICIPAL CORPORATION**

19 **DEFENDANT.**

Case No.

**COMPLAINT FOR CIVIL
PENALTIES AND INJUNCTIVE
RELIEF**

(Health & Saf. Code, Div. 20,
Chapter 6.7.)

22 PLAINTIFF, THE PEOPLE OF THE STATE OF CALIFORNIA, ex rel. STATE WATER
23 RESOURCES CONTROL BOARD, is informed and believes and based on such information and
24 belief alleges as follows:

25 **PLAINTIFF**

26 1. Plaintiff, THE PEOPLE OF THE STATE OF CALIFORNIA ex rel. State Water
27 Resources Control Board (hereinafter "State Water Board" or "Plaintiff") brings its action by and
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1 through Kamala D. Harris, Attorney General of the State of California (hereinafter “Attorney
2 General”) on behalf of the State Water Board.

3 2. Pursuant to Health and Safety Code section 25299.02, the Attorney General may
4 bring a civil action for violations of state law dealing with the underground storage of hazardous
5 substances, as set forth in Chapter 6.7 of Division 20 of the California Health and Safety Code
6 (hereinafter “Chapter 6.7”).

7 3. Pursuant to California Health and Safety Code section 25299.01, the Attorney
8 General may apply to a superior court for an injunction or an order directing compliance against
9 any person who has engaged in, is engaged in, or is about to engage in any acts or practices which
10 violate Chapter 6.7.

11 4. Plaintiff brings this action without prejudice to any other action or claims which it
12 may have based on separate, independent and unrelated violations of Chapter 6.7 by the San
13 Francisco Municipal Transportation Agency and/or on facts which are not alleged in this
14 Complaint.

15 **DEFENDANT**

16 5. Defendant, the City and County of San Francisco, acting by and through its
17 Municipal Transportation Agency (hereinafter “SFMTA” or “Defendant”) is a California
18 municipal corporation located in the City and County of San Francisco. SFMTA owns and
19 operates five (5) facilities where underground storage tanks (hereinafter “USTs”) are located
20 (hereinafter “Covered Facilities”). A list of the Covered Facilities is attached hereto as Exhibit B.
21 The USTs are used to store petroleum-based fuels, including unleaded gasoline and diesel fuel.
22 SFMTA’s headquarters is located at 1 South Van Ness Avenue, San Francisco, California.

23 6. SFMTA is or, at all times relevant to the claims in this Complaint, was legally
24 responsible for compliance with the provisions of the California Health and Safety Code,
25 including Chapter 6.7, at its Covered Facilities.

26 7. In this Complaint, when reference is made to an act of SFMTA, such reference shall
27 mean that the SFMTA employees, or contractors, representatives, and/or agents of SFMTA did
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1 such act, or that SFMTA authorized such act, or that SFMTA negligently failed and omitted to
2 adequately or properly supervise, control or direct its employees, contractors, representatives,
3 and/or agents with respect to such act.
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5 **VENUE**

6 8. Venue is proper in this county pursuant to California Health and Safety Code section
7 25299.03 in that the violations of Chapter 6.7 alleged in the Complaint occurred in the County of
8 San Francisco.

9 **GENERAL ALLEGATIONS**

10 9. The allegations in this Complaint relate solely to Defendant's compliance with laws
11 and regulations governing the operation and maintenance of UST systems at Defendant's
12 Covered Facilities in the City and County of San Francisco, California. Nothing in this
13 Complaint relates to or pertains to any claims or causes of action arising out of unknown past
14 UST violations, future UST violations, or releases of hazardous substances from UST systems
15 caused or contributed to by SFMTA that may have occurred or may occur at Defendant's
16 Covered Facilities, and such causes or claims, if any, are reserved.

17 10. Plaintiff is informed and believes and thereupon alleges that SFMTA has engaged in
18 the following acts at one or more of the Covered Facilities. SFMTA's violations include, but are
19 not limited to, the following representative actions:

- 20 a. Failure to ensure that monthly UST inspections are performed by the designated
21 UST operator and the results of the monthly inspection are recorded in a monthly
22 inspection report, as required by Title 23, California Code of Regulations section
23 2715(c).
- 24 b. Failure to conduct periodic testing of secondary containment UST systems in
25 accordance with the requirements of Title 23, California Code of Regulations
26 section 2637.
- 27 c. Failure to equip USTs with a spill container that will collect any hazardous
28 substances spilled during product delivery operations to prevent the hazardous

1 substance from entering the subsurface environment, as required by Health and
2 Safety Code section 25284.2 and Title 23, California Code of Regulations section
3 2635(b)(1).

- 4 d. Failure to conduct periodic spill containment structure testing in accordance with
5 the requirements of the Health and Safety Code section 25284.2.
- 6 e. Failure to maintain and certify every twelve months all UST system monitoring
7 equipment, in accordance with Title 23, California Code of Regulations section
8 2638.
- 9 f. Failure to equip underground pressurized piping that conveys a hazardous
10 substance with functional automatic line leak detector in accordance with Health
11 and Safety Code sections 25290.1(h), 25290.2(g), 25291(f) and 25292(e), and Title
12 23, California Code of Regulations sections 2636(f)(2) and 2643(c)(1).
- 13 g. Failure to perform testing of automatic line leak detectors in accordance with
14 Health and Safety Code section 25293 and Title 23, California Code of
15 Regulations sections 2636(f)(2), 2638(a), and/or 2643(c).
- 16 h. Failure to have a UST monitoring system that is capable of detecting an
17 unauthorized release from any portion of the UST system at the earliest possible
18 opportunity, as required by Health and Safety Code sections 25290.1(d),
19 25290.2(d), 25291(b) and 25292(a) and Title 23, California Code of Regulations
20 sections 2630(d) and 2641(a). Failure to properly install and place all leak-
21 detecting sensors in a true vertical position and at the lowest point so that each is
22 capable of detecting a leak at the earliest possible opportunity as required by
23 California Code of Regulations, Title 23, including but not limited to section
24 2630(d).
- 25 i. Failure to maintain monitoring and maintenance records in accordance with the
26 requirements of Health and Safety Code section 25293 and Title 23, California
27 Code of Regulations section 2712(b).
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- j. Failure to maintain and update Monitoring and Release Response plans in accordance with the requirements of Health and Safety Code section 25286(a) and Title 23, California Code of Regulations sections 2632(b) and (d), 2641(g) and (h), and 2712(i).
 - k. Failure to equip USTs with an overfill prevention system, as required by Health and Safety Code sections 25290.1(f), 25290.2(e), 25291(c), 25292(d), and 25292.1(a) and the overfill prevention system shall not allow for manual override as required by Title 23, California Code of Regulations section 2635(b)(2).
 - l. Failure to either install secondary containment on underground storage tank piping as required by Health and Safety Code section 25291(a) and (c) and by Title 23, California Code of Regulations sections 2636(a)), for the waste oil and waste coolant underground storage tanks at the Scott and Flynn Covered Facilities or equip those underground storage tanks with an overfill prevention system as required by Title 23, California Code of Regulations section 2635(b)(2)(B), 2635(b)(2)(C), 2636(a)(1), and 2665.
 - m. Making a false statement, representation, or certification in any application, record, report, or other document submitted or required to be maintained pursuant Chapter 6.7 of the Health and Safety Code.
 - n. Failure to ensure that UST primary and secondary containment is “product tight” as required by Health and Safety Code sections 25290.1(c), 25290.2(c) and 25291(a).

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11. Defendant’s noncompliance threatened and continues to threaten public health and safety, and the environment.

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FIRST CAUSE OF ACTION

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(Civil penalties for UST operators – Health and Safety Code § 25299(a))

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12. Plaintiff alleges and incorporates by reference as though fully set forth herein all allegations contained in Paragraphs 1 through 11, inclusive.

1 13. SFMTA, as operator of the underground tank systems at the Covered Facilities, is
2 strictly liable for civil penalties as set forth in California Health and Safety Code section 25299(a)
3 for each daily violation of the rules, regulations, standards or requirements of Chapter 6.7, or
4 adopted pursuant to Chapter 6.7, as to each underground storage tank at the Covered Facilities
5 and as set forth above which occurred within five years after discovery of the facts constituting
6 grounds for commencing the action on these claims.

7 14. SFMTA, as the operator of the underground tank systems, must immediately and
8 permanently be enjoined from further violations of Chapter 6.7.

9 **SECOND CAUSE OF ACTION**

10 **(Civil penalties for UST owners – Health and Safety Code § 25299(b))**

11 16. Plaintiff re-alleges and incorporates by reference as though fully set forth herein all
12 allegations contained in Paragraphs 1 through 11, inclusive.

13 17. SFMTA, as the owner of the underground tank systems at the Covered Facilities, is
14 strictly liable for civil penalties as set forth in California Health and Safety Code section 25299(b)
15 for each daily violation of the rules, regulations, standards or requirements of Chapter 6.7, or
16 adopted pursuant to Chapter 6.7, as to each underground storage tank at the Covered Facilities
17 and as set forth above which occurred within five years after discovery of the facts constituting
18 grounds for commencing the action on these claims.

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

21 **PRAYER**

22 WHEREFORE, the People of the State of California ex rel. State Water Resources Control
23 Board pray for the following relief:

24 1. A permanent injunction requiring Defendant to comply with the specific
25 requirements of California Health and Safety Code, Division 20, Chapter 6.7, as alleged in this
26 Complaint;

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

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

7 4. Plaintiff's costs of inspection, investigation, attorney's fees, enforcement,
8 prosecution, and suit herein pursuant to Code of Civil Procedure section 1021.8, and all other
9 authority; and

10 5. Such other and further relief as the Court deems just and proper.
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12 Dated: July 3, 2015

Respectfully Submitted,

KAMALA D. HARRIS
Attorney General of California



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Deputy Attorneys General
*Attorneys for Plaintiff People of the State of
California ex rel. State Water Resources
Control Board*