

1 EDMUND G. BROWN JR.
Attorney General of California
2 MARY E. HACKENBRACHT
Senior Assistant Attorney General
3 ROBERT W. BYRNE, SBN 213155
Supervising Deputy Attorney General
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-5860
Fax: (415) 703-5480
6 E-mail: Robert.Byrne@doj.ca.gov
*Attorneys for Plaintiff, People of the State of
California, ex rel., State Water Resources Control
7 Board*

[Exempt from fees pursuant to
Government Code Section 6103]

FILED
MAR 26 2010

SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT

8 PAUL GALLEGOS
District Attorney, County of Humboldt
9 MATTHEW MACLEAR, SBN 209228
Deputy District Attorney
10 921 Eleventh Street, Third Floor
Sacramento, CA 95814
11 Telephone: (916) 443-2017
Fax: (916) 443-2886
12 E-mail: mmaclear@cdaa.org
*Attorneys for Plaintiff, People of the State of
13 California*

14 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF HUMBOLDT**

17 **CV100221**

18 **PEOPLE OF THE STATE OF**
19 **CALIFORNIA, ex rel STATE WATER**
20 **RESOURCES CONTROL BOARD; and**
21 **PEOPLE OF THE STATE OF**
22 **CALIFORNIA,**

Plaintiffs,

v.

24 **BIG OIL AND TIRE CO., a California**
25 **Corporation, RICHARD W. POMREHN,**
26 **Individually, and DOES 1 through 10**

Defendants.

Case No. _____

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

(Health & Saf. Code § 25280 *et. seq.*;
Cal. Code Regs., tit. 23, § 2630 *et. seq.*)

1 have based on separate, independent and unrelated violations of Chapter 6.7 of the Health and
2 Safety Code by the Defendants and/or facts which are not alleged in this Complaint.

3 **DEFENDANTS**

4 6. Defendant Big Oil and Tire Co., is a California corporation which does business in the
5 State of California at the UST facilities identified in **Exhibit "A"** which are incorporated herein
6 by reference (hereinafter collectively referred to as the "Covered Facilities"). The Defendant
7 owns and/or operates, or previously has owned and/or operated, underground storage tank
8 systems at the Covered Facilities that are used to store motor vehicle fuel for retail sale.

9 7. Defendant Richard W. Pomrehn is an individual who resides in Humboldt County, and at
10 all relevant times, is and was President of Big Oil and Tire Company and, in this capacity, has
11 responsibility for the operation and maintenance of Big Oil and Tire's facilities, including the
12 underground storage tank systems, at the Covered Facilities identified in **Exhibit "A."**

13 8. The true names and capacities, whether corporate, individual, associate or otherwise of
14 Defendants Does 1 through 10 are unknown to Plaintiffs, who therefore sue said Defendants by
15 such fictitious names, and Plaintiffs will ask leave of Court to amend this complaint to show their
16 true names and capacities when the same have been ascertained. Plaintiffs are informed and
17 believe that each of the Defendants named herein as a Doe is responsible in some manner for the
18 events, occurrences, and circumstances which form the basis of this lawsuit, and is thereby liable
19 for the costs and other relief sought herein.

20 9. Plaintiffs are informed and believe that at all times relevant to this Complaint, each
21 Defendant was the agent, servant, or employee of their Co-Defendants and in doing or failing to
22 do the things alleged herein was acting within the scope of such agency or employment and with
23 the permission and consent of their Co-Defendants. In doing and not doing the things herein
24 alleged, said Defendants were acting within the course and scope of such agency and employment
25 and with the permission and consent and at the direction of their Co-Defendants.

26 10. The use of the terms "Defendant" or "Defendants" in this Complaint is intended to include
27 Defendant Big Oil & Tire Company, Richard W. Pomrehn, and all Defendants designated as
28

1 Does 1 through 10, unless the context of the sentence or particular cause of action indicates
2 otherwise.

3 11. The Defendants, at all times relevant to the claims in this Complaint, were legally
4 responsible for compliance with the provisions of the Health and Safety Code including Chapter
5 6.7 of Division 20 of its Covered Facilities.

6 **VENUE AND JURISDICTION**

7 12. The Defendants at all times mentioned herein have transacted business within the County
8 of Humboldt, State of California. The violations of law hereinafter described have been
9 committed within Humboldt County. Venue is proper in this county pursuant to Health and
10 Safety Code section 25299.03 in that certain of the violations alleged in the complaint occurred in
11 the County of Humboldt. This court has jurisdiction pursuant to Article 6, section 10 of the
12 California Constitution.

13 **GENERAL ALLEGATIONS**

14 13. Plaintiffs are informed and believe and thereupon allege that Defendants have engaged in
15 the following actions at one or more of the Covered Facilities:

- 16 a. Failed to timely maintain or test cathodic protection systems and/or failed to
17 provide or maintain cathodic protection system records as required by Health and
18 Safety Code sections 25292.1(b) and 25293, and by California Code of
19 Regulations, title 23, sections 2635(a)(2)(A) and 2662(c).
- 20 b. Failed to timely perform a ten-year lining inspection as required by California
21 Code of Regulations, title 23, section 2663(h).
- 22 c. Failed to timely perform secondary containment testing pursuant to Health and
23 Safety Code section 25284.1(a)(4)(B)(ii) and as required by California Code of
24 Regulations, title 23, section 2637.
- 25 d. Failed to timely perform secondary containment repair following secondary
26 containment test failure as required by Health and Safety Code sections
27 25290.1(c)(2), 25290.2(c)(2), and 25291(a)(2).

1 e. Failed to maintain a properly functional overfill prevention system as required by
2 Health and Safety Code sections 25290.1(f), 25290.2(e), 25291(c) and 25292(d)
3 and as required by California Code of Regulations, title 23, sections 2635(b) and
4 2665.

5 14. Defendants' noncompliance threatened and continues to threaten public health and safety,
6 and the environment.

7 15. The allegations in this Complaint relate solely to Defendants' compliance with laws and
8 regulations governing the operation and maintenance of underground storage tanks ("USTs") at
9 Defendants' facilities in Humboldt County, California on or before the filing of this Complaint.
10 Nothing in this complaint relates to or pertains to any claims or causes of action arising out of
11 past or future releases, spills, leaks, discharges from or as a cause of operation of USTs or UST
12 systems by Defendants that may have occurred or may occur at Defendants' Covered Facilities
13 listed in Exhibit "A," and such claims or causes of action, if any, are reserved by the People of
14 the State of California.

15 **TOLLING OF STATUTES OF LIMITATIONS**

16 16. Plaintiffs and Defendants entered into an agreement to toll any applicable statute of
17 limitations on May 14, 2007, and thereafter on December 31, 2007 and December 31, 2008, the
18 parties agreed to extend the tolling agreement. As a result of these agreements, the period of time
19 from May 14, 2007 through the date of filing of the Complaint herein, inclusive, (the "Tolling
20 Period"), will not be included in computing the time limited by any statute of limitations under
21 the causes of action alleged against Defendants that may arise out of claims covered by the tolling
22 agreement. Those claims include the claims that are brought in this action against Defendants.

23 **FIRST CAUSE OF ACTION**

24 **Failure to Maintain or Test Cathodic Protection Systems**

25 17. Plaintiffs reallege paragraphs one through sixteen inclusive.

26 18. Within the last five years from the filing of the complaint and continuing through the
27 present, subject to any relevant tolling agreements referenced above and after reasonable inquiry
28 and due diligence in attempting to discover additional violations, Defendants failed to timely

1 maintain or test cathodic protection systems and/or failed to timely provide or maintain cathodic
2 protection system records, at one or more of the Covered Facilities (**Exhibit "A"**) in violation of
3 Health and Safety Code sections 25292.1(b) and 25293, and California Code of Regulations, title
4 23, sections 2662(c) and 2635(a)(2)(A).

5 19. To the extent that Defendants are the operators and/or owners of the underground tank
6 systems and USTs at the Covered Facilities, the Defendants are liable for civil penalties as set
7 forth in Health and Safety Code sections 25299(a)(3),(a)(6), and 25299(b)(5).

8 20. Defendants must immediately and permanently be enjoined from further violations of
9 Chapter 6.7 of Division 20 of the Health and Safety Code.

10 **SECOND CAUSE OF ACTION**
11 **Failure to Perform Ten-year Lining Inspections**

12 21. Plaintiffs reallege Paragraphs one through twenty inclusive.

13 22. Within the last five years from the filing of the complaint and continuing through the
14 present, subject to any relevant tolling agreements referenced above and after reasonable inquiry
15 and due diligence in attempting to discover additional violations, Defendants failed to timely
16 perform a ten-year lining inspection at one or more of the Covered Facilities (**Exhibit "A"**), in
17 violation of California Code of Regulations, title 23, section 2663(h).

18 23. To the extent that Defendants are the operator and/or owner of the underground tank
19 systems and USTs at the Covered Facilities, Defendants are liable for civil penalties as set forth in
20 Health and Safety Code sections 25299(a)(6), and 25299(b)(5).

21 24. Defendants must immediately and permanently be enjoined from further violations of
22 Chapter 6.7 of Division 20 of the Health and Safety Code.

23 **THIRD CAUSE OF ACTION**
24 **Failure to Perform Secondary Containment Testing**

25 25. Plaintiffs reallege Paragraphs one through twenty-four inclusive.

26 26. Within the last five years from the filing of the complaint and continuing through the
27 present, subject to any relevant tolling agreements referenced above and after reasonable inquiry
28 and due diligence in attempting to discover additional violations, Defendants failed to timely

1 perform secondary containment testing, at one or more of the Covered Facilities (**Exhibit "A"**),
2 in violation of Health and Safety Code section 25284.1(a)(4)(B)(i); and California Code of
3 Regulations section 2637.

4 27. To the extent that Defendants are the operators and/or owners of the underground tank
5 systems and USTs at the Covered Facilities, Defendants are liable for civil penalties as set forth in
6 Health and Safety Code sections 25299(a)(6), and 25299(b)(5).

7 28. Defendants must immediately and permanently be enjoined from further violation of
8 Chapter 6.7 of Division 20 of the Health and Safety Code.

9 **FOURTH CAUSE OF ACTION**

10 **Failure to Perform Secondary Containment Repairs**

11 29. Plaintiffs reallege Paragraphs one through twenty eight inclusive.

12 30. Within the last five years from the filing of the complaint and continuing through the
13 present, subject to any relevant tolling agreements referenced above and after reasonable inquiry
14 and due diligence in attempting to discover additional violations, Defendants failed to timely
15 perform secondary containment repair following secondary containment test failure, at one or
16 more of the Covered Facilities (**Exhibit "A"**), in violation of Health and Safety Code sections
17 25290.1(c)(2), 25290.2(c)(2), and 25291(a)(2).

18 31. To the extent that Defendants are the operators and/or owners of the underground tank
19 systems and USTs at the Covered Facilities, Defendants are liable for civil penalties as set forth in
20 Health and Safety Code sections 25299(a)(6), and 25299(b)(5).

21 32. Defendants must immediately and permanently be enjoined from further violations of
22 Chapter 6.7 of Division 20 of the Health and Safety Code.

23 **FIFTH CAUSE OF ACTION**

24 **Failure to Maintain Properly Functioning Overfill Prevention Systems**

25 33. Plaintiffs reallege Paragraphs one through thirty-two inclusive.

26 34. Within the last five years from the filing of the complaint and continuing through the
27 present, subject to any relevant tolling agreements referenced above and after reasonable inquiry
28 and due diligence in attempting to discover additional violations, Defendants failed to maintain

1 properly functional overfill prevention systems, at one or more of the Covered Facilities (**Exhibit**
2 **"A"**), in violation of Health and Safety Code sections 25290.1(f), 25290.2(e), 25291(c),
3 25292(d); and California Code of Regulations, title 23, section 2635.

4 35. To the extent that Defendants are the operators and/or owners of the underground tank
5 systems and USTs at the Covered Facilities, Defendants are liable for civil penalties as set forth in
6 Health and Safety Code sections 25299(a)(6), and 25299(b)(5).

7 36. Defendants must immediately and permanently be enjoined from engaging in activity that
8 violates Chapter 6.7 of Division 20 of the Health and Safety Code.

9 **WHEREFORE, PLAINTIFFS PRAY FOR THE FOLLOWING RELIEF:**

10 1. A preliminary and permanent injunction requiring Defendants to comply with the
11 specific requirements of Health and Safety Code, Division 20, Chapter 6.7, as alleged in the
12 Complaint.

13 2. Civil penalties according to proof against Defendants pursuant to Health and
14 Safety Code section 25299;

15 3. Grant the Plaintiffs' costs of inspection, investigation, attorneys fees, enforcement,
16 prosecution, and suit, herein pursuant to Code of Civil Procedure section 1021.8, and all other
17 authority; and,

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

19 ///

20 ///

21 ///

22 ///

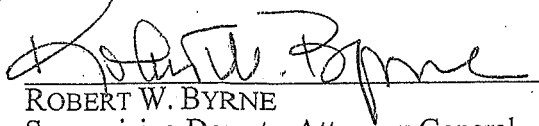
23 ///

24 ///

25 ///

1 Dated: 3/19/10

2 EDMUND G. BROWN JR.
3 Attorney General of California

4 

5 ROBERT W. BYRNE
6 Supervising Deputy Attorney General
7 *Attorneys for Plaintiffs*

8 PAUL GALLEGOS
9 District Attorney, County of Humboldt

10 

11 MATTHEW MACLEAR
12 Deputy District Attorney
13 *Attorneys for Plaintiffs*

EXHIBIT A – BIG OIL AND TIRE FACILITIES

Big Oil and Tire Facilities	
Location	Address
Arcata 76	2205 Alliance Rd., Arcata, 95521
Uniontown 76	724 G St., Arcata, 95521
Blue Lake 76	295 Blue Lake Blvd., Blue Lake, 95525
Broadway 76	1411 Broadway St., Eureka, 95501
Broadway Gas & Deli 76	4050 Broadway St., Eureka 95503
Plaza 76 Circle K	2480 6th St., Eureka 95501
Riverwalk 76	1791 Riverwalk Dr., Fortuna 95540
Rohnerville 76	3663 Rohnerville Rd., Fotuna 95540
Bigfoot Gas	2801 Central Ave., McKinleyville 95519
Central 76	1980 Central Ave., McKinleyville 95519
Freeway 76	1021 Murray Rd., McKinleyville 95519
McKinleyville 76	2698 Central Ave., McKinleyville 95519