

20106

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PHILIP M. JELLEY, INC.  
GERALD C. SMITH  
LAWRENCE R. SHEPP  
RICHARD T. WHITE  
MICHAEL P. WALSH  
J. BRITTAIN HABEGGER  
VIRGINIA PALMER  
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STEPHEN M. JUDSON  
STEPHEN M. WILLIAMS  
JONATHAN W. REDDING  
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KRISTIN A. PACE  
MICHAEL M. K. SEBREE  
ANTONIA L. MORE  
SARAH ROBERTSON McCUAIG  
PHILIP E. DRYSDALE  
KRISTEN THALL PETERS  
JAY M. GOLDMAN  
CARLO C. MORMORUNNI  
MICHAEL S. WARD  
JEAN C. FUNG  
FATIMA M. BRUNSON

FITZGERALD, ABBOTT & BEARDSLEY LLP

ATTORNEYS AT LAW

1221 BROADWAY, 21ST FLOOR  
OAKLAND, CALIFORNIA 94612-1837

TELEPHONE: (510) 451-3300

PLEASE REPLY TO:

P. O. Box 12867  
OAKLAND, CALIFORNIA 94604-2867

R. M. FITZGERALD 1858-1934  
CARL H. ABBOTT 1867-1933  
CHARLES A. BEARDSLEY 1882-1963

FACSIMILE: (510) 451-1527

March 14, 1997

BY REGISTERED MAIL AND CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

TO: THE FOLLOWING ALLEGED VIOLATOR AND  
ATTACHED ADDRESS LIST ON PAGE 9

Texaco Refining and Marketing, Inc.  
P. O. Box 4696  
Houston, Texas 77210

Texaco Refining and Marketing, Inc.  
10 Universal City Plaza  
Universal City, CA 91608

Re: Notice of Discharge, Notice of Intent to File  
Suit Pursuant To Solid Waste Disposal Act §  
7002(a)(1) and Federal Water Pollution Control  
Act § 505(a)(1), Notice Pursuant to the Oil  
Pollution Act, 33 U.S.C. § 2701, and Request  
for Removal of Texaco Property and Restoration  
of Real Property

City of Oakland v. Keep on Trucking, et al.

To whom it may concern:

Our firm represents plaintiff City of Oakland (hereafter "Port of Oakland") in the above matter which is pending in the United States District Court for the Northern District of California, Case No. C-95-03721-CW. In connection with the lawsuit, counterclaims have been filed against the Port of Oakland by the currently named defendants. These counterclaims concern and include the underground storage tanks and contamination related to certain

Texaco Refining and Marketing, Inc. (hereafter "Texaco") tanks installed and owned by Texaco. Demand on Texaco is hereby made to reimburse the Port for its past costs and to assume liability for its future costs relative to the underground storage tanks. If Texaco fails to do so, the Port will join it in the pending litigation.

The demand for removal of equipment and restoration of the Property is also given pursuant to a certain equipment sales agreement and lease dated July 15, 1958, between Tidewater Oil Company and Vic Adelson Drayage, as approved by Port Resolution No. 11496, dated August 18, 1958, attached hereto as Exhibit "A."

This letter also constitutes notice by the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners ("Port"), of (1) a violation by Texaco, successor in interest to Tidewater Oil Company (hereafter collectively referred to as "Texaco") of an effluent standard or limitation pursuant to the Federal Water Pollution Act, 33 U.S.C. § 1311 et seq.; (2) intent by the Port to initiate suit against Texaco for violations of section 7002(a)(1) of the Solid Waste Disposal Act ("RCRA") § 505(a)(1) of the Federal Water Pollution Control Act ("CWA"); (3) the obligation of Texaco to compensate the Port for removal costs and damages resulting from an oil pollution incident; and (4) the Port's request to remove Texaco equipment from the property and to restore the premises to the condition in which it existed prior to the installation of Texaco equipment.

This notice to file suit under RCRA § 7002(a)(1) is being given pursuant to 40 C.F.R § 254.2 and 254.3, which set forth the requirements for notice prior to filing a RCRA § 7002(a)(1) suit.

This notice to file suit under CWA § 505(a)(1) is being given pursuant to 40 C.F.R § 135.2 and 135.3, which set forth the requirements for notice prior to filing a CWA § 505(a)(1) suit.

This notice of the obligation of Texaco to compensate the Port for removal costs and damages resulting from an oil pollution incident is being tendered pursuant to the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq., 40 C.F.R. Part 136.

**I. NOTICE OF INTENT TO FILE SUIT PURSUANT TO SOLID WASTE DISPOSAL  
ACT § 7002(A)(1)**

**A. Sufficient Information To Permit The Recipient To  
Identify The Specific Permit, Standard, Regulation,  
Condition, Requirement, Or Order Which Has Allegedly Been  
Violated**

On October 21, 1992, Petty Officer Joseph Ramos, U.S. Coast Guard ("USCG"), notified Jon Amdur of the Port of a significant spill of diesel into Clinton Basin, San Francisco Bay. Attached as Exhibit "B" and incorporated herein is a map showing the location of the Clinton Basin and adjacent Ninth Avenue Terminal, hereinafter referred to as "the Property."

On October 27, 1992, Jon Amdur observed a significant amount of diesel fuel in Clinton Basin. Similar observations were made on November 2, 1992, and January 4, 1995.

During the course of investigations made to characterize the extent of diesel and other contamination at the Property, the Port discovered that Texaco installed 1 - 2000 gallon gasoline storage tank, 1 - 5000 gallon gasoline storage tank, as well as the pumps, compressor and dispensers thereto, under a certain equipment sales agreement and lease dated July 15, 1958, between Tidewater Oil Company and Vic Adelson Drayage, upon the Property. At least one of these tanks still exists at the Property. Moreover, based on evidence of releases adjacent and in the vicinity of the tanks installed by Texaco, it appears that subsequent users of the underground storage tanks appear to also have used these tanks for diesel and/or waste oil storage.

Port of Oakland is further informed and believes and thereupon alleges that, as a result of such installation, ownership and/or operation of tanks, Texaco released contaminants, including, but not limited to, petroleum hydrocarbons, onto, and adjacent to, the Property. Said hazardous substances, including, but not limited to, petroleum products, continue to exist at the Property.

**B. The Activity Alleged To Constitute A Violation**

Reference is made to paragraph I.A. herein which is hereby incorporated by this reference in its entirety.

**C. The Person Or Persons Responsible For The Alleged Violation**

Texaco

**D. The Date Or Dates Of The Violation**

In, or before, 1958 and continuing through to the present.

**E. The Full Name, Address And Telephone Number Of The Person Giving Notice**

Port of Oakland  
Attn. Michele Heffes, Esq.  
530 Water Street, 4th Floor  
Oakland, California 94607  
Telephone: (510) 272-1348

**F. The Full Name, Address And Telephone Number Of The Legal Counsel Giving Notice Representing The Person Giving Notice**

Fitzgerald, Abbott & Beardsley, LLP  
Attn. Kristen Thall Peters, Esq.  
1221 Broadway, 21st Floor  
Oakland, California 94612  
Telephone: (510) 451-3300

**II. NOTICE OF INTENT TO FILE SUIT PURSUANT TO FEDERAL WATER POLLUTION CONTROL ACT § 505(A)(1)**

**A. Sufficient Information To Permit The Recipient To Identify The Specific Standard, Limitation Or Order Which Has Allegedly Been Violated**

On October 21, 1992, Petty Officer Joseph Ramos, U.S. Coast Guard ("USCG"), notified Jon Amdur of the Port of a significant

spill of diesel into Clinton Basin, San Francisco Bay. Attached as Exhibit "B" and incorporated herein is a map showing the location of the Clinton Basin and the adjacent Ninth Avenue Terminal, hereinafter referred to as "the Property."

On October 27, 1992, Jon Amdur observed a significant amount of diesel fuel in Clinton Basin. Similar observations were made on November 2, 1992, and January 4, 1995.

During the course of investigations made to characterize the extent of diesel and other contamination at the Property, the Port discovered that Texaco installed 1 - 2000 gallon gasoline storage tank, 1 - 5000 gallon gasoline storage tank, as well as the pumps, compressor and dispensers thereto, under a certain equipment sales agreement and lease dated July 15, 1958, between Tidewater Oil Company and Vic Adelson Drayage, upon the Property. At least one of these tanks still exist on the Property. Moreover, based on evidence of releases adjacent and in the vicinity of the tanks installed by Texaco, it appears that subsequent users of the underground storage tanks appear to also have used these tanks for diesel and/or waste oil storage.

Port of Oakland is further informed and believes and thereupon alleges that, as a result of such ownership and/or operation of tanks, Texaco released contaminants, including, but not limited to, petroleum hydrocarbons, onto, and adjacent to, the Property. Said hazardous substances, including, but not limited to, petroleum products, continue to exist at the Property.

The Port is informed and believes and thereupon alleges that this existence of contaminants, including, but not limited to petroleum products, and their potential release into San Francisco Bay as alleged to be caused by Texaco, constitutes a violation by Texaco of an effluent standard or limitation including, without limitation, one or more of the following: an unlawful act under 33 U.S.C. § 1311; an effluent limitation under 33 U.S.C. § 1311; and a prohibition, effluent standard or pretreatment standard under 33 U.S.C. § 1317.

**B. The Activity Alleged To Constitute A Violation**

Reference is made to paragraph II.A. herein which is hereby incorporated by this reference in its entirety.

**C. The Person Or Persons Responsible For The Alleged Violation**

Texaco

**D. The Location Of The Alleged Violation**

271 & 303 8th Avenue  
Oakland, California

**E. The Date Or Dates Of The Violation**

In, or about, 1958, and continuing through to the present.

**F. The Full Name, Address And Telephone Number Of The Person Giving Notice**

Port of Oakland  
Attn. Michele Heffes, Esq.  
530 Water Street, 4th Floor  
Oakland, California 94607  
Telephone: (510) 272-1348

**G. The Full Name, Address And Telephone Number Of The Legal Counsel Giving Notice Representing The Person Giving Notice**

Fitzgerald, Abbott & Beardsley, LLP  
Attn. Kristen Thall Peters, Esq.  
1221 Broadway, 21st Floor  
Oakland, California 94612  
Telephone: (510) 451-3300

**III. NOTICE OF TENDER OF CLAIM TO TEXACO FOR REMOVAL COSTS AND DAMAGES RESULTING FROM AN OIL POLLUTION INCIDENT**

Attached to this notice as Exhibit "C" is a letter dated October 21, 1992, notifying the Port of an oil pollution incident

in violation of the Federal Water Pollution Control Act, 33 U.S.C. § 1321 involving the Port on October 21, 1992, at Oakland Estuary, California ("Incident"). Investigation by the Port and the USCG has revealed that the Incident was caused by discharges of petroleum hydrocarbons from the Property.

Pursuant to the Oil Pollution Act of 1990, 33 USC §2701, Texaco, and others, are responsible for removal costs and damages as specified in 33 USC §2701 et seq. The Port has incurred costs of over \$1,500,000.00 to date in investigating and removing the source of the contamination to prevent further violations of the Oil Pollution Act and the Federal Water Pollution Control Act and other costs related to spills from the incident in the shoreline areas adjacent to the Texaco facility, and continues to incur costs in this regard.

The Port hereby tenders a claim to Texaco for its share of reimbursement of such past costs, and requests that Texaco promptly notify the Port, not later than 30 days after the date of this letter, whether it will accept tender of this claim and reimburse the Port for incurred costs attributable to the location and removal of the tanks and removal of contaminated soil adjoining the tanks, as well as preparation and completion of a Corrective Action Plan to clean up releases associated with usage and/or spillage from said tanks. The future costs, which have not yet been allocated to responsible parties, will likely exceed \$30,000,000.00.

**IV. REQUEST FOR REMOVAL OF TEXACO EQUIPMENT AND RESTORATION OF THE PROPERTY TO THE CONDITION IN WHICH IT EXISTED PRIOR TO INSTALLATION**

Texaco is the successor in interest to Tidewater Oil Company who installed tanks at the Ninth Avenue Terminal at the Port of Oakland in or about 1958. Pursuant to the express terms and conditions of Port Resolution No. 11496, dated August 18, 1958, (Exhibit "A"), Texaco, if requested to do so by the Port, is obligated to "remove such property placed by it upon said premises and the premises shall be restored...to the condition in which they [sic] existed prior to the installation of such equipment."

Please be advised that a review of various public records and site historical research indicates that contamination exists at the premises caused by the existence and use of the tanks installed and

March 14, 1997

owned by Texaco's predecessor-in-interest at the site. Moreover, additional testing is ongoing at this time in order to better ascertain the scope and breadth of such contamination. We will share with you the results of such testing upon our receipt of the results. We are prepared to share the records of testing for your review and photocopying upon your request.

The purpose of this letter is to place you on notice that the Port of Oakland demands removal of Texaco property and equipment, and further requests full restoration of the premises pursuant to the Resolution Authorizing Agreement with Tidewater Oil Company.

Please be advised that we are required by court order to amend our current complaint on or before March 24, 1997. A stipulation signed by all parties is currently pending before the judge which would, among other extensions, grant an additional 45 days to the Port and the defendants in this case to file the above referenced amended claims. Accordingly, unless you have informed us that you accept, without reservation, these demands for removal, restoration, and reimbursement of costs, the Port of Oakland will have no alternative but to join Texaco as a party to the amended pleading.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

FITZGERALD, ABBOTT & BEARDSLEY LLP

By

  
Kristen Thall Peters

KTP:mga

cc: Michele Heffes, Esq.  
Craig Fox, Esq.



**ADDRESS LIST**

Ms. Carol Browner  
Administrator  
United States Environmental  
Protection Agency  
Washington, D.C. 20460

Ms. Felicia Marcus  
Regional Administrator  
United States Environmental  
Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105

Mr. James Strock  
Chief Administrative  
Officer of Solid Waste  
California Environmental  
Protection Agency  
555 Capitol Mall, Suite 235  
Sacramento, CA 95814

Barney Chan  
Alameda County Health Care  
Services Agency  
80 Swan Way, Room 200  
Oakland, CA 94621

Walt Pettit  
State Water Resources  
Control Board  
901 "P" Street  
Sacramento, CA 95814

Loretta K. Barsamian  
Executive Director  
Regional Water Quality  
Control Board  
San Francisco Region  
2101 Webster, Suite 500

Prentice-Hall Corp. System  
14 Centre Street  
Concord, NH 03301

August 20, 1958

Tidewater Oil Company  
2395 Webster Street  
Alameda, California

Attention: Mr. Dean Hamilton

Re: Tidewater Oil Company - Vic  
Adelson Drayage Co. Contract

Gentlemen:

Transmitted herewith is certified copy of Resolution No. 11496 adopted by the Board of Port Commissioners on August 18, 1958, consenting to the installation by your company of certain equipment upon the premises of the Port of Oakland in the Ninth Avenue Terminal Area to be occupied by Vic Adelson Drayage Co. under a rental agreement with the Port of Oakland. This consent is granted, subject to certain express terms and conditions set forth in the resolution to which your attention is invited. We have been advised that these conditions are acceptable to you.

Very truly yours,

J. Kerwin Rooney  
Port Attorney

JKR:emw  
Enclosure

OAK 043109

EXHIBIT

A

BOARD OF PORT COMMISSIONERS  
CITY OF OAKLAND

RESOLUTION No. 11496

RESOLUTION AUTHORIZING  
AGREEMENT WITH TIDEWATER  
OIL COMPANY.

RESOLVED that this Board does hereby consent to the installation by TIDEWATER OIL COMPANY of 1 - 2,000 gallon UL gasoline storage tank, 1 - 5,000 gallon UL gasoline storage tank, 2 - reconditioned electric gasoline pumps, 1 - used air compressor, 1 - Aro lube dispenser and 1 - Aro gear lube dispenser under an Equipment Lease and under an Agreement for Conditional Sale of Personal Property between TIDEWATER OIL COMPANY and VIC ABELSON DRAYAGE CO. upon the premises of the Port, located adjacent to Building B-209 in the Ninth Avenue Terminal Area to be occupied by VIC ABELSON DRAYAGE CO. under a license and concession agreement commencing September 1, 1958, subject, however, to the following express terms and conditions:

1. That TIDEWATER OIL COMPANY, shall, if requested to do so by the Port, remove such property placed by it upon said premises and the premises shall be restored by TIDEWATER OIL COMPANY to the condition in which they existed prior to the installation of such equipment;

2. That TIDEWATER OIL COMPANY shall promptly notify the Executive Director of the Port in the event that VIC ABELSON DRAYAGE CO. shall default in the performance of any obligation on its part under said Equipment Lease and said Agreement for Conditional Sale of Personal Property; and

3. That VIC ABELSON DRAYAGE CO. shall use said facilities only for the servicing of its own equipment and shall not sell gasoline or any other petroleum products to third persons.

At meeting held 8/18/58

Passed by the following vote:

Ayes:

Noes:

Absent:

U.S. Department  
of Transportation  
**United States  
Coast Guard**



Commanding Officer  
U. S. Coast Guard  
Marine Safety Office  
San Francisco Bay

Building 14  
Coast Guard Island  
Alameda, CA 94501-5101  
510-437-3073

NOTICE OF FEDERAL INTEREST FOR  
AN OIL POLLUTION INCIDENT

16465 UCN: 16465  
21 OCT 92  
(Date Issued)

FORTY LAKLAND  
SEA BREEZE MARINA  
AKLAKLAND, CA 94146

Gentlemen:

On or about 21 OCT 92, an oil pollution incident occurred or threatens to occur at SEA BREEZE MARINA. You may be financially responsible for that incident. Under federal statutes, the United States Government may take appropriate action to minimize or mitigate damage to the public health or welfare that is threatened or that may be caused by this incident.


Under the Oil Pollution Act of 1990, the responsible party is liable for, among other things, removal costs and damages resulting from this incident. The failure or refusal to provide all reasonable cooperation and assistance requested by the Federal On-Scene Coordinator (FOSC) will eliminate any defense, or entitlement to limited liability, which otherwise might be available under the Act.

You are advised of the following, which may result from your failure to properly carry out the removal of the discharge as ordered by the Federal On-Scene Coordinator, or to comply with any administrative orders necessary to protect the public health and welfare. For such failure, owners, operators or persons in charge of the vessel or facility from which the oil is discharged are subject under the Federal Water Pollution Control Act (FWPCA), as amended, to a civil penalty of up to \$25,000 per day of violation or up to 3 times the costs incurred by the Oil Spill Liability Trust Fund. Should you require further information concerning this matter please contact MR. R. G. VANCE at the above address and telephone number.

As long as the FOSC determines that you are taking adequate actions in this matter, federal removal action will usually be limited to monitoring the progress of your actions, providing guidance as necessary. Under the FWPCA, as amended, your response actions may be taken into account in determining the amount of any penalty assessed as a result of the discharge.

Sincerely,

  
On-Scene Coordinator's  
Representative

  
Received and Acknowledged  
(For the Port of Oakland)  
Benjamin Z. Bianchi  
Witness(es)

1:30 pm 10/21/92  
Time and Date  
1:30 pm 10/21/92  
Time and Date

EXHIBIT B