

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE METHYL TERTIARY BUTYL ETHER
PRODUCTS LIABILITY LITIGATION

Master File No. 1:00-1898
MDL 1358 (SAS)

This Document Relates To:

The Honorable Shira A. Scheindlin

City of Fresno v. Chevron U.S.A. Inc., et al.
Case No. 04 Civ. 04973 (SAS)

DECLARATION OF JEREMIAH J. ANDERSON IN SUPPORT OF DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT BASED ON THE STATUTE OF
LIMITATIONS OR, ALTERNATIVELY, FOR LACK OF INJURY

Declaration of Jeremiah J. Anderson

I, Jeremiah J. Anderson, hereby declare:

1. I am a member of the bar of the State of Texas and a partner in the law firm of King & Spalding, LLP, counsel of record for Defendants Chevron U.S.A. Inc. and Union Oil Company of California in this litigation. I make this Declaration in support of Defendants' Motion for Summary Judgment Based on the Statute of Limitations or, Alternatively, for Lack of Injury. During the course of this litigation, I have actively participated in pretrial matters, including discovery, document review, and motion practice. This Declaration is based on my personal knowledge and, if called as a witness, I could testify competently thereto.

2. I am counsel of record for Chevron U.S.A. Inc., Chevron Corporation (f/k/a Chevron Texaco Corporation), Union Oil Company of California, and Unocal Corporation in the *Orange County Water District v. Unocal Corp.*, et al., in the United States District Court for the Southern District of New York, 04-Civ-4968 ("*OCWD Litigation*").

3. In the *OCWD Litigation*, the Orange County Water District ("*OCWD*") seeks investigation costs as future damages for MTBE impact at all but three of the thirty-four focus sites (*i.e.*, costs to determine if remediation is even needed). *OCWD* designated Anthony Brown and Robert Stollar as its remediation and damages testifying experts, and they produced reports and have been deposed. *OCWD* designated Dr. Stephen Wheatcraft as its modeling expert, and he too produced a report and was deposed.

4. In this litigation, the City of Fresno ("*City*") seeks investigation costs as future damages for MTBE impact at former release sites, not wellhead treatment costs. The City designated David Norman as its remediation and damages testifying expert. The City did not designate a modeling expert.

5. All records identified above or below with the prefixes FCDEH-FRESNO, RWQCB-FRESNO, and FRESNO-MTBE, were produced by the Fresno County Department of Environmental Health, the Regional Water Quality Control Board (“Regional Board” or “RWQCB”), or the City, respectively.

6. Both the Fresno County Department of Environmental Health and the Regional Board produced many of the documents pursuant to requests under the California Public Records Act. It appears that the City sought records from these entities only through California Public Records Act requests, as the City did not serve Defendants with a notice that it had issued subpoenas to them.

7. I have reviewed a compilation of MTBE testing results from the City’s drinking water wells (Exhibit 15). The City has not had a detection of MTBE in its drinking water wells since February 2011. Its historical detections have been at trace levels, the vast majority below 0.5 ppb. It has been more than three years since MTBE was detected in any of the City’s supply wells at or above 0.5 ppb. Over the last ten years, the single highest detection of MTBE in any of the City’s wells was 1.2 ppb on or around October 23, 2008.

8. Attached hereto as Exhibit 1 are true and correct copies of excerpts of the following documents that were produced in this litigation, relating to or referring to site investigation and monitoring at Chevron #9-4374 (1160 Fresno Street) and Gilbert’s Exxon (4142 East Church):

- a. Letter from Steven J. Brussee et al., Geraghty & Miller, Inc., to Russell W. Walls, RWQCB (Sept. 3, 1996) (RWQCB-FRESNO-042544–42578) (Chevron 9-4374);
- b. Letter from Deanna L. Harding & Penny L. Silzer, Gettler-Ryan, Inc., to Robert Cochran, Chevron USA Prods. Co. (Aug. 6, 1996) (FCDEH-FRESNO-041724–

41763) (Chevron 9-4374);

- c. Letter from RWQCB, to R. J. Cochran, Chevron Prods. Co. (Oct. 12, 1999) (FCDEH-FRESNO-044290-44295) (Chevron 9-4374);
- d. RM Assocs., Quarterly Ground Water Monitoring Report, 4142 East Church Street (June 13, 1997) (FCDEH-FRESNO-054837-54854); and
- e. Grisanti & Assocs., Inc., Soil & Groundwater Contamination Investigation and Corrective Action Plan, Gilbert's Exxon (RWQCB-FRESNO-043861-43967).

9. Attached hereto as Exhibit 2 are true and correct copies of excerpts of the following documents that were produced in this litigation, relating to or referring to site investigation and monitoring at Chevron #9-9093 (3996 N. Parkway Drive) and Tosco #39118 (1605 N. Cedar Avenue):

- a. Pacific Envtl. Group, Inc., Installation of Groundwater Monitoring Wells and Soil Boring (Jan. 28, 1997) (RWQCB-FRESNO-018394-18444) (Chevron #9-9093);
- b. Deanna L. Harding & Stephen J. Carter, Gettler-Ryan, Inc., First Quarter Groundwater Monitoring & Sampling Report (Feb. 17, 1997) (RWQCB-FRESNO-018342-18357) (Chevron #9-9093);
- c. Letter from John M. Noonan, Senior Eng'r, RWQCB, to Robert Cochran, Chevron Prods. Co. (June 19, 1997) (RWQCB-FRESNO-043452-43454) (Chevron #9-9093);
- d. Gettler-Ryan, Inc., Work Plan for a Subsurface Investigation at Former Tosco (Unocal) Service Station No. 3711 (June 26, 2000) (FRESNO-MTBE267382-267400) (Tosco #39118);

- e. Letter from David A. Sholes, Assoc. Eng'g Geologist, RWQCB, to Edward Ralston, Tosco Marketing Co. (July 3, 2000) (FRESNO-MTBE267379-267381) (Tosco #39118); and
- f. Letter from Dane A. Mathis, Assoc. Eng'g Geologist, RWQCB, to Edward C. Ralston, Tosco Marketing Co. (Sept. 12, 2000) (RWQCB-FRESNO-011098-11100) (Tosco #39118).

10. Attached hereto as Exhibit 3 are true and correct copies of excerpts of the following documents that were produced in this litigation, relating to or referring to site investigation and monitoring at 7-Eleven #13917 (3645 E. Olive Ave.), Tosco #30587 (1610 N. Palm Ave.), Valley Gas (2139 South Elm), and Beacon-Arco #615 (1625 Chestnut Ave.):

- a. Memorandum from Ray Bruun, Assoc. Eng'r, RWQCB, to John Noonan, Senior Eng'r, RWQCB (Aug. 5, 1998) (RWQCB-FRESNO-021554-21557) (7-Eleven #13917);
- b. Letter from J. Whittler & J. Auchterlonie, Fluor Daniel GTI, Inc., to Ray Bruun, RWQCB (June 27, 1997) (RWQCB-FRESNO-021558) (7-Eleven #13917);
- c. Pacific Envtl. Group, Inc., Soil Gas Survey Results, Unocal Service Station 3922 (Oct. 29, 1997) (FCDEH-FRESNO-029840-29847) (Tosco #30587);
- d. Glenn L. Matteucci, Asst. Project Manager, Envtl. Resolutions, Inc., Underground Storage Tank and Associated Piping and Dispenser Removal at Tosco 76 Service Station 3922 (Oct. 13, 1998) (FCDEH-FRESNO-030032-114) (Tosco #30587);
- e. ASR Eng'g, Inc., Soil Sampling and Chemical Analyses Report, Gasoline Piping Leak, Valley Gas (Nov. 29, 1999) (RWQCB-FRESNO-001258-1264);

- f. Letter from John D. Whiting, Eng'g Geologist, RWQCB, to M. Shahid, Petro Group II (Feb. 27, 2008) (RWQCB-FRESNO-001318–1320) (Valley Gas); and
 - g. El Dorado Env'tl., Inc., Tank Closure Report Beacon Station #615, at 3, RWQCB-FRESNO-016188 (Sept. 27, 1998) (RWQCB-FRESNO-016182–16229).
11. Attached hereto as Exhibit 4 are true and correct copies of excerpts of the following documents that were produced in this litigation, relating to or referring to site investigation and monitoring at Unocal #6353 (1418 East Shaw):
- a. Kleinfelder, Inc., Soil and Ground Water Investigation Phase II Report, Unocal Station #6353 (Jan. 30, 1989) (FCDEH-FRESNO-025970–26096);
 - b. Kleinfelder, Inc., Ground Water Sampling and Analyses, Unocal Station #6353 (Sept. 4, 1990) (FCDEH-FRESNO-025932–25969);
 - c. Lynda S. Chalom, Unocal Corp., Underground Storage Tank Unauthorized Release (Leak) / Contamination Site Report (June 21, 1994) (RWQCB-FRESNO-039976–39977);
 - d. Letter from Lynn Klinkby, Geologist, County of Fresno Health Servs. Agency, to Robert A. Boust, Unocal Corporate Env'tl. (Oct. 25, 1995) (RWQCB-FRESNO-039985–39987);
 - e. SECOR Int'l Inc., Results of Waste Oil UST Assessment and Request for Low Risk Closure, 76 Station #6353 (May 8, 2006) (FCDEH-FRESNO-025637–25750); and
 - f. Katie Carpenter & Chris Skelton, Twining Labs., Inc., Soil Sample Analyses for Underground Storage Tank Removal, Unocal Service Station (Feb. 5, 2003) (FCDEH-FRESNO-026344–26357).

12. Attached hereto as Exhibit 5 are true and correct copies of excerpts of the following documents that were produced in this litigation, relating to case closures:
- a. Letter from Bruce E. Myers, Assoc. Eng'g Geologist, RWQCB, to Frank Volanti (Dec. 1, 1999) (FCDEH-FRESNO-044287-44289) (Chevron #9-4374);
 - b. Letter from Pamela C. Creedon, Executive Officer, RWQCB, to Gilbert Romero (May 1, 2009) (RWQCB-FRESNO-043537) (Gilbert's Exxon);
 - c. Letter from Bert E. Van Voris, Supervising Eng'r, RWQCB, to Robert J. Cochran, Chevron USA Prods. Co. (May 14, 2002) (RWQCB-FRESNO-030714) (Chevron #9-9093);
 - d. Letter from Pamela C. Creedon, Executive Officer, RWQCB, to Ted Moise, ConocoPhillips (Apr. 12, 2011) (RWQCB2-FRESNO-000308) (Tosco #39118);
 - e. Letter from Bert E. Van Voris, Supervising Eng'r, RWQCB, to Bob DeNinno, The Southland Corp. (Aug. 5, 1998) (RWQCB-FRESNO-021553) (7-Eleven #13917);
 - f. Letter from Lisa Smoot, Env'tl. Health Analyst, County of Fresno Cmty. Health Dep't (Nov. 4, 1998) (FCDEH-FRESNO-030027) (Tosco #30587);
 - g. Letter from Bert E. Van Voris, Supervising Eng'r, RWQCB, to Joseph Aldridge, Ultramar, Inc. (Sept. 25, 2003) (RWQCB-FRESNO-015737) (Beacon-Arco #615); and
 - h. Jim R. Armstrong, Telephone Call Record (June 5, 2006) (FCDEH-FRESNO-025763-25764) (Unocal #6353).

13. Attached hereto as Exhibit 6 are true and correct copies of excerpts of the following RWQCB quarterly memoranda to water purveyors (including the City) providing lists of dischargers of MTBE that were produced in this litigation:

- a. October 16, 1998 (FRESNO-MTBE-007872);
- b. April 15, 1998 (FRESNO-MTBE-007717);
- c. October 15, 1999 (FRESNO-MTBE-007669);
- d. January 14, 2000 (FRESNO-MTBE-008143);
- e. April 14, 2000 (FRESNO-MTBE-008163); and
- f. July 14, 2000 (FRESNO-MTBE-008187).

14. Attached hereto as Exhibit 7 are true and correct copies of pages 29–30, 33–34, 61–64, 100–101, and 283 of the reporter’s official transcript of the deposition of David Norman, the City of Fresno’s remediation and damages expert, which was taken in this matter on April 14, 2012, along with excerpts of Mr. Norman’s cost estimates, which were marked as Exhibit 33 to Mr. Norman’s deposition.

15. Attached hereto as Exhibit 8 are true and correct copies of excerpts from David Norman’s December 5, 2011 Expert Report submitted for this litigation, and excerpts from his Investigation and Remediation Summary Report for Chevron #9-4373 (1160 Fresno Street), Gilbert’s Exxon (4142 East Church), Chevron #9-9093 (3996 N. Parkway Drive), and Tosco #39118 (1605 N. Cedar Avenue), which are Exhibits 5, 15, 20 and 22 to Mr. Norman’s Report.¹

¹ I have added page numbers to the excerpts of Mr. Norman’s Expert Report and the exhibits attached thereto for the Court’s convenience (Exhibits 8 and 9).

16. Attached hereto as Exhibit 9 are true and correct copies of excerpts from Mr. Norman's Investigation and Remediation Summary Report for Tosco #30587 (1610 N. Palm Avenue), Valley Gas (2139 South Elm Street), and Beacon-Arco #615 (1625 Chestnut Avenue), which are Exhibits 2, 4, and 25 to Mr. Norman's Expert Report.

17. Attached hereto as Exhibit 10 are true and correct copies of pages 50–51, , 212, 219–21, and 439–42 of the reporter's official transcript of the deposition Robert Little, the City of Fresno's Federal Rule of Civil Procedure 30(b)(6) witness, which was taken in this matter on January 18–19, 2011, and pages 140–41 of his deposition taken on March 31, 2011.

18. Attached hereto as Exhibit 11 are true and correct copies of pages 343–44, 480–82 of the reporter's official transcript of the deposition of Brock Buche, an engineer for the City of Fresno's Water Division, which was taken in this matter on April 1, 2011; and pages 30–31 and 42–43 of the reporter's official transcript of the deposition of John Whiting, the RWQCB's Federal Rule of Civil Procedure 30(b)(6) witness, which was taken in this matter on April 25, 2011.

19. Attached hereto as Exhibit 12 are true and correct copies of pages 24–25 of the reporter's official transcript of the deposition of Steven Rhodes, the Fresno County Department of Public Health's 30(b)(6) witness, which was taken in this matter on March 29, 2011, along with excerpts from a Fresno County Department of Health document entitled "Environmental Health System Policy and Procedure—Requirements for Documents and Files", which was marked as Exhibit 3 to Mr. Rhodes's deposition; and pages 38–39, 78, 95–96 of the reporter's official transcript of the deposition of Martin McIntyre, which was taken in this matter on March 16, 2011, along with Mr. McIntyre's Curriculum Vitae, which was marked as Exhibit 2 to Mr. McIntyre's deposition.

20. Attached hereto as Exhibit 13 are true and correct copies of excerpts of the following documents that were produced in this litigation, relating to or referring to the City's general knowledge of MTBE in the 1990s:

- a. Memorandum from Krista Clark, Ass'n of Cal. Water Agencies, to MTBE Work Group (May 12, 1998) (FRESNO-MTBE-007866-7869);
- b. Pl.'s Resp. to Interrog. No. 78 from Chevron Defs.' Second Set of Interrog.;
- c. Nat'l Ground Water Ass'n, The Southwest Focused Ground Water Conference: Discussing the Issue of MTBE and Perchlorate in Ground Water (June 3-4, 1998) (FRESNO-MTBE-009307-9422); and
- d. Anne M. Happel et al., Lawrence Livermore Nat'l Lab., An Evaluation of MTBE Impacts to California Groundwater Resources (June 11, 1998) (FRESNO-MTBE-011404-11477).

21. Attached hereto as Exhibit 14 is a true and correct copy of excerpts of the following documents that were produced in this litigation, relating to the City's commencement of MTBE testing, and its well permitting process, and information provided by the State of California:

- a. Water Div., City of Fresno Dep't of Pub. Utils., Water Quality Annual Report 1997 (1997) (FRESNO-MTBE-006103-6108);
- b. City of Fresno, Water Quality Analysis Report (July 6, 1998) (FRESNO-MTBE-006526-6548); and
- c. Eng'g Servs. Div., City of Fresno Pub. Works Dep't, Standard Procedures for Monitoring Well Permit Process (July 1, 1994, revised July 1, 2003);

- d. Letter from Carl L. Carlucci, Cal. Dep't of Health Servs., to Martin McIntyre, Water Sys. Manager, City of Fresno (Apr. 15, 1997) (FRESNO-MTBE-006075-6076); and
- e. State of California, Hazardous Waste and Substances Sites List (Apr. 1998) (FRESNO-MTBE-008126-8134);

22. Attached hereto as Exhibit 15 are true and correct copies of excerpts of the following documents:

- a. Fresno's Original Complaint in this litigation filed on October 22, 2003;
- b. March 25, 1999 Executive Order No. D-5-99 issued by California Governor Gray Davis, obtained from the Official Website of the Office of the Governor of California, <http://gov.ca.gov/news.php?id=9085> (last visited Feb. 1, 2013);
- c. Pamela Creedon, Executive Officer, RWQCB, Executive Officer's Report 3 (Oct. 4-5, 2012), available at http://www.swrcb.ca.gov/rwqcb5/board_info/exec_officer_reports/1210eo.pdf (last visited Jan. 29, 2013);
- d. Memorandum from David P. Spath, Cal. Dep't of Health Servs., Methyl Tertiary Butyl Ether (MTBE) — Alert and Monitoring Advisory (Feb. 6, 1996); and
- e. A compilation of MTBE testing results at City of Fresno supply wells.

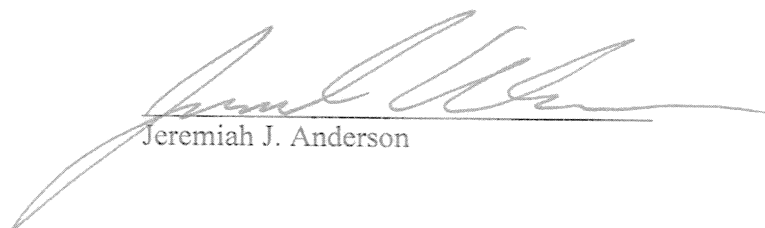
I declare under penalty of perjury that the foregoing is true and correct.

Executed at Houston, Texas on this 1st day of February 1, 2013.


Jeremiah J. Anderson

Certificate of Service

I hereby certify that on February 1, 2013 a true, correct, and exact copy of the foregoing document was served on all counsel via LexisNexis File & Serve.



Jeremiah J. Anderson