

Todd E. Robins, SBN 191853  
Jed J. Borghei, SBN 257049  
SHER LEFF LLP  
450 Mission Street, Suite 400  
San Francisco, CA 94105  
Telephone: (415) 348-8300  
Facsimile: (415) 348-8333

Larry A. Donaldson, SBN 65658  
General Counsel  
6091 N. Poplar, Unit G  
Fresno, CA 93704  
Telephone: (559) 907-3389  
Facsimile: (559) 621-7558

Attorneys for Plaintiff, DEL REY COMMUNITY SERVICE DISTRICT

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN FRANCISCO

DEL REY COMMUNITY SERVICE DISTRICT,

Plaintiff,

vs.

THE DOW CHEMICAL COMPANY; DOW  
AGROSCIENCES, LLC; SHELL OIL COMPANY,  
individually and doing business as SHELL  
CHEMICAL COMPANY; OCCIDENTAL  
CHEMICAL CORPORATION; WILBUR ELLIS  
COMPANY; J.R. SIMPLOT COMPANY; FMC  
CORPORATION; and DOES 1 through 300,  
INCLUSIVE,

Defendants.

ENDORSED  
FILE  
SAN FRANCISCO COUNTY  
SUPERIOR COURT  
Exempt from Filing and  
Motion Fees - Govt. Code  
§ 61031

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D. STEPPE

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CASE NO.

Date Filed:

COMPLAINT FOR DAMAGES  
AND OTHER RELIEF:

(1) STRICT PROD. LIABILITY  
(DESIGN DEFECT);

(2) STRICT PROD. LIABILITY  
(FAILURE TO WARN)

(3) NUISANCE;

(4) TRESPASS; and

(5) NEGLIGENCE.

JURY TRIAL DEMANDED

1 Plaintiff DEL REY COMMUNITY SERVICE DISTRICT hereby alleges as follows,  
2 based on information and belief and investigation of counsel:

3 I. SUMMARY OF THE CASE

4 1. Plaintiff DEL REY COMMUNITY SERVICE DISTRICT ("Plaintiff") owns and  
5 operates a public water system that provides drinking water to residents and businesses within its  
6 service area, which is located in and around Del Rey, California. Plaintiff seeks to recover by  
7 this action the substantial costs necessary to protect the public and restore its damaged water  
8 supply wells, which are contaminated by the toxic chemical, 1,2,3-trichloropropane ("TCP").

9 2. TCP is a highly toxic substance that is an ingredient, component, constituent,  
10 contaminant and/or impurity in certain commercial products. TCP, and/or products containing  
11 TCP, were applied, released, discharged and/or disposed of in the vicinity of certain drinking  
12 water production wells owned and operated by Plaintiff. TCP has migrated through the  
13 subsurface and into the groundwater, and now contaminates the drinking water pumped from  
14 Plaintiff's wells.

15 3. The defendants in this action are the manufacturers, distributors and releasors of  
16 the TCP and/or TCP-containing products that caused the contamination of Plaintiff's wells.  
17 Among other things, the manufacturer defendants knowingly and willfully manufactured,  
18 promoted, and sold TCP and products containing TCP, when they knew or reasonably should  
19 have known that this harmful compound would reach groundwater, pollute drinking water  
20 supplies, render drinking water unusable and unsafe, and threaten the public health and welfare,  
21 as it has done with respect to Plaintiff's water supply.

22 4. Plaintiff files this lawsuit to recover compensatory and all other damages,  
23 including all necessary funds to compensate Plaintiff for the costs of designing, constructing,  
24 installing, operating and maintaining the treatment facilities and equipment required to comply  
25 with state and federal safe drinking water laws and to remove TCP from its water supply, and to  
26 ensure that the responsible parties bear such expense, rather than Plaintiff and its ratepayers.

## II. THE PARTIES

5. Plaintiff is a California Community Service District, formed and existing pursuant to the Community Services District Law, Cal. Government Code §§ 61000 *et seq.*, that owns and operates a public water system which includes, among other elements, drinking water production wells which draw from one or more groundwater aquifers, associated pumping, storage, treatment and distribution facilities and equipment, all of which will be referred to collectively in this Complaint as Plaintiff's "Water System." Plaintiff provides potable water through its Water System to residents and businesses within its service area, which is located in and around Del Rey, California. Among other things, Plaintiff's Water System includes the right of Plaintiff to extract and use groundwater for drinking water supplies from its wells. Plaintiff has a significant property interest in the waters it extracts and uses from its wells. The past, present and continuing contamination of such waters by TCP constitutes physical injury to such waters for which Plaintiff is entitled to, and hereby does, seek damages and other appropriate relief.

6. The following defendants designed, manufactured, formulated, marketed, promoted, distributed, sold (directly or indirectly), applied, discharged, disposed of and/or released the TCP and/or products containing the TCP that contaminates Plaintiff's wells and water supply.

7. Defendant THE DOW CHEMICAL COMPANY ("Dow Chemical") is a Delaware corporation with its principal place of business in Midland, Michigan, which at all times relevant to this action was doing business in California.

8. Defendant DOW AGROSCIENCES, LLC ("Dow AgroSciences") is a Delaware limited liability company with its principal place of business in Indianapolis, Indiana, which at all times relevant to this action was doing business in California. Dow AgroSciences was formerly known as, did business as, and/or is the successor in interest to DowElanco Company. Dow AgroSciences is a wholly owned subsidiary of defendant Dow Chemical.<sup>1</sup>

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<sup>1</sup> The term "Dow" as used herein refers to Dow Chemical and/or Dow AgroSciences.

1           9.       Defendant SHELL OIL COMPANY, individually and doing business as SHELL  
2 CHEMICAL COMPANY ("Shell") is a Delaware corporation with its principal place of business  
3 in Houston, Texas, which at all times relevant to this action was doing business in California.

4           10.      Defendant OCCIDENTAL CHEMICAL CORPORATION, individually and as  
5 successor by merger to Occidental Chemical Agricultural Products, Inc. (formerly known as  
6 Occidental Chemical Company, successor by merger to Associated Farm Supplies (successor by  
7 merger to North Kern Farm Service Co. and Winton Farm Service Co.)) ("Occidental"), is a New  
8 York corporation with its principal place of business in Tulsa, Oklahoma, which at all times  
9 relevant to this action was doing business in California.

10          11.      Defendant WILBUR ELLIS COMPANY ("Wilbur-Ellis") is a California  
11 corporation with its principal place of business in San Francisco, California, which at all times  
12 relevant to this action was doing business in California.

13          12.      Defendant J.R. SIMPLOT COMPANY (formerly known as Simplot Company),  
14 individually and doing business as Simplot Grower Solutions and Simplot Soilbuilders, and as  
15 successor by merger to Simcal Chemical Company (formerly known as Valley Nitrogen  
16 Producers, Inc.) ("Simplot"), is a Nevada corporation with its principal place of business in  
17 Boise, Idaho, which at all times relevant to this action was doing in business in California.

18          13.      Defendant FMC CORPORATION ("FMC") is a Delaware corporation with its  
19 principal place of business in Philadelphia, Pennsylvania, which at all times relevant to this  
20 action was doing in business in California.

21          14.      The names and capacities, whether individual, corporate or otherwise, of  
22 defendants named herein as DOES 1 through 300, inclusive, are unknown at this time to Plaintiff  
23 who therefore sues said defendants by such fictitious names. Plaintiff will amend the Complaint  
24 to show the true names and capacities of said defendants when their identities and capacities  
25 have been ascertained.

26          15.      The defendants named in paragraphs 7-13 above and defendant DOES 1 through  
27 300, inclusive, are referred to collectively herein as "Defendants."

1           16. Defendants Dow and Shell and DOES 1 through 100, inclusive, are referred to  
2 collectively herein as Manufacturer Defendants.

3           17. Defendants Occidental, Wilbur Ellis, Simplot and FMC and DOES 101 through  
4 200, inclusive, are referred to collectively herein as Distributor Defendants.

5           18. DOES 201 through 300, inclusive, are referred to collectively herein as  
6 Owner/Operator Defendants.

7           19. When reference is made in this Complaint to any act or omission of any of the  
8 Defendants, it shall be deemed that the officers, directors, agents, employees or representatives  
9 of the Defendants committed or authorized such act or omission, or failed to adequately  
10 supervise or properly control or direct their employees while engaged in the management,  
11 direction, operation or control of the affairs of Defendants, and did so while acting within the  
12 scope of their duties, employment or agency.

### 13                                   III. JURISDICTION AND VENUE

14           20. The California Superior Court has jurisdiction over this action pursuant to  
15 California Constitution Article VI, Section 10, which grants the Superior Court "original  
16 jurisdiction in all cases except those given by statute to other trial courts." The statutes under  
17 which this action is brought do not grant jurisdiction to any other trial court.

18           21. This Court has jurisdiction over Defendants because, based on information and  
19 belief, each is a corporation or other business that has sufficient minimum contacts in California,  
20 is a citizen of California, or otherwise intentionally avails itself of the California market either  
21 through the distribution or sale of products containing TCP in the State of California or by  
22 having a manufacturing, distribution or other facility located in California so as to render the  
23 exercise of jurisdiction over it by the California courts consistent with traditional notions of fair  
24 play and substantial justice.

25           22. Venue is proper in San Francisco Superior Court because at least one Defendant's  
26 principal place of business is located within the County of San Francisco.

1                    IV. ALLEGATIONS APPLICABLE TO ALL CAUSES OF ACTION

2        A.        **The Contaminant: TCP.**

3                23.        TCP does not occur naturally. Rather, TCP is and/or was produced as a  
4        byproduct of certain chemical processes used to produce allyl chloride, epichlorohydrin and  
5        synthetic glycerin, which, in turn, are and/or were used in connection with the manufacture of  
6        certain commercial products. TCP is also known as allyl trichloride, glycerol trichlorohydrin,  
7        and/or trichlorohydrin. Because only certain large-scale industrial chemical processes involving  
8        heat and chlorine produce TCP, only a few companies in the United States are the source of  
9        TCP.

10              24.        TCP is and/or was, among other things, an inert ingredient, impurity and/or  
11        manufacturing byproduct in certain soil fumigant products used to control nematodes  
12        (microscopic worms that infest plant roots) that were marketed primarily, although not  
13        exclusively, from the 1940s through the 1980s. The TCP present in TCP-containing soil  
14        fumigants had, and has, no beneficial purpose in connection with the application of such soil  
15        fumigants to crops.

16              25.        TCP is and/or was contained in certain other non-agricultural chemical products,  
17        including, but not limited to, some solvents and extractive agents.

18              26.        TCP has unique characteristics that cause extensive environmental contamination  
19        and a corresponding threat to the public health and welfare. In particular, TCP does not readily  
20        adsorb (i.e., stick) to soil particles. Rather, once it is applied, discharged, disposed of or  
21        otherwise released into or onto land, it is readily transported through the subsurface and into  
22        groundwater. In addition, TCP is known to be persistent, *i.e.*, it does not readily biodegrade or  
23        chemically degrade naturally in the subsurface. There is a lengthy delay, based on site specific  
24        factors, between the time TCP or products containing TCP are released into the subsurface  
25        environment and the time TCP accumulates in groundwater in sufficient quantities and locations  
26        to contaminate public drinking water resources. In short, TCP migrates readily through soil and  
27        groundwater, resists natural degradation, and is difficult and costly to remove from groundwater.

1           27.     TCP presents a significant threat to public health and welfare. TCP is known to  
2 cause liver and kidney damage and blood disorders in animals exposed to TCP via ingestion.  
3 TCP has also been shown to cause cancer in animals, and is known to the State of California to  
4 cause cancer for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986.

5 **B.     Regulatory Standards Applicable To TCP.**

6           28.     No federal or state agency has approved TCP as an additive to drinking water. No  
7 federal or state agency has approved releasing or discharging TCP to groundwater.

8           29.     The California Department of Public Health (“DPH”) is the state agency  
9 responsible for regulating public water agencies, including Plaintiff.

10          30.     DPH has established a “Notification Level” for TCP of 0.005 micrograms per  
11 liter (“ug/L”) or 5 parts per trillion (“ppt”). A notification level is a nonregulatory, health-based  
12 advisory level for contaminants not subject to an enforceable maximum contaminant level, or  
13 “MCL.” Notification Levels are not drinking water standards, but rather are established as  
14 precautionary measures for contaminants that may be considered candidates for establishment of  
15 maximum contaminant levels. The only action required when a Notification Level is exceeded is  
16 notification of the water agency’s governing body. As the owner and operator of a public  
17 drinking water system in California, Plaintiff is subject to the Notification Level requirements  
18 described herein.

19          31.     In August 2009, at the request of DPH, the California Office of Environmental  
20 Health Hazard Assessment finalized a Public Health Goal (PHG) for TCP in drinking water of  
21 0.0007 ug/L, or 0.7 parts per trillion. PHGs for carcinogens or other substances that may cause  
22 chronic disease are based solely on health effects and are set at a level that the State has  
23 determined, based on the best available toxicological data in the scientific literature, does not  
24 pose any significant risk to health.

25          32.     In March 2012, DPH announced via its internet website that it “is currently  
26 developing an MCL,” or enforceable maximum contaminant level, for TCP, which “is expected  
27 to be released for public comment in the latter half of 2013.

28

1 **C. The Manufacturer Defendants' Knowledge of TCP's Hazards.**

2 33. The Manufacturer Defendants, each of whom has promoted the use of TCP and/or  
3 products containing TCP (collectively referred to hereinafter as "TCP Products"), knew or  
4 should have known of the grave harm and threat to public health and welfare and the  
5 environment represented by proliferating use of this compound, including (among other things):  
6 widespread pollution of groundwater with TCP, contamination of public and private drinking  
7 water supplies by this harmful compound, drinking water supplies rendered unfit and unusable  
8 for consumption and increased costs to public water suppliers and their customers.

9 34. The manufacturers of TCP Products had a duty and breached their duty to  
10 evaluate and test such Products adequately and thoroughly to determine their environmental fate  
11 and transport characteristics and potential human health and environmental impacts before they  
12 produced and sold such Products. They also had a duty and breached their duty to minimize the  
13 environmental harm caused by TCP. The Manufacturer Defendants, and each of them, failed to  
14 adequately evaluate and test their TCP Products, or otherwise ensure that TCP would not  
15 contaminate drinking water. As a direct, indirect and proximate result of these failures, TCP  
16 contaminated, and continues to contaminate, the drinking water supply of Plaintiff's Water  
17 System.

18 35. At all times relevant to this action, the Manufacturer Defendants knew, or  
19 reasonably should have known, among other things, that: (a) TCP is toxic; and (b) when applied,  
20 discharged, disposed of or otherwise released into or onto land, TCP readily migrates through the  
21 subsurface, mixes easily with groundwater, resists natural degradation, renders drinking water  
22 unsafe and/or non-potable, and requires significant expenses to remove from public drinking  
23 water supplies.

24 36. Despite knowing or having reason to know that long-term groundwater  
25 contamination, pollution of water supplies, and threats to public health and safety were inevitable  
26 consequences of the foreseeable and intended uses of their TCP Products without proper  
27 precautionary measures, including but not limited to adequate warnings, the Manufacturer  
28



1 Defendants nonetheless promoted, marketed and/or sold TCP Products in California and  
2 elsewhere.

3 37. At all times relevant herein, the Manufacturer Defendants, and each of them,  
4 knew or should have known that feasible measures could have been implemented to remove or  
5 substantially reduce the amount of TCP in the their finished TCP-containing soil fumigant  
6 products without decreasing the ability of these products to control nematodes, but they failed to  
7 implement such measures.

8 38. At all times relevant herein, the Manufacturer Defendants, and each of them,  
9 knew or should have known that TCP is a hazardous waste which should be disposed of safely  
10 and separately from non-hazardous wastes. Nonetheless, the Manufacturer Defendants caused or  
11 allowed TCP – a hazardous waste product created by their chemical manufacturing processes –  
12 to be included in their products, including soil fumigant products. The Manufacturer Defendants  
13 then instructed users to apply products containing TCP to agricultural fields, where these  
14 Defendants knew or should have known that TCP would contaminate groundwater.

15 39. Adequate warnings regarding the known and foreseeable risks of TCP could have  
16 prevented or mitigated the contamination and resulting damages alleged herein. Despite  
17 knowing or having reason to know of the risks to public drinking water resources posed by the  
18 discharge, disposal or release into or onto land of TCP Products, the Manufacturer Defendants  
19 unreasonably failed to provide any adequate warnings regarding the known and foreseeable risks  
20 of TCP to customers, end-users, regulators, public officials and/or the public, including Plaintiff.

21 40. In addition to the negligent and/or reckless conduct alleged herein, the  
22 Manufacturer Defendants, by agreement and/or tacit understanding among them, each knowingly  
23 pursued or took an active part in a common plan, design and/or conspiracy to market and/or  
24 promote products they knew to be dangerous to the environment. In particular, these Defendants  
25 engaged in joint activity for the specific purpose of suppressing, concealing, and/or minimizing  
26 information regarding the toxicity and persistence of TCP. These Defendants' common plan,  
27 design and/or conspiracy, and the acts taken in furtherance of such common plan, design and/or  
28

1 conspiracy, are a direct and proximate cause of the TCP contamination in Plaintiff's Water  
2 System.

3 **D. The Impact of TCP on Plaintiff's Water System.**

4 41. TCP has been detected in varying amounts at varying times in water extracted  
5 from certain of Plaintiff's wells (referred to herein as the "Contaminated Wells"). TCP has been  
6 detected and/or is present in the Contaminated Wells at levels substantially above the applicable  
7 PHG. The detection and/or presence of TCP, and the threat of further detection and/or presence  
8 of TCP, in the Contaminated Wells in varying amounts and at varying times has resulted in, and  
9 will continue to cause, significant injuries and damages to the Contaminated Wells and  
10 Plaintiff's Water System.

11 42. The injuries to Plaintiff caused by Defendants' conduct as alleged herein  
12 constitute an unreasonable interference with, and physical damage to, the limited subterranean  
13 supplies of fresh drinking water on which Plaintiff's Contaminated Wells depend. Plaintiff's  
14 interest in protecting the quality of its limited drinking water supplies constitutes a reason  
15 personal for seeking damages sufficient to restore such drinking water supplies to their pre-  
16 contamination condition.

17 **E. Summary of Allegations.**

18 43. At all times relevant to this action:

- 19 (a) The Manufacturer and Distributor Defendants, and each of them, sold,  
20 exchanged, supplied, distributed, delivered or otherwise provided (directly  
21 or indirectly) TCP Products to the Owner/Operator Defendants. Such  
22 sales, exchanges, supplies, distributions, deliveries and/or other provisions  
23 of TCP Products to the Owner/Operator Defendants occurred over time.
- 24 (b) TCP Products purchased or otherwise acquired (directly or indirectly)  
25 from the Manufacturer and/or Distributor Defendants, and each of them,  
26 by the Owner/Operator Defendants were applied, discharged, disposed of  
27 or otherwise released into or onto lands in the vicinity of Plaintiff's  
28 Contaminated Wells. Such applications, discharges, disposals and/or

1 releases of TCP occurred at various times, in varying quantities and in  
2 different locations.

3 (c) TCP takes time to migrate from points of application, discharge, disposal  
4 and/or release to locations within the subsurface at which it has an  
5 appreciable impact on groundwater. TCP has over time migrated in the  
6 subsurface from various application, discharge, disposal and/or release  
7 points at or near the surface on lands in the vicinity of Plaintiff's  
8 Contaminated Wells, causing pollution, contamination, and substantial and  
9 continuing damage to those Wells and the groundwaters that supply them,  
10 causing appreciable injury to Plaintiff and damaging Plaintiff at such times  
11 and in amounts to be proved at trial.

12 44. At all times relevant to this action, TCP Products manufactured, sold, and/or  
13 released by Defendants caused and/or contributed to the TCP contamination alleged herein.

14 45. At all times relevant to this action, the TCP Products purchased or otherwise  
15 acquired by the Owner/Operator Defendants were TCP Products manufactured, marketed,  
16 distributed and/or sold by one or more of the Manufacturer and Distributor Defendants named  
17 herein.

18 46. Defendants, and each of them, are jointly and severally liable for the damages  
19 alleged herein.

#### 20 FIRST CAUSE OF ACTION

#### 21 (Strict Products Liability Based On Defective Design Against The Manufacturer and 22 Distributor Defendants)

23 47. Plaintiff realleges each of the preceding paragraphs, and by this reference  
24 incorporates each such paragraph as though set forth in full.

25 48. The Manufacturer and Distributor Defendants, and each of them, designed,  
26 manufactured, formulated, promoted, marketed, distributed, and/or sold TCP Products.

27 49. The Manufacturer and Distributor Defendants, and each of them, knew that such  
28 TCP Products were to be purchased and used without inspection for defects.

1           50.     TCP Products purchased or otherwise acquired (directly or indirectly) from the  
2 Manufacturer and/or Distributor Defendants, and each of them, by the Owner/Operator  
3 Defendants were applied, discharged, disposed of or otherwise released into or onto lands in the  
4 vicinity of Plaintiff's Contaminated Wells.

5           51.     The TCP Products purchased by the Owner/Operator Defendants were used in a  
6 reasonably foreseeable manner and without substantial change in the condition of such Products.

7           52.     Soil fumigant products containing TCP are, and at all relevant times were,  
8 designed to be applied, injected and/or released directly into soil. Leaks, spills and releases of  
9 soil fumigant products containing TCP were also inherent in the normal, foreseeable uses of such  
10 products, including the transportation, loading, unloading, storage, handling, and application of  
11 such products.

12           53.     The Manufacturer and Distributor Defendants knew, or should have known, that,  
13 use of TCP Products other than soil fumigants in their intended manner would result in the  
14 spillage, discharge, disposal or release of TCP into or onto land.

15           54.     The TCP Products used in the vicinity of Plaintiff's Contaminated Wells were  
16 defective in design and unreasonably dangerous products because, among other things:

- 17           (a)     The TCP contained in soil fumigant products containing TCP served no  
18                   beneficial purpose.
- 19           (b)     TCP causes extensive groundwater contamination when it, or products  
20                   containing it, are used in their foreseeable and intended manner.
- 21           (c)     TCP poses significant threats to the public health and welfare and the  
22                   environment.
- 23           (d)     Defendants failed to conduct reasonable, appropriate or adequate scientific  
24                   studies to evaluate the environmental fate and transport and potential  
25                   human health effects of TCP.

26           55.     At all times relevant to this action, TCP Products were dangerous to an extent  
27 beyond that which would be contemplated by the ordinary consumer, and/or the risk of harm to  
28

1 public health and welfare and the environment posed by TCP outweighed the cost to Defendants  
2 of reducing or eliminating such risk.

3 56. As a direct and proximate result of the defects previously described, Plaintiff's  
4 Contaminated Wells and the groundwaters that supply them have been, and continue to be,  
5 contaminated with TCP, causing physical damage to such groundwaters and causing Plaintiff  
6 significant injury and property damage. Restoration, repair and/or remediation of the property  
7 damage alleged herein has required Plaintiff, and will continue to require Plaintiff, to incur  
8 substantial costs and expenses in an amount to be proved at trial.

9 57. The Manufacturer and Distributor Defendants are strictly, jointly and severally  
10 liable for all such damages, and Plaintiff is entitled to recover all such damages in this action.

11 58. The Manufacturer Defendants knew that it was substantially certain that their  
12 alleged acts and omissions described above would cause injury and damage, including TCP  
13 contamination of drinking water supplies. The Manufacturer Defendants committed each of the  
14 above-described acts and omissions knowingly, willfully, and with oppression, fraud, and/or  
15 malice. Such conduct is reprehensible, despicable, and was performed to promote sales of TCP  
16 Products and maximize profits, in conscious disregard of the probable dangerous consequences  
17 of that conduct and its foreseeable impact upon health, property and the environment, including  
18 Plaintiff's Water System. Therefore, Plaintiff requests an award of exemplary damages in an  
19 amount that is sufficient to punish these Defendants and that fairly reflects the aggravating  
20 circumstances alleged herein. After the completion of additional investigation and discovery,  
21 Plaintiff may seek leave of court to amend this Complaint to allege a claim for exemplary  
22 damages against additional defendants if warranted by the facts.

23 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

24 **SECOND CAUSE OF ACTION**

25 **(Strict Products Liability Based On Failure To Warn Against The Manufacturer And**  
26 **Distributor Defendants)**

27 59. Plaintiff realleges each of the preceding paragraphs, and by this reference  
28 incorporates each such paragraph as though set forth in full.

1           60.     The Manufacturer and Distributor Defendants, and each of them, designed,  
2 manufactured, formulated, promoted, marketed, distributed, and/or sold TCP Products.

3           61.     The Manufacturer and Distributor Defendants, and each of them, knew that such  
4 TCP Products were to be purchased and used without inspection for defects.

5           62.     TCP Products purchased or otherwise acquired (directly or indirectly) from the  
6 Manufacturer and/or Distributor Defendants, and each of them, by the Owner/Operator  
7 Defendants were applied, discharged and/or disposed of in or otherwise released into or onto  
8 lands in the vicinity of Plaintiff's Contaminated Wells.

9           63.     The TCP Products purchased by the Owner/Operator Defendants were used in a  
10 reasonably foreseeable manner and without substantial change in the condition of such products.

11           64.     Soil fumigant products containing TCP are, and at all relevant times were,  
12 designed to be applied, injected and/or released directly into soil. Leaks, spills and releases of  
13 soil fumigant products containing TCP were also inherent in the normal, foreseeable uses of such  
14 products, including the transportation, loading, unloading, storage, handling, and application of  
15 such products.

16           65.     The Manufacturer and Distributor Defendants knew, or should have known, that,  
17 use of TCP Products other than soil fumigants in their intended manner would result in the  
18 spillage, discharge, disposal or release of TCP into or onto land.

19           66.     The TCP Products used in the vicinity of Plaintiff's Contaminated Wells were  
20 defective in design and unreasonably dangerous products for the reasons set forth in Paragraph  
21 50 above, among other things.

22           67.     Despite the known and/or foreseeable environmental and human health hazards  
23 associated with the application or release of TCP Products in the vicinity of subterranean  
24 drinking water supplies, including contamination of public drinking water supplies with TCP, the  
25 Manufacturer and Distributor Defendants, and each of them, failed to provide adequate warnings  
26 of, or take any other precautionary measures to mitigate, those hazards.

1           68.     In particular, the Manufacturer and Distributor Defendants failed to describe such  
2 hazards or provide any precautionary statements regarding such hazards in the labeling of their  
3 TCP Products or otherwise.

4           69.     As a direct and proximate result of the Manufacturer and Distributor Defendants'  
5 failure to warn of the hazards posed by application or release of TCP Products in the vicinity of  
6 subterranean drinking water supplies that were, or should have been, known to them, Plaintiff's  
7 Contaminated Wells and the groundwaters that supply them have been, and continue to be,  
8 contaminated with TCP, causing physical damage to such groundwaters and causing Plaintiff  
9 significant injury and property damage. Restoration, repair and/or remediation of the property  
10 damage alleged herein has required Plaintiff, and will continue to require Plaintiff, to incur  
11 substantial costs and expenses in an amount to be proved at trial.

12           70.     The Manufacturer and Distributor Defendants are strictly, jointly and severally  
13 liable for all such damages, and Plaintiff is entitled to recover all such damages in this action.

14           71.     For the reasons set forth and specifically alleged in Paragraph 58, Plaintiff is  
15 entitled to an award of exemplary damages against the Manufacturer Defendants that is sufficient  
16 to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.  
17 After the completion of additional investigation and discovery, Plaintiff may seek leave of court  
18 to amend this Complaint to allege a claim for exemplary damages against additional defendants  
19 if warranted by the facts.

20           WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

21                           **THIRD CAUSE OF ACTION**

22                           **(Continuing Nuisance Against All Defendants)**

23           72.     Plaintiff realleges each of the preceding paragraphs, and by this reference  
24 incorporates each such paragraph as though set forth in full.

25           73.     Plaintiff is the owner of land, easements and water rights which permit it to  
26 extract groundwater for use in its Water System.

27           74.     The negligent, reckless, intentional and/or ultrahazardous activity of Defendants,  
28 and each of them, as alleged herein has resulted in the continuing contamination of Plaintiff's

1 Contaminated Wells and the groundwaters that supply them by TCP, and constitutes a nuisance.  
2 Each such Defendant has caused, maintained, assisted and/or participated in such nuisance, and  
3 is a substantial contributor to such nuisance.

4 75. The nuisance caused, contributed to, maintained, assisted and/or participated in by  
5 Defendants, and each of them, has caused substantial injury to Plaintiff's Contaminated Wells  
6 and the groundwaters that supply them, in which Plaintiff has a significant property interest.

7 76. The nuisance caused, contributed to, maintained, assisted and/or participated in by  
8 Defendants, and each of them, has and continues to substantially and unreasonably interfere  
9 with, obstruct and/or disturb Plaintiff's right to extract, use and enjoy groundwater from its  
10 Contaminated Wells. Plaintiff is specially and adversely affected by the nuisance.

11 77. The Manufacturer Defendants, each of whom, supplied, distributed, delivered,  
12 sold and/or otherwise entrusted (directly or indirectly) TCP Products that were applied,  
13 discharged, disposed of or otherwise released into or onto land in the vicinity of Plaintiff's  
14 Contaminated Wells, engaged in affirmative conduct that caused, contributed to, maintained  
15 and/or assisted in the creation of the nuisance alleged herein, including, but not limited to:

16 (a) disposing of TCP – a hazardous waste created by the Manufacturer  
17 Defendants' manufacturing process – by causing it to be present in and/or failing to remove it  
18 from TCP Products which were designed to be applied to the ground;

19 (b) promoting, marketing, providing product information and/or instructions  
20 for use of, TCP Products, but failing to require any different or special handling instructions or  
21 take any other precautionary measures to mitigate the known and/or foreseeable risks posed by  
22 the use of TCP Products in the vicinity of subterranean drinking water supplies, including  
23 contamination of groundwater with TCP;

24 (c) providing instructions for use of TCP products that rendered groundwater  
25 contamination a likely, if not inevitable result, of normal application or use of their TCP  
26 Products;

27 (d) misrepresenting the chemical characteristics of their TCP Products and  
28 failing to disclose information regarding the Products' environmental risks to regulators;



1 (e) providing application equipment, advising and assisting with the  
2 application of TCP products, sharing soil fumigant-related research with users and/or providing  
3 other forms of on-site assistance; and

4 (f) participating in and materially supporting field trials and field research  
5 involving TCP Products in and around Plaintiff's service area, which, in turn, helped establish  
6 the effectiveness of those Products and led to the routine use of them by farmers in and around  
7 Plaintiff's service area.

8 78. The Distributor Defendants, each of whom, supplied, distributed, delivered, sold  
9 and/or otherwise entrusted (directly or indirectly) TCP Products that were applied, discharged,  
10 disposed of or otherwise released into or onto land in the vicinity of Plaintiff's Contaminated  
11 Wells, engaged in affirmative conduct that caused, contributed to, maintained and/or assisted in  
12 the creation of the nuisance alleged herein, including, but not limited to applying the TCP  
13 Products to the soil, providing application equipment, advising and assisting with the application  
14 of TCP products and/or providing other forms of on-site assistance.

15 79. The contamination of Plaintiff's water and wells alleged herein has varied over  
16 time and has not yet ceased. TCP continues to migrate into and enter Plaintiff's Contaminated  
17 Wells. The contamination alleged herein is reasonably abatable.

18 80. As a direct and proximate result of Defendants' acts and omissions as alleged  
19 herein, Plaintiff's Contaminated Wells and the groundwaters that supply them have been, and  
20 continue to be, contaminated with TCP, causing Plaintiff significant injury and damage. As a  
21 direct and proximate result of these Defendants' acts and omissions as alleged herein, Plaintiff  
22 has incurred, is incurring, and will continue to incur, investigation, treatment, remediation and  
23 monitoring costs and expenses related to the TCP contamination of Plaintiff's Contaminated  
24 Wells in an amount to be proved at trial.

25 81. For the reasons set forth and specifically alleged in paragraph 58, Plaintiff is  
26 entitled to an award of exemplary damages against the Manufacturer Defendants that is sufficient  
27 to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.  
28 After the completion of additional investigation and discovery, Plaintiff may seek leave of court

1 to amend this Complaint to allege a claim for exemplary damages against additional defendants  
2 if warranted by the facts.

3 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

4 **FOURTH CAUSE OF ACTION**

5 **(Continuing Trespass Against All Defendants)**

6 82. Plaintiff realleges each of the preceding paragraphs, and by this reference  
7 incorporates each such paragraph as though set forth in full.

8 83. Plaintiff is the owner and actual possessor of its Water System, which includes  
9 drinking water production wells, including Plaintiff's Contaminated Wells, which draw  
10 groundwater from one or more aquifers.

11 84. Plaintiff owns, possesses and actively exercises rights to extract and use  
12 groundwater drawn from the drinking water production wells described in the preceding  
13 paragraph, including Plaintiff's Contaminated Wells.

14 85. Defendants, and each of them, negligently, recklessly and/or intentionally failed  
15 to properly control, apply and/or dispose of TCP Products, such that they proximately caused  
16 TCP to enter, invade, intrude upon and injure Plaintiff's possession of property.

17 86. The Manufacturer Defendants, each of whom, supplied, distributed, delivered,  
18 sold and/or otherwise entrusted (directly or indirectly) TCP Products that were applied,  
19 discharged, disposed of or otherwise released into or onto land in the vicinity of Plaintiff's  
20 Contaminated Wells, engaged in affirmative conduct that caused, contributed to, maintained  
21 and/or assisted in the creation of the trespass alleged herein, including, but not limited to:

22 (a) disposing of TCP – a hazardous waste created by the Manufacturer  
23 Defendants' manufacturing process – by causing it to be present in and/or failing to remove it  
24 from TCP Products which were designed to be applied to the ground;

25 (b) promoting, marketing, providing product information and/or instructions  
26 for use of, TCP Products, but failing to require any different or special handling instructions or  
27 take any other precautionary measures to mitigate the known and/or foreseeable risks posed by  
28 the use of TCP Products in the vicinity of subterranean drinking water supplies, including

1 contamination of groundwater with TCP;

2 (c) providing instructions for use of TCP products that rendered groundwater  
3 contamination a likely, if not inevitable result, of normal application or use of their TCP  
4 Products;

5 (d) misrepresenting the chemical characteristics of their TCP Products and  
6 failing to disclose information regarding the Products' environmental risks to regulators;

7 (e) providing application equipment, advising and assisting with the  
8 application of TCP products, sharing soil fumigant-related research with users and/or providing  
9 other forms of on-site assistance; and

10 (f) participating in and materially supporting field trials and field research  
11 involving TCP Products in and around Plaintiff's service area, which, in turn, helped establish  
12 the effectiveness of those Products and led to the routine use of them by farmers in and around  
13 Plaintiff's service area.

14 87. The Distributor Defendants, each of whom, supplied, distributed, delivered, sold  
15 and/or otherwise entrusted (directly or indirectly) TCP Products that were applied, discharged,  
16 disposed of or otherwise released into or onto land in the vicinity of Plaintiff's Contaminated  
17 Wells, engaged in affirmative conduct that caused, contributed to, maintained and/or assisted in  
18 the creation of the trespass alleged herein, including, but not limited to providing application  
19 equipment, advising and assisting with the application of TCP products and/or providing other  
20 forms of on-site assistance.

21 88. The contamination of Plaintiff's water and wells alleged herein has varied over  
22 time and has not yet ceased. TCP continues to migrate into and enter Plaintiff's Contaminated  
23 Wells. The contamination alleged herein is reasonably abatable.

24 89. Plaintiff has not consented to, and does not consent to, the contamination alleged  
25 herein. Defendants, and each of them, knew or reasonably should have known that Plaintiff  
26 would not consent to this trespass.

27 90. As a direct and proximate result of Defendants' acts and omissions as alleged  
28 herein, Plaintiff's Contaminated Wells and the groundwaters that supply them have been, and

1 continue to be, contaminated with TCP, causing Plaintiff significant injury and damage. As a  
2 direct and proximate result of these Defendants' acts and omissions as alleged herein, Plaintiff  
3 has incurred, is incurring, and will continue to incur, investigation, treatment, remediation and  
4 monitoring costs and expenses related to the TCP contamination of Plaintiff's Contaminated  
5 Wells in an amount to be proved at trial.

6 91. For the reasons set forth and specifically alleged in paragraph 58, Plaintiff is  
7 entitled to an award of exemplary damages against the Manufacturer Defendants that is sufficient  
8 to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.  
9 After the completion of additional investigation and discovery, Plaintiff may seek leave of court  
10 to amend this Complaint to allege a claim for exemplary damages against additional defendants  
11 if warranted by the facts.

12 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

13 **FIFTH CAUSE OF ACTION**

14 **(Negligence Against All Defendants)**

15 92. Plaintiff realleges each of the preceding paragraphs, and by this reference  
16 incorporates each such paragraph as though set forth in full.

17 93. The Owner/Operator Defendants had a duty and breached their duty to use due  
18 care in the use, handling, application, discharge and/or disposal of TCP Products.

19 94. The Owner/Operator Defendants negligently, carelessly, and/or recklessly used,  
20 handled, applied, discharged and/or disposed of TCP Products and breached their duties to use  
21 due care by applying, spilling, discharging, disposing of and/or otherwise releasing TCP  
22 Products into or onto land in the vicinity of Plaintiff's Contaminated Wells, thus causing the TCP  
23 contamination alleged herein.

24 95. The Manufacturer and Distributor Defendants had a duty and breached their duty  
25 to use due care in the design, testing, manufacture, formulation, marketing, distribution, and/or  
26 sale of TCP Products.

27 96. The Manufacturer and Distributor Defendants also had a duty and breached their  
28 duty to minimize the environmental harm caused by TCP.

1           97.     The Manufacturer and Distributor Defendants negligently, carelessly, and/or  
2 recklessly designed, manufactured, formulated, handled, controlled (or the lack thereof), tested  
3 (or the lack thereof), marketed, sold and/or otherwise entrusted TCP Products, and breached their  
4 duty to use due care, including but not limited to the following:

5           (a)     The Manufacturer Defendants failed to conduct reasonable, appropriate or  
6 adequate scientific studies to evaluate the environmental fate and transport  
7 and potential human health effects of TCP.

8           (b)     The Manufacturer and Distributor Defendants, and each of them, knew, or  
9 reasonably should have known, that: (a) TCP is extremely toxic; and (b)  
10 when applied, discharged, disposed of or otherwise released into or onto  
11 land, TCP readily migrates through the subsurface, mixes easily with  
12 groundwater, moves great distances, resists natural degradation, renders  
13 drinking water unsafe and/or non-potable and requires significant  
14 expenses to remove from public drinking water supplies.

15           (c)     Despite knowing that TCP would contaminate groundwater and threaten  
16 public health and welfare, the Manufacturer and Distributor Defendants  
17 nonetheless supplied, marketed, sold, and/or entrusted TCP Products  
18 downstream handlers, purchasers and end-users, including the  
19 Owner/Operator Defendants.

20           (d)     The Manufacturer and Distributor Defendants failed to provide adequate  
21 warnings of, or take any other precautionary measures to mitigate, the  
22 known and foreseeable risks posed by application, spillage, discharge,  
23 disposal or release into or onto land of such TCP Products, including  
24 contamination of groundwater with TCP, despite their knowledge of the  
25 special hazards associated with TCP.

26           98.     As a direct and proximate result of Defendants' acts and omissions as alleged  
27 herein, Plaintiff's Contaminated Wells and the groundwaters that supply them have been, and  
28 continue to be, contaminated with TCP, causing physical damage to such groundwaters and

1 causing Plaintiff significant injury and property damage. Restoration, repair and/or remediation  
2 of the property damage alleged herein has required Plaintiff, and will continue to require  
3 Plaintiff, to incur substantial costs and expenses in an amount to be proved at trial.

4 99. For the reasons set forth and specifically alleged in paragraph 58, Plaintiff is  
5 entitled to an award of exemplary damages against the Manufacturer Defendants that is sufficient  
6 to punish these Defendants and that fairly reflects the aggravating circumstances alleged herein.  
7 After the completion of additional investigation and discovery, Plaintiff may seek leave of court  
8 to amend this Complaint to allege a claim for exemplary damages against additional defendants  
9 if warranted by the facts.

10 WHEREFORE, Plaintiff prays judgment against Defendants as set forth hereafter.

11 **PRAYER FOR RELIEF**

12 WHEREFORE, Plaintiff respectfully requests a trial of this Action before a jury, and that,  
13 upon a favorable verdict, this Court enter judgment in favor of Plaintiff and against Defendants,  
14 jointly and severally, as follows:

- 15 a. An award of compensatory damages according to proof;  
16 b. An award of exemplary damages in an amount sufficient to punish Defendants  
17 Dow and Shell, and to deter those Defendants from ever committing the same or similar acts;  
18 c. An order awarding Plaintiff its costs in prosecuting this action, including its  
19 reasonable attorneys' fees, together with prejudgment interest to the full extent permitted by law;  
20 d. Such other further relief as the Court may deem just and proper.

21  
22 DATED: August 3, 2012

SHER LEFF LLP

23  
24 By:

  
TODD E. ROBINS  
JED J. BORGHEI

25  
26 LARRY A. DONALDSON

27 Attorneys for Plaintiff,  
28 DEL REY COMMUNITY SERVICE DISTRICT