

THOMAS G. & CHRISTY J. BROWNING;
THOMAS H. & GENEVA L. BROWNING;
RON & JULIE ALLEN; BOBBY AYERS;
MYRON & TERESA CAMPBELL; ROBERT
& BARBARA CARTER; RAYMOND B.
COOPER; JERALD & GEORGIA COUCH ON
BEHALF OF GEORGIA COUCH, ANNIE
COUCH & VANESSA UTRECHT; DAVID &
PATRICIA DYE; JAMES & JEANETTE
HARPER; JOHN & BARBARA HASSLER;
DAVID KLEIN; BARRY "TIPPER" & CINDY
G. MCNATT, INDIVIDUALLY AND ON
BEHALF OF MORGAN MCNATT & CHASE
MCNATT; LEDDON M. & JUSTINE
MCMILLON; J.B. & ELIZABETH MCNATT;
WILLIAM MEANEY; JOE & BARBARA
MILLER; JOHN W. & KAREN MICHELL,
JR.; RALPH B. PICKETT; GARY R.
PICKETT; THOMAS RAGGIO ON BEHALF
OF RAGGIO FAMILY PROPERTY, LTD.;
ESTIE WADE; and KEITH E. WELLS;
BRUCE MCNATT, INDIVIDUALLY AND ON
BEHALF OF JASON MCNATT

PLAINTIFFS

v.

EXPLORER PIPELINE COMPANY, INC.,
VALERO ENERGY CORP.,
PHILLIPS PETROLEUM COMPANY, INC.,
EQUILON ENTERPRISES, LLC,
AND DOES 1 THROUGH 100

Defendants.

IN THE DISTRICT COURT OF

HUNT COUNTY, TEXAS

354TH JUDICIAL DISTRICT

PLAINTIFFS' SUPPLEMENTAL RESPONSES
TO DEFENDANTS' REQUESTS FOR DISCLOSURE 194.2f
AND DESIGNATION OF EXPERTS

TO: Defendant Explorer Pipeline Company, Inc., by and through its counsel of record, Gordon M. Shapiro, JACKSON & WALKER, L.L.P., 901 Main Street, Suite 6000, Dallas, Texas 75202.

Defendant Valero, by and through its counsel of record David P. Lutz and Steve Leifer, BAKER BOTTS, L.L.P., 2001 Ross Avenue, Suite 600, Dallas, Texas 75201-2980.

Defendant Phillips, by and through its counsel of record, Karl G. Dial and Steve Dillard, FULBRIGHT & JAWORSKI, L.L.P., 2200 Ross Avenue, Suite 2800, Dallas, Texas 75201.

Defendant Equilon, by and through its counsel of record, Greg Curry, THOMPSON & KNIGHT, 1700 Pacific Avenue, Suite 3300, Dallas, Texas 75201

COMES NOW, Plaintiffs in the above-entitled and numbered cause, and pursuant to Rule 194 of the TEXAS RULES OF CIVIL PROCEDURE, serves the following Supplemental Responses to Defendants' Requests for Disclosure 194.2f and Designation of Experts.

Respectfully submitted,

TED B. LYON & ASSOCIATES, P.C.

By:



TED B. LYON, JR.

State Bar No. 12741500

MARQUETTE WOLF

State Bar No. 00797685

Town East Tower, Suite 525

18601 LBJ Freeway

Mesquite, Texas 75150

Telephone: (214) 279-6571

Facsimile: (214) 279-3021

BROWN, BROWN, CHANDLER & TOWNEND

H. GRADY CHANDLER

State Bar No.: 04095000

1302 W. Miller Road

P.O. Box 472286

Garland, Texas 75047-2286

Telephone: (972) 271-4561

Facsimile: (972) 278-3588

BARON & BUDD, P.C.

SCOTT SUMMY

Texas State Bar No. 19507500

3102 Oaklawn Ave., Suite 1100

Dallas, Texas 75219-4281

Telephone: (214) 521-3605

Facsimile: (214) 520-1181

THE VICKERS LAW FIRM

HARRISON VICKERS

State Bar No. 20567000

333 Clay Street

49th Floor

Houston, TX 77002

Telephone: 713/739-8989

Facsimile: 713/739-8383

**LAW OFFICES OF SMITH E. GILLEY
SMITH E. GILLEY
State Bar No. 07935000**

2515 Johnson St.
Greenville, Texas 75403-0983
Telephone: (903) 455-9106
Facsimile: (903) 454-6169

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been forwarded to counsel of record on the 23 day of December, 2002.



Marquette Wolf

REQUESTS FOR DISCLOSURE

REQUEST FOR DISCLOSURE RULE 194.2(f):

- (f) For any testifying expert:
- (1) The expert's name address, and telephone number;
 - (2) subject matter on which the expert will testify;
 - (3) the general substance of the expert's mental impressions and opinions and a brief summary of the basis for them, or if the expert is not retained by, employed by, or otherwise subject to the control of the responding party, documents reflecting such information;
 - (4) if the expert is retained by, employed by, or otherwise subject to the control of the responding party:
 - (a) all documents, tangible things, reports, models, or data compilations that have been provided to, reviewed by, or prepared by or for the expert in anticipation of the expert's testimony; and
 - (b) the expert's current resume and bibliography.

RESPONSE:

All experts listed and designated below will likely provide information on their education, training experience, practice and background:

Retained Experts:

- (1) **Royce D. (Don) Deaver, P.E.**
6918 Pebble Beach
Houston, Texas 77069-2304
(281) 580-2057
- (2) Mr. Deaver will likely testify about the negligence and malice of the Explorer Pipeline Company. Included within the subject matter of Mr. Deaver's testimony will be the construction, operation, safety, maintenance, condition, repair, failure and inspection of the Explorer Pipeline. Also included within the subject matter of Mr. Deaver's testimony will be the relevant standards of care (including federal regulations) and the violations of those standards by the Explorer Pipeline Company. In addition, the subject matter of Mr. Deaver's testimony will include Explorer Pipeline Company's line fill calculations, batch identification, and safety record.

Pursuant to the Court's order, the report of Mr. Deaver is presented herewith which further details the subject matter of his testimony.

- (3) Generally, Mr. Deaver has the opinion, based upon reasonable engineering probability, that over 1,697,000 gallons of Reformulated Gasoline refined, manufactured, produced, distributed and/or sold by Refiner Defendants Equilon Enterprises LLC, Phillips Petroleum Company, Inc., and Valero Energy Corporation was released on March, 9 2000 from the Explorer Pipeline when it ruptured as a proximate result of the Explorer Pipeline Company's negligent and malicious operation of its pipeline.

For further details, please see the reports of Mr. Deaver here and previously produced in *City of Dallas v. Explorer et al.*

- (4)(A) Documents reviewed and considered by Mr. Deaver include those described in his report and are already in the possession of the Defendants and/or equally available to the Defendants. All such documents are available for duplication or inspection at a mutually convenient time and place.

(B) Attached to Mr. Deaver's report is a copy of his current curriculum vitae.

- (1) **Charles Powell, P.E.**
3360 Allspice Run
Norman, OK 73026
(405) 321-0916

- (2) Mr. Powell will likely testify about the Explorer Pipeline Company's negligent and malicious operation of the Explorer Pipeline. Included in the subject matter of Mr. Powell's testimony will be matters related to the metallurgy construction, maintenance, characteristics, repair, inspection, cracking and corrosion of the Explorer pipeline.

Pursuant to the Court's order, the report of Mr. Powell is presented herewith which further details the subject matter of his testimony.

- (3) Generally, it is Mr. Powell's opinion, based upon reasonable engineering probability and certainty, that the March 9, 2000 Explorer pipeline rupture was a proximate result of the Explorer Pipeline Company's negligent and malicious operation of the Explorer pipeline.

For further details, please see the report of Mr. Powell here and previously produced in *City of Dallas v. Explorer et al.*

- (4)(A) Documents reviewed and considered by Mr. Powell in his report and are already in the possession of the Defendants and/or equally available to the Defendants. All such documents are available for further duplication or inspection at a mutually convenient time and place.

(B) Attached to Mr. Powell's report is a current copy of his curriculum vitae.

- (1) **Eric M. Labolle, Ph.D.**
William Fleenor, Ph.D.
1927 El Dorado Pl.
Davis, California 95616
(530) 753-8999
- (2) Drs. Labolle and Fleenor will likely testify about MTBE's fate and transport characteristics on a general and site specific basis, MTBE's leachability characteristics, MTBE concentration levels, and whether MTBE contamination in East Caddo Creek and at the site of the March 9, 2000 Explorer Pipeline rupture posed an ongoing contamination threat to the Lake Tawakoni watershed area, including East Caddo Creek and the Hunt County area that includes the Plaintiffs' properties. They will further testify about the model that is part of their report showing the fate and transport of MTBE.

Pursuant to the Court's order, the report of Drs. Labolle and Fleenor is presented herewith which further details the subject matter of his testimony.

- (3) Generally, it is Drs. Labolle and Fleenor's opinion to a reasonable and scientific probability and certainty, that the MTBE released from the Explorer Pipeline on March 9, 2000 posed an on-going threat of contamination to the Lake Tawakoni watershed area, including East Caddo Creek and the Hunt County area. Dr. Labolle generally opines that under certain probable meteorological and site specific conditions, MTBE poses an on-going contamination threat to the Lake Tawakoni watershed area, including East Caddo Creek and the Hunt County area that includes the Plaintiffs' properties. Dr. Labolle's testimony is generally based upon an analytical model that predicts the fate and transport characteristics of MTBE at the release site, East Caddo Creek, and in Lake Tawakoni.

For further details, please see the reports of Drs. Labolle and Fleenor here and previously produced in the *City of Dallas v. Explorer et al.*

- (4)(A) Documents reviewed and considered by Drs. Labolle and Fleenor include samples and analytical data collected by the City of Dallas, Sabine River Authority and Explorer and/or their contractors and consist of documents already produced in this case and in the possession of the Defendants and/or equally available to the Defendants. The information reviewed and considered by Dr. Labolle also includes those annotations (and footnotes) as well as data used in an analytical model contained in his report. All such documents are available for further duplication or inspection at a mutually convenient time and place.
- (B) Attached to Drs. Labolle and Fleenor's report is a current copy of their curriculum vitae.

- (1) **Marc Lappe, Ph.D.**
47910 Signal Court Road
Gualala, California 95445
(707) 884-1700
- (2) The subject matter of Dr. Lappe's testimony will likely include an evaluation of the toxicological effects MTBE has on human beings exposed to it.

For further details, please see the report of Dr. Lappe.

- (3) Generally, it is Dr. Lappe's opinion that medical studies have established that MTBE is an animal carcinogen and that studies suggest it is a possible cause of various forms of cancer in human beings. Moreover, Dr. Lappe will opine that MTBE can have other health consequences in human beings, particularly children and the elderly, who are exposed to it.

For further details of Dr. Lappe's opinions, please see his report.

- (4)(A) Documents reviewed and considered by Dr. Lappe in his report include documents produced by the Defendant that are already in the possession of the Defendants and/or equally available to the Defendants. The information reviewed and considered by Dr. Lappe also includes those annotations (and footnotes) contained in his report. All such documents are available for further duplication or inspection at a mutually convenient time and place.
- (B) Attached to Dr. Lappe's report is a current copy of his curriculum vitae.

- (1) **Arturo A. Keller, Ph.D.**
Bren School of Environmental Science and Management
University of California, Santa Barbara
4670 Physical Sciences North
Santa Barbara, California 93106-5131
(805) 340-0360

- (2) Dr. Keller will likely testify about the safer alternative designs that were available to the Refiner Defendants other than formulating Reformulated Gasoline by use of MTBE.

Pursuant to the Court's order, the report of Dr. Keller is presented herewith which further details the subject matter of his testimony.

- (3) Generally, Dr. Keller will opine that safer alternative designs of gasoline additives and gasoline formulations were available to the Refiner Defendants and the oil industry aside from MTBE. Dr. Keller will opine that the Refiner Defendants and the oil industry can, and do, use ethanol in the place of MTBE as an oxygenate

additive in gasoline and still meet all federal emission standards and regulations. Further, Dr. Keller will opine that the Refiner Defendants and the oil industry have the capability of meeting all federal emission standards and regulations without adding any oxygenate to gasoline. Dr. Keller will further opine that either ethanol containing gasoline or non-oxygenated gasoline is safer than MTBE containing gasoline.

For further details of Dr. Keller's opinions, please see his report presented herewith.

(4)(A) Documents reviewed and considered by Dr. Keller in his report include documents produced by the Defendant that are already in the possession of the Defendants and/or equally available to the Defendants. The information reviewed and considered by Dr. Keller also includes those annotations (and footnotes) contained in his report. All such documents are available for further duplication or inspection at a mutually convenient time and place.

(B) Attached to Dr. Keller's report is a current copy of his curriculum vitae.

(1) **Dr. Philip Bedient, Ph.D, P.E.**

Herman Brown Professor of Engineering
Department of Civil and Environmental Engineering
Rice University
6100 Main Street/MS – 317
Houston, Texas 77005
(713) 348-4953

(2) Dr. Bedient will likely testify about the unreasonable danger posed by MTBE's fate and transport characteristics and the threat that MTBE poses to drinking water resources from a national and site-specific perspective.

Pursuant to the Court's order, the report of Dr. Bedient is presented herewith which further details the subject matter of his testimony.

(3) Generally, it is Dr. Bedient's opinion, based upon reasonable scientific and engineering probability and certainty, that MTBE's fate and transport characteristics render it an unreasonably dangerous product. Dr. Bedient will further opine that because of its unreasonably dangerous characteristics, MTBE poses a contamination threat to drinking water resources and in fact has impacted drinking water resources across the United States. Further, Dr. Bedient will opine that the resulting contamination from the March 9, 2000 rupture was magnified as a result of MTBE being released.

For further details of Dr. Bedient's opinions, please see his attached report.

(4)(A) Documents reviewed and considered by Dr. Bedient in his report include documents produced by the Defendants that are already in the possession of the Defendants and/or equally available to the Defendants. The information reviewed

and considered by Dr. Bedient also includes those annotations (and footnotes) contained in his report. All such documents are available for further duplication or inspection at a mutually convenient time and place.

(B) Attached to Dr. Bedient's report is a current copy of his curriculum vitae.

(1) **Joseph E. Odencrantz, Ph.D., P.E.**

Tri-S Environmental
Water and Land Offices
3151 Airway Avenue, Bldg. H1
Costa Mesa, California 92626
(714) 966-8490

- (2) Dr. Odencrantz will likely testify about the fate and transport of MTBE, the threat of MTBE contaminating the Lake Tawakoni watershed area, including East Caddo Creek and the Hunt County area that includes the Plaintiffs' properties after the March 9, 2000 Explorer Pipeline rupture; the contamination of the spill site, East Caddo Creek and Lake Tawakoni; sampling data; the remediation efforts and clean-up efforts after the spill; and on-going threats of contamination posed by MTBE.

For further detail of the subject matter, please see the deposition and report of Dr. Odencrantz.

- (3) Generally, the opinions of Dr. Odencrantz are those contained in his deposition and his report. He has the opinion that the MTBE concentration levels in East Caddo Creek and at the release site were considerable and persistent and as such presented a threat of contamination to the Lake Tawakoni watershed area, including East Caddo Creek and the Hunt County area.

For further detail of the opinions of Dr. Odencrantz, please see the deposition and report of Dr. Odencrantz.

- (4)(A) Documents reviewed and considered by Dr. Odencrantz in his report include documents referenced in the report and those produced by the Defendants that are already in the possession of the Defendants and/or equally available to the Defendants. All such documents have previously been provided to the Defendants.

(B) Attached to Dr. Odencrantz's report is a current copy of his curriculum vitae.

(1) **Robert Simons**

Robert Simons & Associates, Inc.
2349 Coventry Road
Cleveland Heights, Ohio 44118
(216) 932-7311

- (2) Mr. Simons will likely testify about the impact that the March 9, 2000 Explorer Pipeline rupture, resulting contamination and Explorer's on-going activities at the rupture site are having on the value of the Plaintiffs' properties. Impacts addressed by Dr. Simons include economic losses, loss of use and enjoyment and diminution in property value.

Pursuant to the Court's order, the report of Dr. Simons is presented herewith which further details the subject matter of his testimony.

- (3) Generally, it is Dr. Simon's opinion that the Plaintiffs have incurred damage to the value of their properties as a result of the March 9, 2000 Explorer Pipeline rupture, resulting contamination and Explorer's on-going activities at the rupture site.

For further details, please see the report of Dr. Simons.

- (4)(A) Documents reviewed and considered by Dr. Simons in his report include the Report of Plaintiffs' expert J.D. Holt (including environmental mapping materials created by Mr. Holt), the report of Plaintiffs' expert Lowell Moon (including real estate appraisals conducted by Mr. Moon) and public documentation created and recorded by Hunt County. The information reviewed and considered by Dr. Simons also includes those annotations (and footnotes) contained in his report. All such documents are available for further duplication or inspection at a mutually convenient time and place.

- (B) Attached to Dr. Simons' report is a current copy of his curriculum vitae.

- (1) **J.D. Holt**
J.D. Holt Consulting, Inc.
1026 East 44th Street
Austin, Texas 78751
(512) 407-9822

- (2) J.D. Holt's utilized the ARCEplorer® Global Information Systems software program to create mapping depictions and hyperlink databases of the Lake Tawakoni water shed area, including East Caddo Creek and the Hunt County area that includes the Plaintiffs' properties.

Pursuant to the Court's order, the report of Mr. Holt is presented herewith which further details the subject matter of his testimony.

- (3) J.D. Holt's opinions and testimony are reflected in the mapping depictions and materials that he has created of the Lake Tawakoni water shed area, including East Caddo Creek and the Hunt County area that includes the Plaintiffs' properties.

For further details of Mr. Holt's opinions, please see his report presented herewith.

- (4)(A) In addition to utilizing the ARCEplorer® Global Information Systems software, materials relied upon by Dr. Holt include samples and analytical data collected by

the City of Dallas, Sabine River Authority and Explorer and/or their contractors and consist of documents already produced in this case and in the possession of the Defendants and/or equally available to the Defendants. All such documents are available for further duplication or inspection at a mutually convenient time and place.

(B) Attached to Mr. Holt's report is a current copy of his curriculum vitae.

(1) **Lowell Moon**

19 Northridge Circle
Rockwall, Texas 75087
(972) 771-5665

(2) Mr. Moon opinion's are reflected in the appraisals that he conducted of the Plaintiffs' properties.

(3) Mr. Moon conducted appraisals of the Plaintiffs' properties to determine their value as of March 9, 2000.

For further details of Mr. Moon's opinions, please see his report presented herewith.

(4)(A) Materials relied upon by Mr. Moon include property records from the Hunt County Central Appraisal District and the Greater Dallas Multiple Listing Service ("MLS"). All such documents are available for further duplication or inspection at a mutually convenient time and place.

(B) Attached to Mr. Moon's report is a current copy of his curriculum vitae.

(1) **William R. Wilder, Ph.D.**

2040 N. Loop 336 West
Suite 128
Conroe, Texas 77304
(936) 756-2030

(2) Dr. Wilder will likely testify about the environmental impact of the released materials on the habitat and wildlife constituents in the affected area.

Pursuant to the Texas Rules of Civil Procedure and the Court's Order, the report of Dr. Wilder is presented herewith that further details the subject matter of his testimony.

(3) Generally, Dr. Wilder will express the opinion, based upon reasonable scientific principles, that the release of such a large volume of reformulated gasoline has had a negative impact in the area affected by the rupture. Dr. Wilder will also opine

that, due to the properties and characteristics of MTBE, such negative impact will continue in the future. For further details, please see Dr. Wilder's report.

- (4)(A) Documents reviewed and considered by Dr. Wilder are already in the Defendant's possession and/or are part of scientific literature that is equally available to the Defendants. All such documents are available for duplication and/or inspection upon a mutually agreed schedule.
- (B) Attached to Dr. Wilder's report is a current copy of his curriculum vitae.

Non-retained, Non-employed, Non-controlled

- (1) **Thomas Kerlin**
Gary Beyer
Texas Natural Resource Conservation Commission
12100 Park Circle 35
Austin, Texas 78701
(512) 239-1000
- (2) Mr. Kerlin and Mr. Beyer are designated to opine on the subject of MTBE and its status as an unregulated compound.
- (3) Mr. Kerlin and Mr. Beyer may offer their opinions that MTBE that is an unregulated contaminant, that there is no maximum contaminant level, that the current 'guidelines' are not regulatory or enforceable, and that the "guidelines" are not based on human epidemiological studies.
- (4) n/a

- (1) **Dennis Johnson**

The address and telephone information is unknown by Plaintiff but may be known by Defendant Explorer as they apparently redacted Mr. Johnson's address from his report that it produced.
- (2) The subject matter of Mr. Johnson's opinions is failure of the 28 inch Explorer Pipeline of March 9, 2000 and its causes.
- (3) Mr. Johnson's opinions are those contained in his report beginning at EXPL0057168 which was commissioned by Explorer pursuant to 49 CFR 195 according to Rod Sands, C.O.O. Explorer Pipeline.
- (4) N/A

- (1) **Cliff Zimmerman**
National Transportation Safety Board

490 L'enfant Plaza East SW 2001
Washington D.C. 20594
(202) 314-6461

(2) Mr. Zimmerman may provide information and opinions about his investigation and the probable cause of the March 9, 2000 Explorer Pipeline rupture. He may also provide opinions contained in the NTSB report and the Material Laboratory Divisions Materials Laboratory Factual Report.

(3) The opinions of Mr. Zimmerman are those contained in the NTSB Report and the Materials Laboratory Factual Report.

(4) n/a

(1) **Matthew Fox**
John Fox
National Transportation Safety Board-
Office of Research and Engineering
Materials Laboratory Division
Washington, D.C. 20594
(202) 314-6000

(2) Mr. Matthew Fox and Mr. John Fox may offer their opinions related to the NTSB laboratory findings and the failure of the pipeline and those subjects included in the Materials Laboratory Factual Report.

(3) The opinions of Mr. Matthew Fox and Mr. John Fox are those found in the Materials Laboratory Factual Report.

(4) n/a

(1) **Chuck Place**
EA Engineering
1420 Valwood Parkway
Carrollton, Texas 75006
(972) 484-1420

(2) The subject matter and opinions of Chuck Place are those included in his deposition previously taken and provided to Defendants in the form of sampling data and analytical results that are attached as exhibits to his deposition and have been previously produced by the Plaintiff.

(3) Mr. Place's opinions are those included in his deposition, provided in lieu of a report. Generally, the following are Mr. Places opinions: that the samples and results reported by EA Engineering were collected and analyzed by reliable and generally accepted scientific standards and methods; that the costs and expenses charged by EA Engineering for the collection and analysis of the samples were

reasonable and necessary and within the customary and usual amounts for the same or similar circumstances.

(4) n/a

Experts designated by other parties.

(1) – (4)

Plaintiff designates as expert witness any expert designated by the Defendants; Plaintiff may later amend this cross-designation narrowing the scope of the Defense Experts for purposes of Plaintiff's designation.