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August 8, 2002

Berkeley City Council
2180 Milvia St.
Berkeley, Ca. 94704

Appeal of ZAB decision on 1797 Shattuck Ave.
Use permit #01-1000027

Dear Councilmembers:

We are appealing the ZAB decision on 1797 Shattuck Ave. because we believe the permit as issued **poses a serious threat to public health and safety.**

As you know, the site was a gas station for over 50 years. The city's own records show that **known carcinogens such as MTBE and benzene remain in the soil in great quantities.** In addition, the "toxic plume" of groundwater is moving off the site in a southeasterly direction, directly towards the senior citizen residence at Delaware and Shattuck and towards Oscar's Hamburgers.

Numerous other food-serving establishments in the immediate area will be affected by soil contaminated with MTBE being stirred up during construction. This goes far beyond odor. It means that **known carcinogens will be flying around.** Other restaurants likely to be affected include the Kentucky Fried Chicken, La Liaison, Berkeley Espresso, Asian Food, PastaPacifico and Party Sushi. The residents living directly across Shattuck Ave. from the project will be affected too.

On August 5, 2002, Shell Oil paid \$28 million to settle a suit for contaminating drinking water wells in the Tahoe basin with MTBE. (See clipping). You expose the city to similar suits if you do not order this site cleaned up before construction. Having potential tenants sign a waiver indicating the site was a gas station will not relieve you of responsibility in future lawsuits, nor will it protect the city from lawsuits from citizens like ourselves who will sue for damages to our health and property.

An August 1999 report to Chevron found in city files, states that there was **MTBE, benzene and lead in all six soil samples taken. These substances are carcinogens.** A March 1999 report states there were MTBE concentrations of 10,000 and 660 parts per billion (ppb) in the groundwater.

A February 2000 report from another consultant indicates there were 22,500 ppb of MTBE, 6,970 ppb of benzene and 46,400 ppb of TPHg (a form of benzene) in the soil. And that was only from boring #2! Another boring reported 10,000 ppb of MTBE, 3000 ppb of benzene and 60,000 ppb of TPHg. At one point, the site was reported to contain a total of 78,000 ppb of MTBE.

THERE IS NO TOXICOLOGY REPORT ON THIS PROJECT. To allow construction to proceed without such a report, a full Environmental Impact Report and professional environmental clean-up *prior* to the start of construction, would be criminal and a violation of your duty to protect public health and safety.

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CITY OF BERKELEY
CITY CLERK DEPT

City staff and the developer say that Chevron can effectively monitor the groundwater wells. But in July 2001, the city's Toxic Management Division wrote to Chevron "about the lack of data for MW-3, last sampled in 1995 prior to the current sampling in April 2001. There has been no reason provided this department as to why the monitoring well was not sampled for five years." There are other examples in TMD files of **Chevron's lack of zeal in monitoring the site in the past, so how can they be trusted to monitor the site in the future?**

We also believe this project is too high, too dense, provides no setbacks along Shattuck Ave. and does not provide enough trees to blunt the effect of the building mass.

Furthermore, the project **does not conform to C-1 zoning**. In a C-1 zone, a mixed use building can be 50 ft. high, but can only be four stories. **This building is five stories high and thus violates the zoning code.**

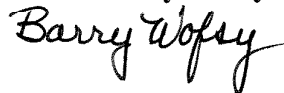
Parking is also a problem with this project. Although 59 spaces are to be provided, it is not known how many will be allocated to retail tenants. **To say that people will rely on public transportation is to ignore reality. BART ridership has fallen and AC Transit was ordered by federal judge Thelton Henderson in July 2002 to increase its ridership to the level it was supposed to have achieved in 1987** and has been unable to reach 15 years later. This means that people drive, and sufficient parking must be provided or the surrounding neighborhoods will suffer.

We question the city's ability to guaranty the required number of affordable units. The GAIA building still has not provided the required number of affordable units over a year after its completion nor have its "community facilities" been built.

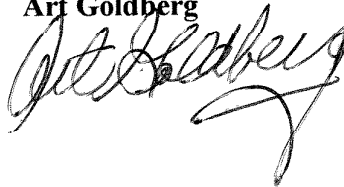
We believe **the planning and zoning staff works to please outside developers** rather than the Berkeley residents who pay their salaries, so we have no confidence they will make the developer live up to the conditions in the negative declaration. **Nor do we believe, they will sufficiently monitor the construction site to insure that toxics are not flying about, endangering the health of the community.**

If you vote to allow this project to be built over a toxic swamp, directly across from a senior citizen residence and near seven restaurants, without an EIR and without a professional environmental clean-up, we will surely see you in court.

Barry Wofsy



Art Goldberg



Shell Oil settles Tahoe MTBE suit

\$28 million payout for tainted wells

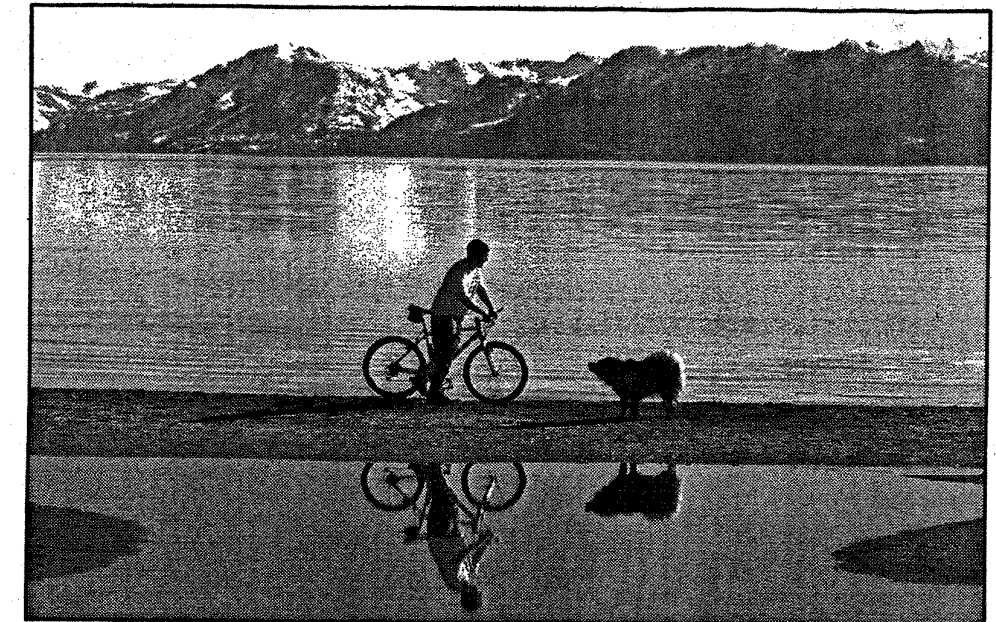
By Kathleen Sullivan
CHRONICLE STAFF WRITER

Ending a trial that began nearly a year ago, Shell Oil Co. agreed Monday to pay the South Tahoe Public Utility District \$28 million to help meet the cost of cleaning up drinking water wells contaminated with the gasoline additive MTBE.

Added to other settlements reached before or during the trial, the district will receive more than \$69 million, enough to clean up eight contaminated wells and pay its legal bills.

"When we started out down this road, we set out to recover enough money to fix the system and pay the bills, so our customers didn't have to pay for it out of their pockets," said Dennis Cocking, a district spokesman. "With the total settlement, we are able to do that."

The settlement with Shell — and two of its divisions — is the largest among the 16 oil companies, refineries, MTBE manufacturers, gas stations and distributors that have agreed to pay the



DAVID B. PARKER / Reno Gazette-Journal 2002

Shell Oil Co. will pay \$28 million to settle a suit regarding tainted water wells near Lake Tahoe.

resort community for the environmental havoc caused by the chemical. The settlement was approved Monday by San Francisco Superior Court Judge Carlos Bea.

"We felt that settling now was the best thing to do to no longer deal with protracted litigation costs," said Shell spokesman Cameron Smyth.

Before the trial began last October, Exxon agreed to pay the district \$12 million, and Chevron agreed to pay \$10 million.

The district filed the product liability lawsuit in 1998 after MTBE pollution forced South Lake Tahoe to close a third of its drinking-water wells.

In April, a jury found that gasoline with MTBE is a defective product and that two major

oil companies — Shell and Lyondell Chemical Co. — were aware of the chemical's dangers but withheld the information when they put it on the market. Lyondell settled in July for \$4 million.

It was the first MTBE case tried in the country. The jury was hearing testimony in the damages phase of the trial when the settlement was announced.

The oil industry has maintained that it followed state and federal laws and that MTBE was deemed appropriate by the U.S. Environmental Protection Agency to reduce car pollution.

But MTBE has proved to be a major environmental headache.

Spilling from leaky underground storage tanks, it travels faster in the groundwater than

gas and takes longer to break down. The state has set a maximum limit for MTBE in drinking water because the chemical is a suspected carcinogen.

Attorney Duane Miller, who represented the district, said 16 states are facing problems related to MTBE contamination.

"We know this case was monitored by the oil industry as an indication of what would occur in future cases all over the country," he said.

Miller said he was heartened by decisions by several oil companies — Exxon, Shell and Atlantic Richfield — to remove MTBE from their gasoline before California's January 2004 deadline.

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EPA: Toxic Chemicals Raise Cancer Risk

By H. JOSEF HEBERT

c The Associated Press

WASHINGTON (June 1) - Toxic chemicals pose an elevated cancer risk to two-thirds of Americans living in nearly every part of the country, says an assessment by the Environmental Protection Agency.

A long-awaited study of health risks from 32 toxic chemicals, released Friday, concludes that 200 million people live in areas where the cancer risk from exposure to these substances is higher than what the EPA considers a minimum level of concern.

The assessment, based on 1996 data, found that automobile and truck emissions are a major cause of exposure to the chemicals, with power plants and other industrial sources also involved.

The study, described as a "snapshot" of health risks from air toxins, found that the chemicals can be expected over a lifetime of exposure to cause 10 additional cancers for every 1 million people. These risks can be found across virtually the entire country, said the study, which was reviewed by outside scientists.

"More than 200 million people live in census tracts where the combined upper bound lifetime cancer risk from these (chemical) compounds exceeded 10 in 1 million risk," said the report. It added that 20 million people live in areas where the risks are even higher - 100 additional lifetime cancers for every 1 million people.

The EPA considers a cancer risk of greater than one in a million or greater as a matter of concern, although those levels do not always trigger regulatory actions.

"The risks are very much in line with what we expected all along," said Jeffrey Holmstead, head of the EPA's air office.

He said the risks of cancer from toxic chemical exposure still "are very, very small" compared with overall cancer risks from all sources, and are likely smaller than suggested by the study.

"Since that time (1996), the risks already have been reduced significantly," he said in an interview late Friday after the study was placed on the EPA's Web site.

Holmstead said the report was "designed to be a baseline" for further studies on risks posed by air toxins. Another assessment is expected to be issued next year based on more recent data.

But environmentalists said the study's findings provide clear evidence that tougher measures are needed to reduce releases of toxic chemicals - such as benzene, mercury, formaldehyde and other carcinogens - from automobiles, power plants and industrial sources.

They show "a lifetime cancer risk at least 10 times greater than the level considered acceptable by the EPA," said Emily Figdor of the U.S. Public Interest Research Group. "These findings are a wake-up call that EPA should take action to reduce this long-overlooked public health threat."

Among the study's conclusions is that automobiles and trucks contribute substantially to the public's exposure to cancer-causing air toxins.

It estimated that 100 million people live in areas where motor vehicles - both on- and off road - account for an additional lifetime cancer risk of at least 10 in a million.

The study also concluded that toxic chemicals pose a significant health hazard other than cancer to much of the U.S. population, especially problems with respiratory systems.

The report said the assessment should be viewed as a "snapshot" that identifies the greatest health risks from toxic chemicals and identify the areas of most potential concern, but not as an analysis to determine what levels of risks are acceptable or not acceptable.

The authors also cautioned that the risk analysis was subject to limitations "due to gaps in data or in the state of the science for assessing risk."

In some cases the shortcomings may have understated the risks, the authors suggested. For example, the study did not attempt to assess various dioxin compounds "that may contribute substantially to (cancer) risks," they wrote.

In addition, the study noted, the EPA is reassessing the health effects of the 32 toxic chemicals that were studied and that the reassessment could show an increase in the overall risks that the chemicals pose.

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