

ILLINOIS POLLUTION CONTROL BOARD
July 21, 2011

CHEVRON ENVIRONMENTAL) PCB 11-65
MANAGEMENT COMPANY) (Permit Appeal - UST)
)
Petitioner,) PETITION FOR REVIEW OF ORDER OF
) THE BOARD

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY

Respondent.

ORIGINAL

**RECEIVED
CLERK'S OFFICE**

AUG 25 2011

**STATE OF ILLINOIS
Pollution Control Board**

Introduction

Comes Now Chevron Environmental Management Company (Petitioner) and files this appeal of the Board's July 21, 2011 Order (Order) dismissing Petitioner's appeal due to Petitioner's alleged failure to timely file an appeal. The Order was served on Petitioner on July 26, 2011 by certified mail. A copy of said Order is attached hereto as Attachment 1. As described in more detail below, Petitioner submitted documentation in support of its appeal to the Illinois Environmental Protection Agency which was received on June 2, 2011. This submittal came well before the July 6, 2011 cutoff date for Petitioner's appeal.

Background

On April 21, 2011, at the parties' request, the Board extended until July 6, 2011, the time period for Petitioner to appeal a March 3, 2011 determination of the Illinois Environmental Protection Agency (Agency). See Attachment 2. The determination concerns a former Texaco underground storage tank (UST) site located at 22 West Irving Park Road, Roselle, DuPage County (the "Site"). In the March 3, 2011 determination, the Agency denied reimbursement for some costs regarding cleanup of the Site. See Attachment 3.

APPEAL RE: ORDER OF THE BOARD

1
2 By way of letter dated May 25, 2011, to Mr. John Sherrill, Manager
3 Financial Management Unit, Bureau of Land, Petitioner set forth its
4 grounds for appeal of the March 3, 2011 determination. See Attachment
5 4.
6

7 Petitioner's letter was delivered by FedEx to Mr. Sherrill's offices
8 on June 2, 2011, at 9:24 AM. A letter from FedEx confirming its
9 delivery of said letter is attached here as Attachment 5.
10

11 **Request for Relief**

12 As Petitioner's documentation in support of its appeal was timely
13 received by the Agency, Petitioner respectfully requests that the
14 Board's Order be rescinded and that Petitioner's appeal be allowed to
15 proceed. In further support of Petitioner's appeal of the Board's
16 Order, Petitioner requests a hearing before the Board should the
17 attached documentation be deemed insufficient to fully support the
18 relief requested.

19
20 Dated this 8/24/2011


21 RICHARD CHATFIELD-TAYLOR
22 Attorney for CHEVRON
23 ENVIRONMENTAL MANAGEMENT COMPANY
24
25
26
27
28

ILLINOIS POLLUTION CONTROL BOARD
April 21, 2011

CHEVRON ENVIRONMENTAL)	
MANAGEMENT COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 11-65
)	(Permit Appeal – UST)
)	(90-Day Extension)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On April 7, 2011, the parties timely filed a joint notice to extend the 35-day period within which the Chevron Environmental Management Company (Chevron) may appeal a March 3, 2011 determination of the Illinois Environmental Protection Agency (Agency). *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 101.300(b), 105.206(c), 105.208(a), (c). In the determination, the Agency refused to reimburse Chevron for some costs regarding Chevron's Underground Storage Tank (UST) located at 22 West Irving Park Road, Roselle, DuPage County.

The Board extends the appeal period until July 6, 2011. *See* 415 ILCS 5/40(a)(1) (2006); 35 Ill. Adm. Code 105.208(a). If Chevron fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, John Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 21, 2011, by a vote of 5-0.



John Therriault, Assistant Clerk
Illinois Pollution Control Board



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 North Grand Avenue East, P.O. Box 19276, Springfield, Illinois 62794-9276 • (217) 782-2829
James R. Thompson Center, 100 West Randolph, Suite 11-300, Chicago, IL 60601 • (312) 814-6026

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

JOHN FRARY

MAR 07 2011

217/782-6762

#212046

MAR 03 2011

CERTIFIED MAIL #

7009 2820 0001 7488 0446

Chevron Environmental Management Company
Attn: John Frary
4800 Fournace Place, BOB, E540B, PO Box 430
Bellaire, TX. 77404

Re: LPC #0434825055 -- DuPage County
Medinah / Texaco Service Station
22 West Irving Park Road
Incident-Claim No.: 913428 -- 57884
Queue Date: January 5, 2010
Leaking UST FISCAL FILE

Dear Mr. Frary:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from August 25, 2008 to September 27, 2009. The amount requested was \$113,244.35.

On January 5, 2010, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated November 30, 2001. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) and Section 40 of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5463

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-5800

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 993-7200

Page 2

includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

If you have any questions, please contact Catherine S. Elston of my staff at 217-785-9351 or Brian Bauer of Hernando Albarracin's staff at 217-782-3335.

Sincerely,



John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS:CSE

ATTACHMENT

c: ARCADIS G & M, Inc.
Leaking UST Claims Unit
Cathy Elston
Brian Bauer

ATTACHMENT A
Accounting Deductions

Re: LPC #0434825055 -- DuPage County
Medinah / Texaco Service Station
22 West Irving Park Road
Incident-Claim No.: 913428 -- 57884
Queue Date: January 5, 2010
Leaking UST FISCAL FILE

Item # Description of Deductions

1. \$113,244.35, deduction for an adjustment in costs due to a lack of supporting documentation (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

Pursuant to Section 22.18b and Section 57.8 of the Act if an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of the State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9 of the Act, an application for payment may be submitted to the Illinois EPA. A complete application for payment must contain a copy of the OSFM eligibility and deductibility determination. An eligibility and deductibility determination for lost incident number 913428 was issued to Texaco Refining and Marketing, Inc. not Chevron Environmental Management Company for which payment has been requested.

In addition, Chevron Environmental Management Company does not meet the definition of Owner or Operator in Section 57.2 or 22.(e)(1)(B) of the Act therefore, all costs incurred regarding this incident are not eligible for reimbursement from the Fund to Chevron Environmental Management Company.

All claims submitted for payment must have a Request for Taxpayer Identification Number and Certification (IRS form W-9) dated October 2007 or newer. You can obtain a blank W-9 from the United States Department of the Treasury, Internal Revenue Service or at their website: <http://www.irs.gov/pub/irs-pdf/fw9.pdf> .

CSE



Richard Chatfield-Taylor
Senior Counsel
Environmental Practice Group

Law Department
Chevron Corporation
6001 Bollinger Canyon Road
San Ramon, CA 94583
Tel 925-842-9035
Fax 925-842-8595
rctaylor@chevron.com

May 25, 2011

John Sherrill, Manager
Financial Management Unit, Bureau of Land
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: LPC#0434825055 – DuPage County
Medinah / Texaco Service Station
22 West Irving Park Road
Incident-Claim No.: 913428—57884
Leaking UST FISCAL FILE

Dear Mr. Sherrill:

In recent correspondence from you dated March 3, 2011, you advise that the Illinois Underground Storage Tank Fund cannot approve the most recent application for payment submitted for the above facility. The reason stated is that the eligibility and deductibility determination was issued to Texaco Refining and Marketing Inc. ("TRMI"), not Chevron Environmental Management Company ("CEMC"), the party submitting the application.

When the initial application was submitted to the Fund in 2001, TRMI made the application based on its status as the owner of the leaking underground storage tanks ("USTs"). Subsequently, by operation of an inter-company agreement styled "Master Asset Transfer and Liability Assumption Agreement" dated October 1, 2001 (the "Agreement"), TRMI assets were transferred to Texaco Downstream Properties Inc. ("TDPI") (Federal Tax Id. No.: 0688339). That Agreement also provides that TDPI agreed to assume, pay, perform, or otherwise discharge certain liabilities of TRMI, which in this specific case include TRMI's obligation to remediate the UST releases at the facility. TDPI continues to be responsible for site remediation.

Chevron Environmental Management Company ("CEMC") filed the recently rejected application for TDPI because CEMC has a contract with TDPI to perform environmental services for the corporation, and has been delegated a Special Power of Attorney ("POA") that allows it to act on TDPI's behalf when doing so. A copy of the PDA is attached for your files. However, we acknowledge that the form of the signature provided with the most recent submittal is insufficient to place the Fund on notice of CEMC's role. In the future we will sign the applications using the following format:

Attachment 4

John Sherrill, Manager
May 25, 2011
Page 2

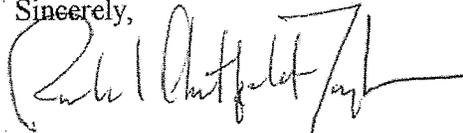
Chevron Environmental Management Company,
Attorney-in Fact for Texaco Downstream Properties Inc.

By: _____

Title: _____
Assistant Secretary

We trust that the foregoing explanations will be sufficient to induce the Fund to process the recently rejected applications. If you have any questions, please contact me at 925 842 9035.

Sincerely,



Richard Chatfield-Taylor
Senior Counsel

Enclosure

cc: John Frary, CEMC
Evelyn Wang, CEMC
Kelley Baker, Antea Group
John Yurish, Antea Group

SPECIAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS: That Texaco Downstream Properties Inc. (the "Company"), a corporation duly organized and validly existing under the laws of the State of Delaware with its principal offices at 6001 Bollinger Canyon Road, San Ramon, California, acting by and through its duly authorized officers does hereby constitute and appoint:

CHEVRON ENVIRONMENTAL MANAGEMENT COMPANY

Its true and lawful Attorney in Fact, for the purpose, and only for the purpose, specified as follows:

To execute documents on behalf of the Company as necessary to perform activities under that certain Environmental Services Agreement, dated March 1, 2010, by and between the Company and Chevron Environmental Management Company.

The Company hereby grants said Attorney full power and authority to act as described above and agrees to ratify and confirm whatsoever shall be lawfully done by virtue hereof. The power and authority hereby conferred shall continue in force so long as said Environmental Services Agreement remains in force.

IN WITNESS WHEREOF, the Company has caused this Special Power of Attorney to be executed this 1st day of March, 2010.

Texaco Downstream Properties Inc.

By Frank G. Soler

Name: Frank G. Soler

Title: Vice President and Secretary

State of California)
County of Contra Costa)

On March 1st, 2010 before me, Amie Bogaard Notary Public, personally appeared Frank G. Soler, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Amie Bogaard (Seal)



FedEx Express
Customer Support
Domestic Trace
3875 Airways Boulevard
Module H, 4th Floor
Memphis, TN 38116

U.S. Mail: PO Box 727
Memphis, TN 38194-4643

Telephone 901-369-3600



July 26, 2011

MICHELLE THOMAS
(770) 409-9933

Dear MICHELLE THOMAS:

Our records reflect the following delivery information for the shipment with the tracking number 797158561360.

Delivery Information:

Signed For By: J.BAKER

Delivered to: 1021 N GRAND AVE E

Delivery Date: June 02, 2011

Delivery Time: 09:24 AM

Shipping Information:

Shipment Reference Information: J097REGPM

Tracking No: 797158561360

Ship Date: June 01, 2011

Shipper: KELLEY BAKER
ANTEA GROUP
5000 PEACHTREE
INDUSTRIAL BLVD
SUITE 160
NORCROSS, GA 30071
US

Recipient: JOHN SHERRILL
IL ENVIRONMENTAL
PROTECTION AG
1021 N GRAND AVE E
EAST
SPRINGFIELD, IL 62702
US

Thank you for choosing FedEx Express. We look forward to working with you in the future.

FedEx Worldwide Customer Service
1-800-Go-FedEx (1-800-463-3339)
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This Information is provided subject to the FedEx Service Guide.

CERTIFICATE OF SERVICE

RECEIVED
CLERK'S OFFICE

AUG 25 2011

STATE OF ILLINOIS
Pollution Control Board

Respondent:

Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601-3218
Attn: Clerk of the Board

cc: Illinois Environmental
Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
Attn: John Sherrill, Manager
Financial Management Unit,
Bureau of Land

Illinois Environmental
Protection Agency
1021 North Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276
Attn: Brian Bauer
LUST Section

Ms. Melanie Jarvis, Esq.
Illinois Attorney General's
Office
500 South Second Street
Springfield, IL 62706

ORIGINAL

Petitioner:

Chevron Environmental Management Company
c/o John Frary
Manager Remediation Projects
Chevron
4800 Fournace Place
Bellaire, TX 77401-2324

cc: Richard Chatfield-Taylor
Environmental Practice Group
Chevron Corporation
6001 Bollinger Canyon Rd., Rm. T-2256
San Ramon, CA 94583

BY OVERNIGHT COURIER: I caused the above-referenced document(s) to be delivered **overnight via Federal Express** to the Respondent addressee(s) listed above.

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

Executed on August 24, 2011, at San Ramon, California.



GINA RINALDI
LEGAL ASSISTANT