

**State of Illinois  
Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street, Suite 11-500  
Chicago, Illinois 60601  
<http://www.ipcb.state.il.us/>**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

ELMHURST MEMORIAL HEALTHCARE and	)	
ELMHURST MEMORIAL HOSPITAL	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 09-xxxx
	)	(Citizen's Suit
CHEVRON U.S.A. INC.,	)	Enforcement Action)
	)	
Respondent.	)	

Elmhurst Memorial Healthcare, Complainant

200 Berteau Avenue  
Elmhurst, Illinois 60126  
DuPage County  
(630) 833-1400

Elmhurst Memorial Hospital, Complainant

200 Berteau Avenue  
Elmhurst, Illinois 60126  
DuPage County  
(630) 833-1400

Chevron U.S.A. Inc., Respondent

c/o Prentice Hall Corporation (Registered Agent)  
33 North LaSalle Street  
Chicago, Illinois  
Cook County

## **FORMAL COMPLAINT**

Complainants, Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital, by and through their attorney, the Law Offices of Carey S. Rosemarin, P.C., complain against the Respondent Chevron U.S.A. Inc., as set forth herein.

### **Overview of this Action**

Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital, through their contractors, investigated and remediated contamination associated with underground storage tanks (“USTs”) operated and abandoned by Texaco, Inc. (“Texaco”) at 701 South Main Street, Lombard, Illinois (the “Property”). For over twenty years commencing in the mid-1950s, Texaco owned and/or operated a gasoline filling station on the Property. Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital now seeks to recover the costs they incurred from Respondent Chevron U.S.A. Inc. (“Chevron”). Texaco’s liabilities have devolved upon Chevron as a result of various corporate transactions.

### **The Parties**

1. Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital (collectively, “EMH”) are Illinois not-for-profit corporations. Their primary offices are located in Elmhurst, Illinois. Each is a “person” within the meaning of Section 3.315 of the Illinois Environmental Protection Act (the “Act”). 415 ILCS 5/3.315.
2. Chevron is a Pennsylvania corporation licensed to conduct business in Illinois. Its primary offices are located in San Ramon, California. Chevron is a “person” within the meaning of Section 3.315 of the Act. 415 ILCS 5/3.315.
3. In October 2001, Chevron Corporation merged with Texaco.

4. By virtue of the merger, any liabilities arising from Texaco's pre-2001 actions relevant to this Complaint became the liabilities of Chevron Corporation. On information and belief, following the 2001 merger, Chevron Corporation effectively transferred such liabilities to its subsidiary, Respondent Chevron.

**Jurisdiction**

5. The Illinois Pollution Control Board has jurisdiction of this matter pursuant to 415 ILCS 5/31.

**Factual Background**

***Texaco's Relationship to the Property***

6. On information and belief: i) The Texas Company owned and/or operated a gasoline filling station on the Property from approximately 1957 to 1977; ii) the gasoline filling station was operated under the name, "Texaco;" and iii) in or about 1959, The Texas Company changed its name to "Texaco, Inc."

7. On information and belief, Texaco caused to be installed on the Property one heating oil UST, at least four gasoline USTs and two other USTs.

8. On information and belief, releases of petroleum occurred as a direct result of Texaco's operation of the gasoline USTs.

9. On information and belief, Texaco ceased using the Property as a gasoline filling station in or about 1977, and abandoned in place all of the USTs then located on the Property.

10. On information and belief, in 1981 a transferee of the Property discovered that some or all of the USTs had not been abandoned properly. This matter was brought to the attention of the Lombard Fire Department at that time. The Fire Department promptly notified the company that

performed the 1978 abandonment of the deficiency in its work, stating that the USTs were only partially filled with an inert solid material.

11. On information and belief, a transferee of the Property removed two USTs in or about 1981.

***EMH's Relationship to the Property***

12. Elmhurst Memorial Hospital was founded in 1926, and was the first hospital in DuPage County. Since that time the EMH organization has expanded significantly. It is now a major health care organization in the Chicago suburbs, and serves the community from numerous locations in DuPage County. The organization employs a staff of more than 3,000 people, plus 600 physicians. It also encompasses a hospital with 427 licensed beds.

13. In 2005, some twenty-five years after Texaco's departure, EMH identified the Property as a possible site for a facility to treat patients suffering from sleep disorders. Elmhurst Memorial Healthcare purchased the Property for that purpose in the same year.

***EMH's First Remediation***

14. Through its contractors, EMH conducted an electromagnetic search to locate any USTs remaining on the Property. One UST, believed to have contained heating oil, was detected on the east side of the existing building. EMH obtained a permit to remove the UST and drained approximately 230 gallons of water from it. On March 17, 2006, the UST was extracted in the presence of representatives of the Illinois State Fire Marshal and the Lombard Fire Department.

15. The heating oil UST was located relatively close to the surface. The top of it was dented and had holes of between two and four inches in length. Soil samples were collected from the vicinity of the excavation pit and submitted for laboratory analysis. Notwithstanding the poor

condition of the UST and detection of petroleum odors, the UST was determined not to be leaking.

16. EMH did not find gasoline USTs on the Property at that time. However, it did locate the area of the former gasoline pump islands and collected soil samples in that vicinity. The samples were analyzed for the indicator contaminants specified in 35 Ill. Adm. Code § 734.405(b).

Laboratory results showed that the soil on the Property contained benzene and ethylbenzene at concentrations exceeding those specified in 35 Ill. Adm. Code Part 742, Appendix B (Tier One).

This soil was contaminated as a result of Texaco's operation of the gasoline filling station.

17. Accordingly, EMH caused over 570 tons of contaminated soil to be excavated and disposed off-site.

18. During the excavation of the contaminated soil, groundwater seeped into the excavation pit. Approximately 1,350 gallons of water was thus collected and disposed off-site.

***EMH's Second Remediation***

19. Subsequently, the existing building on the Property was razed to make way for the new EMH facility. During construction, four gasoline USTs, each of 3,000-gallon capacity, were uncovered.

20. The four USTs were removed on September 19, 2007, with a representative of the Office of the Illinois State Fire Marshal present. That representative determined that a release had occurred, and the release was thus reported to the Illinois Emergency Management Agency (IEMA No. 20071269).

21. Each of the USTs contained gasoline and water and was partially filled with sand. Each contained holes at the bottom.

22. Soil samples collected from the sidewalls and floor of the excavation pit were analyzed for the indicator contaminants for gasoline, as specified in 35 Ill. Adm. Code § 734.405(b). Laboratory results showed the soil contained benzene at concentrations exceeding those specified in 35 Ill. Adm. Code Part 742, Appendix B (Tier One).
23. About 10,500 gallons of gasoline and water was pumped from the tanks and the excavation pit and disposed off-site.
24. About 315 tons of contaminated soil was excavated from the area affected by the gasoline USTs.
25. The Illinois Environmental Protection Agency issued a No Further Remediation Letter with respect to the four gasoline USTs under 415 ILCS 5/57.10 on or about December 27, 2007.
26. EMH expended over \$100,000 to clean up the mess left on the Property by Texaco.
27. EMH notified Respondent of the discovery of the four gasoline USTs at the time of the excavation, and demanded reimbursement of the costs expended in relation to the USTs as early as October 2, 2007. Despite repeated demands since that time, Respondent has not reimbursed EMH for any of the costs it incurred in relation to the USTs on the Property.

## **COUNT I**

### **Violation of Section 21(a) of the Act**

28. Complainants reallege and incorporate by reference as if fully set forth herein Paragraphs 1 through 27 of this Complaint.
29. Section 21(a) of the Act (415 ILCS 5/21(a)) reads in its entirety as follows:  

No person shall:

  - (a) Cause or allow the open dumping of any waste.

30. The USTs, the substances in the USTs, and the contaminated media resulting from releases associated with the USTs on the Property (collectively, "Gas Station Waste") all constitute "waste" within the meaning of the Act. 415 ILCS 5/3.535.

31. Section 3.305 (415 ILCS 5/3.305) of the Act reads in its entirety as follows:

"Open dumping" means the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.

32. On information and belief, at no relevant time has the Property fulfilled the requirements of a sanitary landfill.

33. The abandonment of the Gas Station Waste constitutes "open dumping" within the meaning of the Act.

34. Respondent's predecessor in interest, Texaco, caused or allowed the open dumping of the Gas Station Waste in violation of 415 ILCS 5/21(a).

WHEREFORE, Complainants EMH request the Board to enter an order requiring Respondent to reimburse Complainants for all costs Complainants incurred in investigating and remediating the Gas Station Waste; and ordering any other relief that the Illinois Pollution Control Board and equity deem appropriate.

**COUNT II**

**Violation of Section 21(e) of the Act**

35. Complainants reallege and incorporate by reference as if fully set forth herein Paragraphs 1 through 27 of this Complaint.

36. Section 21(e) of the Act (415 ILCS 5/21(e)) reads in its entirety as follows:

No person shall:

(e) Dispose treat store or abandon any waste, or transport any waste into this State for disposal, treatment, storage or abandonment, except at a site or facility which meets the requirements of this Act and of regulations and standards thereunder.

37. The Gas Station Waste constitutes “waste” within the meaning of the Act.

415 ILCS 5/3.535.

38. The presence of the Gas Station Waste on the Property constitutes “storage” under the Act. 415 ILCS 5/3.46.

39. The presence of the Gas Station Waste on the Property constitutes “disposal” under the Act. 415 ILCS 5/3.08.

40. The presence of the Gas Station Waste on the Property for decades after the cessation of active use by Texaco constitutes “abandonment” under Section 21(e) of the Act.

415 ILCS 5/21(e).

41. Texaco disposed, stored, and abandoned waste at a facility that did not meet the requirements of the Act, and the regulations thereunder, in violation of Section 21(e) of the Act.

WHEREFORE, Complainants request the Illinois Pollution Control Board to enter an order requiring Respondent to reimburse Complainants for all costs Complainants incurred in removing the USTs and investigating and cleaning up and disposing the contaminants, including



but not limited to the contaminated soils and water, at the Property; and ordering any other relief that the Illinois Pollution Control Board and equity deem appropriate.

Dated: March 6, 2009

Respectfully submitted,

Elmhurst Memorial Healthcare  
Elmhurst Memorial Hospital

By: /s/ Carey S. Rosemarin  
One of its attorneys

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**NOTICE TO RESPONDENT**

**NOTE: THIS STATEMENT MUST BE INCLUDED IN THE SERVICE OF THE FORMAL COMPLAINT ON THE RESPONDENT**

**INFORMATION FOR RESPONDENT RECEIVING FORMAL COMPLAINT**

Please take notice that today I filed with the Clerk of the Illinois Pollution Control Board (Board) a formal complaint, a copy of which is served on you along with this notice. You may be required to attend a hearing on a date set by the Board.

Information about the formal complaint process before the Board is found in the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.*) and the Board's procedural rules (35 Ill. Adm. Code 101 and 103). These can be accessed at the Board's Web site ([www.ipcb.state.il.us](http://www.ipcb.state.il.us)). The following is a summary of some of the most important points in the Act and the Board's procedural rules. It is provided for general informational purposes only and does not constitute legal advice or substitute for the provisions of any statute, rule, or regulation:

**Board Accepting Formal Complaint for Hearing; Motions**

The Board will not accept this formal complaint for hearing if the Board finds that it is either "duplicative" or "frivolous" within the meaning of Section 31(d) of the Act (415 ILCS 5/31(d)) and Section 101.202 of the Board's procedural rules (35 Ill. Adm. Code 101.202). "Duplicative" means that an identical or substantially similar case is already pending before the Board or in court. *See* 35 Ill. Adm. Code 103.212(a) and item 10 of the formal complaint.

"Frivolous" means that the formal complaint seeks relief that the Board does not have the authority to grant, or fails to state a cause of action upon which the Board can grant relief. For example, the Board has the authority to order a respondent to stop polluting and pay a civil penalty, to implement pollution abatement measures, or to perform a cleanup or reimburse cleanup costs. The Board does not have the authority, however, to award attorney fees to a citizen complainant. *See* 35 Ill. Adm. Code 103.212(a) and items 5 and 9 of the formal complaint.

If you believe that this formal complaint is duplicative or frivolous, you may file a motion with the Board, within 30 days after the date you were served with the complaint, requesting that the Board not accept the complaint for hearing. The motion must state the facts supporting your belief that the complaint is duplicative or frivolous. Memoranda, affidavits, and any other relevant documents may accompany the motion. If you need more time than 30 days to file a motion alleging that the complaint is duplicative or frivolous, you must file a motion for an extension of time within 30 days after service of the complaint. A motion for an extension of time must state why you need more time and the amount of additional time you need. Timely filing a motion alleging that the complaint is duplicative or frivolous will stay the 60-day period for filing an answer to the complaint. *See* 35 Ill. Adm. Code 103.204, 103.212(b).

All motions filed with the Board's Clerk must include an original, nine copies, and proof of service on the other parties. Service may be made in person, by U.S. mail, or by messenger service. Mail service is presumed complete four days after mailing. *See* 35 Ill. Adm. Code 101.300(c), 101.302, 101.304.

If you do not respond to the Board within 30 days after the date on which the complaint was served on you, the Board may find that the complaint is not duplicative or frivolous and accept the case for hearing. The Board will then assign a hearing officer who will contact you to schedule times for telephone status conferences and for hearing. *See* 35 Ill. Adm. Code 103.212(a).

### **Answer to Complaint**

You have the right to file an answer to this formal complaint within 60 days after you receive the complaint. If you timely file a motion alleging that the complaint is duplicative or frivolous, or a motion to strike, dismiss, or challenge the sufficiency of the complaint, then you may file an answer within 60 days after the Board rules on your motion. *See* 35 Ill. Adm. Code 101.506, 103.204(d), (e), 103.212(b).

The Board's procedural rules require the complainant to tell you as respondent that:

**Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).**

### **Necessity of an Attorney**

Under Illinois law, an association, citizens group, unit of local government, or corporation must be represented before the Board by an attorney. In addition, an individual who is not an attorney cannot represent another individual or other individuals before the Board. However, even if an individual is not an attorney, he or she is allowed to represent (1) himself or herself as an individual or (2) his or her unincorporated sole proprietorship. *See* 35 Ill. Adm. Code 101.400(a). Such an individual may nevertheless wish to have an attorney prepare an answer and any motions or briefs, and present a defense at hearing.

### **Costs**

In defending against this formal complaint, you are responsible for your attorney fees, duplicating charges, travel expenses, witness fees, and any other costs that you or your attorney may incur. The Board requires no filing fee to file your answer or any other document with the Board. The Board will pay any hearing costs (*e.g.*, hearing room rental, court reporting fees, hearing officer expenses).

If you have any questions, please contact the Clerk's Office at (312) 814-3629.

**CERTIFICATE OF SERVICE**

I, the undersigned, on oath or affirmation, state that on March 6, 2009, the foregoing formal complaint and notice to respondent was electronically filed with the Clerk in the above captioned matter and I served a true and correct copy of said documents on the respondent by certified mail/return receipt requested at the address below:

RESPONDENT'S ADDRESS:

Chevron U.S.A. Inc.  
c/o Prentice Hall Corporation, Registered Agent  
33 North LaSalle Street  
Chicago, Illinois 60602

Respectfully submitted,

Elmhurst Memorial Healthcare  
Elmhurst Memorial Hospital

By:     /s/ Andrew J. Marks      
One of its Attorneys

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Andrew J. Marks (ARDC No. 6286796)  
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