

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE

MAY 08 2009

STATE OF ILLINOIS  
Pollution Control Board

ELMHURST MEMORIAL HEALTHCARE )  
and )  
ELMHURST MEMORIAL HOSPITAL, )  
 )  
Complainants, )  
 )  
vs. )  
 )  
CHEVRON U.S.A., INC. )  
 )  
Respondent. )

No. PCB 2009-066  
(Citizen's Suit  
Enforcement Action)

NOTICE OF FILING

To: Carey S. Rosemarin  
Andrew J. Marks  
Law Offices of Carey S. Rosemarin, P.C.  
500 Skokie Boulevard, Suite 510  
Northbrook, Illinois 60062

PLEASE TAKE NOTICE that on May 8, 2009, we filed with the clerk of the Illinois Pollution Control Board an original and nine copies of Respondent's Answer and Affirmative Defenses to Complaint, a copy of which is attached hereto and herewith served upon you.

CHEVRON U.S.A. INC.

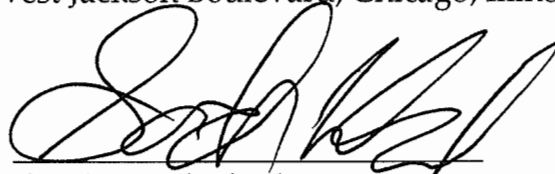
Dated: May 8, 2009

By:   
One of its attorneys

Joseph A. Girardi  
Robert B. Christie  
Henderson & Lyman  
Attorneys for Chevron U.S.A. Inc.  
175 W. Jackson Blvd., Suite 240  
Chicago, Illinois 60604  
(312) 986-6960

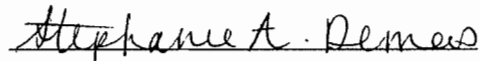
**PROOF OF SERVICE BY MAIL**

I, Sarah A. Whitford, a non-attorney on oath, state that I served a copy of this Notice and Respondent's Answer and Affirmative Defenses to Complaint on the persons to whom the Notice is directed at the address contained in the Notice by depositing the same in the U.S. mail at 175 West Jackson Boulevard, Chicago, Illinois 60604 before 5:00 p.m. on May 8, 2009.



Sarah A. Whitford

Subscribed and sworn to before  
me this 8<sup>th</sup> day of May, 2009.

  
Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ELMHURST MEMORIAL HEALTHCARE )  
and )  
ELMHURST MEMORIAL HOSPITAL, )  
 )  
Complainants, )  
 )  
vs. )  
 )  
CHEVRON U.S.A., INC. )  
 )  
Respondent. )

RECEIVED  
CLERK'S OFFICE

MAY 08 2009

STATE OF ILLINOIS  
Pollution Control Board

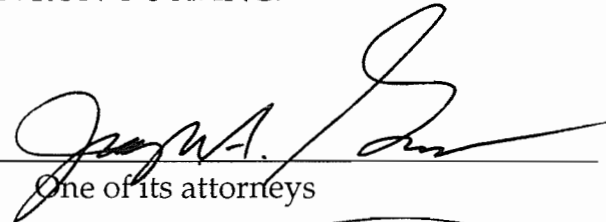
No. PCB 2009-066  
(Citizen's Suit  
Enforcement Action)

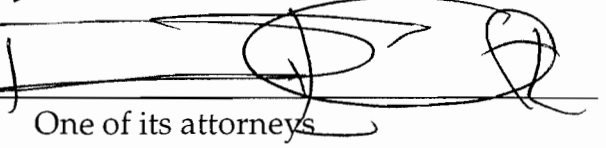
APPEARANCE

The undersigned, Joseph A. Girardi and Robert B. Christie, of Henderson & Lyman, enter their appearance as counsel for Respondent Chevron U.S.A. Inc., incorrectly named as Chevron U.S.A., Inc.

CHEVRON U.S.A. INC.

Dated: May 7, 2009

By:   
One of its attorneys

By:   
One of its attorneys

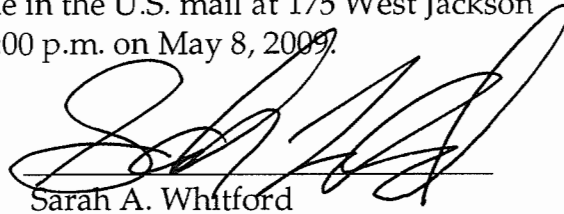
Joseph A. Girardi  
Robert B. Christie  
Henderson & Lyman  
Attorneys for Chevron U.S.A. Inc.  
175 W. Jackson Blvd., Suite 240  
Chicago, Illinois 60604  
(312) 986-6960

**PROOF OF SERVICE BY MAIL**

I, Sarah A. Whitford, a non-attorney on oath, state that I served a copy of the foregoing Appearance of Respondent Chevron U.S.A. Inc. on:

Carey S. Rosemarin  
Andrew J. Marks  
Law Offices of Carey S. Rosemarin, P.C.  
500 Skokie Boulevard, Suite 510  
Northbrook, Illinois 60062

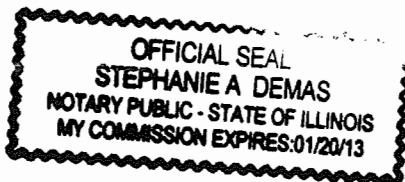
at the above address by depositing the same in the U.S. mail at 175 West Jackson Boulevard, Chicago, Illinois 60604 before 5:00 p.m. on May 8, 2009.



Sarah A. Whitford

Subscribed and sworn to before  
me this 8<sup>th</sup> day of May, 2009.

Stephanie A. Demas  
Notary Public



BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED  
CLERK'S OFFICE  
MAY 08 2009  
STATE OF ILLINOIS  
Pollution Control Board

ELMHURST MEMORIAL HEALTHCARE )  
and )  
ELMHURST MEMORIAL HOSPITAL, )  
 )  
Complainants, )  
 )  
vs. )  
 )  
CHEVRON U.S.A., INC. )  
 )  
Respondent. )

No. PCB 2009-066  
(Citizen's Suit  
Enforcement Action)

ANSWER AND AFFIRMATIVE DEFENSES  
OF  
CHEVRON U.S.A. INC.

Respondent, Chevron U.S.A. Inc., incorrectly named as Chevron U.S.A., Inc. ("Respondent"), by its attorneys Henderson & Lyman, and for its answer and affirmative defenses to the formal complaint of Complainants, Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital ("Complainants"), states as follows:

Answer

**Complaint, Overview:** 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.

**Answer:** As this paragraph is merely a conclusory overview of the allegations of the Complaint, Respondent adopts and relies on its answers to the individual allegations of the Complaint as they may be applicable here. To the extent not otherwise alleged in the Complaint, Respondent denies the allegations of the Overview.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to admit or deny the location of the primary offices of Complainant, and as such denies same and demands strict proof thereof. Respondent admits the remaining allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent admits that it is a Pennsylvania corporation, is licensed to conduct business in Illinois, has offices located in San Ramon, California, and is a "person" within the meaning of Section 3.315 of the Act. Other than as specifically admitted herein, Respondent denies the remaining allegations of this paragraph.

**Complaint ¶ 3.** In October 2001, Chevron Corporation merged with Texaco.

**Answer:** Respondent denies the allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent denies the allegations of this paragraph.

### **Jurisdiction**

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

**Answer:** Respondent denies the allegations of this paragraph.

### **Allegations of Factual Background**

**Complaint ¶ 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."

**Answer:** Respondent admits that The Texas Company operated a gasoline filling station at the Property from early 1958 through early 1977 and that the station was branded as a "Texaco" station. Respondent admits that The Texas Company changed its name to "Texaco Inc." in 1959. Other than as specifically admitted herein, Respondent denies it had any ownership interest in the Property and further denies the remaining allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent admits that the owner of the Property installed a number of USTs on the Property in approximately 1958. Other than as specifically admitted herein Respondent does not have sufficient knowledge to form a belief as to truth of the remaining allegations of this paragraph and, as such, denies same and demands strict proof thereof.

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

**Answer:** Respondent denies the allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent admits that in early 1977 Texaco Inc. ceased operating a gasoline filling station on the Property and returned possession and control of the Property and any USTs then located thereon to the owner of the Property. Other than as specifically admitted herein Respondent denies the remaining allegations of this

paragraph.

**Complaint ¶ 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.

**Answer:** Respondent admits that in 1981 the Lombard Fire Department issued a letter to Aetna Tank and Pump Company, Inc. opining that Aetna should place additional fill material in one or more USTs then located on the Property. Respondent avers that the Lombard Fire Department oversaw and inspected Aetna's abandonment of the USTs for the owner of the Property in 1978 and determined that the USTs had been properly abandoned in accordance with applicable law. Other than as specifically admitted herein Respondent does not have sufficient knowledge to form a belief as to truth of remaining allegations of this paragraph and, as such, denies same and demands strict proof thereof.

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

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict



proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent admits that the public records of the Office of the State Fire Marshal indicate that a heating oil UST was removed from the Property on or about March 17, 2006. Other than as specifically admitted herein, Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent denies soil was contaminated as a result of Texaco's operation of the gasoline filling station. Respondent does not have sufficient knowledge to form a belief as to truth of the remaining allegations of this paragraph and, as such, denies same and demands strict proof thereof.

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

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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).

**Answer:** Respondent admits that the public records of the Illinois Environmental Protection Agency indicate that IEMA no. 20071269 was assigned to the Property on September 19, 2007. Respondent further admits that the public records of the Office of the State Fire Marshal indicate that four USTs were removed from the Property on or about September 19, 2007. Respondent avers that the public records of the Office of the State Fire Marshal further indicate that the USTs were taken out of service on or before December 31, 1973. Other than as specifically admitted herein, Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

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

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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).

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 23.** About 10,500 gallons of gasoline and water was pumped from the tanks and the excavation pit and disposed off-site.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to

truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 24.** About 315 tons of contaminated soil was excavated from the area affected by the gasoline USTs.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 26.** EMH expended over \$100,000 to clean up the mess left on the Property by Texaco.

**Answer:** Respondent denies that Texaco Inc. left any "mess" on the Property. Respondent does not have sufficient knowledge information to form a belief as to truth of the remaining allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 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.

**Answer:** Respondent admits that on or about October 2, 2007 Complainants, by their counsel, indicated to Respondent that Complainants had discovered four USTs on the Property and requested reimbursement of all costs incurred. Respondent further

admits that it has not paid any sums to Complainants. Other than as specifically admitted herein, Respondent denies the allegations of this paragraph.

### COUNT I

**Complaint ¶ 28.** Complainants reallege and incorporate by reference as if fully set forth herein Paragraphs 1 through 27 of this Complaint.

**Answer:** Respondent adopts and realleges its answers to paragraphs 1 – 27 of the Complaint as thought fully set forth herein.

**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.

**Answer:** Respondent admits that the allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent denies the allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent admits that the allegations of this paragraph.

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

**Answer:** Respondent does not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, denies same and demands strict proof thereof.

**Complaint ¶ 33.** The abandonment of the Gas Station Waste constitutes “open dumping” within the meaning of the Act.

**Answer:** Respondent denies the allegations of this paragraph.

**Complaint ¶ 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).

**Answer:** Respondent denies that Texaco Inc. is its “predecessor in interest” and further denies the remaining allegations of this paragraph.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against Complainants on each and every claim for relief requested by Complainants, or for such other and further relief as the Board may deem appropriate.

## COUNT II

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

**Answer:** Respondent adopts and realleges its answers to paragraphs 1 – 27 of the Complaint as thought fully set forth herein.

**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.

**Answer:** Respondent admits that the allegations of this paragraph.

**Complaint ¶ 37.** The Gas Station Waste constitutes “waste” within the meaning of the Act. 415 ILCS 5/3.535.

**Answer:** Respondent denies the allegations of this paragraph.

**Complaint ¶ 38.** The presence of the Gas Station Waste on the Property constitutes "storage" under the Act. 415 ILCS 5/3.46.

**Answer:** Respondent denies that 415 ILCS 5/3.46 currently defines the term "storage" and avers that the term "storage" is currently defined in 415 ILCS 5/3.480. Respondent further denies the allegations of this paragraph, whether this paragraph alleges 415 ILCS 5/3.46 or whether it alleges 415 ILCS 5/3.480.

**Complaint ¶ 39.** The presence of the Gas Station Waste on the Property constitutes "disposal" under the Act. 415 ILCS 5/3.08.

**Answer:** Respondent denies that 415 ILCS 5/3.08 currently defines the term "disposal" and avers that the term "disposal" is currently defined in 415 ILCS 5/3.185. Respondent further denies the allegations of this paragraph, whether this paragraph alleges 415 ILCS 5/3.08 or whether it alleges 415 ILCS 5/3.185.

**Complaint ¶ 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).

**Answer:** Respondent denies the allegations of this paragraph.

**Complaint ¶ 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.

**Answer:** Respondent denies the allegations of this paragraph.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against Complainants on each and every claim for relief requested by Complainants, or for such other and further relief as the Board may deem appropriate.

#### **AFFIRMATIVE DEFENSES**

For its complete and affirmative defense to Counts I and II of the Complaint,

Respondent states as follows:

**Affirmative Defense No. I**  
**(No Assumption of Texaco Inc.'s Liabilities)**

1. Paragraph 3 of the Complaint alleges that Chevron Corporation (not the Respondent) merged with Texaco Inc.

2. Paragraph 4 of the Complaint alleges that by virtue of the alleged merger, any liabilities arising from Texaco Inc.'s pre-2001 actions relevant to this Complaint became the liabilities of Chevron Corporation.

3. Paragraph 4 of the Complaint further alleges, on information and belief only, that following the alleged merger, Chevron Corporation effectively transferred the liabilities of Texaco Inc. to Respondent. Paragraph 4 does not allege any facts upon which Complainants formed their information and belief to make the allegations.

4. In fact, on October 9, 2001 a transaction took place in which:

(a) The common stock of Texaco Inc. was acquired by a subsidiary of Chevron Corporation; and

(b) As a result Texaco Inc. became and remains a wholly-owned, indirect, subsidiary of Chevron Corporation.

5. Texaco Inc. did not merge into or with Chevron Corporation.

6. No liabilities of Texaco Inc. were transferred to or assumed by Respondent in this transaction.

7. As a result, any liability of Texaco Inc. for the actions alleged in the Complaint is not the liability of Respondent.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on



each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. II  
(Discharge in Bankruptcy)**

1. Paragraph 4 of the Complaint alleges, on information and belief, that Respondent is responsible the liabilities of Texaco Inc.
2. On April 12, 1987, Texaco Inc. instituted a proceeding under Chapter 11 of the United States Bankruptcy Code, entitled *In re Texaco Inc., et al.*, 87 B 20142, United States Bankruptcy for the Southern District of New York (hereinafter the "Texaco Bankruptcy").
3. On January 26, 1988 the Court in the Texaco Bankruptcy entered an order that fixed the date of March 15, 1988 as the last date for creditors to file proofs of claim.
4. On March 23, 1988 the Court in the Texaco Bankruptcy entered an order approving confirmation of the plan of reorganization ("Plan") of Texaco Inc.
5. The Plan provides that any claims not filed and approved by the Court in the Texaco Bankruptcy are discharged and forever barred.
6. No claims arising out or relating to any acts, omissions or liabilities of Texaco Inc. arising out of or relating to the Property, including but not limited to the claims alleged in the Complaint, were filed in the Texaco Bankruptcy by Complainants or any other person or entity.
7. By reason of the foregoing, the claims alleged in the Complaint have been discharged and Complainants are barred from asserting such claims in this proceeding.
8. As a result, the claims of Complainants, having been previously discharged against Texaco, could not have been transferred to or assumed by Respondent as

Complainants allege.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. III**  
**(Jurisdiction – Act Not Applicable)**

1. The Complaint seeks relief against Respondent for releases of gasoline, in violation of the Act, that are alleged to have occurred at some time during Texaco Inc.'s operation of a gasoline filling station on the Property which began, at the earliest, in 1957 and ended, at the latest, in 1977.

2. The Act did not become effective until June 29, 1970, some 12 years after Texaco Inc. began operating the filling station.

3. None of the sections of the Act which the Complaint alleges Texaco Inc. violated were in effect any earlier than January 1, 1985, which at least 8 years after Texaco Inc. last operated the filling station.

4. By reason of the foregoing the Act does not apply to the claims alleged; therefore, there is no jurisdiction under the Act for the Illinois Pollution Control Board to adjudicate the Complaint.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. IV**  
**(Jurisdiction – No Authority to Award Cost Recovery)**

1. Paragraph 5 of the Complaint alleges that the Illinois Pollution Control Board has jurisdiction of this matter pursuant to 415 ILCS 5/31.

2. Count I of the Complaint requests that the Board enter an order requiring Respondent to reimburse Complainants for all costs Complainants incurred in investigating and remediating the Property.

3. Count II of the Complaint requests that the Board enter an order requiring Respondent to reimburse Complainants for all costs Complainants incurred in removing the USTs and investigating, cleaning up and disposing of contaminated soils and water at the Property.

4. The essence of the Complaint is, therefore, a claim for cost recovery.

5. The Act, at 415 ILCS 5/33 (b), grants authority to the Board to enter orders for certain specific relief, but does grant authority to the Board to enter orders allowing cost recovery to complainants for violations of the Act by respondents.

6. By reason of the foregoing, the Board does not have the authority under the Act to grant the relief requested in the Complaint.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. V**  
**(Incurred Risk)**

1. Paragraph 12 of the Complaint alleges that Complainants are a major health

care organization and employ a staff of more than 3,000 people.

2. Paragraph 13 of the Complaint alleges Complainants purchased the Property in 2005 more than 25 years after Texaco Inc. had departed.

3. Nowhere do Complainants allege that they performed any investigation or due diligence for the presence of USTs or releases of gasoline or other petroleum at the Property prior to purchasing the Property.

4. Reasonable due diligence performed prior to purchasing the Property would have disclosed information in the public records that USTs were or had been on the Property and that releases of gasoline or petroleum were present on the Property.

5. A reasonable and prudent person, therefore, would have performed such due diligence prior to purchasing the Property and would have discovered that USTs were or had been on the Property and that releases of gasoline or petroleum were present on the Property.

6. Complainants, therefore, knew or should have known prior to purchasing the Property that USTs were or had been on the Property and that releases of gasoline or other petroleum products were present on the Property.

7. Complainants, therefore, incurred the risk of USTs and releases of gasoline or other petroleum being present on the Property, and, consequently, incurred the risk of the cost of removal of the USTs and remediation of the Property.

8. By reason of the foregoing Complainants are barred from bringing this Complaint seeking to recover from Respondent the very costs which they could have avoided incurring.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control

Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. VI  
(Assumption of Risk)**

1. Paragraph 12 of the Complaint alleges that Complainants are a major health care organization and employ a staff of more than 3,000 people.

2. Paragraph 13 of the Complaint alleges Complainants purchased the Property in 2005 more than 25 years after Texaco Inc. had departed.

3. Nowhere do Complainants allege that they performed any investigation or due diligence for the presence of USTs or releases of gasoline or other petroleum at the Property prior to purchasing the Property.

4. Reasonable due diligence performed prior to purchasing the Property would have disclosed information in the public records that USTs were or had been on the Property and that releases of gasoline or petroleum were present on the Property.

5. A reasonable and prudent person, therefore, would have performed such due diligence prior to purchasing the Property and would have discovered that USTs were or had been on the Property and that releases of gasoline or petroleum were present on the Property.

6. Complainants, therefore, knew or should have known prior to purchasing the Property that USTs were or had been on the Property and that releases of gasoline or other petroleum products were present on the Property.

7. Complainants, therefore, assumed the risk of USTs and releases of gasoline or other petroleum being present on the Property, and, consequently, assumed the risk of

incurring the cost of removal of the USTs and remediation of the Property.

8. By reason of the foregoing Complainants are barred from bringing this Complaint seeking to recover from Respondent the very costs which they could have avoided assuming.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. VII  
(Avoidable Consequence)**

1. Paragraph 12 of the Complaint alleges that Complainants are a major health care organization and employ a staff of more than 3,000 people.

2. Paragraph 13 of the Complaint alleges Complainants purchased the Property in 2005 more than 25 years after Texaco Inc. had departed.

3. Nowhere do Complainants allege that they performed any investigation or due diligence for the presence of USTs or releases of gasoline or other petroleum at the Property prior to purchasing the Property.

4. Reasonable due diligence performed prior to purchasing the Property would have disclosed information in the public records that USTs were or had been on the Property and that releases of gasoline or petroleum were present on the Property.

5. A reasonable and prudent person, therefore, would have performed such due diligence prior to purchasing the Property and would have discovered that USTs were or had been on the Property and that releases of gasoline or petroleum were present on the Property.

6. Complainants, therefore, knew or should have known prior to purchasing the Property that USTs were or had been on the Property and that releases of gasoline or other petroleum products were present on the Property.

7. Complainants, therefore, could have reasonably avoided the consequence of USTs and releases of gasoline or other petroleum being present on the Property, and, therefore avoided the cost of removal of the USTs and remediation of the Property.

8. By reason of the foregoing Complainants are barred from bringing this Complaint seeking to recover from Respondent the very costs which they could have reasonably avoided incurring.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. VIII  
(Causation)**

1. Paragraph 6 of the Complaint alleges that Texaco Inc. operated a gasoline filling station on the Property from approximately 1957 to 1977.

2. Paragraph 8 of the Complaint alleges, on information and belief only, that releases of petroleum occurred as a direct result of Texaco's operation of the gasoline USTs; however, paragraph 8 does not allege any facts to support this conclusion.

3. Paragraph 9 of the Complaint alleges, on information and belief only, that Texaco abandoned in place all of the USTs then located on the Property.

4. Paragraph 11 of the Complaint alleges that a subsequent transferee of the Property removed two USTs in or about 1981.

5. Owners or operators of the Property after Texaco Inc. left the Property performed abandonment-in-place procedures to the USTs, including filling the USTs with sand.

6. By reason of the foregoing, persons other than Texaco Inc. took actions with the USTs, including abandonment-in-place and removal, that could be the cause of any releases of gasoline or other petroleum on the Property.

7. Complainants cannot demonstrate that the releases of gasoline or other petroleum alleged occurred during the time that Texaco Inc. operated any USTs on the Property; thus, Texaco Inc.'s operation of the USTs could not have directly resulted in the releases alleged.

Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

**Affirmative Defense No. IX  
(Laches)**

1. In its answer, Respondent has alleged that it not liable to Complainants for the claims alleged; however, Respondent's ability to present its defense has been substantially impaired and prejudiced by the passage of more than 30 years since it last had any contact with the Property.

2. Documents, witnesses and other evidence, upon which Respondents' defense would rest, cannot be located or are no longer in existence.

3. By reason of the foregoing, under the doctrine of laches, Complainants are estopped from bringing this action against Respondent.

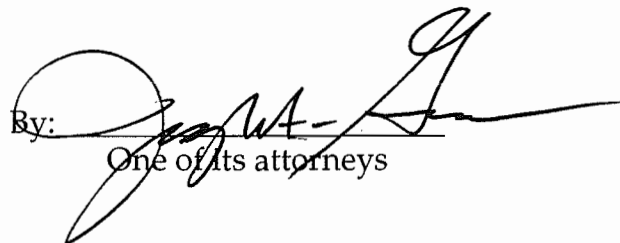


Wherefore, Respondent respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondent and against the Complainants on each and every claim for relief requested by Complainants, and for such other and further relief as the Board may deem appropriate.

Respectfully submitted,

Chevron U.S.A. Inc.

Dated: May 7, 2009

By:   
One of its attorneys

Joseph A. Girardi  
Robert B. Christie  
Henderson & Lyman  
Attorneys for Chevron U.S.A. Inc.  
175 W. Jackson Boulevard  
Suite 240  
Chicago, Illinois 60604  
(312) 986-6960