BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ELMHURST MEMORIAL HEALTHCARE and ELMHURST MEMORIAL HOSPITAL,	)	
Complainants,	)	
vs.	)	No. PCB 2009-066 (Citizen's Suit Enforcement Action)
CHEVRON U.S.A., INC.	)	
Respondent.	)	

NOTICE OF FILING

To: Carey S. Rosemarin
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Northbrook, Illinois 60062

PLEASE TAKE NOTICE that on June 26, 2009, we filed with the clerk of the Illinois Pollution Control Board an original and nine copies of Response of Chevron U.S.A. Inc. to Motion to Strike Affirmative Defenses, a copy of which is attached hereto and herewith served upon you.

CHEVRON U.S.A. INC.

Dated: June 26, 2009

By: _____
One of its attorneys

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RESPONSE OF CHEVRON U.S.A. INC.
TO
MOTION TO STRIKE AFFIRMATIVE DEFENSES

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

Law Applicable to the Complainants' Motion

With respect to affirmative defenses, the procedural rules of the Illinois Pollution Control Board ("Board") provide only that "any facts constituting an affirmative defense must be plainly set forth before hearing in the answer or in a supplemental answer, unless the affirmative defense could not have been known before hearing." (Emphasis supplied) 35 Ill. Adm. Code 103.204(d). As the Board procedural rules do not specifically define, state or enumerate specific affirmative defenses, the Board has defined affirmative defenses in many of its decisions. For example, in People of the State of Illinois v. Stein Steel Mills Services, Inc., PCB No. 02-1 (April 18, 2002), the Board initially defined an affirmative defense as "new facts or arguments that, if true,

will defeat . . . the government's claim even if all allegations in the complaint are true." Citing: People v. Community Landfill Co., PCB 97-193, slip op. at 3 (Aug. 6, 1998). In addition, the Board (pursuant to the authority granted under 35 Ill. Adm. Code 101.100(b)), then enlarged that definition to also include the definition of an affirmative defense found in the Illinois Code of Civil Procedure, specifically:

> (d) The facts constituting any affirmative defense, such as payment, release, satisfaction, discharge, license, fraud, duress, estoppel, laches, statute of frauds, illegality, that the negligence of a complaining party contributed in whole or in part to the injury of which he complains, that an instrument or transaction is either void or voidable in point of law, or cannot be recovered upon by reason of any statute or by reason of nondelivery, want or failure of consideration in whole or in part, and any defense which by other affirmative matter seeks to avoid the legal effect of or defeat the cause of action set forth in the complaint, counterclaim, or third-party complaint, in whole or in part, and any ground or defense, whether affirmative or not, which, if not expressly stated in the pleading, would be likely to take the opposite party by surprise, must be plainly set forth in the answer or reply. 735 ILCS 5/2-613(d) (Emphasis supplied)

Further, the Board has held that pleading of defenses should be liberally allowed in order to inform the parties of the legal theories to be presented, prevent confusion as to whether a defense has been timely raised, and avoid taking the other party by surprise. People v. Geon Company, PCB No. 97-62 (October 2, 1997); Citing, People v. Midwest Grain Products, PCB No. 97-179 (August 21, 1997).

It is, therefore, clear that any set of facts or any provisions of law, including those which constitute defenses specifically set forth in 5/2-613(d) above, that could or might avoid or defeat a cause of action, whether in whole or in part, or that could or might take the opposing party by surprise, must be pled or they are waived. Thus, at the pleading stage of a proceeding, as here, a respondent must be accorded all appropriate opportunity to present any set of facts or any provisions of law that presently are an

affirmative defense, or which may, through discovery and preparation for hearing, ripen into an affirmative defense.

In People v. Stein Steel, supra, the Board further held that a motion to strike an affirmative defense admits all well-pleaded facts constituting the defense, and attacks only the legal sufficiency of those facts. The Board found that "where the well-pleaded facts of an affirmative defense raise the possibility that the party asserting them will prevail, the defense should not be stricken." Citing, International Insurance Co. v. Sargent and Lundy, 242 Ill. App. 3d 614, 630-31, 609 N.E.2d 842, 853-54 (1st Dist. 1993), Citing, Raprager v. Allstate Insurance Co., 183 Ill. App. 3d 847, 854, 539 N.E.2d 787, 791 (2nd Dist. 1989) (Emphasis supplied). And there is no requirement to raise any new facts in an affirmative defense, as the Board has held that a respondent may rely on the facts pled by a complainant. See International Union, etc., et al. v Caterpillar Inc., PCB No. 94-20 (holding that a fully developed record may show that a violation of the Act did not occur or that the relief requested by the complainant is improper).

For the reasons set forth below, application of the foregoing principles to the affirmative defenses alleged by Respondent finds that the Complainants' motion to strike should be denied.

Argument

Affirmative Defense No. I - No Assumption of Texaco Inc.'s Liabilities

Complainants did not move to strike this defense; therefore, no response is made.

Affirmative Defense No. II - Discharge in Bankruptcy

Complainants allege that Respondent is responsible for the liabilities of Texaco Inc. in this matter, which Respondent has denied. In this affirmative defense, Respondent has asserted that, irrespective of this responsibility issue, the claims alleged in the Complaint were discharged in the Texaco Inc. bankruptcy ("Texaco Bankruptcy") that took place in the late 1980s. Thus, Complainants cannot have any claims against Texaco Inc. for which they can allege Respondent could be responsible.

In their motion to strike this defense, Complainants, in summary, argue that their claims against Texaco Inc. were not discharged by the Texaco bankruptcy because the Complainants did not know, and could not have known, of their claims at the time of the Texaco Bankruptcy. Complainants reason, therefore, that they could not have filed, and were not required to file, a claim in the Texaco bankruptcy to preserve their claims.

Complainants do not dispute the following:

1. 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").

2. 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.

3. On March 23, 1988, the Court in the Texaco Bankruptcy entered an order approving confirmation of the plan of reorganization ("Plan") of Texaco Inc. (Exhibit 1)

4. The Plan provides that any claims not filed and approved by the Court in the Texaco Bankruptcy are discharged and forever barred.

5. 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.

While Complainants rely on several cases in support of their position that deal with other bankruptcies, they do not refer to or discuss any cases that have been decided on this very issue by the bankruptcy court as a part of the Texaco Bankruptcy. These Texaco Bankruptcy decisions demonstrate that Complainants' claims have been discharged.

Texaco Inc. v. Fred Saunders, et al. (In re Texaco Inc.), 182 B.R. 937 (1995) arose out of an action brought by Texaco Inc. to reopen the Texaco Bankruptcy for the purpose of enforcing the discharge provisions of the order confirming the plan of reorganization ("Order of Confirmation") against Mr. Saunders and approximately 20 other persons (collectively "Saunders"). Saunders was pursuing various environmental claims against Texaco Inc. in a state court proceeding in Louisiana in 1995. None of the Saunders had filed claims in the Texaco Bankruptcy.

The Saunders state court action was initiated well after the conclusion of the Texaco Bankruptcy and sought damages from Texaco Inc. for remediation of the environmental impacts to the Saunders real property. Saunders alleged the impacts occurred as the result of the migration of contaminants generated by Texaco Inc. on adjoining property (that had previously been operated by Texaco Inc.) to the Saunders property. All of Texaco Inc.'s actions at the adjoining property were concluded years before the Texaco Bankruptcy was initiated. Texaco Inc. filed an affirmative defense in the state court action alleging the Saunders claims were discharged in the Texaco Bankruptcy. Saunders moved to strike the defense, but the state court judge denied their motion, stating:

> Well, I do [have jurisdiction to decide the motion to strike], I don't have any doubt about it, but I'm not [going to] knock out something that is not [going to] impede my law suit, it's not [going to] stop anything at this basis. I understand what you're saying. I believe you. And believe me I understand what you're saying. I don't think I can strike a defense like that. Saunders, 182 B.R. at 943 (1995)

At the same time Texaco Inc. also filed a motion in the bankruptcy court in New York (initiating this 1995 proceeding) to reopen the Texaco Bankruptcy to enforce against Saunders the injunction contained in the Order of Confirmation that prohibits any person from pursuing a claim that has been discharged. In response Saunders alleged (as do Complainants here) that their claims had not manifested themselves and could not have been known by the respondents at the time of the Texaco Bankruptcy. The bankruptcy court denied these defenses and enforced the discharge against Saunders.

In reaching its decision, the bankruptcy court first restated the law that the confirmation of a plan under Chapter 11 discharges the debtor from any debt that arose prior to the date of such confirmation, whether or not a proof of claim on that debt is filed or allowed, citing 11 U.S.C. 1141(d)(1). Thus, all debts are discharged and the only right that a holder of a discharged debt may have is through the proof-of-claim process. The bankruptcy court next restated the law regarding the effect of the discharge as being a permanent injunction against the commencement or continuation of any action to recover discharged claims, citing 11 U.S.C. 524(a)(2). The bankruptcy court then found that the Order of Confirmation of the Texaco Inc. plan of reorganization mirrors these provisions and is binding on all persons holding claims against Texaco Inc.

The bankruptcy court next reviewed the meaning of "debt", in the context of

what the Order of Confirmation discharges. The court found that "debt" means "liability on a claim", citing 11 U.S.C. 101(12). The court then found that "claim" means:

> (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; or
>
> (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured.

The court reviewed the decisions interpreting the nature and breath of "claim", quoting from In re Chateaugay Corp., 944 F.2d 997 (2nd Cir. 1991), as follows:

> Congress unquestionably expected this definition to have wide scope. 'By this broadest possible definition .... the bill contemplates that all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case.' H.R.Rep No. 595, 95th Cong., 2d Sess. 309 (1978), *reprinted in* 1978 U.S.Code Cong. & Admin. News 5787, 5963, 6266. *See also Johnson v. Home State Bank*, 501 U.S. 78, 83, 111 S.Ct. 2150, 2154, 115 L.Ed2d 66 (1991); *Pennsylvania Dep't of Public Welfare v. Davenport*, 495 U.S. 552, 557, 110 S. Ct. 2126, 2130, 109 L.Ed.2d 588 (1990).

The bankruptcy court then applied this law to the Saunders claims and determined that all of Texaco Inc.'s operations at the adjoining property ceased years before the Texaco Bankruptcy. As a result the court found that "All of the physical events required to establish causation and damage for such claims occurred prior to the confirmation." Texaco v Saunders, 182 B.R. at 951 The court thus ruled that all claims resulting from Texaco Inc.'s operations at the adjoining property arose prior to the Texaco Bankruptcy and that the Saunders claims were discharged in the Texaco Bankruptcy.

The same is true of the claims of Complainants here. The Complaint alleges that Texaco Inc. did not own or operate the USTs or the Property after 1977, well before the

Texaco Bankruptcy. Thus, any action of Texaco Inc. that could have given rise to the claims alleged by Complainants were completed prior to the Texaco Bankruptcy. These claims were, therefore, debts of Texaco Inc. at the time of the Texaco Bankruptcy and were discharged by the Order of Confirmation.

The bankruptcy court then examined and rejected the Saunders arguments that their claims were "unmanifested" and "unknown" and should not fall under the meaning of "claim". With respect to "unmanifested", Saunders argued that the contamination caused by Texaco Inc. was not visible at the surface of their land at the time of the Texaco Bankruptcy and, therefore, had not manifested itself. While the bankruptcy court agreed with Saunders on that particular fact, the court found that fact was not controlling of the issue of discharge. The controlling issue is, rather, whether the contamination was capable of being detected prior to confirmation of the plan. The court found that it certainly was capable of detection by reasonable investigation of the property prior to confirmation of the plan. As such the contamination would fall within the meaning of "claim", as it was fully matured and uncontingent.

In the instant matter before the Board, the claims of Complainants were easily capable of detection by long-standing methods of investigation of real property for the presence of the USTs and releases from the USTs. Like the Saunders claims, while any contamination may not have been not visible at the surface of the Property, any releases that existed in 1987 were certainly capable of detection at that time. Thus, Complainants' claims were discharged.

The Saunders respondents also argued that they had no knowledge of the existence of their claims at the time of the Order of Confirmation. The bankruptcy court

assumed, for the purpose of its ruling, that the Saunders respondents' assertions were true. Nevertheless, the bankruptcy court ruled that these claims were within the definition of a "claim". Citing again to In Re Chateaugay, supra, the court found that response costs for pre-petition releases are within the definition of "claim", regardless of when such costs are incurred.

In the instant matter, there is no question that any releases that occurred under Texaco's operation of the Property were prior to the Texaco Bankruptcy. Therefore, any response costs, no matter when incurred, including those which Complainants allege were recently incurred, are "claims" and have been discharged. Thus, the fact that these Complainants did own the Property at the time of the Texaco Bankruptcy, and, therefore, could not have filed a claim, does not change the rule that the debt for which they now seek recompense was discharged, and no one can now bring a claim for it.

The decision of the bankruptcy court in Texaco v. Saunders is the law of the case in the Texaco Bankruptcy. As Complainants' motion to strike this defense involves the Texaco Bankruptcy, Texaco v. Saunders is also the law of this case in determining the instant motion. For this reason, Complainants' reliance in their motion on decisions that Complainants argue would lead to a different result are simply not controlling here.

For all of the foregoing reasons Respondent submits that Complainants' motion to dismiss Affirmative Defense No. III should be denied.

Affirmative Defense No. III – No Jurisdiction Under the Act

Complainants' motion to strike Affirmative Defense No. III should be denied because the provisions of the Act upon which the Complaint relies were enacted after

Texaco last owned or operated the USTs or the Property and these provisions cannot be retroactively applied.

The Complaint, at paragraph 4, alleges that Respondent is responsible for any liability of Texaco Inc. The Complaint, at paragraphs 6 - 9, then alleges that Texaco Inc. owned and/or operated the Property and USTs on the Property from 1959 through 1977 and that releases occurred from the USTs. In Count I, at paragraphs 28 - 34, the Complaint alleges that, as a result of these alleged releases, Texaco Inc. violated the current provisions of Section 21(a) of the Act, which provides that "No person shall: (a) Cause or allow the open dumping of any waste". 415 ILCS 5/21(a) Complainants alleges that "waste" is defined as in Section 5/3.535 of the current provisions of the Act to include the alleged releases from the USTs. 415 ILCS 5/3.535

In Count II, at paragraphs 35 - 41, the Complaint similarly alleges that Texaco Inc. violated the current provisions of Section 21(e) of the Act which provides that "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". 415 ILCS 5/21(a) The Complaint again relies on the current definition of "waste" as provided in Section 5/3.535 of the Act. 415 ILCS 5/3.535

Respondent's affirmative defense alleges that (i) the Complaint alleges and relies on the current versions of various sections of the Act, (ii) these current versions were not in effect during 1977 or at any time prior to 1977, (iii) these current versions are not applicable to any time when Texaco owned or operated the USTs or the Property, and (iv) these current versions may not be retroactively applied. As such, the defense

alleges that the Board is without jurisdiction to enforce these current versions against Respondent in this matter.

Complainants respond by arguing that the Act (which became effective in 1970) and all subsequent amendments to the Act, including those to Sections 21(a) and (e), may be applied retroactively. Complainants, consequently, argue that the releases alleged, although admittedly alleged to have occurred not later than 1977 are, therefore, subject to these current provisions of the Act. Complainants' motion is both misleading and plainly wrong.

When the Act became effective in 1970, section 21(a), then being 1971 Ill. Rev. Stat., Ch. 111½, Sect. 1021(a), provided only as follows:

> No person shall:
> (a) Cause or allow the open dumping of garbage;

There is no reference to "waste" in 1021(a), nor did the Act in 1970 even contain a definition for "waste". "Garbage" was defined as:

> (e) "Garbage" is waste resulting from the handling, processing, preparation, cooking, and consumption of food, and wastes from the handling, processing, storage, and sale of produce. 1971 Ill. Rev. Stat., Ch. 111½, Sect. 1003(e).

As the definition of "garbage" obviously does not include releases of petroleum from USTs, it is clear that Section 21(a), in 1970, did not relate to or regulate the releases from USTs that are alleged in the Complaint.

The same conclusion is true for Section 21(e). In 1970 Section 21(e) provided:

> No person shall:
> (e) Conduct any refuse-collection or refuse-disposal operations, except for refuse generated by the operator's own activities, without a permit granted by the Agency upon such conditions, including periodic reports and full access to adequate records and the inspection of facilities, as may be necessary to assure compliance with this Act and with regulations adopted thereunder, after the

> Board has adopted standards for the location, design, operation and maintenance of such facilities; 1971 Ill. Rev. Stat., Ch. 111½, Sect. 1021(e)

There is no reference to "waste" in 1021(e), nor did the Act in 1970 even contain a definition for "waste". "Refuse" was defined as:

> (k) "Refuse" is any garbage or other discarded solid materials. 1971 Ill. Rev. Stat., Ch. 111½, Sect. 1003(k)

As the definition of "refuse" obviously does not include releases of petroleum from USTs, it is clear that Section 21(e), in 1970, did not relate to or regulate the releases from USTs that are alleged in the Complaint. And no other provision of the 1970 version of Section 1021, which is the only section of the 1970 Act prohibiting land pollution, related to or regulated the releases alleged from the USTs. See 1971 Ill. Rev. Stat., Ch. 111½, Sect. 1021 (b) – (d) and (f).[1]

The Complaint alleges that Texaco ceased operating the USTs and the Property in 1977. The 1977 Illinois Revised Statutes contain revisions to the Act passed to and including July 2, 1977. The 1977 version of the Act continues, at 1021(a), to regulate only the open dumping of garbage, and, at 1021(e), to regulate only the disposal of refuse. 1977 Ill. Rev. Stat., Ch. 111½, Sect. 1021(a) and (e). The definition of "garbage", at Section 1003(e), remained the same, and the definition of "refuse", at Section 1003(k), also remained the same, except that radioactive materials are excepted from the definition. Thus, in 1977 the releases from the USTs alleged in the Complaint were not regulated by the Act.

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[1] While the Act, in 1970, defined the term "contaminant" as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source" (1971 Ill. Rev. Stat., Ch. 111½, Sect. 1003(d)), the release or discharge of a contaminant is regulated only in respect to air and water pollution, not land pollution. See 1971 Ill. Rev. Stat., Ch.

The 1979 version of the Act, as contained in the 1979 Illinois Revised Statutes, makes the following relevant changes:

1. Sections 1021(a) and (b) are combined and the word "refuse" is substituted for "garbage". Ch. 111½, Section 1021 (a);
2. Section 1021(e) became Section 1021(d), but continued to regulate only refuse collection and refuse disposal. Ch. 111½, Sect. 1021(d);
3. The term "refuse" is redefined to mean simply "waste". Ch. 111½, Sect. 1003(s); and
4. For the first time the word "waste" became a defined term. Ch. 111½, Sect. 1003 (ff).

Whether the term "waste" does or does not include the releases alleged in the Complaint is not relevant to this matter, as the earliest that any amendment contained in the 1979 Illinois Revised Statutes was effective is July 1, 1978, which is after the date that the Complaint alleges Texaco Inc. ceased operating the USTs or the Property.

Therefore, a plain reading of Section 21 of the Act from its inception in 1970 through 1978 demonstrates that the Act never regulated releases of petroleum from USTs; thus, the Act cannot be applicable to the releases alleged in the Complaint unless it were to be applied retroactively, which Respondent's affirmative defense alleges cannot be done.

The decisions of the Board have consistently confirmed Respondent's position. In Casanave v. Amoco Oil Company, PCB No. 97-84 (1997), the Board refused to apply Section 21 of the Act retroactively. There, the complainant brought a citizen's enforcement action against Amoco regarding leaking USTs under Sections 21(a), (d)-(f), (i) and (m) of the 1996 provisions of the Act. Amoco, however, had ceased operating the USTs and the property in 1952 and, therefore, moved to dismiss the Complaint

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111½, Sect. 1009 and 1012.

alleging the Act cannot be applied retroactively. The Board agreed with Amoco and held that, in order for Amoco to have violated the provisions of the Act relied upon by Complainants, Amoco must have engaged in the proscribed conduct after those provisions became effective (citing People v. Fiorini, 143 Ill. 2d 318; 574 N.E. 2d 612). The Board stated:

> Because the complaint does not allege that Amoco owned, operated, possessed or controlled the property or the underground storage tanks after the effective date of the Act in 1970 or after the Section 21 provisions became effective, Amoco could not have allowed contamination to continue or disposed, stored or abandoned any waste based on the facts of this case after the Section 21 provisions became effective. See Mandel, PCB 92-33, slip op. at 5-6. Therefore, even assuming that all well-pleaded allegations are true, none of the conduct alleged in the complaint occurred after 1970, the effective date of the Act, or after the effective dates of the Section 21 provisions. Consequently, no set of facts in the complaint can be proved that would entitle the complainant to relief. Hence, the complaint must be dismissed. See People ex rel. Fahner v. Carriage Way West, Inc., 88 Ill. 2d 300, 430 N.E.2d 1005, 1008-09 (1981).

Two years later in Union Oil Company v. Barge-Way Oil Company, et al., PCB No. 98-169 (1999), the Board again held that Section 21 cannot be applied retroactively. There, Union Oil sought to enforce Section 21(e), as it was amended in 1979 to include "waste", against actions of Mobil Oil Company that are alleged to have occurred on or about 1974. Mobil moved to dismiss arguing that, in order for it to be liable under the 1979 amendments to Section 21, those amendments would have to be applied retroactively, and that they simply cannot be so applied. The Board agreed with Mobil and dismissed the claims, stating:

> Under Illinois law, a statutory amendment will be construed as applying prospectively absent express language to the contrary. People v. Fiorni, 143 Ill. 2d 318, 333, 574 N.E.2d 612 (1991). As stated in Fiorini, "an exception to the rule of prospectivity arises where the legislature intended that the amendment apply retroactively and where the amendment

> applies only to changes in procedure or remedies, rather than substantive rights," (Emphasis added.) Fiorini, 143 Ill. 2D at 333 (citing Matier v. Chicago Board of Education, [10] 82 Ill. 2d 373, 390, 415 N.E. 2d 1034 (1980)).
>
> Thus, in order for retroactive application to be permissible, there must be both express statutory language allowing for such application and the law which is sought to be retroactively applied is not substantive. *Id.* Illinois courts have defined substantive law as that "which establishes rights and duties that may be redressed through the rules of procedure." Fiorini, 143 Ill. 2d at 333.

The Board's holdings in Casanave and Union Oil are controlling here. The complaint alleges that Texaco owned and/or operated the USTs and the Property between 1959 and 1977. The Complaint does not allege that Texaco owned or operated the USTs or the Property at any time after 1977. The provisions of Section 21, upon which Complainants rely, were not amended to include a definition of the term "waste" that might apply to the alleged releases from the USTs until after 1977. Thus, the only manner in which Texaco could be liable under the 1979 amendments, or any post-1979 amendments, to Section 21 would be to apply the provisions of amended Section 21 retroactively, which the Board has clearly determined cannot be done. The amendments to Section 21 do not state they are to be applied retroactively. And, in any event, the prior decisions of the Board have determined that the amendments are substantive and, therefore, cannot be applied retroactively. See also Vogue Tyre & Rubber Company v. Illinois EPA, PCB 96-10 (2004).

Complainants rely on Grand Pier Center LLC v. American International Specialty Lines Insurance Company, PCB No. 05-157 (2005), as finding that the Act can be applied retroactively. This reliance is misplaced. While the decision in Grand Pier relies on the opinion of the appellate court in State Oil Company v. State of Illinois, 822

N.E.2d 876 (2004), the decision is plainly wrong and in apposite to all existing decisions of the Board. Grand Pier did not overrule Casanave, Union Oil or Vogue, nor did it even refer to or distinguish these decisions; thus, Casanave, Union Oil and Vogue remain the law of the Board regarding the issue of retroactivity. Further, as the Board held in Casanave and Union Oil, there is a two-prong test that must be met before a statute may be applied retroactively: the statute must specifically provide that it is to be applied retroactively, and the statute must be of a procedural nature and not affect substantive rights. In Grand Pier, the two prong test was misapplied to extend retroactivity to Section 21(e) of the Act. Section 21(e) clearly affects a party's substantive rights as it regulates a party's conduct. Under People v. Fiorini, supra, which is an Illinois Supreme Court decision, a substantive statute cannot be applied retroactively. Thus, Fiorini is controlling here and the holding in Grand Pier is not controlling here.

For all of the foregoing reasons Respondent submits that Complainants' motion to dismiss Affirmative Defense No. III should be denied.

Affirmative Defense No. IV – No Jurisdiction to Award Cost Recovery

Complainants move to strike this defense arguing that the Board has always ruled that it has the authority to award cleanup costs. Respondent is well aware of the Board's decisions on this issue. Although the Board has determined that it has the authority to award cost recovery, it is undisputed that the Act, at 415 ILCS 5/33 (b), does not specifically grant this authority to the Board. The Board has, therefore, inferred that it has the authority to award cost recovery via the language in 5/33(a) that allows the Board to "enter such final order, or make such final determination, as it shall

deem appropriate under the circumstances." 415 ILCS 5/33 (a)

But this position is not undisputed. In Casanave, supra, Board Member R. C. Flemal, in a special concurring opinion, opined that the Board does not have the power to hear private cost recovery actions. And in NBD Bank v. Krueger Ringier, Inc., 292 Ill. App. 3d 691 (1997), the appellate court held that a private right of action cost recovery does not exist under the Act for the circumstances of the instant case, stating:

> The Illinois Environmental Protection Act and companion regulations were not designed to protect the purchasers of real estate who discover after the conveyance that remedial action is necessary to remove contaminants from the property, nor was the Act designed to protect against economic losses resulting from the obligation to remove contaminants.

Given the foregoing, Respondent respectfully requests that the Board revisit and reconsider its prior determinations allowing cost recovery. This request is especially relevant in actions such as this matter, where any reasonable due diligence by Complainants prior to purchasing the property would have disclosed the releases alleged and Complainants could have avoided incurring the costs which they now request the Board award to them.

For all of the foregoing reasons Respondent submits that Complainants' motion to dismiss Affirmative Defense No. IV should be denied.

Affirmative Defense No. V - Incurred Risk
Affirmative Defense No. VI - Assumption of Risk
Affirmative Defense No. VII - Avoidable Consequence

These three defenses allege that the Complaint does not allege that Complainants performed any due diligence, which would surely have disclosed the existence of the USTs and the releases alleged. Given the foregoing, the defenses allege that

Complainants either incurred, assumed or could have avoided the risk of (a) the existence of the USTs and the alleged releases being on the Property, and (b) the remediation costs, which they now ask the Board to award them from Respondent. Complainants brush all three of these defenses aside stating "Respondent has articulated no legal theory by which a third party's investigation (or lack of investigation) prior to entering into a contract for the purchase of property could possibly relieve Respondent of responsibility for violations of Sections 21(a) or (e) . . ." Motion, at p. 11. Complainants are not correct.

Without the benefit of discovery it is not yet known what the contract documents between Complainants and their seller provided in respect to the environmental condition of the Property. Customarily, however, as a part of a buyer's due diligence in a commercial real estate transaction, the buyer provides in the contract documents for a right to perform a Phase I and, if necessary, a Phase II investigation of the real estate to determine the environmental risks involved in acquiring the real estate. The allegations of the Complaint demonstrate that Complainants are sophisticated business enterprises and are, assumedly, represented by professional advisors. Thus, Complainants should have known what the environmental risks were in acquiring the Property prior to closing on it. From the allegations of the Complaint, however, it appears Complainants did not know, as they allege the USTs and the releases were first "detected" in 2006 after a 2005 closing. Complaint, para. 13-24.

The post-closing discovery of USTs and related releases by a buyer of commercial real estate has been found by the Illinois appellate court to be simply the "disappointed commercial expectations" of the buyer. NBD Bank v. Krueger Ringier

Inc., supra, at p. 696. And the NBD Bank court held that the Act was not intended to be used by such a disappointed buyer to recover the costs of removal of contaminants. See language quoted from NBD Bank, at Response, p. 17.

In the instant case these three affirmative defenses raise exactly that issue. Application of NBD Bank to the instant case finds that Complainants should not be allowed to use the Act to recover remediation costs that should have been resolved with their seller in their acquisition of the Property.

For all of the foregoing reasons Respondent submits that Complainants' motion to dismiss Affirmative Defense Nos. V-VII should be denied.

Affirmative Defense No. VIII - Causation

Complainants argue that this defense cannot be a defense because it presents no new facts and is merely a denial. However, an affirmative defense is not required to plead new facts, and any set of facts or law which could defeat a claim or take the opposing party by surprise must be pled. See Response, pp. 1-3. As this defense alleges, releases may have occurred as a result of the actions of third parties operating the USTs after Texaco operated them by these third parties abandoning the USTs in place or removing them. Discovery will be taken on this issue and may support this defense. As this could be a defense to the claim or could take Complainants by surprise, at this early stage of this proceeding the defense should not be stricken.

For all of the foregoing reasons Respondent submits that Complainants' motion to dismiss Affirmative Defense No. VIII should be denied.

Affirmative Defense No. IX - Laches

Complainants argue that laches is not applicable here because they have not

unreasonably delayed in bringing this action; however, Complainants misperceive this issue. Laches requires two elements: unreasonable delay in bringing a claim and prejudice to the party against whom the claim is brought. People v. Skokie Valley Asphalt Co., PCB 96-98 (2004). There is no question that the second element is met here. It has been over 30 years since Texaco operated the Property. Evidence that Respondent could use to defend itself certainly has been lost. Records may have been destroyed and witnesses may have died or cannot be found.

The first element has also been met. It is not that these Complainants unreasonably delayed, as they acquired the Property in the past few years. But their recent acquisition of the Property does not wash away the fact that any releases caused by Texaco occurred more than 30 years ago. If the owner of the Property at the time that Texaco operated the USTs were to have brought this action at this time, the delay would be unreasonable and laches would certainly apply. That delay is not mitigated simply because Complainants recently acquired the Property. Given the time that has passed since these claims could have been brought, Complainants must be held to the same standard that the prior owner would have been held. A simple sale of the Property from a person who would have been subject to a laches defense to another person should not do away with the laches defense.

For all of the foregoing reasons Respondent submits that Complainants' motion to dismiss Affirmative Defense No. IX should be denied.

Respectfully submitted,
Chevron U.S.A. Inc.

Dated: June 26, 2009

By: _____
One of its attorneys

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	Jointly Administered
TEXACO INC.,	:	Chapter 11 Case Nos.
TEXACO CAPITAL INC.,	:	87 B 20142(MS)
TEXACO CAPITAL N.V.,	:	87 B 20143(MS)
	:	87 B 20144(MS)
Debtors.	:	

ORDER (I) CONFIRMING SECOND AMENDED JOINT PLAN OF REORGANIZATION AND (II) AUTHORIZING TEXACO INC. TO INCUR SECURED INDEBTEDNESS FOR PURPOSE OF CONSUMMATING PLAN

The Second Amended Joint Plan of Reorganization proposed by Texaco Inc., Texaco Capital Inc., Texaco Capital N.V. and Pennzoil Company, dated January 27, 1988 (the "Plan")[1] having been filed with this Court by Texaco Inc. ("Texaco"), Texaco Capital Inc., Texaco Capital N.V. and Pennzoil Company ("Pennzoil") on January 29, 1988; and the Second Amended Disclosure Statement Pursuant to Section 1125 of the Bankruptcy Code (including the Plan as an exhibit thereto), dated January 29, 1988 (the "Disclosure Statement"), having been approved by, and transmitted to the Debtors' creditors and Texaco's equity security holders in

1. Capitalized terms used in this order that are not define herein shall have the same meaning in this order that they have in the Plan.

EX. 1

accordance with the Court's order dated January 29, 1988 ("January 29 Order") approving the Disclosure Statement in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3017; and March 22, 1988 at 10:00 A.M. having been fixed as the date and time of a hearing (the "Confirmation Hearing") pursuant to sections 1128 and 1129 of the Bankruptcy Code to consider confirmation of the Plan and approval of the compromise and settlement between Pennzoil and Texaco pursuant to the Pennzoil Settlement and the Plan; and the Debtors having moved by Motion Pursuant to Section 364(c) of the Bankruptcy Code for Order Authorizing Texaco Inc. to Incur Secured Indebtedness For Purpose of Consummating Second Amended Joint Plan of Reorganization, dated March 7, 1988 (the "Financing Motion") for an order pursuant to section 364(c) of the Bankruptcy Code authorizing Texaco to incur secured indebtedness in an amount up to $3 billion (whether as borrower or as guarantor of the borrowings of certain of its subsidiaries); and due notice of the Confirmation Hearing having been given to all creditors of the Debtors, equity security holders of Texaco and other parties in interest in accordance with the terms of the January 29 Order; and notice of the Financing Motion having been given to the statutory General Committee of Unsecured Creditors and Committee of Equity Security Holders (the

"Committees"), the United States Trustee, the Securities and Exchange Commission (the "SEC") and all parties in interest that have requested notice pursuant to Bankruptcy Rule 2002 by service of a copy of the Financing Motion (and the Summary of Terms annexed thereto as Exhibit 1) by first class mail, postage prepaid or by hand delivery, in compliance with Bankruptcy Rule 4001(c); and the Confirmation Hearing and a hearing on the Financing Motion having been held on March 22, 1988; and the Court having considered all objections to the confirmation of the Plan, the Pennzoil Settlement and the Financing Motion (the "Objections"); and upon all of the evidence adduced and arguments of counsel made at the Confirmation Hearing and the hearing on the Financing Motion; and after due deliberation, the Court hereby FINDS, DETERMINES, ORDERS, ADJUDGES AND DECREES that:

Confirmation of Plan

1. The Plan has been accepted in writing by the equity security holders of the Debtors whose acceptance is required by law.

2. The Plan complies with the applicable provisions of the Bankruptcy Code.

3. The Debtors and Pennzoil have complied with the applicable provisions of chapter 11 of the Bankruptcy Code.

4. The Plan has been proposed in good faith and not by any means forbidden by law.

5. All payments made or promised by the Debtors or by a person acquiring property under the Plan for services or for costs and expenses in, or in connection with, the Plan, or in connection with the Plan and incident to the cases, have been fully disclosed to the court and are reasonable or, if to be fixed after confirmation of the Plan, will be subject to approval of the court.

6. The identity, qualifications, and affiliations of the persons who are to be directors or officers of the Debtors, after confirmation of the Plan, have been fully disclosed, and the continuance of such persons in such offices is equitable, and consistant with the interests of the Debtors' creditors and Texaco's equity security holders and with public policy.

7. The identity of any insider that will be employed or retained by the reorganized Debtors and the nature of such insider's compensation have been fully disclosed.

8. With respect to any impaired class of interests, each holder of an interest in such class has accepted the Plan or will receive or retain under the Plan property of a value, as of the Effective Date of the Plan,

that is not less than the amount such holder would receive o retain if Texaco were liquidated under chapter 7 of the Bankruptcy Code on such date.

9. No class of Claims is impaired under the Plan.

10. Except to the extent that the holder of a Claim of a kind specified in section 507(a) of the Bankruptcy Code has agreed to a different treatment of such Claim, the Plan provides that with respect to such a Claim the holder will receive on account of such Claim cash equal to the allowed amount of such Claim on the Effective Date of the Plan.

11. Pennzoil has agreed to accept less favorable treatment of the Pennzoil Judgment Claim than the treatment accorded other claims in Class 6-A of the Plan.

12. Article VII.E. of the Plan provides that the corporate charters of the Debtors contain or shall be amende as of the Effective Date to provide for the inclusion of provisions prohibiting the issuance of non-voting equity securities and providing, as to the several classes of securities possessing voting power, an appropriate distribution of such power among such classes, including, in the case of any class of equity securities having a preference over another class of equity securities with

respect to dividends, adequate provision for the election of directors representing such preferred class in the event of default in the payment of such dividends.

13. Confirmation of the Plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors.

14. All fees payable under section 1930 of title 28 of the United States Code have been paid or the Plan provides for the payment of all such fees on the Effective Date of the Plan.

15. There is substantial risk that the continuation of the litigation between Texaco and Pennzoil with respect to the Pennzoil Judgment would, through the denial of Texaco's petition for a writ of certiorari to the United States Supreme Court or otherwise, result in (i) the affirmance of the Pennzoil Judgment in an amount in excess of $11 billion including post-judgment interest, with the effect of destroying any value for the interests of Texaco's equity security holders, (ii) significant litigation costs being borne by Texaco, and (iii) the substantial protraction of the time period during which the Debtors' chapter 11 cases would remain pending, to the severe economic detriment of the Debtors and their creditors, Texaco's stockholders and other parties in interest.

16. The compromises and settlements encompassed by the Plan and the Pennzoil Settlement do not fall below the lowest point in the range of reasonableness, are fair, equitable and reasonable and are in the best interests of Texaco's estate.

17. Pennzoil is receiving the consideration which it is to receive under the Plan and the Pennzoil Settlement in good faith.

18. Each of the conditions to Confirmation set forth in Article VIII.A. of the Plan has been satisfied.

19. The Plan, a copy of which is annexed hereto as Exhibit "A", be, and it hereby is, confirmed.

20. The Pennzoil Settlement be, and it hereby is, approved in all respects and Texaco be, and it hereby is, authorized and directed to make all payments and to take all actions provided for in the Pennzoil Settlement in accordance with the terms of the Plan and the Pennzoil Settlement Agreement.

21. Each of the Objections be, and it hereby is, overruled.

22. Except as otherwise provided herein and in the Plan, and effective as of the Effective Date of the Plan, in accordance with section 1141(d) of the Bankruptcy Code, each of the Debtors be, and it hereby is, discharged of and from

any and all debts and claims that arose against it before the date of entry of this order, including, without limitation, any debt or claim of a kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, whether or not (i) a proof of claim based on such a debt is filed or deemed filed under section 501 of the Bankruptcy Code, (ii) such Claim is allowed under section 502 of the Bankruptcy Code, or (iii) the holder of such Claim has accepted the Plan.

23. Except as otherwise provided in the Plan, on the Effective Date of the Plan, in accordance with sections 1141(b) and 1141(c) of the Bankruptcy Code, all property of each Debtor's estate and all other property dealt with by the Plan, be, and it hereby is, vested in the respective Debtor and is free and clear of all claims and interests of creditors and equity security holders of the Debtors.

24. Except as provided in the Plan and subject only to the occurrence of the Effective Date of the Plan, any judgment at any time obtained, to the extent that such judgment is a determination of personal liability of any of the Debtors with respect to any debt or Claim discharged hereunder, be, and it hereby is, rendered null and void.

25. The commencement or continuation of any action, the employment of process, or any act to collect, recover or offset any debt discharged hereunder as a personal

liability of any of the Debtors, or from property of any of the Debtors, be, and it hereby is, permanently enjoined, stayed and restrained.

26. Howard Good, Moses Weiss, Edward Grossmann, Pauline Wander, Sidney J. Silver, Barnett Stepak, Charles E. Webster, Dorothy Whitman, Joseph Shanis, Robert R. Burslem, Barney Welch, Trustee, William Steiner, Ellen E. R. Leslie, Carbide Tool Grinding Service, Inc. Profit Sharing Plan, C.J Kirk and Dorothy Kirk and all other plaintiffs in the Stockholder Actions and their respective servants, agents, attorneys and representatives, be, and each of them hereby is, permanently enjoined, stayed and restrained from pursuing or prosecuting any of the Stockholder Actions against any or all of the Persons or entities as to whom the Stockholder Actions are to be dismissed pursuant to Article VII.H.2 of the Plan.

27. Texaco be, and it hereby is, authorized and empowered to take any action and to execute, deliver and file in all courts in which the Stockholder Actions are pending, all documents and instruments, including, without limitation stipulations of dismissal of the Stockholder Actions, necessary or appropriate to dismiss each of the Stockholder Actions in accordance with the provisions of Article VII.H. of the Plan, and no further approval by or authority of any

court or tribunal before which a Stockholder Action is pending shall be required to enable Texaco to dismiss any Stockholder Action as to any Person or entity named as a defendant in any such Stockholder Action upon the execution and delivery by such Person or entity of a release as provided for in Article VII.M.2 of the Plan.

28. In accordance with Article VI of the Plan and section 365 of the Bankruptcy Code, the assumption of all executory contracts and unexpired leases of the Debtors as to which (a) no objection to the assumption thereof has been filed with the Court and not resolved as of the date of this order, and (b) no other stipulation is in effect, be, and it hereby is, approved in all respects, provided, however, that in accordance with Article IX of the Plan, the Court shall retain jurisdiction to determine any dispute as to the amount of the defaults, if any, required to be cured under section 365(b)(1) of the Bankruptcy Code with respect to any such executory contract or unexpired lease, and nothing herein shall revoke or alter any party's rights under the Global Order dated July 10, 1987 providing a procedure for the assumption of oil and gas leases, mineral servitudes, subleases, farmout agreements and other executory contracts, including paragraph A.3(e) thereof.

29. The Court shall retain jurisdiction in accordance with (and as limited by) Article IX of the Plan and section 1142 of the Bankruptcy Code.

30. No payment provided for in the Plan shall be made prior to the Effective Date.

31. Each of the Debtors be, and it hereby is, authorized and empowered to issue, execute, deliver, file or record any document, and to take any action necessary or appropriate to implement, effectuate and consummate the Plan and the Pennzoil Settlement in accordance with their respective terms, including, without limitation, any release, agreement of indemnity, Bylaw or Charter amendment, whether or not specifically referred to in the Plan or any exhibit thereto and without further application to or order of this Court.

Authorization to Incur Secured Indebtedness

32. The Disclosure Statement disclosed to all parties in interest in Section VIII.E thereof the intention and requirement that Texaco raise $3.2 billion for the purpose of consummating the Plan, the bulk of which would be raised from borrowings, and the Plan contemplated the incurrence of secured debt, the proceeds of which would be used to fund payments to creditors in accordance with the Plan.

33. Notice of the Financing Motion, including the Summary of Terms annexed thereto as Exhibit 1 (the Revolving Credit and Guaranty Agreement (the "Loan Agreement") substantially in execution form heretofore filed with the Court not having been available at the time of the filing of the Motion), given to the statutory Committees, the United States Trustee, the SEC and all parties in interest that have requested notice pursuant to Bankruptcy Rule 2002, and the notice given to all creditors and stockholders of Texaco by means of the Disclosure Statement and Plan, constitute good, adequate and sufficient notice of the Financing Motion in accordance with Bankruptcy Rule 4001(c) of the Bankruptcy Rules, and all other notice is hereby waived and dispensed with pursuant to Bankruptcy Rule 4001(c)(3).

34. The financing necessary to finance the payments to be made pursuant to the Plan is not available to the Debtors on an unsecured basis. Pursuant to section 1142 of the Bankruptcy Code, it is hereby determined that the incurrence of the secured indebtedness contemplated by the Financing Motion is necessary for the consummation of the Plan.

35. The Financing Motion be, and it hereby is, granted in all respects.

36. Pursuant to section 364(c)(2) of the Bankruptcy Code and the Plan, Texaco be, and it hereby is, authorized and empowered to:

a. enter into and perform the Loan Agreement in substantially the form heretofore filed with the Court with a syndicate of banking institutions (collectively, the "Banks"), providing for secured revolving credit in the aggregate principal amount of $3,000,000,000 to be made available to Texaco and certain of its subsidiaries;

b. borrow up to the aggregate principal amount of $3,000,000,000 at any one time outstanding under the Loan Agreement (and unconditionally guaranty the obligations of such subsidiaries in connection with borrowings under the Loan Agreement by such subsidiaries, provided that the outstanding principal amount which may be borrowed by Texaco and such subsidiaries shall not exceed in the aggregate $3,000,000,000 at any one time outstanding) to be used in connection with the financing of the payments required to be made by Texaco pursuant to the Plan and for the general corporate purposes of Texaco and such subsidiaries; and

c. pledge to the Banks, pursuant to the Loan Agreement and one or more pledge agreements in substantially the forms annexed to the Loan Agreement (the "Pledge

Agreements"), as security for all of its obligations under the Loan Agreement (whether as borrower or guarantor), all stock of Texaco Canada Inc. owned by Texaco (and cause its subsidiaries to do so in respect of any such stock owned by its subsidiaries) and such other collateral as may be pledged from time to time pursuant to the Loan Agreement (such stock and other collateral, collectively the "Collateral").

37. Any and all claims of the Banks against Texaco (whether as borrower or as guarantor) arising under or in connection with the Loan Agreement shall constitute allowed secured Administrative Claims, entitled to the benefit of a first perfected security interest in the Collateral, pursuant to the Plan and section 364(c)(2) of the Bankruptcy Code.

38. Upon the occurrence of any Event or Default (as defined in the Loan Agreement) the Banks may forthwith (without any further application to or order of the Court) enforce their rights as secured parties against the Collateral in accordance with the terms of the Loan Agreement, the Pledge Agreements and the other instruments and agreements executed and delivered in connection therewith.

39. In accordance with Article VII.C.2 of the Plan, any asset of the estate of Texaco which is to be sold or encumbered as Collateral for the obligations of Texaco

(whether as borrower or guarantor) pursuant to the terms of the Loan Agreement shall automatically revest in Texaco on the day before the date of such sale or collateralized borrowings, as the case may be, without any further order of this Court or the Office of the United States Trustee, and only if, the proceeds of such sale or the funds so borrowed shall vest in Texaco's estate until the effective date.

40. The Loan Agreement has been negotiated in good faith and at arm's length between Texaco and the Banks and any credit extended and loans made to Texaco or such subsidiaries (and guaranteed by Texaco) by the Banks pursuant thereto shall be deemed to have been extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

Dated: White Plains, New York
March 23, 1988
At 12:10 P.M.

/s/ Howard Schwartzberg
United States Bankruptcy Judge

377197.3/7-13

I hereby attest and certify on March 23, 1988 that the foregoing document is a full, true and correct copy of the original on file in my office.

CLERK, U.S. BANKRUPTCY COURT
Southern District of New York

By _____ Deputy

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	Jointly Administered Chapter 11 Case Nos.
TEXACO INC.,	87 B 20142 (HS)
TEXACO CAPITAL INC.,	87 B 20143 (HS)
TEXACO CAPITAL N.V.,	87 B 20144 (HS)
Debtors.	

NOTICE OF (i) CONFIRMATION OF PLAN OF REORGANIZATION AND (ii) DISCHARGE OF DEBTS

TO ALL CREDITORS, EQUITY SECURITY HOLDERS AND OTHER PARTIES IN INTEREST:

NOTICE IS HEREBY GIVEN of the entry of an order of this Court, dated March 25, 1988 (the "Confirmation Order"), confirming the Debtors' Second Amended Joint Plan of Reorganization (the "Plan")* dated January 27, 1988. The Confirmation Order, among other matters, provides that:

1. Except as otherwise provided in the Plan, each of Texaco Inc., Texaco Capital Inc. and Texaco Capital N.V. is discharged from any and all debts (inclusive of any asserted claims or liabilities) that arose against any or all of them before the date of entry of the Confirmation Order, including, without limitation, any debt of a kind specified in sections 502(g), 502(h) or 502(i) of the Bankruptcy Code, other than:

(A) Administrative Expenses of the chapter 11 cases consisting of debts incurred in the ordinary course of business of the above-named Debtors, or debts arising under loans or advances to any of the said Debtors whether or not incurred in the ordinary course of business, which Administrative Expenses will be paid by the Debtors in accordance with the terms and conditions of such debts;

(B) Administrative Expenses of the chapter 11 cases consisting of allowances of compensation or reimbursement of expenses to the extent granted by the Court pursuant to sections 330, 503(b)(3), 503(b)(4) or 503(b)(5) of the Bankruptcy Code;

(C) Tax Claims that are not Allowed Claims as defined in the Plan;

(D) Certain unsecured debts held by the United States Department of Energy; and

(E) Certain unsecured debts arising under environmental laws which are not Allowed Claims, as defined in and more fully described in the Plan;

whether or not (i) a proof of claim based on such debt was filed or deemed filed under section 501 of the Bankruptcy Code; (ii) such debt is allowed under section 502 of the Bankruptcy Code; or (iii) the holder of such debt has accepted the Plan;

2. Any judgment at any time obtained, to the extent that such judgment is a determination of the liability of any of the Debtors with respect to any debt discharged pursuant to the Confirmation Order, is null and void as against any of the Debtors; and

3. All creditors whose debts are discharged by the Confirmation Order and all creditors whose judgments are declared null and void by paragraph 2 hereof are forever enjoined and stayed from the commencement, continuation, institution, employment of any process or engagement of any act to collect such debts or liabilities of Texaco Inc., Texaco Capital Inc. or Texaco Capital N.V.

*Capitalized terms that are not defined herein shall have the same meanings in this notice that they have in the Plan.

BY ORDER OF THE COURT

Dated: New York, New York
April 7, 1988

/s/ Howard Schwartzberg
United States Bankruptcy Judge

PROOF OF SERVICE BY MAIL

I, Sarah A. Whitford, a non-attorney on oath, state that I served a copy of this Notice and Response of Chevron U.S.A. Inc. to Motion to Strike Affirmative Defenses 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 June 26, 2009.

Sarah A. Whitford

Subscribed and sworn to before
me this 26th day of June, 2009.

OFFICIAL SEAL
STEPHANIE A DEMAS
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/20/13

Stephanie A. Demas 6/26/2009
Notary Public