BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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 February 9, 2011, we filed with the clerk of the Illinois Pollution Control Board an original and nine copies of Respondents' Answer and Affirmative Defenses to the Amended Complaint, a copy of which is attached hereto and herewith served upon you.

CHEVRON U.S.A. INC. and
TEXACO INC.

Dated: February 9, 2011

By: _____
One of its attorneys

Joseph A. Girardi
Robert B. Christie
Henderson & Lyman
Attorneys for Respondents
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 Respondents' Answer and Affirmative Defenses to Amended 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 February 9, 2011.

Sarah A. Whitford

Subscribed and sworn to before
me this 9th day of February, 2011.

Notary Public

OFFICIAL SEAL
LINDSEY E LIABO
NOTARY PUBLIC - STATE OF ILLINOIS
MY COMMISSION EXPIRES:01/20/13

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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

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

Respondents, Chevron U.S.A. Inc., incorrectly named as Chevron U.S.A., Inc., and Texaco Inc. ("Respondents"), by their attorneys, Henderson & Lyman, and for their answers and affirmative defenses to the amended formal complaint of Complainants, Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital ("Complainants"), state 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 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. Since that time, Texaco has become a subsidiary of Chevron U.S.A. and/or Chevron Corporation. Elmhurst Memorial Healthcare and Elmhurst Memorial Hospital now seek to recover the costs they incurred from Respondents Chevron U.S.A. and/or Texaco.

Answer: As this paragraph is merely a conclusory overview of the allegations of the Amended Complaint, Respondents adopt and rely on their answers to the

individual allegations of the Amended Complaint as they may be applicable here. To the extent not otherwise alleged in the Amended Complaint, Respondents deny 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: Respondents do not have sufficient knowledge to admit or deny the location of the primary offices of Complainants, and as such deny same and demand strict proof thereof. Respondents admit the remaining allegations of this paragraph.

Complaint ¶ 2. Chevron U.S.A. is a Pennsylvania corporation licensed to conduct business in Illinois. Its primary offices are located in San Ramon, California. Chevron U.S.A. is a "person" within the meaning of Section 3.315 of the Act. 415 ILCS 5/3.315.

Answer: Respondents admit that Chevron U.S.A. Inc. 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, Respondents deny the remaining allegations of this paragraph.

Complaint ¶ 3. Texaco is a Delaware corporation that conducted business in Illinois. Its primary offices are located in San Ramon, California. Texaco is a "person" within the meaning of Section 3.315 of the Act. 415 ILCS 5/3.315.

Answer: Respondents admit that Texaco Inc. is a Delaware 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, Respondents deny the remaining allegations of this paragraph.

Complaint ¶ 4. Pursuant to an October 9, 2001 transaction, the common stock of Texaco was acquired by a subsidiary of Chevron Corporation. As a result of this transaction, Texaco became a wholly-owned subsidiary of Chevron Corporation. Texaco remains liable for its pre-2001 actions relevant to this Amended Complaint.

Answer: Respondents admit that, pursuant to an October 9, 2001 transaction, the common stock of Texaco Inc. was acquired by a subsidiary of Chevron Corporation. Respondents deny that, as a result of this transaction, Texaco Inc. became a wholly-owned subsidiary of Chevron Corporation, but aver that Texaco Inc. became a wholly-owned, indirect subsidiary of Chevron Corporation. Respondents deny that Texaco Inc. is liable for any of the claims alleged by Complainants and deny the remaining allegation of this paragraph.

Complaint ¶ 5. Chevron U.S.A. is a subsidiary of Chevron Corporation. Most of Chevron Corporation's United Sates businesses are managed and operated by Chevron U.S.A.

Answer: Respondents admit that Chevron U.S.A. Inc. is a subsidiary of Chevron Corporation. Respondents deny the remaining allegations of this paragraph.

Complaint ¶ 6. As a result of corporate restructuring, certain Chevron Corporation subsidiaries transferred assets to Chevron U.S.A., and as a result, Chevron U.S.A. may also be liable for Texaco's pre-2001 actions relevant to this Amended Complaint.

Answer: Respondents deny the allegations of this paragraph.

Jurisdiction

Complaint ¶ 7. The Illinois Pollution Control Board has jurisdiction of this matter pursuant to 415 ILCS 5/31.

Answer: Respondents deny the allegations of this paragraph.

Factual Background

Complaint ¶ 8. The Texas Company (which later became Respondent Texaco) owned and/or operated a gasoline filling station on the Property from approximately 1957 to 1977.

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

Complaint ¶ 9. The gasoline filling station was operated under the name, "Texaco."

Answer: Respondents admit the allegations of this paragraph.

Complaint ¶ 10. In 1959, The Texas Company changed its name to "Texaco Inc." (i.e., Respondent Texaco).

Answer: Respondents admit the allegations of this paragraph.

Complaint ¶ 11. 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: Respondents deny they installed any USTs on the Property, but admit that the owner of the Property installed a number of USTs on the Property in approximately 1958. Other than as specifically admitted herein Respondents do not have sufficient knowledge to form a belief as to truth of the remaining allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 12. On information and belief, releases of petroleum occurred as a direct result of Texaco's operation of the gasoline USTs.

Answer: Respondents deny the allegations of this paragraph.

Complaint ¶ 13. 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: Respondents admit 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 Respondents deny the remaining allegations of this paragraph.

Complaint ¶ 14. 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: Respondents admit that in 1981the 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. Respondents aver 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 Respondents do not have sufficient knowledge to form a belief as to truth of remaining allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 15. On information and belief, a transferee of the Property removed two USTs in or about 1981.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 16. 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: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 17. 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: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 18. 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: Respondents admit 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, Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 19. 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: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 20. 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: Respondents deny the soil was contaminated as a result of Texaco Inc.'s operation of the gasoline filling station. Respondents do not have sufficient knowledge to form a belief as to truth of the remaining allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 21. Accordingly, EMH caused over 570 tons of contaminated soil to be excavated and disposed off-site.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 22. 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: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 23. 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: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 24. 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: Respondents admit that the public records of the Illinois Environmental Protection Agency indicate that IEMA no. 20071269 was assigned to the Property on September 19, 2007. Respondents further admit 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. Respondents aver 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, Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 25. Each of the USTs contained gasoline and water and was partially filled with sand. Each contained holes at the bottom.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 26. 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: Respondents do not have sufficient knowledge to form a belief as to

truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 27. About 10,500 gallons of gasoline and water was pumped from the tanks and the excavation pit and disposed off-site.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 28. About 315 tons of contaminated soil was excavated from the area affected by the gasoline USTs.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 29. 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: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 30. EMH expended over $100,000 to clean up the mess left on the Property by Texaco.

Answer: Respondents deny that Texaco Inc. left any "mess" on the Property. Respondents do not have sufficient knowledge to form a belief as to truth of the remaining allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 31. A representative of EMH contacted representatives of the Respondents at the time of the excavation, and the latter represented that Chevron

U.S.A., or some other subsidiary of Chevron Corporation, was responsible for the liabilities of Texaco.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 32. EMH demanded that Respondents reimburse EMH for the costs expended in relation to the USTs as early as October 2, 2007.

Answer: Respondents admit that on or about October 2, 2007 Complainants, by their counsel, requested reimbursement of all costs incurred. Respondents deny the remaining allegations of this paragraph.

Complaint ¶ 33. Despite repeated demands Respondents have not reimbursed EMH for any of the costs it incurred in relation to the USTs on the Property.

Answer: Respondents admit they have not reimbursed Complainants for any of the costs alleged to have been incurred in relation to the USTs on the Property, but deny Respondents are liable for such costs and deny the remainder of the allegations of this paragraph.

COUNT I

Complaint ¶ 34. Complainants reallege and incorporate by reference as if fully set forth herein Paragraphs 1 through 33 of this Amended Complaint.

Answer: Respondents adopt and reallege their answers to paragraphs 1 - 33 of the Amended Complaint as thought fully set forth herein.

Complaint ¶ 35. 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: Respondents admit the allegations of this paragraph.

Complaint ¶ 36. 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: Respondents deny the allegations of this paragraph.

Complaint ¶ 37. 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: Respondents admit the allegations of this paragraph.

Complaint ¶ 38. On information and belief, at no relevant time has the Property fulfilled the requirements of a sanitary landfill.

Answer: Respondents do not have sufficient knowledge to form a belief as to truth of the allegations of this paragraph and, as such, deny same and demand strict proof thereof.

Complaint ¶ 39. The abandonment of the Gas Station Waste constitutes "open dumping" within the meaning of the Act.

Answer: Respondents deny the allegations of this paragraph.

Complaint ¶ 40. Texaco caused or allowed the open dumping of the Gas Station Waste in violation of 415 ILCS 5/21(a).

Answer: Respondents deny the allegations of this paragraph.

Wherefore, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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 ¶ 41. Complainants reallege and incorporate by reference as if fully set forth herein Paragraphs 1 through 33 of this Amended Complaint.

Answer: Respondents adopt and reallege their answers to paragraphs 1 - 33 of the Amended Complaint as thought fully set forth herein.

Complaint ¶ 42. 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: Respondents admit the allegations of this paragraph.

Complaint ¶ 43. The Gas Station Waste constitutes "waste" within the meaning of the Act. 415 ILCS 5/3.535.

Answer: Respondents deny the allegations of this paragraph.

Complaint ¶ 44. The presence of the Gas Station Waste on the Property constitutes "storage" under the Act. 415 ILCS 5/3.480.

Answer: Respondents deny the allegations of this paragraph.

Complaint ¶ 45. The presence of the Gas Station Waste on the Property constitutes "disposal" under the Act. 415 ILCS 5/3.185.

Answer: Respondents deny the allegations of this paragraph.

Complaint ¶ 46. 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: Respondents deny the allegations of this paragraph.

Complaint ¶ 47. 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: Respondents deny the allegations of this paragraph.

Wherefore, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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 Respondents complete and affirmative defenses to Counts I and II of the Amended Complaint, Respondents states as follows:

Affirmative Defense No. I
(Chevron U.S.A. Inc. Is Not Liable For Texaco Inc.'s Actions)

1. Paragraph 4 of the Amended Complaint alleges that, pursuant to an October 9, 2001 transaction, the common stock of Texaco Inc. was acquired by a subsidiary of Chevron Corporation. Paragraph 4 further alleges that, as a result of this transaction, Texaco Inc. became a wholly-owned subsidiary of Chevron Corporation.

2. Paragraph 5 of the Amended Complaint alleges that Chevron U.S.A. Inc. is a subsidiary of Chevron Corporation and manages most of Chevron Corporation's United Sates businesses.

3. Paragraph 6 of the Amended Complaint alleges that, as a result of corporate restructuring, certain Chevron Corporation subsidiaries transferred assets to Chevron U.S.A. Inc., and as a result, Chevron U.S.A. Inc. may also be liable for Texaco's pre-2001 actions relevant to this Amended Complaint.

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; and

(c) The transaction did not provide that Chevron U.S.A. Inc. assumed the liabilities of Texaco Inc.

5. As a result, any liability of Texaco Inc. for the actions alleged in the Amended Complaint is not the liability of Chevron U.S.A. Inc.

Wherefore, Respondent Chevron U.S.A. Inc. respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of this 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. 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.

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 Amended Complaint, were filed in the Texaco Bankruptcy by Complainants or any other person or entity.

6. By reason of the foregoing, all of the claims alleged in the Amended Complaint against Texaco Inc. have been discharged in bankruptcy and Complainants are, therefore, barred from asserting such claims in this proceeding against Texaco Inc..

8. As all of Complainants' claims against Texaco Inc. have been previously discharged in bankruptcy, Chevron U.S.A. Inc. cannot have any liability to Complainants, by reason of assumption of Texaco Inc's liabilities, transfer of Texaco Inc.'s assets or liabilities, or otherwise; thus, Complainants' claims against Chevron U.S.A. Inc. are similarly barred.

Wherefore, Respondents respectfully requests that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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 Amended Complaint seeks relief against Respondents 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 Amended 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, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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 7 of the Amended Complaint alleges that the Illinois Pollution Control Board has jurisdiction of this matter pursuant to 415 ILCS 5/31.

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

3. Count II of the Amended Complaint requests that the Board enter an order requiring Respondents 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 Amended 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 Amended Complaint.

Wherefore, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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
(Primary Implied Assumption of the Risk)

1. Paragraph 16 of the Amended Complaint alleges that Complainants are a major health care organization and employ a staff of more than 3,000 people.

2. Paragraph 17 of the Amended Complaint alleges that, in 2005, Complainants identified the Property as a site in which they were interested in acquiring and that they closed on the purchase of the Property in that year.

3. At the time of Complainants' acquisition of the Property, the Property was improved commercial real estate, being improved with the building that was formerly used as the filling station building when the Property was operated as a filling station.

4. It is usual and customary, and part of the standard conditions of a purchase contract, that a buyer of commercial real estate will undertake an investigation of the environmental condition of such real estate, and that the results of such investigation must be acceptable to the buyer.

5. Such an investigation begins with a Phase I environmental audit, which is performed by a licensed environmental consultant. A Phase I environmental audit includes, among other things, a physical inspection of the site and a review of all records available to the public regarding the site.

6. The results of the Phase I environmental audit provide a buyer of commercial

real estate with knowledge of the past and current uses of the site, whether the site may be environmentally impacted, and whether to perform a Phase II or other additional environmental investigations, including sampling and laboratory analysis of the soil and groundwater on the site, to better determine the environmental condition of the site.

7. A buyer of commercial real estate, armed with the results of such an environmental investigation, then determines whether to assume the risks of the environmental condition of the site, negotiate changes to the purchase contract to provide for remediation of the site, or determine not to acquire the site at all.

8. Had Complainants performed a Phase I environmental audit of the Property, Complainants would have known that the Property had previously been used as a filling station, that USTs may be, or were, present on the Property and that the soil and/or groundwater on the Property may be, or was, contaminated by releases of gasoline or other petroleum products.

9. Complainants are sophisticated buyers and users of commercial real estate; however, the Amended Complaint does not allege that Complainants performed a Phase I or other environmental investigation of the Property before acquiring the Property.

10. 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.

11. Complainants' alleged ignorance of the environmental condition of the Property, through simply electing not to perform an environmental investigation of the Property before purchasing it, does not relieve them of having assumed this risk.

12. Additionally, at the time of Complainants' acquisition, the Property was

located on a corner of a main thoroughfare in a business area of Lombard, Illinois, and the former filling station building was present on the Property. Complainants, therefore, knew, even without the benefit of an environmental investigation, that the Property could have been used as a filling station in the past.

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

Wherefore, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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
(Secondary Implied Assumption of the Risk)

1. Paragraph 16 of the Amended Complaint alleges that Complainants are a major health care organization and employ a staff of more than 3,000 people.

2. Paragraph 17 of the Amended Complaint alleges that, in 2005, Complainants identified the Property as a site in which they were interested in acquiring and that they closed on acquisition of the Property in that year.

3. At the time of Complainants' acquisition of the Property, the Property was improved commercial real estate, being improved with the building that was formerly used as the filling station building when the Property was operated as a filling station.

4. It is usual and customary, and part of the standard conditions of a purchase contract, that a buyer of commercial real estate will undertake an investigation of the environmental condition of such real estate, and that the results of such investigation

must be acceptable to the buyer.

5. Such an investigation begins with a Phase I environmental audit, which is performed by a licensed environmental consultant. A Phase I environmental audit includes, among other things, a physical inspection of the site and a review of all records available to the public regarding the site.

6. The results of the Phase I environmental audit provide a buyer of commercial real estate with knowledge of the past and current uses of the site, whether the site may be environmentally impacted, and whether to perform a Phase II or other additional environmental investigations, including sampling and laboratory analysis of the soil and groundwater on the site, to better determine the environmental condition of the site.

7. A buyer of commercial real estate, armed with the results of such an environmental investigation, then determines whether to assume the risks of the environmental condition of the site, negotiate changes to the purchase contract to provide for remediation of the site, or determine not to acquire the site at all.

8. Had Complainants performed a Phase I environmental audit of the Property, Complainants would have known that the Property had previously been used as a filling station, that USTs may be, or were, present on the Property and that the soil and/or groundwater on the Property may be, or was, contaminated by releases of gasoline or other petroleum products.

9. Complainants are sophisticated buyers and users of commercial real estate; however, the Amended Complaint does not allege that Complainants performed a Phase I or other environmental investigation of the Property before acquiring the Property.

10. 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.

11. Complainants' alleged ignorance of the environmental condition of the Property, through simply electing not to perform an environmental investigation of the Property before purchasing it, does not relieve them of having assumed this risk.

12. Additionally, at the time of Complainants' acquisition, the Property was located on a corner of a main thoroughfare in a business area of Lombard, Illinois, and the former filling station building was present on the Property. Complainants, therefore, knew, even without the benefit of an environmental investigation, that the Property could have been used as a filling station in the past.

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

Wherefore, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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
(Statute of Limitations)

1. In this action Complainants are private citizens bringing an action for cost recovery. Actions brought by private citizens for cost recovery are subject to application of the statutes of limitation.

2. The applicable Illinois statute of limitations is the five-year statute, Section 13-205 of the Code of Civil Procedure, 735 ILCS 5/13-205, and provides as follows:

> Sec. 13-205. Five year limitation. Except as provided in Section 2-725 of the "Uniform Commercial Code", approved July 31, 1961, as amended, and Section 11-13 of "The Illinois Public Aid Code", approved April 11, 1967, as amended, actions on unwritten contracts, expressed or implied, or on awards of arbitration, or to recover damages for an injury done to property, real or personal, or to recover the possession of personal property or damages for the detention or conversion thereof, and all civil actions not otherwise provided for, shall be commenced within 5 years next after the cause of action accrued.

3. The Amended Complaint alleges that releases from the USTs occurred during the period of time from 1959 – 1977, when Texaco Inc. was the owner or operator of a gasoline filling station at the Property. Complainants' cause of action against Texaco Inc., therefore, accrued under the statute of limitations no later than December 31, 1977.

4. Complainants first named Texaco Inc. as a respondent in the Amended Complaint, which was not served on Texaco Inc. until June 11, 2010, more than 32 years after the cause of action accrued. Complainants' cause of action is, therefore, barred by the five-year statute of limitations.

5. The five-year limitation may be extended by the "discovery rule", which would require that Complainants did not know, nor should Complainants have reasonably known, of the existence of their cause of action before June 11, 2005.

6. The Amended Complaint admits that Complainants "identified the Property" and "purchased the Property" in 2005, but fails to allege any specific dates in 2005 for those actions.

7. By reason of the foregoing Complainants may have known or reasonably should have known of the existence of their cause of action before June 11, 2005 and their cause of action is barred by the statute of limitations.

Wherefore, Respondents respectfully request that the Illinois Pollution Control

Board enter an order finding in favor of Respondents 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
(Laches)

1. In its answer, Respondents have alleged that they are not liable to Complainants for the claims alleged; however, Respondents' ability to present its defense has been substantially impaired and prejudiced by the passage of more than 30 years since Texaco Inc. 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 Respondents.

Wherefore, Respondents respectfully request that the Illinois Pollution Control Board enter an order finding in favor of Respondents 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. and
Texaco Inc.

Dated: February 9, 2011

By: _____
One of its attorneys

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