

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD JUL 9 2003

STATE OF ILLINOIS
Pollution Control Board

PEOPLE OF THE STATE OF ILLINOIS,)
)
 Complainant,)
)
 vs.)
)
 TEXACO REFINING & MARKETING,)
 INC., a Delaware Corporation,)
)
 Respondent.)

PCB No. 02-03
(Enforcement)

NOTICE OF FILING

To: All Parties On Service List

Please take notice that the undersigned caused to be filed, on July 9th 2003, with the Clerk of the Pollution Control Board, a copy of ANSWER ON BEHALF OF CHEVRON ENVIRONMENTAL SYSTEMS COMPANY, a copy of which is herewith served upon you.

Chevron Environmental Services Company

BY: Barbara Magel
Their Attorney

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PEOPLE OF THE STATE OF ILLINOIS,)
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ANSWER ON BEHALF OF CHEVRON
ENVIRONMENTAL SERVICES COMPANY

NOW COMES Chevron Environmental Services Company [hereinafter "CESC" successor to Respondent Texaco Refining & Marketing, Inc. ("TRMI")], by its attorneys and answers the Complaint filed in the above captioned matter as follows:

To the extent that any allegation herein is not explicitly admitted herein, it is denied.

COUNT I
WATER POLLUTION

1. This count is brought on behalf of the People of the State of Illinois, by JAMES E. RYAN, Attorney General of the State of Illinois, and JEFF TOMCZAK, State's Attorney of Will County, on their own motion and at the request of the Illinois Environmental Protection Agency ("Illinois EPA"), pursuant to Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2000), for civil penalties.

RESPONSE: Paragraph 1 states prefatory legal conclusions for which no answers are required.

2. The Illinois EPA is an agency of the State of Illinois created pursuant to Section 4 of the Act, 415 ILCS 5/4 (2000), and charged, *inter alia*, with the duty of enforcing the Act.

RESPONSE: Paragraph 2 states legal conclusions for which no answers are required.

3. At all times relevant to the complaint, Texaco Refining & Marketing, Inc. ("Texaco") was and is a Delaware corporation qualified to do business in the State of Illinois. Texaco operated an oil refinery at the site from 1910 to 1981 located at 301 W. 2nd Street, Lockport in Will County, Illinois ("site" or "facility").

RESPONSE: CESC states that at all times TRMI existed as a subsidiary of Texaco, it was a Delaware corporation. That corporate entity has now been succeeded by CESC as owner/operator of the former refinery at 301 West 2nd Street, Lockport in Will County, Illinois ("site" or "property"). CESC denies that TRMI operated an oil refinery at the site from 1910 to 1981, but states that corporations related to TRMI, or TRMI operated that refinery for that period.

4. In 1987, Texaco closed five Resource Conservation and Recovery Act ("RCRA") interim status waste disposal units at its facility, in accordance with an approved closure plan. The five RCRA interim status waste disposal units are as follows: 1) Landfarm No. 1 ("LF-1"), used for the disposal of oily waste and contaminated soils from refinery operations; 2) Leaded Landfarm ("LLF"), used for disposal of leaded tank bottoms from refinery operations; 3) Land Application Area ("LAA"), used as a land spreading area for the disposal of wastewater treatment residues; 4) Cooling Tower Disposal Area ("CT"), used as a land spreading area for dewatering and disposal of cooling tower sediments; and 5) Landfarm No. 2 ("LF-2"), used to store excavated wastes and associated contaminated soils removed from the above four units and placed in LF-2 as part of closure operations from August 1986 until December 1987.

RESPONSE: CESC denies that it closed five disposal units at its facility in 1987 and affirmatively states that one disposal unit and four treatment units were closed. Further, CESC denies that excavated wastes and associated contaminated soils are stored in LF-2. LF-2 is a permanent disposal unit. To the extent that the factual allegations of this paragraph are not specifically denied, they are admitted.

5. On September 30, 1993, the Illinois EPA approved Texaco's RCRA Part B Post-Closure Permit Application with conditions. In November 1993, Texaco appealed various permit conditions to the Illinois Pollution Control Board ("Board"). Some of the contested conditions were included in the permit to address the known groundwater contamination at the facility. This permit appeal is still pending before the Board.

RESPONSE: CESC admits that a Part B Post-Closure Permit was approved for the Site by IEPA on or about September 30, 1993 and that a permit appeal was filed with respect to the Site Part B Post-Closure Permit in November, 1993. CESC denies that

such appeal is still pending before the Board. As to the remaining allegations of this Paragraph, CESC is without sufficient information to admit or deny such allegations.

6. Under Texaco's interim status groundwater assessment plan and interim post-closure care plan, Texaco monitors and submits groundwater reports to the Illinois EPA. Texaco's Fourth Quarter 1998 and First Quarter 1999 groundwater monitoring results detected various constituents in eight monitoring wells. These sample results with applicable standards indicated, are attached hereto as Exhibit A. Five of the wells are located on Landfarm No. 2, Monitoring Wells PM-9R, PM-10R, PM-13, PM-21 and PM-24; one is located on Landfarm No. 1, Monitoring Well PM-29R; and two are located on the southwest corner of the facility, Monitoring Wells PM-5 and R-1.

RESPONSE: CESC admits that TRMI monitored ground water and routinely submitted data reports to the Illinois EPA. CESC denies that such monitoring is continuing under the interim status ground water assessment plan or interim post-closure care plan and states affirmatively that ongoing groundwater monitoring and reporting are conducted in compliance with the Part B Post-Closure Permit for the site. To the extent the Paragraph includes a legal conclusion as to "applicable standards", such conclusion requires no answer and therefore is neither admitted nor denied. Further, CESC states affirmatively that the numerical standards listed on Exhibit A were not applicable to interim status ground water programs. CESC admits the remaining factual allegations of Paragraph 6.

7. Samples from Monitoring Well PM-9R indicated at least the following constituents in the groundwater: Acenaphthene, Fluorene, Ethylbenzene and Xylenes.

RESPONSE: CESC admits that analytical results for Monitoring Well PM-9R showed detections of acenaphthene, fluorene, ethylbenzene and xylene.

8. Samples from Monitoring Well PM-10R indicated at least the following constituents in the groundwater: Lead.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well PM-10R showed detections of lead.

9. Samples from Monitoring Well PM-13 indicated at least the following constituents in the groundwater: Acenaphthene, Anthracene, Fluorene, Phenanthrene, Pyrene, and Xylenes.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well PM-13 showed detection of acenaphthene, anthracene, fluorene, phenanthrene, pyrene and xylenes.

10. Samples from Monitoring Well PM-21R indicated at least the following constituents in the groundwater: Fluorene, Lead and Phenanthrene.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well PM-21R showed detection of fluorene, lead and phenanthrene.

11. Samples from Monitoring Well PM-24 indicated at least the following constituents in the groundwater: Lead.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well PM-24 showed detection of lead.

12. Samples from Monitoring Well PM-29R indicated at least the following constituents in the groundwater: Lead.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well PM-29 showed detection of lead.

13. Samples from Monitoring Well PM-5 indicated at least the following constituents in the groundwater: Acenaphthene, Anthracene,*[sic]* Arsenic, Benzene, Benzo(a)anthracene, Chrysene, Ethylbenzene, Fluoranthene, Fluorene, 2-Methylnaphthalene, Phenanthrene, Pyrene, Ethylbenzene, Toluene and Xylenes.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well PM-5 showed detection of acenaphthene, anthracene, arsenic, benzene, benzo(a)anthracene, chrysene, ethylbenzene, fluoranthene, fluorene, 2-methylnaphthalene, phenanthrene, pyrene, ethylbenzene, toluene and xylenes. CESC affirmatively states that Well PM-5 was located up-gradient of a voluntarily installed ground water interceptor system so that ground water from this area has been captured for treatment since February 1999. CESC further states that it voluntarily performed petroleum hydrocarbon recovery to the south of Well PM-5 beginning in 1985.

14. Samples from Monitoring Well R-1 indicated at least the following constituents in the groundwater: Acenaphthene, Anthracene,*[sic]* Benzo(a)-anthracene,

Benzo(a)pyrene, Chromium, Chrysene, Fluoranthene, Fluorene, Lead, Phenanthrene, Pyrene, Ethylbenzene, Toluene and Xylenes.

RESPONSE: CESC admits that analytical results for sampling of Monitoring Well R-1 showed detection of acenaphthene, anthracene, benzo(a)-anthracene, benzo(a)pyrene, chromium, chrysene, fluoranthene, fluorene, lead, phenanthrene, pyrene, ethylbenzene, toluene and xylenes. CESC affirmatively states that Well R-1 was located up-gradient of a voluntarily installed ground water interceptor system so that ground water from this area has been captured for treatment since February 1999. CESC further affirmatively states that R-1 was originally used as a hydrocarbon recovery well beginning in 1985.

15. The groundwater monitoring reports also contain physical descriptions of potential groundwater contamination indicating that the water samples were turbid, brownish yellow or grayish, had oil droplets, film or sheen and/or hydrocarbon odor. A list of physical descriptions of the contamination found in each well is set forth herein and attached hereto as Exhibit B.

RESPONSE: CESC admits that its ground water monitoring reports submitted to IEPA from time to time contain physical descriptions of the water samples collected. CESC denies that all of these descriptions were necessarily indicative of ground water contamination.

16. On July 21, 1999, the Illinois EPA sent a Violation Notice regarding the groundwater contamination.

RESPONSE: CESC admits that it received a letter styled a Violation Notice on or about July 21, 1999. CESC further states that such Notice speaks for itself.

17. On October 6, 1999, a meeting was held in which Texaco submitted Compliance Commitment Agreements which were rejected by the Illinois EPA on October 21, 1999.

RESPONSE: CESC admits that its representatives met with representatives of Illinois EPA and that CESC on October 6, 1999 and that on October 27, 1999 CESC admits that it timely submitted Compliance Commitment Agreements. CESC further admits that it received letters rejecting those agreements on or about November 24,

1999. CESC states affirmatively that its representatives were told that the proposed Compliance Commitment Agreements were rejected solely on the ground that Complainant wanted to collect a penalty, as opposed to any technical deficiency.

18. On December 14, 1999, the Illinois EPA sent Notices of Intent to Pursue Legal Action to Texaco. On January 18, 2000, the Illinois EPA and Texaco held a meeting regarding these letters.

RESPONSE: CESC admits that on or about December 14, 1999 it received a letter styled Notice of Intent to Pursue Legal Action and that a meeting was held on January 20, 2000. CESC further states that the letter speaks for itself.

19. Section 12(a) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/12(a)(1998), provides as follows:

No person shall:

- (a) Cause or threaten or allow the discharge of any contaminants into the environment in any State so as to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or so as to violate regulations or standards adopted by the Pollution Control Board under this Act.

RESPONSE: Paragraph 19 merely restates Section 12(a) of the Act, which speaks for itself.

20. Section 3.06 of the Act, 415 ILCS 5/3.06 (2000), contains the following definition:

"CONTAMINANT" is any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.

RESPONSE: Paragraph 20 merely restates Section 3.06 of the Act, which speaks for itself.

21. Acenaphthene, Anthracene, [sic] Arsenic, Benzene, Benzo(a)anthracene, Benzo(a)pyrene, Bis(2-ethylhexyl)-phthalate, chromium, Chrysene, Ethylbenzene, Fluoranthene, Fluorene, 2-Methyl-naphthalene, Phenanthrene, Pyrene, Lead, Toluene and Xylenes are "contaminants" as that term is defined in Section 3.06 of the Act.

RESPONSE: Paragraph 21 states legal conclusions for which no answers are required.

22. Section 3.26 of the Act, 415 ILCS 5/3.26 (2000), provides the following definition:

“PERSON” is any individual, partnership, co-partnership, firm, company, limited liability, company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

RESPONSE: Paragraph 22 merely restates Section 3.26 of the Act, which speaks for itself.

23. Defendant is a “person” as that term is defined in Section 3.26 of the Act, 415 ILCS 5/3.26 (2000).

RESPONSE: Paragraph 23 states a legal conclusion for which no answer is required.

24. Section 3.55 of the Act, 415 ILCS 5/3.55 (2000), contains the following definition:

“WATER POLLUTION” is such alteration of the physical, thermal, chemical, biological or radioactive properties of any waters of the State, or such discharge of any contaminant into any waters of the State, as will or is likely to create a nuisance or render such waters harmful or detrimental or incurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate uses, or to livestock, wild animals, birds, fish, or other aquatic life.

RESPONSE: Paragraph 24 merely restates Section 3.55 of the Act, which speaks for itself.

25. Section 3.56 of the Act, 415 ILCS 5/3.56 (2000), provides the following definition:

“WATERS” means all accumulations of water, surface and . . . underground, natural, and artificial, public and private, or parts thereof, which are wholly or partially within, flow through, or borders upon this State.

RESPONSE: CESC denies that Paragraph 25 fully restates Section 3.56 of the Act, but avers that the Act speaks for itself.

26. The groundwater underlying the Texaco site is a "water" of the State of Illinois, as that term is defined in Section 3.56 of the Act, 415 ILCS 5/3.56 (2000).

RESPONSE: Paragraph 26 states a legal conclusion for which no answer is required.

27. Pursuant to the authority granted in Section 8(a) of the Illinois Groundwater Protection Act, 415 ILCS 55/8(a)(2000), the Illinois Pollution Control Board ("Board") has promulgated rules and regulations to establish comprehensive water quality standards which are specifically for the protection of groundwater.

RESPONSE: Paragraph 27 states prefatory legal conclusions for which no answers are required. To the extent Paragraph 27 purports to summarily restate Section 8(a) of the Act, CESC states that the Act speaks for itself.

28. Section 620.210 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.210, provides as follows:

Section 620.210 Class I: Potable Resource Groundwater

Except as provided in Sections 620.230, 620.240, or 620.250, Potable Resource Groundwater is:

- d) Groundwater located 10 feet or more below the land surface and within:
 - 1) The minimum setback zone of a well which serves as a potable water supply and to the bottom of such well;
 - 2) Unconsolidated sand, gravel or sand and gravel which is 5 feet or more in thickness and that contains 12 percent or less of fines (i.e. fines which pass through a No. 200 sieve tested according to ASTM Standard Practice D2488-84, incorporated by reference at Section 620.125);
 - 3) Sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness; or
 - 4) Any geological material which is capable of a:
 - A) Sustained groundwater yield, from up to a 12 inch borehole, of 150 gallons per day or more from a thickness of 15 feet or less; or
 - B) Hydraulic conductivity of 1×10^{-4} cm/sec or greater using one of the following test methods or its equivalent:

- i) Permeameter;
 - ii) Slug test; or
 - iii) Pump test.
- e) Any groundwater which is determined by the Board pursuant to petition procedures set forth in Section 620.260, to be capable of potable use. (Board Note: Any portion of the Thickness associated with the geologic materials as described in subsections 620.210(a)(2), (a)(3) or (a)(4) should be designated as Class I: Potable Resource Groundwater if located 10 feet or more below the land surface.

RESPONSE: Paragraph 28 merely restates Section 620.210 of the Ground Water Quality Regulations, which speak for themselves.

29. The groundwater underlying the Texaco site is Class I groundwater as defined in Section 620.210 of the Board Groundwater Quality Standards, 35 Ill. Adm. Code 620.210, as it is located 10 or more feet below the land surface and within sandstone which is 10 feet or more in thickness, or fractured carbonate which is 15 feet or more in thickness.

RESPONSE: In further answer, CESC states that some of the ground water beneath its facility is located less than ten feet from the ground's surface. To the extent that the allegations in Paragraph 29 are inconsistent with this answer, they are denied.

30. Section 620.405 of the Board's Groundwater Quality Regulations, 35 Ill. Adm. Code 620.405, provides as follows:

No person shall cause, threaten or allow the release of any contaminant to groundwater so as to cause a groundwater quality standard set forth in this subpart to be exceeded.

RESPONSE: Paragraph 30 merely restates Section 620.405 of the Ground Water Quality Regulations, which speak for themselves.

31. Section 620.410 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410, provides in pertinent part as follows:

- a) Inorganic Chemical Constituents. Except due to natural caused or as provided in Section 620.450, concentrations of the following chemicals constituents must not be exceeded in Class I groundwater:

Constituent

Standard

	(mg/L)
Arsenic	0.05
Chromium	0.1
Lead	0.0075

- b) Organic Chemical Constituents. Except due to natural causes or as provided in Section 620.450 or subsection (c), concentrations of the following organic chemical constituents shall not be exceeded in Class I groundwater:

<u>Constituent</u>	<u>Standard</u> <u>(mg/L)</u>
Benzene*	0.005
Benzo(a)pyrene*	0.0002
Bis(2-ethylhexyl)-phtalate	0.006
Ethylbenzene	0.7
Toluene	1
Xylenes	10

*Denotes a carcinogen

RESPONSE: Paragraph 31 states legal conclusions for which no answers are required. To the extent Paragraph 31 purports to restate Section 620.410 of the Ground Water Quality Regulations, CESC states that these regulations speak for themselves.

32. The levels of Arsenic, Lead, Benzene, Benzo(a)pyrene, Bis(2-ethylhexyl)-phtalate, Chromium, Ethylbenzene, Toluene and Xylenes found in Monitoring Wells PM-9R, PM-10R, PM-21R, PM-24, PM-29R, R-1 and PM-5 as set forth in Exhibit A, exceed the Board Class I groundwater quality standards, as set forth in the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.410.

RESPONSE: CESC admits that the levels of the constituents identified in Paragraph 32 exceed the Class 1 groundwater quality standards of 35 Ill. Adm. Code 620.410. CESC denies that such exceedences are violations of 35 IAC 620.410 and affirmatively states that such standards are not applicable to the groundwater samples from Monitoring Wells PM-9R, PM-10R, PM-21R, PM-24, PM-29R, R-1 and PM-5 reflected on Exhibit A.

33. Section 620.420 of the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.420, provides in pertinent part as follows:

- a) Inorganic Chemical Constituents.

- 1) Except due to natural causes or as provided in Section 620.450 or subsection (a)(3) or (d), concentrations of the following chemicals constituents must not be exceeded in Class I groundwater:

<u>Constituent</u>	<u>Standard</u> (mg/L)
Lead	0.1

- b) Organic Chemical Constituents

- 1) Except due to natural causes or as provided in Section 620.450 or subsection (b)(2) or (d), concentrations of the following organic chemical constituents shall not be exceeded in Class II groundwater:

<u>Constituent</u>	<u>Standard</u> (mg/L)
Benzo(a)pyrene*	0.002
Bis(2-ethylhexyl)-phtalate	0.006

RESPONSE: Paragraph 33 states legal conclusions for which no answers are required. To the extent Paragraph 33 purports to restate Section 620.420 of the Groundwater Quality regulations, CESC answers that such regulations speak for themselves. CESC denies that 0.006 mg/L is the Section 620.420 standard for bis (2-ethylhexyl)-phtalate.

34. The levels of Lead, Benzo(a)pyrene and Bis(2-ethylexyl)-phtalate, found in Monitoring Wells R-1, as set forth in Exhibit A, exceed the Board Class II groundwater quality standards, as set forth in the Board Groundwater Quality Regulations, 35 Ill. Adm. Code 620.420.

RESPONSE: CESC admits that the levels of the constituents identified in Paragraph 34 exceed Class II groundwater quality standards of 35 Ill. Adm. Code 620.420. CESC denies that any such exceedences constitute violations of 620.420 standards and affirmatively states that such standards are not applicable to the groundwater samples from Monitoring Well R-1 as set forth in Exhibit A..

35. Pursuant to the authority granted in Section 58.3 of the Illinois Environmental Protection Act, 415 ILCS 5/58.3 (2000), entitled, the Site Investigation and Remedial Activities Program; Brownfields Redevelopment Fund the Board has promulgated the rules and regulations in 35 Ill. Adm. Code Part 742, entitled, Tiered

Approach to Corrective Action Objectives ("TACO"), which establish remediation objectives protective of human health and the environment based on identified risks and specific site characteristics.

RESPONSE: Paragraph 35 merely contains prefatory descriptive language regarding statutes and regulations which speak for themselves and for which no answers are required.

36. Table E Tier 1 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 742, Appendix B, Table E, Tier 1, provides in pertinent part as follows:

Groundwater Remediation Objectives

<u>Chemical Name</u>	<u>Class I</u>	<u>Class II</u>
Benzene	0.005	0.025
Benzo(a)-anthracene	0.00013	0.00065
Benzo(a)-pyrene	0.0002	0.002
Bis(2-ethylhexyl)-phtalate	0.006	0.06
Chrysene	0.0015	0.0075
Fluorene	0.28	1.4
Toluene	1.0	2.5
Xylene	10.0	10.0
Inorganics		
Arsenic	0.05	0.2
Chromium	0.1	0.1
Lead	0.0075	0.1

RESPONSE: Paragraph 36 states legal conclusions for which no answers are required. Table E, Tier 1 of 35 Ill. Adm. Code 742, Appendix B speaks for itself.

37. The levels of Arsenic, Benzene, Benzo(a)-anthracene, Benzo(a)pyrene, Bis(2-ethylhexyl)-phtalate, Chrysene, Chromium, Fluorene, Lead, Toluene and Xylene, found in Monitoring Wells PM-9R, PM-10R, PM-21R, PM-24, PM-29R, R-1 and PM-5 as set forth in Exhibit A, exceed the Groundwater Remediation Objectives set forth in

Table E Tier 1 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 742, Appendix B, Table E, Tier 1 for Class I groundwater.

RESPONSE: CESC admits that the levels of the constituents identified in Paragraph 37 exceed the Remediation Objectives set forth in 35 Ill. Adm. Code 742, Appendix B, Table E Tier 1 for Class I groundwater. CESC denies that the cited exceedences constitute violations of TACO.

38. The levels of Benzo(a)-anthracene, Chrysene, Benzo(a)pyrene, Bis(2-ethylhexyl)-phthalate and Lead and Toluene, found in Monitoring Well R-1 as set forth in Exhibit A, exceed the Groundwater Remediation Objectives set forth in Table E Tier 1 of the Board Waste Disposal Objectives set forth in Table E Tier 1 of the Board Waste Disposal Regulations, 35 Ill. Adm. Code 742, Appendix B, Table E, Tier 1 for Class II groundwater.

RESPONSE: CESC admits that the level of the constituents identified in Paragraph 38 exceed Groundwater Remediation Objectives set forth in Table E Tier 1 of 35 Ill. Adm. Code 742, Appendix B, Table E, Tier 1 for Class II groundwater. CESC denies that the cited exceedences constitute violations of TACO.

39. Section 620.110 of the Board Groundwater Quality regulations, 35 Ill. Adm. Code 620.110 provides in pertinent part as follows:

“Practical Quantitation Limit” or “PQL” means the lowest concentration or level that can be reliably measured within specified limits of precision and accuracy during routine laboratory operation conditions in accordance with “Test Methods For Evaluating Solid Wastes, Physical/Chemical Methods”, EPA Publication No. SW-846, incorporated by reference at Section 620.125.

RESPONSE: Paragraph 39 states legal conclusions for which no answers are required. Section 620.110 of the Groundwater Quality regulations, speaks for itself.

40. Texaco’s Illinois EPA approved Post Closure Groundwater Quality Assessment Plan, Page 44, Evaluation Procedures b, provides as follows:

For organic parameters, the PQL will be used. A tolerance range of two times the PQL will be established. If an observed value is above the tolerance range or any two or more parameter values for that well exceed the established PQL, then Texaco shall immediately resample the well. If

the resample again fails the comparisons, then it shall be concluded an exceedance has occurred.

RESPONSE: CESC answers that the Illinois EPA approved Post Closure Ground Water Quality Assessment Plan speaks for itself. CESC states affirmatively that this Assessment Plan is no longer pertinent to groundwater monitoring at the site which is now controlled by a Part B Post Closure Permit.

41. The levels of Acenaphthene, Anthracene, Benzo(a)-anthracene, Chrysene, Fluoranthene, Fluorene, 2-Methyl-naphthalene, Phenathrene, Pyrene, Ethylbenzene, Toluene, Xylenes, found in Monitoring Wells PM-9R, PM-13, P M-21R, PM-5 and R-1 as set forth in Exhibit A, exceed either two times the PQL or the PQL where more than one constituent in a well is above the PQL.

RESPONSE: CESC is without sufficient knowledge to either admit or deny the allegations of paragraph 41 as to PQLs.

42. Since at least the Fourth Quarter of 1998, and continuing to the filing of this Complaint, at least eight of the Monitoring Wells at the Texaco Facility have levels of contaminants which are either above the Groundwater Quality Standards set forth in 35 Ill. Adm. Code 620, the TACO Groundwater Remediation Objectives set forth in 35 Ill. Adm. Code 742, or detection limits based on the PQL.

RESPONSE: CESC is without sufficient knowledge to either admit or deny the allegations of Paragraph 42. CESC states affirmatively that the TACO Objectives are not enforceable standards but rather defined benchmarks for assessment and remediation. CESC states further that the cited standards are not applicable to the identified ground water samples.

43. Respondent, Texaco, is in violation of Section 12(a) of the Act and 35 Ill. Adm. Code 620.405 because the levels of contaminants detected in the groundwater are above one or more of 35 Ill. Adm. Code 620 Class I Groundwater Quality Standards or 35 Ill. Adm. Code 620 Class II Groundwater Quality Standards.

RESPONSE: Paragraph 43 states legal conclusions for which no answers are required.

44. Respondent, Texaco, is in violation of Section 12(a) of the Act because the levels of contaminants detected in the groundwater are above one or more of the following objectives or detection limits: (1) TACO, 35 Ill. Adm. Code 742, Appendix E,

Table 1 - Tier I, Class I Groundwater Remediation Objectives; (2) TACO, 35 Ill. Adm. Code 742, Appendix B, Table E - Tier 1, Class III Groundwater Remediation Objectives; (3) two times the PQL; and (4) the PQL where more than one constituent in a well is above the PQL.

RESPONSE: Paragraph 44 states legal conclusions for which no answers are required.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order:

1. Authorizing a hearing on this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 12(a) of the Act, 415 ILCS 5/12(a)(2000), and 35 Ill. Adm. Code 620.405;
3. Requiring Respondent to prepare and initiate a groundwater remediation plan acceptable to the Complainant;
4. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, and pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violation continues;
5. Ordering Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2000), including attorney, expert witness and consultant fees expended by the State in its pursuit of this action; and
6. Granting such other relief as the Board deems appropriate and just.

RESPONSE: CESC denies that Complainants are entitled to the relief requested.

COUNT II OPEN DUMPING

1. This count is brought on behalf of the People of the State of Illinois, by JAMES E. RYAN, Attorney General of the State of Illinois, and JEFF TOMCZAK, State's Attorney of Will County, on their own motion pursuant to Illinois Environmental Protection Act ("Act"), 415 ILCS 5/31(2000), for civil penalties.

RESPONSE: Paragraph 1 states prefatory legal conclusions for which no answers are required.

2.-7. Complainant realleges and incorporates herein by reference paragraphs 2 through 5, 22 and 23 of Count I as paragraphs 2 through 7 of this Count II.

RESPONSE: CESC restates and incorporates its answers to Paragraphs 2 through 5, 22 and 23 of Count I, inclusive, as if fully set forth here, as its answers to Paragraphs 2-7, inclusive, of this Count II.

8. On July 28, 1999, the Illinois EPA inspected the site, and observed coke fines and black tar-like material scattered across the ground in various areas over approximately an acre in the west-central part of the site, west of the I&M Canal. The coke fines and black tar-like material were commingled with vegetation at the site.

RESPONSE: CESC admits that IEPA visited the site on or about July 28, 1999. CESC is without sufficient knowledge to either admit or deny the remaining allegations of Paragraph 8.

9. Coke was previously processed at the Site until approximately 1981. On information and belief, this black tar-like material was off-specification coke.

RESPONSE: CESC admits that an independent contractor Great Lakes Carbon processed coke at the site until approximately 1981. CESC is without sufficient information or knowledge to either admit or deny if the remaining allegations of Paragraph 9.

10. On September 28, 1999, Texaco shipped the coke fines and tar-like material to Allied Waste Services, located in Morris, Illinois, listing the waste as petroleum coke contaminated soil on the manifests.

RESPONSE: CESC admits that on September 28, 1999 TRMI shipped a volume of coke fines to Allied Waste Services located in Morris, Illinois listing the wastes as petroleum coke contaminated soil on the manifests. CESC further affirmatively states that such shipment was made to remove the coke fines from the site expeditiously to address IEPA's interest, despite the fact that CESC was already involved in identifying recycling options for the materials prior to issuance of the IEPA Violation Notice.

11. Section 3.53 of the Act, 415 ILCS 5/3.53(2000), provides the following definition:

"WASTE" means any garbage, sludge from a waste treatment plant, water supply treatment plant, or air pollution control facility or other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining and agricultural operations, and from community activities, . . .

RESPONSE: CESC denies that Paragraph 11 fully restates Section 3.53 of the Act, which speaks for itself.

12. Section 3.82 of the Act, 415 ILCS 5/3.82(2000), provides the following definition:

"SOLID WASTE" means waste.

RESPONSE: Paragraph 12 merely restates Section 3.82 of the Act, which speaks for itself.

13. Section 3.41 of the Act, 415 ILCS 5/3.41(2000), contains the following definition:

"SANITARY LANDFILL" means a facility permitted by the Agency for the disposal of waste on land meeting the requirements of the Resource Conservation and Recovery Act, P.L. 94-580, and regulations thereunder, and without creating nuisances or hazards to public health or safety, by confining the refuse to the smallest practical volume and covering it with a layer of earth at the conclusion of each day's operation, or by such other methods and intervals as the Board may provide by regulation.

RESPONSE: Paragraph 13 merely restates Section 3.41 of the Act, which speaks for itself.

14. The area of site described in paragraph 8 above, has never been permitted by the Illinois EPA for the disposal or storage of waste.

RESPONSE: CESC is without sufficient information to either admit or deny the allegations in Paragraph 14. CESC states affirmatively that many areas of the former refinery were interim status or permitted waste storage units.

15. Section 3.08 of the Act, 415 ILCS 5/3.08(2000), contains the following definition:

"DISPOSAL" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste or hazardous waste into or on any land or water or into any well so that such waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

RESPONSE: Paragraph 15 merely restates Section 3.08 of the Act, which speaks for itself.

16. Section 3.54 of the Act, 415 ILCS 5/3.54(2000), contains the following definition:

"WASTE DISPOSAL SITE" is a site on which solid waste is disposed.

RESPONSE: Paragraph 16 merely restates Section 3.54 of the Act, which speaks for itself.

17. The area of the site described in paragraph 8 above, is a waste disposal site because coke fines and tar-like material, wastes as defined in paragraph 11 above, were disposed or stored thereon.

RESPONSE: To the extent that Paragraph 17 states a legal conclusion, no answer is required. To the extent that Paragraph 17 states factual allegations, CESC is without sufficient knowledge to either admit or deny such allegations.

18. Section 3.24 of the Act, 415 ILCS 5/3.24(2000), contains the following definition:

"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.

RESPONSE: Paragraph 18 merely restates Section 3.24 of the Act, which speaks for itself.

19. Section 3.31 of the act, 415 ILCS 5/3.31(2000), contains the following definition:

"REFUSE" means waste.

RESPONSE: Paragraph 19 merely restates Section 3.31 of the Act, which speaks for itself.

20. Section 21(a) of the Act, 415 ILCS 5/21(a)(2000), provides as follows:

No person shall:

a. Cause or allow the open dumping of any waste.

RESPONSE: Paragraph 20 merely restates Section 21(a) of the Act, which speaks for itself.

21. By allowing the coke fines and tar-like material to be disposed of or stored on the ground in various areas over approximately an acre in the west-central part of the site, Texaco caused or allowed the consolidation waste at the site.

RESPONSE: To the extent Paragraph 21 states legal conclusions for which no answers are required. CESC denies that it allowed the consolidation of waste at the site as alleged in Paragraph 21. To the extent that Paragraph 21 states factual allegations, CESC is without sufficient knowledge to either admit or deny the such factual allegations.

22. From sometime prior to July 28, 1999 and until September 28, 1999, Texaco caused or allowed open dumping of the coke fines and tar-like material at the site, a disposal site that did not fulfill the requirements of a sanitary landfill.

RESPONSE: To the extent Paragraph 22 states legal conclusions, no answers are required. To the extent Paragraph 22 states factual allegations, CESC denies such allegations.

23. Respondent, by its actions as alleged herein, violated Section 21(a) of the Act, 415 ILCS 5/21(a)(2000).

RESPONSE: Paragraph 23 states legal conclusions for which no answers are required.

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, respectfully requests that the Board enter an order:

1. Authorizing a hearing on this matter at which time Respondent will be required to answer the allegations herein;
2. Finding that Respondent violated Section 21(a) of the Act;
3. Assessing against Respondent a civil penalty of Fifty Thousand Dollars (\$50,000.00) for each violation of the Act, an pertinent regulations promulgated thereunder, with an additional penalty of Ten Thousand Dollars (\$10,000.00) for each day during which the violation continues;
4. Ordering Respondent to pay all costs of this action pursuant to Section 42(f) of the Act, 415 ILCS 5/42(f)(2000), including attorney, expert witness and consultant fees expended by the State in its pursuit of this actions; and
5. Granting such other relief as the Board deems appropriate and just.

RESPONSE: CESC denies that Complainants are entitled to the relief requested.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Complainant's prayer for injunctive relief is moot since the Illinois EPA has already approved Respondents' ground water monitoring and remediation approach through issuance of a Part B Post-Closure Permit for the entire site. In addition Respondent has already removed almost all coke materials and soils from the ground surface to bedrock in the "former coke handling area", and that area will be further addressed under the provisions of the Corrective Action portion of the RCRA Part B Post-Closure Permit.

SECOND AFFIRMATIVE DEFENSE

Complainant is not entitled to an award of costs under the Illinois Environmental Protection Act or otherwise.

THIRD AFFIRMATIVE DEFENSE

Respondent voluntarily installed ground water remedial systems at the site, absent any regulatory requirement to do so and in advance of any notice from Illinois EPA and has continued to comply with all Illinois EPA requirements. Under such circumstances, the imposition of a penalty would not serve to further compliance with

the Environmental Protection Act, and therefore would be inappropriate under that Act.

FOURTH AFFIRMATIVE DEFENSE

The coke fines at the site were a product of an independent contractor held for sale and therefore do not constitute waste; their presence did not constitute open dumping on the part of CESC.

FIFTH AFFIRMATIVE DEFENSE

Respondent was in the process of preparing to remove the coke fines, intending to sell some of them for use as a fuel or in cement or asphalt production, or any other industrial use, prior to Illinois EPA issuance of any notice. A contract for removal of these materials was in place prior to IEPA issuance of Violation Notices. Under such circumstances no penalty is appropriate under the Illinois Environmental Protection Act.

SIXTH AFFIRMATIVE DEFENSE

Complainant is estopped from asserting violations as to ground water or coke conditions at the site having been aware of such conditions for years without asserting that any violation existed.

SEVENTH AFFIRMATIVE DEFENSE

The detection of constituents in groundwater at a facility complying with interim status and regulatory ground water requirements does not constitute a violation of the Illinois Environmental Protection Act.

EIGHTH AFFIRMATIVE DEFENSE

The 35 IAC 620 ground water standards are not applicable to a site complying with interim status ground water regulatory requirements, and later a permitted ground water management zone, and therefore are inapplicable to the ground water detections identified in the Complaint in this matter.

NINTH AFFIRMATIVE DEFENSE

Application of the 35 IAC 620 ground water standards in this matter would constitute retroactive regulation in violation of Respondent's due process rights.

TENTH AFFIRMATIVE DEFENSE

Application of the Environmental Protection Act restriction on open dumping to coke fines located at the Site would constitute retroactive regulation in violation of CESC's due process rights.

ELEVENTH AFFIRMATIVE DEFENSE

Neither the TACO remediation objectives, nor the PQLs cited by Complainant are enforceable standards in the context of this matter, and therefore can not form the basis of an allegation of violation of the Environmental Protection Act. Further 35 IAC 742 objectives are not applicable, by their terms, to the Site as a property subject to a Federally delegated program.

TWELFTH AFFIRMATIVE DEFENSE

415 ILCS 5/49(c) provides Respondent with a prima facie defense to any and all allegations of violation of the Act based upon ground water detections at the property.

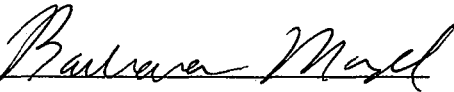
THIRTEENTH AFFIRMATIVE DEFENSE

CESC reserves the right to assert additional defenses as development of this matter continues.

WHEREFORE, CESC respectfully requests that the Board dismiss Complainant's Complaint against it with prejudice and enter judgment in CESC's favor along with an award of costs and grant such further relief as the Board deems just, fair and equitable.

Respectfully Submitted,

Chevron Environmental Services Company

By: 

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)
)
Complainant,)
)
vs.)
) PCB No. 02-03
TEXACO REFINING & MARKETING,) (Enforcement)
INC., a Delaware Corporation,)
)
Respondent.)

CERTIFICATE OF SERVICE

The undersigned hereby states on oath that on this 9th day of July, 2003 copies of the ANSWER ON BEHALF OF CHEVRON ENVIRONMENTAL SYSTEMS COMPANY were served via Hand Delivery or by First Class Mail, postage pre-paid, upon the parties named on the attached Service List.

Chevron Environmental Services Company

BY: Barbara Magel
Their Attorney

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