

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

City of Evanston, an Illinois Municipal Corporation,	)	
	)	
	)	
Plaintiff,	)	
vs.	)	
	)	Case No.
Chevron U.S.A. Inc., a California Corporation and E-Town Community Ventures, LLC, an Illinois Limited Liability Company,	)	
	)	
	)	
Defendants.	)	

**COMPLAINT**

Now comes Plaintiff, City of Evanston (the “City” or “Evanston”), by its attorneys, Michael S. Blazer, Thomas S. Yu, and Jeep & Blazer, LLC, and for its Complaint against Defendants, Chevron U.S.A. Inc. (“Chevron”) and E-Town Community Ventures, LLC (“E-Town”), states:

**Allegations Common To All Counts**

**Nature of Action**

1. This is a civil action for declaratory and injunctive relief, and cost recovery brought pursuant to: (1) Section 7002 of the Resource Conservation and Recovery Act (“RCRA”), 42 U.S.C. §6972, *et seq.*; (2) Title 9, Section 12 of the Evanston Code of Ordinances (“Hazardous Substances Ordinance”), Evanston, Illinois - Code of Ordinances, §9-12-1, *et seq.* (2012); and (3) the Illinois common law of trespass and nuisance.

2. This Complaint concerns the release and migration of hazardous substances, specifically petroleum and its byproducts, from leaking underground

storage tanks (“USTs”) at a vacant commercial property, formerly owned and operated as a gasoline service station by The Texas Corporation (“Texaco”), which is located at the northeast corner of the intersection of Church Street and Darrow Street, commonly known as 1801-1805 Church Street, in Evanston (the “Texaco Station”).

3. The Darrow Street right-of-way is located adjacent to and immediately east of the Texaco Station. Evanston owns the Darrow Street right-of-way.

4. The Church Street right-of-way is located adjacent to and immediately south of the Texaco Station. Evanston owns the Church Street right-of-way. The Church Street and Darrow Street rights-of-way are hereinafter referred to as the “City Property”.

5. There are commercial and residential properties (the “Neighboring Properties”) east of the Darrow Street right-of-way and south of the Church Street right-of-way, adjacent to the Texaco Station.

6. The locations of the Texaco Station, the City Property and the Neighboring Properties are depicted in an aerial site layout map, a copy of which is attached hereto as Exhibit A.

7. The soil and groundwater at the Texaco Station and the City Property are contaminated with petroleum, gasoline and their byproducts, including, among other things: benzene, toluene, ethylbenzene and xylene (“BTEX”); polynuclear aromatic hydrocarbons (“PNAs”); and lead (collectively the “Contaminants”).

8. On information and belief, the soil and groundwater at the Neighboring Properties is also contaminated with Contaminants.

9. Releases of Contaminants from leaking USTs at the Texaco Station have migrated and continue to migrate into the soil and groundwater of the Texaco Station and the City Property.

10. On information and belief, releases of Contaminants from leaking USTs at the Texaco Station have migrated and continue to migrate into the soil and groundwater of the Neighboring Properties.

11. BTEX, PNAs and lead are known or suspected human carcinogens that threaten human health and are identified as solid or hazardous waste pursuant to regulations adopted under Subchapter III of RCRA, 42 U.S.C. §6901, *et seq.*

12. In general terms, the City seeks to hold Defendants responsible for the presence of contamination in the soil and groundwater at the Texaco Station, the City Property and the Neighboring Properties. More specifically, the City seeks to recover:

- a. Investigative and other response costs incurred by the City because of contamination at the Texaco Station and the City Property;
- b. Injunctive relief under RCRA and common law restraining and enjoining Defendants from allowing continued contamination of the Texaco Station, the City Property and the Neighboring Properties;
- c. Injunctive relief under RCRA and common law compelling Defendants to abate the contamination they caused or contributed to, by their acts and omissions, at the Texaco Station, the City Property and the Neighboring Properties; and
- d. Compensatory damages caused by Defendants' acts and omissions.

**The Parties**

13. On information and belief, Texaco owned and operated the Texaco Station from approximately 1925 through the early 1970's.

14. On information and belief, on October 8, 2001, Texaco merged with Chevron Corporation to form ChevronTexaco. The present day corporate successor to Texaco and ChevronTexaco is Chevron.

15. On information and belief, Chevron is a California corporation, registered to conduct business and doing business in the State of Illinois, with its principal place of business at 6001 Bollinger Canyon Road, San Ramon, California 94583.

16. On information and belief, E-Town is an Illinois limited liability company with its principal place of business at 1338 Warrington Road, Deerfield, Illinois 60015.

17. On information and belief, on April 2, 2002, E-Town acquired legal title to the Texaco Station and is the current owner.

18. The City is a municipal corporation located in Cook County, Illinois and is a Home Rule unit of government.

19. The City has at all times material hereto owned the City Property.

**Jurisdiction and Venue**

20. This Court has federal question jurisdiction over this matter pursuant to 28 U.S.C. §1331 because this case arises under the laws of the United States. Specifically, Count I is predicated upon and seeks relief pursuant to RCRA.

21. This Court has supplemental jurisdiction over the State and local law claims herein pursuant to 28 U.S.C. §1367 in that said claims are so related to the RCRA claim that they form part of the same case or controversy under Article III of the

U.S. Constitution. The claim in Count II is predicated upon and seeks relief pursuant to the City's Hazardous Substances Ordinance. The claims in Counts III and IV are predicated upon and seek relief pursuant to the common law of trespass and nuisance.

22. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b) and 42 U.S.C. §6972(a) because the events or omissions giving rise to the claims herein occurred in this judicial district and the properties that are the subject of this action are also situated in this judicial district.

### **Facts**

23. On information and belief, from 1925 to the late 1990's, a gasoline service and auto repair service station occupied the Texaco Station. On information and belief, from the late 1990's to the present, the Texaco Station has been vacant.

24. On information and belief, Texaco owned and operated an unknown number of gasoline USTs of 2,000-gallon and 3,000-gallon capacity, gasoline dispenser islands, and associated piping and fill systems at the Texaco Station.

25. On information and belief, an auto lift and grease pit were also located at the Texaco Station.

26. On information and belief, during the period of Texaco's ownership and operation, at least two USTs of 2,000-gallon and 3,000-gallon capacity, respectively, leaked Contaminants at the Texaco Station.

27. On information and belief, in 1963, during Texaco's ownership and operation, a 2,000-gallon gasoline UST at the Texaco Station leaked Contaminants and was abandoned in-place.

28. On information and belief, in 1967, during Texaco's ownership and operation, a 3,000-gallon gasoline UST at the Texaco Station leaked Contaminants and was replaced with another 3,000-gallon UST.

29. On information and belief, an unknown number of additional gasoline USTs at the Texaco Station have been abandoned or replaced, and continue to constitute a source of Contaminants.

30. In September 2000, the Office of Illinois State Fire Marshall ("OSFM") conducted an exploratory excavation of the Texaco Station and issued a Notice of Violation, which identified the following conditions:

- a. At least two unregistered USTs were abandoned improperly;
- b. The USTs contained water and gasoline; and
- c. The USTs are leaking in close proximity to a sewer.

A copy of said Notice is attached hereto as Exhibit B.

31. In April 2001, OFSM issued a progress report stating the following:

NOTHING HAS BEEN DONE TO THIS SITE. THE TANKS ARE LEAKING AND NO CAPS ARE ON THE VENTS, FILLS OR PRODUCT LINES. THEY ARE CONTINUING TO TAKE ON WATER. THIS SITE WAS BOUGHT AT A TAX AUCTION AND THE PREVIOUS OWNER IS NOWHERE TO BE FOUND.

A copy of said report is attached hereto as Exhibit C.

32. On information and belief, no investigative or remedial action has been taken by Defendants to address the leaking USTs or resulting contamination.

33. In 2012, the City retained an environmental consultant to investigate the nature and extent of contamination at and from the Texaco Station.

34. On March 6, 2012, the City's consultant issued an environmental report ("Phase II Report") which stated that:

- a. Five of six soil samples which were analyzed have Contaminant concentrations in excess of applicable Illinois Environmental Protection Agency ("Illinois EPA") regulations; and
- b. Recommended that further investigation be conducted to find additional USTs and if additional tanks are located, then that the USTs be removed in accordance with applicable law.

A copy of the Phase II Report is attached hereto as Exhibit D.

35. On July 6, 2012, the City's consultant issued a follow-up environmental report ("Site Investigation Report") which stated that:

- a. Exploratory excavations located four USTs, including two 2,000-gallon USTs and two 3,000-gallon USTs;
- b. The two 2,000-gallon USTs were filled with water and gasoline; and
- c. The two 3,000 gallon USTs were filled with sand.

A copy of the Site Investigation Report is attached hereto as Exhibit E.

36. The Site Investigation Report also concluded that:

Contamination from the 1801-05 Church Street property has migrated off-site in the east/southeast direction and is impacting Church Street, Darrow Street, and possibly the commercial property to the east.

37. On information and belief, releases of Contaminants at the Texaco Station are the source of contamination present at the Texaco Station and the City Property.

38. On information and belief, the contamination extends to the Neighboring Properties.

**COUNT I: RCRA INJUNCTION, 42 U.S.C. §6972(a)(1)(B)**  
**AGAINST CHEVRON**

1-38. The City adopts and re-alleges paragraphs 1 through 38 of the Allegations Common to all Counts as Paragraphs 1 through 38 of this Count I.

39. 42 U.S.C. §6972 confers upon any person the right to file suit:

(B) against any person ... or past or present owner or operator of a ... facility ... who has contributed or who is contributing to the past or present handling, storage, treatment ... or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

40. The City is a "person" under §6903(15) of RCRA.

41. Chevron is a "person" under §6903(15) of RCRA.

42. On information and belief, Contaminants leaked from USTs at the Texaco Station and migrated into the soil and groundwater of the City Property and the Neighboring Properties during the period of time that Chevron, through its corporate predecessor Texaco, owned the USTs.

43. The Contaminants released and migrating from the Texaco Station to the City Property and the Neighboring Properties, and the resulting contaminated soil and groundwater, are solid or hazardous waste as defined in §§6903(5) and (27) of RCRA and regulated by Subchapter III of RCRA and the regulations promulgated or authorized thereunder.

44. In accordance with 42 U.S.C. §6972, on August 22, 2012, the City sent a Notice of Intent to Sue, via registered mail with return receipt requested, to Defendants, the Administrator of the U.S. Environmental Protection Agency ("USEPA"), the USEPA

Region 5 Administrator, the U.S. Attorney General and the Director of the Illinois EPA. Copies of the Notice and proof of service are attached hereto as Exhibit F.

45. On information and belief, Chevron, through its corporate predecessor Texaco, has engaged in the handling, treatment, storage and/or disposal of solid or hazardous waste in a manner which has contributed to and is contributing to the contamination of the Texaco Station, the City Property and the Neighboring Properties.

46. On information and belief, Chevron's handling, treatment, storage, and/or disposal of solid or hazardous waste presents, and will continue to present, an imminent and substantial endangerment to public health and the environment as defined in RCRA, which condition will remain until the solid or hazardous waste is removed and/or remediated from the Texaco Station, the City Property and the Neighboring Properties.

47. On information and belief, Chevron is responsible for the contamination of the Texaco Station, the City Property and the Neighboring Properties by failing to properly handle, dispose, contain and abate the solid or hazardous waste present at and released from the Texaco Station as required by the applicable hazardous waste management regulations promulgated and authorized pursuant to Subchapter III of RCRA.

48. Since the issuance of the Notice of Intent to Sue dated August 22, 2012, no action has been taken by the USEPA Administrator, the USEPA Region 5 Administrator, the U.S. Attorney General or the Illinois EPA Director, which would preclude the City from pursuing a claim under RCRA Section 7002(a)(1)(B).

49. Pursuant to 42 U.S.C. §6972(b)(2)(F), a copy of this Complaint will be served upon the U.S. Attorney General and the USEPA Administrator.

50. This Court has jurisdiction pursuant to 42 U.S.C. §6972(a) of RCRA to enter injunctive relief and to impose any appropriate civil penalties, including: restraining and enjoining Chevron from allowing continued contamination of the Texaco Station, the City Property and Neighboring Properties; compelling Chevron to take any and all actions necessary to abate the conditions they have caused or contributed to which present an imminent and substantial endangerment to public health or the environment; and restraining Chevron from taking any actions in violation of RCRA and the regulations promulgated or authorized thereunder.

WHEREFORE, the City prays for judgment in its favor and against Chevron as follows:

A. For a declaration that Chevron is liable for the subject contamination under 42 U.S.C. §6972 of RCRA;

B. For injunctive relief restraining and enjoining Chevron from allowing continued contamination of the Texaco Station, the City Property and Neighboring Properties, and compelling Chevron to take any and all actions necessary to abate the conditions they have caused, which present an imminent and substantial endangerment to public health and the environment;

C. For injunctive relief restraining and enjoining Chevron from taking any actions in violation of RCRA and the regulations promulgated or authorized thereunder;

D. For an award of the City's attorneys' fees, expert costs and costs of suit, and to impose any appropriate civil penalties; and

E. For such further relief as this Court deems appropriate.

**COUNT II: VIOLATION OF HAZARDOUS SUBSTANCES ORDINANCE**

1-38. The City adopts and re-alleges paragraphs 1 through 38 of the Allegations Common to all Counts as Paragraphs 1 through 38 of this Count II.

39. The Texaco Station, the City Property and the Neighboring Properties are located within the City limits.

40. E-Town and Chevron are “persons” as defined in §9-12-1 of the Hazardous Substances Ordinance.

41. BTEX, PNAs and lead are byproducts of petroleum and are listed as toxic pollutants under 40 C.F.R. 401.15 and therefore qualify as “hazardous substances” as defined in §9-12-1 of the Hazardous Substances Ordinance.

42. E-Town is a person “owning or in control of any real property from which a hazardous substance is or may be released” pursuant to §9-12-2(A)(4) of the Hazardous Substances Ordinance.

43. Chevron is a person “who owned or had custody or control of the container...which held such hazardous substance at the time of, or immediately prior to, such release” pursuant to §9-12-2(A)(3) of the Hazardous Substances Ordinance.

44. As a result of the releases of hazardous substances, the City has incurred and will continue to incur removal and abatement costs under §§9-12-1 and 9-12-3 of the Hazardous Substances Ordinance. These costs include, among other things, the cost of consultants and experts to monitor, assess and evaluate the threat of release of hazardous substances, as well as attorneys’ fees.

45. Defendants are jointly and severally liable to the City for all costs incurred and to be incurred by the City for removal and/or abatement activity pursuant to §9-12-2(A) of the Hazardous Substances Ordinance.

WHEREFORE, the City prays for judgment in its favor and against Defendants as follows:

A. For a declaration that Defendants are liable under §9-12-2 of the Hazardous Substances Ordinance;

B. For an award of all removal and abatement costs incurred in connection with the release of hazardous substances described herein, including prejudgment interest and attorneys' fees through the trial of this matter; and

C. For such further relief as this Court deems appropriate.

### **COUNT III: TRESPASS**

1-38. The City adopts and re-alleges paragraphs 1 through 38 of the Allegations Common to all Counts as Paragraphs 1 through 38 of this Count III.

39. Defendants have caused and allowed, and continue to cause and allow, Contaminants to migrate and enter onto the City Property.

40. Defendants did not have permission, authority or right to allow any Contaminants to enter upon the City Property, and the migration of Contaminants onto the City Property is unlawful and without the consent of the City.

41. Notwithstanding Defendants' knowledge that the Contaminants originated from the Texaco Station and migrated and entered onto the City Property, contaminating the soil and groundwater thereon, and despite demand by the City,

Defendants have failed to remove or otherwise remediate the contamination on the City Property.

42. Defendants' actions and omissions have interfered with and continue to interfere with the City's property rights.

43. Defendants' actions and omissions have caused and will continue to cause damage to the City, including but not limited to unreimbursed expenses and costs and other violations of the City's rights as owner of the City Property.

WHEREFORE, the City prays for judgment in its favor and against Defendants as follows:

A. For injunctive relief restraining and enjoining Defendants from allowing continued contamination of the City Property and compelling Defendants to take any and all actions necessary to abate the contamination of the City Property;

B. For an award of compensatory and other appropriate damages in amounts to be determined by the evidence at trial and allowed by law;

C. For an award of punitive damages in an amount deemed appropriate by this Court; and

D. For such further relief as this Court deems appropriate.

**COUNT IV: PRIVATE NUISANCE**

1-43. The City adopts and re-alleges paragraphs 1 through 43 of Count III as Paragraphs 1 through 43 of this Count IV.

44. The actions and omissions of Defendants constitute a nuisance, which has substantially interfered with the City's use and enjoyment of the City Property.

45. Defendants' actions have caused and will continue to cause damage to the City, including but not limited to unreimbursed expenses and costs, and other violations of the City's property rights as owner of the City Property.

WHEREFORE, the City prays for judgment in its favor and against Defendants as follows:

A. For injunctive relief restraining and enjoining Defendants from allowing continued contamination of the City Property and compelling Defendants to take any and all actions necessary to abate the contamination of the City Property;

B. For an award of compensatory and other appropriate damages in amounts to be determined by the evidence at trial and allowed by law;

C. For an award of punitive damages in an amount deemed appropriate by this Court; and

D. For such further relief as this Court deems appropriate.

Dated: March 18, 2013

The City of Evanston

By: /s/ Thomas S. Yu  
One of its Attorneys

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