

CUSHMAN
LAW
OFFICES, P.S.
ATTORNEYS AT LAW

924 CAPITOL WAY SOUTH
OLYMPIA, WASHINGTON 98501

(360) 534-9183
FACSIMILE (360) 956-9795

JON E. CUSHMAN†
BENJAMIN D. CUSHMAN*
JOSEPH W. SCUDERI#
CLYDIA J. CUYKENDALL
STEPHANIE M.R. BIRD

†ALSO ADMITTED IN OREGON
*ALSO ADMITTED IN ALASKA, OREGON, IDAHO &
NORTH CAROLINA
#ALSO ADMITTED IN ALASKA, OREGON, GUAM &
MINNESOTA

January 29, 2009

RECEIVED

FEB 02 2009

DEPARTMENT OF ECOLOGY - CENTRAL REGIONAL OFFICE

Ms. Amy Gaylord
Law Department
Chevron USA, Inc.
6111 Bollinger Canyon Road
San Ramon, CA 94583

Re: Claim for Contamination Migrating onto Chevron Dealership at 201 West 1st Street, Cle Elum, WA 98922 from Shell Dealership at 207 West 1st Street, Cle Elum, WA 98722, both owned by Parminder Gillon

Dear Ms. Gaylord,

This is written in response to your letter of January 13, 2009 denying Chevron's responsibility for the contamination which Parminder Gillon claims has migrated from the Chevron clean-up of contamination at 207 West 1st Street, Cle Elum, WA, a clean-up being done under an Indemnity Agreement between George Simpson and Texaco, Inc. dated February 10, 2000 (Ecology Facility Site ID 92387155). First, let me clarify that my client and I are not "demanding" anything, but seeking a reasonable solution to this controversy. I have reviewed your response with Mr. Gillon's environmental consultant and he disagrees with your interpretation of the scientific evidence for reasons set forth below. I disagree with your legal interpretation of the indemnity.

From a legal standpoint, Mr. Gillon, as owner of the property adjacent to 207 West 1st Street is a third party as to contamination originating from 207 West 1st Street. Section 1 on the indemnity clearly states, "Texaco agrees to indemnify, defend, protect and hold harmless Simpson and his heirs, *purchasers*, successors and assigns" (emphasis added). Mr. Gillon, as the current owner of 207 West 1st Street, is in the direct chain of title of purchasers from George Simpson, and is entitled to the benefit of this indemnity for contamination that has migrated off-site on to his property at 201 West 1st Street. While the amount of money in controversy does not warrant litigation, I am confident a Washington Court would support my interpretation. The fact that Mr. Gillon voluntarily made some expenditures to identify the source of the contamination should not change this conclusion, because the Washington State Department of Ecology, to which this contamination has been reported *as required by state law*, encourages voluntary clean-ups. Mr. Gillon's actions were taken to mitigate Chevron's liability under the Indemnity Agreement and reduce the potential costs of clean-up. Since Mr. Gillon is a Chevron dealer at 201 West 1st

Street, such action should be encouraged by Chevron, not criticized. Finally, Chevron's eight month delay in responding to Mr. Gillon's claim may have exacerbated damage to the environment and is a shabby way for Chevron to treat its own dealer.

From a scientific standpoint, Associated Environmental Group ("AEG") offers the following comments on your interpretation of its data. The December 12, 2006 report from Gettler Ryan Inc., Chevron's contractor for sampling monitoring wells at 207 West 1st Street, which report was copied to Brett Hunter at Chevron, very clearly shows the groundwater flow direction is to the northeast towards the 201 West 1st Street (claimant's property), not northwest as you contend. The 207 West 1st Street property is up-gradient. Our test results show it, and so does Chevron's own consultant results. AEG is not clear as to what "larger body of historical data" you are talking about. It appears that Gettler Ryan has sampled the Texaco property at 5 different events in 2006. If needed for litigation, AEG can request these reports from the Ecology archive and review them to solidify the groundwater flow direction.

Your second argument about the lack of 2006 soil samples is accurate, but you have taken it out of context. Generally, it's difficult to spend additional money outside of the services dictated by banks that finance acquisition of commercial property. The 2006 work was conducted for a real estate transaction and was limited in scope. That is why the recommendation was to conduct additional subsurface investigation characterization. Both the soil and groundwater samples were collected during the monitoring well installation work at 201 West 1st Street in April, 2008 to supplement the limited work conducted in 2006 in connection with Mr. Gillon's acquisition of the 201 West 1st Street property. In other words, the 2006 work was conducted only to answer yes or no questions as to the presence of contamination at the 201 West 1st Street property, not to characterize the extent of contamination.

Finally, your last point about the lack of contaminants from recent analytical results at 207 West 1st Street property will need to be investigated further, but we expect Chevron to contribute to the costs of such additional investigation under the Indemnity Agreement, because the Washington Department of Ecology has not yet issued a No Further Action Determination for the 207 West Street property. AEG has not seen any recent test results from Gettler Ryan and I'm requesting that you share such results with me to support your contention that the 207 West 1st Street property is not the source of contamination at the 201 West 1st Street property. The December 12, 2006 report from Gettler Ryan, shows MW7 and MW29 (both wells are near the property line between the two properties) had contamination above cleanup levels. There is no data to support your suggestion that Mr. Gillon's current operation of 207 West 1st Street as a Shell dealership is the source of the contamination migrating onto 201 West 1st Street,

I reiterate my original proposal that we collaboratively apply for Washington State's Voluntary Clean-up Program to address the contamination at 201 West 1st Street, as a substantially more cost effective way to address our differences than litigation to establish responsibility. By copy of this letter to a Chevron executive, a Shell lawyer, and my client's jobbers I'm requesting they support this suggestion, since litigation could delay clean-up and increases its cost to the loser.

Sincerely,



Clydia J. Cuykendall

Cc(with a copy of Chevron's 1/13/09 letter):

Shariq Yosufzai
President, Chevron Global Marketing
6001 Bollinger Canyon Road
San Ramon, CA 94583

Brenda Wade
Shell Oil Company
Legal Department
One Shell Plaza
910 Louisiana
Houston, TX 77252-2463

Steve Neubauer
Associated Petroleum Products (Chevron jobber)
2320 Milwaukee Way
Tacoma, WA 98401

Justin Christian
RE Powell (Shell jobber)
501 East Wine Country Road
Grandview, WA 98930

Washington Department of Ecology, Central Region
Toxics Clean-Up Program
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3401



Amy E. Gaylord
Counsel

Law Department
Chevron U.S.A. Inc.
6111 Bollinger Canyon Road
San Ramon, CA 94583
Tel 925-543-1676
Fax 925-543-2346
agaylord@chevron.com

January 13, 2009

Ms. Clydia Cuykendall
Cushman Law Offices
924 Capitol Way South
Olympia, WA 98501

Received

JAN 16 2009

Cushman Law Offices

Re: 201 West 1st Street, Cle Elum, Washington

Dear Ms. Cuykendall:

I write in response to your inquiries on behalf of Mr. Parminder Gillon, the owner of the property located at 201 West 1st Street ("Subject Property") and the adjacent former Texaco service station property located at 207 West 1st Street ("Texaco Property") in Cle Elum, Washington. It is our understanding that Mr. Gillon has voluntarily incurred \$14,994.32 in costs for a cursory environmental investigation of the Subject Property, which he is now demanding Chevron reimburse. We also understand that Mr. Gillon is demanding that Chevron take responsibility for the enrollment of the Subject Property in the Washington Department of Ecology's ("Ecology") Voluntary Cleanup Program ("VCP"), and assume the expense of any resulting costs. The legal basis for these demands is unclear, however they appear to be premised on the conclusion by Associated Environmental Group, LLC ("AEG") that petroleum contamination is migrating in groundwater from the former Texaco Property onto the Subject Property, and that Chevron, on behalf of Texaco, is therefore responsible for all costs relating to that contamination. As set forth below, a review of the data reveals that AEG's conclusions are erroneous and premised on incomplete facts, and that Mr. Gillon's demands are legally untenable. Accordingly, Chevron declines to pay the requested \$14,994.32 to reimburse AEG's costs and likewise declines to participate in the enrollment of the Subject Property in the VCP.

The Facts Do Not Support the Conclusion that Contamination at the Subject Property Originated at the Former Texaco Property.

The facts do not support Mr. Gillon's contention that the Texaco Property is the source of contamination on the Subject Property for several reasons: (1) AEG incorrectly interpreted the groundwater flow direction from the Texaco Property; (2) the data collected at the Subject Property are not indicative of a migrating release from the Texaco Property; and, (3) recent data from the Texaco Property indicate contamination is not migrating onto the adjacent Subject Property.

2102.001
W/C: CSC cc: chent

Ms. Clydia Cuykendall
January 13, 2009
Page 2

AEG's conclusion that groundwater flows from the former Texaco Property toward the Subject Property is unsupported. Based on four quarters of groundwater data collected in 2006, AEG concluded that the flow of groundwater in the vicinity of the Subject property was in a northeasterly direction, i.e., from the former Texaco Property toward the Subject Property. This conclusion ignores the larger body of historic data, as well as data collected subsequent to that time. The majority of the data clearly shows a groundwater flow direction toward the north/northwest, which, at a minimum, means the Subject Property is cross-gradient from the former Texaco Property if not actually up gradient of it. Similarly, AEG failed to consider the groundwater flow direction during the one groundwater sampling event it conducted in 2008, which actually support Texaco's conclusion that groundwater flows to the north/northwest. Thus, the contention that contamination is migrating from the former Texaco Property toward the Subject Property in groundwater is not technically sound.

Similarly, the data collected by AEG at the Subject Property do not advance Mr. Gillon's position. Despite having advanced six soil borings in 2006, no soil samples were collected from those borings, leaving a data gap as to whether there may be a source in soil on site. Nevertheless, of those six borings, only one groundwater sample contained detectible concentrations of petroleum constituents. However, as is typically the case, the more reliable data collected from groundwater wells suggests that petroleum constituents in both soil and groundwater generally are below, or only slightly above, actionable levels. Overall, AEG's investigation yielded a single grab sample of groundwater with slightly elevated TPHg and benzene levels, and one soil sample that slightly exceeds standards for benzene. These data do not suggest an offsite source migrating through groundwater from the former Texaco Property.

Finally, AEG's analysis wholly ignores data from the former Texaco Property. Soil and groundwater data collected in 2008 from three wells along the eastern boundary of the Texaco Property are, with the exception of one detection of benzene at levels slightly above actionable levels, non-detect or below actionable levels. These data do not support Mr. Gillon's theory of responsibility.

In total, the data does not support the theory that contaminants on the Subject Property have migrated from a source on the Texaco Property.

Mr. Gillon Has No Claim Against Texaco.

Although it is unclear, it would appear that Mr. Gillon believes himself entitled to state a claim against Texaco pursuant to the Indemnity Agreement relating to the Texaco Property. He is not. Even if it could be proven that the contamination at issue originated from Texaco's operations, which as set forth above it cannot, the indemnity agreement clearly states that Texaco has indemnified Mr. Gillon's predecessor in interest "from and against any and all third party claims or agency orders ...". Mr. Gillon's voluntary actions do not constitute a covered third party claim.

Ms. Clydia Cuykendall
January 13, 2009
Page 3

Moreover, Mr. Gillon has no legal claim separate and apart from the Indemnity Agreement. For example, a claim brought under the Model Toxics Control Act requires a showing that a release of a hazardous substance occurred at the time of the potentially responsible party's ownership or operation of a facility (RCW 70.105D.040). Here the data does not support a finding that the contamination identified at the Subject Property even originated at the Texaco Property, let alone from Texaco's former operations (as opposed to Shell's ongoing operations) there. Accordingly, any claim against Texaco by Mr. Gillon will fail.

Conclusion.

Texaco will continue to work with Ecology to do the work required of it, if any, in relation to the former Texaco Property. If additional information about the contamination on the Subject Property becomes available, feel free to provide it to us and we will consider it. Based on the available information, however, Texaco bears no responsibility for the costs incurred by Mr. Gillon and it therefore declines his demands.

Feel free to contact me if you have any questions.

Sincerely,



Amy E. Gaylord

cc: Olivia Skance, Chevron Environmental Management Company
Kelly Esters, Chevron Environmental Management Company