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date: 8/10/2003

Ariu Levi  
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Re: Response to Petition Of Chevron Texaco Corp. dated 8/6/2003

Dear Mr. Levi:

The following is a summary of my response to the above Petition.

Texaco's Petition under the Summary of Reasons for Review is full of untrue statements based on the following facts:

The Petition (Page 3 first paragraph) states that:

“ In 1983, Texaco purchased the property but did not operate. From 1983 to 1986, Texaco neither stored nor dispensed gasoline at the site.”

This is not a fact and there is no evidence to substantiate it. The neighbors noticed that Texaco's sign was taken down and replaced by that of Shell gas station.

Also GTI. Inc report Oct. 1986 under Site History states that:

“SITE HISTORY

The site was operated as a Texaco service station until it was closed several years ago. The exact date of closure is not available to ground water technology at this time. The underground storage tanks remain on-site but have been purged of all products.”

**The neighbors have also noticed these on goings. They say that the gas station was first Texaco and then became Shell (Mr. Kubo). Furthermore no evidence was presented by Texaco about the purging of the tanks. Texaco has denied the above facts without any evidence.**

Furthermore, the fact is that 1983 is the year in which Texaco acquired the fee simple for this property from the owner in the foreclosure procedure. But it had stakes in this property prior to the 1983 foreclosure.

The Petition (Page 3 Mid. second Paragraph) states that:

“ The investigation found that the release occurred near the pump islands and was most reasonably caused by a leak in the products piping or dispensers used during operation of the system.”

This is untrue based on the facts; GTI 86 Report which stated that:

- “MW1 near the former pump island,  
 At 5’ below the grade slight odor  
 At 8’ below the grade strong odor  
 At 15’ below the grade strong odor
- MW2 At 2’ below the grade slight odor  
 At 10’ below the grade slight odor
- MW3 At 10’ below the grade strong petroleum odor  
 At 15’ below the grade slight petroleum odor
- SB1 At 5’ below the grade slight petroleum odor  
 At 7’ below the grade strong petroleum odor  
 At 10’ below the grade slight petroleum odor  
 At 14’ below the grade strong petroleum odor  
 At 15’ below the grade slight petroleum odor
- SB2 At 3’ below the grade slight petroleum odor  
 At 8’ below the grade slight petroleum odor  
 At 10’ below the grade strong petroleum odor
- SB3 At 2’ below the grade slight petroleum odor  
 At 7’ below the grade slight petroleum odor”

How Could Texaco ignores all of these facts made by their own investigator, and claim that there was only some contamination under the pump islands?

The fact is MW3, which is the location of the former USTs tanks, is the most contaminated location on this site, based on all of the monitoring reports.

Texaco Petition (Page 3 Mid. third Paragraph) states that:

“A 1995 groundwater investigation revealed that a subsequent Release of petroleum hydrocarbons had occurred.”

Texaco tries to say that there was a release of gas from the third generation tanks. However, this cannot be substantiated with the results of the inspections and regular tests since 1995. Likewise observations made during the retrofit project back in February 2001 exposed everything. (1) No observable or probable releases from the third generation UST's or the lines were made. Because of the pea gravel on and around the third generation tanks it was impossible, even with a substantial leak from this generation, to contaminate the upper level of the ground 5’ or 30’ away from the third generation. (2) On the contrary, the contamination is from the second generation and is

still in the soil. The topsoil could only be contaminated within 5' to 30' from the third USTs because they are all in the vicinity of the second USTs. Furthermore, Texaco has no evidence or technical reason for its baseless claim made above.

The Texaco Petition wrongly implies that the gas prior to 1995 did not have any MTBE component. The fact is that there was no test for MTBE. **If a person does not test the sample for MTBE, he/she could not see the concentrations of MTBE on his/her test results.**

Texaco Petition on Page 5 relays wrongly by their contractor assumption that:

“ This evaluation concluded that the constituents from the pre -1983 release would not have contributed the need for cleanup of the site in 1986 or now.”

This is not correct based on all of the letters by ACHCSA. In fact, the Agency stated that Texaco or GTI had to file the GTI 1986 Report with SWRCB back in 1986. **Based on the 1986 GTI Report the property was contaminated.**

The Texaco Petition is missing one very important point, which is the Settlement Agreement between the parties dated August of 1997. This stated that Texaco was responsible for remedial action of existing contamination and quarterly monitoring. It was also based on the settlement agreement and prior agreement that Texaco was responsible for testing and integrity of the monitoring wells, prior to late 1999.

**The Facts are:**

- A. Based on information contained in the soil report of GTI. 86, and October 5, 1992 (H+GCC92) Texaco did not disclose the information contained in GTI. 86 to the authority despite the requirement that this information should be disclosed. Texaco illegally removed the tanks, lines, and dispensers without any proper closure. This was especially outrageous since they had knowledge of the contamination, which was reflected in the GTI. 86 report. Texaco withheld evidence and tried to deceive the government agencies and Kubo.
- B. We took legal action against Kubo, Texaco, Callaris, and Chevron in the Superior Court of Santa Clara County Case # 744664, in 1994. The basis of the suit was due to the contamination of the property prior to the Mohammadians' purchase
- C. The parties settled in late 1997. It was based on this settlement agreement that Texaco and the Calleries were held to be the responsible parties for the quarterly monitoring testing and they were responsible for any cleanout. A copy of this settlement was submitted to Mr. Scott Seery from ACHCSA before it was signed and later received another copy with the signatures.

- D. Texaco had been responsible for taking care of the monitoring wells and tests from 1994 to late 1999. Texaco was responsible for maintaining the integrity of the monitoring wells, and as such Texaco and their agents were the only persons with the keys to the caps in order to open the monitoring wells. Texaco and its agents in essence could do whatever they pleased, whenever they pleased because they were the only ones with access to the monitoring wells, and nobody suspected to them.
- E. As Mr. Don Atkinson Adams, the Senior Registered Environmental Health specialist from ACHCSA stated in his letter dated September 18, 1995, **"Please note that this problem with the leak detectors does not mean the system has leaked. I have no indication of leakage at this time."**
- F. In January 1999, Mr. Weston and I observed the monitoring wells. The problems with the monitoring wells were discussed in detail in my letter dated 7-9-1999, and provided further evidence that Texaco was directly responsible for the problems that caused the increase in the contamination from the top of the monitoring wells.
- G. **Enviro Soil Tech Reports** With regard to the soil report by Soil Tech Engineering dated December 27, 2001, which is already on file of ACHCSA. If we look at Figure 3: TPHg concentration contour map groundwater. As you will notice the center of high contamination is the place of the former USTs (MW3). On the next page, Figure 4: Benzene concentration contour map in groundwater. As you will notice again the center of the high contamination is the place of former USTs (MW3). On the next page, Figure 5: MTBE concentration contour map groundwater. As you will notice again the center of the high contamination is the place of former USTs (MW3). If we review all of the Environ Soil Tech consultant's reports, which are already on file of ACHCSA, we will find that TPH-g Benzene & MTBE concentration is along the former USTs (MW3).
- H. By looking at the chart of analytical results, it is evident that something happened in 1998. It appears that somebody contaminated or discharged gas and/or MTBE to all of the wells. That somebody could only be either Texaco or its contractor. In my letter to Ms. Lori Casias of the State Water Control Board dated 7-9-1999 I explained in detail the facts and presumptions and all that has arisen in regards to this irregularity. The fact is that the contamination was reduced as soon as Texaco was not in position to do wrong doing.
- I. The fact-finding and exposing the USTs3 Generation of early 2001 provided more support for the contentions mentioned in the above letter dated 7-9-1999, which Texaco and their Agent were responsible for contamination of 1998-1999.

### **Evidences & Facts**

#### **The As Built Plan**

The As Built Plan of 2001 shows the new plumbing, dispenser, and the location of sensors. In February 2001, after we exposed the pipeline and the tanks, we observed the following:

- J. All of the highlighted areas, in the As Built Plan, consisted of the tank locations and piping, which were done in early 1987. We discovered that there was pea gravel in the tank area, from approximately 11 foot to the finish slab, and in the trenches of the pipes, no less than 4 feet of which we did not excavate.
- K. The pipeline was double lined. There was no evidence that the pipeline leaked. There was not even a single crack on the secondary pipes.
- L. There is no evidence that any of the tanks were leaking, especially since the existing tanks are double wall XRX Tanks, which were installed back in 1987. These tanks have sensor probes between the containers and the secondary wall, and we have tested them regularly over the last seven years under the direct supervision of the ACHCSA by Don Atkinson Adams, Robert Weston, and Scott Seery.
- M. Messer's Scott Seery and Robert Weston witnessed the above facts as they observed that there was no evidence that the system, which was installed in early 1987, leaked. There was indeed no evidence of gas or even gas odors in this area at all.
- N. We changed all of the piping system and equipments just to be sure and to be safe in the future.
- O. In February 2001, after Exposing the pipeline and tanks, Mr. Scott Seery took a photograph of the existing system. The ACHCSA has this photograph in its file and I also have a copy of this photo.
- P. **GTI. 86 Report**

The question is how much gas leaked before 1986 in order to contaminate up to 15' of soil below the grade where there still remained a strong odor at 15' deep. Of course today we do have the same ground untouched and contaminated.

How Could Texaco ignore all of these facts and decide that the case should be closed on 1986?

How much wrongdoing by Texaco is allowable.

Based on all of the existing facts, visual inspections, and observation of the exposed third generation UST's and the result of the regular testing conducted during 1995 to 2001, and the admission of the ACHCSA senior specialist, THERE WAS NO RELEASE AT ALL FROM THE EXISTING SYSTEM. THIS IS A FACT NOT AN ASSUMPTION.

- 1. The problem with the vapor recovery system was only due to the 6" pipe with **reverse slope**, which is evident in fact (O) above. There was no

evidence of leaking in the vapors recovery line at all. We could not pass the test when the vapor recovery line contained liquid gas, and we would pass the test when it did not contain liquid gas.

- Q. It was impossible that the discharge of gas from the third generation tanks could contaminate the sites 30', 10', or even 5' away from the tank pad at the elevation of 3', or 4', or 5', or 6', or 7' from the ground. With the fact that all of the existing USTs pad are filled with pea gravel since 1987 (Pea gravel is drainage).
- R. **The irresponsible actions of Texaco** and their employees since 1986 is clear indication of their illegal action and their culpability. It is my belief that Texaco is capable of contaminating the wells by adding MTBE and or other chemical to the monitoring wells because (a). They were the only persons with access to the monitoring wells. (b). They have engaged in illegal and deceptive practices in the past. Examples of Texaco's illegal actions include: in 1986 Texaco was aware that the site was contaminated based on the (GTI 86) report and they withheld this information from the authority. Texaco was aware that they had a duty to report the contamination to the Authority and they failed to do so. Texaco illegally removed the tanks, lines, and dispensers without any proper tank closures and installed three monitoring wells without any permits. They were aware that when removing the tanks it must be done with a permit and under the supervision of the appropriate governmental authority. This is especially important since they were aware of the (GTI 86) report, and site contamination. Texaco was aware of the Authorities requirement for diligent testing after the removal of the tanks, especially since they were aware of the facts in the GTI 86 report. However, they did not comply, and withheld evidence with the intention of deceiving everyone including the authorities. They were aware that they had to do cleanup of the property prior to the sale of the property to Mr. Kubo. However, they did not do this and withheld evidence again. During last eight years they did not provide any information or evidence regarding all of their action and wrongdoing, and their stand is that they cannot locate the information. What an excuse for a big Company!

Again the GTI 86 report states that, "**the underground storage tanks remain on-site but have been purged of all product.**" This means that the underground tanks were on site on October 1986 and that they were without gas. What happened to the inventory of gas at the date of foreclosure or closure of the station it is not known. If Texaco paid somebody to purge the tanks between 1983-1986 they should have some evidence and documentation, like their check, from this they should have been able to find who purged the tanks. As Texaco did not have any documents to prove that they paid someone to purge the tanks, the only logical presumption is that the tanks leaked and all of the gas was discharged into the ground.

How the Texaco consultants who have made so many untrue statements based on the evidences could be trusted? It seems that they have been paid by Texaco to do their best to release Texaco from their duty based on the legal settlement agreement with the Mohammadians by wrong doing and making up false statements.

As I have already explained above based on the exposed third generation USTs and the observations and tests done by us and witnessed by ACHCSA my contention has always been with merit and is fully substantiated by all of the evidences and facts.

We conducted several tests and found no leaks and no release was found. We exposed the third generation USTs we found no evidence of damage or leaks or releases. Indeed we found that contamination was impossible at the topsoil adjacent to the third generation USTs, due to pea gravel. Texaco has no evidence supporting its finding.

How could a double wall tank and piping leak if tested for leaks and no leakage is found, and further if there is no evidence of a leak in the second containment?

I believe all of the responsible parties has the documents existed in the file of ACHCSA.

Yours truly,

*M. Mohammadian*

Mehdi Mohammadian

CC: to all interested party and informing them that Mr. Jeffrey Widman Esq. is not representing us in this case, please direct us all of the correspondences.

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