

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

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PIERRE DARBOUZE, M.D.,	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	NO. 97-2970
	:	
CHEVRON CORPORATION, and	:	
CHEVRON USA INC., d/b/a	:	
CHEVRON PRODUCTS COMPANY and	:	
d/b/a CHEVRON USA PRODUCTS	:	
COMPANY,	:	
Defendants.	:	

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MEMORANDUM

R.F. KELLY, J.

JANUARY , 1998

Pierre Darbouze, M.D., ("Darbouze") has brought this action against Chevron Corporation ("Chevron Corp.") and Chevron U.S.A., Inc. ("Chevron U.S.A."). Darbouze alleges violations of state and federal law stemming from the discovery of underground petroleum storage tanks on his property. Chevron Corp. has moved for Summary Judgment on all counts. The Motion for Summary Judgment is uncontested by Darbouze, therefore, it will be granted. Chevron U.S.A. has moved to Dismiss Counts III, VI, and VII, of the Complaint, pursuant to Federal Rule of Civil Procedure 12(b)(1), alleging lack of subject matter jurisdiction. For the reasons that follow the Motion to Dismiss is granted as to Count III but denied as to Counts VI and VII.

**I. FACTS.**

The property in question is located at 6613 Chew Avenue

in Philadelphia, Pennsylvania. Gulf Oil owned the property from January 31, 1938 until August 25, 1976, and operated an automobile service station and/or gas station on the premises. During this time period, it is alleged that Gulf Oil installed at least 17 underground storage tanks at the property. Gulf Oil sold the property in 1976.

In 1981, after several intervening owners, title was transferred to Darbouze. Since its purchase, Darbouze has practiced family medicine on the property. In 1995, Darbouze attempted to sell the property. An environmental assessment revealed the existence of up to seventeen underground storage tanks on the property, rendering it unmarketable at fair market value.

On November 20, 1995, Darbouze, through his attorney, sent Chevron Corp. notice of his intent to commence a civil action pursuant to section 7002 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972. This letter was sent by registered mail, return receipt requested, to the principle place of business of Chevron U.S.A. erroneously addressed to Chevron Corp. Carbon copies were also sent, by registered mail, return receipt requested, to the relevant state and federal administrative agencies. Bruce Buhler, Esquire, in-house counsel for Chevron U.S.A. was also sent a carbon copy of this letter, although by regular mail.

On November 22, 1995 a similar letter was sent by counsel for Darbouze notifying Chevron Corp. of his intent to bring a civil action pursuant to section 601(c) of the Pennsylvania Clean Streams Law and section 1305(c) of the Pennsylvania Storage Tank and Spill Prevention Act. 35 Pa.C.S.A. § 691.601(c); 35 Pa.C.S.A. § 6021.1305(c). This letter was carbon copied to the Pennsylvania Department of Environmental Protection by registered mail, return receipt requested, and to Bruce Buhler by regular mail.

On April 27, 1997, Darbouze filed the complaint in this action naming Chevron Corp. and Chevron U.S.A. as defendants. Apparently, Darbouze mistakenly believed that both Chevron Corp. and Chevron U.S.A. could be held liable as corporate successors of Gulf Oil. In truth, only Chevron U.S.A. merged with Gulf Oil and assumed the debts and liabilities of the extinct corporation. Chevron Corp. is a separate and distinct corporate entity from its wholly owned subsidiary, Chevron U.S.A. This prevents Darbouze from holding Chevron Corp. liable for the condition of the property and is the basis of the uncontested motion for Summary Judgment. As previously indicated, that Motion is granted, thus, Chevron U.S.A. is the sole remaining defendant.

Chevron U.S.A. has moved to dismiss three counts of the complaint for lack of subject matter jurisdiction. Chevron U.S.A. contends that Darbouze's letters have failed to provide it

with adequate notice as required by the RCRA, the Storage Tank and Spill Prevention Act, and the Clean Streams Law. Darbouze contends that Chevron U.S.A. had actual notice of his intent to sue through the November 1995 letters and through correspondence between the parties since that time.

## **II. STANDARD.**

A Rule 12(b)(1) motion to dismiss for lack of subject matter jurisdiction challenges the court's "very power to hear the case." FED. R. CIV. P. 12(b)(1). Robinson v. Dalton, 107 F.3d 1018, 1021 (3d Cir. 1997). In reviewing the question of jurisdiction, "no presumptive truthfulness attaches to Plaintiff's allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims." Dalton, 107 F.3d at 1021. As soon as it is determined that subject matter jurisdiction is absent, dismissal is mandatory, as the court lacks the power to adjudicate the claim. FED. R. CIV. P. 12(h)(3).

## **III. DISCUSSION.**

### **A. Count III - The Resource Conservation and Recovery Act.**

The RCRA requires a citizen to (1) provide notice to the Administrator of the Environmental Protection Agency, the State, and the alleged violator and (2) wait ninety days before commencing a suit under section 7002. Although the statute itself is silent regarding the method of notice, 40 C.F.R. Part

254 contains explicit instructions on how to provide notice to an alleged violator. Chevron U.S.A. contends that Darbouze's failure to comply with 40 C.F.R. Part 254 requires dismissal of Count III of the Complaint.

40 C.F.R. Part 254.2 provides in relevant part:

(a) Notice of intent to file suit under subsection 7002(a)(1) of the Act shall be served . . . in the following manner:

(1) If the alleged violator is a . . . corporation, service of notice shall be accomplished by registered mail, return receipt requested, addressed to or by personal service upon, the owner or site manager of the building, plant, installation or facility alleged to be in violation. . . . If the alleged violator is a corporation, a copy of the notice shall also be mailed to the registered agent, if any, of that corporation in the State in which such violation is alleged to have occurred.

40 C.F.R. Part 254.2 (1996). Darbouze contends that 40 C.F.R. Part 254 applies only to actions brought under 42 U.S.C. §7002 (a)(1)(A) or (a)(2) and is inapplicable to this action, which is brought under § 7002(a)(1)(B). That contention is incorrect. The regulation specifies that it applies to actions brought under section 7002(a)(1), which includes both sections (A) and (B). Clearly, Darbouze was required to comply with the above quoted regulation.

Darbouze's letter dated November 22, 1995 specifies that it was sent in order to provide notice in compliance with 40 C.F.R. Part 254, although it failed to do so. The letter was improperly sent by regular mail to Chevron U.S.A.'s in-house counsel. The letter was sent by registered mail to Chevron

U.S.A.'s principal place of business, although improperly addressed to Chevron Corp. Additionally, Darbouze failed to notify Chevron U.S.A.'s registered agent in Pennsylvania. For these reasons, Chevron U.S.A. was improperly notified.

The United States Supreme Court has held that failure to comply with the notice and delay requirements for the commencement of a citizen suit under the RCRA mandates dismissal. Hallstrom v. Tillamook County, 493 U.S. 20, 33 (1989). As to Chevron U.S.A., the letter dated November 22, 1995 does not provide adequate notice pursuant to 40 C.F.R. Part 254. Accordingly, because this court lacks subject matter jurisdiction, Count III of the complaint must be dismissed.

B. Counts VI and V - The Clean Streams Law and The Storage Tank and Spill Prevention Act.

Like the RCRA, the Clean Streams Law and the Storage Tank and Spill Prevention Act both require that a citizen (1) provide written notice to the Pennsylvania Department of Environmental Resources and the alleged violator and (2) wait sixty days before commencing suit.\* Unlike the RCRA, there is no state regulation comparable to 40 C.F.R. Part 254 specifying the manner of notice. Darbouze's letter dated November 25, 1995 sufficiently provided Chevron U.S.A. with written notice of his

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\* On July 1, 1995 the Department of Environmental Resources became known as the Department of Environmental Protection. 71 Pa.C.S.A. § 1340.101 et. seq.

intent to commence suit under the Clean Streams Law and the Storage Tank and Spill Prevention Act. Darbouze properly filed suit sixty days after giving Chevron U.S.A. notice. Thus, Chevron U.S.A.'s Motion to Dismiss Counts VI and VII of the Complaint must be denied.

An appropriate Order follows.

