

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

-----X
RIVERKEEPER, INC., ROLF CARLE, LAURA HOFFMAN,
MICHAEL HOFFMAN, DEBORAH MASTERS,
WILLIAM SCHUCK, TERESA TORO,
Plaintiffs,

PLAINTIFF'S
COMPLAINT

CV : 04 2056
GLASSER, J.
MANN, M.J.

-against-

EXXON MOBIL CORPORATION,

Defendant.

FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
* MAY 18 2004 *

-----X
BROOKLYN OFFICE

COMPLAINT

Riverkeeper Incorporated, Rolf Carle, Laura Hoffman, Michael Hoffman, Deborah Masters, William Schuck, and Teresa Toro, by their attorneys, Pace Environmental Litigation Clinic, Inc., allege for their complaint herein as follows:

NATURE OF ACTION

1. This is a citizen suit, brought under section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), and section 7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B), for the defendant's violations of the terms and provisions of those Acts by the unpermitted and unlawful discharge of pollutants into Newtown Creek and the imminent and substantial endangerment posed by the solid waste spreading under Greenpoint, Brooklyn.

JURISDICTION

2. This Court has original jurisdiction over the claims set forth in this complaint by virtue of section 1331 of the Judiciary and Judicial Procedure Act, 28 U.S.C. § 1331, because this action arises under the laws of the United States.

3. This Court has subject matter jurisdiction over the claims set forth in this complaint by virtue of section 505(a) of the Clean Water Act, 33 U.S.C. § 1365(a), and section 7002(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a).
4. On or about January 20, 2004, Plaintiffs mailed notice of the violations complained of herein, and of its intent to file suit, to the Administrator of the United State Environmental Protection Agency ("EPA"), the New York Department of Environmental Conservation ("DEC"), and to the defendant as required by section 505(b)(1)(A) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(A). More than sixty days have passed since notice was served.
5. On or about January 20, 2004, Plaintiffs mailed notice of the violations complained of herein, and its intent to file suit, to the Administrator of the United State Environmental Protection Agency ("EPA"), the New York Department of Environmental Conservation ("DEC"), and to the defendant as required by section 7002(b)(2)(A) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(b)(2)(A). More than ninety days have passed since notice was served.
6. The violations complained of herein are ongoing and will continue in the future.
7. Neither EPA nor DEC has commenced and diligently prosecuted a court action under section 505(b)(1)(B) of the Clean Water Act, 33 U.S.C. § 1365(b)(1)(B), which would bar this court action.
8. Neither EPA nor DEC has commenced and diligently prosecuted a court action under section 7002(b)(2)(B) or (C) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(b)(2)(B), (C), which would bar this action.
9. Neither EPA nor DEC has expended response costs with respect to the site of the violations complained of herein under section 104 of the Comprehensive Environmental Response Cleanup and Liability Act, 42 U.S.C. § 9604, which would bar this action.
10. This action is not barred by section 309(g)(6), 33 U.S.C. § 1319(g)(6), because the complaint is filed before the 120th day after service of the Clean Water Act Notice Letter of Intent to Sue pursuant to section 309(g)(6)(B)(ii) of the Clean Water Act, 33 U.S.C. § 1319(g)(6)(B)(ii).

11. All conditions precedent to filing a citizen suit under section 505 of the Clean Water Act, 33 U.S.C. § 1365, and section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, have been satisfied.

VENUE

12. Venue is appropriate in the Eastern District of New York pursuant to section 505(c)(1) of the Clean Water Act, 33 U.S.C. § 1365(c)(1), and section 7002(a) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972(a), because the source of the violations complained of is located within the district.

PARTIES

13. Plaintiff Riverkeeper Incorporated sues on behalf of its supporting members. Riverkeeper is a non-profit corporation, organized under the law of the State of New York. Riverkeeper and its 5,000 supporting members are dedicated to conserve, protect, and restore the Hudson River, New York Harbor, East River, Long Island Sound, and connected bays, tributaries, and watersheds, which includes Newtown Creek. Riverkeeper is a "person" for the purpose of the citizen suit provisions of sections 505 and 502(5) of the Clean Water Act, 33 U.S.C. §§ 1365, 1362(5), and sections 1004(15) and 7002(a) of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6903(15), 6972(a). Some supporting members of Riverkeeper live near Newtown Creek and would enjoy the use of the creek were it not for Defendant's discharge of pollutants into Newtown Creek. The petroleum discharge leaves an oily sheen on Newtown Creek's surface, it emits a petroleum smell in the area, and the petroleum spill has affected property values. Petroleum products have permeated the soil and groundwater, posing an imminent and substantial endangerment to humans and wildlife living in Greenpoint, Brooklyn, New York. The interest of the Riverkeeper's supporting members are being, and will continue to be, adversely affected by the Defendant's failure to comply with the requirements of the Clean Water Act and the Resource Conservation and Recovery Act.

14. Rolf Carle is a resident of Greenpoint, Brooklyn, New York. Newtown Creek's degraded condition impairs Mr. Carle's use and enjoyment of the Creek, and he is offended by the oily sheen and petroleum smell of the Creek.
15. Plaintiff Laura Hoffman is a resident of Greenpoint, Brooklyn, New York. Newtown Creek's degraded condition impairs Ms. Hoffman's use and enjoyment of the Creek, and she is offended by the oily sheen and petroleum smell of the Creek.
16. Plaintiff Michael Hoffman is a resident of Greenpoint, Brooklyn, New York. Newtown Creek's degraded condition impairs Mr. Hoffman's use and enjoyment of the Creek, and he is offended by the oily sheen and petroleum smell of the Creek.
17. Plaintiff Deborah Masters is a resident of Williamsburg, and she works in Greenpoint, Brooklyn, New York. Newtown Creek's degraded condition impairs Ms. Masters' use and enjoyment of the Creek, and she is offended by the oily sheen and petroleum smell of the Creek.
18. Plaintiff William Schuck lives on the shores of Newtown Creek. Newtown Creek's degraded condition impairs Mr. Schuck's use and enjoyment of the Creek, and he is offended by the oily sheen and petroleum smell of the Creek.
19. Teresa Toro is a resident of Greenpoint, Brooklyn, New York. Newtown Creek's degraded condition impairs Ms. Toro's use and enjoyment of the Creek, and she is offended by the oily sheen and petroleum smell of the Creek.
20. The quality of Newtown Creek directly and adversely affects the recreational, aesthetic, economic, environmental, and health interests of the Plaintiffs. The Plaintiffs have been, are being, and will continue to be adversely affected by the Defendant's illegal and unpermitted discharges into Newtown Creek and the spread of pollutants under Plaintiff supporting members' property.
21. Defendant Exxon Mobil Corporation is a publicly held corporation organized under the laws of the State of New Jersey. Mobil Oil Corporation was the owner of a petroleum facility located at 300 North Henry Street, Brooklyn, New York, and it owned and operated a refinery located between Greenpoint and Norman Avenues, Brooklyn, New York, before 1968. Exxon Mobil Corporation is the

corporate successor of Mobil Oil Corporation, after the two companies merged in 1999. Exxon Mobil Corporation continues to own and operate the North Henry Street Facility. Over a period of several years before 1968, the refinery released approximately 17 million gallons of petroleum products from leaking tanks and pipelines. The petroleum products have spread over approximately 55 acres underground and are seeping into Newtown Creek. Exxon Mobil continues to operate a remediation system in the Greenpoint area which continues to affect the direction of flow of the petroleum products in the soil, and which includes the containment boom on Newtown Creek through which petroleum products are released to the Creek.

BACKGROUND

22. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants from a point source, into waters of the United States, unless such discharge is in compliance with specified portions of the Act. Discharges not authorized by, or in violation of the terms of a National Pollutant Discharge Elimination System ("NPDES") permit, or a State Pollutant Elimination System ("SPDES") permit, are prohibited.
23. Under sections 402(a) and (b) of the Act, 33 U.S.C. §§ 1342(a) and (b), the Administrator of the EPA has authorized the New York DEC to implement a NPDES/SPDES permit program.
24. Section 505 of the Clean Water Act, 33 U.S.C. § 1365, authorizes a citizen suit to enforce the provisions of section 301, 33 U.S.C. § 1311.
25. Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), of the Resource Conservation and Recovery Act permits any person to commence a civil action against any person who has contributed or is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment.

26. Defendant Exxon Mobil Corporation owned and operated an oil refinery in Greenpoint, Brooklyn, New York, from at least 1950 from which an explosion and a series of leaks and spills released approximately 17 million gallons of petroleum products into the underlying soils and aquifer.
27. The former Mobil refinery occupied the entire area east of Kingsland Avenue between Greenpoint Avenue south to Norman Avenue. This refinery, with a capacity of 31,000 barrels per day, produced solvents, gasoline, kerosene, fuel oil and refinery oil. Naptha, gasoline, gas oil and fuel oil and possibly other petroleum products were stored at this refinery.
28. The petroleum plume now extends from Norman Avenue where an Exxon Mobil facility now owned by BP Amoco Corporation was located before 1969, south of Meeker Avenue, and east of Bridgewater Street, and to the banks of Newtown Creek. This plume covers approximately 55 acres.
29. The petroleum product discharge potentially includes, but is not limited to, the following constituents: benzene and benzo(a)pyrene; benz(a)anthracene; indeno(1,2,3-cd)pyrene; dibenz(a,h)anthracene; chrysene; benzo(b)fluoranthene; and benzo(k)fluoranthene; MTBE; and lead.
30. Exxon Mobil's petroleum products flow through fissures of the bulkhead constructed along the creek on the property located at 42-44 Bridgewater Street, into the creek water, through sections of the containment boom that floats in front of the wall and into Newtown Creek. Neither Exxon Mobil nor any other person has a Clean Water Act permit for this discharge of petroleum products through the bulkhead.

FIRST CLAIM: CLEAN WATER ACT

31. Plaintiff's supporting members and co-plaintiffs include residents of the Greenpoint Community who live and recreate near Newtown Creek, and some supporting members own property near Newtown Creek whose market value may be affected by the pollution in Newtown Creek.

32. The fissures in the bulkhead and the gaps between the sections of the containment boom are both "point sources" within the meaning of section 502(14) of the Clean Water Act, 33 U.S.C. § 1362(14).
33. The discharge through the fissures and gaps contains petroleum products.
34. Petroleum products are a "pollutant" within the meaning of section 502(6) of the Clean Water Act, 33 U.S.C. § 1362(6).
35. The petroleum product discharge causes an oily sheen on Newtown Creek and causes the area to smell of petroleum.
36. The constituents present in the petroleum product discharge have been shown to cause harm to aquatic life.
37. New York DEC has designated Newtown Creek as class SD, which prohibits the addition of petroleum products in amounts that cause a visible sheen.
38. The petroleum discharge violates water quality standards for petroleum product discharges in Newtown Creek.
39. The petroleum product discharge is seeping through a point source into navigable waters without a NPDES/SPDES permit.
40. Defendant Exxon Mobil has neither applied for, nor been granted, a NPDES/SPDES permit for the discharge of petroleum products into Newtown Creek.
41. Newtown Creek is a "navigable water" of the United States within the meaning of section 502(7) of the Clean Water Act, 33 U.S.C. § 1362(7).
42. The petroleum product discharge enters navigable water when it discharges through the fissures in the bulkhead and into Newtown Creek.
43. Some of the petroleum product discharge escapes from the containment boom, traveling with the tide of Newtown Creek and its tributaries. Newtown Creek is a tidal waterway, its cbb and flow dependent on the East River, which, in turn, flows into to the Hudson River and into New York Harbor.
44. The tidal nature of Newtown Creek causes pollutants to travel quickly and for great distances, harming the biological, physical, and chemical integrity of the navigable waters in the area affected by the tide.

45. The petroleum product discharge into Newtown Creek is the "addition" of a pollutant within the meaning of section 502(12) of the Clean Water Act, 33 U.S.C. § 1362(13).
46. Defendant Exxon Mobil has violated and will continue to violate "an effluent standard or limitation" under section 505(a)(1)(A) of the Act, 33 U.S.C. § 1365(a)(1)(A), because of its illegal and unpermitted discharges from the bulkhead and containment boom into Newtown Creek.

FIRST CLAIM FOR RELIEF

47. Defendant's discharges of pollutants into Newtown Creek are illegal and unpermitted discharges within the meaning of section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).
48. Defendant Exxon Mobil has not applied for, nor been granted, a permit pursuant to section 402 of the Clean Water Act, 33 U.S.C. § 1342, from the EPA or the DEC for the petroleum product discharges from the bulkhead and containment boom into Newtown Creek.
49. Defendant's violations are ongoing.

SECOND CLAIM:

RESOURCE CONSERVATION AND RECOVERY ACT

64. Petroleum is a "solid waste" within the meaning of §1004(27) of the Resource Conservation and Recovery Act, 42 U.S.C. §6903(27). A "solid waste" includes a liquid that results from industrial, commercial, mining and agricultural operations.
65. Petroleum is a "hazardous waste" within the meaning of § 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C.A. §6903(5).
55. The explosions, leaks, releases and spills of petroleum products from Mobil's Greenpoint facility over the years constitute an improper "disposal" within the meaning of section 1004(3) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6903(3).

59. Exxon Mobil Corporation is a past owner and operator of a solid waste disposal facility within the meaning of section 7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. § 6792(a)(1)(B).
60. Petroleum flows through fissures in the bulkhead located on the property at 42-44 Bridgewater Street into Newtown Creek. Petroleum flows through sections of the containment boom and into the middle of Newtown Creek.
66. Petroleum products cause an increase in mortality and an increase in serious irreversible or incapacitating reversible illness within the meaning of § 1004(5) of the Resource Conservation and Recovery Act, 42 U.S.C. §6903(5).
67. The presence of petroleum products in the environment presents an imminent and substantial endangerment to the health of persons and wildlife and to the environment.
67. The presence of petroleum products is a significant endangerment to wildlife and wildlife habitat in the area. The ingestion of petroleum can cause disruption in normal internal organ function.
68. A single drop of oil on a bird egg can cause mortality and developmental defects in affected embryos. When birds are exposed to petroleum products on their feathers, the feathers are unable to trap air and repel water. This causes hypothermia, the inability to fly and eventually, death. Petroleum products can cause other physiological problems when ingested or absorbed through the skin.
69. Large quantities of petroleum products can result in the death of fish. For fish, the presence of petroleum products even in small concentrations results in changes in growth, feeding, fertility and survival rates and displacement.
68. Chemical migration is occurring through the groundwater. The groundwater generally travels through this area via two aquifer zones towards Newtown Creek. The aquifer zones are interconnected.
69. The Brooklyn-Queens aquifer is an untapped resource that cannot be used due to the continued contamination caused by the presence of petroleum products.
71. The petroleum product discharge contains benzene, a known carcinogen.
72. The presence of underground petroleum products can cause petroleum vapors.

73. Petroleum vapors may cause an imminent and substantial endangerment to the health and environment within the meaning of §7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. §6792(a)(1)(B).
74. The breakdown of underground petroleum causes methane gases to occur. These gasses accumulate in confined structures, such as homes and commercial buildings, resulting in potentially explosive conditions.
75. The potentially explosive conditions are an imminent and substantial endangerment to the health and environment within the meaning of §7002(a)(1)(B) of the Resource Conservation and Recovery Act, 42 U.S.C. §6792(a)(1)(B).

SECOND CLAIM FOR RELIEF

50. The underground petroleum product plume is an imminent and substantial endangerment to the environment in that the high levels of hazardous wastes in the soil pose a significant threat to human beings, to Newtown Creek and to the fish, birds and other wildlife in and around the river.
51. As a result of the improper storage and/or disposal of hazardous wastes from the former Exxon Mobil site, groundwater has been contaminated. The contaminated groundwater flows to Newtown Creek, which is part of the Hudson estuary.
52. Contaminated groundwater discharges into Newtown Creek pose a threat to human beings and wildlife that live and recreate near the creek.
54. Exxon Mobil has contributed to the past and present handling, storage and/or disposal of hazardous waste as defined by the Resource Conservation and Recovery Act § 1004, 42 U.S.C. § 6903 and 40 C.F.R. §§ 261.2, 261.3.
56. As a past and present owner or operator, under the Resource Conservation and Recovery Act 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), Defendant is liable for

conditions on their present or formerly owned property that present an imminent and substantial endangerment to the health or the environment.

RELIEF REQUESTED

Wherefore, Plaintiffs respectfully request this court to grant the following relief:

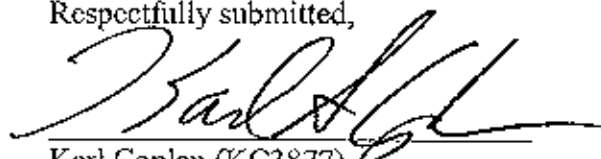
- A. Declare Defendant to have violated, and to be in violation of section 301 of the Clean Water Act, 33 U.S.C. § 1311.
- B. Require the Defendant to repair or replace the leaking bulkhead and containment boom to eliminate the fissures and gaps in order to prevent the discharge of petroleum into Newtown Creek.
- C. Require the Defendant to obtain NPDES/SPDES permits in compliance with section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a) to be effective until an impermeable bulkhead and containment boom are constructed.
- D. Require Defendant to take such measures necessary to minimize or eliminate the pollutants from discharging through the bulkhead and containment boom during the construction of an impermeable bulkhead.
- E. Compel Defendant to remediate all damage to the environment because of their illegal and unpermitted discharges.
- F. Order Defendant, pursuant to section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), to pay \$27,500 per day for each illegal discharge prior to March 15, 2004 and \$32,500 per day for each day of violation thereafter.
- G. Declare the Defendant Exxon Mobil, as past owner and operator of a facility that disposed of solid waste, liable for the imminent and substantial endangerment to Newtown Creek and to the Hudson River estuary and the surrounding land created by the contamination on the site.
- H. Compel Defendant to eliminate health hazards and minimize potential health effects by the contamination of the site.

- I. Compel Defendant to eliminate all damage to the environment caused by its activities at the site.
- J. Compel Defendant to repair the damage to the land of the former Exxon Mobil site and its surrounds and to Newtown Creek as part of the Hudson River estuary.
- K. Award Plaintiffs' costs including reasonable attorney, witness, and consultation fees, as authorized by section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), and section 7002(e) of the Resource Conservation and Recovery Act, 42 U.S.C. §6972(e).
- L. Award such other relief as this court deems just and proper.

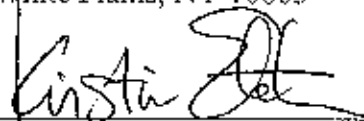
Dated: White Plains, NY

May 18, 2004

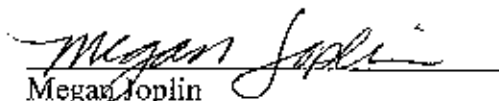
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