

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

STATE OF NEW YORK AND COMMISSIONER
OF THE NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION and Trustee
of Natural Resources,

Plaintiffs,

-against-

EXXON MOBIL CORPORATION and
EXXONMOBIL REFINING AND SUPPLY
COMPANY,

Defendants.

No. 07-CV-2902 (KAM/RML)

**STIPULATION AND ORDER OF
DISMISSAL**

WHEREAS, the undersigned parties (the “Parties”) have entered into a Consent Decree, dated October __, 2010 (the “Consent Decree”), in order to resolve the claims alleged in the above-captioned action;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements contained in the Consent Decree,

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the parties to the above-entitled action, that:

1. All claims asserted by Plaintiffs State of New York and the New York State Department of Environmental Conservation against Defendants Exxon Mobil Corporation and ExxonMobil Refining and Supply Company with respect to (i) investigation and remediation of Newtown Creek, (ii) penalties related to Newtown Creek accruing after the Effective Date of the Consent Decree, and (iii) natural resource damages to Newtown Creek in the above-entitled action be, and the same hereby are, dismissed without prejudice pursuant to Fed. R. Civ. P. 41(a).

2. Upon Defendants’ full payment of the amounts required under paragraphs 32, 35, 43 and 58 of the Consent Decree, all claims asserted by Plaintiffs State of New York and the New York State Department of Environmental Conservation against Defendants Exxon Mobil Corporation and ExxonMobil Refining and Supply Company in the above-entitled action—except (i) those claims referenced in Paragraph 1 above, (ii) those reserved in Article XVII of the Consent Decree, and (iii) those limited to liability for the investigation, remediation and abatement of contamination (the “Cleanup Claims”)—shall be dismissed with prejudice pursuant to Fed. R. Civ. P. 41(a), without costs to either party against the other.

3. The Cleanup Claims are fully resolved by, and merged in, the Consent Decree, which is res judicata as to those Claims, except to the extent that claims may be asserted pursuant to the Consent Decree for enforcement of its terms or under the reopener provision of paragraph 89 thereof.

4. Nothing in this Stipulation and Order shall be interpreted to diminish or prejudice the rights reserved by the Parties under Article XVII of the Consent Decree.

5. This Court hereby retains, and the Parties consent to, agree not to contest, and waive any defenses based on, jurisdiction over any and all disputes arising under or related to the Consent Decree from the date this Stipulation and Order is so ordered until the Parties agree in a writing filed with the Court that such jurisdiction is no longer necessary or appropriate.

STATE OF NEW YORK and ALEXANDER B.
GRANNIS
as Commissioner of the New York State
Department of Environmental Conservation and
Trustee of Natural Resources

ANDREW CUOMO
Attorney General of the State of New York

Dated: _____

By: _____

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Dated: _____

By: _____

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Attorneys for Defendants

ORDERED, ADJUDGED AND DECREED this ____ day of _____, 20__

United States District Judge