



STATE OF NEW YORK  
OFFICE OF THE ATTORNEY GENERAL

ANDREW M. CUOMO  
Attorney General

DIVISION OF PUBLIC ADVOCACY  
Environmental Protection Bureau

February 8, 2007

**Via Certified United States Mail**

Chevron Corporation  
6001 Bollinger Canyon Rd.  
San Ramon, California 94583

Chevron Corporation  
The Prentice-Hall Corporation System, Inc.  
Registered Agent in New York State  
80 State Street  
Albany, New York 12207

Chevron Environmental Management Company  
6001 Bollinger Canyon Rd.  
San Ramon, California 94583

Chevron Environmental Management Company  
Corporation Service Company  
Registered Agent in New York State  
80 State Street  
Albany, New York 12207-2543

RE: Notice of Intent to Sue Chevron Corporation and Chevron Environmental Management Company for Clean Water Act Violations in Greenpoint, Brooklyn, New York

Dear Sirs and Madams:

The State of New York (State) hereby gives notice of its intent to sue Chevron Corporation and its affiliate, Chevron Environmental Management Company (together "Chevron"), under 33 U.S.C. § 1365 for ongoing violations of the Federal Water Pollution Control Act, more commonly known as the Clean Water Act (CWA), 33 U.S.C. §§ 1251, *et seq.* Specifically, the State will seek civil penalties and injunctive relief under the CWA for ongoing, unpermitted discharges of pollutants by Chevron into Newtown Creek (Creek), a navigable water

of the United States, in violation of 33 U.S.C. § 1311, which makes unlawful any discharge of a pollutant by any person without a permit.

## **I. Chevron's Ongoing Violations of Clean Water Act: Unpermitted Discharges of Pollutants from Newtown Creek Bulkhead**

The CWA prohibits the discharge of any pollutant from a point source into the waters of the United States, except pursuant to and in compliance with a permit. *See* 33 U.S.C. § 1311(a); 33 U.S.C. § 1342(a). The CWA defines "pollutant" broadly to include "dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water." 33 U.S.C. § 1362(6); *see also United States v. Hamel*, 551 F.2d 107, 111 (6th Cir. 1977) (finding that gasoline was a pollutant under the Act). The CWA defines a "point source" as "any discernable, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged." 33 U.S.C. § 1362(14); *see also Concerned Area Residents for the Environment v. Southview Farm*, 34 F.3d 114, 118-19 (2d Cir. 1994) (holding that Act's point source definition should be "broadly interpreted"). The Creek is a navigable water of the United States. *See* 33 U.S.C. § 1362(7); *see also Rapanos v. United States*, 126 S.Ct. 2208, 2006 U.S. LEXIS 4887 (2006) (defining "navigable waters" as used in the CWA).

### **A. Chevron's Former Newtown Creek Facility and Bulkhead Discharges**

From approximately 1934 to 1968, Chevron, and its predecessors, including Paragon Oil Company and Texaco Inc., owned and operated a petroleum storage facility that was located in Greenpoint, Brooklyn, New York at the corner of Bridgewater Street and Meeker Avenue and which bordered the Creek (Chevron facility). This property is now known as the Peerless Importers property and is located at 26 Bridgewater Street and Meeker Avenue (Block #2666, Lots 1, 52, 125).

During the course of its ownership and operation of the Chevron facility, Chevron spilled, released, and otherwise discarded petroleum products and other pollutants into the environment in the area of its facility and these pollutants entered the soils, subsurface, and groundwater, as well as the surface waters and sediments of the Creek. The pollutants from these releases are discharging into the adjacent Creek through gaps, cracks, and fissures in a shoreline bulkhead along the Creek at the current Peerless Importers property. Despite the work undertaken to date by Chevron to stop these discharges, petroleum and other pollutants continue to discharge into the Creek from the Chevron facility without the permit required by CWA section 301(a), 33 U.S.C. § 1311(a).

B. Chevron's Unpermitted Bulkhead Discharges Violate Clean Water Act

Chevron is currently violating the Clean Water Act by discharging unpermitted petroleum products and other pollutants into the Creek through the gaps, cracks, and fissures in the Peerless Importers bulkhead. These cracks, fissures, and gaps, as well as the bulkhead itself, are point sources as defined by the Clean Water Act because they convey Chevron's pollutants from the ground to the Creek's waters. The pollutants identified in Exhibit A, which is attached to this letter, are many of the pollutants that Chevron is discharging through the bulkhead seeps into the Creek. The State also believes that one or more of the following petroleum products or constituents are also discharging from the bulkhead: crude oil, naphtha, fuel oils (Nos. 2, 4, or 6), kerosene, gasoline, gas oil, diesel fuel, and lead, among others. Many of these pollutants are potentially toxic and/or carcinogenic chemicals – such as benzene, which has been identified by the United States Environmental Protection Agency as a known carcinogen – that can cause great harm to public health and the environment.

Furthermore, the bulkhead seeps are ongoing and nearly continuous in occurrence. Attached is Exhibit B, which identifies all unpermitted bulkhead discharges currently known to the State. Each daily discharge of a single unpermitted pollutant from the bulkhead constitutes a separate violation under the Clean Water Act, and the State fully intends to seek the appropriate penalties available under the Act for each violation.

**II. Chevron's Violations Are Harming the State of New York**

Chevron's unpermitted discharges from the bulkhead at the Peerless Importers property constitute ongoing and significant violations of the Clean Water Act that have inflicted, and continue to inflict, great harm upon the State of New York, its citizens and residents, and the environment. The pollutants illegally discharged to date by Chevron – various kinds of petroleum, petroleum compounds and constituents, and volatile and semi-volatile compounds, among others – pose a significant threat to the health of those New York citizens and residents who use the Creek, and connected surface waters, for subsistence fishing, crabbing, and recreational activities, as well as to those who live close to the Creek. Chevron's illegal discharges, furthermore, have helped to create an offensive nuisance that interferes with the enjoyment of the environment by nearby residents.

New York's environment also continues to suffer because of Chevron's ongoing illegal discharges. The Creek is a water of the State of New York. Chevron's pollution of the Creek contributes to the degradation of its water quality, and in turn, threatens the recently improving water quality of New York Harbor, of which the Creek is a tributary. Chevron's pollution of the Creek also harms the State-owned tidal wetlands found in the Creek, which are a valuable resource for the protection of water quality. Chevron's pollution, furthermore, poses a serious threat to all of the Creek's wildlife, including any birds, fish, crustaceans, shellfish, or benthic organisms that live in, or near, the Creek, or that frequent it for food.

Finally, the State itself has also been harmed by Chevron's illegal discharges as it has had to expend monies and resources to attempt to stop, ameliorate, or mitigate the public health risks and environmental harms associated with Chevron's pollution of the Creek. The State anticipates that these efforts will increase in the future and that it will be forced to expend substantial monies and resources to address Chevron's ongoing pollution of the Creek.

Chevron will remain in violation of the CWA each day that oil and other pollutants are discharged through the bulkheads into the Creek. As noted in 33 U.S.C. § 1319(d) and 40 C.F.R. § 19.4, violations are subject to a civil penalty not to exceed \$32,500 for each such violation. At the close of the 60-day notice period, the State intends to file a citizen suit under section 505(a) of the CWA, 33 U.S.C. § 1365(a), against Chevron. The State intends to seek penalties, injunctive relief, legal fees, and costs for these violations of the CWA.

The claims set forth above are not exclusive. This Notice of Intent to Sue is sent without waiver of or any prejudice to the rights of the State of New York, the Attorney General of the State of New York, or any other agency or officer of the State to advance any additional or further legal and/or factual claims, including any federal claim for relief and/or state law and/or common law cause of action based upon information or facts that are now known or may become known in the future.

This Notice of Intent to Sue sufficiently states grounds for filing suit and conforms with all requirements of 33 U.S.C. § 1365(b) and 40 C.F.R. § 135.3(a). During the 60-day CWA notice period, the State remains willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue discussions in the absence of litigation, please initiate such discussions within ten (10) days of receiving this Notice. At the close of the 60-day period, unless significant progress is made in remedying these violations, the State will file a citizen suit against Chevron under CWA section 505(a), 33 U.S.C. § 1365(a). If you wish to discuss these matters further, please do not hesitate to contact the undersigned.

Sincerely,

ANDREW M. CUOMO  
Attorney General of the State of New York

By:   
ROBERT EMMET HERNAN

Assistant Attorney General  
New York State Office of the Attorney General  
Environmental Protection Bureau, 26<sup>th</sup> Floor  
120 Broadway  
New York, New York 10271  
Tel: (212) 416-8461  
Fax: (212) 416-6007  
robert.hernan@oag.state.ny.us

Cc: (By Certified Mail)

Stephen L. Johnson, Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Alan J. Steinberg, Regional Administrator  
U.S. Environmental Protection Agency  
Region 2  
290 Broadway  
New York, NY 10007-1866

Commissioner  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1010

Alison Crocker, Acting General Counsel  
New York State Department of Environmental Conservation  
625 Broadway  
Albany, NY 12233-1500

## EXHIBIT A

### POLLUTANTS DISCHARGING FROM BULKHEAD

benzene  
toluene  
ethylbenzene  
xylenes  
methyl tert butyl ether (MTBE)  
naphthalene  
1,2,4-trimethylbenzene  
1,3,5-trimethylbenzene  
n-butylbenzene  
isopropylbenzene  
n-propylbenzene  
p-isopropyltoluene  
sec-butylbenzene  
acenaphthene  
fluorene  
phenanthrene  
anthracene  
fluoranthene  
pyrene  
benzo(a)anthracene  
chrysene  
benzo(b)fluoranthene  
benzo(k)fluoranthene  
benzo(a)pyrene  
indeno(1,2,3-cd)pyrene  
dibenz(a,h)anthracene  
benzo(g,h,i)perylene  
t-amyl methyl ether  
t-butyl alcohol  
chloroform  
1,1-dichloroethane  
cis-1,2-dichloroethene  
tetrachloroethene  
trichloroethene  
vinyl chloride  
bis(2-ethylhexyl)phthalate  
sec-butylbenzene  
cyclohexane  
1,2,4-trichlorobenzene  
benzo(b)pyrene  
2-methylnaphthalene  
acetone  
tert-butylbenzene  
chlorobenzene  
heptane

## EXHIBIT B

### Observations of Unpermitted Bulkhead Discharges into Newtown Creek

Date	Witness
February 6, 2002	Exxon
July 2, 2002	Exxon
July 10, 2002	Exxon
July 23, 2002	Exxon
August 1, 2002	Exxon
August 6, 2002	Exxon
August 13, 2002	Exxon
October 25, 2002	Riverkeeper
December 11, 2002	Riverkeeper
December 16, 2002	Exxon
January 8, 2003	Exxon
January 15, 2003	Exxon
January 20, 2003	Exxon
February 6, 2003	Exxon
February 13, 2003	Exxon
February 25, 2003	Exxon
March 11, 2003	Exxon
March 18, 2003	Exxon
March 20, 2003	Exxon
April 1, 2003	Exxon
April 8, 2003	Exxon
April 15, 2003	Exxon
April 22, 2003	Exxon
April 29, 2003	Exxon
May 5, 2003	Riverkeeper

May 6, 2003	Exxon
May 12, 2003	Riverkeeper
May 20, 2003	Exxon
May 29, 2003	Exxon
June 3, 2003	Exxon
June 9, 2003	Riverkeeper
June 10, 2003	Exxon
June 17, 2003	Exxon
June 24, 2003	Exxon
July 2, 2003	Exxon
July 9, 2003	Exxon
July 14, 2003	Exxon
July 22, 2003	Exxon
July 29, 2003	Exxon
August 5, 2003	Exxon
August 11, 2003	Riverkeeper
August 12, 2003	Riverkeeper and Exxon
August 19, 2003	Exxon
August 26, 2003	Exxon
August 27, 2003	Riverkeeper
September 4, 2003	Exxon
September 9, 2003	Exxon
September 10, 2003	Riverkeeper
September 18, 2003	Exxon
September 22, 2003	Riverkeeper
September 23, 2003	Exxon
September 29, 2003	Exxon
October 9, 2003	Exxon
October 14, 2003	Exxon

October 17, 2003	Riverkeeper
October 21, 2003	Exxon
October 30, 2003	Riverkeeper and Exxon
November 4, 2003	Exxon
November 11, 2003	Exxon
November 13, 2003	Riverkeeper
November 18, 2003	Exxon
November 25, 2003	Riverkeeper
November 26, 2003	Exxon
December 10, 2003	Exxon
December 15, 2003	Exxon
January 9, 2004	Exxon
February 13, 2004	Exxon
March 2, 2004	Exxon
March 3, 2004	Exxon
March 11, 2004	Exxon
March 15, 2004	Exxon
March 23, 2004	Exxon
March 25, 2004	Riverkeeper
April 7, 2004	Exxon
April 12, 2004	Exxon
April 20, 2004	Exxon and Riverkeeper
April 21, 2004	Riverkeeper
April 28, 2004	Exxon
April 29, 2004	Exxon
May 10, 2004	Riverkeeper
May 11, 2004	Exxon
May 13, 2004	Exxon
May 19, 2004	Exxon

May 24, 2004	Exxon
May 25, 2004	Riverkeeper
June 3, 2004	Exxon
June 5, 2004	Riverkeeper
June 15, 2004	Exxon
July 1, 2004	Riverkeeper
July 2, 2004	Riverkeeper
July 6, 2004	Riverkeeper
July 14, 2004	Exxon and Riverkeeper
July 15, 2004	Exxon and Riverkeeper
July 20, 2004	Exxon
July 28, 2004	Riverkeeper
July 29, 2004	Riverkeeper
August 4, 2004	Exxon
August 11, 2004	Exxon
August 12, 2004	Riverkeeper
August 13, 2004	Riverkeeper
August 14, 2004	Riverkeeper
August 15, 2004	Riverkeeper
August 16, 2004	Riverkeeper
August 17, 2004	Riverkeeper
August 18, 2004	Exxon and Riverkeeper
August 19, 2004	Riverkeeper
August 26, 2004	Exxon
September 3, 2004	Exxon
September 23, 2004	Riverkeeper
November 2, 2004	Exxon

November 11, 2004	Exxon
November 12, 2004	Riverkeeper
November 15, 2004	Riverkeeper
November 22, 2004	Exxon
December 8, 2004	Riverkeeper
December 14, 2004	Riverkeeper
December 16, 2004	Riverkeeper
February 2, 2005	Exxon
February 9, 2005	Exxon
March 10, 2005	Exxon
March 15, 2005	Exxon
March 22, 2005	Exxon
April 5, 2005	Riverkeeper
April 7, 2005	Riverkeeper
April 12, 2005	Riverkeeper
April 13, 2005	Riverkeeper
April 15, 2005	Riverkeeper
May 31, 2005	Riverkeeper
June 21, 2005	Riverkeeper
July 28, 2005	Riverkeeper
July 29, 2005	Riverkeeper
August 26, 2005	Riverkeeper
September 1, 2005	Riverkeeper
September 20, 2005	Riverkeeper
October 14, 2005	Chevron
October 28, 2005	Riverkeeper
November 1, 2005	Riverkeeper
November 3, 2005	Riverkeeper

November 5, 2005	Riverkeeper
November 7, 2005	Riverkeeper
November 9, 2005	Riverkeeper
December 1, 2005	Riverkeeper
December 2, 2005	Riverkeeper
December 8, 2005	Chevron
December 15, 2005	Riverkeeper
December 16, 2005	Riverkeeper
December 20, 2005	Chevron
December 23, 2005	Chevron
December 27, 2005	Chevron
December 30, 2005	Chevron
January 6, 2006	Chevron
January 10, 2006	Chevron
January 24, 2006	Chevron
January 27, 2006	Chevron
February 3, 2006	Chevron
February 7, 2006	Chevron
February 8, 2006	Riverkeeper
February 14, 2006	Chevron
February 23, 2006	Chevron
March 6, 2006	Chevron
March 20, 2006	Chevron
March 23, 2006	NYSDEC
March 27, 2006	Chevron
April 18, 2006	Chevron
April 20, 2006	Chevron
May 1, 2006	Chevron
May 11, 2006	Riverkeeper

May 17, 2006	NYSDEC
May 22, 2006	NYSDEC
May 23, 2006	NYSDEC
May 30, 2006	Riverkeeper and NYSDEC
May 31, 2006	Riverkeeper and NYSDEC
June 1, 2006	NYSDEC
June 2, 2006	NYSDEC
June 5, 2006	NYSDEC
June 6, 2006	NYSDEC
June 7, 2006	NYSDEC
June 19, 2006	NYSDEC
June 20, 2006	NYSDEC
June 21, 2006	NYSDEC
June 28, 2006	NYSDEC
July 5, 2006	NYSDEC
July 6, 2006	NYSDEC
July 7, 2006	Riverkeeper and NYSDEC
July 10, 2006	NYSDEC
July 11, 2006	NYSDEC
July 12, 2006	NYSDEC
July 14, 2006	NYSDEC
July 17, 2006	NYSDEC
July 18, 2006	NYSDEC
July 24, 2006	NYSDEC
July 26, 2006	Riverkeeper
July 27, 2006	NYSDEC and Riverkeeper
August 1, 2006	NYSDEC
August 2, 2006	NYSDEC

August 15, 2006	NYSDEC
August 17, 2006	Riverkeeper
August 28, 2006	NYSDEC
August 29, 2006	NYSDEC
August 30, 2006	NYSDEC
September 5, 2006	NYSDEC
September 6, 2006	NYSDEC
September 7, 2006	NYSDEC
September 8, 2006	Riverkeeper
September 11, 2006	NYSDEC
September 12, 2006	NYSDEC
September 13, 2006	NYSDEC
September 14, 2006	NYSDEC
September 18, 2006	Riverkeeper
October 3, 2006	NYSDEC
October 4, 2006	NYSDEC
October 13, 2006	Riverkeeper
October 16, 2006	Riverkeeper
October 18, 2006	Riverkeeper
October 24, 2006	NYSDEC
October 25, 2006	NYSDEC
October 31, 2006	NYSDEC
November 8, 2006	NYSDEC
November 10, 2006	Riverkeeper
November 14, 2006	NYSDEC
November 15, 2006	Riverkeeper and NYSDEC
November 16, 2006	NYSDEC
November 17, 2006	NYSDEC

November 18, 2006	NYSDEC
November 21, 2006	NYSDEC
November 27, 2006	NYSDEC
November 28, 2006	NYSDEC
November 29, 2006	NYSDEC
December 17, 2006	Riverkeeper
December 18, 2006	Riverkeeper
January 2, 2007	NYSDEC
January 25, 2007	Riverkeeper