



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**

ExxonMobil Corporation  
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Irving, Texas 75039-2298

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

ExxonMobil Corporation  
Corporation Service Company  
Registered Agent in New York State  
80 State Street  
Albany, New York 12207

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

Steve P. Trifiletti  
ExxonMobil Refining & Supply Company  
Global Remediation  
Inwood Terminal  
464 Doughty Boulevard  
Inwood, New York 11096

BP America Inc.  
4101 Winfield Rd.  
Warrenville, Illinois 60555

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

BP America Inc.  
CT Corporation System  
Registered Agent in New York State  
111 Eighth Ave.  
New York, New York 10011

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

Phelps Dodge Corporation  
One North Central Ave.  
Phoenix, Arizona 85004-4416

Phelps Dodge Corporation  
CT Corporation System  
Registered Agent in New York State  
111 Eighth Ave.  
New York, New York 10011

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

Keyspan Corporation  
One Metrotech Center  
Brooklyn, New York 11201

RE: Notice of Intent to Sue ExxonMobil Corporation, ExxonMobil Refining & Supply Company, Chevron Corporation, Chevron Environmental Management Company, BP America Inc., Phelps Dodge Corporation, and Keyspan Corporation for Violations of the Resource Conservation and Recovery Act in Greenpoint, Brooklyn, New York

Dear Sirs and Madams:

The State of New York (State) hereby gives notice of its intent to sue ExxonMobil Corporation and its affiliate, ExxonMobil Refining & Supply Company (together “Exxon”), Chevron Corporation and its affiliate, Chevron Environmental Management Company (together “Chevron”), BP America Inc. (BP), Phelps Dodge Corporation (PD), and Keyspan Corporation (Keyspan) under 42 U.S.C. § 6972(a)(1)(B) for violating the federal Resource Conservation and Recovery Act (RCRA) by creating an imminent and substantial endangerment to health and the environment in Newtown Creek (the Creek) and portions of the adjacent shoreline. In its action, the State will seek injunctive relief under RCRA for solid or hazardous waste contamination of soils and groundwaters, and the surface waters and sediments of the Creek, all of which may pose, separately and collectively, an imminent and substantial endangerment to the health of Greenpoint’s residents and to the Creek and its surrounding environs. The State’s ultimate goal is the cleanup of the Creek.

#### **I. The Contamination of Newtown Creek with RCRA Solid or Hazardous Wastes**

An historic and underappreciated resource, Newtown Creek is a 3.5-mile-long waterway that separates Queens and Brooklyn, New York and that flows into the East River, making it a tributary of the invaluable New York Harbor. The Creek itself has several tributaries – Whale Creek, Dutch Kills, Maspeth Creek, and English Kills – and approximately 170 acres of sediment bed.

Recent samples of the Creek’s surface waters and sediments have revealed that industrial wastes, including petroleum, are present in the Creek. Attached as Exhibit A is a list of the wastes, or chemicals, currently found in the Creek. Some of those listed – for example, arsenic, lead, copper, various polychlorinated biphenyls (PCBs), various pesticides, various polynuclear aromatic hydrocarbons (PAHs), various semi-volatile organic compounds (SVOCs), and various volatile organic compounds (VOCs) – are known to be toxic or carcinogenic. Most, if not all, of

the chemicals listed in Exhibit A are solid or hazardous wastes under RCRA when, as here, they have been discarded.

The presence of these RCRA wastes in the Creek's waters and sediments may pose a threat to the health of its citizens and residents – in particular, nearby residents, subsistence fishers and crabbers, and recreational users. The continued presence of these wastes may also pose a threat to the Creek's aquatic life – fish, shellfish, crustaceans, and plants – and to any birds – waterfowl and wading birds, for instance – that migrate through or eat biota from the Creek. In addition, the Creek's contamination endangers the various other natural resources that exist within the Creek's ecosystem – its surface waters, its sediments, and its tidal wetlands, among others. Finally, the Creek's pollution may also pose a threat to the overall water quality of New York Harbor.

## **II. The RCRA Solid or Hazardous Wastes Disposed of by Exxon, Chevron, BP, Phelps Dodge, and Keyspan Created an Imminent and Substantial Endangerment**

Each of the companies noticed here by the State have contributed or are contributing solid or hazardous wastes to the current contamination of the Creek's waters and sediments and adjacent land areas, and therefore bear responsibility for creating environmental conditions that may pose an imminent and substantial endangerment to public health and the environment, all in violation of RCRA.

### **A. Exxon**

Since at least the early 1900's, if not earlier, Exxon and its predecessors, including the Standard Oil Company, the Standard Oil Company of New York, and Mobil Oil Company, have owned and operated petroleum refinery and storage facilities – at times known as the Brooklyn Terminal – located in the Greenpoint neighborhood of Brooklyn. At one point, these facilities included a large tank farm property (now a part of the Newtown Creek Wastewater Treatment Plant) and a refinery and storage facility that encompassed all of the land now bounded by North Henry Street, Greenpoint Avenue, Norman Avenue, Apollo Street, and Newtown Creek. Exxon still owns an inactive petroleum storage facility within that area.

During the many decades of Exxon's operation of its Greenpoint petroleum refinery and storage facilities, Exxon spilled, leaked, or otherwise discarded at least seventeen million gallons of various petroleum products and other non-petroleum pollutants from its Greenpoint facilities into the surrounding environment, including into the soils, subsurface soils, groundwater, and the waters and sediments of Newtown Creek. This widespread contamination has formed a massive plume of underground petroleum and other pollutants in the Greenpoint area (the Spill). Vapors from the Spill's pollutants continue to present ongoing health risks to the people of Greenpoint.

Exxon's disposal of solid or hazardous wastes is ongoing as the Spill's pollutants continue to move into the Creek through seeps in shoreline bulkheads located at the Peerless

Importers and Steel Equities properties<sup>1</sup> and, on information and belief, through contaminated groundwater flowing into the Creek. Exxon also continues to dispose of solid or hazardous wastes through its on-site and off-site free product recovery systems, which are currently discharging into the Creek solid or hazardous wastes not authorized by any federal or state permit or equivalency.

Many, if not all, of the solid or hazardous wastes disposed of, or being disposed of, by Exxon have been detected in the recent sampling of the Creek's surface waters and sediments, *see* the attached Exhibit A, and have also been detected in recent groundwater sampling in the Greenpoint area, *see* the attached Exhibit B. Creek sediment samples also found petroleum - as much as 10% of the dry weight of the sample.

B. Chevron

Chevron, and its predecessors, including Paragon Oil Company and Texaco Inc., owned and operated a petroleum storage facility that was located in Greenpoint, Brooklyn at the corner of Bridgewater Street and Meeker Avenue and which bordered the Creek. During the course of its ownership and operation of this facility, Chevron and its predecessors spilled, released, and otherwise disposed of petroleum and other contaminants into the environment in the area of its facility, which contaminants entered the subsurface, soils, and groundwater, as well as the surface waters and sediments of the Creek and its tributaries. For years, and continuing to the present, contaminants from these releases have discharged into the adjacent Creek through gaps, cracks, and fissures in a bulkhead along the Creek at the site of the facility, which is now known as the Peerless Importers property. These bulkhead discharges are ongoing.

Many, if not all, of the solid or hazardous wastes disposed of, or being disposed of, by Chevron have been detected in the recent sampling of the Creek's surface waters and sediments, *see* the attached Exhibit A, and have also been detected in recent groundwater sampling in the Greenpoint area, *see* the attached Exhibit B. Creek sediment samples also found petroleum - as much as 10% of the dry weight of the sample.

C. BP

BP, including a predecessor, Amoco, owns and operates the BP Amoco Bulk Storage Facility located at Norman Avenue and Apollo Street in Greenpoint, Brooklyn, adjacent to the Creek. During the course of its ownership and operation of the facility, BP spilled, released, and otherwise disposed of petroleum and other pollutants into the environment in the area of its facility and those pollutants entered the subsurface, soils, and groundwater, as well as the surface waters and sediments of the Creek and its tributaries. Petroleum and other pollutants from the

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<sup>1</sup> The Peerless Importers property is located at 26 Bridgewater Street and Meeker Avenue (Block #2666, Lots 1, 52, 125), and the Steel Equities property is located at 100 and 120 Apollo Street and Bridgewater Street (Block #2666, Lots 101 and 201).

BP facility have migrated through the subsurface and merged with contaminants from Exxon's Spill, eventually discharging into the Creek's waters and sediments. Exxon, Chevron, and BP together will hereafter be referred to as the "oil companies."

Many, if not all, of the solid or hazardous wastes disposed of, or being disposed of, by BP have been detected in the recent sampling of the Creek's surface waters and sediments, *see* the attached Exhibit A, and have also been detected in recent groundwater sampling in the Greenpoint area, *see* the attached Exhibit B. Creek sediment samples also found petroleum - as much as 10% of the dry weight of the sample.

D. Phelps Dodge

Phelps Dodge operated a copper smelting plant on its Laurel Hill site, located on the north bank of the Creek downstream of Maspeth Creek and east of the Kosciuszko Bridge. This site is a State Superfund Site listed on the State's Registry of Inactive Hazardous Waste Disposal Sites as Site No. 241002. The primary contaminants of concern at the PD site are heavy metals, including cadmium, chromium, copper, lead, and mercury, as well as PAHs and PCBs. Past discharges, spills, leaks, and disposal from the facility's operation caused sediment contamination in the Creek and those sediments serve as continuing sources of contaminant releases. Many, if not all, of the solid or hazardous wastes disposed of by PD have been detected in recent sampling of the Creek's surface waters and sediments. *See* Exhibit A, attached hereto.

E. Keyspan

Keyspan Corporation, and its predecessors, are past and present owners and operators of several manufactured gas plant (MGP) facilities along Newtown Creek. Specifically, Keyspan has owned and operated three sites: (1) the Greenpoint Energy Center site, a manufactured gas plant (MGP) located at 287 Maspeth Avenue, Brooklyn, New York and adjacent to the Creek; (2) the Equity Works MGP site, located at Maspeth Avenue, Brooklyn and in close proximity to the Creek; and (3) the Scholes Street Holder Station site, located at 338 and 350 Scholes Street, Brooklyn, New York and also in close proximity to the Creek.

Keyspan's operations at these three facilities resulted in the release into the environment of a wide variety of contaminants, including arsenic, metals, PCBs, petroleum products, VOCs, chlorinated solvents, SVOCs, and ferro-ferric cyanide complexes. These solid or hazardous wastes have entered the soil, subsurface, and groundwater at Keyspan's facilities and, on information and belief, the surface waters and sediments of the Creek. These wastes continue to exist in the Creek's sediments and thus serve as continuing sources of contaminant releases.

Many, if not all, of the solid or hazardous wastes disposed of, or being disposed of, by Keyspan have been detected in the recent sampling of the Creek's surface waters and sediments.

See Exhibit A, attached hereto. Many, if not all, have also been detected in soil sampling at the Keyspan Greenpoint Energy Center site. See Exhibit C, attached hereto.

### **III. The State of New York's Intention to File Suit**

In light of all the facts described above, the oil companies, PD, and Keyspan, as past or present generators, transporters, or owners and operators of facilities where solid or hazardous wastes were treated, stored, or disposed of, have contributed, or are contributing, to the past or present handling, storage, treatment, transportation, or disposal of solid and of hazardous wastes in such a way as to have created an imminent and substantial endangerment at their facilities, as well as in the Creek and its surrounding environs. Pursuant to the RCRA citizen suit provision, 42 U.S.C. § 6972(a)(1)(B), the State accordingly intends to sue these companies for “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.” RCRA defines disposal as a “discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.” See 42 U.S.C. § 6903(3).

The oil companies, PD, and Keyspan are in violation of RCRA's imminent and substantial endangerment provision until such time as they cease to dispose of pollutants, and until such pollutants are remediated by them. At the close of the 90-day notice period, the State intends to file a citizen suit against the oil companies, PD, and Keyspan pursuant to 42 U.S.C. § 6972(a)(1)(B). The State intends to seek all available injunctive relief for the companies' creation of an imminent and substantial endangerment in violation of RCRA, as well as the State's legal fees and costs.

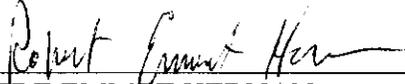
The claims set forth above are not exclusive. This Notice of Intent to Sue is sent without waiver of or any prejudice to the rights of the State of New York, the Attorney General of the State of New York, or any other agency or officer of the State of New York to advance any additional or further legal 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. During the 90-day RCRA notice period, the State will be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, please initiate those discussions within ten (10) days of receiving this notice so that a meeting can be arranged and settlement negotiations may be completed before the end of the notice period. If you wish to discuss these matters further, please do not hesitate to contact the undersigned. At the close of the 90-day notice period, unless significant progress is made in remedying these

violations, the State intends to file a citizen suit against the oil companies, PD, and Keyspan under 42 U.S.C. § 6972(a)(1)(B).

Sincerely,

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<b>EXHIBIT A</b>		
<b>POLLUTANTS IN NEWTOWN CREEK</b>		
<b>SEDIMENTS AND SURFACE WATER</b>		
<b>MARCH, JULY 2004</b>		
	<b>SEDIMENT</b>	<b>SURFACE WATER</b>
<b>METALS</b>		
Aluminum	X	X
Antimony	X	X
Arsenic	X	
Barium	X	X
Cadmium	X	
Calcium	X	X
Chromium	X	
Cobalt	X	
Copper	X	X
Iron	X	X
Lead	X	X
Magnesium	X	X
Manganese	X	X
Mercury	X	
Nickel	X	
Potassium	X	X
Selenium	X	
Sodium	X	X
Vanadium	X	
Zinc	X	X
<b>PCBs (Polychlorinated</b>		
<b>Biphenyls)</b>		
Aroclor 1242	X	
Aroclor 1254	X	
Aroclor 1260	X	
<b>PESTICIDES</b>		
4,4-DDD	X	
4,4-DDE	X	X
4,4-DDT	X	X
Aldrin		X
Alpha-chlordane	X	
Beta-BHC		X
Gamma-BHC(Lindane)		X
Gamma chlordane	X	
Dieldrin	X	
Endosulfan		X
Endrin Aldehyde		X
Gamma-BHC		X
Heptachlorepoxyde		X
<b>PAHs</b>		
Acenaphthene	X	X
Anthracene	X	
Benzo(a)anthracene	X	
Benzo(a)pyrene	X	
Benzo(b)fluoranthene	X	
Benzo(g,h,i)perylene	X	
Benzo(k)fluoranthene	X	
Chrysene	X	
Dibenz(a,h)anthracene	X	
Fluoranthene	X	
Fluorene	X	
Indeno(1,2,3)pyrene	X	

Naphthalene	X	X
Phenathrene	X	
Pyrene	X	
<b>SVOCs (Semi-volatile Organic Compounds)</b>		
Acenaphthylene	X	
Acetophenone	X	X
Benzaldehyde	X	
biphenyl	X	
Bis(2-Ethylhexyl)phthalate	X	
Butylbenzylphthalate	X	
Dibenzofuran	X	
2,4-Dichlorophenol		X
Di-n-butylphthalate	X	
Di-n-octylphthalate	X	
2-Methylnaphthalene	X	
4-Methylphenol	X	
2-Methylnaphthalene	X	
<b>VOCs (Volatile Organic Compounds)</b>		
1,2-Dichlorobenzene	X	
1,4-Dichlorobenzene	X	X
2-Butanone(MEK)	X	
Acetone	X	
Benzene	X	X
Carbon Disulfide	X	
Chloroform		X
cis-1,2-Dichloroethene		X
Cyclohexane	X	
Ethylbenzene	X	
Isopropylbenzene	X	
Methyl acetate		X
Methyl cyclohexane	X	
Methyl Tert Butyl Ether	X	X
Methylene chloride	X	X
Tetrachloroethane	X	
Toluene	X	
Trichloroethene	X	X
Xylene	X	X
<b>DIOXINS AND FURANS</b>		
Octachlorodibenzofuran	X	
Octachlorodibenzo-p-dioxin	X	
Heptachlorodibenzofuran	X	
Heptachlorodibenzo-p-dioxin	X	
Pentachlorodibenzofuran	X	
Pentachlorodibenzo-p-dioxin	X	
Tetrachlorodibenzofuran	X	
Tetrachlorodibenzo-p-dioxin	X	
<b>OTHERS</b>		
Ammonia		X
Bromide		X
Chloride		X
Nitrite/Nitrate		X
Sulfate		X
Total Dissolved Solids		X
Total Suspended Solids		X

**EXHIBIT B**  
**POLLUTANTS FOUND IN GROUNDWATER**

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  
naphthalene  
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 C**  
**POLLUTANTS FOUND IN SOILS AT KEYSpan SITE**  
**MARCH 2004**

acetone  
2-butanone  
benzene  
toluene  
ethylbenzene  
xylenes  
tetrachloroethene  
styrene  
naphthalene  
2-nethylnaphthalene  
acenaphthylene  
acenaphthene  
dibenzofuran  
fluorene  
4,6-dinitro-2-methylphenol  
phenanthrene  
anthracene  
carbazole  
fluoranthene  
pyrene  
benzo(a)anthracene  
chrysene  
bis(2-ethylhexyl)phthalate  
benzo(b)fluoranthene  
benzo(k)fluoranthene  
benzo(a)pyrene  
indeno(1,2,3-cd)pyrene  
dibenzo(a,h)perylene  
arsenic  
barium  
cadmium  
chromium  
cyanide  
lead  
mercury  
selenium  
silver