

VIA CERTIFIED MAIL



January 20, 2004

ExxonMobil Corporation  
c/o Corporation Service Company  
80 State Street  
Albany, NY 12207

ExxonMobil Corporation  
5959 Las Colinas Boulevard  
Irving, TX 75039

Mobil Corporation  
400 Kingsland Avenue  
Brooklyn, NY 11222

Mobil Corporation  
c/o Prentice-Hall Corporation System, Inc.  
80 State Street  
Albany, NY 12207

Frank A. Risch  
Mobil Corporation  
5959 Las Colinas Boulevard  
Irving, TX 75039

BP Amoco Corporation  
c/o Prentice-Hall Corporation System, Inc.  
80 State Street  
Albany, NY 12207

R.J. Pillari  
BP Corporation North America, Inc.  
4101 Winfield Road  
Warrenville, IL 60555

BP Products North America, Inc.  
200 E. Randolph Drive  
Chicago, IL 60601

BP Amoco  
315 Norman Avenue  
Brooklyn, NY 11222

Texaco Inc.  
The Prentice-Hall Corporation System, Inc.  
80 State Street  
Albany, NY 12207

Texaco Inc.  
c/o ChevronTexaco Corp / #5319  
Tax Dept / 2613 Camino Ramon  
San Ramon, CA 94583

J.E. Bethancourt  
Texaco Inc.  
6001 Bollinger Canyon Road  
San Ramon, CA 94583

John T. Magliocco  
Peerless Importers, Inc.  
16 Bridgewater Street  
Brooklyn, NY 11222

The "181 Lawrence Avenue Realty"  
Company  
2 Meeker Avenue  
Brooklyn, NY 11211

Roux Associates, Inc.  
c/o Lazer, Aptheker, Feldman, Rosella & Yedid  
225 Old Country Road  
Melville, NY 11747-2712

RE: Notice of Intent to Sue ExxonMobil Corporation, Mobil Corporation, BP Amoco Corporation, BP Corporation North America, Inc., Texaco, Inc., Roux Associates, Inc., and Peerless Importers, Inc./ The "181 Lawrence Avenue Realty" Company for Resource Conservation and Recovery Act Violations in Greenpoint, New York.

Dear Sirs and Madams:

This letter constitutes Riverkeeper's and co-plaintiffs' NOTICE OF INTENT TO SUE the ExxonMobil Corporation, Mobil Corporation, BP Amoco Corporation, BP Corporation North America, Inc., Texaco, Inc., Roux Associates, Inc., Peerless Importers, Inc./ The 181 Lawrence Avenue Realty Company, and the above-referenced executives and officers (hereafter "oil companies, Roux, and Peerless") as present or past owners or operators of the following sites and facilities under 42 U.S.C. section 6972(a)(1)(B) for violations of the federal Resource Conservation and Recovery Act ("RCRA"): Mobil Storage Terminal, 400 Kingsland Avenue, Brooklyn, NY 11222; BP Amoco Bulk Storage Facility, 315 Norman Avenue, Brooklyn, NY 11222; the former Mobil Oil Refinery located in the entire area east of Kingsland Avenue between Greenpoint Avenue south to Norman Avenue (presently the BP Amoco Bulk Storage Facility and identified as Borough 3 - Block 2612 - Lot 75); the former Paragon Oil Co./Texaco Inc. facility (hereafter "Paragon/Texaco facility") located north of Bridgewater Street and west of Meeker Avenue (presently owned and/or operated by Peerless Importers, Inc. and identified in part as the following three (3) lots: Borough - 3, Block - 2666, Lots - 125, 52 and 1, with addresses at 927 Meeker Avenue, Brooklyn NY 11222, 42 Bridgewater Street, Brooklyn, NY 11222, and 44 Bridgewater Street Brooklyn, NY 11222); and ExxonMobil's product recovery system located on and adjacent to the aforementioned sites and operated by Roux. Specifically, this letter gives notice of our intent to seek redress for ongoing petroleum product contamination of ground waters, surface waters, soil, and sediment, conditions which have created an imminent and substantial endangerment to health and the environment, in violation of RCRA.

Riverkeeper, Inc., whose contact information is P.O. Box 130, Garrison, NY, (845) 424-4149, is a non-profit, environmental watchdog organization that protects and safeguards the ecological integrity of the Hudson River, its tributaries, and the New York City Drinking Water Supply Watershed. On behalf of our members, we routinely file citizen suits under RCRA to prevent and remediate environmental pollution problems. Many of our members and constituents live near and routinely recreate in and on Newtown Creek. Co-plaintiff Teresa Toro, whose mailing address is 146 Java Street, Brooklyn, NY, 11222, is a neighbor of the aforementioned facilities, and a user and enjoyer of Newtown Creek. Co-plaintiff Rolf Carle, whose mailing address is 146 Java Street, Brooklyn, NY, 11222, is a neighbor of the aforementioned facilities, and a user and enjoyer of Newtown Creek. Co-plaintiff William Schuck, whose mailing address is 99 Commercial Street, Brooklyn, NY, 11222, lives on the shore of Newtown Creek and uses and enjoys its waters. Co-plaintiffs Michael and Laura Hoffman, whose mailing address is 127 Dupont Street, Brooklyn, NY, 11222-1145, are neighbors of the aforementioned facilities, and are users and enjoyers of Newtown Creek. Co-

plaintiff Bernard Ente, whose mailing address is P.O. Box 780568, Maspeth, NY 11378, is a user and enjoyer of Newtown Creek. Co-plaintiff Deborah Masters, whose mailing address is 475 Kent Street, 7<sup>th</sup> Floor, Brooklyn, NY 11211, is a user and enjoyer of Newtown Creek.

Pursuant to the RCRA citizen suit provision, 42 U.S.C. section 6972, we place the oil companies and Peerless on notice that we intend to sue them as present or past owners or operators of the Mobil Storage Terminal, BP Amoco Bulk Storage Facility, former Mobil Oil Refinery, the former Paragon/Texaco facility/present Peerless site (collectively "the facility sites") and Roux on notice that we intend to sue it as present or past owner or operator of a free product recovery system located on, but not limited to, the facility sites, 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 . . ." See 42 U.S.C. § 6972(a)(1)(B); See 87<sup>th</sup> Street Owners Corp. v. Carnegie Hill, 251 F. Supp. 2d. 1215 (S.D.N.Y. 2002).

The oil companies, Roux, and Peerless have disposed of petroleum product from numerous locations, including but not limited to the named facility sites. The current buildup of petroleum product in the groundwater and soils of Greenpoint, Brooklyn, beneath and beyond the named facility sites, and the ongoing discharge to surface waters and sediment of Newtown Creek and its tributaries, presents an imminent and substantial endangerment to health and the environment.

Disposal is defined 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 40 CFR § 260.10. Approximately seventeen (17) million gallons of petroleum products (including, but not limited to, unleaded gasoline, diesel fuel, kerosene, No. 2 fuel oil and/or a gasoline distillate) leaked from storage tanks located on the facility sites and formed a 55 acre underground plume roughly stretching from the banks of Newtown Creek, south to Anthony Street, west to Morgan Street, and east to Scott Street, beneath residential and industrial Greenpoint, Brooklyn. At least two (2) smaller spill areas, along Kingsland Avenue (2 acres) and at the Mobil Storage Terminal (1 acre), are under facility sites and may be contiguous to the larger spill.

To the best of our knowledge, the Mobil Storage Terminal products include or included, but are not limited to, gasoline, fuel oil, kerosene and naphtha; the BP Amoco Bulk Storage Facility products include or included, but are not limited to, No. 2 fuel oil, regular gasoline, premium gasoline and kerosene. The former Mobil Oil Refinery stored products included, but were not limited to, naphtha, Sovasol (a solvent), gasoline, gas oil and fuel oil, and its manufactured products included, but were not limited to, Sovasol nos. 1 – 6, gasoline, kerosene, No. 2 fuel oil, No. 6 fuel oil and refinery oil; the former Paragon/Texaco storage facility products included, but were not limited to, gasoline, kerosene, diesel fuel, No.2 fuel oil, No.4 fuel oil, No.6 fuel oil, and lube oil.<sup>1</sup> These products contain such hazardous constituents as: benzene,

<sup>1</sup> See Geraghty & Miller, Inc.; Report: Investigation of Underground Accumulation of Hydrocarbons Along Newtown Creek Brooklyn, New York; (July 1979).

anthracene, ethylbenzene, fluoranthene, fluorine, n-hexane, naphthalene, toluene, m-xylene, p-xylene, xylenes, 1-methyl naphthalene, cumene, benzo(a)pyrene, benz(a)anthracene, indeno(1,2,3-cd)pyrene, dibenz(a,h)anthracene, chrysene, benzo(b)fluoranthene, and benzo(k)fluoranthene, lead, MTBE, TBA, lead, and other detergents, dyes, antioxidants, metal deactivators, corrosion inhibitors, octane enhancers, and sulpher.

Roux operates a free-product recovery system on and adjacent to the facility sites, working to recover petroleum products including, but not limited to, the aforementioned products. This system consists of underground product recovery sumps and wells. Additionally, Roux operates product recovery booms in Newtown Creek. Public records at the New York State Department of Environmental Conservation reveal that ExxonMobil and Roux own and operate the boom containment system currently anchored to the Peerless properties bulkheads.

"Petroleum is considered a hazardous and solid waste under RCRA." Bologna v. Kerr-McGee Corp., 95 F. Supp. 197, 201 (S.D.N.Y. 2000); see also Singer v. Bulk Petroleum Corp., 9 F. Supp. 2d. 916, 920 (N.D. Ill. 1998) (denying defendant's motion to dismiss RCRA claim arising out of petroleum leak, as complaint "specifically alleged that petroleum products have migrated through the soil, that petroleum contamination remains in the soil and groundwater near the site, and that such contamination requires a response."); United States v. Hill, No. 95-CV-1716, 1998 WL 278291, at \*3 (N.D.N.Y. May 20, 1998) (leakage of petroleum into surrounding soil constitutes disposal of solid waste under RCRA); Aurora Nat'l Bank v. Tri Star Mktg., Inc., 990 F. Supp. 1020, 1027 (N.D.Ill. 1998) (same).

The mere presence of petroleum products in ground or surface waters can cause environmental harm. See 87<sup>th</sup> Street Owners Corp. v. Carnegie Hill, 251 F. Supp. 2d. 1215, 1219 (S.D.N.Y. 2002) ("Evidence of ground water contamination by oil . . . could itself support a finding of environmental harm."); Domermuth Petroleum Equipment & Maintenance Corp. v. Herzog & Hopkins, Inc., 111 A.D.2d 957, 959 (N.Y. App. Div. 1985) ("Judicial notice was taken of the common knowledge that oil can seep through the ground into surface and groundwater and thereby cause ecological damage.").

Presently, between thirteen (13) and seventeen (17) million gallons of petroleum product, or more, lies beneath and adjacent to the named facilities, within and around an aquifer, and seeps through bulkheads into Newtown Creek. The mere presence of the petroleum product in the ground and surface waters can support a finding of environmental harm. However, there are specific dangers that should be noted as well.

The Brooklyn aquifer is frequently cited as a desperately needed drinking water source in the case of a drought, loss of upstate reservoirs or the failure of connecting aqueducts. Due to the presence of carcinogenic hydrocarbons, the aquifer cannot be directly tapped as a drinking water source. However, the contaminated Brooklyn aquifer is part of the larger Long Island Aquifer System and serves as a recharge zone for the aquifers in the southeastern portion of

Queens County that are tapped as a source for drinking water.<sup>2</sup> Thus, although the contaminated Brooklyn aquifer is not a direct source of drinking water, it is part of a larger system that is used for drinking water.

Additionally, petroleum product seepage into Newtown Creek surface waters has both local and far reaching impacts. On a daily basis, sheens of oil float on the surface of Newtown Creek, creating a stench, releasing toxins into the air, and endangering aquatic habitats and water quality. On the following occasions Riverkeeper conducted patrols on Newtown Creek: October 25, 2002; December 11, 2002; May 5, 2003; May 12, 2003; June 9, 2003; August 11, 2003; August 12, 2003; August 27, 2003; September 10, 2003; September 22, 2003; October 17, 2003; October 30, 2003; November 13, 2003; and November 25, 2003. During these patrols Riverkeeper observed significant seepage of petroleum product from the bulkhead of Peerless Importers, Inc., located west of Meeker Avenue and north of Bridgewater Street. ExxonMobil and Roux operate containment booms in Newtown Creek, along Peerless' permeable bulkheads, in an attempt to catch the discharged petroleum product. Some of the product is caught in the boom and is then partially retrieved during a weekly skimming process. Some of the product also escapes the boom, traveling with the tide of Newtown Creek and its tributaries. Newtown Creek is a navigable and tidal waterway, its ebb and flow dependent on the East River, which, in turn, flows into to the Hudson River. The tidal nature of these interconnecting water bodies cause pollutants to travel quickly and for great distances, thereby causing grave environmental impacts. Consequently, recreational users of Newtown Creek, the East River and the Hudson River risk exposure to carcinogens; particularly subsistence anglers fishing at the mouth of the Newtown Creek and around New York Harbor. The oil companies, Roux, and Peerless have owned and operated their properties, bulkheads, and containment booms in such a manner as to discharge pollutants into these waters of the United States on a constant and continuing basis for at least the last 5 years, but in all likelihood since the 1950s when the oil companies' predecessors first caused a massive 17 million gallon petroleum spill at adjacent oil terminal site(s) on Newtown Creek in Greenpoint.

The oil companies, Roux, and Peerless are in violation of RCRA's imminent and substantial endangerment provisions, until such time as they cease to dispose of pollutants in such a manner, and until such pollutants are remediated. At the close of the 90-day notice period, we intend to file a citizen suit against the oil companies, Roux, and Peerless pursuant to 42 U.S.C. section 6972(a)(1)(B). We intend to seek injunctive relief for the creation of an imminent and substantial endangerment in violation of RCRA. This Notice of Intent to Sue covers all RCRA violations by the oil companies preceding the date of this letter and covers all future violations arising from its continued operations.

This Notice of Intent to Sue sufficiently states grounds for filing suit. During the 90-day RCRA notice period, we 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, we suggest that you 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 periods.

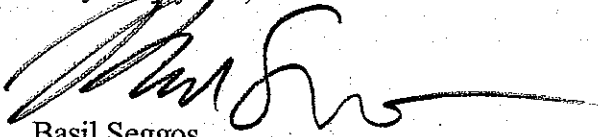
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<sup>2</sup> See Brooklyn-Queens Aquifer System; <http://www.epa.gov/region02/water/aquifer/brooklyn/brooklyn.htm>.

At the close of the 90-day notice periods, unless significant progress is made in remedying these violations, we intend to file a citizen suit against the oil companies, Roux, and Peerless under RCRA section 42 U.S.C. section 6972(a)(1)(B).

If you wish to discuss these matters further, please do not hesitate to contact the undersigned at (845)-424-4149 x 230. Karl Coplan of the Pace Environmental Litigation Clinic will be representing Riverkeeper and co-plaintiffs in this matter. He can be reached at (914)-422-4343.

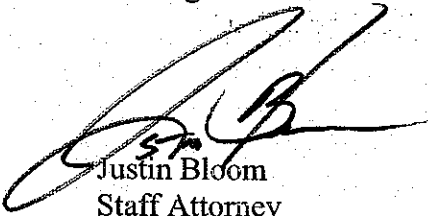
Very truly yours,



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Cc:

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Newtown Creek Alliance  
Via email