

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Northern Great Kills Civic Association, Inc.

(b) County of Residence of First Listed Plaintiff Richmond County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Keri N. Powell (atty of record), Deborah Goldberg, Earthjustice, 116 John St., Suite 3100, NY, NY 10038; (212) 791-1881

DEFENDANTS

The City of New York

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

Michael A. Cardozo, Corporation Counsel of the City of New York; Christopher G. King, Assistant Corporation Counsel

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify)
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 U.S.C. 6972(a)(1)(B)

Brief description of cause:

Citizen suit to compel city to eliminate endangerment posed by Brookfield Ave. Landfill contamination

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE C. Sifton, S.J.; C.L. Pollak, M.J.DOCKET NUMBER 08-2539

DATE

SIGNATURE OF ATTORNEY OF RECORD

10-14-2008Keri N. Powell

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFF _____ JUDGE _____ MAG. JUDGE _____

ARBITRATION CERTIFICATION

I, _____, counsel for _____ do hereby certify pursuant to the Local Arbitration Rule 83.10 that to the best of my knowledge and belief the damages recoverable in the above captioned civil action exceed the sum of \$150,000 exclusive of interest and costs. _____ Relief other than monetary damages is sought.

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

None

Please refer to NY-E Division of Business Rule 50.1(d)(2)

1.) Is the civil action being filed in the Eastern District of New York removed from a New York State court located in Nassau or Suffolk County: No

2.) If you answered "no" above:

a.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County? No

b.) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District? Yes

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County? _____

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes ✓

No _____

Are you currently the subject of any disciplinary action(s) in this or any other state or federal court?

Yes _____ (If yes, please explain)

No ✓

Please provide your E-MAIL Address and bar code below. Your bar code consists of the initials of your first and last name and the last four digits of your social security number or any other four digit number registered by the attorney with the Clerk of Court.

(This information must be provided pursuant to local rule 11.1(b) of the civil rules).

ATTORNEY BAR CODE: KP 7202

E-MAIL Address: kpowell@earthjustice.org

I consent to the use of electronic filing procedures adopted by the Court in Administrative Order No. 97-12, "In re Electronic Filing Procedures(EFP)", and consent to the electronic service of all papers.

Signature: Keri A. Powell

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Northern Great Kills Civic Association, Inc.

Plaintiff

v.

The City of New York

Defendant

Civil Action No.

Summons in a Civil Action

To: *(Defendant's name and address)*

The City of New York
City Hall
New York, New York 10007

A lawsuit has been filed against you.

Within 20 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, whose name and address are:

Keri N. Powell
Earthjustice
116 John St., Suite 3100
New York, NY 10038

If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Name of clerk of court

Date: _____

Deputy clerk's signature

(Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States allowed 60 days by Rule 12(a)(3).)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Northern Great Kills Civic Association, Inc.,

Plaintiff,

v.

The City of New York,

Defendant.

Civil Action No.

COMPLAINT

STATEMENT OF THE CASE

1. This is a citizen suit brought under section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), to require defendant City of New York (the "City") to take all actions necessary to eliminate the imminent and substantial endangerment to health and the environment stemming from the historical and continuing release of toxic pollution from the Brookfield Avenue Landfill ("the Landfill") on Staten Island.

2. From 1966 to 1980, the City operated the Landfill as a municipal waste dump. In the late 1970s, it was revealed that hazardous waste had been dumped in the Landfill illegally. Because the Landfill was not designed for hazardous waste, it is unable to contain the toxic contamination. Each day, approximately 95,000 gallons of contaminated water ("leachate") discharges from the Landfill into the surrounding community.

3. The City's own studies confirm that the Landfill has contaminated and continues to contaminate adjacent surface waters, groundwater, and sediment. This contamination poses an imminent and substantial endangerment to health and the environment.

4. The City failed to comply with three separate administrative consent orders dating back as far as 1985 requiring the City to remediate the Landfill site and abate the endangerment to public health and the environment.

5. Plaintiff Northern Great Kills Civic Association (the "Association") is a membership organization that represents the concerns of families residing in the Northern Great Kills community, located just across the street from the Landfill. Many of the Association's members own homes in the Northern Great Kills community and have lived there for decades. For more than sixteen years, the Association and its members have worked with state and local officials to obtain remediation of the Landfill, to no avail. The City's longstanding failure to abate the endangerment posed by the Landfill's past and present pollutant discharges harms the Association's members. To redress this harm, the Association seeks injunctive relief, as provided by section 7002 of RCRA, 42 U.S.C. § 6972.

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and pursuant to 28 U.S.C. § 1331 (federal question). Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), authorizes citizens to bring suit "against any person . . . who has contributed or who 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." Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), empowers the Court to compel any person referred to in paragraph (1)(B) "to take such . . . action as may be necessary" to eliminate the endangerment.

7. On June 26, 2008, plaintiff gave notice of the endangerment by registered mail as required by section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A) to the Administrator of the U.S. Environmental Protection Agency ("U.S. EPA"), the Governor of New York State, the Commissioner of the New York State Department of Environmental Conservation ("NYS DEC"), the Mayor of the City of New York, the Commissioner of the New York City Department of Environmental Protection ("NYC DEP"), and the Commissioner of the New York City Department of Sanitation ("NYC DOS"). The notice is appended hereto as Attachment 1.

8. In accordance with section 7002(b)(2)(A) of RCRA, 42 U.S.C. § 6972(b)(2)(A), more than 90 days have passed since notice was served on the U.S. EPA Administrator, the State of New York, and the City. U.S. EPA has not taken any of the actions described in section 7002(b)(2)(B)(i)-(iv) of RCRA, 42 U.S.C. § 6972(b)(2)(B)(i)-(iv). The State has not taken any of the actions described in Section 7002(b)(2)(C)(i)-(iii) of RCRA, 42 U.S.C. § 6972(b)(2)(C)(i)-(iii).

9. Venue is proper in the Eastern District of New York pursuant to section 7002(a) of RCRA, 42 U.S.C. § 6972(a), because it is the "district in which . . . the alleged endangerment may occur."

PARTIES

Plaintiff

10. Plaintiff Northern Great Kills Civic Association, Inc. is a not-for-profit membership organization incorporated under the laws of the State of New York.

11. The Association's members reside in the neighborhood adjacent to the Landfill, some directly across the street. The City's past and present discharges from the Landfill, and defendant's failure to eliminate the risk from contamination of the surrounding soil, water, and

air, presents or may present an imminent and substantial endangerment to the health of these individuals and to the environment in which they have an interest.

Defendant

12. Defendant City of New York is a political subdivision of New York State and a "person" as defined at 42 U.S.C. § 6903(15). The City presently owns the Landfill and owned the Landfill at the time the illegal hazardous waste dumping occurred. The NYC DOS operated the Landfill when it was accepting municipal waste from 1966 to 1980. The NYC DEP is now managing the Landfill site.

FACTS

The Landfill

13. The Landfill is classified by the NYS DEC as a Class 2 inactive hazardous waste site, meaning that the site "is one at which contamination constitutes a significant threat to public health or the environment." (N.Y. Comp. Code R. & Regs., tit. 6 ("6 NYCRR"), § 375-2.7(b)(3)(iii).)

14. The Landfill is located near the Richmond and Great Kills sections of Staten Island, New York. It is bounded to the south and east by Arthur Kill Road, to the west by Richmond Avenue, and to the north by Richmond Creek. The Landfill's southern boundary is adjacent to a heavily populated residential area. A housing development, Colonial Square, is located on the Landfill's eastern edge. Upon information and belief, most of the perimeter is fenced, with the exception of the border along Richmond Creek. Signs posted on the fence warn that the area is an inactive hazardous waste site.

15. In 1998, the NYC DEP issued a remedial investigation report ("1998 Report") describing the nature and extent of contamination from the Landfill and assessing the hazards to human health and the environment that may be attributable to site-related contaminants.

16. The 1998 Report explains that the northern tidal marsh portion of the Landfill is part of Fresh Kills, a significant Fish and Wildlife Habitat, as designated by New York State's Coastal Management Program ("CMP"). (1998 Report at 9.) The CMP assigned the area the highest significance value of the five "Significant Habitats" on the north and west side of Staten Island. (*Id.*) It was awarded a high score on the species vulnerability category due to its use as a wintering area by the northern harrier (threatened) and long-eared owl, and as a nesting area by the barn owl (special concern species). (*Id.*)

17. Tidal portions of Richmond Creek are classified by the State of New York as class "SC", meaning that they should be suitable for fish propagation and survival. (1998 Report at 2-8.) The State's "best use" designation for these waters is fishing. (*Id.*) Class SC waters are also meant to be suitable for primary contact recreation such as swimming. (6 NYCRR § 701.10.)

18. From 1966 to 1980, DOS operated the Landfill as a municipal solid waste dump. (1998 Report at 2-3.) Approximately 130 acres of this 272-acre site have been used for the disposal of municipal solid waste. (*Id.*)

19. In 1982, after Landfill operation ceased, testimony before the New York State Select Committee on Crime indicated that from 1974 through 1980, liquid industrial and hazardous waste material were illegally dumped at several New York City landfills, including the Brookfield Avenue Landfill. (1998 Report at 2-3.) According to that testimony, materials disposed of included waste oil, sludges, metal plating wastes, lacquers, and solvents. (*Id.*)

Testimony further revealed that volumes disposed of ranged from 11,000 to 55,000 gallons per week in 1974. (*Id.*) In 1978, volumes ranged up to 50,000 gallons per night, with the Brookfield Avenue Landfill identified as the primary disposal point. (*Id.* at 2-4.) Contaminants such as cyanide, dichlorobenzene, dioctylphthalate, naphthalene, ethyl benzene, toluene, xylene, and alkyl phenol potentially were disposed of at the Landfill. (*Id.*)

Impacts on Public Health and the Environment

20. The City's 1998 Report confirms that the Landfill is a significant source of contamination to Richmond Creek. (1998 Report at 8.) Specifically, the City's investigation revealed that the Landfill discharges approximately 95,000 gallons of toxic leachate each day, most of which is discharged into Richmond Creek and associated wetlands. (*Id.* at 5.) This leachate causes numerous water quality standard violations in Richmond Creek, including violations of standards set for copper, lead, zinc, total cyanide, nickel, mercury, and the pesticides DDD, DDE, gamma-BHC, heptachlor, aldrin, dieldrin, and endrin. (*Id.* at 8.) Ammonia discharged from the Landfill has resulted in exceedances of federal criteria at four of eight surface water sample locations. (*Id.*)

21. The 1998 Report also confirms that the sediment in the Richmond Creek segment adjacent to the Landfill contains significant levels of contamination. (1998 Report at 8.) The report states that the contaminants in the sediments exceeding standards and to which the Landfill is believed to have contributed include a variety of semi-volatile organic chemicals, pesticides, PCBs, iron, nickel, lead, copper, zinc, and mercury. (*Id.*)

22. The 1998 Report concludes that contaminants found in sediment and surface water have the potential to pose high risk to certain ecological receptors. (1998 Report at 12.) Organisms living in sediment on the creek bottom and in the surrounding wetlands (known as

“benthos”) are the most at risk, primarily due to arsenic, copper, lead, mercury, chlordane, and PCBs in sediment. (*Id.*)

23. The 1998 Report also indicates that the Landfill is responsible for shallow groundwater contamination extending to Richmond Creek. (1998 Report at 5.) The groundwater was found to exceed state standards for thirteen volatile organic compounds, seventeen semi-volatile organic compounds, eight pesticides, two PCBs, and thirteen metals. (*Id.*)

24. With respect to air pollution, the City’s 1998 Report documents that the Landfill is a significant source of methane-related compounds and possibly benzene. (1998 Report at 7.)

25. In September 2005, the City finalized a supplemental Remedial Investigation Report (the “2005 Report”) further documenting the impacts of Landfill contamination on Richmond Creek and associated wetlands. This report states that there is “the potential for both acute and chronic unacceptable carcinogenic and adverse non-carcinogenic health effects to both adults and children due to ingestion and dermal exposure to contaminated sediment, surface water, finfish and shellfish from Richmond Creek.” (2005 Report at ES-9.)

26. The 2005 Report further documents that the Landfill is a source of contamination of surface water, sediment, and aquatic life. With respect to aquatic life, the report documents that biological tissue samples contained 4-4’-DDD, 4-4’-DDE, Aroclor-1254, copper, and mercury. (2005 Report at ES-5.) The report concludes that the Landfill is a source of the contaminants found in the biota. (*Id.* at ES-6.) The report also explains that the consumption of contaminated fish serving as prey poses a risk to osprey and great blue herons. (*Id.* at ES-11.)

The City's Longstanding Failure to Remediate the Landfill

27. In 1985, NYS DEC and NYC DOS agreed to an administrative consent order directing the City to remediate the Landfill. The City failed to comply with the 1985 order.

28. In 1990, NYS DEC and NYC DOS agreed to a new administrative consent order. The City also failed to comply with the 1990 order.

29. In 1992, NYS DEC and NYC DEP superseded the first two administrative consent orders with a third administrative consent order (the "1992 Order"), which established a timetable for completion of remediation. As proof of its commitment to implement the 1992 order, the City agreed, *inter alia*, to pay stipulated penalties for any non-compliance with the order's milestone dates.

30. Pursuant to the 1992 Order, the City retained consultants who conducted the studies described above in paragraphs 15-26 to determine the extent of contamination at and around the Landfill. The City also assessed the feasibility and effectiveness of potential remedies.

31. In March 2002, NYS DEC issued a Record of Decision ("2002 ROD") presenting the selected remedy for what it refers to as "Operable Unit #1" of the Landfill, which is defined as the portion of the site on which the Landfill itself is located. (2002 ROD at 1.)

32. The 2002 ROD declares that the selected remedy is designed "to address the significant threat to human health and/or the environment created by the presence of hazardous waste at the Brookfield Avenue Landfill." (2002 ROD at 1.) It goes on to specify that there is "a significant threat to human health associated with ingestion of surface soil, ingestion of shallow groundwater, inhalation of volatile organics from shallow groundwater, and ingestion of shellfish from Richmond Creek." (*Id.*) It further specifies that there is "a significant environmental threat

associated with the impacts of chlordane, arsenic, copper, lead, and mercury to Richmond Creek.” (*Id.*)

33. The remedy specified in the 2002 ROD involves capping the landfill, active gas collection and treatment, leachate collection and treatment, surface water collection, minimization of encroachment into freshwater and tidal wetlands, installation of a barrier wall, institutional controls including deed restrictions to supplement engineering controls, and initiation of a long term monitoring program to ensure that the contained hazardous waste does not leave the site. (2002 ROD at 1.)

34. In March 2007, NYS DEC issued a ROD (“2007 ROD”) presenting the selected remedy for what it refers to as “Operable Unit #2” of the Landfill, defined as the Landfill’s impacts on Richmond Creek. The 2007 ROD declares that “[a]ctual or threatened release of hazardous waste constituents from the Brookfield Avenue Landfill Site will be addressed by implementing” the remedy identified in the 2002 ROD. (2007 ROD, Declaration Statement). It additionally requires the implementation of certain institutional controls (*e.g.*, prohibition on use of groundwater for potable purposes) and monitoring. (*Id.* at 20-21.)

35. In June of 2007, the City released a Request for Proposals to eligible contractors for implementation of the 2002 ROD.

36. Upon information and belief, the City awarded a contract for remediation of the Landfill on September 6, 2007. However, the City has not authorized the contractor to begin work.

37. Upon information and belief, in January of 2008, officials from the NYC DEP and the NYS DEC informed members of the Citizens’ Advisory Committee, a group of local

residents and others set up to oversee implementation of the 1992 Order, that progress toward implementing the remedy for the Landfill had stalled due to lack of funding.

38. To date, work on remediating the Landfill has not commenced.

39. Upon information and belief, though the City routinely missed deadlines set forth in the 1992 Order and has never commenced remediation of the Landfill, no penalty payments have been assessed against the City pursuant to the Order.

CLAIM FOR RELIEF

40. Plaintiff realleges and incorporates by reference the herein preceding paragraphs.

41. Pursuant to 42 U.S.C. § 6903(15), the City is a "person" subject to the citizen suit provisions of RCRA, 42 U.S.C. § 6972.

42. The City has contributed or is contributing to the past or present handling, storage, treatment, transportation or disposal of solid or hazardous waste which may present an imminent and substantial endangerment to health and/or the environment within the meaning of section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B).

43. Plaintiff's interests and those of its members are being harmed and will continue to be harmed by the endangerment and by the City's failure to abate the endangerment, unless the Court grants the relief sought herein.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests this Court to enter a judgment:

A. Declaring that there exists or may exist an imminent and substantial endangerment to public health and the environment caused by the City's past and present handling, storage, treatment, transportation and/or disposal of solid or hazardous waste with respect to contamination emanating from the Landfill;

B. Ordering the City to take all such actions as may be necessary to eliminate any such endangerment, including implementing the remedies agreed to by the City in the 2002 and 2007 RODs.

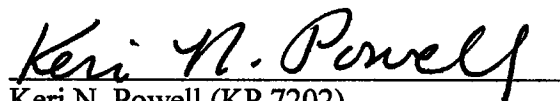
C. Establishing a timetable for the City's remediation of the Landfill and appointing a special master to oversee the City's compliance with that timetable.

D. Ordering the City to pay Plaintiff's reasonable attorneys' fees, expert witness fees, and costs incurred in prosecuting this action; and

E. Ordering such other relief as the Court may deem just and proper.

Dated: October 14, 2008

Respectfully submitted,



Keri N. Powell (KP 7202)
Deborah Goldberg (DG 9285)
Earthjustice
116 John Street, Suite 3100
New York, NY 10038
Telephone: (212) 791-1881
Fax: (212) 791-0839
Email: kpowell@earthjustice.org
dgoldberg@earthjustice.org

ATTORNEYS FOR PLAINTIFF

Attachment 1



EARTHJUSTICE

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII
INTERNATIONAL JUNEAU, ALASKA NEW YORK, NEW YORK OAKLAND, CALIFORNIA
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

Thursday, June 26, 2008

**BY REGISTERED MAIL, RETURN RECEIPT REQUESTED
AND FACSIMILE**

The Honorable Michael R. Bloomberg
Mayor of the City of New York
City Hall
New York, New York 10007
Fax: (212) 788-2460

Michael A. Cardozo
Corporation Counsel of the City of New York
100 Church Street
New York, New York 10007
Fax: (212) 788-0367

Commissioner Emily Lloyd
New York City Department of Environmental Protection
59-17 Junction Boulevard
Flushing, New York 11373
Fax: (718) 595-3525

Commissioner John J. Doherty
New York City Department of Sanitation
346 Broadway, 10th Floor
New York, New York 10013
Fax: (212) 385-2560

**Re: Notice of Intent to Sue Under Section 7002(a)(1)(B) of the Resource
Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B)**

Dear Mayor Bloomberg, Mr. Cardozo, Ms. Lloyd and Mr. Doherty:

Pursuant to section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), Earthjustice, on behalf of their client Northern Great Kills Civic Association ("the Association"), hereby notifies you of their intent to sue the City of New York ("the City"), the New York City Department of Environmental Protection ("DEP"), and the New York City Department of Sanitation ("DOS") for the abatement of an imminent and substantial endangerment to health and the environment in connection with the illegal disposal of hazardous wastes at the Brookfield Avenue Landfill ("the Landfill") on Staten Island in New York City.

From approximately 1974 through 1980, industrial hazardous wastes were disposed of illegally at the Landfill, including waste oil, sludge, pesticides, metal plating wastes, lacquers and solvents. Estimates of the volume of hazardous waste disposed of range from 10,000 gallons a week to as much as 50,000 gallons a day at times. As a result of this illegal disposal, the Landfill now discharges approximately 95,000 gallons of contaminated water each day into groundwater and surface water bodies, including Richmond Creek and associated wetlands, and the Upper Glacial and Cretaceous aquifers. These toxic discharges contribute to numerous surface water quality violations in Richmond Creek, including standards for tetrachloroethene, copper, lead, zinc, total cyanide, nickel, mercury and a number of pesticides including DDD, DDE, BHC, heptachlor, aldrin, and endrin. As concluded by the New York State Department of Environmental Conservation ("DEC"), hazardous waste migrating from the site poses a significant threat to human health associated with ingestion of surface soil, ingestion of shallow groundwater, inhalation of volatile organics from shallow groundwater, and ingestion of shellfish from Richmond Creek. Likewise, the DEC confirms that discharges of chlordane, arsenic, copper, lead, and mercury to Richmond Creek and associated water bodies pose a significant environmental threat. See DEC Record of Decision, Brookfield Avenue Landfill Site (March 2002) at 1, 6.¹

At the time of the illegal dumping of toxic waste, the Landfill was owned by the City and operated by the DOS. The City continues to own the property, but the Landfill site is now managed by the DEP.

Though administrative consent orders negotiated between the New York State DEC and the DOS in 1985 and again in 1990 required that the Landfill be cleaned up, the DOS ignored both orders. The community's hope was restored in 1992 when the DEC negotiated a new consent order with the DEP. Unfortunately, progress toward remediating the site under this third consent decree has been plagued by repeated delays. It took an entire decade, until March 2002, for the DEC and DEP to complete a Record of Decision detailing the selected remedy for the site. It took another four years, until May 2006, for the DEP and DEC to agree to a "Remedial Action Design Plan." Though the DEP solicited bids for the cleanup in June 2007, community representatives recently were informed that no bids have been accepted and that progress toward commencing a cleanup has stalled due to a funding shortfall. Thus, sixteen years after the most recent administrative consent order and nearly thirty years after the City first became aware of toxic waste dumped at the Landfill, the site remains unremediated. Community residents have no reason to believe that cleanup activities will commence any time in the near future.

Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), allows affected citizens to bring suit against:

against any person, . . . including any past or present generator, past or present transporter, or past or present owner or operator of a treatment, storage, or disposal facility, who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous

¹ Available online at http://www.dec.ny.gov/docs/remediation_hudson_pdf/rod243006.pdf.

waste which may present an imminent and substantial endangerment to health or the environment.

The Northern Great Kills Civic Association believes that hazardous waste disposed of at the Landfill and migrating into adjacent water bodies presents an imminent and substantial endangerment to health and the environment. Nearly thirty years after New York City officials discovered that hazardous waste was illegally disposed of at the Landfill, the City and its agencies have failed to fulfill their obligation to take the actions necessary to abate this ongoing and substantial endangerment.

The suit will be filed in the United States District Court for the Eastern District of New York and will seek abatement of the imminent and substantial endangerment to health and the environment caused by the Landfill. The Court will be asked, among other things, to order the City and its agencies to commence immediately with implementing the selected remedy described in the March 2002 Record of Decision and to complete the remediation promptly.

The address of the Northern Great Kills Civic Association is P.O. Box 192, Staten Island, New York, 10308. The Association's President, Geri Kelsch, can be reached by telephone at (718) 984-8385. The Association will file the lawsuit on behalf of their members, all of whom reside in close proximity to the Landfill and suffer from the City's failure to remediate the site.

If you have any questions about the issues raised in this letter or wish to discuss its contents with us, please contact Keri Powell at the address and phone number listed below. We request that if you wish to discuss this matter before the complaint is filed, you contact us as quickly as possible. We intend to file the complaint shortly after the expiration of the 90-day notice period stipulated by 42 U.S.C. § 6972(b)(2)(A) unless the City acts promptly and adequately to abate the endangerment.

Respectfully,



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