

In the Matter of Alleged Violation of  
Articles 3, 17 and 71 of the  
Environmental Conservation Law (ECL),  
Article 12 of the Navigation Law of  
the State of New York and Title 6 of  
the Official Compilation of Codes,  
Rules and Regulations (6 NYCRR) of  
the State of New York by:

RULING ON MOTION FOR A  
MORE DEFINITE STATEMENT

June 3, 2004

**EXXONMOBIL OIL CORPORATION,**

Respondent.

DEC Case No.  
D1-0001-02-06

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### **Background**

The staff of the New York State Department of Environmental Conservation (staff) issued a complaint to the respondent, ExxonMobil Oil Corporation (the respondent or ExxonMobil), dated March 18, 2004. In the complaint, staff alleges that the respondent violated article 12 of the New York Navigation Law (NL) and articles 3, 17 and 71 of the New York Environmental Conservation Law (ECL) by discharging more than 17 million gallons of petroleum over a period of decades, from its facility at 300 North Henry Street, Brooklyn, New York, via the Peerless Importers bulkhead, into a Marine district, Newtown Creek, and failing to immediately undertake remediation at the site. Staff seeks penalties for respondent's failure to appropriately respond to their remediation obligations. By motion dated April 1, 2004, respondent moved for a more definite statement. Staff filed its response to this motion on April 7, 2004.

Initially, this matter was assigned to Administrative Law Judge (ALJ) Susan DuBois. However, on May 27, 2004, the case was reassigned to ALJ Kevin Casutto.

### **Position of the Parties**

Generally, ExxonMobil argues in its memorandum in support of its motion that staff's complaint fails to set forth allegations to which the respondent can answer because the complaint: 1) fails to identify when the discharge took place, 2) fails to identify how the purported discharge took place (whether at one

time or over a period of time), 3) fails to identify from which of the two facilities specified in the complaint the alleged discharge originated, 4) fails to state the alleged point sources for continued migration and 5) fails to allege that the purported discharge actually occurred during ExxonMobil's tenure of ownership or operation of either facility.

Staff's response in opposition to the respondent's motion includes five attachments: a July 1979 report entitled "Investigation of Underground Accumulation of Hydrocarbons along Newtown Creek, Brooklyn, New York," prepared by Geraghty & Miller, Inc., for the U.S. Coast Guard (Attachment 1); the two orders on consent referenced in the respondent's motion, dated February 27, 1990 and June 20, 1990 (Attachments 2 and 3); a summary outline entitled "August 2003 Community Meeting, ExxonMobil Free-Product Recovery Project, Greenpoint, Brooklyn, New York", presented by the Department, the U.S. Coast Guard and the respondent (Attachment 4); and a copy of a detailed map of the original refinery and related materials (Attachment 5). These attachments, staff contends, provide much more detailed description than alleged in the complaint and demonstrate that the respondent is fully familiar with facts and circumstances underlying the allegations of the complaint. Staff concludes with a request that the respondent's motion for more definite statement be denied, and ExxonMobil be ordered to timely answer the allegations in the complaint.

## **Discussion**

The complaint does provide sufficient detail to the respondent of the alleged violations. See generally, 6 NYCRR 622.3(a)(1). In accord with 6 NYCRR 622.3(a)(1)(i), the complaint provides a statement of the legal authority and jurisdiction under which the proceeding is to be held (see, the complaint caption and the initial paragraph). Pursuant to 6 NYCRR 622.3(a)(1)(ii), the complaint provides reference to the particular sections of the statutes, rules and regulations involved (see, complaint paragraphs 4, 5, 9, 11, 15, 18, 21, 23, 26, 29, 30, 34, 36, 37 and 38).

Last, pursuant to 6 NYCRR 622.3(a)(1)(iii), the complaint reasonably provides a concise statement of the matters asserted. See *Matter of Bath Petroleum Storage, Inc.*, DEC Case No. R8-1088-97-01 (Ruling of the ALJ, April 28, 2004), citing *Matter of Adelman*, 1998 WL 1670845, \*2 (Ruling of the ALJ, July 30, 1998) (The regulations require only a concise, which means terse or succinct, statement of matters asserted; elaboration is not required, only notice sufficient to respond).

In response to the respondent's claims suggesting that respondent has no knowledge of when or how the discharge took place, or knowledge sufficient to answer the complaint, staff has provided the attachments to its opposition. Although these documents are not part of the complaint and therefore are not relevant to the motion for more definite statement, staff's opposition filings show that the respondent has been involved in remediation of the petroleum spill at this site since prior to 1979. In addition, the respondent makes reference to the two orders on consent executed in 1990 between the respondent and the Department, which staff has provided. Staff's Attachment 4, the Community Meeting report, indicates that the report was presented jointly by the Department, the U.S. Coast Guard and the respondent, and discusses the discharge from the Peerless bulkhead to Newtown Creek.

**Ruling**

The respondent's motion for more definite statement is denied. Further elaboration on the allegations may be obtained by the respondent through discovery. Pursuant to 6 NYCRR 622.4(e)(1), the respondent must answer the complaint within 10 days of receipt of this ruling.

\_\_\_\_\_/s/\_\_\_\_\_  
Kevin J. Casutto  
Administrative Law Judge

Albany, New York  
June 3, 2004

To: ExxonMobil Distribution List  
[Case No. D1-0001-02-06]

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NYSDEC Case No. D1-0011-04-03  
June 3, 2004**

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