

UNION COUNTY SUPERIOR COURT  
2 BROAD STREET  
ELIZABETH NJ 07207

TRACK ASSIGNMENT NOTICE

RECEIVED

AUG 25 2004

COURT TELEPHONE NO. (908) 659-3844  
COURT HOURS

DATE: AUGUST 19, 2004  
RE: N J DEPT OF ENVIRONMENTAL PROTEC VS EXXON MO  
DOCKET: UNN L -003026 04

THE ABOVE CASE HAS BEEN ASSIGNED TO: TRACK 4.

DISCOVERY IS PRESUMPTIVELY 450 DAYS BUT MAY BE ENLARGED OR SHORTENED BY THE JUDGE AND RUNS FROM THE FIRST ANSWER OR 90 DAYS FROM SERVICE ON THE FIRST DEFENDANT, WHICHEVER COMES FIRST.

THE MANAGING JUDGE ASSIGNED IS: HON THOMAS N. LYONS

IF YOU HAVE ANY QUESTIONS, CONTACT TEAM 001  
AT: (908) 659-4177

IF YOU BELIEVE THAT THE TRACK IS INAPPROPRIATE YOU MUST FILE A CERTIFICATION OF GOOD CAUSE WITHIN 30 DAYS OF THE FILING OF YOUR PLEADING. PLAINTIFF MUST SERVE COPIES OF THIS FORM ON ALL OTHER PARTIES IN ACCORDANCE WITH R.4:5A-2.

ATTENTION:

ATT: ALLAN KANNER  
ATTORNEY GENERAL DEPT ENV  
HUGHES JUSTICE COMPLEX  
CN 093  
TRENTON NJ 08625-0093

JUVOREI

**CIVIL CASE INFORMATION STATEMENT**  
(CIS)

FOR USE BY CLERK'S OFFICE ONLY

Use for initial pleadings (not motions) under R. 4:5-1.

Pleadings will be rejected for filing under R. 1:5-6(c) if information above the black bar is not completed or if attorney's signature is not affixed.

PAYMENT TYPE: CK CG CA

CHG/CK NO.:

AMOUNT:

OVERPAYMENT:

BATCH NUMBER:

ATTORNEY/PRO SE NAME: Allan Kanner & Associates

TELEPHONE NO.: (800) 331-1546

COUNTY OF VENUE: Union

FIRM NAME (If Applicable): ALLAN KANNER & ASSOCIATES, P.L.L.C.

DOCKET NUMBER (When Available):

**UNNL 3026 04**

OFFICE ADDRESS:  
Allan Kanner & Associates, P.L.L.C.  
701 Camp Street  
New Orleans, LA 70130

DOCUMENT TYPE: Complaint

JURY DEMAND:     YES   X   NO

NAME OF PARTY (e.g., John Doe, Plaintiff):  
New Jersey Department of Environmental Protection and Administrator, New Jersey Spill Compensation Fund, Plaintiffs

CAPTION: New Jersey Department of Environmental Protection and Administrator, New Jersey Spill Compensation Fund v. Exxon Mobil Corporation

CASE TYPE NUMBER  
(See reverse side for listing): 156

IS THIS A PROFESSIONAL MALPRACTICE CASE?     YES   X   NO

If You Have Checked "Yes," See N.J.S.A. 2A:53A-27 and Applicable Case Law Regarding Your Obligation to File an Affidavit of Merit.

RELATED CASES PENDING?   X   YES     NO

IF YES, LIST DOCKET NUMBERS: A-6537-03 T3

DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of the same transaction or occurrence)?  
    YES   X   NO

NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY, IF KNOWN  
    NONE   X   UNKNOWN

~~THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE~~

CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION

A. DO THE PARTIES HAVE IF YES, IS THAT     EMPLOYER-EMPLOYEE     FRIEND-NEIGHBOR   X   OTHER (explain) Regulatory Agency  
A CURRENT, PAST OR RELATIONSHIP:  
RECURRENT RELATIONSHIP?  
  X   YES     NO     FAMILIAL     BUSINESS

B. DOES THE STATUTE GOVERNING THIS CASE PROVIDE   X   YES     NO FOR PAYMENT OF FEES BY THE LOSING PARTY?

USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION.

DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS?  
    YES   X   NO

IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION:

WILL AN INTERPRETER BE NEEDED?     YES   X   NO

IF YES, FOR WHAT LANGUAGE:

ATTORNEY SIGNATURE:

*AK*

RECEIVED  
AUG 25 2004



Trenton, County of Mercer, State of New Jersey, by way of Complaint against the above-named defendant, say:

STATEMENT OF THE CASE

1. Plaintiffs bring this civil action pursuant to the Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to -23.24, ("the Spill Act"), and the common law, for reimbursement of the cleanup and removal costs and damages they have incurred, and will incur, for any natural resource of this State that has been, or may be, injured as a result of the discharge of hazardous substances at the Exxon Bayway site located in Linden, New Jersey, Union County and to compel the Defendant to perform, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and restoration of any natural resource that has been, or may be, injured by the discharge of hazardous substances at or from the Exxon Bayway site.

THE PARTIES

2. Plaintiff DEP is a principal department within the Executive Branch of the State government, vested with the authority to conserve natural resources, protect the environment, prevent pollution, and protect the public health and safety. N.J.S.A. 13:1D-9.

3. In addition, with the State being the trustee, for the benefit of its citizens, of all natural resources within its

jurisdiction, plaintiff DEP is vested with the authority to protect this public trust. N.J.S.A. 58:10-23.11a.

4. Plaintiff Administrator is the chief executive officer of the New Jersey Spill Compensation Fund ("Spill Fund"). N.J.S.A. 58:10-23.11j. As chief executive officer of the Spill Fund, plaintiff Administrator is authorized to approve and pay any cleanup and removal costs plaintiff DEP incurs, N.J.S.A. 58:10-23.11f.c. and d., and to certify the amount of any claim to be paid from the Spill Fund, N.J.S.A. 58:10-23.11j.d.

5. Defendant Exxon Mobil Corporation ("Exxon Mobil Corp."), is a corporation organized under the laws of the State of New Jersey, with its main place of business located at 800 Bell Street, Houston, Texas 77002.

6. Defendant Exxon Mobil Corp. is the successor corporation to Exxon Corporation. In 1999, Exxon Corporation merged with Mobil Corporation.

7. The defendant is a "person" within the meaning of N.J.S.A. 58:10-23.11b.

#### AFFECTED NATURAL RESOURCES

##### Groundwater

8. Groundwater is an extremely important natural resource for the people of New Jersey, supplying more than 900 million gallons of water per day, which provides more than half of New Jersey's population with drinking water.

9. Not only does groundwater serve as a source of potable water, it also serves as an integral part of the State's ecosystem. Groundwater provides base flow to streams, and influences surface water quality and wetland ecology and the health of the aquatic ecosystem.

10. Groundwater also provides cycling and nutrient movement, prevents salt water intrusion, provides ground stabilization, prevents sinkholes, and provides maintenance of critical water levels in freshwater wetlands.

11. Groundwater and the other natural resources of the State are unique resources that support the State's tourism industry, which helps sustain the State's economy.

12. There are more than 6,000 contaminated sites in New Jersey that have confirmed groundwater contamination with hazardous substances.

#### Surface Water

13. A supply of approximately 850 million gallons of surface water per day supplies nearly half of New Jersey's population with drinking water.

14. Surface water in New Jersey is also used for other commercial and industrial uses, such as cooling water and electrical generation, boating, fishing, swimming, and transportation of goods and services.

15. The tourist and recreation industries, which are vital to the economy of this State, are dependent on clean waters and beaches.

#### Ecological Resources

16. New Jersey's land and aquatic resources are also comprised of unique and complex ecosystems.

17. Wetlands are a critical example of New Jersey's ecological resources.

18. New Jersey wetlands cover approximately 730,000 acres of freshwater wetlands and 250,000 acres of coastal wetlands.

19. These wetlands can sustain a wide diversity of plants and animals which are essential in a healthy food chain. Wetlands perform a number of additional functions, including improvement of water quality, sediment trapping, recharge of groundwater, protection of shorelines and lands from flooding or erosion.

#### GENERAL ALLEGATIONS

20. The Exxon Bayway property consists of approximately 1300 acres of real property located at 1400 Park Avenue, Linden, Union County, this property being also known and designated as Block 515, Lot 1, Block 516, Lots 1 and 2; Block 517, Lot 1; Block 518, Lots 1 and 2; Block 519, Lots 1 and 2; Block 520, Lots 1, 3, 4, 5, 6 and 8, Block 522, Lot 1; Block 523, Lots 1 and 2; Block 524, Lots 9 and 24; Block 568, Lot 10; Block 580, Lots 40, 42 and 47; Block 581,

Lot 11-3; Block 586, Lots 3-1, 3-2, 5, 6, 17 and 18 on the Tax Map of the City of Linden ("the Exxon Bayway Property"), and all other areas where any hazardous substance discharged there has become located (collectively, "the Site"), which plaintiff DEP has designated as Site Remediation Program Interest No. 001046.

21. From 1877 through 1993, Exxon Mobil Corp. or its predecessors owned the Exxon Bayway Property.

22. From approximately 1909 until 1993, Exxon Mobil Corp. or its predecessors conducted petroleum refining operations at the Exxon Bayway Property, including, at one time or another, the receipt and shipment of crude oil, partially refined oil, and finished products, the storage of crude oil and refined products in bulk tanks, the distillation of petroleum, the movement of oil by pipeline to process areas, catalytic cracking, finishing and blending, and the storage and distribution of a wide range of petroleum products. In addition, Exxon Mobil Corp. or its predecessors conducted several petrochemical manufacturing operations at the Exxon Bayway Property. During this time period, "hazardous substances," as defined in N.J.S.A. 58:10-23.11b., were "discharged" at and from the Exxon Bayway Property within the meaning of N.J.S.A. 58:10-23.11b.

23. On or about November 27, 1991, defendant Exxon Mobil Corp.'s predecessor, Exxon Corp., entered into an Administrative Consent Order ("November 27, 1991 ACO") with plaintiff DEP, which



required defendant Exxon Corp. to remediate the Site under DEP's oversight.

24. Sampling results taken from the Exxon Bayway Property during inspections have revealed the presence of various hazardous substances in the soils and groundwater at and underlying the Site, including petroleum hydrocarbons, with benzene as that of greatest concern.

25. While the defendant Exxon Mobil Corp., or its predecessors, has undertaken limited cleanup of hazardous substances from the soils and groundwater at and underlying the Site pursuant to the November 27, 1991 ACO, groundwater contamination continues.

26. Hazardous substances from the Exxon Bayway Property have discharged to and are present in the surface water, wetlands and sediments adjacent to the Exxon Bayway Property.

#### FIRST COUNT

##### Spill Act

27. Plaintiffs repeat each allegation of Paragraphs 1 through 26 above as though fully set forth in its entirety herein.

28. Plaintiffs have incurred, and will continue to incur, cleanup and removal costs and damages, including lost use and reasonable assessment costs, for any natural resource of this State that has been, or may be, injured by the discharges at the Exxon Bayway Property.

29. The costs and damages the Plaintiffs have incurred, and will incur, for the Site, are "cleanup and removal costs" within the meaning of N.J.S.A. 58:10-23.11b.

30. Defendant, as the discharger of hazardous substances at the Exxon Bayway Property, is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Exxon Bayway Property. N.J.S.A. 58:10-23.11g.c.(1).

31. The Defendant, as the owner of the Exxon Bayway Property at the time hazardous substances were discharged there, also is a person otherwise responsible for the discharged hazardous substances, and is liable, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs have incurred, and will incur, to assess, mitigate, restore, or replace, any natural resource of this State that has been, or may be, injured by the discharges of hazardous substances at the Exxon Bayway Property. N.J.S.A. 58:10-23.11g.c.(1).

32. Pursuant to N.J.S.A. 58:10-23.11u.a.(1)(a) and N.J.S.A. 58:10-23.11u.b., plaintiff DEP may bring an action in the Superior Court for injunctive relief, N.J.S.A. 58:10-23.11u.b.(1); for its

unreimbursed investigation, cleanup and removal costs, including the reasonable costs of preparing and successfully litigating the action, N.J.S.A. 58:10-23.11u.b.(2); natural resource restoration and replacement costs, N.J.S.A. 58:10-23.11u.b.(4); and for any other unreimbursed costs or damages plaintiff DEP incurs under the Spill Act, N.J.S.A. 58:10-23.11u.b.(5).

33. Pursuant to N.J.S.A. 58:10-23.11q., plaintiff Administrator is authorized to bring an action in the Superior Court for any unreimbursed costs or damages paid from the Spill Fund.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayway Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant, without regard to fault, for all cleanup and removal costs and damages, including lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource

of this State injured by the discharges of hazardous substances at the Exxon Bayway Property;

- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Exxon Bayway Property, by performing, under plaintiff DEP's oversight, or to fund plaintiff DEP's performing of, any further assessment and compensatory restoration of, any natural resource injured by the discharge of hazardous substances at the Exxon Bayway Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

SECOND COUNT

Public Nuisance

34. Plaintiffs repeat each allegation of Paragraphs 1 through 33 above as though fully set forth in its entirety herein.

35. Groundwater is a natural resource of the State held in trust by the State.

36. The use, enjoyment and existence of uncontaminated natural resources is a right common to the general public.

37. The contamination of groundwater at the Site constitutes a physical invasion of public property and an unreasonable and substantial interference, both actual and potential, with the exercise of the public's common right to this natural resource.

38. As long as groundwater remains contaminated due to the Defendant's conduct, the public nuisance continues.

39. Until the groundwater is restored to its pre-injury quality, the Defendant is liable for the creation, and continued maintenance, of a public nuisance in contravention of the public's common right to clean groundwater.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayway Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur

for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayway Property;

- c. Enter judgment against the Defendant, compelling the Defendant to compensate, the citizens of New Jersey for the damage to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Exxon Bayway Property, by performing, under plaintiff DEP's oversight, or by funding plaintiff DEP's performing of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Exxon Bayway Property;
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

THIRD COUNT

Trespass

40. Plaintiffs repeat each allegation of Paragraphs 1 through 39 above as though fully set forth in its entirety herein.

41. Groundwater is a natural resource of the State held in trust by the State for the benefit of the public.

42. The Defendant is liable for trespass, and continued trespass, since hazardous substances were first discharged at and from the Exxon Bayway Property.

43. As long as groundwater remains contaminated, the Defendant's trespass continues.

PRAYER FOR RELIEF

WHEREFORE, plaintiffs DEP and Administrator pray that this Court:

- a. Order the Defendant to reimburse the Plaintiffs for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, that the Plaintiffs have incurred for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayway Property, with applicable interest;
- b. Enter declaratory judgment against the Defendant for all cleanup and removal costs and damages, including restitution for unjust enrichment, lost use and reasonable assessment costs, the Plaintiffs will incur for any natural resource of this State injured by the discharges of hazardous substances at the Exxon Bayway Property;
- c. Enter judgment against the Defendant, compelling the Defendant to compensate the citizens of New Jersey for

the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Exxon Bayway Property, by performing, under plaintiff DEP's oversight, or by funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Exxon Bayway Property;

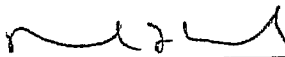
- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

Dated: July \_\_, 2004

By: \_\_\_\_\_  
Allan Kanner  
Special Counsel to the Attorney General  
701 Camp Street  
New Orleans, LA 70130  
(800) 331-1546  
(504) 524-5777  
(504) 524-5763 Fax

Dated: July 23, 2004

By:  \_\_\_\_\_  
Richard F. Engel  
Deputy Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093  
(609) 984-4863

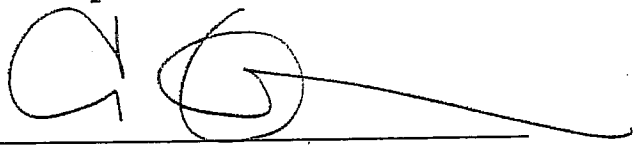


the damages to, or loss of, their natural resources as a result of the discharges of hazardous substances at the Exxon Bayway Property, by performing, under plaintiff DEP's oversight, or by funding plaintiff DEP's performance of, any further assessment and compensatory restoration of any natural resource injured by the discharge of hazardous substances at the Exxon Bayway Property;

- d. Award the Plaintiffs their costs and fees in this action; and
- e. Award the Plaintiffs such other relief as this Court deems appropriate.

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

Dated: August 18<sup>th</sup>, 2004

By:   
Allan Kanner  
Special Counsel to the Attorney General  
701 Camp Street  
New Orleans, LA 70130  
(800) 331-1546  
(504) 524-5777  
(504) 524-5763 Fax

Dated: August \_\_, 2004

By: \_\_\_\_\_  
Richard F. Engel  
Deputy Attorney General  
Richard J. Hughes Justice Complex  
25 Market Street, PO Box 093  
Trenton, NJ 08625-0093  
(609) 984-4863

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, the Court is advised that Allan Kanner, Special Counsel to the Attorney General, is hereby designated as trial counsel for the Plaintiffs in this action.

CERTIFICATION REGARDING OTHER PROCEEDINGS AND PARTIES

Undersigned counsel hereby certifies, in accordance with R. 4:5-1(b)(2), that the matters in controversy in this action may be considered to be the subject of another pending action: New Jersey Society for Environmental, Economic Development, et al. v. Bradley M. Campbell, Commissioner et al., Superior Court of New Jersey, Appellate Division, Docket No. A-6537-03 T3. Otherwise, the matters in controversy in this action are not the subject of any other pending or contemplated action in any court or arbitration proceeding action in any court or arbitration proceeding known to the Plaintiffs at this time, nor is any non-party known to the Plaintiffs at this time who should be joined in this action pursuant to R. 4:28, or who is subject to joinder pursuant to R. 4:29-1. If, however, any such non-party or new issue, including claims to recover other cleanup and removal costs, later becomes known to the Plaintiffs, an amended certification shall be filed

and served on all other parties and with this Court in accordance with  
R. 4:5-1(b) (2).

PETER C. HARVEY  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: 

Allan Kanner  
Special Counsel to the Attorney General  
701 Camp Street  
New Orleans, LA 70130  
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*August 18th*  
Dated: ~~July~~ 18, 2004