

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

_____)	
Conservation Law Foundation, Inc.,)	
)	Case No. _____
Plaintiff,)	
)	COMPLAINT FOR
)	DECLARATORY AND INJUNCTIVE
)	RELIEF AND CIVIL PENALTIES
v.)	
)	
ExxonMobil Corporation,)	
ExxonMobil Oil Corporation, and)	
ExxonMobil Pipeline Company,)	
)	
Defendants.)	
_____)	

Plaintiff Conservation Law Foundation, Inc. (“CLF”), by and through its counsel, hereby alleges:

INTRODUCTION

1. This is a civil suit brought under the citizen suit enforcement provisions of the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (“Resource Conservation and Recovery Act” or “RCRA”), and the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (“Clean Water Act” or “CWA”). Plaintiff seeks declaratory and injunctive relief, civil penalties, and other relief the Court deems proper to remedy Defendants ExxonMobil Corporation, ExxonMobil Oil Corporation, and ExxonMobil Pipeline Company’s (hereinafter, collectively, “ExxonMobil”) violations of federal law, which include: (1) that ExxonMobil has contributed and is contributing to past and present handling, storage, treatment, transportation, or disposal of solid and

hazardous wastes which may present an imminent and substantial endangerment to health or the environment in violation of RCRA; (2) ExxonMobil's past and ongoing failures to comply with its National Pollutant Discharge Elimination System ("NPDES") permit and the Clean Water Act.

JURISDICTION AND VENUE

2. Plaintiff brings this civil suit under the citizen suit enforcement provisions of Section 7002 of the Resource Conservation and Recovery Act, 42 U.S.C. § 6972, and Section 505 of the Clean Water Act, 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the parties and this action pursuant to those statutes and 28 U.S.C. § 1331 (providing district courts with original jurisdiction over an action arising under the Constitution and laws of the United States).

3. Venue is proper in the U.S. District Court for the District of Massachusetts pursuant to Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), and Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the source of the violations is located within this judicial district.

4. On May 17, 2016, Plaintiff notified Defendants of its intention to file suit for violations of the Clean Water Act, in compliance with the statutory notice requirements set forth in 33 U.S.C. § 1365(a)(1), and the corresponding regulations at 40 C.F.R. § 135.2. Letter to R. Tillerson, President, ExxonMobil Corp., from Z. Griefen, Env'tl. Enf't Litigator, CLF (May 17, 2016). In that May 17, 2016 notice letter, Plaintiff also notified Defendants of its intention to file suit for violations of RCRA, in compliance with the statutory notice requirements set forth in 42 U.S.C. § 6972(b)(2)(A), and the corresponding regulations at 40 C.F.R. Part 254. *Id.* A true and accurate copy of Plaintiff's May 17, 2016 notice letter is appended hereto as Exhibit A.

5. On July 8, 2016, Plaintiff provided Defendants with an “Amended Notice of Violations and Intent to File Suit under the Resource Conservation and Recovery Act and Clean Water Act.” In that July 8, 2016 amended notice letter, Plaintiff notified Defendants that “[t]his letter supersedes and replaces that portion of the Notice of Intent issued by CLF on May 17, 2016 regarding the Clean Water Act violations at the Everett Terminal. This letter does not amend or alter those allegations associated with the Resource Conservation and Recovery Act (‘RCRA’) claims contained in the May 17, 2016 Notice of Intent and that portion of the Notice of Intent is included herein only for reference.” Letter to R. Tillerson, President, ExxonMobil Corp., from Z. Griefen, Env’tl. Enf’t Litigator, CLF, (July 8, 2016), at 2. A true and accurate copy of Plaintiff’s July 8, 2016 amended notice letter is appended hereto as Exhibit B.

6. More than 60 days have elapsed since Plaintiff served the July 8, 2016 amended notice letter on Defendants, during which time neither the EPA nor the Commonwealth of Massachusetts has commenced and diligently prosecuted a court action to redress the Clean Water Act violations alleged in this complaint. 33 U.S.C. § 1365(b)(1)(B).

7. More than 90 days have elapsed since Plaintiff served the May 17, 2016 notice letter on Defendants, during which time neither the EPA nor the Commonwealth of Massachusetts has commenced and diligently prosecuted a court action to redress the RCRA violations alleged in this complaint. 42 U.S.C. § 6972(b).

PARTIES

8. Plaintiff CLF is a nonprofit, member-supported organization dedicated to protecting New England’s environment. It is incorporated under the laws of Massachusetts with its principal place of business at 62 Summer Street, Boston, MA, 02110. CLF has over 4,000 members, including more than 1,600 members in Massachusetts. CLF has long worked to protect the

health of New England's waterways, including addressing the significant water quality impacts of industrial and stormwater pollution. CLF members use and enjoy New England's waterways for recreational and aesthetic purposes, including but not limited to boating, swimming, fishing, hunting, and sightseeing. These waters of the United States include the waterways harmed and threatened by ExxonMobil's violations of federal environmental laws and regulations.

9. CLF and its members are concerned about and have an interest in preventing ExxonMobil's pollutant discharges from the Everett Terminal in part because these discharges contain toxic pollutants that are known to be harmful to humans and aquatic life and to persist in the environment. These discharges of toxic pollutants result from ExxonMobil's failure to operate its pollutant treatment system in a manner that complies with its NPDES Permit, meaning that much of this pollution would be avoidable if ExxonMobil operated its pollutant treatment system as required by the Permit. CLF and its members are concerned that these toxic pollutant discharges, which frequently exceed the limits in ExxonMobil's NPDES permit, harm the ecosystems and human use and enjoyment of the Island End and Mystic Rivers.

10. CLF and its members are also concerned about, and have an interest in eliminating the risk from, the toxic pollutants from the Everett Terminal that will wash into the Island End and Mystic Rivers, as well as into and nearby communities, when the Terminal is flooded by a severe storm and/or sea level rise, consistent with the following map:



Census 2010 Municipalities Labels

Legend for Hurricane Surge Inundation Zones

- Category 1
- Category 2
- Category 3
- Category 4

Hurricane Surge Inundation Zones

2013-2014 Color Orthos (USGS)

http://maps.massgis.state.ma.us/map_ol/oliver.php.

11. Because ExxonMobil has not taken climate change impacts into account in its stormwater pollution prevention plan (“SWPPP”), spill prevention, control and countermeasures plan (“SPCC”) and facility response plan (“FRP”), CLF and its members are placed directly in harm’s way and have no reasonable assurance that they will be protected from pollutants released and discharged from the Everett Terminal.

12. Defendant ExxonMobil Corporation is a multinational oil and gas corporation incorporated in New Jersey and headquartered in Irving, Texas. It is the largest direct

descendant of John D. Rockefeller's Standard Oil Company and was formed on November 30, 1999 by the merger of Exxon (originally the Standard Oil Company of New Jersey) and Mobil (originally the Standard Oil Company of New York).

13. Defendant ExxonMobil Pipeline Company is a Delaware corporation headquartered in Houston, Texas. ExxonMobil Pipeline Company, an indirectly wholly-owned subsidiary of ExxonMobil Corporation, operates oil pipelines and provides the management and employees for the operation of oil pipelines and oil terminals for ExxonMobil Corporation and its subsidiaries and affiliates.

14. ExxonMobil Pipeline currently provides the management and employees for operation of the Everett Terminal.

15. Defendant ExxonMobil Oil Corporation is a New York corporation headquartered in Irving, Texas. ExxonMobil Oil Corporation, a subsidiary of ExxonMobil Corporation, refines, markets, and transports petroleum and gas products.

16. ExxonMobil Oil Corporation operates the Everett Terminal and holds the National Pollutant Discharge Elimination System permit for the Terminal.

17. Upon information and belief, ExxonMobil¹ is the world's fifth largest company by revenue and the third largest publicly traded company by market capitalization. ExxonMobil was ranked ninth globally on the Forbes Global 2000 list in 2016 and was the second most profitable company in the Fortune 500 in 2016.

¹ For ease of reference herein, "ExxonMobil" will be used herein to refer to ExxonMobil Corporation, ExxonMobil Oil Corporation, ExxonMobil Pipeline Company, and their predecessors collectively.

18. ExxonMobil is a large producer of oil and gas, producing, upon information and belief, approximately 3.9 million BOE (barrels of oil equivalent) every day. ExxonMobil's reserves exceed, upon information and belief, 25 billion BOE. With 37 oil refineries in 21 countries constituting a combined daily refining capacity of 6.3 million barrels, ExxonMobil is the largest oil refiner in the world.

STATUTORY AND REGULATORY BACKGROUND

Resource Conservation and Recovery Act

19. RCRA's citizen suit provision, 42 U.S.C. § 6972, provides in relevant part:

[A]ny person may commence a civil action on his own behalf--
(1)(A) against any person . . . who is alleged to be in violation of any permit, standard, regulation, condition, requirement, prohibition, or order which has become effective pursuant to this chapter; or (B) 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 waste which may present an imminent and substantial endangerment to health or the environment[.]

42 U.S.C. § 6972(a)(1).

20. "RCRA's primary purpose . . . is to reduce the generation of hazardous waste and to ensure the proper treatment, storage, and disposal of that waste which is nonetheless generated, 'so as to minimize the present and future threat to human health and the environment.'" *Meghri v. KFC W., Inc.*, 516 U.S. 479, 483 (1996) (quoting 42 U.S.C. § 6902(b)).

21. RCRA's citizen suit provision "allows citizen suits when there is a reasonable prospect that a serious, near-term threat to human health or the environment exists." *Me. People's All. & Nat. Res. Def. Council v. Mallinckrodt, Inc.*, 471 F.3d 277, 279 (1st Cir. 2006).

Clean Water Act

22. Congress enacted the Clean Water Act to “restore and maintain the chemical, physical, and biological integrity of the Nation’s waters.” 33 U.S.C. § 1251(a). To accomplish that objective, Congress set as a national goal that “the discharge of pollutants into the navigable waters be eliminated” *Id.*

23. Accordingly, Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant into waters of the United States from a point source, unless the discharge complies with various enumerated sections of the Act.

24. Among other things, Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of a valid NPDES permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p).

25. Section 502(14) of the Clean Water Acts defines “point source” broadly to include “any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. § 1362(14).

26. Under the regulations implementing the Clean Water Act, the definition of “discharge of a pollutant” includes “additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man.” 40 C.F.R. § 122.2.

27. Dischargers of pollutants, including industrial wastewater, process water and stormwater associated with industrial activity, must obtain and comply with the requirements of NPDES permits issued under Section 402 of the Clean Water Act, 33 U.S.C. § 1342.

28. NPDES discharge permits contain pollutant sampling and monitoring requirements and limits on the amount or concentration of allowable pollutants, in addition to requirements regarding control measures, best management practices, and recordkeeping and reporting.

29. The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. §§ 1311(a), 1342.

30. Section 505(a)(1) of the Clean Water Act, 33 U.S.C. § 1365(a)(1), provides for citizen enforcement actions against any “person” who is alleged to be in violation of an “effluent standard or limitation . . . or an order issued by the Administrator or a State with respect to such a standard or limitation.”

31. Such enforcement action under Clean Water Act Section 505(a) includes an action seeking remedies for unauthorized discharges in violation of Section 301 of the Clean Water Act, 33 U.S.C § 1311, as well as for failing to comply with one or more permit conditions in violation of Sections 402 and 505(f) of the Act, 33 U.S.C. §§ 1342, 1365(f).

32. Each separate violation of the Clean Water Act subjects the violator to a penalty of up to \$37,500 per day per violation for all violations occurring between January 12, 2009 and November 2, 2015, and up to \$51,570 per day per violation for all violations occurring after November 2, 2015. *See* 33 U.S.C. §§ 1319(d), 1365(a); 40 C.F.R. §§ 19.1–19.4.

FACTUAL BACKGROUND

ExxonMobil's Everett Terminal

33. ExxonMobil's Everett Terminal, located in Everett, Massachusetts ("Everett Terminal" or "Terminal") is a petroleum products distribution and bulk storage terminal that has operated since 1965. It had previously operated as a refinery from 1921 to 1964.

34. The Terminal is composed of approximately 110 acres and consists of a light fuel (gasoline, diesel and jet fuel) storage area known as the North Tank Farm; a heavy fuel oil and asphalt storage area known as the South Tank Farm; and a marine bulk products receiving and shipping facility known as the Marine Facilities.

35. Sprague Energy is an asphalt storage and distribution facility located within the South Tank Farm on property formerly owned by ExxonMobil.

36. ExxonMobil's Everett Terminal is engaged in the receipt, storage, and distribution of petroleum products. The spectrum of fuels handled by this facility consists of gasoline, low sulfur diesel, jet fuel, heavy oil, and fuel additives. Petroleum products are received in bulk quantities at the Everett Terminal's marine vessel dock and then transferred, via aboveground piping, to aboveground storage tanks located within the facility's "tank farm." The "tank farm" is comprised of a tank truck loading rack and twenty-nine storage tanks in which petroleum products are stored. Final distribution of product is conducted at the Terminal's truck loading racks.

37. ExxonMobil's Everett Terminal generates, stores, handles, and disposes of toxic and hazardous chemicals, metals, and compounds including but not limited to: Ignitable Waste, Petroleum Hydrocarbons, Benzene, Toluene, Ethylbenzene, (m,p,o), Xylenes, tert-Butyl Alcohol, Naphthalene, Phenols, Phthalates (Phthalate esthers), Polycyclic Aromatic

Hydrocarbons (“PAHs”), Acenaphthene, Anthracene, Fluoranthene, Fluorene, Naphthalene, Phenanthrene, Pyrene, Antimony, Arsenic, Cadmium, Copper, Lead, Nickel, Selenium, and Zinc.

38. The Terminal’s marine transfer area is comprised of three berths (Berths 1, 3, and 4). At active berths, barges and ships offload petroleum products that are piped to and stored in the tanks within the tank farm. Those products are then piped to the Terminal’s truck loading rack, where they are loaded onto trucks and distributed.

39. The Terminal is typically operated by a regular staff of approximately fourteen employees, who operate out of an office building located adjacent to the tank farm and just north of the marine docking facility. The regular Terminal staff consists of a terminal superintendent, a terminal supervisor, nine terminal operators who cover twenty-four hour operations of the Terminal, an electrician, a mechanic, and an accountant. At any given time, at least two terminal operators are on duty. Additional Terminal support is provided by a field operations specialist, an area administrator, and an area engineer.

40. ExxonMobil Pipeline is responsible for the proper operation and maintenance of the facility. Those responsibilities entail, among other duties, monitoring the Terminal and, when necessary, cleaning, repairing, and replacing, as appropriate, worn or damaged equipment, including pipes, valves, docks and tanks. Likewise, ExxonMobil Pipeline was and is responsible for monitoring the transfer of petroleum products at each point in the process, from delivery at the marine transfer area through the receipt and storage of those products in the tanks in the tank farm, to the transport of those products to the truck loading rack where they are loaded on trucks for distribution.

41. The ExxonMobil Everett Terminal operations also include the collection and discharge of stormwater from all areas of the Terminal, including from Sprague Energy.

42. All of the stormwater discharged is collected by the Terminal's stormwater collection system which drains to a treatment works near the eastern edge of the North Tank Farm.

43. Residential areas are located in close proximity to the Terminal.

Discharges to the Island End River & ExxonMobil's NPDES Permit

44. ExxonMobil operates the Everett Terminal pursuant to EPA NPDES Permit No. MA0000833, as modified on October 12, 2011 ("the Permit").

45. The Permit authorizes ExxonMobil, subject to certain conditions, to discharge stormwater, groundwater, steam condensate, tank bottoms, and potable water (used for garage floor washing, hydrostatic testing, truck washing, fire testing, landscape watering, and safety showers).

46. The receiving water identified in ExxonMobil's Permit is the Island End River (Boston Harbor/Mystic River Watershed/Segment MA71-03), a small tributary to the Mystic River.

47. The Island End River flows into the Mystic River, approximately half a mile west of the Mystic River's confluence with Boston Harbor.

48. The Island End River is designated as a Class SB water body by the Commonwealth of Massachusetts, meaning that it is "designated as a habitat for fish, other aquatic life and wildlife, including for their reproduction, migration, growth and other critical functions, and for primary and secondary contact recreation." 314 Mass. Code Regs. 4.05.

49. Under Section 303(d) of the Clean Water Act, states are required to develop information on the quality of their water resources and report this information to the EPA, the U.S. Congress, and the public.

50. In Massachusetts, the responsibility for identifying waters that are impaired, meaning that they do not meet the Massachusetts Water Quality Standards, 314 CMR 4.0, resides with the Massachusetts Department of Environmental Protection (“MassDEP”).

51. The MassDEP’s most recent assessment of impaired waters was published in *Massachusetts Year 2014 Integrated List of Waters*, MassDEP (Dec. 2015).

52. The *Massachusetts Year 2014 Integrated List of Waters* identifies the lower reach of the Mystic River (Segment ID No. MA71-03, which includes the Island End River) as one of the waterways within Massachusetts that is impaired. The impairment, as identified by the MassDEP, is related to the presence of the following pollutants, which were not considered to be present due to natural causes: Ammonia (Un-ionized); Dissolved Oxygen; Foam/Flocs/Scum/Oil Slicks; Petroleum Hydrocarbons; Taste and Odor; Fecal Coliform; PCB in Fish Tissue; Sediment Screening Value (Exceedence); and Other.

53. The *Massachusetts Year 2010 Integrated List of Waters* identified this section of the Mystic River, including the Island End River, as impaired for the following pollutants: Ammonia (Un-ionized); Dissolved Oxygen; Foam/Flocs/Scum/Oil Slicks; Petroleum Hydrocarbons; Taste and Odor; Fecal Coliform; PCB in Fish Tissue; and Other. *Massachusetts Year 2010 Integrated List of Waters*, MassDEP (Nov. 2011).

54. As required by statute, EPA has included conditions in the Permit to ensure that discharges from the Terminal will not cause or contribute to a violation of the Massachusetts Water Quality Standards.

55. Stormwater discharges from the Everett Terminal are conveyed to the Island End River by means of a 6-foot diameter, 1,500 foot long culvert. The downstream end of the culvert is regularly submerged by, and its flow influenced by, the tidal influences of the Island End River.

56. There are three discharge outfalls from the Everett Terminal that connect to the culvert: Outfalls 01A, 01B, and 01C. The Permit includes mandatory permit conditions that specify the required operation of the stormwater system, including specific conditions and limitations governing the discharge from each outfall.

57. The mandatory operational protocol in the permit was implemented pursuant to a settlement agreement between ExxonMobil and EPA, whereby ExxonMobil “agreed to extensively redesign its effluent treatment system in order to improve effluent quality under all flow conditions, including through the use of a continuously operated advanced treatment system, and a flow equalization tank to store storm water volume during periods of peak storm water flow.” Response to Comments on Draft Modification of NPDES Permit No. MA0000833, at 1-2 (attached to Permit).

58. The Permit requires that all discharges up to and including a volume of 280 gpm must occur through Outfall 01C.

59. Discharges through Outfall 01C are treated by a continuously operated advanced treatment system, which was implemented to improve effluent quality under all flow conditions.

60. The permit includes numeric effluent limitations for each outfall, including effluent limitations for PAHs.

Spill Prevention and Response Measures Required at the Everett Terminal

61. The Permit requires that ExxonMobil “develop, implement, and maintain a Storm Water Pollution Prevention Plan (“SWPPP”) designed to reduce, or prevent, the discharge of pollutants in storm water to the receiving waters.” Permit Part I.B.1, p. 13.

62. The Permit requires that: “the SWPPP shall contain the elements listed below: A description of all storm water controls, both structural and non-structural. [Best Management Practices (“BMPs”)] must include . . . preventative maintenance programs, spill prevention and response procedures, runoff management practices, and proper handling of deicing materials. The SWPPP shall describe how the BMPs are appropriate for the facility. All BMPs shall be properly maintained and be in effective operating conditions.” Permit Part I.B.4(e), p. 13-14.

63. The Permit incorporates spill prevention and response procedures as a BMP in the SWPPP.

64. Applicable spill prevention and response procedures include a Spill Prevention, Control, and Countermeasures (“SPCC”) Plan, which is required pursuant to 40 C.F.R. § 112, Subpart A.

65. ExxonMobil is required to prepare an SPCC for the Everett Terminal because it is an “owner or operator of a non-transportation-related onshore or offshore facility engaged in drilling, producing, gathering, storing, processing, refining, transferring, distributing, using, or consuming oil and oil products, which due to its location, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or

upon the navigable waters of the United States or adjoining shorelines . . .” 40 C.F.R.

§ 112.1(b).

66. The SPCC must include “procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines . . .” 40 C.F.R.

§ 112.1(a)(1).

67. The SPCC regulations highlight the importance of SPCC Plans:

SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.

40 C.F.R. § 112.1(e).

68. The SPCC regulations state that:

Except as provided in §112.6, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part. (1) By means of this certification the Professional Engineer attests: (i) That he is familiar with the requirements of this part; (ii) That he or his agent has visited and examined the facility; (iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part; (iv) That procedures for required inspections and testing have been established; and (v) That the Plan is adequate for the facility. (vi) That, if applicable, for a produced water container subject to §112.9(c)(6), any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan. (2) Such

certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.

40 C.F.R. § 112.3(d).

69. Applicable spill prevention and response procedures include a Facility Response Plan (“FRP”), which is required pursuant to 40 C.F.R. § 112, Subpart A.

Risks to the Everett Terminal

70. The Everett Terminal is vulnerable to sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surges due to its location, elevation, and lack of preventative infrastructure.

71. ExxonMobil has not implemented needed actions to address and eliminate these vulnerabilities at the Everett Terminal.

72. For Everett, Massachusetts, the flood of record for storm surge risk occurred in February 1978 and had a flood elevation of 10.5 feet.

73. Upon information and belief, the majority of the areas at the Everett Terminal are at or below 10.5 feet.

74. Preparation for spills and other releases of hazardous substances is especially important at the Everett Terminal given its vulnerability to sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surges.

75. The Federal Emergency Management Agency (“FEMA”) flood maps for Boston, Chelsea, Revere, and Winthrop were recently updated in part to reflect readily available information

regarding climate change-induced sea level rise and storm surge predictions. The updated FEMA maps for Chelsea include a substantial part of the city in the flood hazard zone.

76. Applying the same data and information that were applied to Chelsea to Everett, places a substantial part of ExxonMobil's Everett Terminal in the flood hazard zone.

77. The boundary between the cities of Everett and Chelsea is in close proximity to, and at the same elevation as, the Everett Terminal and the area of Chelsea nearest the Everett Terminal is in the flood hazard zone.

78. Despite the extensive information and knowledge in ExxonMobil's possession regarding climate change-induced impacts, including knowledge and information about increased precipitation, storm surge and sea level rise, ExxonMobil has not requested an update of the FEMA flood hazard maps for the location of its Everett Terminal.

79. A severe rainfall event in July 2010 (NRC Report No. 947252), together with ExxonMobil's failure to fortify its Terminal against increased risks from extreme weather events, produced a failure of the Everett Terminal's treatment system that resulted in a discharge of untreated pollutants directly into the Island End River. In an August 15, 2010 letter to the MassDEP, ExxonMobil explained that this failure and unpermitted, untreated discharge occurred in part because:

On July 10th the facility experienced a severe rainfall event, noted in the Boston and Cambridge area as a rainfall of 2-3.5" of rain in ~2 hrs. The sudden intense rainfall resulted in the flooding of the facility oil water separator, compromising the function of the system. Water continued to be pumped from the suction end of the [Oil Water Separator].

Letter from A. F. Powers, Terminal Superintendent, ExxonMobil Pipeline Co., to Water Technical Unit, U.S. EPA, *Submission of Discharge Monitoring Reports, Permit No. MA0000833* (Aug. 15, 2010)

80. As indicated in the “SLOSH” model (Sea, Lake, and Overland Surges from Hurricanes), the majority of the Everett Terminal is included within a “Category 1” Hurricane Surge Inundation Zone, which is indicated by the color light green as shown in the legend below the map on this page:



Census 2010 Municipalities Labels

Legend for Hurricane Surge Inundation Zones

Category 1

Category 2

Category 3

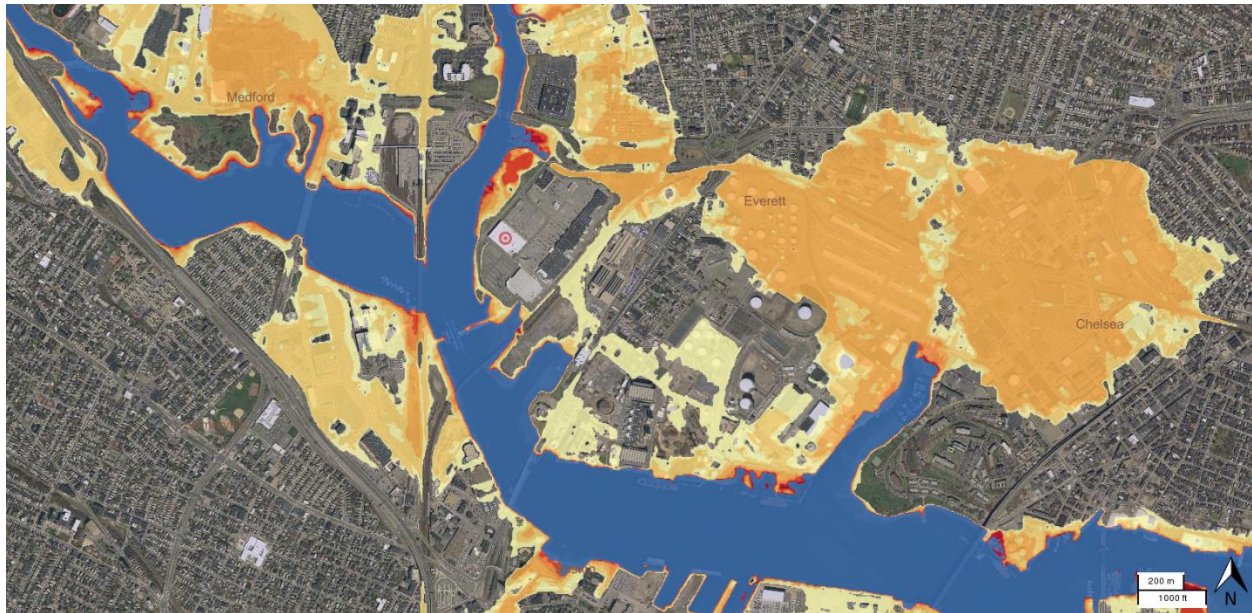
Category 4

Hurricane Surge Inundation Zones

2013-2014 Color Orthos (USGS)

http://maps.massgis.state.ma.us/map_ol/oliver.php

81. The threat of a rise in sea level at the Terminal is imminent, as indicated by the following map, which shows that a four-foot or greater rise in sea level will inundate much of the Terminal:



2010 U.S. Census Municipalities Labels

Legend for Coastal Inundation Scenarios

- Current Mean Higher High Water
- 1 ft Sea Level Rise
- 2 ft Sea Level Rise
- 3 ft Sea Level Rise
- 4 ft Sea Level Rise
- 5 ft Sea Level Rise
- 6 ft Sea Level Rise

Coastal Inundation Scenarios

Massachusetts Municipal Boundaries Lines

- Towns
- Interstate
- Coast

http://maps.massgis.state.ma.us/map_ol/oliver.php

82. The Terminal is at risk of discharging oil and other pollutants due to climate change-induced sea level rise.

83. The Terminal is at risk of discharging oil and other pollutants due to climate change-induced storm surge.

84. The Terminal has discharged, and is at risk of discharging, oil and other pollutants due to climate change-induced increased precipitation.

85. The Terminal has discharged, and is at risk of discharging, oil and other pollutants due to climate change-affected weather events.

86. The Terminal has discharged, and is at risk of discharging, oil and other pollutants due to climate change-affected severe weather events.

87. The Terminal has discharged, and is at risk of discharging oil and other pollutants due to climate change-affected extreme weather events.

88. ExxonMobil is aware of these risks, yet has failed to design and implement protective measures to fortify the Everett Terminal as required under federal law.

Climate Change Impacts

89. The harms associated with climate change are serious and well recognized.

Massachusetts v. EPA, 549 U.S. 497, 521 (2007).

90. “That global warming is taking place as a result of human emissions of carbon dioxide and other greenhouse gases, and that its consequences are likely to be harmful, is widely accepted in the scientific community.” *Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie*, 508 F. Supp. 2d 295, 341 (D. Vt. 2007).

91. In 2013, the President of the United States issued an Executive Order entitled “Preparing the United States for the Impacts of Climate Change.” That Executive Order states that “[t]he impacts of climate change—including an increase in prolonged periods of excessively high temperatures, more heavy downpours, an increase in wildfires, more severe droughts, permafrost thawing, ocean acidification, and sea-level rise—are already affecting communities, natural resources, ecosystems, economies, and public health across the Nation.” Exec. Order No. 13653, 78 Fed. Reg. 66,819 (Nov. 6, 2013).

92. According to the Third National Climate Assessment:

- a. “Global climate is changing and this is apparent across the U.S. in a wide range of observations. The global warming of the past 50 years is primarily due to human activities, predominantly the burning of fossil fuels.” Third National Climate Assessment ((J. M. Melillo et al. eds., 2014) at 15, *available at* <http://nca2014.globalchange.gov/report>).
- b. “Some extreme weather and climate events have increased in recent decades, and new and stronger evidence confirms that some of these increases are related to human activities.” *Id.*
- c. “Human-induced climate change is projected to continue, and it will accelerate significantly if global emissions of heat-trapping gases continue to increase.” *Id.*
- d. “Impacts related to climate change are already evident in many sectors and are expected to become increasingly disruptive across the nation throughout this century and beyond.” *Id.*

- e. “Climate change threatens human health and well-being in many ways, including through more extreme weather events and wildfire, decreased air quality, and diseases transmitted by insects, food, and water.” *Id.* at 16.
 - f. “Infrastructure is being damaged by sea level rise, heavy downpours, and extreme heat; damages are projected to increase with continued climate change.” *Id.*
 - g. “Water quality and water supply reliability are jeopardized by climate change in a variety of ways that affect ecosystems and livelihoods.” *Id.*
 - h. “Climate disruptions to agriculture have been increasing and are projected to become more severe over this century.” *Id.*
 - i. “Ecosystems and the benefits they provide to society are being affected by climate change. The capacity of ecosystems to buffer the impacts of extreme events like fires, floods, and severe storms is being overwhelmed.” *Id.* at 17.
 - j. “Ocean waters are becoming warmer and more acidic, broadly affecting ocean circulation, chemistry, ecosystems, and marine life.” *Id.*
 - k. “Planning for adaptation (to address and prepare for impacts) and mitigation (to reduce future climate change, for example by cutting emissions) is becoming more widespread, but current implementation efforts are insufficient to avoid increasingly negative social, environmental, and economic consequences.” *Id.*
93. According to the Massachusetts Climate Change Adaptation Report:
- (a) “Massachusetts’ climate is already changing and will continue to do so over the course of this century—ambient temperature has increased by approximately 1°C

(1.8°F) since 1970 and sea surface temperature by 1.3°C (2.3°F) between 1970 and 2002. These warming trends have been associated with other observed changes, including a rise in sea level of 22 centimeters (cms) between 1921 and 2006.”

Executive Office of Energy and Environmental Affairs, Massachusetts Climate Change Adaptation Report (Sept. 2011), at 7.

- (b) “Assuming that sea level continues to increase at its current rate, because land in Massachusetts is naturally subsiding, by the end of the century, it is expected to rise by another one foot (IPCC, 2007). In addition, the magnitude of sea level rise is predicted to be compounded by thermal expansion of the oceans, the melting of ice on land (such as Greenland) and the collapse of the West Antarctic Ice Sheet. By the end of this century, under the IPCC high emissions scenario with ice melt, it has been suggested that sea level rise resulting from all these factors could reach six feet.” *Id.* at 8 (internal citations omitted).
- (c) “Regarding infrastructure, the most significant vulnerability of existing structures stems from the fact that they were built based on historic weather patterns, not taking into account future predicted changes to sea level, precipitation, or flooding. This puts the infrastructure at increased risk of future damage and economic costs.” *Id.* at 10.
- (d) “There are several factors that contribute to sea level rise—expansion of the water as its temperature rises, changing water currents, and melting of ice on land (such as Greenland). In Massachusetts, these factors are further amplified by local subsidence of land. Relative sea level rise in Massachusetts from 1921 to 2006 was 2.6 millimeters annually (0.10 inches/year)—an increase of approximately 26 centimeters

or 10.2 inches per century. Over that same time period, the global rate of sea level rise was about 1.7 mm/year (0.07 inches/year). Thus, there is about 1 mm/year (0.04 inches/ year) local land subsidence in the relative sea level record.” *Id.* at 21-22 (internal citations omitted).

- (e) “The Massachusetts Climate Change Adaptation Advisory Committee relied on three sources of projections for sea level rise by 2100 (Table 2 and Figure 4). First, the 2007 IPCC projections are widely viewed as conservative but are highly credible and internationally recognized. Second, the Rahmstorf et al. (2007) approach uses a relationship between global mean surface temperature and sea level and then projects future changes using the IPCC Third Assessment Report (2001) temperature scenarios. Third, Pfeffer et al. (2008) use the IPCC (2007) steric projection, and add ice melt to it. Pfeffer et al. (2008) base this on physically plausible melt or deterioration rates for Greenland, Antarctica, and other glaciers and ice caps related to different rates of melting and discharge that are known from ice sheet and glacier behavior.” *Id.* at 22.
- (f) “Sea currents also play a role in sea level rise along the Massachusetts coast. The northeastern U.S. may experience additional sea level rise above the global mean due to changes in the strength of the Atlantic Meridional Overturning Circulation, of which the Gulf Stream is a part. As the Atlantic Meridional Overturning Circulation slows, the dynamic topography of the sea surface changes and sea-level rises along the coast. Yin et al. (2009) suggest that there is the potential for an additional 15 to 27 cm (5.9 to 10.6 in.) sea level rise in Boston by 2100, while Hu et al. (2009)

suggest that a sea level rise of 10 to 30 cm (3.9 to 11.8 in.) will occur in the northeastern U.S. by 2100.” *Id.* (internal citations omitted).

(g) “Finally, Bamber et al. (2009) found that the collapse of the West Antarctic Ice Sheet would not only add to sea level rise but, as it shrinks, would also cause a redistribution of ocean mass due to the reduced gravitational attraction of the smaller West Antarctic Ice Sheet. This would be a global effect, most pronounced in a band at ~40° north latitude where the sea level rise is projected to be about 25 percent more than elsewhere around the globe. Coastal Massachusetts extends from roughly 41°10'N to 42°53'N and would experience the full brunt of this impact. There is presently high uncertainty regarding the potential for full West Antarctic Ice Sheet collapse, but this effect also applies to a partial collapse. Overall, by 2100 sea level rise in Massachusetts could range from 29 to 201 cm.” *Id.*

(h) “Current rates of sea level rise and projections for accelerated trends are all significant threats to the coastal communities of the state. Sea level rise would increase the height of storm surges and associated coastal flooding frequencies, permanently inundate low-lying coastal areas, and amplify shore line erosion. Extensive development and infrastructure, both public and private, would be affected in these expanding vulnerable areas.” *Id.* at 22-23.

(i) “Analysis of five coastal sites in the Northeast, including Boston and Woods Hole, indicates that future sea level rise would create significant increases in the frequency of today’s 100-year flood events.” *Id.* at 23 (internal citations omitted).

- (j) “Engineered structures, such as seawalls designed to stabilize shorelines, could be overtopped.” *Id.*
- (k) “It is forecast that the Northeast will experience a greater frequency of high precipitation events Scientists predict an 8 percent increase in extreme precipitation events in the northeastern U.S. by mid-century, and up to a 13 percent rise by 2100. Rainfall during the wettest five-day period each year is projected to increase by 10 percent by mid-century and by 20 percent by the end of the century.” *Id.* at 25 (internal citations omitted).
- (l) “By 2050, Boston could experience the current 100-year riverine flood every two to three years on average and, by 2100, the current 100-year riverine flood is expected to occur every one to two years under both the low- and high-emissions scenarios. In the case of coastal storms, the frequency and timing of winter storms or nor’easters could change. Under the low-emissions scenario, little change is predicted in the number of nor’easters striking the Northeast, but it could experience approximately 5 to 15 percent more late-winter storms under the high-emissions scenario.” *Id.* (internal citations omitted).
- (m) “The energy sector’s three primary climate change concerns are flooding (due to increased precipitation and storm surge), extreme events (such as hurricanes and snow and ice storms), and increased temperature.” *Id.* at 62.
- (n) “The following are the predicted impacts on energy infrastructure: . . .”
- i. “Extreme and more frequent weather events, including flooding, may damage energy production and delivery equipment such as generation

plants (e.g. the Pilgrim nuclear power station), terminals, storage facilities and above- and below-ground wires and pipes. Damaged infrastructure will lead to interrupted service, degraded energy reliability, increased equipment maintenance or replacement costs, and adverse impacts to public safety.” *Id.*

- ii. “Sea level rise and storm-related flooding may require relocating coastal infrastructure, which would require new real estate acquisitions for replacement sites.” *Id.*
- iii. “Extreme temperature changes could result in an increased demand for cooling in summer and a decreased demand for heating in winter. One 2005 study of changes in Boston’s heating and cooling demand indicates that, ‘depending on the climate scenario, household electricity consumption in peak summer months may be nearly three times that of the 1960-2000 average, with over 25 percent of the increase directly attributable to climate change.’ Such changes also can shift energy production and use. For example, high temperatures reduce thermal efficiency of electric generation. This could challenge the ability of the electric system operators to meet peak electricity demands.” *Id.* (internal citations omitted).
- iv. “There may be lengthened repair times and delays. Repair crews will find it more difficult to work in protective gear for extended periods in high temperatures, during prolonged rain or in extreme cold.” *Id.*

- (o) “Other entities that have the potential to generate hazardous waste in the event of a natural disaster include waste generators such as retailers with hazardous materials (e.g., pharmacies and chain retail stores), certain chemical handling businesses, fuel tank farms, waste transporters, and residences equipped with heating oil tanks and containing hazardous household products.” *Id.* at 69.
- (p) “Potential Strategies identified in the Massachusetts Climate Change Adaptation Report to address the serious harms threatened by large quantity hazardous waste generators include: . . .”
- a. “Ensure that contingency plans for hazardous waste treatment, storage, and disposal facilities and large quantity generators include a description of procedures, structures, or equipment used at the facilities to prevent flooding and run-off from hazardous waste handling areas.” *Id.* at 69.
 - b. “Develop better mapping data to identify solid and hazardous waste facilities that would be vulnerable to rising sea level and new, more frequent, or more severe flooding.” *Id.*
 - c. “Consider requiring all solid and hazardous waste facilities operating in areas prone to coastal or inland flooding to prepare adaptation plans. This could be addressed through the permit renewal process.” *Id.*
 - d. “Evaluate modification of the siting and design requirements for new and expanded waste management facilities to account for predicted site-specific climate change impacts that could be expected during the life of the facility.” *Id.* at 70.

94. Massachusetts coastal communities regularly face impacts associated with storm damage, flooding, and erosion, which affect residential and commercial development, infrastructure and critical facilities, and natural resources and ecosystems. Sea level rise will exacerbate these problems, and as the rate of rise accelerates, not only will the impacts from coastal storm events become more frequent and widespread, but even daily high tides will have adverse effects. Sea Level Rise: Understanding and Applying Trends and Future Scenarios for Analysis and Planning (2013) at 5 (*available at* <http://www.mass.gov/eea/docs/czm/stormsmart/slr-guidance-2013.pdf>).

95. This unfortunate reality has been demonstrated recently in the context of severe weather events, including Superstorm Sandy. As reported on November 14, 2012 in the New Jersey news media outlet NJ.com:

[A]t the Sewaren terminal of Motiva Enterprises, a subsidiary of Shell, the tidal surge damaged bulk fuel tanks, releasing approximately 378,000 gallons of low-sulfur diesel, officials said. Nearly three quarters of that amount escaped the containment area, rushing into the Arthur Kill and its tributaries. That's like 30 tanker trucks pouring their contents into the water.

It represents the largest fuel or oil spill in New Jersey in perhaps a decade or more, officials said.

'That's a major spill,' said Larry Ragonese, a spokesman for the state Department of Environmental Protection. 'On a normal basis, we would have had quite a bit of uproar and media attention.'

That, of course, did not happen as the region reeled amid death, destruction and darkness. Quickly and quietly, though, Shell and the other two oil companies that experienced leaks — at the Phillips 66 refinery in Linden and at the Kinder Morgan terminal in Carteret — moved in to plug breached tanks and contain what had already been released.

Within 24 hours, hundreds of workers had responded with oil skimmers, vacuum trucks, water barges, work boats and thousands of feet of containment boom, according to local, state and federal officials who have provided oversight for the work.

Ryan Hutchins, *Oil Spills, Other Hurricane Sandy Damage Present N.J. with Potential Pollution Headaches*, NJ.com. (Nov. 14, 2012), available at:

http://www.nj.com/news/index.ssf/2012/11/hurricane_sandy_oil_spills.html.

96. Harvard's Daniel P. Schrag, Sturgis Hooper Professor of Geology in the Faculty of Arts and Sciences stated in a news report regarding Superstorm Sandy that:

‘By midcentury, this will be the new normal,’ Schrag predicted. ‘How do you deal with extreme heat in the summer? It’s going to be a challenge, but humans are adaptable. It’s not going to be easy, just like a 13-foot storm surge will be the new norm on the Eastern seaboard.’

Edward Mason, *Hello Again, Climate Change: Sandy Prompts Renewed Interest and Concern, and Schrag Says it Should*, Harvard Gazette (Nov. 6, 2012) available at:

<http://news.harvard.edu/gazette/story/2012/11/hello-again-climate-change/>.

ExxonMobil has Long Been Aware of Climate Change and the Related Impacts

97. ExxonMobil has long been well aware of the present impacts and risks of climate change.

98. Despite knowing of the certainty of rising temperatures and rising sea levels since as early as the 1970s, ExxonMobil did not use its findings to prepare its Everett Terminal for such risks.

99. ExxonMobil is a science and engineering based company that employs roughly 16,000 scientists and engineers who every day explore the boundaries of scientific knowledge in order to develop the energy supplies that power the modern economy.

100. ExxonMobil scientists have contributed climate research and related policy analysis to more than fifty papers in peer reviewed publications from at least 1977 to the present.

101. ExxonMobil scientists and researchers were among the first to grapple with the fact that there might be a connection between the carbon dioxide emissions from humanity's use of fossil fuels and climate fluctuations.

102. In an October 31, 1977 ExxonMobil interoffice memorandum from H. Shaw to J. Harrison, ExxonMobil acknowledged the rule of thumb that doubling the current level of CO₂ from 330 ppm to about 700 ppm would cause a change of about 2°C on average in temperature, and that the "CO₂ problem . . . is the most important man-made weather problem that we have to contend with." Inter Office Mem. from H. Shaw to J. Harrison on "Environmental Effect of Carbon Dioxide" (Oct. 31, 1977), at 4.

103. A May 18, 1978 transcript of a presentation delivered by ExxonMobil's J.F. Black, Scientific Advisor to Products Research Division of Exxon Research and Engineering Co., states that, based on estimates of fossil fuel consumption that agree with ExxonMobil's, "one recent study predicts that in 2075 A.D., CO₂ concentration will peak at a level about twice what could be considered normal." Letter from J.F. Black to F.G. Turpin, Vice President, Exxon Research and Engineering Co. Petroleum Staff, (June 6, 1978), at 2 (attaching "Greenhouse Effect Presentation Transcript of May 18, 1978").

104. Mr. Black's presentation further concludes that "the best presently available climate model for treating the Greenhouse Effect predicts that a doubling of the CO₂ concentration in the atmosphere would produce a mean temperature increase of about 2°C to 3°C over most of the earth" and that "there is no guarantee that better knowledge will lessen rather than augment the severity of the predictions." *Id.* at 3.

105. According to Mr. Black, “[p]resent thinking holds that man has a time window of five to ten years before the need for hard decisions regarding changes in energy strategies might become critical.” *Id.* “Atmospheric scientists generally attribute this growth in CO₂ to the combustion of fossil fuel.” *Id.* at 5.

106. The presentation further confirmed that “it is generally accepted by climatologists that a doubling of the carbon dioxide concentration in the atmosphere would produce from 1.5°C – 3.0°C warming at the earth’s surface in the lower and mid-latitudes with about 2 to 3 times greater effect at the poles,” and “that the expected temperature increase would be large even compared to the temperatures at the time of the last interglacial.” *Id.* at 11.

107. In December 1978, ExxonMobil’s H. Shaw of Government Research Labs of Exxon Research and Engineering Co. wrote to E.E. David, General Administration, describing a proposed ExxonMobil tanker research program to measure CO₂ uptake by oceans and wine to estimate relative contribution to atmospheric CO₂ concentration of fossil fuel combustion and forest clearing. One rationale for the research program, he explained, was to be able to “carry bad news, if any, to the corporation.” Letter from Henry Shaw to r. Edward E. David, Jr. (Dec. 7, 1978), at 2.

108. Soon thereafter, an ExxonMobil research memorandum entitled “Controlling the CO₂ Concentration in the Atmosphere” recognized that CO₂ concentrations were 15% higher than in 1850 and “appear[] to be doubling every 15 years.” Mem. on “Controlling Atmospheric CO₂” (Oct. 16, 1979), at 1.

109. According to the memorandum, the most widely held theory was that the increase in CO₂ concentrations was due to fossil fuel combustion, that it would cause a warming of the earth’s

surface, and that the present trend of fossil fuel consumption would cause “dramatic environmental effects before the year 2050.” *Id.*

110. The memorandum goes on to state that “[t]he potential problem is great and urgent,” *id.* at 2 (emphasis in original), and “[m]any models today predict that doubling the 1860 atmospheric CO₂ concentration will cause a 1° to 5°C global temperature increase,” *id.* at 3. Such doubling would occur by about 2050. *Id.*

111. The memorandum quotes a 1969 E.K. Peterson study regarding the effects of doubling 1860 CO₂ concentration, including a temperature increase of 9°F above 1950 levels and sea level rise of 4 feet. *See id.* at Appendix A.

112. The memorandum concludes in part that “[t]he present trends of fossil fuel combustion with a coal emphasis will lead to dramatic world climate changes within the next 75 years” according to many climate models. *Id.* at 1.

113. Mr. Ferrall’s letter enclosing the memorandum cautioned that:

The major conclusion from this report is that, should it be deemed necessary to maintain atmospheric CO₂ levels in order to prevent significant climatic changes, dramatic changes in patterns of energy use would be required. World fossil fuel resources other than oil and gas could never be used to an appreciable extent.

Mem. from W.L. Ferrall, to R.L. Hirsh on “Controlling Atmospheric CO₂” (Oct. 16, 1979) (enclosing October 16, 1979 Mem. on “Controlling Atmospheric CO₂”).

114. In December 1980, a research memo prepared by Exxon Research & Engineering Company entitled CO₂ Greenhouse Effect Technological Forecast expressed “[l]ittle doubt” that atmospheric CO₂ concentrations have been increasing since the 1950s. Mem. to T. K. Kett from

Henry Shaw on “Exxon Research & Engineering Company Technological Forecast: CO₂ Greenhouse Effect”, at 1 (attached to Mem. from H. Shaw to T. K. Kett (Dec. 18, 1980)).

115. ExxonMobil’s December 1980 Technological Forecast further states that, based on various energy projections, Exxon Research calculations indicated that the doubling of the CO₂ concentration “can occur at about 2060. If synthetic fuels are not developed, and fossil fuel needs are met by petroleum, then the atmospheric CO₂ doubling time would be delayed by about 5 years to 2065.” *Id.* at 3.

116. According to the December 1980 Technological Forecast, “[t]he most widely accepted calculations carried on thus far on the potential impact of a doubling of carbon dioxide on climate indicate that an increase in the global average temperature of $3\pm 1.5^{\circ}\text{C}$ is most likely . . . with greater warming occurring [sic] at the . . . polar regions.” The forecast went on to say that calculations projecting lower average temperature increases “are not held in high regard by the scientific community.” *Id.*

117. The Forecast predicted that “a general concensus [sic] will not be reached until such time as a significant temperature increase can be detected above the natural random temperature fluctuations in average global climate. The earliest that such discreet signals will be able to be measured is after the year 2000.” *Id.* at 4.

118. An August 18, 1981 memorandum from R.W. Cohen, Director, Theoretical and Mathematical Laboratory of Exxon R & E Co., to W. Glass stated that:

it is distinctly possible that the CPD scenario will later produce effects which will indeed be catastrophic (at least for a substantial fraction of the earth’s population). This is because the global ecosystem in 2030 might still be in a transient, headed for much more significant effects after time lags perhaps of the order of

decades. If this indeed turns out to be the case, it is very likely that we will unambiguously recognize the threat by the year 2000 because of advances in climate modeling and the beginning of real experimental confirmation of the CO₂ effect.

Inter-Office Correspondence from R. W. Cohen to W. Glass (Aug. 18, 1991), at 1 (with attachments).

119. An April 1, 1982 Technical Review and accompanying summary on CO₂ Greenhouse Effect prepared by the Coordination and Planning Division of Exxon R & E Company (marked “Proprietary Information, for Authorized Company Use Only”) updated the company’s “[b]est estimate” of CO₂ doubling, concluding that it would increase average global temperature from 1.3° to 3.1°C, with 10°C at the poles and very little at the equator. Summary of Technical Review (April 1, 1982), at 1. While claiming that the problem might not be as significant as a nuclear holocaust or world famine, the Technical Review acknowledged that “[a]t the high end, some scientists suggest there could be considerable adverse impact including the flooding of some coastal land masses as a result of a rise in sea level due to melting of the Antarctic ice sheet,” *id.* at 1, and that “if the Antarctic ice sheet . . . should melt, then this could cause a rise in sea level on the order of 5 meters.” Technical Review (April 1, 1982) at 12-13 (providing estimates of time for melting range from hundreds to a thousand years).

120. The Technical Review also advised ExxonMobil that a draft Massachusetts Institute of Technology and Oak Ridge Laboratory report that considered CO₂ concentration of 500-1000 ppm as the “assumed threshold for inducing great irreversible harm to our planet, such as causing a large ocean level rise due to melting polar ice.” *Id.* at 18.

121. Despite knowing of the imminence of rising temperatures and rising sea levels, ExxonMobil did not use its findings to better fortify its Everett Terminal against such risks.

122. An August 24, 1982 slide presentation for a meeting with Exxon Corp. personnel regarding the CO₂ Greenhouse Effect indicated that “[w]arming could induce major changes in climate,” including temperature, rainfall patterns and coastal sea levels. Slide presentation Re: Basis for the CO₂ Greenhouse Effect (Aug. 24, 1982), at 3. Graphs within the presentation demonstrate estimates of changes in global average surface temperatures for different ranges of CO₂ concentration. For example, a CO₂ concentration of 600 ppm shows increase in global average surface temperature from 2°C to over 3°C. *Id.* at 6.

123. Despite knowing of that warming global temperatures would result in changes to coastal sea levels, ExxonMobil did not use its findings to better fortify its Everett Terminal from such risks.

124. On September 2, 1982, Roger Cohen, of Exxon Research and Engineering, wrote to A. M. Natkin, in Exxon’s Office of Science and Technology that:

over the past several years a clear scientific consensus has emerged regarding the expected climatic effects of increased atmospheric CO₂. The consensus is that a doubling of atmospheric CO₂ from its pre-industrial revolution value would result in an average global temperature rise of (3.0 ± 1.5) °C.

Letter from Roger W. Cohen, Director, Theoretical and Mathematical Sciences Laboratory, to A.

M. Natkin, Office of Science and Technology, Exxon Corporation (Sept. 2, 1982), at 1. Mr.

Cohen further stated that:

[t]here is unanimous agreement in the scientific community that a temperature increase of this magnitude would bring about significant changes in the earth’s climate, including rainfall

distribution and alterations in the biosphere Current projections indicate that doubling will occur sometime in the latter half of the 21st century It is generally believed that the first unambiguous CO₂-induced temperature increase will not be observable until around the year 2000.

Id. at 1-2. Mr. Cohen noted that ExxonMobil research results are consistent with most researchers in the field, and notes that the company's "ethical responsibility is to permit the publication of our research in the scientific literature; indeed to do otherwise would be a breach of Exxon's public position and ethical credo on honesty and integrity." *Id.* at 3.

125. Despite knowing of the certainty of rising global temperatures and resulting changes to the earth's climate, ExxonMobil did not use its findings to better fortify its Everett Terminal against such risks, nor did it share its findings to notify the public of related risks.

126. A February 1984 slide presentation to ExxonMobil entitled "Corporate Research Program in Climate/CO₂-Greenhouse" likewise acknowledged that the climatic effect of CO₂ doubling includes mean surface temperature rise between 1.5°C and 4.5°C as well as a decrease in coverage and thickness of sea ice and concurrent sea level rise. Corporate Research Program in Climate/ CO₂-Greenhouse (Feb. 2, 1984), presented by A. J. Callegari, at 9.

127. Approximately five years later, a presentation to ExxonMobil's Board of Directors on "Potential Enhanced Greenhouse Effects" cited the 1983 National Research Council projections of temperature increase of 1.5-4.5°C (2-3 times greater in polar regions) and sea level rise of 70 cm over the next 100 years. The presentation acknowledged that data at that time confirmed that: greenhouse gasses are increasing, fossil fuels contribute most of the CO₂, and projections suggest "significant climate change" and "sea level rise with generally negative consequences." Potential Enhanced Greenhouse Effects, Status and Outlook (Feb. 22, 1989), presented by Daune G. Levine, at 23.

128. Despite knowing of rising sea levels resulting from rising global temperatures, ExxonMobil did not use its findings to better fortify its Everett Terminal against such risks.

129. ExxonMobil has continued to pursue climate change research since that initial discovery.

130. As part of its work on climate science, ExxonMobil participated in the National Academy of Sciences' review of the third U.S. National Climate Assessment Report.

131. ExxonMobil has pursued collaborative research with leading universities such as MIT and Stanford.

132. ExxonMobil has been acknowledged as a groundbreaking leader in scientific research analyzing historic sea levels and sedimentary deposition at different sea levels over time.

133. The discipline of sequence stratigraphy had its origin in the 1977 comprehensive monograph of Payton, which first published the results of the extensive in-house stratigraphic studies by Peter Vail and his colleagues within ExxonMobil.

134. The Vail group drew their insights from the analysis of seismic profiles available to them as part of ExxonMobil's worldwide exploration efforts. Two quite distinct but intertwined paradigms were encompassed by Payton's original publication, and persisted in later summaries by ExxonMobil researchers.

135. The recognition of unconformity-bounded sequences was predicated upon the belief that sequence deposition was controlled by sea level fluctuations, leading to the concept of systems tracts and the development of what later writers have termed the "sequence stratigraphic model (SSM)."

136. At the same time, it was asserted that an accurate sea level history could be reconstructed from sequence analysis, leading to the concept of a global sea level curve, or global sea level model (GSM), which could be applied to the interpretation of continental margin strata worldwide.

137. ExxonMobil scientists developed the GSM model of global sea level change, referred to as the global eustasy model. The global eustasy model was developed by Peter Vail and his coworkers at ExxonMobil during the 1960s. Vail's contributions fundamentally altered the techniques for reservoir mapping and prediction. Vail's work was hailed as a theoretical and technical breakthrough.

138. The ExxonMobil global eustasy model was based on proprietary geophysical data also developed through ExxonMobil's scientific assessments. Articles about the new techniques appeared in the journal "Science" commenting about the "staggering amount of data normally denied to outsiders." Most of these data have never been seen or published outside of ExxonMobil.

139. Publications and conference presentations by the Vail group appear as large volumes of work accompanied by superb graphics, in which funding subsidies from ExxonMobil are acknowledged.

140. Despite the extensive research conducted by ExxonMobil scientists and knowledge of the conclusive findings regarding climate change and its impacts, including sea level rise, ExxonMobil has not taken reasonable and required measures to protect the Everett Terminal against such risks.

141. Further, ExxonMobil did not share its findings with the people of the Commonwealth of Massachusetts, the Massachusetts Department of Environmental Protection, or the EPA.

142. Rather, ExxonMobil relied on its research and associated knowledge of climate change in making business and investment decisions.

143. ExxonMobil has recently acknowledged that action should be taken to address the risks of climate change in general.

144. ExxonMobil has agreed that the second assessment report of the Intergovernmental Panel on Climate Change, published in 1995, reached the following conclusion: “The balance of evidence suggests a discernible human influence on global climate.” Letter from Kenneth P. Cohen, Vice President Public and Gov’t Affairs, ExxonMobil, to Mr. Lee Bollinger, President, Columbia University (Nov. 20, 2015), at 3.

145. In December 2015, Ken Cohen of ExxonMobil wrote of the COP21 climate change conference in Paris that “[w]hen it comes to COP21, we are hopeful that an agreement will be reached for meaningful action to address the risks surrounding climate change.” The official statement released by ExxonMobil regarding COP21 similarly states that “ExxonMobil takes global climate change seriously and the risks of rising greenhouse gas emissions warrant thoughtful action.”

146. In April 2016, Suzanne McCarron of ExxonMobil wrote that “[t]he risks of climate change are real and those risks warrant constructive action by policymakers, the business community, and everyone who uses energy.” She repeated that sentiment in May 2016, stating that “[a]t ExxonMobil, we believe the risks of climate change are real,” and going on to say that “[a]ll told, since 2000, ExxonMobil has spent approximately \$7 billion to develop lower-

emission energy solutions.” Most recently, in August 2016, she wrote that “[r]educing greenhouse gas emissions in the coming decades amounts to one of society’s most important challenges.”

147. Despite acknowledging that the risks of climate change are real, ExxonMobil has not taken reasonable and required measures to sufficiently fortify the Everett Terminal and protect it from such risks.

148. ExxonMobil’s CEO, Rex Tillerson, has been giving speeches emphasizing the importance of reducing greenhouse gases and managing the risks of climate change since at least 2009.

149. According to ExxonMobil’s disclosures to investors, “the Chairman of the Board and Chief Executive Officer and the members of the Management Committee have responsibility for climate change matters.” Investor CDP 2014 Information Request, Exxon Mobil Corporation, at 2.

150. “The Board’s Public Issues and Contributions Committee is responsible for the oversight of safety, health, and environmental performance, including climate change risk. This committee reviews the effectiveness of the Corporation’s policies, programs, and practices on safety, health and the environment, and social responsibility. The Committee hears reports from operating units on safety and environmental activities and also visits operating sites to observe and comment on current operating practices. All members of the Committee are independent within the meaning of the NYSE listing standards.” *Id.*

151. “The Committee’s charter is available on the Corporate Governance section of ExxonMobil’s website. Corporate governance is managed with systems and standards for all

aspects of our business. Specific to environmental issues including climate change, there are timely interactions with members of the Management Committee as well as updates at least annually with the ExxonMobil Board of Directors and the Public Issues and Contributions Committee, which is comprised of non-employee directors.” *Id.*

152. “On the subject of risks of climate change, the full ExxonMobil Board of Directors receives in depth briefings at least annually that cover updates on public policy, scientific and technical research, as well as company positions and actions in this area. In addition, the Chairman of the Board and Chief Executive Officer and members of the Management Committee are actively engaged in discussions relating to greenhouse gas emissions and climate change on an ongoing basis.” *Id.*

153. Despite the Board’s responsibilities and in-depth briefings on scientific and technical updates concerning climate change, ExxonMobil has not taken reasonable and required actions to sufficiently protect the Everett Terminal from climate change-related risks.

154. ExxonMobil claims a strong commitment to robust engineering of its facilities in the face of acknowledged risks of severe storm events and sea level rise.

155. ExxonMobil has stated that the “company also engineers its facilities and operations robustly with extreme weather considerations in mind. Fortification to existing facilities and operations are addressed, where warranted due to climate or weather events, as part of ExxonMobil’s Operations Integrity Management System.” Energy and Carbon – Managing the Risks, 14, <http://cdn.exxonmobil.com/~media/global/files/energy-and-environment/report---energy-and-carbon---managing-the-risks.pdf> (last visited Sept. 13, 2016).

156. In discussing the topic of “Engineer[ing] facilities resilient to extreme events,”

ExxonMobil has stated that:

ExxonMobil also employs robust engineering with regard to its facilities. Local climate, as well as potential changes in local conditions over the life of the investment (such as changes to sea level or permafrost) are carefully assessed and considered. Given the spatial and temporal uncertainties of many extreme weather events, particularly with respect to future changes in climate, facilities are generally engineered to be resilient to extreme event “tails”, with the inclusion of additional safety factors. Some jurisdictions, such as Singapore, have specific building standards that are employed in our designs that consider potential climate change impacts.

For existing facilities, processes and systems to manage extreme weather events (such as Gulf Coast hurricanes) are considered along with other factors in the company’s Operations Integrity Management System (OIMS), both with regard to risk management and extreme event response. These processes are drilled extensively, both internally and cooperatively with local authorities, to ensure readiness when needed, and are systematically evaluated and continuously improved as part of our ongoing OIMS system.

Energy and Climate, 20-21 <http://cdn.exxonmobil.com/~media/global/files/energy-and-environment/report---energy-and-climate.pdf> (last visited Sept. 13, 2016).

157. Contrary to this statement, ExxonMobil has not engineered its Everett Terminal robustly with extreme weather conditions in mind, nor has it ensured “readiness” with regard to risk management and extreme event response.

158. ExxonMobil’s operations around the world include both onshore and offshore activities that can experience weather extremes and storms, large sea level variations and wave height, and temperature and precipitation extremes.

159. ExxonMobil claims that, “[a]s a result, [the company] designs, constructs and operates our facilities to withstand a variety of extreme weather conditions, much of the range of potential outcomes.” Investor CDP 2014 Information Request, Exxon Mobil Corporation, at 10.

160. ExxonMobil further asserts that “[a]t ExxonMobil, risks are mitigated with appropriate contingency planning and the application of a comprehensive risk management system. Known risks are mitigated first of all by factoring them into equipment and facility design, construction and operations. Business continuity planning and emergency preparedness are two essential elements to manage risks of business disruption, so that we can continue supplying fuels for transportation and electrical power as well as chemicals for consumer products.” *Id.*

161. Contrary to these statements, ExxonMobil has not designed, constructed or operated its Everett Terminal to withstand a variety of extreme weather conditions, nor has it mitigated the risks at the Terminal with appropriate planning.

162. Engineers working in the oil and gas industry and other major infrastructure projects along the coastal United States customarily take future climate change impacts into account throughout their planning, decision-making, and project construction and design processes.

163. Engineers exercising skill and judgment reasonably expected of similarly situated professionals make planning and design decisions based on information regarding climate change-induced impacts.

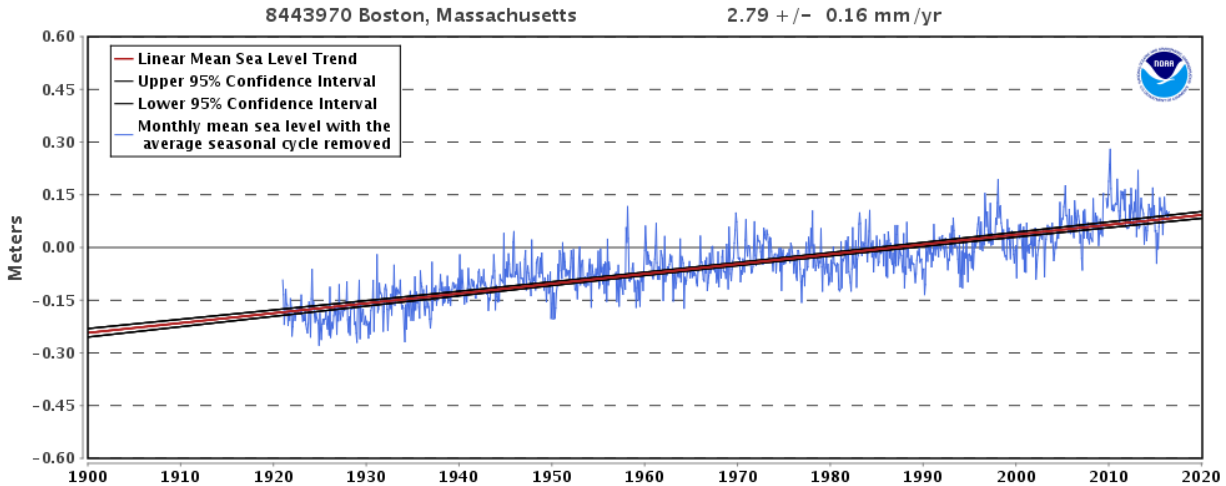
164. For example, the U.S. Army Corps of Engineers issued a regulation in 2013 entitled “Incorporating Sea Level Change in Civil Works Programs.” That regulation states that “[sea level change (“SLC”)] can cause a number of impacts in coastal and estuarine zones, including changes in shoreline erosion, inundation or exposure of low-lying coastal areas, changes in storm

and flood damages, shifts in extent and distribution of wetlands and other coastal habitats, changes to groundwater levels, and alterations to salinity intrusion into estuaries and groundwater systems.” Department of the Army ER 1100-2-8162, U.S. Army Corps of Engineers CECW-CE, CECW-P Regulation No. 1100-2-8162 (Dec. 31, 2013), at Appendix B.

165. The U.S. Army Corps of Engineers acknowledges that sea level change is likely to impact coastal projects, and “[a]s a result, managing, planning, engineering, designing, operating, and maintaining for [sea level change] must consider how sensitive and adaptable 1) natural and managed ecosystems and 2) human and engineered systems are to climate change and other related global changes.” *Id.*

166. The Army Corps’ regulation also states that “[h]istoric trends in local MSL [mean sea level] are best determined from tide gauge records. The Center for Operational Oceanographic Products and Services (CO-OPS), of the National Oceanographic and Atmospheric Administration (NOAA), provides historic information and local MSL trends for tidal stations operated by NOAA/NOS in the US.” *Id.* at B-2.

167. The historic rate of relative sea level change at relevant local tide stations (as shown in the graph below for the Boston Tide Gauge) should be used as the low rate for analysis, because it is a linear extrapolation from historic tide gauge measurements and does not account for future acceleration of sea level rise, ice sheet melt or sea level rise due to warmer water occupying a greater volume.



Mean Sea Level Trend Measured at the Boston Tide Gauge, Tides & Currents, NOAA, available at: http://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?stnid=8443970 (last visited Sept. 13, 2016).

168. At the local level, municipalities also take climate change induced risks into account in designing and constructing various infrastructure projects. For example, the Deer Island sewage treatment plant in Boston, Massachusetts was designed and built taking future sea level rise into consideration. Because of the level of the plant relative to the level of the ocean at the outfall is critical to the amount of rainfall and sewage that can be treated, the plant was built 1.9 feet higher than it would otherwise have been to accommodate the amount of sea level rise projected to occur by 2050, the planned life of the facility. The planners recognized that the future would be different from the past and they decided to plan for the future based on the best available information.

169. Unlike others involved in large-scale engineering projects, ExxonMobil has not taken climate change information known to it into account in designing and constructing the Everett Terminal to protect the Terminal and surrounding communities from catastrophic discharges that will result in the event of sea level rise, increased precipitation or storm events, and storm surges.

170. ExxonMobil's knowing disregard of the imminent risks of climate change that threaten the Everett Terminal and its continuing failure to fortify the Terminal against such known risks make ExxonMobil liable for violations of the CWA and RCRA, as described below.

CLAIMS FOR RELIEF

First Cause of Action

Violations of the Resource Conservation and Recovery Act – Imminent and Substantial Endangerment to Human Health and the Environment

171. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

172. At the Everett Terminal, ExxonMobil is regulated under RCRA as a "Large Quantity Generator" of hazardous waste, Handler ID No. MAD000842427.

173. As described above, ExxonMobil's Everett Terminal generates, stores, handles, and disposes of toxic and hazardous chemicals, metals, and compounds, including but not limited to: Ignitable Waste, Petroleum Hydrocarbons, Benzene, Toluene, Ethylbenzene, (m,p,o), Xylenes, tert-Butyl Alcohol, Naphthalene, Phenols, Phthalates (Phthalate esthers), Polycyclic Aromatic Hydrocarbons (PAH), Acenaphthene, Anthracene, Fluoranthene, Fluorene, Naphthalene, Phenanthrene, Pyrene, Antimony, Arsenic, Cadmium, Copper, Lead, Nickel, Selenium, and Zinc. *See supra*, ¶ 37.

174. As described above, large areas of the Everett Terminal are located at an elevation of less than ten feet above sea level.

175. As indicated in the "SLOSH" model (*supra* ¶ 80), the majority of the Everett Terminal is included within a "Category 1" Hurricane Surge Inundation Zone.

176. The threat of significant storm surge at the Terminal is imminent. *See supra*, ¶ 80.

177. The threat of sea level rise at the Terminal is imminent. *See supra*, ¶ 81.

178. ExxonMobil's Everett Terminal is at risk of being inundated and destroyed by storm surge and sea level rise, because the facility has not been properly engineered, managed, and fortified or, if necessary, relocated to protect from the impending threat of these climate change-related impacts.

179. ExxonMobil has not integrated climate change-induced risks into its systems for handling, storage, or disposal of hazardous waste at the Everett Terminal facility.

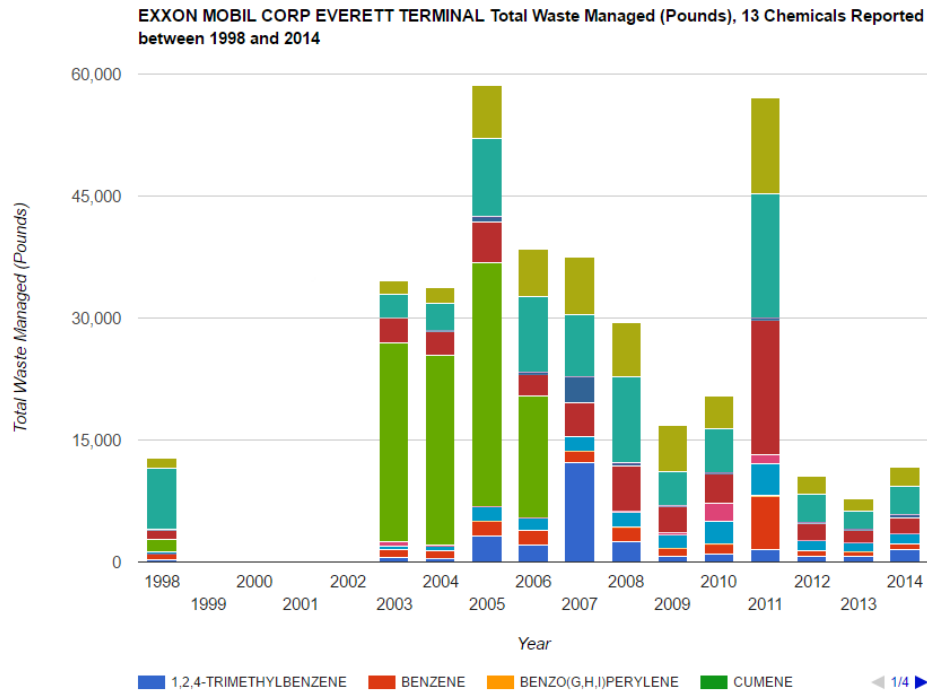
180. ExxonMobil has failed to address sea level rise, increased precipitation and flooding, altered groundwater systems, and increased magnitude and frequency of severe weather events in its RCRA and other compliance and permitting filings.

181. ExxonMobil has not meaningfully modified the Everett Terminal to protect the facility from climate change-induced risks.

182. The design of the Everett Terminal facility, and any regulatory filing based thereon, is based on standards for spill containment, drainage, and resistance to weather events that do not integrate information related to climate change and its related impacts.

183. ExxonMobil's failure to adapt the Everett Terminal to increased precipitation, rising sea levels and storm surges of increasing frequency and magnitude puts the facility, the public health, and the environment at great risk because a significant storm surge, rise in sea level, and/or extreme rainfall event may flood the facility and release solid and hazardous wastes into the Island End River, Mystic River, and directly onto the city streets of Everett.

184. The resulting harm to the Terminal, the public health and the environment would be significant, due to the magnitude of waste hazardous waste managed by the Terminal:



Exxon Mobil Corp Everett Terminal Total Waste Managed (Pounds), 13 Chemicals Reported between 1998 and 2015, available at:

[http://iaspub.epa.gov/triexplorer/facility_profile_charts?p_tri=02149XXNCS52BEA&p_VAR=WST_PROD&p_LABEL=Total+Waste+Managed%20\(Pounds\)](http://iaspub.epa.gov/triexplorer/facility_profile_charts?p_tri=02149XXNCS52BEA&p_VAR=WST_PROD&p_LABEL=Total+Waste+Managed%20(Pounds)) (last visited Sept. 28, 2016).

185. ExxonMobil's operation of its Everett Terminal presents an "imminent and substantial endangerment to health or the environment" because sea level rise, increased precipitation and flooding and severe storm impacts (including wind, storm surge and pounding surf) will result in releases of solid and/or hazardous wastes into the environment and surrounding residential communities.

186. Due to its failure to adapt to these risks, ExxonMobil has contributed and is contributing to the past or present handling, storage, treatment, transportation, or disposal of solid and hazardous wastes which may present an imminent and substantial endangerment to health or the environment under 42 U.S.C. § 6972(a)(1)(B), in violation of RCRA.

Second Cause of Action

Violations of the Clean Water Act – Failure to Comply with Permit’s Operational Requirements for Discharges

187. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

188. ExxonMobil’s NPDES Permit contains operational requirements that define the circumstances under which ExxonMobil may discharge through each of its three outfalls.

189. The Permit provides, in relevant part:

Wastewater Treatment System Flow

a. The continuous treatment system shall be designed, constructed, maintained and operated to treat the volume of storm water, groundwater and other associated wastewaters up to and including 280 gpm through outfall 01C.

b. The collection, storage and treatment systems shall be designed, constructed, maintained and operated to treat the total equivalent volume of storm water, groundwater, hydrostatic test water, boiler condensate, fire testing water, truck was water, effluent pond water and continuous treatment system filter backwash water which would result from a 10-year 24-hour precipitation event, which volume shall be discharged through outfall 01C and outfall 01A. All wet weather and dry weather discharges less than or equal to the design capacity of the continuous treatment system [280 gpm] shall be treated through the continuous treatment system and discharged at outfall 01C. The flow through the corrugated plate separator shall not exceed 4,000 gpm.

Permit Part I.A.23(a)–(b), p. 10-11.

190. The Permit further specifies that discharges from Outfall 01B shall be limited to situations when the combined capacity of the facility to collect and treat through outfalls 01A and 01C is exceeded and are expected only in extreme weather events. *See* Permit Part I.A.23(c), p. 11.

191. The Terminal Operator’s Guide (“TOG”) similarly provides that:

All dry weather flow, 0–280 gpm, is treated by the OWS followed by dry weather treatment system (DWTS; also known as the CTS) and discharged to outfall 01C.

Moderate storm event flow, 280–4,000 gpm, is treated by the OWS and discharged to outfall 01A without treatment by the DWTS.

Heavy storm event flow, 4,000–13,600 gpm, is pumped to tank 140 for treatment by the OWS or DWTS following the storm event. Up to 1.3 million gallons will be transferred to tank 140.

TOG Oil Water Separator § 6.2.

192. Outfall 01C is designated as the primary outfall because its discharges are treated through the continuously operated advanced treatment system.

193. Discharges from Outfalls 01A and 01B receive lower levels of treatment, if any, and are thus only authorized when total flow exceeds the designated levels for Outfall 01C.

194. Contrary to the express terms of the Permit, discharges from Outfall 01A frequently occur even when Outfall 01C has not reached its 280 gpm capacity.

195. As a result, the entire discharge system, including Outfalls 01A and 01C, is being operated in violation of the Permit.

196. Through such unlawful operation, ExxonMobil is routinely failing to comply with its Permit and ensure that all of its discharges receive the highest level of treatment possible.

197. Each and every day that the discharge system was or is operated in violation of the Permit constitutes a separate and distinct violation of the Clean Water Act.

Third Cause of Action

Violations of the Clean Water Act – Violations of Permitted Effluent Limits

198. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

199. ExxonMobil's NPDES Permit for the Everett Facility includes numeric effluent limitations for each outfall.

200. ExxonMobil has repeatedly discharged pollutants from the Facility into the Island End River and Mystic River, from and through point sources, in concentrations and amounts that exceed the numeric effluent limits set out in its NPDES Permit.

201. ExxonMobil discharged pollutants in amounts exceeding the maximum allowable levels set by the numeric effluent limits in the Permit at least 164 times since 2010.

202. The pollutants discharged by ExxonMobil in excess of the permitted levels include, but are not limited to: Anthracene; Acenaphthene; Acenaphthylene; Benzo(a)anthracene; Benzo(b)fluoranthene; Benzo(k)fluoranthene; Benzo(ghi)perylene; Benzo(a)pyrene; Chrysene; Dibenz(a,h)anthracene; Fluoranthene; Fluorene; Indeno(1,2,3-cd)pyrene; Naphthalene; Phenanthrene; Pyrene; and Total Suspended Solids.

203. Each and every violation of the effluent limitations in the Permit is a separate and distinct violation of ExxonMobil's NPDES Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

204. Further, each and every day that there is discharge from Outfall 01A when Outfall 01C is below its maximum capacity of 280 gpm constitutes a separate and distinct violation for each

and every pollutant present in the discharge, since **no** pollutants may be discharged from Outfall 01A if Outfall 01C has not reached maximum capacity.

205. These violations are ongoing and continuous, and barring a change at the Terminal and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

Fourth Cause of Action

Violations of the Clean Water Act – Violations of State Water Quality Standards

206. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

207. The Permit requires ExxonMobil to ensure that its discharges do not cause violations of State Water Quality Standards, that pollutants are not discharged in concentrations or combinations that would be hazardous or toxic to human or aquatic life, and that its discharges do not impair the uses designated for the Island End and Mystic Rivers.²

208. Massachusetts Surface Water Quality Standards provide in relevant part that “[a]ll surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.” 314 Code Mass. Regs. § 4.05(5)(e).

² See Permit Part I.A.2, p. 3; Part I.A.3, p. 5; Part I.A.4, p. 6 (stating that for each outfall, any discharge must be “limited and monitored by the permittee as specified” and “not cause a violation of the State Water Quality Standards of the receiving water”); Part I.A.5, p. 9 (“The discharges either individually or in combination shall not cause or contribute to a violation of State Water Quality Standards of the receiving waters.”); Part I.A.9, p. 9 (“The discharge shall not contain materials in concentrations or combinations which are hazardous or toxic to human health, aquatic life of the receiving surface waters or which would impair the uses designate by its classification.”); Part I.A.24, p. 11 (“The permittee shall not discharge any pollutant or combination of pollutants in toxic amounts.”; “Any toxic components of the effluent shall not result in any demonstrable harm to aquatic life or violate any state or federal water quality standard which has been or may be promulgated.”).

209. Under the Massachusetts Surface Water Quality Standards, the National Recommended Water Quality Criteria published by EPA in 2002 are the allowable receiving water concentrations unless otherwise specified. *See id.*

210. Many of ExxonMobil's discharges violate applicable State Water Quality Standards, and as such, constitute violations of the Permit and the Clean Water Act.

Fifth Cause of Action

Violation of the Clean Water Act – Failure to Develop, Implement, and Maintain a SWPPP Designed to Reduce or Prevent Discharge of Pollutants

211. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

212. The Permit states that “[t]he permittee shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce, or prevent, the discharge of pollutants in storm water to the receiving waters identified in this permit. The SWPPP shall be a written document and consistent with the terms of this permit. The permittee shall comply with the terms of its SWPPP.” Permit Part I.B.1, p. 13.

213. ExxonMobil's application for coverage under NPDES permits, including the currently applicable NPDES permit, as well as its SWPPP developed pursuant to the Permit, failed to include information documenting, or plans to address, climate change induced risks such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased frequency and magnitude of storm surges that threaten the Everett Terminal.

214. By failing to address sea level rise, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent or reduce the discharge of pollutants in storm water to the receiving waters identified in the permit.

215. By failing to address increased magnitude and frequency of storm events, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent or reduce the discharge of pollutants in storm water to the receiving waters identified in the permit.

216. By failing to address increased magnitude and frequency of storm surge, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent or reduce the discharge of pollutants in storm water to the receiving waters identified in the permit.

217. By failing to address increased precipitation, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent or reduce the discharge of pollutants in storm water to the receiving waters identified in the permit.

218. For all of these reasons, ExxonMobil has failed to develop and implement a SWPPP designed to prevent the discharge of pollutants in storm water to the receiving waters, in violation of the Permit and the Clean Water Act.

Sixth Cause of Action

Violation of the Clean Water Act – Unlawful Certification of SWPPP

219. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

220. The Permit requires that: “[t]he SWPPP shall be completed or updated and signed by the Permittee within 90 days after the effective date of this Permit. The Permittee shall certify that the SWPPP has been completed or updated and that it meets the requirements of the permit. The certification shall be signed in accordance with the requirements identified in 40 C.F.R. § 122.22.” Permit Part I.B.2, p. 13.

221. 40 C.F.R. § 122.22(a)(1) requires that a permit application submitted by a corporation be signed by a responsible corporate officer:

For the purpose of this section, a responsible corporate officer means: (i) A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy- or decision-making functions for the corporation, or (ii) the manager of one or more manufacturing, production, or operating facilities, provided, the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures.

Id. Section 122.22(a)(1) also notes that:

EPA does not require specific assignments or delegations of authority to responsible corporate officers identified in § 122.22(a)(1)(i). The Agency will presume that these responsible corporate officers have the requisite authority to sign permit applications unless the corporation has notified the Director to the contrary. Corporate procedures governing authority to sign permit applications may provide for assignment or delegation to applicable corporate positions under § 122.22(a)(1)(ii) rather than to specific individuals.

Id.

222. 40 C.F.R. § 122.22 required ExxonMobil to submit the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the

best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

40 C.F.R. § 122.22(d).

223. ExxonMobil signed and submitted the required certification at the time of submittal of each of its NPDES permit applications.

224. ExxonMobil signed and submitted the required certification at the time of development and certification of its SWPPP.

225. ExxonMobil signed these certifications without disclosing information in its possession and relied on by the company in its business decision-making regarding climate change-induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surge.

226. ExxonMobil signed these certifications without developing and implementing a SWPPP based on information in its possession and relied on by the company in its business decision-making regarding climate change-induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surge.

227. ExxonMobil signed these certifications without developing and implementing a Spill Prevention, Control, and Countermeasures based on information in its possession and relied on by the company in its business decision-making regarding climate change-induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and increased magnitude and frequency of storm surge.

228. ExxonMobil's failure to disclose and consider climate changed-induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge renders its SWPPP certification to not be true, accurate, and complete, and is therefore unlawful under 40 C.F.R. § 122.22.

229. Failure to prepare the SWPPP in accordance with the requirements identified in 40 C.F.R. § 122.22 to which ExxonMobil certified that it had complied with is a violation of the Permit and the Clean Water Act.

Seventh Cause of Action

Violation of the Clean Water Act – Failure to Prepare SWPPP in Accordance with Good Engineering Practices

230. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

231. The Permit requires that: “[t]he SWPPP shall be prepared in accordance with good engineering practices.” Permit Part I.B.4, p. 13.

232. ExxonMobil's SWPPP for the Everett Terminal was not prepared in accordance with good engineering practices because the SWPPP was not based on information consistent with the duty of care applicable to engineers.

233. The SWPPP was not prepared based on information regarding climate change-induced impacts known to reasonably prudent engineers.

234. The SWPPP was not prepared based on information regarding climate change-induced impacts known to ExxonMobil.

235. For these reasons, ExxonMobil has failed to prepare a SWPPP in accordance with good engineering practices, in violation of the Permit and the Clean Water Act.

Eighth Cause of Action

Violation of the Clean Water Act – Failure to Identify Sources of Pollution Reasonably Expected to Affect the Quality of Stormwater Discharges

236. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

237. The Permit requires that: “The SWPPP shall . . . identify potential sources of pollution that may reasonably be expected to affect the quality of the storm water discharges.” Permit Part I.B.4, p. 13.

238. This condition of the Permit uses the term “pollution” as opposed to the term “pollutant.”

239. ExxonMobil has failed to identify sources of pollution resulting from climate change-induced sea level rise, increased magnitude and frequency of storm surge, and increased magnitude and severity of storms as sources of pollution reasonably expected to affect the quality of the storm water discharges from the Everett Terminal, in violation of the Permit and the Clean Water Act.

Ninth Cause of Action

Violation of the Clean Water Act – Failure to Describe and Implement Practices to Reduce Pollutants and Assure Permit Compliance

240. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

241. The Permit requires that: “The SWPPP shall . . . describe and ensure implementation of practices which will be used to reduce the pollutants and assure compliance with this permit.”

Permit Part I.B.4, p. 13.

242. The SWPPP fails to describe or ensure implementation of practices which will be used to prevent and address pollutant discharges resulting from climate change-induced effects, in violation of the Permit and the Clean Water Act.

243. ExxonMobil has failed to properly maintain its waste water treatment system in violation of the Permit and the Clean Water Act.

Tenth Cause of Action

Violation of the Clean Water Act – Failure to Identify Sources, Spill Areas, and Drainage

244. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

245. The Permit requires that: “The SWPPP shall contain the elements listed below: A summary of all pollutant sources which includes all areas where spills have occurred or could occur. For each source, identify the expected drainage and the corresponding pollutant.” Permit Part I.B.4(c), p. 13.

246. The SWPPP does not address climate change-induced effects as pollutant sources.

247. The SWPPP does not identify areas where spills associated with climate change-induced effects could occur.

248. The SWPP fails to identify expected drainage paths associated with climate change-induced effects such as storm surge and sea level rise.

249. For these reasons, the SWPPP fails to contain the elements required under Permit Part I.B.4(c), in violation of the Permit and the Clean Water Act.

Eleventh Cause of Action

Violation of the Clean Water Act – Failure to Implement Adequate Spill Prevention and Response Procedures

250. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

251. Climate change-induced and affected factors such as sea level rise, storm surge, precipitation, and weather events (including severe and extreme weather events) can reasonably be expected to cause or contribute to the discharge of oil in quantities that may be harmful to receiving waters in violation of the SPCC regulations, the SWPPP, and the Permit.

252. Due to its location, the Terminal is at risk of discharging oil due to climate change-induced sea level rise.

253. Due to its location, the Terminal is at risk of discharging oil due to climate change-induced storm surge.

254. Due to its location, the Terminal has discharged, and is at risk of discharging, oil and other pollutants due to climate change-induced increased precipitation.

255. Due to its location, the Terminal has discharged, and is at risk of discharging, oil and other pollutants due to climate change-affected weather events.

256. Due to its location, the Terminal has discharged, and is at risk of discharging, oil and other pollutants due to climate change-affected severe weather events.

257. Due to its location, the Terminal has discharged, and is at risk of discharging oil and other pollutants due to climate change-affected extreme weather events.

258. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change information known to ExxonMobil, the petroleum industry, and to practicing engineers in Massachusetts.

259. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change-induced and affected sea level rise that is reasonably expected to affect the Terminal.

260. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change-induced and affected storm surge that is reasonably expected to affect the Terminal.

261. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change-induced and affected precipitation that is reasonably expected to affect the Terminal.

262. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change-induced and affected weather events that are reasonably expected to affect the Terminal.

263. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change-induced and affected severe weather events that is reasonably expected to affect the Terminal.

264. The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change-induced and affected extreme weather events that are reasonably expected to affect the Terminal.

265. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to include necessary discharge prevention measures including procedures for routine handling of products (e.g., loading, unloading, and facility transfers, etc.).

266. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to include necessary discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

267. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to include to identify where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge).

268. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

269. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. § 112.1(b).

270. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to assure that the entire containment system, including walls and floor, is capable of containing oil and is constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.

271. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to address the typical failure mode associated with climate change-induced or affected factors and the most likely quantity of oil that would be discharged.

272. Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC fails to include appropriately designed (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (ii) Curbing or drip pans; (iii) Sumps and collection systems; (iv) Culverting, gutters, or other drainage systems; (v) Weirs, booms, or other barriers; (vi) Spill diversion ponds; (vii) Retention ponds; or (viii) Sorbent materials. (2) For offshore facilities: (i) Curbing or drip pans; or (ii) Sumps and collection systems.

273. For all of these reasons, ExxonMobil has failed to implement adequate spill prevention and response procedures, in violation of the Permit and the Clean Water Act.

Twelfth Cause of Action

Violation of the Clean Water Act – Failure to Amend or Update the SWPPP

274. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

275. The Permit requires that:

The permittee shall amend and update the SWPPP within 30 days for any changes at the facility affecting the SWPPP. Changes which may affect the SWPPP include, but are not limited to, the following activities: a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States Any amended or new versions of the SWPPP shall be re-certified by the Permittee. Such re-certifications also shall be signed in accordance with the requirements identified in 40 CFR § 122.22.

Permit Part I.B.6, p. 14.

276. ExxonMobil has not amended or updated its SWPPP based on information regarding climate change known to ExxonMobil, in violation of the Permit and the Clean Water Act.

277. ExxonMobil has not amended or updated its SPCC, including an engineer's certification based on information regarding climate change known to ExxonMobil. 40 C.F.R. § 112.5.

278. 40 C.F.R. § 122. 41(e) requires that under all permits, including the Terminal's Permit, "the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of [the] permit" and with the requirements of storm water pollution prevention plans. "Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the permit." *Id.*

279. ExxonMobil has failed to properly operate and maintain the Terminal due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

280. 40 C.F.R. § 122.41(d) requires that under all permits, including the Terminal's Permit, that "[t]he permittee shall take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment." 40 C.F.R. § 122.41(d).

281. ExxonMobil has failed take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

282. For these reasons, ExxonMobil has failed to properly amend or update its SWPPP, in violation of the Permit and the Clean Water Act.

Thirteenth Cause of Action

Violation of the Clean Water Act – Violation of Permit Prohibition on Visible Oil Sheen, Foam, or Floating Solids

283. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

284. The Permit provides that a "discharge shall not cause a visible oil sheen, foam, or floating solids." Permit Part I.A.8, p. 9.

285. There have been at least four instances in which discharges associated with the ExxonMobil Everett Terminal and/or the Sprague Energy facility were reported to the National Incident Command. All four of these incidents, which occurred in 2011, 2014, and 2015, resulted in a discharge that reached the water, identified as the Mystic River and/or the Island End River.

286. These discharges constitute violations of the Permit and the Clean Water Act.

Fourteenth Cause of Action

Violation of the Clean Water Act – Unpermitted Discharges to the Half-Moon Shaped Pond

287. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

288. The half-moon shaped pond within the Everett Terminal facility that is incorporated into the facility's stormwater treatment system has existed since time immemorial and was a part of the Island End River until, upon information and belief, ExxonMobil (or its predecessors in interest) filled in the surface water connection between the half-moon shaped pond and the Island End River sometime in the early 1900s.

289. The half-moon shaped pond is connected to the Island End River via surface water flows, subsurface hydrological connections, and man-made conduits. The half-moon shaped pond, the Island End River, and the Mystic River are all "waters of the United States" as defined in 40 C.F.R. § 122.2, and, therefore, "navigable waters" as defined in 33 U.S.C. § 1362(7).

290. Upon information and belief, the half-moon shaped pond has existed in its current location since at least the early 1900s and flowed into the Island End River until ExxonMobil (or its predecessors in interest) impounded and appropriated it in the early 1900s.

291. The half-moon shaped pond was part of the traditionally navigable Island End River or, alternatively, a navigable tributary to the traditionally navigable Island End River, and therefore was and is a water of the United States.

292. A man-made structure cannot eliminate the Clean Water Act's jurisdiction over a water of the United States.

293. A man-made diversion, however long ago undertaken, cannot change a water of the United States into something else.

294. ExxonMobil's discharges of pollutants into the half-moon shaped pond are unpermitted and therefore violate the Clean Water Act.

RELIEF REQUESTED

295. Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

- a. injunctive relief pursuant to § 7002 of RCRA, 42 U.S.C. § 6972, ordering ExxonMobil to perform and pay for such work as may be required to respond to the hazardous waste and solid waste present at the Everett Terminal and restraining ExxonMobil from further violating RCRA;
- b. declaratory and injunctive relief to prevent further violations of the Clean Water Act pursuant to §§ 505(a) and (d) of the CWA, 33 U.S.C. § 1365(a);
- c. civil penalties of up to \$37,500 per day per day per violation for all Clean Water Act violations occurring between January 12, 2009 and November 2, 2015, and up to \$51,570 per day per violation for all CWA violations occurring after November 2, 2015 pursuant to § 309(d) of the CWA, 33 U.S.C. § 1319(d), and the regulations governing the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§ 19.2, 19.4;
- d. and an award of the costs of litigation, including reasonable attorney and expert witness fees, under § 7002 of RCRA, 42 U.S.C. § 6972, and § 505(d) of the CWA, 33 U.S.C. § 1365(d); and
- e. all other relief as permitted by law.

JURY DEMAND

Plaintiff requests a jury trial on the issue of liability and any other issue cognizable by a jury.

Respectfully submitted,

Dated: September 29, 2016

CONSERVATION LAW
FOUNDATION, INC.

By its attorneys:

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**Pro Hac Vice Application Filed Concurrently
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May 17, 2016

VIA Registered Mail and Certified Mail, Return Receipt Requested

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Jason Pociask, ExxonMobil Everett Terminal Superintendent
ExxonMobil Pipeline Company
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RE: Notice of Violations and Intent to File Suit under the Resource Conservation and Recovery Act and Clean Water Act

To Whom it May Concern:

This letter constitutes a Notice by Conservation Law Foundation, Inc. (“CLF”)¹ to ExxonMobil Oil Corporation (together with ExxonMobil Pipeline Company, hereinafter, “ExxonMobil” or “You”) under Section 7002(b)(2)(A) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6972(b)(2)(A). Please be advised that unless, within ninety (90) days following your receipt of this Notice, You adequately resolve the conditions at the marine distribution terminal in Everett, Massachusetts (the “Everett Terminal”) operated by You, which may present an imminent and substantial endangerment to health or the environment, CLF intends to file a Complaint in the United States District Court of the District of Massachusetts to assert claims against You and any other entities that may have contributed to the conditions at the Everett Terminal, seeking declaratory and injunctive relief pursuant to RCRA Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), civil penalties, and CLF’s reasonable litigation costs, including attorneys and expert witness fees and costs. Pursuant to RCRA Section 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), such action will not be filed earlier than ninety days from the date of this Notice.

CLF also gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 CFR, part 135 and 40 CFR 254 to the addressed persons of CLF’s intention to file suit in the United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

1. RCRA Violations

ExxonMobil, acting through officers, managers, subsidiary companies, and instrumentalities, owns or has owned or operates or has operated all or portions of the Everett Terminal, which

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England’s environment.



consists of a “tank farm,” three berths, buildings and infrastructure located at 52 Beacham Street in Everett, in the Commonwealth of Massachusetts, at the confluence of the Island End River with the Mystic River. You are a Large Quantity Generator of hazardous waste at the Everett Terminal, and, as more fully described below, You have contributed and are contributing to the past or present handling, storage, treatment, transportation, or disposal of solid and hazardous wastes which may present an imminent and substantial endangerment to health or the environment in violation of RCRA.

CLF hereby asserts that You have contributed to the past or present handling, storage, treatment, transportation, or disposal of Hazardous Waste, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and Solid Waste, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), at the Everett Terminal, which may present an imminent and substantial endangerment to health or the environment. Based on the information currently available to CLF, the toxic and hazardous wastes and pollutants listed below, many of which are highly carcinogenic, are present at the Everett Terminal:

2,4-Dimethylphenol	Benzene	Chrysene	Indeno[1,2,3cd]pyrene	SGT-HEM (Oil and Grease)
3&4 Methylphenol (Cresol)	Benzo[a]pyrene	Cyanide	Iron	Toluene
Acetone	Benzo[b]fluoranthene	Dibenzo[a,h]anthracene	Lead	Xylenes [m,p,o]
Antimony	Benzo[k]fluoranthene	Di-n-butyl phthalate	Mercury	Petroleum Hydrocarbons
Arsenic	Cadmium	Ethylene	Naphthalene	Phenols
Benz(a)anthracene	Chromium	Fluoranthene	Nickel	Zinc
Methyl Tertiary-Butyl Ether (MTBE)	Tert-Butyl Alcohol (TBA)	Phthalates/Phthalate esters	Coal Tar	Butyl benzyl phthalate
Acenaphthylene	Benzo(ghi)perylene	Tert-Butyl Alcohol	Acenaphthene	Phenanthrene
Fuel Oil	Anthracene	Total BTEX	Gasoline	



To the extent that other Hazardous and Solid Wastes are revealed to be present at the Everett Terminal (a fact that You are in a better position to know than CLF) You are put on notice that CLF intends to include these wastes in its proof of your RCRA violations. You routinely discharge many of these toxic and hazardous wastes into the Island End River and the Mystic River, and the soils and groundwater at the Everett Terminal are heavily contaminated from your past, present, and ongoing handling, storage, treatment, transportation, or disposal of Hazardous and Solid Waste.

The Hazardous and Solid Waste at your Everett Terminal is generated, handled, stored, treated, transported and disposed of at or near sea level in close proximity to major human population centers, Chelsea Creek, the Island End River, and the Mystic River, which flows through the communities of Everett, Somerville, Chelsea, and Boston on its way to Boston Harbor. The first significant storm surge that makes landfall at the Everett Terminal at or near high tide is going to further flush your Hazardous and Solid Waste into the Island End and Mystic Rivers and through those communities, and a significant rise in sea level will put the majority of the Everett Terminal, including soils, groundwater, and treatment works, under water. You know all this, and yet have not taken appropriate steps to protect the public and the environment from this certain risk.

Nor have You disclosed your creation of this immanent and substantial risk to the United States Environmental Protection Agency (“EPA”), state regulators, or the public. On the contrary, You have actively obfuscated, denied, and attempted to conceal these risks from federal and state regulators and the public. Your obfuscation and denial is not and has not been limited to the imminent and substantial endangerment to health or the environment You have created at the Everett Terminal; You have also engaged in a decades-long scheme to conceal and sow doubt regarding the effects of climate change and your role, as the largest oil refiner on the planet, causing the anthropogenic climate change that is resulting in a greater frequency of storm surges and extreme weather events and rising sea levels. Your pattern of failing to disclose required information in your possession regarding these risks, and of acting to conceal these risks, may expose You to liability in this matter under legal theories other than the violations of RCRA discussed herein.

Your violations of RCRA are ongoing and continuous. CLF intends to seek a civil injunction, as provided under section 7002 of RCRA, ordering ExxonMobil to perform and pay for such work as may be required to respond to the Hazardous Waste and Solid Waste present at the Everett Terminal and restraining You from further violating RCRA. CLF also intends to seek civil penalties and an award of the costs of litigation, including attorney and expert witness fees, under section 7002 of RCRA.



2. Clean Water Act Violations

The ExxonMobil Everett Terminal is engaged in the receipt, storage, and distribution of petroleum products. The spectrum of fuels handled by this facility consists of gasoline, low sulfur diesel, jet fuel, heavy oil, and fuel additives. Petroleum products are received in bulk quantities at the Everett Terminal's marine vessel dock. Product is then transferred, via aboveground piping, to aboveground storage tanks located within the facility's tank farm areas. Final distribution of product is conducted at the facility's truck loading racks. The Everett Terminal operations also include the collection and discharge of stormwater from Sprague Energy, an asphalt storage and distribution facility located on property formerly owned by ExxonMobil.

ExxonMobil has operated the Everett Terminal pursuant to an individual permit issued by EPA under to the Clean Water Act National Pollutant Discharge Elimination System (NPDES) 33 U.S.C. § 1342 *et seq.* ExxonMobil currently operates subject to NPDES Permit No. MA0000833 issued in 2008 (the "Permit"). Among other requirements, NPDES Permit No. MA0000833 states that "The permittee shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce, or prevent, the discharge of pollutants in stormwater to the receiving waters identified in this permit. The SWPPP shall be a written document and consistent with the terms of this permit. The permittee shall comply with the terms of its SWPPP."

ExxonMobil's application for coverage under NPDES permits, including the currently applicable NPDES Permit, failed to include information documenting climate change induced factors known to ExxonMobil such as increased precipitation, increased magnitude and frequency of storm events, and increased frequency and magnitude of storm surges. By failing to address sea level rise, increased precipitation, and increased magnitude and frequency of storm events and storm surges, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent the discharge of pollutants in stormwater to the receiving waters as identified in and required by the Permit.

The receiving water identified in ExxonMobil's NPDES Permit for the Everett Terminal is the Island End River (Boston Harbor/Mystic River Watershed/Segment MA71-03), a small tributary to the Mystic River. The entire Island End River is less than one-half mile long, and about 500 feet across at its widest point. The Island End River flows into the Mystic River, approximately half a mile west of the Mystic River's end in Boston Harbor. The Island End River is designated as a Class SB water body by the Commonwealth of Massachusetts.



The half-moon shaped pond within the Everett Terminal property that is incorporated into the facility's stormwater treatment system has existed since time immemorial and was a part of the Island End River until ExxonMobil (or its predecessors in interest) impounded it by filling in the surface water connection between the half-moon shaped pond and the Island End River sometime during the 1900's. A man-made structure cannot eliminate the Clean Water Act's jurisdiction over a water of the United States. The half-moon shaped pond is connected to the Island End River via surface water flows, subsurface hydrological connections, and/or man-made conduits. The half-moon shaped pond, the Island End River, and the Mystic River are all "waters of the United States" as defined in 40 C.F.R. § 122.2, and, therefore, "navigable waters" as defined in 33 U.S.C. § 1362(7).

The Massachusetts Department of Environmental Protection (MassDEP) evaluated and developed a comprehensive list of the assessed waters and the most recent list was published in the Massachusetts Year 2012 Integrated List of Waters (MassDEP, April 2012). The list identifies the lower reach of the Mystic River (Segment ID No. MA71-03, which includes the Island End River) as one of the waterways within Massachusetts that is impaired. The impairment, as identified by the MassDEP, is related to the presence of the following pollutants, which were not considered to be present due to natural causes: Ammonia, Un-ionized; Dissolved Oxygen; Foam/Flocs/Scum/Oil Slicks; Petroleum Hydrocarbons; Toxics; Taste and Odor, Fecal Coliform, and PCBs.

Unlawful Certification of SWPPP

NPDES Permit No. MA0000833 requires that: "The SWPPP shall be completed or updated and signed by the Permittee within 90 days after the effective date of this Permit. The Permittee shall certify that the SWPPP has been completed or updated and that it meets the requirements of the permit. The certification shall be signed in accordance with the requirements identified in 40 CFR § 122.22." Part I.B.2. 40 CFR § 122.22 required ExxonMobil to submit the following certification to comply with 122.22 "(d) *Certification*. Any person signing a document under paragraph (a) or (b) of this section shall make the following certification: **I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.**" (emphasis added)



ExxonMobil signed and submitted the certification required by 40 CFR § 122.22 at the time of submittal of (a) each of its NPDES permit applications, and (b) each SWPPP. ExxonMobil signed these certifications without (a) disclosing information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge, and (b) developing and implementing a SWPPP based on information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge. ExxonMobil also signed these certifications without developing and implementing a SPCC based on information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge.

Failure to Prepare SWPPP in Accordance with Good Engineering Practices

NPDES Permit No. MA0000833 requires that: “The SWPPP shall be prepared in accordance with good engineering practices.” ExxonMobil’s SWPPP for the Everett Terminal was not prepared in accordance with good engineering practices because the SWPPP was not based on information available to ExxonMobil and consistent with the duty of care applicable to engineers. The SWPPP was not prepared based on information regarding climate change-induced impacts known to reasonably prudent engineers and known to ExxonMobil.

Failure to Identify Sources of Pollution

NPDES Permit No. MA0000833 requires that: “The SWPPP shall . . . identify potential sources of pollution that may reasonably be expected to affect the quality of the stormwater discharges.” This Condition of the Permit uses the term “pollution” as opposed to the term “pollutant.” ExxonMobil has failed to identify sources of pollution resulting from climate change-induced sea level rise, storm surge, and increased magnitude and severity of storms as sources of pollution reasonably expected, and specifically anticipated by ExxonMobil, to affect the quality of the stormwater discharges from the Everett Terminal.

Failure to Describe and Implement Practices

The Permit requires that: “The SWPPP shall . . . describe and ensure implementation of practices which will be used to reduce the pollutants and assure compliance with this permit.” The SWPPP does not describe or ensure implementation of practices which will be used to address pollutant discharges resulting from climate change-induced effects that are known to ExxonMobil.



Failure to Identify Sources, Spill Areas, Drainage

The Permit requires that: “. . . the SWPPP shall contain the elements listed below: A summary of all pollutant sources which includes all areas where spills have occurred or could occur. For each source, identify the expected drainage and the corresponding pollutant.” The SWPPP does not address climate change-induced effects as pollutant sources, fails to identify where spills could occur and fails to identify drainage paths associated with storm surge and sea level rise, all of which are known to ExxonMobil.

Failure to Update SWPPP and SPCC

The Permit requires that: “. . . the SWPPP shall contain the elements listed below: A description of all stormwater controls, both structural and non-structural. BMPs must include . . . preventative maintenance programs, spill prevention and response procedures, runoff management practices, and proper handling of deicing materials. The SWPPP shall describe how the BMPs are appropriate for the facility. All BMPs shall be properly maintained and be in effective operating conditions.” The Permit incorporates spill prevention and response procedures as an enforceable BMP in the SWPPP.

A spill prevention and response procedure applicable to the Facility is the Spill Prevention, Control, and Countermeasures Plan required pursuant to 40 CFR § 112, Subpart A (“SPCC Plan”). This enforceable BMP requires establishment of “procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).” 40 CFR § 112.1(a)(1)(emphasis added).

The SPCC Plan must prevent discharges from the Everett Terminal because it is a facility, “*which due to its location*, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States(including resources under the Magnuson Fishery Conservation and Management Act)” 40 CFR § 112.1(b)(emphasis added).



Due to its location, the Everett Terminal is at risk of discharging oil due to climate change-induced sea level rise, storm surges, increased precipitation, and altered, severe, and/or extreme weather events.

The SPCC regulations highlight the applicability of the Plan as follows: “112.1(e): This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.”

The SPCC Regulations underscore that: “(d) Except as provided in §112.6, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part. (1) By means of this certification the Professional Engineer attests: (i) That he is familiar with the requirements of this part; (ii) That he or his agent has visited and examined the facility; (iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part; (iv) That procedures for required inspections and testing have been established; and (v) That the Plan is adequate for the facility. (vi) That, if applicable, for a produced water container subject to §112.9(c)(6), any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan. (2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.” 40 CFR § 112.3(d)

The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change information known to ExxonMobil, the petroleum industry in general, and to practicing engineers in Massachusetts, including climate change information regarding the certainty of increased sea level rise, storm surges, increased precipitation, and altered, severe, and/or extreme weather events.

Climate change-induced and affected factors such as sea level rise, storm surge, precipitation, and weather events (including severe and extreme weather events) can reasonably be expected to



cause or contribute to the discharge of oil in quantities that may be harmful to receiving waters in violation of the SPCC regulations, the SWPPP, and the Permit.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include necessary discharge prevention measures including procedures for routine handling of products.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include necessary and prudent discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

Due to ExxonMobil's failure to consider or incorporate climate change information, including information known to ExxonMobil, the SPCC Plan fails to identify where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge),

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 CFR §112.1(b).

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to assure that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.

Due to ExxonMobil's failure to integrate climate change information, including information known to ExxonMobil, the SPCC Plan fails to address the typical failure mode associated with climate change-induced or affected factors, and the most likely quantity of oil that would be discharged.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include appropriately designed (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (ii) Curbing or drip pans; (iii) Sumps and collection systems; (iv) Culverting, gutters, or other drainage systems; (v) Weirs, booms, or



other barriers; (vi) Spill diversion ponds; (vii) Retention ponds; or (viii) Sorbent materials. (2) For offshore facilities: (i) Curbing or drip pans; or (ii) Sumps and collection systems.

Failure to Amend SWPPP and SPCC Plan

NPDES Permit No. MA0000833 requires that: “The permittee shall amend and update the SWPPP within 30 days for any changes at the facility affecting the SWPPP. Changes which may affect the SWPPP include, but are not limited to, the following activities: a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States . . . Any amended or new versions of the SWPPP shall be re-certified by the Permittee. Such re-certifications also shall be signed in accordance with the requirements identified in 40 CFR § 122.22.”

ExxonMobil has not amended its SWPPP based on information regarding climate change known to ExxonMobil. ExxonMobil has not amended its SPCC Plan, to include an engineer’s certification based on information regarding climate change known to ExxonMobil. 40 CFR § 112.5.

The Permit requires that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this Permit and with the requirements of stormwater pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the Permit. *See also* 40 CFR 122.41(e).

ExxonMobil has failed to properly operate and maintain the Everett Terminal to achieve compliance with the conditions of the Permit due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

The Permit requires that “The permittee shall take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment.” *See also* 40 CFR 122.41(d). ExxonMobil has failed take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

By failing to submit information related to climate change-induced and affected factors in its permit application and in reports to the Environmental Protection Agency, ExxonMobil has submitted incorrect information in a permit application or reports to the Regional Administrator.



By failing to submit information related to climate change-induced and affected factors in its permit application and in reports to the Environmental Protection Agency, ExxonMobil has failed to promptly submit such relevant facts or information.

Discharges of Toxic and Hazardous Pollutants in Excess of Numeric Effluent Limits

ExxonMobil has grossly exceeded the numeric effluent limits set out in the Everett Terminal's individual NPDES Permit for a wide variety of toxic and hazardous pollutants for at least ten of the last twelve quarters.

As a result of ExxonMobil's industrial operations, the Everett Terminal Facility releases a variety of pollutants into the Island End River and Mystic River.

Dischargers of pollutants, including industrial wastewater, process water and stormwater associated with industrial activity, must comply with the requirements of a National Pollutant Discharge Elimination System ("NPDES") permit issued under Section 402 of the Clean Water Act, 33 U.S.C § 1342. Section 301(a) of the Clean Water Act prohibits discharges not authorized by, or in violation of, the terms of a valid NPDES discharge permit. NPDES discharge permits contain pollutant sampling and monitoring requirements and limits on the amount or concentration of allowable pollutants, in addition to requirements regarding control measures, best management practices, and recordkeeping and reporting.

The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. § 1311(a); 33 U.S.C § 1342.

ExxonMobil has repeatedly discharged pollutants from the Facility into the Island End River and Mystic River, from and through point sources, in concentrations and amounts that exceed the numeric effluent limits set out in its NPDES Permit. Exhibit 1 hereto is a table of pollutant discharges self-reported by ExxonMobil as exceeding the numeric effluent limits set out in ExxonMobil's NPDES Permit from the Second Quarter of 2010 through the Second Quarter of 2015. If more recent quarters show additional violations of the permitted levels of pollutant discharges, CLF intends to include those violations in its suit.

As shown in Exhibit 1, ExxonMobil discharged pollutants in amounts exceeding the maximum allowable levels set by the numeric effluent limits in its NPDES permit more than seventy (70) times during the last five years (running from the Second Quarter of 2010 through the Second Quarter of 2015). Many of these discharges of hazardous pollutants exceeded the numeric limits by several thousand percent.



Every day in which ExxonMobil has failed and continues to fail to comply with the requirements of the Clean Water Act and NPDES Permit No. MA0000833 is a separate and distinct violation of ExxonMobil's NPDES Permit and Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. § 1311(a); 33 U.S.C § 1342.

Additional information, including information in ExxonMobil's possession, may reveal additional violations. For example, this letter covers violations occurring after the date of the most recent publically available DMR data. In addition, this letter covers violations that continue or reoccur, or that can reasonably be expected to continue or reoccur, after the date of this letter. This letter covers ExxonMobil's failure to take corrective action to abate the numeric effluent limit violations and other permit schedule violations. CLF intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice letter. This notice letter covers all such violations to the full extent permitted by law.

These violations are ongoing and continuous, or capable of repetition, and barring a change at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations are likely to continue indefinitely. ExxonMobil is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§19.2, 19.4, each separate violation of the Act subjects ExxonMobil to a penalty up to \$32,500 per day for each violation that occurred between March 15, 2004 and January 12, 2009, and up to \$37,500 per day for each violation that occurred after January 12, 2009. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring ExxonMobil to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the notice period (90 days under RCRA; 60 days under the Clean Water Act), CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If You wish to pursue such discussions, please have Your attorney contact



CLF within the next 20 days so that negotiations may be completed before the end of the notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the notice period.

Sincerely,



Zachary K. Griefen, Environmental Enforcement Litigator
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cc:

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EXHIBIT 1

Effluent Violations of NPDES Permit through Second Quarter of 2015

Quarter	Date	Outfall	Parameter	Limit Type	Units	Permit Limit	Reported Discharge	Percentage in Exceedance
2015Q2	4/20/2015	01A	Acenaphthene	Max. Daily	µg/L	0.031	1.42	4481%
2015Q2	4/20/2015	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.248	700%
2015Q2	4/20/2015	01A	Fluorene	Max. Daily	µg/L	0.031	1.53	4835%
2015Q2	4/20/2015	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.297	858%
2015Q2	4/20/2015	01A	Pyrene	Max. Daily	µg/L	0.031	0.0691	123%
2015Q1	1/4/2015	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.408	1216%
2014Q2	5/17/2014	01A	Total Suspended Solids	Max. Daily	Mg/L	100	127	27%
2014Q2	4/8/2014	01A	Fluorene	Max. Daily	µg/L	0.031	1.1	3448%
2014Q1	1/6/2014	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.191	516%
2014Q1	1/6/2014	01A	Chrysene	Max. Daily	µg/L	0.031	0.179	477%
2014Q1	1/6/2014	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.774	2397%
2014Q1	1/6/2014	01A	Fluorene	Max. Daily	µg/L	0.031	0.556	1694%
2014Q1	1/6/2014	01A	Pyrene	Max. Daily	µg/L	0.031	0.439	1316%
2014Q1	1/6/2014	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.581	1774%
2013Q2	5/9/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.441	1323%
2013Q2	5/9/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.469	1413%
2013Q2	4/12/2013	01A	Chrysene	Max. Daily	µg/L	0.031	0.142	358%
2013Q2	4/12/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.368	1087%
2013Q2	4/12/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.384	1139%
2013Q1	3/12/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.23	642%
2013Q1	3/12/2013	01A	Fluorene	Max. Daily	µg/L	0.031	0.648	1990%
2011Q4	12/7/2011	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.13	319%
2011Q4	12/7/2011	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.152	390%
2011Q4	12/7/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.247	697%
2011Q4	12/7/2011	001A	Fluoranthene(2C)	Max. Daily	µg/L	0.031	0.311	903%
2011Q4	12/7/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.247	697%
2011Q4	11/10/2011	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.183	490%
2011Q4	11/10/2011	001A	Benzo(g,h,i)perylene(2C)	Max. Daily	µg/L	0.031	0.211	581%
2011Q4	11/10/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.29	835%
2011Q4	11/10/2011	001A	Fluoranthene	Max. Daily	µg/L	0.031	0.726	2242%
2011Q4	11/10/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.797	2471%
2011Q3	9/6/2011	001A	Chrysene	Max. Daily	µg/L	0.031	1.52	4803%
2011Q3	9/6/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.664	2042%
2011Q3	8/2/2011	001A	Benzo(a)anthracene(2C)	Max. Daily	µg/L	0.031	0.279	800%
2011Q3	8/2/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.144	329%
2011Q3	8/2/2011	001A	Fluoranthene(2C)	Max. Daily	µg/L	0.031	1.48	4674%
2011Q3	8/2/2011	001A	Fluorene	Max. Daily	µg/L	0.031	1.04	3255%
2011Q3	8/2/2011	001A	Naphthalene(2C)	Max. Daily	µg/L	0.031	5.62	18029%

Quarter	Date	Outfall	Parameter	Limit Type	Units	Permit Limit	Reported Discharge	Percentage in Exceedance
2011Q3	8/2/2011	001A	Phenanthrene(2C)	Max. Daily	µg/L	0.031	7.12	22868%
Quarter	Date	Outfall	Parameter	Limit Type	Units	Permit Limit	Reported Discharge	Percentage in Exceedance
2011Q3	8/2/2011	001A	Pyrene	Max. Daily	µg/L	0.031	4.25	13610%
2011Q2	5/4/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.447	1342%
2011Q2	5/4/2011	001A	Pyrene	Max. Daily	µg/L	0.031	1.34	4223%
2011Q1	3/11/2011	001A	Fluoranthene	Max. Daily	µg/L	0.031	1.22	3836%
2011Q1	3/11/2011	001A	Phenanthrene(2C)	Max. Daily	µg/L	0.031	2.45	7803%
2011Q1	3/11/2011	001A	Pyrene	Max. Daily	µg/L	0.031	1.12	3513%
2011Q1	1/18/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.215	594%
2010Q3	9/8/2010	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.177	471%
2010Q3	9/8/2010	001A	Chrysene	Max. Daily	µg/L	0.031	0.368	1087%
2010Q3	9/8/2010	001A	Fluoranthene	Max. Daily	µg/L	0.031	0.556	1694%
2010Q3	9/8/2010	001A	Pyrene	Max. Daily	µg/L	0.031	0.941	2935%
2010Q3	8/23/2010	001 A	Benzo(a)anthracene	Max. Daily	µg/L	0.031	0.202	552%
2010Q3	8/23/2010	001 A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.135	335%
2010Q3	8/23/2010	001 A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.144	365%
2010Q3	8/23/2010	001 A	Benzo(k)fluoranthene	Max. Daily	µg/L	0.031	0.115	271%
2010Q3	8/23/2010	001 A	Chrysene	Max. Daily	µg/L	0.031	0.192	519%
2010Q3	8/23/2010	001 A	Fluoranthene	Max. Daily	µg/L	0.031	0.385	1142%
2010Q3	8/23/2010	001 A	Pyrene	Max. Daily	µg/L	0.031	0.644	1977%
2010Q3	7/10/2010	001A	Total Suspended Solids	Max. Daily	mg/L	100	142	42%
2010Q3	7/10/2010	001A	Acenaphthylene	Max. Daily	µg/L	0.031	0.124	300%
2010Q3	7/10/2010	001A	Anthracene	Max. Daily	µg/L	0.031	0.229	639%
2010Q3	7/10/2010	001A	Benzo(a)anthracene	Max. Daily	µg/L	0.031	0.714	2203%
2010Q3	7/10/2010	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.6	1836%
2010Q3	7/10/2010	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.676	2081%
2010Q3	7/10/2010	001A	Benzo(g,h,i)perylene	Max. Daily	µg/L	0.031	0.419	1252%
2010Q3	7/10/2010	001A	Benzo(k)fluoranthene	Max. Daily	µg/L	0.031	0.438	1313%
2010Q3	7/10/2010	001A	Chrysene	Max. Daily	µg/L	0.031	0.914	2848%
2010Q3	7/10/2010	001A	Dibenz(a,h)anthracene	Max. Daily	µg/L	0.031	0.143	361%
2010Q3	7/10/2010	001A	Fluoranthene	Max. Daily	µg/L	0.031	1.25	3932%
2010Q3	7/10/2010	001A	Indeno(1,2,3-cd)pyrene	Max. Daily	µg/L	0.031	0.314	913%
2010Q3	7/10/2010	001A	Phenanthrene	Max. Daily	µg/L	0.031	0.6	1835%
2010Q3	7/10/2010	001A	Pyrene	Max. Daily	µg/L	0.031	2.16	6868%
2010Q3	7/10/2010	001A	Pyrene	Max. Daily	µg/L	0.031	0.17	448%



For a thriving New England

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July 8, 2016

VIA Registered Mail and Certified Mail, Return Receipt Requested

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The Prentice-Hall Corporation System, Inc.
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Jason Pociask, ExxonMobil Everett Terminal Superintendent
ExxonMobil Pipeline Company
52 Beacham Street, Everett, MA 02149

RE: Amended Notice of Violations and Intent to File Suit under the Resource Conservation and Recovery Act and Clean Water Act

To Whom it May Concern:

This letter supersedes and replaces that portion of the Notice of Intent issued by CLF on May 17, 2016 regarding the Clean Water Act violations at the Everett Terminal. This letter does not amend or alter those allegations associated with the Resource Conservation and Recovery Act (“RCRA”) claims contained in the May 17, 2016 Notice of Intent and that portion of the Notice of Intent is included herein only for reference.

This letter constitutes a Notice by Conservation Law Foundation, Inc. (“CLF”)¹ to ExxonMobil Oil Corporation (together with ExxonMobil Pipeline Company, hereinafter, “ExxonMobil” or “You”) under Section 7002(b)(2)(A) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as further amended by the Hazardous and Solid Waste Amendments of 1984 (“RCRA”), 42 U.S.C. § 6972(b)(2)(A). Please be advised that unless, within ninety (90) days following your receipt of CLF’s May 17, 2016 Notice, You adequately resolve the conditions at the marine distribution terminal in Everett, Massachusetts (the “Everett Terminal”) operated by You, which may present an imminent and substantial endangerment to health or the environment, CLF intends to file a Complaint in the United States District Court of the District of Massachusetts to assert claims against You and any other entities that may have contributed to the conditions at the Everett Terminal, seeking declaratory and injunctive relief pursuant to RCRA Section 7002(a)(1)(B), 42 U.S.C. § 6972(a)(1)(B), civil penalties, and CLF’s reasonable litigation costs, including attorneys and expert witness fees and costs. Pursuant to RCRA Section 7002(b)(2)(A), 42 U.S.C. § 6972(b)(2)(A), such action will not be filed earlier than ninety days from the date of CLF’s May 17, 2016 Notice of Intent.

CLF also gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act (“Clean Water Act,” “CWA,” or “Act”), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., part 135 and 40 C.F.R. 254 to the addressed persons of CLF’s intention to file suit in the United States District Court of the District of Massachusetts seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

1. RCRA Violations

ExxonMobil, acting through officers, managers, subsidiary companies, and instrumentalities, owns or has owned or operates or has operated all or portions of the Everett Terminal, which

¹ CLF is a not-for-profit 501(c)(3) organization dedicated to the conservation and protection of New England’s environment.

consists of a “tank farm,” three berths, buildings and infrastructure located at 52 Beacham Street in Everett, in the Commonwealth of Massachusetts, at the confluence of the Island End River with the Mystic River. You are a Large Quantity Generator of hazardous waste at the Everett Terminal, and, as more fully described below, You have contributed and are contributing to the past or present handling, storage, treatment, transportation, or disposal of solid and hazardous wastes which may present an imminent and substantial endangerment to health or the environment in violation of RCRA.

CLF hereby asserts that You have contributed to the past or present handling, storage, treatment, transportation, or disposal of Hazardous Waste, as that term is defined in Section 1004(5) of RCRA, 42 U.S.C. § 6903(5), and Solid Waste, as that term is defined in Section 1004(27) of RCRA, 42 U.S.C. § 6903(27), at the Everett Terminal, which may present an imminent and substantial endangerment to health or the environment. Based on the information currently available to CLF, the toxic and hazardous wastes and pollutants listed below, many of which are highly carcinogenic, are present at the Everett Terminal:

2,4-Dimethylphenol	Benzene	Chrysene	Indeno[1,2,3cd]pyrene	SGT-HEM (Oil and Grease)
3&4 Methylphenol (Cresol)	Benzo[a]pyrene	Cyanide	Iron	Toluene
Acetone	Benzo[b]fluoranthene	Dibenzo[a,h]anthracene	Lead	Xylenes [m,p,o]
Antimony	Benzo[k]fluoranthene	Di-n-butyl phthalate	Mercury	Petroleum Hydrocarbons
Arsenic	Cadmium	Ethylene	Naphthalene	Phenols
Benz(a)anthracene	Chromium	Fluoranthene	Nickel	Zinc
Methyl Tertiary-Butyl Ether (MTBE)	Tert-Butyl Alcohol (TBA)	Phthalates/Phthalate esters	Coal Tar	Butyl benzyl phthalate
Acenaphthylene	Benzo(ghi)perylene	Tert-Butyl Alcohol	Acenaphthene	Phenanthrene
Fuel Oil	Anthracene	Total BTEX	Gasoline	

To the extent that other Hazardous and Solid Wastes are revealed to be present at the Everett Terminal (a fact that You are in a better position to know than CLF) You are put on notice that CLF intends to include these wastes in its proof of your RCRA violations. You routinely discharge many of these toxic and hazardous wastes into the Island End River and the Mystic River, and the soils and groundwater at the Everett Terminal are heavily contaminated from your past, present, and ongoing handling, storage, treatment, transportation, or disposal of Hazardous and Solid Waste.

The Hazardous and Solid Waste at your Everett Terminal is generated, handled, stored, treated, transported and disposed of at or near sea level in close proximity to major human population centers, Chelsea Creek, the Island End River, and the Mystic River, which flows through the communities of Everett, Somerville, Chelsea, and Boston on its way to Boston Harbor. The first significant storm surge that makes landfill at the Everett Terminal at or near high tide is going to further flush your Hazardous and Solid Waste into the Island End and Mystic Rivers and through those communities, and a significant rise in sea level will put the majority of the Everett Terminal, including soils, groundwater, and treatment works, under water. You know all this, and yet have not taken appropriate steps to protect the public and the environment from this certain risk.

Nor have You disclosed your creation of this immanent and substantial risk to the United States Environmental Protection Agency (“EPA”), state regulators, or the public. On the contrary, You have actively obfuscated, denied, and attempted to conceal these risks from federal and state regulators and the public. Your obfuscation and denial is not and has not been limited to the imminent and substantial endangerment to health or the environment You have created at the Everett Terminal; You have also engaged in a decades-long scheme to conceal and sow doubt regarding the effects of climate change and your role, as the largest oil refiner on the planet, causing the anthropogenic climate change that is resulting in a great frequency of storm surges and extreme weather events and rising sea levels. Your pattern of failing to disclose required information in your possession regarding these risks, and of acting to conceal these risks, may expose You to liability in this matter under legal theories other than the violations of RCRA discussed herein.

Your violations of RCRA are ongoing and continuous. CLF intends to seek a civil injunction, as provided under section 7002 of RCRA, ordering ExxonMobil to perform and pay for such work as may be required to respond to the Hazardous Waste and Solid Waste present at the Everett Terminal and restraining You from further violating RCRA. CLF also intends to seek civil penalties and an award of the costs of litigation, including attorney and expert witness fees, under section 7002 of RCRA.

2. Clean Water Act Violations

The ExxonMobil Everett Terminal is engaged in the receipt, storage, and distribution of petroleum products. The spectrum of fuels handled by this facility consists of gasoline, low sulfur diesel, jet

fuel, heavy oil, and fuel additives. Petroleum products are received in bulk quantities at the Everett Terminal's marine vessel dock. Product is then transferred, via aboveground piping, to aboveground storage tanks located within the facility's tank farm areas. Final distribution of product is conducted at the facility's truck loading racks. The Everett Terminal operations also include the collection and discharge of stormwater from Sprague Energy, an asphalt storage and distribution facility located on property formerly owned by ExxonMobil.

ExxonMobil operates the Everett Terminal pursuant to an individual permit issued by EPA under the Clean Water Act National Pollutant Discharge Elimination System ("NPDES") permit program, 33 U.S.C. § 1342 *et seq.* ExxonMobil currently operates subject to NPDES Permit No. MA0000833, which was issued in 2008 and became effective in 2009. That permit was modified in 2011; the modification became effective on January 1, 2012 (the "Permit"). By its terms, the Permit expired in 2014 and has since been administratively continued.

Among other requirements, the Permit states that "[t]he permittee shall develop, implement, and maintain a Storm Water Pollution Prevention Plan (SWPPP) designed to reduce, or prevent, the discharge of pollutants in storm water to the receiving waters identified in this permit. The SWPPP shall be a written document and consistent with the terms of this permit. The permittee shall comply with the terms of its SWPPP." Permit Part I.B.1, p. 13. ExxonMobil's applications for coverage under NPDES permits, including the currently applicable NPDES Permit, failed to include information documenting climate change induced factors known to ExxonMobil such as increased precipitation, increased magnitude and frequency of storm events, and increased frequency and magnitude of storm surges. By failing to address sea level rise, increased precipitation, and increased magnitude and frequency of storm events and storm surges, ExxonMobil has not developed and is not implementing a SWPPP designed to prevent the discharge of pollutants in stormwater to the receiving waters as identified in and required by the Permit.

As discussed below, ExxonMobil is also routinely violating other terms and conditions of its Permit. The Permit requires ExxonMobil to operate its wastewater treatment system in a specific manner designed to ensure that the maximum amount of wastewater receives the highest level of treatment prior to being discharged. By failing to comply with this condition of the Permit, ExxonMobil is discharging wastewater that has not been adequately treated, resulting in unnecessary and illegal pollution. ExxonMobil is also routinely discharging pollutants in levels that exceed the effluent limitations in its Permit and violate state water quality standards.

The receiving water identified in ExxonMobil's NPDES Permit for the Everett Terminal is the Island End River (Boston Harbor/Mystic River Watershed/Segment MA71-03), a small tributary to the Mystic River. The entire Island End River is less than one-half mile long, and about 500 feet across at its widest point. The Island End River flows into the Mystic River, approximately half a

mile west of the Mystic River's end in Boston Harbor. The Island End River is designated as a Class SB water body by the Commonwealth of Massachusetts.

The half-moon shaped pond within the Everett Terminal property that is incorporated into the facility's stormwater treatment system, also known as the "Effluent Pond," has existed since time immemorial and is a part of the Island End River, although ExxonMobil (or its predecessors in interest) defined its shape by filling in other areas of surface water sometime during the 1900s. The half-moon shaped pond is connected to the Island End River via subsurface hydrological connections and man-made conduits. The half-moon shaped pond, the Island End River, and the Mystic River are all "waters of the United States" as defined in 40 C.F.R. § 122.2, and, therefore, "navigable waters" as defined in 33 U.S.C. § 1362(7). A man-made structure cannot eliminate the Clean Water Act's jurisdiction over a water of the United States. ExxonMobil's discharges of pollutants into the half-moon shaped pond are unpermitted and therefore violate the Clean Water Act.

The Massachusetts Department of Environmental Protection ("MassDEP") evaluated and developed a comprehensive list of the assessed waters and the most recent list was published in the Massachusetts Year 2014 Integrated List of Waters (MassDEP, December 2015). The list identifies the lower reach of the Mystic River (Segment ID No. MA71-03, which includes the Island End River) as one of the waterways within Massachusetts that is impaired. The impairment, as identified by the MassDEP, is related to the presence of the following pollutants, which were not considered to be present due to natural causes: Ammonia (Un-ionized); Fecal Coliform; Foam/Flocs/Scum/Oil Slicks; Other; Dissolved Oxygen; PCB in Fish Tissue; Petroleum Hydrocarbons; Sediment Screening Value (Exceedence); and Taste and Odor.

Unlawful Certification of SWPPP

NPDES Permit No. MA0000833 requires that: "The SWPPP shall be completed or updated and signed by the Permittee within 90 days after the effective date of this Permit. The Permittee shall certify that the SWPPP has been completed or updated and that it meets the requirements of the permit. The certification shall be signed in accordance with the requirements identified in 40 CFR § 122.22." Part I.B.2, p.13. 40 C.F.R. § 122.22 required ExxonMobil to submit the following certification to comply with §122.22:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and

complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

ExxonMobil signed and submitted the certification required by 40 C.F.R. § 122.22 at the time of submittal of (a) each of its NPDES permit applications, and (b) each SWPPP. ExxonMobil signed these certifications without (a) disclosing information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge, and (b) developing and implementing a SWPPP based on information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge. ExxonMobil also signed these certifications without developing and implementing a Spill Prevention, Control, and Countermeasures Plan (“SPCC Plan”) based on information in its possession and relied on by the company in its business decision-making, regarding climate changed induced factors such as sea level rise, increased precipitation, increased magnitude and frequency of storm events, and storm surge.

Failure to Prepare SWPPP in Accordance with Good Engineering Practices

NPDES Permit No. MA0000833 requires that: “The SWPPP shall be prepared in accordance with good engineering practices.” Part I.B.4, p. 13. ExxonMobil’s SWPPP for the Everett Terminal was not prepared in accordance with good engineering practices because the SWPPP was not based on information available to ExxonMobil and consistent with the duty of care applicable to engineers. The SWPPP was not prepared based on information regarding climate change-induced impacts known to reasonably prudent engineers and known to ExxonMobil.

Failure to Identify Sources of Pollution

NPDES Permit No. MA0000833 requires that: “The SWPPP shall . . . identify potential sources of pollution that may reasonably be expected to affect the quality of the stormwater discharges.” Part I.B.4, p. 13. This condition of the Permit uses the term “pollution” as opposed to the term “pollutant.” ExxonMobil has failed to identify sources of pollution resulting from climate change-induced sea level rise, storm surge, and increased magnitude and severity of storms as sources of pollution reasonably expected, and specifically anticipated by ExxonMobil, to affect the quality of the stormwater discharges from the Everett Terminal.

Failure to Describe and Implement Practices

The Permit requires that: “The SWPPP shall . . . describe and ensure implementation of practices which will be used to reduce the pollutants and assure compliance with this permit.” Part I.B.4, p. 13. The SWPPP does not describe or ensure implementation of practices which will be used to

address pollutant discharges resulting from climate change-induced effects that are known to ExxonMobil.

Failure to Identify Sources, Spill Areas, Drainage

The Permit requires that: “. . . the SWPPP shall contain the elements listed below: A summary of all pollutant sources which includes all areas where spills have occurred or could occur. For each source, identify the expected drainage and the corresponding pollutant.” Part I.B.4(c), p. 13. The SWPPP does not address climate change-induced effects as pollutant sources, fails to identify where spills could occur and fails to identify drainage paths associated with storm surge and sea level rise, all of which are known to ExxonMobil.

Failure to Update SWPPP and SPCC

The Permit requires that: “. . . the SWPPP shall contain the elements listed below: A description of all stormwater controls, both structural and non-structural. [Best Management Practices, or] BMPs must include . . . preventative maintenance programs, spill prevention and response procedures, runoff management practices, and proper handling of deicing materials. The SWPPP shall describe how the BMPs are appropriate for the facility. All BMPs shall be properly maintained and be in effective operating conditions.” Part I.B.4(e), p. 13-14. The Permit incorporates spill prevention and response procedures as an enforceable BMP in the SWPPP.

A spill prevention and response procedure applicable to the Facility is the Spill Prevention, Control, and Countermeasures Plan required pursuant to 40 C.F.R. § 112, Subpart A. This enforceable BMP requires establishment of “procedures, methods, equipment, and other requirements to prevent the discharge of oil from non-transportation-related onshore and offshore facilities into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act).” 40 C.F.R. § 112.1(a)(1) (emphasis added).

The SPCC Plan must prevent discharges from the Everett Terminal because it is a facility, “*which due to its location*, could reasonably be expected to discharge oil in quantities that may be harmful, as described in part 110 of this chapter, into or upon the navigable waters of the United States or adjoining shorelines, or into or upon the waters of the contiguous zone, or in connection with activities under the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States (including resources under the Magnuson Fishery Conservation and Management Act)” 40 C.F.R. § 112.1(b) (emphasis added).

Due to its location, the Everett Terminal is at risk of discharging oil due to climate change-induced sea level rise, storm surges, increased precipitation, and altered, severe, and/or extreme weather events.

The SPCC regulations highlight the applicability of the Plan as follows: “112.1(e): This part establishes requirements for the preparation and implementation of Spill Prevention, Control, and Countermeasure (SPCC) Plans. SPCC Plans are designed to complement existing laws, regulations, rules, standards, policies, and procedures pertaining to safety standards, fire prevention, and pollution prevention rules. The purpose of an SPCC Plan is to form a comprehensive Federal/State spill prevention program that minimizes the potential for discharges. The SPCC Plan must address all relevant spill prevention, control, and countermeasures necessary at the specific facility. Compliance with this part does not in any way relieve the owner or operator of an onshore or an offshore facility from compliance with other Federal, State, or local laws.”

The SPCC Regulations underscore that: “(d) Except as provided in §112.6, a licensed Professional Engineer must review and certify a Plan for it to be effective to satisfy the requirements of this part. (1) By means of this certification the Professional Engineer attests: (i) That he is familiar with the requirements of this part; (ii) That he or his agent has visited and examined the facility; (iii) That the Plan has been prepared in accordance with good engineering practice, including consideration of applicable industry standards, and with the requirements of this part; (iv) That procedures for required inspections and testing have been established; and (v) That the Plan is adequate for the facility. (vi) That, if applicable, for a produced water container subject to §112.9(c)(6), any procedure to minimize the amount of free-phase oil is designed to reduce the accumulation of free-phase oil and the procedures and frequency for required inspections, maintenance and testing have been established and are described in the Plan. (2) Such certification shall in no way relieve the owner or operator of a facility of his duty to prepare and fully implement such Plan in accordance with the requirements of this part.” 40 C.F.R. § 112.3(d).

The SPCC Plan for the Everett Terminal was not prepared in accordance with good engineering practices because it is not based on consideration of climate change information known to ExxonMobil, the petroleum industry in general, and to practicing engineers in Massachusetts, including climate change information regarding the certainty of increased sea level rise, storm surges, increased precipitation, and altered, severe, and/or extreme weather events.

Climate change-induced and affected factors such as sea level rise, storm surge, precipitation, and weather events (including severe and extreme weather events) can reasonably be expected to cause or contribute to the discharge of oil in quantities that may be harmful to receiving waters in violation of the SPCC regulations, the SWPPP, and the Permit.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include necessary discharge prevention measures including procedures for routine handling of products.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include necessary and prudent discharge or drainage controls such as secondary containment around containers and other structures, equipment, and procedures for the control of a discharge.

Due to ExxonMobil's failure to consider or incorporate climate change information, including information known to ExxonMobil, the SPCC Plan fails to identify where experience indicates a reasonable potential for equipment failure (such as loading or unloading equipment, tank overflow, rupture, or leakage, or any other equipment known to be a source of a discharge).

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include a prediction of the direction, rate of flow, and total quantity of oil which could be discharged from the facility as a result of each type of major equipment failure.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to provide appropriate containment and/or diversionary structures or equipment to prevent a discharge as described in 40 C.F.R. §112.1(b).

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to assure that the entire containment system, including walls and floor, must be capable of containing oil and must be constructed so that any discharge from a primary containment system, such as a tank, will not escape the containment system before cleanup occurs.

Due to ExxonMobil's failure to integrate climate change information, including information known to ExxonMobil, the SPCC Plan fails to address the typical failure mode associated with climate change-induced or affected factors, and the most likely quantity of oil that would be discharged.

Due to ExxonMobil's failure to consider climate change information, including information known to ExxonMobil, the SPCC Plan fails to include appropriately designed (i) Dikes, berms, or retaining walls sufficiently impervious to contain oil; (ii) Curbing or drip pans; (iii) Sumps and collection systems; (iv) Culverting, gutters, or other drainage systems; (v) Weirs, booms, or other barriers; (vi) Spill diversion ponds; (vii) Retention ponds; or (viii) Sorbent materials; and for offshore facilities: (ix) Curbing or drip pans, or (x) Sumps and collection systems.

Failure to Amend SWPPP and SPCC Plan

NPDES Permit No. MA0000833 requires that: “The permittee shall amend and update the SWPPP within 30 days for any changes at the facility affecting the SWPPP. Changes which may affect the SWPPP include, but are not limited to, the following activities: a change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to the waters of the United States . . . Any amended or new versions of the SWPPP shall be re-certified by the Permittee. Such re-certifications also shall be signed in accordance with the requirements identified in 40 C.F.R. § 122.22.” Part I.B.6, p. 14.

ExxonMobil has not amended its SWPPP based on information regarding climate change known to ExxonMobil. ExxonMobil has not amended its SPCC Plan, to include an engineer’s certification based on information regarding climate change known to ExxonMobil. 40 C.F.R. § 112.5.

The Permit requires that the permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of the Permit and with the requirements of stormwater pollution prevention plans. Part I.A.14, pg. 9. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when the operation is necessary to achieve compliance with the conditions of the Permit. *See also* 40 C.F.R. § 122.41(e).

ExxonMobil has failed to properly operate and maintain the Everett Terminal to achieve compliance with the conditions of the Permit due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

The Permit requires that “The permittee shall take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment.” *See also* 40 C.F.R. § 122.41(d). ExxonMobil has failed take all reasonable steps to minimize or prevent any discharge which has a reasonable likelihood of adversely affecting human health or the environment due to its failure to consider and act upon climate change related information, including information known to ExxonMobil.

By failing to submit information related to climate change-induced and affected factors in its permit application and in reports to the Environmental Protection Agency, ExxonMobil has submitted incorrect information in a permit application or reports to the Regional Administrator.

By failing to submit information related to climate change-induced and affected factors in its permit application and in reports to the Environmental Protection Agency, ExxonMobil has failed to promptly submit such relevant facts or information.

Failure to Comply with Permit Conditions regarding Discharges through Specified Outfalls

Dischargers of pollutants, including industrial wastewater, process water and stormwater associated with industrial activity, must comply with the requirements of a NPDES permit issued under Section 402 of the Clean Water Act, 33 U.S.C § 1342. Section 301(a) of the CWA prohibits discharges not authorized by, or in violation of, the terms of a valid NPDES discharge permit. NPDES discharge permits contain pollutant sampling and monitoring requirements and limits on the amount or concentration of allowable pollutants, in addition to requirements regarding operation, control measures, best management practices, and recordkeeping and reporting.

The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. § 1311(a); 33 U.S.C. § 1342.

The Everett Terminal Permit sets forth the parameters and conditions under which ExxonMobil may discharge without violating the Clean Water Act's prohibitions. Central to these conditions are the operational requirements that define the circumstances under which ExxonMobil may discharge through its three discharge outfalls: Outfalls 01A, 01B and 01C. The Permit requires that discharges up to a certain amount will solely flow through Outfall 01C, providing specifics of the wastewater flow, in part, as follows²:

Wastewater Treatment System Flow

- a. The continuous treatment system shall be designed, constructed, maintained and operated to treat the volume of storm water, groundwater and other associated wastewaters up to and including 280 gpm through outfall 01C.
- b. The collection, storage and treatment systems shall be designed, constructed, maintained and operated to treat the total equivalent volume of storm water, groundwater, hydrostatic test water, boiler condensate, fire testing water, truck was water, effluent pond water and continuous treatment system filter backwash water which would result from a 10-year 24-hour precipitation event, which volume shall be discharged through outfall 01C and outfall 01A. All wet weather and dry weather discharges less than or equal to the design capacity of the continuous treatment system [280 gpm] shall be treated through the continuous treatment system and

² The Permit specifies that discharges from Outfall 01B shall be limited to situations when the combined capacity of the facility to collect and treat through outfalls 01A and 01C is exceeded and are expected only in extreme weather events. *See* Permit Part I.A.23(c), p. 11.

discharged at outfall 01C. The flow through the corrugated plate separator shall not exceed 4,000 gpm.

Permit Part I.A.23(a) & (b), p. 10-11.³ This required flow structure is confirmed by ExxonMobil's Terminal Operator's Guide ("TOG"), which states in pertinent part:

- All dry weather flow, 0–280 gpm, is treated by the OWS followed by dry weather treatment system (DWTS; also known as the CTS) and discharged to outfall 01C.
- Moderate storm event flow, 280–4,000 gpm, is treated by the OWS and discharged to outfall 01A without treatment by the DWTS.
- Heavy storm event flow, 4,000–13,600 gpm, is pumped to tank 140 for treatment by the OWS or DWTS following the storm event. Up to 1.3 million gallons will be transferred to tank 140.

See TOG Oil Water Separator § 6.2.

This tiered discharge structure was implemented pursuant to a settlement agreement between ExxonMobil and EPA whereby ExxonMobil "agreed to extensively redesign its effluent treatment system in order to improve effluent quality under all flow conditions, including through the use of a continuously operated advanced treatment system, and a flow equalization tank to store storm water volume during periods of peak storm water flow." Response to comments on draft modification of NPDES Permit No. MA0000833, at 1-2 (attached to modified Permit). Under the Permit, Outfall 01C is designated as the primary outfall because discharges from 01C are treated through the new continuously operated advanced treatment system. Discharges from Outfalls 01A and 01B receive lower levels of treatment, if any, and thus are only authorized when total flow exceeds the levels designated in the Permit.

Contrary to these express terms of the Permit, discharges from Outfall 01A have frequently occurred even when Outfall 01C has not reached its 280 gpm capacity. As demonstrated in Exhibit 1, ExxonMobil's flow data shows unauthorized discharges from Outfall 01A on over 500 days

³ With respect to these operational requirements, the Permit also requires that "The permittee shall inspect, operate, and maintain the continuous treatment system, conventional oil water separator and the corrugated plate separator at the facility to ensure that the Effluent Limitations and Monitoring Requirements and other conditions contained in this permit are met. The permittee shall ensure that all components of the facility's Storm Water Pollution Prevention Plan, including those that specifically address the operation and maintenance of the separator(s) and other components of the storm water conveyance system, are complied with." Permit Part I.A.14, p. 9.

between January 2012 and May 2014. On many of those days, the total discharge from the entire system – *i.e.*, Outfalls 01A and 01C combined – was well below Outfall 01C’s maximum capacity of 280 gpm. As a result, the entire discharge system, including Outfalls 01A and 01C, is being operated in violation of the Permit conditions. Through such unlawful operation, ExxonMobil is routinely failing to comply with its Permit and ensure that all of its discharges receive the highest level of treatment possible. Thus, CLF intends to sue for each and every day that the discharge system has been operated in violation of the Permit conditions. At a minimum, this includes each and every one of the more than 500 days listed in Exhibit 1 as a separate and distinct date of violation.

Discharges of Toxic and Hazardous Pollutants in Excess of Numeric Effluent Limits and State Water Quality Standards

As a result of ExxonMobil’s industrial operations, the Everett Terminal Facility releases a variety of pollutants into the Island End and Mystic Rivers from and through point sources. ExxonMobil repeatedly discharges pollutants from the Facility into these Rivers, in concentrations and amounts that grossly exceed the numeric effluent limits set out in its NPDES Permit and/or violate State Water Quality Standards. These discharges are toxic to organisms and human health and impair the uses of the Island End and Mystic Rivers.

The Permit requires ExxonMobil to ensure that its discharges do not cause violations of State Water Quality Standards, that pollutants are not discharged in concentrations or combinations that would be hazardous or toxic to human or aquatic life, and that its discharges do not impair the uses designated for the Island End and Mystic Rivers. *See* Permit Part I.A.2, p. 3; Part I.A.3, p. 5; Part I.A.4, p. 6 (stating that for each outfall, any discharge must be “limited and monitored by the permittee as specified” and “not cause a violation of the State Water Quality Standards of the receiving water”); Part I.A.5, p. 9 (“The discharges either individually or in combination shall not cause or contribute to a violation of State Water Quality Standards of the receiving waters.”); Part I.A.9, p. 9 (“The discharge shall not contain materials in concentrations or combinations which are hazardous or toxic to human health, aquatic life of the receiving surface waters or which would impair the uses designate by its classification.”); Part 1.A.24, p. 11 (“The permittee shall not discharge any pollutant or combination of pollutants in toxic amounts.”; “Any toxic components of the effluent shall not result in any demonstrable harm to aquatic life or violate any state or federal water quality standard which has been or may be promulgated.”). Massachusetts Surface Water Quality Standards are found at 314 Code Mass. Regs. §§ 4.00, and provide in relevant part that “[a]ll surface waters shall be free from pollutants in concentrations or combinations that are toxic to humans, aquatic life or wildlife.” 314 Code Mass. Regs. § 4.05(5)(e). Under the regulations, the National Recommended Water Quality Criteria published by EPA in 2002 are the allowable receiving water concentrations unless otherwise specified. *See id.*

Despite these clear restrictions, many of ExxonMobil's discharges violate applicable State Water Quality Standards, and as such, constitute violations of the Permit. Exhibit 2 summarizes these violations.

The conditions of the Permit, which are also included in ExxonMobil's TOG, flatly prohibit any discharge from Outfall 01A unless Outfall 01C has reached maximum capacity. Thus, each day there is discharge from Outfall 01A when Outfall 01C is below its maximum capacity of 280 gpm constitutes a separate and distinct violation for each and every pollutant present in the discharge, since no pollutants may be discharged from Outfall 01A if Outfall 01C has not reached maximum capacity. This includes all such days documented in Exhibit 1, as well as any additional days that new information may reveal.

ExxonMobil is also routinely discharging pollutants in amounts exceeding the maximum allowable levels set by the numeric effluent limits in the Permit. As shown in Exhibit 3, ExxonMobil self-reported over one hundred (100) violations of numeric effluent limits during the last four and a half years (running from January 2012 through June of 2016). Many of these discharges of hazardous pollutants exceeded the numeric effluent limits by several thousand percent. If new information reveals additional violations of the permitted levels of pollutant discharges, CLF intends to include those violations in its suit.

The Permit's effluent limits are enforceable through a citizen suit even if EPA has apparently determined that it will not take enforcement action unless the concentrations of toxins in ExxonMobil's discharges reach a level many times greater than the permitted limits. *See* Part I.A.2 n.7, p. 4 ("Compliance/non-compliance for Polycyclic Aromatic Hydrocarbons (PAHs) for discharges at outfall 01A shall be 10 µg/l for individual PAHs."). This footnote in the Permit merely explains how EPA will exercise its own enforcement discretion – to interpret it as superseding the Permit's numeric effluent limitations would undermine the Permit, the state regulations establishing water quality-based effluent limitations, and the Clean Water Act itself.

In addition to the violations of numeric limitations and water quality standards, there have been at least four instances in which discharges associated with the ExxonMobil and/or Sprague Energy facilities were reported to the National Incident Command. All four of these incidents, which occurred in 2011, 2014 and 2015 and are identified in Exhibit 4, resulted in a discharge that reached the water, identified as the Mystic River and/or Island End River. These discharges violate the Permit generally, and specifically violate the provision that provides in part that: a "discharge shall not cause a visible oil sheen, foam, or floating solids." Permit Part I.A.8, p. 9.

Every day in which ExxonMobil has failed and continues to fail to comply with the requirements of the Clean Water Act and NPDES Permit No. MA0000833 is a separate and distinct violation of ExxonMobil's NPDES Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

The discharge of any pollutant in violation of a NPDES permit, the failure to conduct required monitoring for pollutant discharges, and the failure to comply with other requirements of a NPDES permit are all violations of the Clean Water Act, 33 U.S.C. § 1311(a); 33 U.S.C. § 1342.

Additional information, including information in ExxonMobil's possession, may reveal additional violations. For example, this letter covers violations occurring after the date of the most recent publically available discharge monitoring report ("DMR") data. In addition, this letter covers violations that continue or reoccur, or that can reasonably be expected to continue or reoccur, after the date of this letter. This letter covers ExxonMobil's failure to take corrective action to abate the numeric effluent limit violations and other Permit violations. CLF intends to sue for all violations, including those yet to be uncovered and those committed after the date of this notice letter. This notice letter covers all such violations to the full extent permitted by law.

These violations are ongoing and continuous, or capable of repetition, and barring a change at the Facility and full compliance with the permitting requirements of the Clean Water Act, these violations are likely to continue indefinitely. ExxonMobil is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. §§19.2, 19.4, each separate violation of the Act subjects ExxonMobil to a penalty up to \$32,500 per day for each violation that occurred between March 15, 2004 and January 12, 2009; up to \$37,500 per day for each violation that occurred between January 12, 2009 and November 2, 2015; and up to \$51,570 per day for each violation that occurred after November 2, 2015. CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring ExxonMobil to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with matter.

CONCLUSION

During the notice period (90 days under RCRA which began May 17, 2016, and 60 days under the Clean Water Act), CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If You wish to pursue such discussions, please have your attorney contact CLF within the next 20 days so that negotiations may be completed before the end of the notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the notice period.

Sincerely,



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EXHIBIT 1

Recorded Daily Discharge Volume at Outfalls 01A and 01C

Compared to Unused Daily Capacity at Outfall 01C

1/1/2012 – 5/31/2014

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2012Q1	1/1/2012	44748	0	44748	403200	403200	100.0%
2012Q1	1/2/2012	69591	0	69591	403200	403200	100.0%
2012Q1	1/3/2012	35656	0	35656	403200	403200	100.0%
2012Q1	1/4/2012	14277	0	14277	403200	403200	100.0%
2012Q1	1/5/2012	14777	0	14777	403200	403200	100.0%
2012Q1	1/6/2012	14777	0	14777	403200	403200	100.0%
2012Q1	1/7/2012	13157	0	13157	403200	403200	100.0%
2012Q1	1/8/2012	2622	0	2622	403200	403200	100.0%
2012Q1	1/9/2012	12896	0	12896	403200	403200	100.0%
2012Q1	1/10/2012	3830	0	3830	403200	403200	100.0%
2012Q1	1/11/2012	60969	0	60969	403200	403200	100.0%
2012Q1	1/14/2012	141368	0	141368	403200	403200	100.0%
2012Q1	1/15/2012	80075	0	80075	403200	403200	100.0%
2012Q1	1/16/2012	27357	19292	46649	403200	383908	95.2%
2012Q1	1/17/2012	153124	105053	258177	403200	298147	73.9%
2012Q1	1/18/2012	76932	79184	156116	403200	324016	80.4%
2012Q1	1/19/2012	76932	32448	109380	403200	370752	92.0%
2012Q1	1/20/2012	1010	34517	35527	403200	368683	91.4%
2012Q1	1/21/2012	1010	28408	29418	403200	374792	93.0%
2012Q1	1/22/2012	171478	26305	197783	403200	376895	93.5%
2012Q1	1/23/2012	285394	71038	356432	403200	332162	82.4%
2012Q1	1/24/2012	19329	184645	203974	403200	218555	54.2%
2012Q1	1/25/2012	339085	48016	387101	403200	355184	88.1%
2012Q1	1/28/2012	83575	295478	379053	403200	107722	26.7%
2012Q1	1/29/2012	21903	104037	125940	403200	299163	74.2%
2012Q1	1/30/2012	10205	56555	66760	403200	346645	86.0%
2012Q1	1/31/2012	56338	52138	108476	403200	351062	87.1%
2012Q1	2/1/2012	18152	23855	42007	403200	379345	94.1%
2012Q1	2/2/2012	38266	64066	102332	403200	339134	84.1%
2012Q1	2/3/2012	10789	41970	52759	403200	361230	89.6%
2012Q1	2/4/2012	3229	42037	45266	403200	361163	89.6%
2012Q1	2/5/2012	30329	40000	70329	403200	363200	90.1%
2012Q1	2/7/2012	5837	28671	34508	403200	374529	92.9%
2012Q1	2/10/2012	15121	11349	26470	403200	391851	97.2%
2012Q1	2/11/2012	58961	0	58961	403200	403200	100.0%
2012Q1	2/12/2012	52298	3144	55442	403200	400056	99.2%
2012Q1	2/14/2012	12953	31345	44298	403200	371855	92.2%
2012Q1	2/16/2012	1505	23078	24583	403200	380122	94.3%
2012Q1	2/17/2012	15846	28322	44168	403200	374878	93.0%
2012Q1	2/18/2012	13969	15883	29852	403200	387317	96.1%
2012Q1	2/20/2012	1940	21250	23190	403200	381950	94.7%
2012Q1	2/22/2012	7597	31566	39163	403200	371634	92.2%
2012Q1	2/24/2012	87485	63526	151011	403200	339674	84.2%
2012Q1	2/25/2012	123299	201309	324608	403200	201891	50.1%
2012Q1	2/26/2012	3284	33170	36454	403200	370030	91.8%
2012Q1	2/27/2012	4974	36009	40983	403200	367191	91.1%
2012Q1	2/28/2012	2089	37841	39930	403200	365359	90.6%
2012Q1	2/29/2012	14317	36638	50955	403200	366562	90.9%
2012Q1	3/2/2012	164661	133128	297789	403200	270072	67.0%
2012Q1	3/5/2012	21914	52988	74902	403200	350212	86.9%
2012Q1	3/6/2012	19953	62566	82519	403200	340634	84.5%
2012Q1	3/7/2012	2056	53338	55394	403200	349862	86.8%
2012Q1	3/8/2012	11131	42811	53942	403200	360389	89.4%
2012Q1	3/9/2012	24531	29610	54141	403200	373590	92.7%
2012Q1	3/10/2012	11042	27075	38117	403200	376125	93.3%
2012Q1	3/11/2012	3263	49063	52326	403200	354137	87.8%
2012Q1	3/13/2012	31838	63212	95050	403200	339988	84.3%
2012Q1	3/27/2012	1272	20461	21733	403200	382739	94.9%
2012Q1	3/29/2012	8218	32824	41042	403200	370376	91.9%
2012Q2	4/3/2012	8170	41622	49792	403200	361578	89.7%
2012Q2	4/6/2012	2048	26245	28293	403200	376955	93.5%
2012Q2	4/9/2012	2653	44617	47270	403200	358583	88.9%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2012Q2	4/12/2012	22808	44827	67635	403200	358373	88.9%
2012Q2	4/13/2012	19529	60091	79620	403200	343109	85.1%
2012Q2	4/19/2012	1882	28307	30189	403200	374893	93.0%
2012Q2	4/21/2012	4449	24529	28978	403200	378671	93.9%
2012Q2	4/22/2012	110556	173490	284046	403200	229710	57.0%
2012Q2	4/25/2012	10499	85681	96180	403200	317519	78.7%
2012Q2	4/26/2012	18587	77889	96476	403200	325311	80.7%
2012Q2	4/27/2012	4302	86338	90640	403200	316862	78.6%
2012Q2	4/28/2012	28667	152243	180910	403200	250957	62.2%
2012Q2	4/29/2012	2839	71439	74278	403200	331761	82.3%
2012Q2	4/30/2012	7855	64783	72638	403200	338417	83.9%
2012Q2	5/2/2012	12518	98987	111505	403200	304213	75.4%
2012Q2	5/3/2012	6664	100521	107185	403200	302679	75.1%
2012Q2	5/4/2012	36556	92303	128859	403200	310897	77.1%
2012Q2	5/5/2012	44416	146307	190723	403200	256893	63.7%
2012Q2	5/6/2012	15943	77330	93273	403200	325870	80.8%
2012Q2	5/7/2012	9103	94329	103432	403200	308871	76.6%
2012Q2	5/8/2012	22458	87875	110333	403200	315325	78.2%
2012Q2	5/9/2012	28135	126181	154316	403200	277019	68.7%
2012Q2	5/13/2012	11082	66177	77259	403200	337023	83.6%
2012Q2	5/14/2012	37437	170169	207606	403200	233031	57.8%
2012Q2	5/17/2012	27416	156935	184351	403200	246265	61.1%
2012Q2	5/18/2012	42460	151722	194182	403200	251478	62.4%
2012Q2	5/19/2012	31232	155451	186683	403200	247749	61.4%
2012Q2	5/21/2012	4790	75741	80531	403200	327459	81.2%
2012Q2	5/23/2012	47678	149681	197359	403200	253519	62.9%
2012Q2	5/24/2012	3482	112890	116372	403200	290310	72.0%
2012Q2	5/25/2012	25138	55245	80383	403200	347955	86.3%
2012Q2	5/26/2012	5414	66860	72274	403200	336340	83.4%
2012Q2	5/27/2012	3168	61925	65093	403200	341275	84.6%
2012Q2	5/28/2012	2784	80310	83094	403200	322890	80.1%
2012Q2	5/29/2012	32037	120803	152840	403200	282397	70.0%
2012Q2	5/30/2012	7168	106612	113780	403200	296588	73.6%
2012Q2	5/31/2012	9343	73432	82775	403200	329768	81.8%
2012Q2	6/1/2012	10166	36645	46811	403200	366555	90.9%
2012Q2	6/4/2012	75310	227024	302334	403200	176176	43.7%
2012Q2	6/6/2012	27057	106434	133491	403200	296766	73.6%
2012Q2	6/7/2012	6263	162418	168681	403200	240782	59.7%
2012Q2	6/8/2012	105684	175122	280806	403200	228078	56.6%
2012Q2	6/9/2012	63167	209671	272838	403200	193529	48.0%
2012Q2	6/10/2012	24689	124796	149485	403200	278404	69.0%
2012Q2	6/11/2012	8558	61856	70414	403200	341344	84.7%
2012Q2	6/12/2012	5391	63334	68725	403200	339866	84.3%
2012Q2	6/14/2012	156085	229667	385752	403200	173533	43.0%
2012Q2	6/15/2012	13000	61604	74604	403200	341596	84.7%
2012Q2	6/16/2012	730	76772	77502	403200	326428	81.0%
2012Q2	6/18/2012	2449	86449	88898	403200	316751	78.6%
2012Q2	6/19/2012	4072	44931	49003	403200	358269	88.9%
2012Q2	6/22/2012	3609	53331	56940	403200	349869	86.8%
2012Q2	6/27/2012	63807	227861	291668	403200	175339	43.5%
2012Q2	6/28/2012	21985	140248	162233	403200	262952	65.2%
2012Q2	6/29/2012	21899	100609	122508	403200	302591	75.0%
2012Q2	6/30/2012	21694	102792	124486	403200	300408	74.5%
2012Q3	7/2/2012	3553	69128	72681	403200	334072	82.9%
2012Q3	7/4/2012	21400	161733	183133	403200	241467	59.9%
2012Q3	7/12/2012	5966	39756	45722	403200	363444	90.1%
2012Q3	7/13/2012	2177	42664	44841	403200	360536	89.4%
2012Q3	7/17/2012	7073	66651	73724	403200	336549	83.5%
2012Q3	7/20/2012	120100	195252	315352	403200	207948	51.6%
2012Q3	7/21/2012	1730	69933	71663	403200	333267	82.7%
2012Q3	7/22/2012	2794	53092	55886	403200	350108	86.8%
2012Q3	7/23/2012	7347	72081	79428	403200	331119	82.1%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2012Q3	7/24/2012	154992	207940	362932	403200	195260	48.4%
2012Q3	7/25/2012	163248	197715	360963	403200	205485	51.0%
2012Q3	7/26/2012	37257	94825	132082	403200	308375	76.5%
2012Q3	7/27/2012	7844	94932	102776	403200	308268	76.5%
2012Q3	7/28/2012	179465	155603	335068	403200	247597	61.4%
2012Q3	7/30/2012	6198	84514	90712	403200	318686	79.0%
2012Q3	7/31/2012	102645	80164	182809	403200	323036	80.1%
2012Q3	8/2/2012	121044	142958	264002	403200	260242	64.5%
2012Q3	8/3/2012	43931	150372	194303	403200	252828	62.7%
2012Q3	8/4/2012	10317	49904	60221	403200	353296	87.6%
2012Q3	8/5/2012	12602	80726	93328	403200	322474	80.0%
2012Q3	8/6/2012	15438	39626	55064	403200	363574	90.2%
2012Q3	8/7/2012	13534	64233	77767	403200	338967	84.1%
2012Q3	8/8/2012	2031	139282	141313	403200	263918	65.5%
2012Q3	8/10/2012	147851	117233	265084	403200	285967	70.9%
2012Q3	8/11/2012	211571	180214	391785	403200	222986	55.3%
2012Q3	8/12/2012	8523	54482	63005	403200	348718	86.5%
2012Q3	8/13/2012	8450	53830	62280	403200	349370	86.6%
2012Q3	8/14/2012	12604	23817	36421	403200	379383	94.1%
2012Q3	8/15/2012	277394	71426	348820	403200	331774	82.3%
2012Q3	8/17/2012	3872	66722	70594	403200	336478	83.5%
2012Q3	8/18/2012	26958	127110	154068	403200	276090	68.5%
2012Q3	8/19/2012	6266	42683	48949	403200	360517	89.4%
2012Q3	8/21/2012	30524	45378	75902	403200	357822	88.7%
2012Q3	8/22/2012	4098	38603	42701	403200	364597	90.4%
2012Q3	8/23/2012	4271	15031	19302	403200	388169	96.3%
2012Q3	8/24/2012	5747	31552	37299	403200	371648	92.2%
2012Q3	8/25/2012	842	40211	41053	403200	362989	90.0%
2012Q3	8/26/2012	4175	48171	52346	403200	355029	88.1%
2012Q3	8/27/2012	3605	32860	36465	403200	370340	91.9%
2012Q3	8/28/2012	13969	61008	74977	403200	342192	84.9%
2012Q3	8/29/2012	4735	59552	64287	403200	343648	85.2%
2012Q3	8/31/2012	8482	46379	54861	403200	356821	88.5%
2012Q3	9/1/2012	3608	30907	34515	403200	372293	92.3%
2012Q3	9/4/2012	26977	61699	88676	403200	341501	84.7%
2012Q3	9/7/2012	124307	116630	240937	403200	286570	71.1%
2012Q3	9/8/2012	118642	158648	277290	403200	244552	60.7%
2012Q3	9/9/2012	167450	220830	388280	403200	182370	45.2%
2012Q3	9/10/2012	36216	70930	107146	403200	332270	82.4%
2012Q3	9/11/2012	3809	78143	81952	403200	325057	80.6%
2012Q3	9/13/2012	6093	128892	134985	403200	274308	68.0%
2012Q3	9/15/2012	12343	51359	63702	403200	351841	87.3%
2012Q3	9/17/2012	18122	48339	66461	403200	354861	88.0%
2012Q3	9/18/2012	5944	49563	55507	403200	353637	87.7%
2012Q3	9/20/2012	234208	150701	384909	403200	252499	62.6%
2012Q3	9/21/2012	51573	102586	154159	403200	300614	74.6%
2012Q3	9/22/2012	16624	98370	114994	403200	304830	75.6%
2012Q3	9/23/2012	2635	46019	48654	403200	357181	88.6%
2012Q3	9/24/2012	43222	94548	137770	403200	308652	76.6%
2012Q3	9/25/2012	62187	185177	247364	403200	218023	54.1%
2012Q3	9/26/2012	5611	125563	131174	403200	277637	68.9%
2012Q3	9/27/2012	6922	57418	64340	403200	345782	85.8%
2012Q3	9/28/2012	154180	168952	323132	403200	234248	58.1%
2012Q3	9/30/2012	123973	229456	353429	403200	173744	43.1%
2012Q4	10/1/2012	24455	105729	130184	403200	297471	73.8%
2012Q4	10/2/2012	32415	157991	190406	403200	245209	60.8%
2012Q4	10/3/2012	22926	122924	145850	403200	280276	69.5%
2012Q4	10/4/2012	23335	80531	103866	403200	322669	80.0%
2012Q4	10/5/2012	20080	77752	97832	403200	325448	80.7%
2012Q4	10/6/2012	20862	128304	149166	403200	274896	68.2%
2012Q4	10/8/2012	12395	67003	79398	403200	336197	83.4%
2012Q4	10/10/2012	6150	88880	95030	403200	314320	78.0%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2012Q4	10/11/2012	41972	60341	102313	403200	342859	85.0%
2012Q4	10/12/2012	9945	66713	76658	403200	336487	83.5%
2012Q4	10/13/2012	9614	86413	96027	403200	316787	78.6%
2012Q4	10/14/2012	41833	125918	167751	403200	277282	68.8%
2012Q4	10/15/2012	28397	100445	128842	403200	302755	75.1%
2012Q4	10/16/2012	17959	106113	124072	403200	297087	73.7%
2012Q4	10/17/2012	9740	69703	79443	403200	333497	82.7%
2012Q4	10/18/2012	11466	86877	98343	403200	316323	78.5%
2012Q4	10/20/2012	171212	211309	382521	403200	191891	47.6%
2012Q4	10/21/2012	65007	88757	153764	403200	314443	78.0%
2012Q4	10/22/2012	25498	125724	151222	403200	277476	68.8%
2012Q4	10/23/2012	3124	77285	80409	403200	325915	80.8%
2012Q4	10/25/2012	4104	79258	83362	403200	323942	80.3%
2012Q4	10/26/2012	9773	84437	94210	403200	318763	79.1%
2012Q4	11/1/2012	255400	280993	536393	403200	122207	30.3%
2012Q4	11/2/2012	30842	94674	125516	403200	308526	76.5%
2012Q4	11/3/2012	33191	91508	124699	403200	311692	77.3%
2012Q4	11/4/2012	8752	153688	162440	403200	249512	61.9%
2012Q4	11/5/2012	13169	126426	139595	403200	276774	68.6%
2012Q4	11/9/2012	166182	148446	314628	403200	254754	63.2%
2012Q4	11/10/2012	13578	56680	70258	403200	346520	85.9%
2012Q4	11/11/2012	18247	142441	160688	403200	260759	64.7%
2012Q4	11/13/2012	35759	170968	206727	403200	232232	57.6%
2012Q4	11/14/2012	69714	125213	194927	403200	277987	68.9%
2012Q4	11/15/2012	8410	61748	70158	403200	341452	84.7%
2012Q4	11/16/2012	7564	67209	74773	403200	335991	83.3%
2012Q4	11/17/2012	17403	104587	121990	403200	298613	74.1%
2012Q4	11/20/2012	6116	10848	16964	403200	392352	97.3%
2012Q4	11/21/2012	2338	77714	80052	403200	325486	80.7%
2012Q4	11/23/2012	2860	50117	52977	403200	353083	87.6%
2012Q4	11/26/2012	3291	41582	44873	403200	361618	89.7%
2012Q4	11/28/2012	12757	74600	87357	403200	328600	81.5%
2012Q4	11/30/2012	2468	64349	66817	403200	338851	84.0%
2012Q4	12/6/2012	3432	40773	44205	403200	362427	89.9%
2012Q4	12/7/2012	2121	38175	40296	403200	365025	90.5%
2012Q4	12/8/2012	87090	224210	311300	403200	178990	44.4%
2012Q4	12/9/2012	13081	95891	108972	403200	307309	76.2%
2012Q4	12/11/2012	72778	154624	227402	403200	248576	61.7%
2012Q4	12/12/2012	15039	88595	103634	403200	314605	78.0%
2012Q4	12/13/2012	12984	93677	106661	403200	309523	76.8%
2012Q4	12/14/2012	3868	47161	51029	403200	356039	88.3%
2012Q4	12/15/2012	7744	60084	67828	403200	343116	85.1%
2012Q4	12/16/2012	34463	112053	146516	403200	291147	72.2%
2012Q4	12/20/2012	24359	126209	150568	403200	276991	68.7%
2012Q4	12/23/2012	64348	161854	226202	403200	241346	59.9%
2012Q4	12/24/2012	22609	146957	169566	403200	256243	63.6%
2012Q4	12/25/2012	5877	94046	99923	403200	309154	76.7%
2012Q4	12/26/2012	23746	115845	139591	403200	287355	71.3%
2012Q4	12/31/2012	18030	165760	183790	403200	237440	58.9%
2013Q1	1/1/2013	93618	209883	303501	403200	193317	47.9%
2013Q1	1/3/2013	22440	83917	106357	403200	319283	79.2%
2013Q1	1/4/2013	1941	68517	70458	403200	334683	83.0%
2013Q1	1/5/2013	15355	81342	96697	403200	321858	79.8%
2013Q1	1/6/2013	11818	85223	97041	403200	317977	78.9%
2013Q1	1/7/2013	23514	68454	91968	403200	334746	83.0%
2013Q1	1/8/2013	60365	108689	169054	403200	294511	73.0%
2013Q1	1/9/2013	15822	78872	94694	403200	324328	80.4%
2013Q1	1/10/2013	45978	181958	227936	403200	221242	54.9%
2013Q1	1/11/2013	57480	60338	117818	403200	342862	85.0%
2013Q1	1/12/2013	72538	177967	250505	403200	225233	55.9%
2013Q1	1/13/2013	37125	126698	163823	403200	276502	68.6%
2013Q1	1/14/2013	75655	171583	247238	403200	231617	57.4%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2013Q1	1/15/2013	5604	60982	66586	403200	342218	84.9%
2013Q1	1/16/2013	19655	161155	180810	403200	242045	60.0%
2013Q1	1/17/2013	58142	123818	181960	403200	279382	69.3%
2013Q1	1/18/2013	2731	95755	98486	403200	307445	76.3%
2013Q1	1/19/2013	51349	112101	163450	403200	291099	72.2%
2013Q1	1/20/2013	27195	82865	110060	403200	320335	79.4%
2013Q1	1/21/2013	7621	62574	70195	403200	340626	84.5%
2013Q1	1/23/2013	5428	23628	29056	403200	379572	94.1%
2013Q1	1/24/2013	34878	35348	70226	403200	367852	91.2%
2013Q1	1/29/2013	3092	59548	62640	403200	343652	85.2%
2013Q1	1/30/2013	58720	84765	143485	403200	318435	79.0%
2013Q1	2/1/2013	53362	144253	197615	403200	258947	64.2%
2013Q1	2/2/2013	4928	36306	41234	403200	366894	91.0%
2013Q1	2/3/2013	4215	47504	51719	403200	355696	88.2%
2013Q1	2/4/2013	16113	48002	64115	403200	355198	88.1%
2013Q1	2/5/2013	9636	49181	58817	403200	354019	87.8%
2013Q1	2/6/2013	38708	119103	157811	403200	284097	70.5%
2013Q1	2/7/2013	12942	12141	25083	403200	391059	97.0%
2013Q1	2/11/2013	33800	136898	170698	403200	266302	66.0%
2013Q1	2/12/2013	96948	291802	388750	403200	111398	27.6%
2013Q1	2/13/2013	63387	151896	215283	403200	251304	62.3%
2013Q1	2/14/2013	51731	131891	183622	403200	271309	67.3%
2013Q1	2/16/2013	178226	126426	304652	403200	276774	68.6%
2013Q1	2/17/2013	75875	99532	175407	403200	303668	75.3%
2013Q1	2/18/2013	15017	57066	72083	403200	346134	85.8%
2013Q1	2/19/2013	104732	140586	245318	403200	262614	65.1%
2013Q1	2/21/2013	23531	93228	116759	403200	309972	76.9%
2013Q1	2/22/2013	17737	134263	152000	403200	268937	66.7%
2013Q1	2/23/2013	51182	118260	169442	403200	284940	70.7%
2013Q1	3/3/2013	53986	213168	267154	403200	190032	47.1%
2013Q1	3/4/2013	23654	129047	152701	403200	274153	68.0%
2013Q1	3/5/2013	7561	99802	107363	403200	303398	75.2%
2013Q1	3/6/2013	33741	154323	188064	403200	248877	61.7%
2013Q1	3/14/2013	193686	164583	358269	403200	238617	59.2%
2013Q1	3/15/2013	29076	51612	80688	403200	351588	87.2%
2013Q1	3/16/2013	41766	101142	142908	403200	302058	74.9%
2013Q1	3/17/2013	25939	149230	175169	403200	253970	63.0%
2013Q1	3/18/2013	16594	64167	80761	403200	339033	84.1%
2013Q1	3/21/2013	116285	170628	286913	403200	232572	57.7%
2013Q1	3/22/2013	71545	156919	228464	403200	246281	61.1%
2013Q1	3/23/2013	66275	147989	214264	403200	255211	63.3%
2013Q1	3/25/2013	27547	142496	170043	403200	260704	64.7%
2013Q1	3/26/2013	62866	145892	208758	403200	257308	63.8%
2013Q1	3/27/2013	113537	154659	268196	403200	248541	61.6%
2013Q1	3/28/2013	27737	71037	98774	403200	332163	82.4%
2013Q1	3/29/2013	12415	71376	83791	403200	331824	82.3%
2013Q1	3/31/2013	20486	83968	104454	403200	319232	79.2%
2013Q2	4/1/2013	7396	103290	110686	403200	299910	74.4%
2013Q2	4/2/2013	13367	101424	114791	403200	301776	74.8%
2013Q2	4/3/2013	20510	57296	77806	403200	345904	85.8%
2013Q2	4/4/2013	21295	66032	87327	403200	337168	83.6%
2013Q2	4/5/2013	1817	76918	78735	403200	326282	80.9%
2013Q2	4/6/2013	11244	55636	66880	403200	347564	86.2%
2013Q2	4/8/2013	5977	54009	59986	403200	349191	86.6%
2013Q2	4/9/2013	11029	79535	90564	403200	323665	80.3%
2013Q2	4/10/2013	8368	68864	77232	403200	334336	82.9%
2013Q2	4/11/2013	10674	60021	70695	403200	343179	85.1%
2013Q2	4/12/2013	73556	138810	212366	403200	264390	65.6%
2013Q2	4/13/2013	110231	113317	223548	403200	289883	71.9%
2013Q2	4/14/2013	28674	138346	167020	403200	264854	65.7%
2013Q2	4/15/2013	15091	52585	67676	403200	350615	87.0%
2013Q2	4/16/2013	18742	93993	112735	403200	309207	76.7%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2013Q2	4/17/2013	7784	75092	82876	403200	328108	81.4%
2013Q2	4/18/2013	3656	54820	58476	403200	348380	86.4%
2013Q2	4/20/2013	100947	210377	311324	403200	192823	47.8%
2013Q2	4/21/2013	11595	66129	77724	403200	337071	83.6%
2013Q2	4/22/2013	11632	57116	68748	403200	346084	85.8%
2013Q2	4/23/2013	5826	73180	79006	403200	330020	81.9%
2013Q2	4/24/2013	26799	69357	96156	403200	333843	82.8%
2013Q2	4/25/2013	14175	47807	61982	403200	355393	88.1%
2013Q2	4/26/2013	1911	43186	45097	403200	360014	89.3%
2013Q2	4/28/2013	12681	34970	47651	403200	368230	91.3%
2013Q2	4/30/2013	1766	37196	38962	403200	366004	90.8%
2013Q2	5/1/2013	8309	49234	57543	403200	353966	87.8%
2013Q2	5/3/2013	8128	62334	70462	403200	340866	84.5%
2013Q2	5/4/2013	3496	72267	75763	403200	330933	82.1%
2013Q2	5/6/2013	4206	59208	63414	403200	343992	85.3%
2013Q2	5/7/2013	1724	49614	51338	403200	353586	87.7%
2013Q2	5/8/2013	37970	59578	97548	403200	343622	85.2%
2013Q2	5/9/2013	196008	169164	365172	403200	234036	58.0%
2013Q2	5/10/2013	185522	163113	348635	403200	240087	59.5%
2013Q2	5/11/2013	23313	131082	154395	403200	272118	67.5%
2013Q2	5/12/2013	21941	83413	105354	403200	319787	79.3%
2013Q2	5/13/2013	18252	73953	92205	403200	329247	81.7%
2013Q2	5/14/2013	14331	71937	86268	403200	331263	82.2%
2013Q2	5/17/2013	8517	21741	30258	403200	381459	94.6%
2013Q2	5/19/2013	3263	68080	71343	403200	335120	83.1%
2013Q2	5/20/2013	3969	85384	89353	403200	317816	78.8%
2013Q2	5/22/2013	6173	56929	63102	403200	346271	85.9%
2013Q2	5/23/2013	25551	44620	70171	403200	358580	88.9%
2013Q2	5/27/2013	102156	135039	237195	403200	268161	66.5%
2013Q2	5/28/2013	18861	74833	93694	403200	328367	81.4%
2013Q2	5/31/2013	91483	225591	317074	403200	177609	44.0%
2013Q2	6/1/2013	3903	87814	91717	403200	315386	78.2%
2013Q2	6/2/2013	40215	115808	156023	403200	287392	71.3%
2013Q2	6/3/2013	65133	154720	219853	403200	248480	61.6%
2013Q2	6/4/2013	87628	134452	222080	403200	268748	66.7%
2013Q2	6/5/2013	11038	98225	109263	403200	304975	75.6%
2013Q2	6/6/2013	30795	59945	90740	403200	343255	85.1%
2013Q2	6/20/2013	6717	134895	141612	403200	268305	66.5%
2013Q2	6/21/2013	21891	70811	92702	403200	332389	82.4%
2013Q2	6/22/2013	24453	98463	122916	403200	304737	75.6%
2013Q2	6/23/2013	8885	66055	74940	403200	337145	83.6%
2013Q2	6/24/2013	38967	113042	152009	403200	290158	72.0%
2013Q2	6/25/2013	11683	103878	115561	403200	299322	74.2%
2013Q2	6/26/2013	1819	120193	122012	403200	283007	70.2%
2013Q2	6/27/2013	153205	127835	281040	403200	275365	68.3%
2013Q2	6/28/2013	183195	179106	362301	403200	224094	55.6%
2013Q2	6/30/2013	20459	89918	110377	403200	313282	77.7%
2013Q3	7/1/2013	17186	72257	89443	403200	330943	82.1%
2013Q3	7/2/2013	17098	84664	101762	403200	318536	79.0%
2013Q3	7/3/2013	11732	91751	103483	403200	311449	77.2%
2013Q3	7/5/2013	2330	52793	55123	403200	350407	86.9%
2013Q3	7/6/2013	9518	62613	72131	403200	340587	84.5%
2013Q3	7/7/2013	7879	32398	40277	403200	370802	92.0%
2013Q3	7/8/2013	10952	61715	72667	403200	341485	84.7%
2013Q3	7/9/2013	10451	78995	89446	403200	324205	80.4%
2013Q3	7/11/2013	4572	72836	77408	403200	330364	81.9%
2013Q3	7/13/2013	2778	45929	48707	403200	357271	88.6%
2013Q3	7/14/2013	7188	70663	77851	403200	332537	82.5%
2013Q3	7/15/2013	5067	64308	69375	403200	338892	84.1%
2013Q3	7/16/2013	4054	44996	49050	403200	358204	88.8%
2013Q3	7/17/2013	4535	58067	62602	403200	345133	85.6%
2013Q3	7/19/2013	2515	38748	41263	403200	364452	90.4%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2013Q3	7/25/2013	29897	126097	155994	403200	277103	68.7%
2013Q3	7/28/2013	22884	105109	127993	403200	298091	73.9%
2013Q3	7/29/2013	24616	152356	176972	403200	250844	62.2%
2013Q3	7/30/2013	20055	112246	132301	403200	290954	72.2%
2013Q3	7/31/2013	9223	77361	86584	403200	325839	80.8%
2013Q3	8/2/2013	51507	155546	207053	403200	247654	61.4%
2013Q3	8/3/2013	5170	81023	86193	403200	322177	79.9%
2013Q3	8/4/2013	14860	85275	100135	403200	317925	78.9%
2013Q3	8/5/2013	5189	62974	68163	403200	340226	84.4%
2013Q3	8/6/2013	7363	61609	68972	403200	341591	84.7%
2013Q3	8/7/2013	6511	58838	65349	403200	344362	85.4%
2013Q3	8/11/2013	12113	129543	141656	403200	273657	67.9%
2013Q3	8/12/2013	3474	73895	77369	403200	329305	81.7%
2013Q3	8/13/2013	5757	55028	60785	403200	348172	86.4%
2013Q3	8/14/2013	6289	56601	62890	403200	346599	86.0%
2013Q3	8/16/2013	4988	48844	53832	403200	354356	87.9%
2013Q3	8/19/2013	8245	63569	71814	403200	339631	84.2%
2013Q3	8/21/2013	2693	44414	47107	403200	358786	89.0%
2013Q3	8/26/2013	3083	32086	35169	403200	371114	92.0%
2013Q3	8/31/2013	7516	36312	43828	403200	366888	91.0%
2013Q3	9/1/2013	187731	197431	385162	403200	205769	51.0%
2013Q3	9/2/2013	50743	132472	183215	403200	270728	67.1%
2013Q3	9/3/2013	8039	83386	91425	403200	319814	79.3%
2013Q3	9/6/2013	2393	36210	38603	403200	366990	91.0%
2013Q3	9/7/2013	2183	62310	64493	403200	340890	84.5%
2013Q3	9/10/2013	3061	57403	60464	403200	345797	85.8%
2013Q3	9/11/2013	2019	53500	55519	403200	349700	86.7%
2013Q3	9/12/2013	212393	91709	304102	403200	311491	77.3%
2013Q3	9/14/2013	23751	108165	131916	403200	295035	73.2%
2013Q3	9/15/2013	8988	57979	66967	403200	345221	85.6%
2013Q3	9/16/2013	14269	163435	177704	403200	239765	59.5%
2013Q3	9/17/2013	4940	81977	86917	403200	321223	79.7%
2013Q3	9/22/2013	32254	101627	133881	403200	301573	74.8%
2013Q3	9/23/2013	27616	57767	85383	403200	345433	85.7%
2013Q3	9/24/2013	3310	42433	45743	403200	360767	89.5%
2013Q3	9/27/2013	3125	30973	34098	403200	372227	92.3%
2013Q4	10/4/2013	1364	20886	22250	403200	382314	94.8%
2013Q4	10/6/2013	10629	105728	116357	403200	297472	73.8%
2013Q4	10/7/2013	22075	65601	87676	403200	337599	83.7%
2013Q4	10/10/2013	4151	36945	41096	403200	366255	90.8%
2013Q4	10/14/2013	3271	28194	31465	403200	375006	93.0%
2013Q4	10/23/2013	5527	19547	25074	403200	383653	95.2%
2013Q4	10/31/2013	3964	20788	24752	403200	382412	94.8%
2013Q4	11/3/2013	7161	39474	46635	403200	363726	90.2%
2013Q4	11/7/2013	5291	77722	83013	403200	325478	80.7%
2013Q4	11/8/2013	13411	71497	84908	403200	331703	82.3%
2013Q4	11/10/2013	3896	43688	47584	403200	359512	89.2%
2013Q4	11/18/2013	5626	83186	88812	403200	320014	79.4%
2013Q4	11/19/2013	2239	46035	48274	403200	357165	88.6%
2013Q4	11/20/2013	1876	34423	36299	403200	368777	91.5%
2013Q4	11/22/2013	2147	66267	68414	403200	336933	83.6%
2013Q4	11/23/2013	3142	35985	39127	403200	367215	91.1%
2013Q4	11/25/2013	7836	24563	32399	403200	378637	93.9%
2013Q4	11/29/2013	8988	134168	143156	403200	269032	66.7%
2013Q4	12/1/2013	69204	212179	281383	403200	191021	47.4%
2013Q4	12/2/2013	89012	157962	246974	403200	245238	60.8%
2013Q4	12/3/2013	12105	63053	75158	403200	340147	84.4%
2013Q4	12/5/2013	2929	46462	49391	403200	356738	88.5%
2013Q4	12/6/2013	30283	76313	106596	403200	326887	81.1%
2013Q4	12/7/2013	90213	213453	303666	403200	189747	47.1%
2013Q4	12/8/2013	76289	198214	274503	403200	204986	50.8%
2013Q4	12/9/2013	91035	214286	305321	403200	188914	46.9%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2013Q4	12/10/2013	131038	199817	330855	403200	203383	50.4%
2013Q4	12/11/2013	13545	80478	94023	403200	322722	80.0%
2013Q4	12/12/2013	7292	49050	56342	403200	354150	87.8%
2013Q4	12/15/2013	42894	172523	215417	403200	230677	57.2%
2013Q4	12/16/2013	17045	85611	102656	403200	317589	78.8%
2013Q4	12/20/2013	72916	181123	254039	403200	222077	55.1%
2013Q4	12/25/2013	38369	111123	149492	403200	292077	72.4%
2013Q4	12/26/2013	9577	81710	91287	403200	321490	79.7%
2013Q4	12/27/2013	15481	82294	97775	403200	320906	79.6%
2013Q4	12/31/2013	1692	114718	116410	403200	288482	71.5%
2014Q1	1/1/2014	28271	90135	118406	403200	313065	77.6%
2014Q1	1/2/2014	1947	7427	9374	403200	395773	98.2%
2014Q1	1/4/2014	3972	49462	53434	403200	353738	87.7%
2014Q1	1/7/2014	115656	181288	296944	403200	221912	55.0%
2014Q1	1/10/2014	16233	78300	94533	403200	324900	80.6%
2014Q1	1/11/2014	163688	215588	379276	403200	187612	46.5%
2014Q1	1/16/2014	52236	168311	220547	403200	234889	58.3%
2014Q1	1/17/2014	58009	83477	141486	403200	319723	79.3%
2014Q1	1/18/2014	83127	229696	312823	403200	173504	43.0%
2014Q1	1/20/2014	155194	231411	386605	403200	171789	42.6%
2014Q1	1/21/2014	13133	79582	92715	403200	323618	80.3%
2014Q1	1/22/2014	6588	62514	69102	403200	340686	84.5%
2014Q1	1/24/2014	3296	48228	51524	403200	354972	88.0%
2014Q1	1/25/2014	6444	54280	60724	403200	348920	86.5%
2014Q1	1/27/2014	3937	61597	65534	403200	341603	84.7%
2014Q1	1/28/2014	37335	45793	83128	403200	357407	88.6%
2014Q1	2/1/2014	12487	46589	59076	403200	356611	88.4%
2014Q1	2/2/2014	14358	48319	62677	403200	354881	88.0%
2014Q1	2/3/2014	10295	64761	75056	403200	338439	83.9%
2014Q1	2/4/2014	20936	88125	109061	403200	315075	78.1%
2014Q1	2/6/2014	3269	56656	59925	403200	346544	85.9%
2014Q1	2/10/2014	9131	49418	58549	403200	353782	87.7%
2014Q1	2/11/2014	2515	36935	39450	403200	366265	90.8%
2014Q1	2/13/2014	2225	123336	125561	403200	279864	69.4%
2014Q1	2/17/2014	27793	92874	120667	403200	310326	77.0%
2014Q1	2/19/2014	14460	107930	122390	403200	295270	73.2%
2014Q1	2/25/2014	70896	149374	220270	403200	253826	63.0%
2014Q1	2/26/2014	39520	112602	152122	403200	290598	72.1%
2014Q1	2/27/2014	80530	125654	206184	403200	277546	68.8%
2014Q1	3/5/2014	21187	88990	110177	403200	314210	77.9%
2014Q1	3/8/2014	23246	151297	174543	403200	251903	62.5%
2014Q1	3/9/2014	119580	152581	272161	403200	250619	62.2%
2014Q1	3/10/2014	31934	107627	139561	403200	295573	73.3%
2014Q1	3/12/2014	75593	192023	267616	403200	211177	52.4%
2014Q1	3/13/2014	42975	150060	193035	403200	253140	62.8%
2014Q1	3/14/2014	30323	148202	178525	403200	254998	63.2%
2014Q1	3/16/2014	10898	101697	112595	403200	301503	74.8%
2014Q1	3/17/2014	3030	53505	56535	403200	349695	86.7%
2014Q1	3/18/2014	7407	74759	82166	403200	328441	81.5%
2014Q1	3/19/2014	51487	157380	208867	403200	245820	61.0%
2014Q1	3/20/2014	163195	219474	382669	403200	183726	45.6%
2014Q1	3/21/2014	23094	98963	122057	403200	304237	75.5%
2014Q1	3/22/2014	17821	60992	78813	403200	342208	84.9%
2014Q1	3/24/2014	5618	67858	73476	403200	335342	83.2%
2014Q1	3/25/2014	12512	98937	111449	403200	304263	75.5%
2014Q1	3/27/2014	9379	73797	83176	403200	329403	81.7%
2014Q1	3/28/2014	22667	121650	144317	403200	281550	69.8%
2014Q1	3/29/2014	231344	163627	394971	403200	239573	59.4%
2014Q2	4/3/2014	107215	264250	371465	403200	138950	34.5%
2014Q2	4/4/2014	32301	207946	240247	403200	195254	48.4%
2014Q2	4/5/2014	176834	216390	393224	403200	186810	46.3%
2014Q2	4/6/2014	59243	180084	239327	403200	223116	55.3%

Quarter	Date	Discharge from Outfalls in Gallons per Day (GPD)		Daily Discharge from 01A & 01C (GPD)	Daily Limit for Outfall 01C (GPD)	Unused Daily Capacity at Outfall 01C	
		01A (GPD)	01C (GPD)			(GPD)	(%)
2014Q2	4/7/2014	93897	167331	261228	403200	235869	58.5%
2014Q2	4/9/2014	81015	179834	260849	403200	223366	55.4%
2014Q2	4/10/2014	56106	189203	245309	403200	213997	53.1%
2014Q2	4/11/2014	32077	145055	177132	403200	258145	64.0%
2014Q2	4/12/2014	56723	113648	170371	403200	289552	71.8%
2014Q2	4/13/2014	18145	71749	89894	403200	331451	82.2%
2014Q2	4/14/2014	28056	130532	158588	403200	272668	67.6%
2014Q2	4/15/2014	203922	192864	396786	403200	210336	52.2%
2014Q2	4/17/2014	89662	274237	363899	403200	128963	32.0%
2014Q2	4/18/2014	80853	122947	203800	403200	280253	69.5%
2014Q2	4/19/2014	9020	101910	110930	403200	301290	74.7%
2014Q2	4/20/2014	2549	73617	76166	403200	329583	81.7%
2014Q2	4/21/2014	65984	154546	220530	403200	248654	61.7%
2014Q2	4/22/2014	18991	117559	136550	403200	285641	70.8%
2014Q2	4/23/2014	61467	192525	253992	403200	210675	52.3%
2014Q2	4/24/2014	15072	130014	145086	403200	273186	67.8%
2014Q2	4/25/2014	17974	77182	95156	403200	326018	80.9%
2014Q2	4/26/2014	12066	131694	143760	403200	271506	67.3%
2014Q2	4/27/2014	43395	107987	151382	403200	295213	73.2%
2014Q2	4/28/2014	1982	123369	125351	403200	279831	69.4%
2014Q2	4/29/2014	30316	92432	122748	403200	310768	77.1%
2014Q2	4/30/2014	25274	111231	136505	403200	291969	72.4%
2014Q2	5/2/2014	54244	233411	287655	403200	169789	42.1%
2014Q2	5/3/2014	146425	168273	314698	403200	234927	58.3%
2014Q2	5/4/2014	18846	165978	184824	403200	237222	58.8%
2014Q2	5/5/2014	20297	105070	125367	403200	298130	73.9%
2014Q2	5/6/2014	14504	63849	78353	403200	339351	84.2%
2014Q2	5/7/2014	9308	77086	86394	403200	326114	80.9%
2014Q2	5/8/2014	538	66275	66813	403200	336925	83.6%
2014Q2	5/10/2014	193382	145317	338699	403200	257883	64.0%
2014Q2	5/11/2014	78074	213734	291808	403200	189466	47.0%
2014Q2	5/12/2014	19941	103808	123749	403200	299392	74.3%
2014Q2	5/13/2014	16183	124519	140702	403200	278681	69.1%
2014Q2	5/14/2014	12624	74412	87036	403200	328788	81.5%
2014Q2	5/16/2014	27176	94036	121212	403200	309164	76.7%
2014Q2	5/18/2014	149787	182403	332190	403200	220797	54.8%
2014Q2	5/19/2014	29748	89163	118911	403200	314037	77.9%
2014Q2	5/20/2014	24038	122357	146395	403200	280843	69.7%
2014Q2	5/22/2014	16886	118896	135782	403200	284304	70.5%
2014Q2	5/23/2014	26525	98363	124888	403200	304837	75.6%
2014Q2	5/24/2014	39695	103906	143601	403200	299294	74.2%
2014Q2	5/25/2014	8909	71145	80054	403200	332055	82.4%
2014Q2	5/27/2014	120368	118896	239264	403200	284304	70.5%
2014Q2	5/28/2014	144442	246364	390806	403200	156836	38.9%
2014Q2	5/29/2014	29837	174517	204354	403200	228683	56.7%
2014Q2	5/30/2014	1858	89342	91200	403200	313858	77.8%
2014Q2	5/31/2014	31,804	79914	111718	403200	323286	80.2%

EXHIBIT 2

Violations of State Water Quality Standards

Date	Outfall	Parameter	Reported Value (µg/L)	Limit for Human Health for Consumption of:		% Exceedence of Limit for Consumption of:	
				Water + Organism (µg/L)	Organism Only (µg/L)	Water + Organism	Organism Only
1/1/2016 – 3/31/2016	01A	Benzo(b)fluoranthene	0.0532	0.0038	0.018	1300%	196%
7/1/2015 – 9/30/2015	01A	Benzo(a)anthracene	0.0587	0.0038	0.018	1445%	226%
7/1/2015 – 9/30/2015	01A	Benzo(b)fluoranthene	0.0881	0.0038	0.018	2218%	389%
7/1/2015 – 9/30/2015	01A	Benzo(k)fluoranthene	0.072	0.0038	0.018	1795%	300%
1/4/2015	01A	Chrysene	0.0268	0.0038	0.018	605%	49%
10/1/2014	01A	Benzo(a)pyrene	0.0535	0.0038	0.018	1308%	197%
10/1/2014	01A	Benzo(b)fluoranthene	0.0856	0.0038	0.018	2153%	376%
10/1/2014	01A	Indeno(1,2,3-cd)pyrene	0.0713	0.0038	0.018	1776%	296%
7/4/2014	01A	Benzo(a)pyrene	0.03	0.0038	0.018	689%	67%
7/4/2014	01A	Benzo(b)fluoranthene	0.0261	0.0038	0.018	587%	45%
7/4/2014	01A	Chrysene	0.0453	0.0038	0.018	1092%	152%
1/6/2014	01A	Benzo(a)anthracene	0.13	0.0038	0.018	3321%	622%
1/6/2014	01A	Benzo(a)pyrene	0.0901	0.0038	0.018	2271%	401%
1/6/2014	01A	Benzo(b)fluoranthene	0.191	0.0038	0.018	4926%	961%
1/6/2014	01A	Benzo(k)fluoranthene	0.0884	0.0038	0.018	2226%	391%
1/6/2014	01A	Chrysene	0.179	0.0038	0.018	4611%	894%
12/12/2013	01C	Benzo(k)fluoranthene	0.0212	0.0038	0.018	458%	18%
7/23/2013	01A	Chrysene	0.0287	0.0038	0.018	655%	59%
5/9/2013	01A	Benzo(a)pyrene	0.0509	0.0038	0.018	1239%	183%
5/9/2013	01A	Benzo(b)fluoranthene	0.08	0.0038	0.018	2005%	344%
5/9/2013	01A	Chrysene	0.061	0.0038	0.018	1505%	239%
5/9/2013	01A	Indeno(1,2,3-cd)pyrene	0.105	0.0038	0.018	2663%	483%
4/12/2013	01A	Benzo(a)anthracene	0.0222	0.0038	0.018	484%	23%
4/12/2013	01A	Benzo(a)pyrene	0.0702	0.0038	0.018	1747%	290%
4/12/2013	01A	Benzo(b)fluoranthene	0.0924	0.0038	0.018	2332%	413%
4/12/2013	01A	Chrysene	0.142	0.0038	0.018	3637%	689%

EXHIBIT 3

Effluent Violations of NPDES Permit

Quarter	Date	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Discharge	% Exceedence of Permit Limit
2016Q2	4/1/2016 – 6/30/2016	01A	Anthracene	Max. Daily	µg/L	0.031	0.782	2423%
2016Q2	4/1/2016 – 6/30/2016	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.47	1416%
2016Q2	4/1/2016 – 6/30/2016	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.21	577%
2016Q2	4/1/2016 – 6/30/2016	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.877	2729%
2016Q2	4/1/2016 – 6/30/2016	01A	Pyrene	Max. Daily	µg/L	0.031	0.325	948%
2016Q2	4/1/2016 – 6/30/2016	01A	Fluorene	Max. Daily	µg/L	0.031	0.458	1377%
2016Q1	1/1/2016 – 3/31/2016	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.559	1703%
2016Q1	1/1/2016 – 3/31/2016	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.28	803%
2016Q1	1/1/2016 – 3/31/2016	01A	Phenanthrene	Max. Daily	µg/L	0.031	1.59	5029%
2016Q1	1/1/2016 – 3/31/2016	01A	Pyrene	Max. Daily	µg/L	0.031	0.254	719%
2016Q1	1/1/2016 – 3/31/2016	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.0532	72%
2016Q1	1/1/2016 – 3/31/2016	01A	Acenaphthylene	Max. Daily	µg/L	0.031	6.39	20513%
2016Q1	1/1/2016 – 3/31/2016	01A	Anthracene	Max. Daily	µg/L	0.031	1.07	3352%
2016Q1	1/1/2016 – 3/31/2016	01A	Fluorene	Max. Daily	µg/L	0.031	2.63	8384%
2015Q4	10/13/2015	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.562	1713%
2015Q4	10/13/2015	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.0404	30%
2015Q4	10/13/2015	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.197	535%
2015Q4	10/13/2015	01A	Pyrene	Max. Daily	µg/L	0.031	0.111	258%
2015Q3	7/1/2015 – 9/30/2015	01A	Benzo(a)anthracene	Max. Daily	µg/L	0.031	0.0587	89%
2015Q3	7/1/2015 – 9/30/2015	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.0881	184%
2015Q3	7/1/2015 – 9/30/2015	01A	Benzo(k)fluoranthene	Max. Daily	µg/L	0.031	0.072	132%
2015Q2	4/1/2015 – 6/30/2015	01A	Fluorene	Max. Daily	µg/L	0.031	1.53	4835%
2015Q2	4/20/2015	01A	Acenaphthene	Max. Daily	µg/L	0.031	1.42	4481%
2015Q2	4/20/2015	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.248	700%
2015Q2	4/20/2015	01A	Anthracene	Max. Daily	µg/L	0.031	0.168	442%
2015Q2	4/20/2015	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.297	858%
2015Q2	4/20/2015	01A	Pyrene	Max. Daily	µg/L	0.031	0.0691	123%
2015Q1	1/4/2015	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.299	865%

Quarter	Date	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Discharge	% Exceedence of Permit Limit
2015Q1	1/4/2015	01A	Anthracene	Max. Daily	µg/L	0.031	0.097	213%
2015Q1	1/4/2015	01A	Pyrene	Max. Daily	µg/L	0.031	0.283	813%
2015Q1	1/4/2015	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.3	868%
2015Q1	1/4/2015	01A	Fluorene	Max. Daily	µg/L	0.031	0.301	871%
2015Q1	1/4/2015	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.408	1216%
2014Q4	10/1/2014	01A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.0535	73%
2014Q4	10/1/2014	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.0856	176%
2014Q4	10/1/2014	01A	Indeno(1,2,3-cd)pyrene	Max. Daily	µg/L	0.031	0.0713	130%
2014Q4	10/1/2014	01A	Benzo(ghi)perylene	Max. Daily	µg/L	0.031	0.0544	75%
2014Q4	10/1/2014	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.233	652%
2014Q4	10/1/2014	01A	Fluorene	Max. Daily	µg/L	0.031	0.0548	77%
2014Q4	10/1/2014	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.134	332%
2014Q4	10/1/2014	01A	Pyrene	Max. Daily	µg/L	0.031	0.269	768%
2014Q3	7/4/2014	01A	Chrysene	Max. Daily	µg/L	0.031	0.0453	46%
2014Q3	7/4/2014	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.172	455%
2014Q3	7/4/2014	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.11	255%
2014Q3	7/4/2014	01A	Pyrene	Max. Daily	µg/L	0.031	0.156	403%
2014Q2	5/17/2014	01A	Total Suspended Solids	Max. Daily	Mg/L	100	127	27%
2014Q2	5/8/2014	01C	Phenanthrene	Max/ Daily	µg/L	0.031	0.0485	56%
2014Q2	4/8/2014	01A	Fluorene	Max. Daily	µg/L	0.031	1.1	3448%
2014Q2	4/8/2014	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.914	2848%
2014Q2	4/8/2014	01A	Anthracene	Max. Daily	µg/L	0.031	0.231	645%
2014Q2	4/8/2014	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.163	423%
2014Q2	4/8/2014	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.239	671%
2014Q2	4/8/2014	01A	Pyrene	Max. Daily	µg/L	0.031	0.124	300%
2014Q1	1/6/2014	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.191	516%
2014Q1	1/6/2014	01A	Benzo(k)fluoranthene	Max. Daily	µg/L	0.031	0.0884	185%
2014Q1	1/6/2014	01A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.0901	191%

Quarter	Date	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Discharge	Percentage in Exceedance
2014Q1	1/6/2014	01A	Benzo(a)anthracene	Max. Daily	µg/L	0.031	0.13	319%
2014Q1	1/6/2014	01A	Chrysene	Max. Daily	µg/L	0.031	0.179	477%
2014Q1	1/6/2014	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.774	2397%
2014Q1	1/6/2014	01A	Fluorene	Max. Daily	µg/L	0.031	0.556	1694%
2014Q1	1/6/2014	01A	Pyrene	Max. Daily	µg/L	0.031	0.439	1316%
2014Q1	1/6/2014	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.581	1774%
2014Q1	1/6/2014	01A	Anthracene	Max. Daily	µg/L	0.031	0.232	648%
2014Q1	1/6/2014	01A	Naphthalene	Max. Daily	µg/L	0.031	0.754	2332%
2013Q4	10/1/2013 – 12/31/2013	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.33	481%
2013Q4	12/12/2013	01C	Benzo(k)fluoranthene	Max. Daily	µg/L	0.018	0.0212	18%
2013Q3	9/18/2013	01C	Acenaphthene	Max. Daily	µg/L	0.031	0.209	574%
2013Q3	9/18/2013	01C	Phenanthrene	Max. Daily	µg/L	0.031	0.0536	73%
2013Q3	7/23/2013	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.916	2855%
2013Q3	7/23/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.147	374%
2013Q3	7/23/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.0856	176%
2013Q2	5/9/2013	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.564	1719%
2013Q2	5/9/2013	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.08	158%
2013Q2	5/9/2013	01A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.0509	64%
2013Q2	5/9/2013	01A	Benzo(g,h,i)perylene	Max. Daily	µg/L	0.031	0.147	374%
2013Q2	5/9/2013	01A	Fluorene	Max. Daily	µg/L	0.031	0.175	465%
2013Q2	5/9/2013	01A	Indeno(1,2,3-cd)pyrene	Max. Daily	µg/L	0.031	0.105	239%
2013Q2	5/9/2013	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.215	594%
2013Q2	5/9/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.441	1323%
2013Q2	5/9/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.469	1413%
2013Q2	5/9/2013	01A	Chrysene	Max. Daily	µg/L	0.031	0.061	97%
2013Q2	4/12/2013	01A	Chrysene	Max. Daily	µg/L	0.031	0.142	358%
2013Q2	4/12/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.368	1087%
2013Q2	4/12/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.384	1139%

Quarter	Date	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Discharge	Percentage in Exceedance
2013Q2	4/12/2013	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.162	423%
2013Q2	4/12/2013	01A	Fluorene	Max. Daily	µg/L	0.031	0.147	374%
2013Q2	4/12/2013	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.174	461%
2013Q2	4/12/2013	01A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.0702	126%
2013Q2	4/12/2013	01A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.0924	198%
2013Q1	3/12/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.23	642%
2013Q1	3/12/2013	01A	Fluorene	Max. Daily	µg/L	0.031	0.648	1990%
2013Q1	3/12/2013	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.872	2713%
2013Q1	3/12/2013	01A	Anthracene	Max. Daily	µg/L	0.031	0.133	329%
2013Q1	3/12/2013	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.302	874%
2013Q1	3/12/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.104	235%
2013Q1	1/23/2013	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.753	2329%
2013Q1	1/23/2013	01A	Acenaphthylene	Max. Daily	µg/L	0.031	0.316	919%
2013Q1	1/23/2013	01A	Anthracene	Max. Daily	µg/L	0.031	0.146	371%
2013Q1	1/23/2013	01A	Fluoranthene	Max. Daily	µg/L	0.031	0.195	529%
2013Q1	1/23/2013	01A	Fluorene	Max. Daily	µg/L	0.031	0.852	2648%
2013Q1	1/23/2013	01A	Naphthalene	Max. Daily	µg/L	0.031	0.829	2574%
2013Q1	1/23/2013	01A	Phenanthrene	Max. Daily	µg/L	0.031	0.351	1032%
2013Q1	1/23/2013	01A	Pyrene	Max. Daily	µg/L	0.031	0.157	406%
2012Q3	9/4/2012	01A	Pyrene	Max. Daily	µg/L	0.031	0.0936	202%
2012Q1	1/12/2012	01A	Acenaphthene	Max. Daily	µg/L	0.031	0.62	1900%
2012Q1	1/12/2012	01A	Fluorene	Max. Daily	µg/L	0.031	0.24	674%
2012Q1	1/12/2012	01A	Pyrene	Max. Daily	µg/L	0.031	0.118	281%
2011Q4	12/7/2011	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.13	319%
2011Q4	12/7/2011	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.152	390%
2011Q4	12/7/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.247	697%
2011Q4	12/7/2011	001A	Fluoranthene(2C)	Max. Daily	µg/L	0.031	0.311	903%
2011Q4	12/7/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.247	697%

Quarter	Date	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Discharge	Percentage in Exceedance
2011Q4	11/10/2011	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.183	490%
2011Q4	11/10/2011	001A	Benzo(g,h,i)perylene(2C)	Max. Daily	µg/L	0.031	0.211	581%
2011Q4	11/10/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.29	835%
2011Q4	11/10/2011	001A	Fluoranthene	Max. Daily	µg/L	0.031	0.726	2242%
2011Q4	11/10/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.797	2471%
2011Q3	9/6/2011	001A	Chrysene	Max. Daily	µg/L	0.031	1.52	4803%
2011Q3	9/6/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.664	2042%
2011Q3	8/2/2011	001A	Benzo(a)anthracene(2C)	Max. Daily	µg/L	0.031	0.279	800%
2011Q3	8/2/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.144	329%
2011Q3	8/2/2011	001A	Fluoranthene(2C)	Max. Daily	µg/L	0.031	1.48	4674%
2011Q3	8/2/2011	001A	Fluorene	Max. Daily	µg/L	0.031	1.04	3255%
2011Q3	8/2/2011	001A	Naphthalene(2C)	Max. Daily	µg/L	0.031	5.62	18029%
2011Q3	8/2/2011	001A	Phenanthrene(2C)	Max. Daily	µg/L	0.031	7.12	22868%
2011Q3	8/2/2011	001A	Pyrene	Max. Daily	µg/L	0.031	4.25	13610%
2011Q2	5/4/2011	001A	Chrysene	Max. Daily	µg/L	0.031	0.447	1342%
2011Q2	5/4/2011	001A	Pyrene	Max. Daily	µg/L	0.031	1.34	4223%
2011Q1	3/11/2011	001A	Fluoranthene	Max. Daily	µg/L	0.031	1.22	3836%
2011Q1	3/11/2011	001A	Phenanthrene(2C)	Max. Daily	µg/L	0.031	2.45	7803%
2011Q1	3/11/2011	001A	Pyrene	Max. Daily	µg/L	0.031	1.12	3513%
2011Q1	1/18/2011	001A	Pyrene	Max. Daily	µg/L	0.031	0.215	594%
2010Q3	9/8/2010	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.177	471%
2010Q3	9/8/2010	001A	Chrysene	Max. Daily	µg/L	0.031	0.368	1087%
2010Q3	9/8/2010	001A	Fluoranthene	Max. Daily	µg/L	0.031	0.556	1694%
2010Q3	9/8/2010	001A	Pyrene	Max. Daily	µg/L	0.031	0.941	2935%
2010Q3	8/23/2010	001A	Benzo(a)anthracene	Max. Daily	µg/L	0.031	0.202	552%
2010Q3	8/23/2010	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.135	335%
2010Q3	8/23/2010	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.144	365%
2010Q3	8/23/2010	001A	Benzo(k)fluoranthene	Max. Daily	µg/L	0.031	0.115	271%

Quarter	Date	Outfall	Parameter	Limit Type	Unit	Permit Limit	Reported Discharge	Percentage in Exceedance
2010Q3	8/23/2010	001A	Chrysene	Max. Daily	µg/L	0.031	0.192	519%
2010Q3	8/23/2010	001A	Fluoranthene	Max. Daily	µg/L	0.031	0.385	1142%
2010Q3	8/23/2010	001A	Pyrene	Max. Daily	µg/L	0.031	0.644	1977%
2010Q3	7/10/2010	001A	Total Suspended Solids	Max. Daily	mg/L	100	142	42%
2010Q3	7/10/2010	001A	Acenaphthylene	Max. Daily	µg/L	0.031	0.124	300%
2010Q3	7/10/2010	001A	Anthracene	Max. Daily	µg/L	0.031	0.229	639%
2010Q3	7/10/2010	001A	Benzo(a)anthracene	Max. Daily	µg/L	0.031	0.714	2203%
2010Q3	7/10/2010	001A	Benzo(a)pyrene	Max. Daily	µg/L	0.031	0.6	1836%
2010Q3	7/10/2010	001A	Benzo(b)fluoranthene	Max. Daily	µg/L	0.031	0.676	2081%
2010Q3	7/10/2010	001A	Benzo(g,h,i)perylene	Max. Daily	µg/L	0.031	0.419	1252%
2010Q3	7/10/2010	001A	Benzo(k)fluoranthene	Max. Daily	µg/L	0.031	0.438	1313%
2010Q3	7/10/2010	001A	Chrysene	Max. Daily	µg/L	0.031	0.914	2848%
2010Q3	7/10/2010	001A	Dibenz(a,h)anthracene	Max. Daily	µg/L	0.031	0.143	361%
2010Q3	7/10/2010	001A	Fluoranthene	Max. Daily	µg/L	0.031	1.25	3932%
2010Q3	7/10/2010	001A	Indeno(1,2,3-cd)pyrene	Max. Daily	µg/L	0.031	0.314	913%
2010Q3	7/10/2010	001A	Phenanthrene	Max. Daily	µg/L	0.031	0.6	1835%
2010Q3	7/10/2010	001A	Pyrene	Max. Daily	µg/L	0.031	2.16	6868%
2010Q3	7/10/2010	001A	Pyrene	Max. Daily	µg/L	0.031	0.17	448%

EXHIBIT 4

Everett Terminal/Island End and Mystic River Incident Reports

EVERETT TERMINAL/ISLAND END AND MYSTIC RIVER INCIDENT REPORTS

Incident No.	Date	Source	Location	Chris Released	Code	/	Vol	Reach Water	Body Water/Tributary	of	Sheen Details			
											Color	Odor	Length	Width
994131	10/31/11	Unknown	Unknown Sheen, 52 Beacham St.	OUN/Unknown Oil			0	Yes	Mystic Island River	River-End Atlantic Ocean	Silvery	No odor	150 ft.	2 ft.
1078242	3/30/14	Sprague Energy	43 Beacham Street	OSX/Oil, Fuel; No. 6			200 gal.	Yes	Containment Area on the Facility		Left blank on incident report			
1086453¹	6/19/14	Sprague Energy	Marine Terminal, Intersection of Rover & Commercial St, Exxon Mobil Dock, Three Berth	ASP/Asphalt			0	Yes	Mystic River		Left blank on incident report			
1130759	10/13/15	Exxon Mobil	52 Beacham St.	OTW/Oil, Fuel: No. 2			2 gal.	Yes	Island End	Mystic River	Silvery	---	50 ft.	---

¹ This is a CORRECTION to a Report #1086443 – Wrong Chris Code entered on Report 1086443. Correct Chris Code ASP

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 NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Conservation Law Foundation, Inc.

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

(c) Attorneys (Firm Name, Address, and Telephone Number)
Zachary K. Griefen, Esq., Conservation Law Foundation
15 East State Street, Montpelier, VT 05602, Tel.: (802) 223-5992

DEFENDANTSExxonMobil Corporation,
ExxonMobil Oil Corporation, and
ExxonMobil Pipeline Company

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

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

Attorneys (If Known)

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 (Excludes 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 <input type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical 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"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <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"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <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"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <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"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer w/Disabilities - Employment <input type="checkbox"/> 446 Amer w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

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

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. § 6901, et seq. ("RCRA"); 33 U.S.C. § 1251, et seq. ("Clean Water Act")

Brief description of cause:
citizen suit for violations of RCRA (imminent and substantial endangerment) and the Clean Water Act

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ _____ CHECK YES only if demanded in complaint:
JURY DEMAND: ☐ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____

DOCKET NUMBER _____

DATE
09/29/2016SIGNATURE OF ATTORNEY OF RECORD
/s/ Zachary K. Griefen, Esq.

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

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JUDGE

MAG JUDGE

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INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading 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. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS1. Title of case (name of first party on each side only) Conservation Law Foundation, Inc., v. ExxonMobil Corporation et al.

2. Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).



I. 410, 441, 470, 535, 830*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.



II. 110, 130, 140, 160, 190, 196, 230, 240, 290, 320, 362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.



III. 120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.

*Also complete AO 120 or AO 121. for patent, trademark or copyright cases.

3. Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.

N/A

4. Has a prior action between the same parties and based on the same claim ever been filed in this court?

YES ☐NO ☒

5. Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)

YES ☐NO ☒

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐NO ☒

6. Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?

YES ☐NO ☒7. Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).YES ☒NO ☐A. If yes, in which division do all of the non-governmental parties reside?Eastern Division ☒Central Division ☐Western Division ☐

B. If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?

Eastern Division ☐Central Division ☐Western Division ☐

8. If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)

YES ☐NO ☐

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Zachary K. Griefen, BBO#665521ADDRESS Conservation Law Foundation, 15 East State Street, Suite 4, Montpelier, VT 05602TELEPHONE NO. 802-223-5992