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## Enviros Sue Exxon Over Climate Risks To Mass. Terminal

By Stan Parker

Law360, New York (September 29, 2016, 4:19 PM EDT) -- Exxon Mobil Corp. put Boston-area communities in jeopardy by not adequately safeguarding hazardous materials at a petroleum storage facility from rising seas and more storms due to climate change, an environmental group alleged Thursday in what it calls a first-of-its-kind lawsuit.

Conservation Law Foundation sued the petroleum giant in Massachusetts federal court, making good on a threat it issued in May when it gave its notice of intent to sue. The group's lawsuit is the latest to try to hold ExxonMobil accountable for the knowledge it's allegedly had about the dangers of climate change since the 1970s.

"ExxonMobil knowingly and unlawfully misled regulators about whether its Everett facility can withstand rising seas, more intense precipitation, and other climate impacts without spewing oil and other toxic pollutants into adjoining neighborhoods, the Mystic River, and the Boston Harbor," CLF President Brad Campbell said in a Thursday statement. "Today's lawsuit — the first of its kind — aims to hold ExxonMobil accountable for decades of dishonesty and require that the Everett facility meet the legal standards for climate-readiness."

The company is currently **fending off investigations** by state attorneys general, including New York AG Eric Schneiderman and Massachusetts AG Maura Healey, as they pursue claims that the company defrauded investors and consumers about the dangers of climate change in order to peddle its stock and its fuel.

The CLF's suit targets a specific ExxonMobil facility, Everett Terminal, a roughly 100-acre facility that receives, stores and distributes a variety of fuels. It also stores hazardous chemicals on-site, including metals, petroleum hydrocarbons, benzene, ignitable waste, toluene and various other chemicals, according to the suit.

"Despite knowing ... 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," the complaint reads.

Exxon and other petroleum giants have successfully fended off claims based on rising sea levels before, notably in the **Ninth Circuit's 2012 decision** in *Kivalina v. ExxonMobil Corporation, et al.*, which struck down public nuisance claims brought by a Native Alaskan village.

But Thursday's complaint hones in on Exxon's obligation to prepare its own facility for the risks it's allegedly known about since the 1970s and has publicly acknowledged in more recent years.

The suit alleges a violation of the Resource Conservation and Recovery Act — that the facility's risk of releasing hazardous chemicals poses an "imminent and substantial endangerment to health or the environment" — and 13 violations of the Clean Water Act.

Not all of the Clean Water Act claims are climate-related: One alleges the company is currently in violation of its National Pollutant Discharge Elimination System permit by discharging more pollutants into Island End River and Mystic River than allowed.

The environmental group also accused the company of failing to account for climate-change consequences in its Storm Water Pollution Prevention Plan.

The groups are seeking fines for the Clean Water Act violations and a court order that would make ExxonMobil "perform and pay for such work as may be required to respond to the hazardous waste and solid waste" at the terminal.

An Exxon spokesman told Law360 in a statement on Thursday that the lawsuit is an "attempt to use the courts to promote a political agenda."

"This lawsuit is based on discredited and inaccurate claims by activists about ExxonMobil's nearly 40-year history of support for climate research that was conducted publicly in conjunction with the Department of Energy, academics and the U.N. Intergovernmental Panel on Climate Change," the statement reads. "To suggest that we had reached definitive conclusions, decades before the world's experts and while climate science was in an early stage of development, is not credible."

Conservation Law Foundation is represented by its own Zachary K. Griefen and Christopher M. Kilian, and by Allan Kanner, Elizabeth B. Petersen and Allison S. Brouk of Kanner & Whiteley LLC.

Counsel information for ExxonMobil was not available Thursday.

The case is *Conservation Law Foundation, Inc. v. ExxonMobil Corporation et al.*, case number 1:16-cv-11950, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Juan Carlos Rodriguez. Editing by Jack Karp.