

CIVIL COVER SHEET

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

<p>I. (a) PLAINTIFFS Northern Great Kills Civic Association, Inc.</p> <p>(b) County of Residence of First Listed Plaintiff <u>Richmond County</u> (EXCEPT IN U.S. PLAINTIFF CASES)</p> <p>(c) Attorney's (Firm Name, Address, and Telephone Number) Keri N. Powell (atty of record), Deborah Goldberg, Earthjustice, 116 John St., Suite 3100, NY, NY 10038; (212) 791-1881</p>	<p>DEFENDANTS The City of New York</p> <p>County of Residence of First Listed Defendant _____ (IN U.S. PLAINTIFF CASES ONLY)</p> <p>NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.</p> <p>Attorneys (If Known) Michael A. Cardozo, Corporation Counsel of the City of New York; Christopher G. King, Assistant Corporation Counsel</p>
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<p>II. BASIS OF JURISDICTION (Place an "X" in One Box Only)</p> <p><input type="checkbox"/> 1 U.S. Government Plaintiff</p> <p><input type="checkbox"/> 2 U.S. Government Defendant</p> <p><input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)</p> <p><input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)</p>	<p>III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)</p> <p>(For Diversity Cases Only)</p> <table style="width: 100%;"> <tr> <td style="width: 25%;">Citizen of This State</td> <td style="width: 10%;"><input type="checkbox"/> 1</td> <td style="width: 10%;"><input type="checkbox"/> 1</td> <td style="width: 45%;">Incorporated or Principal Place of Business In This State</td> <td style="width: 10%;"><input type="checkbox"/> 4</td> <td style="width: 10%;"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td><input type="checkbox"/> 2</td> <td><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business In Another State</td> <td><input type="checkbox"/> 5</td> <td><input type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td><input type="checkbox"/> 3</td> <td><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td><input type="checkbox"/> 6</td> <td><input type="checkbox"/> 6</td> </tr> </table>	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
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6														

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<p>PERSONAL INJURY</p> <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	<p>PERSONAL INJURY</p> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <p>PERSONAL PROPERTY</p> <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"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Acts <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<p>REAL PROPERTY</p> <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	<p>CIVIL RIGHTS</p> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<p>PRISONER PETITIONS</p> <input type="checkbox"/> 510 Motions to Vacate Sentence <p>Habeas Corpus:</p> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<p>LABOR</p> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<p>PROPERTY RIGHTS</p> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
		<p>IMMIGRATION</p> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<p>SOCIAL SECURITY</p> <input type="checkbox"/> 861 HIA (1395f) <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))	<p>FEDERAL TAX SUITS</p> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

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

VI. CAUSE OF ACTION

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

Brief description of cause:
 Citizen suit to compel city to eliminate endangerment posed by Brookfield Ave. Landfill contamination

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ _____ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY (See instructions): JUDGE C. Sifton, S.J.; C.L. Pollak, M.J. DOCKET NUMBER 08-2539

DATE 10-14-2008 SIGNATURE OF ATTORNEY OF RECORD Keri N. Powell

FOR OFFICE USE ONLY

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

ARBITRATION CERTIFICATION

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

DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:
None

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

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

2.) If you answered "no" above:

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

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

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

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

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

Yes ✓ No _____

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

Yes _____ (If yes, please explain) No ✓

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

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

ATTORNEY BAR CODE: KP 7202

E-MAIL Address: kpowell@earthjustice.org

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

Signature: Keri A. Powell

UNITED STATES DISTRICT COURT

for the

Eastern District of New York

Northern Great Kills Civic Association, Inc.

Plaintiff

v.

The City of New York

Defendant

)
)
)
)
)

Civil Action No.

Summons in a Civil Action

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

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

A lawsuit has been filed against you.

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

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

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

Name of clerk of court

Date: _____

Deputy clerk's signature

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

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

_____)	
Northern Great Kills Civic Association, Inc.,))	
))	
Plaintiff,)	Civil Action No.	
))	
v.))	
))	
The City of New York,))	
))	
Defendant.))	
_____)	

COMPLAINT

STATEMENT OF THE CASE

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

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

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

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

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

JURISDICTION AND VENUE

6. This Court has jurisdiction over the subject matter of this action pursuant to section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), and pursuant to 28 U.S.C. § 1331 (federal question). Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), authorizes citizens to bring suit "against any person . . . who has contributed or who is contributing to the past or present handling, storage, treatment, transportation, or disposal of any solid or hazardous waste which may present an imminent and substantial endangerment to health or the environment." Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), empowers the Court to compel any person referred to in paragraph (1)(B) "to take such . . . action as may be necessary" to eliminate the endangerment.

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

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

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

PARTIES

Plaintiff

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

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