



**EARTHJUSTICE**

BOZEMAN, MONTANA DENVER, COLORADO HONOLULU, HAWAII  
INTERNATIONAL JUNEAU, ALASKA NEW YORK, NEW YORK OAKLAND, CALIFORNIA  
SEATTLE, WASHINGTON TALLAHASSEE, FLORIDA WASHINGTON, D.C.

Thursday, June 26, 2008

**BY REGISTERED MAIL, RETURN RECEIPT REQUESTED  
AND FACSIMILE**

The Honorable Michael R. Bloomberg  
Mayor of the City of New York  
City Hall  
New York, New York 10007  
Fax: (212) 788-2460

Michael A. Cardozo  
Corporation Counsel of the City of New York  
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New York, New York 10007  
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Commissioner Emily Lloyd  
New York City Department of Environmental Protection  
59-17 Junction Boulevard  
Flushing, New York 11373  
Fax: (718) 595-3525

Commissioner John J. Doherty  
New York City Department of Sanitation  
346 Broadway, 10<sup>th</sup> Floor  
New York, New York 10013  
Fax: (212) 385-2560

**Re: Notice of Intent to Sue Under Section 7002(a)(1)(B) of the Resource  
Conservation and Recovery Act, 42 U.S.C. § 6972(a)(1)(B)**

Dear Mayor Bloomberg, Mr. Cardozo, Ms. Lloyd and Mr. Doherty:

Pursuant to section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. § 6972(a)(1)(B), Earthjustice, on behalf of their client Northern Great Kills Civic Association ("the Association"), hereby notifies you of their intent to sue the City of New York ("the City"), the New York City Department of Environmental Protection ("DEP"), and the New York City Department of Sanitation ("DOS") for the abatement of an imminent and substantial endangerment to health and the environment in connection with the illegal disposal of hazardous wastes at the Brookfield Avenue Landfill ("the Landfill") on Staten Island in New York City.

From approximately 1974 through 1980, industrial hazardous wastes were disposed of illegally at the Landfill, including waste oil, sludge, pesticides, metal plating wastes, lacquers and solvents. Estimates of the volume of hazardous waste disposed of range from 10,000 gallons a week to as much as 50,000 gallons a day at times. As a result of this illegal disposal, the Landfill now discharges approximately 95,000 gallons of contaminated water each day into groundwater and surface water bodies, including Richmond Creek and associated wetlands, and the Upper Glacial and Cretaceous aquifers. These toxic discharges contribute to numerous surface water quality violations in Richmond Creek, including standards for tetrachloroethene, copper, lead, zinc, total cyanide, nickel, mercury and a number of pesticides including DDD, DDE, BHC, heptachlor, aldrin, and endrin. As concluded by the New York State Department of Environmental Conservation ("DEC"), hazardous waste migrating from the site poses a significant threat to human health associated with ingestion of surface soil, ingestion of shallow groundwater, inhalation of volatile organics from shallow groundwater, and ingestion of shellfish from Richmond Creek. Likewise, the DEC confirms that discharges of chlordane, arsenic, copper, lead, and mercury to Richmond Creek and associated water bodies pose a significant environmental threat. *See* DEC Record of Decision, Brookfield Avenue Landfill Site (March 2002) at 1, 6.<sup>1</sup>

At the time of the illegal dumping of toxic waste, the Landfill was owned by the City and operated by the DOS. The City continues to own the property, but the Landfill site is now managed by the DEP.

Though administrative consent orders negotiated between the New York State DEC and the DOS in 1985 and again in 1990 required that the Landfill be cleaned up, the DOS ignored both orders. The community's hope was restored in 1992 when the DEC negotiated a new consent order with the DEP. Unfortunately, progress toward remediating the site under this third consent decree has been plagued by repeated delays. It took an entire decade, until March 2002, for the DEC and DEP to complete a Record of Decision detailing the selected remedy for the site. It took another four years, until May 2006, for the DEP and DEC to agree to a "Remedial Action Design Plan." Though the DEP solicited bids for the cleanup in June 2007, community representatives recently were informed that no bids have been accepted and that progress toward commencing a cleanup has stalled due to a funding shortfall. Thus, sixteen years after the most recent administrative consent order and nearly thirty years after the City first became aware of toxic waste dumped at the Landfill, the site remains unremediated. Community residents have no reason to believe that cleanup activities will commence any time in the near future.

Section 7002(a)(1)(B) of RCRA, 42 U.S.C. § 6972(a)(1)(B), allows affected citizens to bring suit against:

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

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<sup>1</sup> Available online at [http://www.dec.ny.gov/docs/remediation\\_hudson\\_pdf/rod243006.pdf](http://www.dec.ny.gov/docs/remediation_hudson_pdf/rod243006.pdf).

waste which may present an imminent and substantial endangerment to health or the environment.

The Northern Great Kills Civic Association believes that hazardous waste disposed of at the Landfill and migrating into adjacent water bodies presents an imminent and substantial endangerment to health and the environment. Nearly thirty years after New York City officials discovered that hazardous waste was illegally disposed of at the Landfill, the City and its agencies have failed to fulfill their obligation to take the actions necessary to abate this ongoing and substantial endangerment.

The suit will be filed in the United States District Court for the Eastern District of New York and will seek abatement of the imminent and substantial endangerment to health and the environment caused by the Landfill. The Court will be asked, among other things, to order the City and its agencies to commence immediately with implementing the selected remedy described in the March 2002 Record of Decision and to complete the remediation promptly.

The address of the Northern Great Kills Civic Association is P.O. Box 192, Staten Island, New York, 10308. The Association's President, Geri Kelsch, can be reached by telephone at (718) 984-8385. The Association will file the lawsuit on behalf of their members, all of whom reside in close proximity to the Landfill and suffer from the City's failure to remediate the site.

If you have any questions about the issues raised in this letter or wish to discuss its contents with us, please contact Keri Powell at the address and phone number listed below. We request that if you wish to discuss this matter before the complaint is filed, you contact us as quickly as possible. We intend to file the complaint shortly after the expiration of the 90-day notice period stipulated by 42 U.S.C. § 6972(b)(2)(A) unless the City acts promptly and adequately to abate the endangerment.

Respectfully,



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Counsel for Northern Great Kills Civic  
Association, Inc.

cc (by certified mail):

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The Honorable David A. Paterson  
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