

ALAN G. HEVESI
COMPTROLLER



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER

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ALBANY, NEW YORK 12236

May 8, 2006

VIA FACSIMILE

Commissioner Denise Sheehan
Department of Environmental Conservation
625 Broadway
Albany, NY 12233

Dear Commissioner Sheehan:

It is my understanding that the Department of Environmental Conservation is currently negotiating another Order on Consent with ExxonMobil, one of the responsible parties, regarding the problem of petroleum contamination in the Greenpoint area of Brooklyn.

To be most effective in protecting the public, such an Order should be based on an expert, thorough and independent analysis of the full extent of the contamination. At the moment, there is nothing in the public record that shows that such an analysis has been conducted.

It is my fiduciary obligation to protect and manage the assets of the New York Environmental and Spill Compensation Fund. If the Order does not require the responsible party to fully clean up the contamination, the Oil Spill Fund and the taxpayers could be left with that potentially huge responsibility and health risks may not be completely eliminated.

My staff has visited the Greenpoint area on several occasions, reviewed technical documentation related to the contamination, attended the Department's public meeting on January 25, 2006 in Greenpoint, and observed the continuing seep of petroleum product into Newtown Creek. Based on the knowledge gained to date, we have developed a four point action plan. Three of the points in the plan would clearly and independently identify the magnitude of the contamination. The fourth would take immediate action to limit continued contamination of Newtown Creek. I offer the resources of the Fund to pay for these essential activities.

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- Delineate the vertical and horizontal extent of the entire plume, including the dissolved phase. Defining the plume is standard practice for oil spills and should be performed as soon as possible. Delineation is essential to determine the magnitude of the contamination of the Greenpoint area and the threat to public health.
- Perform comprehensive indoor air and soil-vapor sampling at any residence or business located within the footprint of the plume that requests for such testing.
- Perform comprehensive sediment sampling in Newtown Creek to determine if the contamination extends beyond the creek, or is migrating up through creek sediments into the creek itself.
- Stop the seep into Newtown Creek. Recovery wells should be installed as soon as possible to intercept all petroleum before it reaches the creek.

My office has had access only to information that is publicly available. If DEC has evidence that has not been provided to the public demonstrating that the steps I recommend today have been taken and their results independently verified, I would welcome the opportunity to review such information. If such studies have not been conducted and independently verified, I call on you to suspend negotiation of the Order with ExxonMobil and allow DEC and the Oil Spill Fund to conduct these studies immediately. The people of Greenpoint and the state could be left at risk if an Order is negotiated without knowing the full extent of the damage.

Given increasing press coverage of this problem, recent litigation related to the contamination, significant pressure from elected officials, and the frustration of Greenpoint residents over the insufficiency and slow pace of the cleanup, I believe that it is essential that DEC provide maximum public input and review of any proposed solution. Therefore, I urge you to open to all stakeholders the entire process of planning, remediation and negotiations with the responsible parties. Also, I request that you enable my office and the Office of the Attorney General to review the proposed form of any such Order.

We must be certain that the cleanup protects the community, the State, and the environment. The information that would be provided by the studies we propose would strengthen your agency's ability to ensure that an Order is as strong and effective as possible. I look forward to working with you on this issue.

Sincerely,

A handwritten signature in blue ink that reads "Alan G. Hevesi". The signature is written in a cursive style with a large initial "A".

Alan G. Hevesi