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# *Committee Meeting*

of

SENATE ENVIRONMENT AND ENERGY COMMITTEE

ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE

*“The Committees will take testimony on actions taken by corporations to avoid their Superfund obligations in New Jersey through Federal bankruptcy proceedings”*

*The following resolutions will be considered:*

Senate Resolution 107, Assembly Resolution 219

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**LOCATION:** Meadowlands Environment Center  
Lyndhurst, New Jersey

**DATE:** April 18, 2017  
10:00 a.m.

**MEMBERS OF COMMITTEES PRESENT:**

Senator Bob Smith, Chair  
Senator Linda R. Greenstein, Vice Chair  
Senator Christopher “Kip” Bateman  
Senator Samuel D. Thompson

Assemblyman Tim Eustace, Chair  
Assemblyman Gordon M. Johnson  
Assemblyman Robert J. Karabinchak  
Assemblyman John S. Wisniewski  
Assemblyman Kevin J. Rooney



**ALSO PRESENT:**

Carrie Anne Calvo-Hahn  
Judith L. Horowitz  
Matthew H. Peterson  
*Office of Legislative Services  
Committee Aides*

Kevil Duhon  
*Senate Majority  
Brian Quigley  
Assembly Majority  
Committee Aides*

Rebecca Panitch  
*Senate Republican  
Glen Beebe  
Assembly Republican  
Committee Aides*

***Meeting Recorded and Transcribed by  
The Office of Legislative Services, Public Information Office,  
Hearing Unit, State House Annex, PO 068, Trenton, New Jersey***

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BOB SMITH  
Chairman

LINDA R. GREENSTEIN  
Vice-Chairwoman

RICHARD J. CODEY  
CHRISTOPHER "KIP" BATEMAN  
SAMUEL D. THOMPSON

JUDITH L. HOROWITZ  
Office of Legislative Services  
Committee Aide  
(609) 847-3855  
(609) 292-0561 fax

MATTHEW H. PETERSON  
Office of Legislative Services  
Committee Aide  
(609) 847-3855  
(609) 292-0561 fax

## New Jersey State Legislature

### SENATE ENVIRONMENT AND ENERGY COMMITTEE

STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

#### COMMITTEE NOTICE

TO: MEMBERS OF THE SENATE ENVIRONMENT AND ENERGY COMMITTEE

FROM: SENATOR BOB SMITH, CHAIRMAN

SUBJECT: COMMITTEE MEETING - APRIL 18, 2017

*The public may address comments and questions to Judith L. Horowitz or Matthew H. Peterson, Committee Aides, or make bill status and scheduling inquiries to Pamela Petrone, Secretary, at (609)847-3855, fax (609)292-0561, or e-mail: OLSAideSEN@njleg.org. Written and electronic comments, questions and testimony submitted to the committee by the public, as well as recordings and transcripts, if any, of oral testimony, are government records and will be available to the public upon request.*

**The Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee will meet jointly on Tuesday, April 18, 2017 at 10:00 AM at the Meadowlands Environment Center, Two DeKorte Park Plaza, Lyndhurst, New Jersey 07071.**

The committees will take testimony on actions taken by corporations to avoid their Superfund obligations in New Jersey through federal bankruptcy proceedings.

The following bill(s) will be considered:

SR-107 Smith, B/Bateman	Urges relevant federal and State authorities to investigate actions taken by Argentinian state oil company to discharge Superfund obligations through bankruptcy proceedings.
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Issued 4/12/17

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

For changes in schedule due to snow or other emergencies, see website <http://www.njleg.state.nj.us> or call 800-792-8630 (toll-free in NJ) or 609-847-3905.



TIM EUSTACE  
Chair

JOHN F. McKEON  
Vice-Chair

ROBERT J. KARABINCHAK  
JOHN S. WISNIEWSKI  
KEVIN J. ROONEY  
DAVID W. WOLFE

CARRIE ANNE CALVO-HAHN  
Office of Legislative Services  
Committee Aide  
(609) 847-3855  
(609) 292-0561 fax

**New Jersey State Legislature**  
**ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE**  
STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

**COMMITTEE NOTICE**

**TO: MEMBERS OF THE ASSEMBLY ENVIRONMENT AND SOLID WASTE COMMITTEE**

**FROM: ASSEMBLYMAN TIM EUSTACE, CHAIR**

**SUBJECT: COMMITTEE MEETING - APRIL 18, 2017**

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The following bill(s) will be considered:

AR-219 Eustace	Urges relevant federal and State authorities to investigate actions taken by Argentinian state oil company to discharge Superfund obligations through bankruptcy proceedings.
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Issued 4/12/17

For reasonable accommodation of a disability call the telephone number or fax number above, or for persons with hearing loss dial 711 for NJ Relay. The provision of assistive listening devices requires 24 hours' notice. CART or sign language interpretation requires 5 days' notice.

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# SENATE RESOLUTION No. 107

## STATE OF NEW JERSEY

### 217th LEGISLATURE

INTRODUCED FEBRUARY 27, 2017

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Co-Sponsored by:**

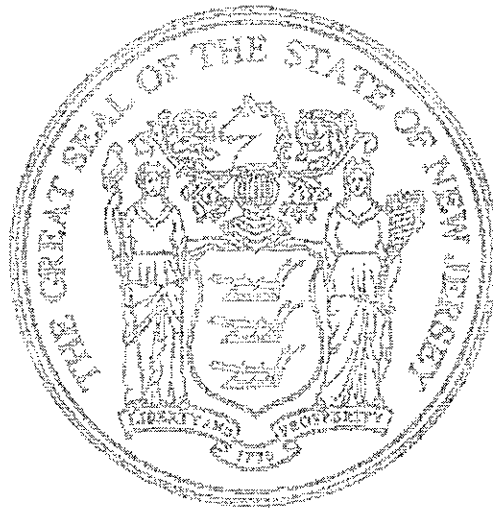
**Senators Scutari, Sarlo and Diegnan**

**SYNOPSIS**

Urges relevant federal and State authorities to investigate actions taken by Argentinian state oil company to discharge Superfund obligations through bankruptcy proceedings.

**CURRENT VERSION OF TEXT**

As introduced.



1   **A SENATE RESOLUTION** urging relevant federal and State  
2   authorities to investigate actions taken by Argentina’s state-  
3   owned oil company, YPF S.A., to discharge its Superfund  
4   obligations in New Jersey through federal bankruptcy  
5   proceedings.  
6

7   **WHEREAS**, The federal “Comprehensive Environmental Response,  
8   Compensation, and Liability Act” (CERCLA), also known as  
9   Superfund, provides for the cleanup of some of the nation’s most  
10   contaminated hazardous waste sites; and

11   **WHEREAS**, Due to its long history of chemical and other industrial  
12   manufacturing, New Jersey has more Superfund sites than any other  
13   state in the country; and

14   **WHEREAS**, Beginning in the 1940s, and continuing for several  
15   decades, the Diamond Alkali Company (later Maxus Energy  
16   Corporation) owned and operated a facility at 80-120 Lister Avenue  
17   in Newark, New Jersey that manufactured agricultural chemicals,  
18   including the herbicide known as “Agent Orange”; and

19   **WHEREAS**, In 1983, the United States Environmental Protection  
20   Agency (EPA) and the New Jersey Department of Environmental  
21   Protection found high levels of dioxin, an extremely toxic  
22   byproduct of agricultural manufacturing processes, at the 80-120  
23   Lister Avenue site and in the Passaic River; and

24   **WHEREAS**, The EPA placed the Diamond Alkali site on the Superfund  
25   National Priorities List in 1984, beginning a decades-long effort to  
26   clean up the site and ensure the cooperation of responsible parties;  
27   and

28   **WHEREAS**, Subsequent studies showed that the Diamond Alkali site  
29   contains a large number of other hazardous substances including  
30   semi-volatile and volatile compounds, herbicides, pesticides,  
31   polychlorinated biphenyls (PCBs), and metals, which affected and  
32   continue to affect the soil, groundwater, air, surface water, and  
33   building structures at the site; and

34   **WHEREAS**, Contamination from the Diamond Alkali site also affected  
35   large portions of the Passaic River, leading to prohibitions and  
36   advisories on fish and crab consumption for the tidal Passaic River  
37   and Newark Bay; and

38   **WHEREAS**, In 1995, Argentina’s state-owned oil company, YPF S.A.,  
39   acquired Maxus Energy Corporation (“Maxus”), presumably with  
40   full knowledge of the environmental liabilities it would inherit with  
41   this acquisition; and

42   **WHEREAS**, In March 2016, the EPA announced its Record of Decision  
43   (ROD) to remediate contaminated sediments found in the lower 8.3  
44   miles of the Lower Passaic River, a part of the Diamond Alkali site,  
45   at a cost of \$1.38 billion; and

46   **WHEREAS**, Shortly after the ROD was issued, in June 2016, YPF S.A.  
47   placed Maxus into bankruptcy, in an apparent attempt to avoid  
48   paying the company’s environmental liabilities; and

1 WHEREAS, The bankruptcy proceedings followed a series of  
2 transactions in which YPF S.A. stripped billions of dollars in assets  
3 out of Maxus, leaving it unable to perform its Superfund  
4 obligations for the Diamond Alkali site and other Superfund sites in  
5 New Jersey; and

6 WHEREAS, In August 2016, YPF S.A. completed a successful bond  
7 issuance in which it raised \$1.75 billion from investors; and

8 WHEREAS, The State of New Jersey has an interest in ensuring that all  
9 parties responsible for environmental contamination pay their fair  
10 share of cleanup costs; and

11 WHEREAS, Federal bankruptcy laws are designed to assist companies  
12 and individuals who have a legitimate need for protection from  
13 creditors, not to assist or protect profitable companies seeking to  
14 avoid environmental liabilities; and

15 WHEREAS, Given the scale of the remediation costs at the Diamond  
16 Alkali site, and the dangerous precedent YPF S.A.'s actions could  
17 set for future Superfund sites, an investigation into YPF S.A.'s  
18 actions, and those of its subsidiary Maxus, is necessary; now,  
19 therefore,

20

21 **BE IT RESOLVED** by the Senate of the State of New Jersey:

22

23 1. This House urges the New Jersey State Commission of  
24 Investigation to examine actions taken by Argentina's state-owned  
25 oil company, YPF S.A., and its subsidiary Maxus Energy  
26 Corporation, to use United States bankruptcy proceedings in an  
27 apparent attempt to avoid responsibility for environmental liabilities  
28 related to the cleanup of the Diamond Alkali Superfund site, the  
29 Passaic River, and other Superfund sites in New Jersey.

30

31 2. This House urges the New Jersey Department of  
32 Environmental Protection to prepare a report for submission to the  
33 Legislature that would include a listing and description of all  
34 Superfund sites where Maxus Energy Corporation is a potentially  
35 responsible party; an assessment of the potential impacts a  
36 bankruptcy declaration may have on the pace of the remediation at  
37 those sites and the added burden this declaration would place on  
38 other potentially responsible parties and taxpayers; and an  
39 examination of the precedent that YPF S.A.'s actions would set for  
40 other companies facing Superfund obligations.

41

42 3. This House urges the United States Congress to request a  
43 report from the United States Government Accountability Office  
44 that would examine current Superfund obligations tied to foreign,  
45 state-owned corporations and any actions those corporations may be  
46 taking to avoid paying their environmental liabilities in the United  
47 States including, but not limited to, the use of bankruptcy  
48 proceedings. This House further urges Congress to make

1 appropriate changes to the federal "Comprehensive Environmental  
2 Response, Compensation, and Liability Act" to prevent foreign  
3 corporations from avoiding their Superfund liabilities.  
4

5 4. This House urges the United States Securities and Exchange  
6 Commission to initiate a review of public statements and  
7 disclosures made by YPF S.A. regarding the environmental  
8 liabilities of its subsidiary, Maxus Energy Corporation, to determine  
9 if inaccurate information was provided to shareholders and  
10 prospective investors regarding YPF S.A.'s overall financial  
11 condition.  
12

13 5. This House urges the United States Attorney General and the  
14 New Jersey Attorney General to investigate any potential violations  
15 of federal or State law by YPF S.A. and Maxus, including, but not  
16 limited to, any violations of the federal or State racketeer influenced  
17 and corrupt organizations (RICO) acts, and pursue all appropriate  
18 legal remedies.  
19

20 6. Copies of this resolution, as filed with the Secretary of State,  
21 shall be transmitted by the Secretary of the Senate to the President  
22 of the United States, the Speaker and Minority Leader of the United  
23 States House of Representatives, the Majority and Minority Leaders  
24 of the United States Senate, each member of the New Jersey  
25 Congressional delegation, the United States Attorney General, the  
26 Chairman of the United States Securities and Exchange  
27 Commission, the New Jersey Attorney General, the Commissioner  
28 of the New Jersey Department of Environmental Protection, and the  
29 Executive Director of the New Jersey State Commission of  
30 Investigation.  
31

#### 32 STATEMENT

33  
34  
35 This resolution would urge relevant federal and State authorities  
36 to investigate actions taken by Argentina's state-owned oil  
37 company, YPF S.A., to discharge its Superfund obligations in New  
38 Jersey through federal bankruptcy proceedings.

39 Beginning in the 1940s, and continuing for several decades, the  
40 Diamond Alkali Company (later Maxus Energy Corporation) owned  
41 and operated a facility at 80-120 Lister Avenue in Newark, New  
42 Jersey that manufactured agricultural chemicals, including the  
43 herbicide known as "Agent Orange." In 1983, the United States  
44 Environmental Protection Agency (EPA) and the New Jersey  
45 Department of Environmental Protection found high levels of  
46 dioxin, an extremely toxic byproduct of agriculture manufacturing  
47 processes, at the 80-120 Lister Avenue site and in the Passaic River.  
48 Consequently, the EPA placed the Diamond Alkali site on the

1 Superfund National Priorities List in 1984, beginning a decades-  
2 long effort to clean up the site and ensure the cooperation of  
3 responsible parties.

4 In 1995, Argentina's state-owned oil company, YPF S.A.,  
5 acquired Maxus Energy Corporation, presumably with full  
6 knowledge of the environmental liabilities it would inherit. In  
7 March 2016, the EPA announced its record of Decision (ROD) to  
8 remediate contaminated sediments found in the lower 8.3 miles of  
9 the Lower Passaic River, a part of the Diamond Alkali site, at a cost  
10 of \$1.38 billion. Shortly after the ROD was issued, YPF S.A.  
11 placed Maxus into bankruptcy, in an apparent attempt to avoid  
12 paying the company's environmental liabilities. This action  
13 followed a series of transactions in which YPF S.A. stripped  
14 billions of dollars in assets out of Maxus, leaving it unable to  
15 perform its Superfund obligations for the Diamond Alkali site and  
16 other Superfund sites in New Jersey. Despite this, YPF S.A.  
17 recently completed a successful bond issuance in which it raised  
18 \$1.75 billion from investors.

19 The State of New Jersey has an interest in ensuring that all  
20 parties that are responsible for environmental contamination pay  
21 their fair share of the cleanup costs. Federal bankruptcy laws are  
22 designed to assist companies and individuals who have a legitimate  
23 need for protection from creditors, not to assist or protect profitable  
24 companies seeking to avoid environmental liabilities. Given the  
25 scale of the remediation costs at the Diamond Alkali site, and the  
26 dangerous precedent YPF S.A.'s actions could set for future  
27 Superfund sites, an investigation into YPF S.A.'s actions, and those  
28 of its subsidiary Maxus, is appropriate.



# ASSEMBLY RESOLUTION No. 219

## STATE OF NEW JERSEY

### 217th LEGISLATURE

INTRODUCED FEBRUARY 28, 2017

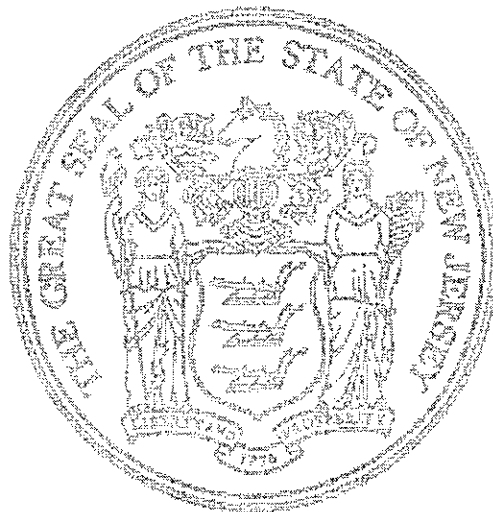
Sponsored by:  
Assemblyman **TIM EUSTACE**  
District 38 (Bergen and Passaic)

#### SYNOPSIS

Urges relevant federal and State authorities to investigate actions taken by Argentinian state oil company to discharge Superfund obligations through bankruptcy proceedings.

#### CURRENT VERSION OF TEXT

As introduced.



AR219 EUSTACE

2

1 AN ASSEMBLY RESOLUTION urging relevant federal and State  
2 authorities to investigate actions taken by Argentina's state-  
3 owned oil company, YPF S.A., to discharge its Superfund  
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7 WHEREAS, The federal "Comprehensive Environmental Response,  
8 Compensation, and Liability Act" (CERCLA), also known as  
9 Superfund, provides for the cleanup of some of the nation's most  
10 contaminated hazardous waste sites; and

11 WHEREAS, Due to its long history of chemical and other industrial  
12 manufacturing, New Jersey has more Superfund sites than any other  
13 state in the country; and

14 WHEREAS, Beginning in the 1940s, and continuing for several  
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16 Corporation) owned and operated a facility at 80-120 Lister Avenue  
17 in Newark, New Jersey that manufactured agricultural chemicals,  
18 including the herbicide known as "Agent Orange"; and

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29 contains a large number of other hazardous substances including  
30 semi-volatile and volatile compounds, herbicides, pesticides,  
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AR219 EUSTACE

4

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21 6. Copies of this resolution, as filed with the Secretary of State,  
22 shall be transmitted by the Clerk of the General Assembly to the  
23 President of the United States, the Speaker and Minority Leader of  
24 the United States House of Representatives, the Majority and  
25 Minority Leaders of the United States Senate, each member of the  
26 New Jersey Congressional delegation, the United States Attorney  
27 General, the Chairman of the United States Securities and Exchange  
28 Commission, the New Jersey Attorney General, the Commissioner  
29 of the New Jersey Department of Environmental Protection, and the  
30 Executive Director of the New Jersey State Commission of  
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32  
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34 STATEMENT

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29 of its subsidiary Maxus, is appropriate.

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**SENATOR BOB SMITH (Chair):** The joint meeting of the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee is now called to order.

With your permission, Chairman, I'll introduce my members who are present.

We have Senator Sam Thompson from Middlesex County, and a whole bunch of other counties. We have Senator--

UNIDENTIFIED MEMBERS OF AUDIENCE: We can't hear you.

SENATOR BATEMAN: You need to speak up a little bit, Bob.

SENATOR SMITH: Is the mike on? Sorry.

All right, let's-- All right, there we go.

All right, unlike Trenton, *green* means the microphone is live.  
(laughter)

All right, so -- my name is Bob Smith; I chair the Senate Environment and Energy Committee.

It's an honor to be sitting by the Chairman of the Assembly Environment and Solid Waste Committee, Assemblyman Eustace.

With the Assemblyman's permission, I'll introduce the members of the Senate Environment Committee who are present, and then I'll turn it back to you for the Assembly Environment Committee members.

So on my almost-farthest left, the good looking guy with the gray hair is Senator Sam Thompson from Middlesex County. The next good looking guy, also with gray hair--

SENATOR BATEMAN: Very gray. (laughter)

SENATOR SMITH: --is Senator Kip Bateman from Somerset County. And the really fabulously looking Senator--

UNIDENTIFIED MEMBER OF COMMITTEE: With gray hair. (laughter)

SENATOR SMITH: --with the kind of blondish hair is Senator Linda Greenstein.

And we have a couple of our very fine staffers here.

Chairman Eustace, would you like to introduce your members?

**ASSEMBLYMAN TIM EUSTACE (Chair):** Thank you, Senator. I appreciate the ability to do this joint hearing; and I appreciate many of our Trenton employees making it up here and doing the heavy lifting.

I would like to introduce the Assembly members of the Committee. Assemblyman Kevin Rooney is here; Assemblyman Bob Karabinchak is here; Assemblyman John Wisniewski; and Assemblyman Gordon Johnson. Thank you, gentleman, for joining us here. We hope for a productive hearing, and I thank everybody for their attendance here today.

SENATOR SMITH: All right. And by way of a very, very quick opening remark -- the point of today's hearing is to provide the record -- the justification for what is a fairly extreme action that we hope the Senate and Assembly will take -- and that is to call out, for their absolutely outrageous conduct, YPF, the government of Argentina, and other entities that are trying to stick the taxpayers of New Jersey with an absolutely horrendous cleanup bill for a major Superfund site in this country.

It's kind of interesting that our new President is about to meet with the President of Argentina. We're hoping to be able to get this Resolution into our new President's hands so that he understands that there is a history here that is one that should shock everyone's conscience.

Right now, the new Argentine President is a fellow named Mauricio Macri; he has indicated that Argentina intends to resolve conflicts of the past and show the investing community that Argentina and Argentine-controlled companies are investment-worthy business partners. And I would submit to you, after you hear what will be on the record today, that you will believe that YPF -- which is an Argentine company -- that their actions attempting to avoid significant environmental liabilities -- not just in New Jersey, but the United States -- stand in sharp contrast to the President of Argentina's actions. And we need to get that in front of our U.S. Senators, our Congressmen, and the various agencies of the Federal government, because we don't want this precedent, or even this activity, to stand. We want them to pay their fair share of the cleanup of the Passaic River, which they caused.

So that's the plan, I hope.

Chairman, anything you wanted to say by way of introduction?

ASSEMBLYMAN EUSTACE: Thank you, Chairman.

I do want to add that one of our jobs, as elected officials in the State of New Jersey, is to protect the citizenry of our state. And this is hundreds of millions of dollars that YPF is trying to get away with. And we're going to ask that our Federal Senators and our Federal Congressmen stand up for us, and ask that the President does, as well, as he meets with the Argentine President next week.

Thank you.

SENATOR SMITH: Would you like to call our first witness?

ASSEMBLYMAN EUSTACE: I will; thank you very much.

Debbie Mans, New York/New Jersey Baykeeper.

SENATOR SMITH: And by the way, we have a court stenographer (*sic*) present; everything that you say is going on record and will be part of the record that we send to the President and our Federal legislators.

**DEBORAH A. MANS:** Thanks.

Can everyone hear me? I don't know if these are on. (referring to Hearing Unit microphones)

Okay.

SENATOR SMITH: We can hear you.

MS. MANS: Okay, thanks. Okay, perfect.

Once again, my name is Debbie Mans, and I am the Co-Chair of the Passaic River Community Advisory Group, or CAG. The Passaic River Community Advisory Group provides advice and recommendations to the Environmental Protection Agency and its partner agencies to help ensure a more effective and timely cleanup and restoration of the Passaic River.

I am also the Executive Director and Baykeeper for New York/New Jersey Baykeeper, an organization founded in 1989 to protect, preserve, and restore the New York/New Jersey Harbor Estuary, which includes the lower Passaic River.

I am here today to represent the communities that have been harmed by the pollution in the Passaic River for many decades.

This site was first listed on the Superfund National Priorities List, or NPL, in 1984, over 30 years ago. Many members of our CAG can still remember when the Federal and State agencies came into their neighborhood in protective gear, sweeping the streets and local farmers' stands for dioxin dust.

Dioxin, pesticides, and other hazardous substances are found in the soil and groundwater at the primary site -- at Lister Avenue, or Diamond Alkali, where they manufactured Agent Orange -- and dioxin and PCPs, metals, PAHs, and pesticides are found throughout the sediment of the lower Passaic River. Indeed, it's ubiquitous throughout the sediment.

Over the years the cleanup has progressed slowly along, primarily consisting of a constant back-and-forth between the responsible parties and the EPA over sampling locations and methodologies, sampling results, new-fangled ideas to "clean" the river, or recommendations to "let the river heal itself."

When a new Administration arrived in 2009, the community knew it had a chance to really achieve a comprehensive cleanup plan; and in the fall of 2009, instituted the CAG. Since that time, we have been meeting, on a near-monthly basis, in the basement of a Newark church to advise and push for a cleanup that will make it safe for people to fish and crab from the river. Right now, it is illegal to catch a blue claw crab from the river; and there is a "do not eat" advisory in place for all fish and shellfish in the tidal portion of the Passaic River.

This risk to public health is unacceptable. That is why it is always very frustrating to me that some of the polluters continue to shirk

their responsibilities when it comes to cleaning up the river. For years, these companies benefited, at our expense, by dumping their waste into our river. The communities bear the cost, not the companies, for these many years of contamination.

In March 2016, a comprehensive remedy was finally selected for the lower eight miles of the river, the most contaminated section and the source of ongoing contamination, spreading throughout New York/New Jersey Harbor. The occasion was celebrated by the City of Newark, our two Senators, and all Congressional representatives in the region. Design of the remedy is underway.

Yet here we are, with a major polluter trying to get out from under its responsibility to the people of New Jersey. This could also set a dangerous precedent for other cleanups.

Today, I am here to put a face on the Passaic River; and to ask the faceless corporations that have poisoned our river to step up and take responsibility.

Thank you.

SENATOR SMITH: Thank you, Ms. Mans.

Any questions for Ms. Mans? (no response)

If not, our second witness is Professor Steve Gold, from Rutgers University.

Professor Gold, we understand you are an expert in a lot of things; but one of the things you have a great deal of expertise in is in the area of bankruptcy.

**S T E V E C. G O L D, Esq.:** (off mic) No, Superfund.

SENATOR SMITH: Superfunds; I'm sorry, Superfund sites. And maybe you can give us a little generic discussion of how the Superfund program works; and perhaps how is it that the taxpayers of New Jersey are getting stiffed in this.

MR. GOLD: Yes, sir; I'm please to, Chairman Smith.

Chairman Eustace, Senators, Assemblypersons, thank you for having me here today and allowing me to participate in this important hearing on a matter of great concern to the citizens of New Jersey.

Once again, my name is Steve Gold; I am a Professor of Law and the Judge Raymond J. Dearie Scholar at Rutgers Law School, at our Rutgers University Newark. To be very clear, I am testifying today in my personal capacity. I'm not here on behalf of Rutgers, and my views are my own. They should not be ascribed to Rutgers University.

The first step in understanding the issue that the Committee is confronting today is understanding the Superfund statute and the nature of Superfund obligations. So that will be my main focus. I will then talk briefly about how bankruptcy and corporate law issues come to intersect with Superfund liability issues.

So the Federal statute that is commonly known as the *Superfund Law* is formerly the Comprehensive Environmental Response Compensation and Liability Act, or CERCLA. It was enacted in 1980. The law has two basic purposes: The first purpose was to provide the Federal government with the tools it needed to respond to releases of hazardous substances; and the second purposes was to try to ensure that, as much as possible, the cost of responding to hazardous substance releases is borne by those who created or profited from the conditions that led to those releases.

CERCLA, thus, embodies a polluter-pays principle, on which I will elaborate as I describe the liability scheme.

The primary trigger for response action under CERCLA is a release, or threatened release, of a hazardous substance into the environment. The statute then authorizes the President to respond to protect public health, or welfare, or the environment. Thus CERCLA established a uniquely Federal responsive authority, funded initially by a tax that fed money into the Hazardous Substances Superfund. The tax has since expired, but the Superfund program, through appropriations from Congress, continues to clean up sites, such as Lister Avenue and the Passaic River.

Response actions under the Superfund statute tend to fall into one of two categories: removal actions or remedial actions. *Removal actions*, by and large -- there are exceptions -- tend to be smaller, shorter-term actions. *Remedial actions* are long-term actions under the statute “consistent with permanent remedy” of the release of hazardous substances. EPA uses Superfund money for remedial action only if a site is listed on the National Priorities List, a list of the sites that present the most significant hazards to human health, welfare, or the environment.

As you know, New Jersey includes, within its borders, more National Priority List sites -- what is commonly known as a *Superfund site* -- than any other state in the country. This affects the Federal fisc if the Federal government needs to clean up the sites. It also affects the State fisc because, under the terms of the Superfund statute, EPA may not spend Federal Superfund money for remedial action unless the State commits to contributing 10 percent of the cost of the remedial action. Thus even if a



cleanup is proceeding under Federal law -- and not under the separate State authorities for cleanups -- the State will bear a share of that cost, unless responsible parties pay.

CERCLA gives EPA two different ways to secure response actions. First is, the EPA, or a State agency under an agreement with EPA, may perform the cleanup itself. That's known as a *fund-lead cleanup*. And EPA's option, then, is to seek to recover the cost of that cleanup after the fact from responsible parties.

The second alternative is known as an *enforcement-lead cleanup*, and there are several mechanisms by which EPA can obtain responsible party performance of cleanup actions. Theoretically, responsible parties can clean up a site voluntarily, although it's generally in the interest of both the government and the responsible party to reach an enforceable agreement defining what they will do. That is the second mechanism: a consensual agreement, either in the case of a remedial action, such as the Passaic River, by a Consent Decree entered in Federal Court; or for other types of response actions by a Consent Administrative Order.

The third way the EPA can get responsible parties to clean up is by compulsion. The EPA has the authority to issue cleanup orders or to seek injunctions from a court ordering responsible parties to clean up.

I've used the term *responsible parties* a lot, and we need to just briefly talk about what that means.

These are the liability provisions of CERCLA. You begin with the basic common elements that are true of all Superfund sites. There must be a facility from which there is a release or a threatened release of hazardous substances, which causes the incurrence of response costs. These

elements are typically not controversial; EPA does not run around responding to sites where they have not been satisfied.

The question, then, is who is liable. And CERCLA makes four classes of parties liable for a site. One is the owner and operator of a facility; second is the owner or operator of a facility at the time of disposal of hazardous substances; third is anybody who arranged, by contract or otherwise, for the disposal or treatment of hazardous substances at a facility that that person does not own; and the fourth is anybody who transported hazardous substances to a facility that the transporter selected.

So liability encompasses a range of people with different connections to Superfund sites.

Liability for response costs encompasses all costs of removal or remedial action incurred by the United States government, or a State, or an Indian tribe not inconsistent with the National Contingency Plan. So in principle, if the government spends money cleaning up a Superfund site, all of that money should be recoverable from liable parties.

CERCLA also provides liability for damages for injury, loss, or destruction of natural resources, which is a distinct claim from the claim for response costs. It's best thought of as the residual harm to the environment that is not addressed by a cleanup, including the interim harm -- the loss of use of the environment while it's dirty -- and any diminution in the quality of the environment that's left over even after a response action occurs.

Those damages are payable to Natural Resource Trustees, which are government agencies that hold those resources in trust for the people, including the United States government, State governments -- including the New Jersey government -- and Indian tribes.

The key features of CERCLA liability to understand -- that set the stage for the types of events that the Committee is investigating -- are several. First, liability under Superfund is strict liability; it does not require any fault on the part of the person who is liable. Even actions that are legal and non-negligent can give rise to Superfund liability. Second, liability is status based; it's based on the fact that you are an owner or an operator, or were an owner or an operator of a facility; that you arranged for disposal of hazardous substances there. It does not require, for example, that the particular chemicals that a responsible party put out of sight are the same chemicals that EPA is cleaning up. There is a relaxed standard of causation in Superfund claims.

Third, in general -- with some exceptions -- Superfund liability is joint and several. So if there are multiple parties that are liable at a Superfund site, all, theoretically, can be held liable for the entire cost of cleanup. This is very significant because it is not at all atypical for some responsible parties at Superfund sites to be insolvent. The burden of insolvency then, under the statute, is placed upon other responsible parties, rather than on the government and the taxpayers.

And the fourth important feature of Superfund liability is that it is retroactive. The purpose of Superfund primarily was to clean up a legacy of contaminated industrial sites. In order to do that, Superfund holds people liable, if they are responsible parties, for costs that were incurred before the statute was enacted; for releases that occurred before the statute was enacted; for releases in the present that result from behavior that occurred before the statute was enacted. It is a highly backward-looking statute, in terms of imposing liability. This is why we can be

talking about liability at a site like the Lister Avenue site and the Passaic River/Newark Bay for activities that began in the 1950s.

Because of the breadth and strictness of CERCLA's liability scheme, and the retroactive nature of CERCLA liability, it is not surprising that CERCLA liability encounters bankruptcy, provisions of the bankruptcy code, provisions of corporate law that limit liability. I would not say that these statutory schemes and matters of corporate law are in conflict with one another; but there is no question that they intersect.

CERCLA is there to make polluters pay; bankruptcy is there to protect debtors from overwhelming liabilities. The intersection is not surprising.

I would, for conceptual purposes, divide our thinking about this into a, sort of, backward-looking and forward-looking category. These are not legal terms of art; they're not legal, technical terms that will make a difference. But it's a good way to think about this.

Liability is very, very retroactive and goes back even, in some cases, to acts committed in the 19th century. So it's no surprise that liable parties at Superfund sites include entities that are defunct, that are dissolved, that have been bought and sold many times; they've been reorganized; maybe that have gone through bankruptcy in the past. Defunct is defunct. But an entity that is a successor to a previous entity may be held liable under principles of successorship liability. And in these sort of backward-looking situations, where the history has led to corporate transactions, disappearing parties, sometimes there are orphan shares or orphan sites where there is no longer a viable, responsible party who can pick up either all or part of the liability.

Forward-looking, I think, emerges when a corporate entity -- once we know that they're a Superfund, once the liabilities are contemplated -- undergoes changes, including bankruptcy. This can be perfectly legitimate. Sometimes companies go broke; and if they do, then Superfund -- the government, as a creditor, must stand in line with other creditors. CERCLA claims for post-petition environmental responsibilities do not disappear in bankruptcy. A site owner maintains an obligation to comply with the environmental laws, even in bankruptcy. A person who has agreed to undertake response actions may often not discharge that obligation in bankruptcy. But if we are talking about a claim for the payment of money, the bankruptcy code treats that -- again, except in limited exceptions -- the bankruptcy code treats that as a general unsecured claim, and EPA or New Jersey DEP stands in line with other creditors, often being reimbursed very small percentages of the claim.

Where the issues arise is if the debtor -- responsible party -- cannot satisfy its Superfund liability but there are related entities that hold valuable assets, or income streams, that may have originated in the debtor; or if there are transactions with other entities that have removed assets that could have been used to satisfy the debtors liability; or if there are indemnities involved that may go to related entities to the debtor. In that case, the theories of liability may be such as: successor liability, parent liability for the acts of subsidiaries through piercing the corporate veil, fraudulent conveyance, enforcing the indemnity agreements. These corporate law issues are not Superfund law and they're not bankruptcy law. They are about the responsibility of corporate entities to maintain enough assets to satisfy preexisting liabilities. They are difficult issues; they are

highly fact-specific issues; they may be resolved in any of a number of ways in the courts. But, in general, to the extent they can -- consistently with the limitations of corporate law and bankruptcy law -- entities should not be allowed to make their CERCLA liabilities disappear.

And with that, I thank you; and I'm ready for any questions, if you have any.

SENATOR SMITH: So have you had an opportunity to review the memos that were revealed in discovery concerning the lawyer's advice -- going as far back as 1996 or earlier -- in which a plan was laid out in order to avoid environmental liability?

MR. GOLD: Senator, I have not reviewed those memos; I'm sorry. I do know that it's not an uncommon response to CERCLA liabilities for entities to try to find ways to avoid them.

SENATOR SMITH: Do you think there's a distinction to be made, as you mentioned-- It's true that sometimes successor companies become defunct; they go out of business, they're not particularly -- their business is not particularly viable. But if there's an actual, in effect, game plan to delete the assets of the company so that there are not assets available to pay for the cost of clean-up, does that rise to a different level?

MR. GOLD: I would think, Mr. Chairman, that it certainly could. There is a basic principle that if you have a liability, you don't -- you're not allowed to engage in transactions that are designed to defraud that creditor. And again, without-- I have not reviewed the record of this particular case, so I can't opine about whether these transactions go to it. I can say, from the little I know about this record, that it is certainly worthy of inquiry.

SENATOR SMITH: So when you have a chance, hopefully in the next two weeks, take a look at the legal memos that we have uncovered as part of a litigation discovery process. And if you would, we'd appreciate your opinion -- if you would send it in to be part of the Committee's record, it would be very helpful.

MR. GOLD: I will do my best, Mr. Chairman.

SENATOR SMITH: Okay.

Chairman, with your permission, if members want to ask a question, they're certainly welcome.

ASSEMBLYMAN EUSTACE: Sure.

ASSEMBLYMAN WISNIEWSKI: Yes.

ASSEMBLYMAN EUSTACE: Assemblyman Wisniewski, you had a question?

ASSEMBLYMAN WISNIEWSKI: Mr. Chairman, thank you.

Thank you for your testimony.

The issue of a polluter being able to discharge their liability is fundamentally why we're here; and it's of great concern. As a matter of bankruptcy policy, of the law itself, is there any bright line statement in the law that says you may not discharge liability for pollution?

MR. GOLD: I don't purport to be an expert on the bankruptcy code, Assemblyman. But I would say that the statement-- As you stated it, that statement is probably too broad. There are-- A liability that can be reduced to a claim in bankruptcy, as I understand it -- which is essentially any claim for payment of money -- if that's all it is, that can be discharged. The difficulty is -- where complications arise is if the contaminated property is actually part of the bankruptcy estate or if there is an existing cleanup

obligation, an injunctive obligation, on the part of the debtor. But if it's simply a matter of -- we have a money judgement against you for costs incurred in the past, I believe that that would be a dischargeable claim. But again, I disclaim expertise in the bankruptcy code.

ASSEMBLYMAN WISNIEWSKI: The reason I ask the question is that it's generally understood that student loan debts can't be discharged in bankruptcy. And so we have young men and women who go to school and, for a variety of legitimate reasons, aren't able to make their payments. We tell them, "Too bad; you have to deal with this," yet it seems that our laws exist in a way that allow corporations -- that have far better ability to bob and weave around the liability -- to do just that. And it seems that part of the response has to be asking our Federal legislators to amend the bankruptcy laws so that these types of dodges can't take place.

And also to look at the trade agreements that we enter into with foreign nations that -- you know, we like to believe in free trade, except we see that those countries we deal with take advantage of our laws and allow their member corporations to abuse our laws in a way that leaves us holding the bag. That's something that we ought to be looking at as well.

ASSEMBLYMAN EUSTACE: Thank you, Assemblyman.

Assemblyman Johnson, you had a question?

ASSEMBLYMAN JOHNSON: Thank you, Chair.

For clarification, I think I heard you say that going after a fine or money, then, we would have to stand in line and wait with the other creditors. But if part of the -- if the settlement is that they have to clean the site up, then that comes under a different category. Is that what I heard?



MR. GOLD: Yes. You know, I think as a careful lawyer, I have to say--

ASSEMBLYMAN JOHNSON: As a non-lawyer.

MR. GOLD: As a careful lawyer, I would have to say, "It depends." But there is case law to the effect that existing cleanup obligations of the debtor are not discharged in bankruptcy, as opposed to claims for money, which certainly are.

ASSEMBLYMAN JOHNSON: Okay, okay; right.

And my second question, through the Chair: Is this Argentinian law we're talking about, or U.S. law, or how does that-- How do these two different countries, actually -- entities -- how does this contract, how is that impacted by these two different countries with two different laws -- two different corporate laws?

MR. GOLD: Well, I am most certainly talking only about United States law. And speaking a little bit off the top of my head, I can't think of any reason why the fact that a responsible party, under United States law, is a foreign entity should have any effect on how United States law works within the United States.

ASSEMBLYMAN JOHNSON: Okay, thank you.

Thank you, Chair.

ASSEMBLYMAN EUSTACE: Yes, sir.

Thank you, Professor.

MR. GOLD: Thank you very much.

ASSEMBLYMAN EUSTACE: We're going to call up our next witness.

ASSEMBLYMAN KARABINCHAK: Chairman? I just thought of a--

ASSEMBLYMAN EUSTACE: I'm sorry -- Assemblyman Karabinchak.

ASSEMBLYMAN JOHNSON: One more question.

ASSEMBLYMAN KARABINCHAK: One more question, Mr. Gold -- Professor Gold.

ASSEMBLYMAN EUSTACE: Sorry, Professor Gold.

ASSEMBLYMAN KARABINCHAK: Thank you.

MR. GOLD: (off mike) No problem.

ASSEMBLYMAN KARABINCHAK: I was a little slow on the button. (laughter)

Anyway, I just wanted to thank you for your testimony, for one. It was very insightful for me.

MR. GOLD: Thank you.

ASSEMBLYMAN KARABINCHAK: However, I just have a couple of different questions. Not being a lawyer, but a businessman, I look at things a little differently.

Obviously, when this company was viable and it was doing business in the State of New Jersey, it must have had some level of general liability insurance. Inside that body of that liability insurance, should have some sublevel for some way to have pollutants being taken care of. What I don't understand is that if that insurance company was being paid to insure this company, why is that not an issue -- or that's not an avenue that we could go down to get some remediation for this pollutant?

MR. GOLD: There has been a great deal of litigation about insurance coverage for environmental cleanup liabilities, particularly under older, comprehensive general liability policies. Those policies typically had pollution exclusion clauses. Of course, the construction of a particular policy is a matter of, first, State law; and second, the terms of the policy. So I would not have any idea whether there was particular CGL insurance in effect that would cover this liability.

More recently, the companies have written policies specifically for environmental cleanup liabilities. They're quite expensive, but they, of course, could kick in, in a circumstance like this.

ASSEMBLYMAN KARABINCHAK: Okay.

The next question I have is -- for this performance of the cleanup. Again, as you stated, bankruptcy clears the field on everything except for potentially the money for this cleanup; that's not going to be carved out during a Federal bankruptcy. But that's not 100 percent sure, that.

And again, this is a very broad question. With the industry that produces -- whether it's liquids, or dry chemicals, or whatever -- that has potential pollutants, which is determined by our Feds, isn't there a way to have these companies bond for the future, for performance of clean up? Is that not an avenue that we could look down? It's not going to necessarily hurt the industry; however, it's bonding for future -- that if they do go bankrupt, that we have an avenue to go down, to have the performance done?

MR. GOLD: Assemblyman, if I understand your question, I think the short answer is, "yes," that could be done. Financial assurance

mechanisms are a common feature of environmental settlements. Again, I don't purport to be a bankruptcy expert; but in the General Motors bankruptcy, a very large trust was established to handle the remediation liabilities at General Motors own facilities. There may be a distinction to be drawn between facilities that an entity owns, versus facilities where an entity is liable for arranging disposal of hazardous substances. I can't really speak to that. But theoretically, what you suggest ought to be possible.

ASSEMBLYMAN KARABINCHAK: Thank you; thank you very much.

Thank you, Mr. Chairman.

MR. GOLD: Thank you.

ASSEMBLYMAN EUSTACE: Thank you, sir.

Thank you, again, Professor.

We're going to ask Jeff Tittel of the Sierra Club to come up.

J E F F T I T T E L: Thank you. And I really wish we weren't here today.

This has been a nightmare that's been going on for over 40 years.

And I think I just want to start off with a little context. Because I think we tend to forget -- as we're talking about bankruptcy and Superfund -- that this plant in Newark on Lister Ave made Agent Orange. And Agent Orange poisoned the people of Vietnam; it poisoned Vietnam vets; it poisoned the people of Newark; and it's destroyed the Passaic River.

We've been fighting for 40 years to make the river whole again -- to make sure that the communities along the way that have been impacted get cleaned up and get protected. It's been an ongoing nightmare,

and it continues. Because we see a company wanting to play games, and has been playing games all along, to avoid its responsibility and its liability for the disaster that it created. And that's what this is about.

So we're here to strongly support this Resolution going forward. I wish we could do more. I wish those responsible could go to jail because of what they've done. Because even when they did it back in the 1960s and early 1970s, it still was wrong, it still violated laws. And here we are, all these years later-- And we've been involved -- Sierra Club and, of course, other groups too -- since the beginning; from the Superfund site itself where the plant was, to knocking it down. They wanted to put in a hazardous waste incinerator that the community opposed, and Sierra Club and other groups did. And they ended up entombing the site. And so you understand, there's been a long history here.

I mean, I personally have been meeting for more than 20 years with EPA, DEP, and other officials to try to get a cleanup going. Sierra Club is part of the Citizens Advisory Group as well; and after all of this, we were there when the State of New Jersey filed suit back, originally, under Brad Campbell. We've been involved with the EPA.

And I just want to say that with the cleanup plan -- this cleanup plan was not our preferred cleanup plan, but it's the plan in place, and it's the only plan we have, and it has to go forward. We would have liked to have seen a 17-mile cleanup of the entire site; we would have liked to have seen a complete dredge. That didn't happen. It was a compromise because the EPA wanted to get this moving after 30 years of delay. And we know that these companies were deliberately delaying, because they wanted to push something called *natural attenuation*. The longer they delay, the more

the dioxin spreads through the bays, into the oceans, into the fisheries, the fewer hot spots there are. And then they can say, "We don't have to clean up; we can't find any hot spots." And this is part of that pattern -- the pattern of delay, the pattern of obfuscation, the pattern of hiding; spinning off companies, going into bankruptcies.

But all of this means that these companies, especially Maxus, does not want to pay for the mess that they made and the poisoning of a river and a community that they did. And that's why it's so critical for the Legislature to move forward.

I also want to talk about it from a personal standpoint. My family is from Ironbound, or Down Neck. My aunt and uncle -- my Aunt Loraine and my Uncle Eddie -- my Uncle Eddie, with cerebral palsy, worked at Remco. He used to do piecework. And my cousin, Ed Junior, lived on Kossuth Street, a few blocks from here. My aunt and uncle both died of liver cancer; and if you look it up, there's a direct link between dioxin and liver cancer. My cousin also died of cancer -- organ cancer -- which can be related.

So the point I'm making is it's killed people, it's poisoned people. And they have to be held accountable. And we have to do as much as we can to make sure that they don't get away with it. I mean, that's what this is really about.

And I wanted to make a couple of suggestions. One is, I think the State of New Jersey should be looking into entering into the case, into bankruptcy court, to try to protect New Jersey's interests. New Jersey won a judgement against the parties for \$4 billion -- for up to \$4 billion for a full claim. So we should be entering it to protect our interest.

Two, the State of New Jersey has not filed an NRD claim under our Spill Act against the responsible parties, and needs to do that. We need to do it for two reasons: one, because it's right; and two, to protect our interest, because of the bankruptcy issue.

I wish there was a lot more we could do. The Resolution is important to send a clear message, but we have to do more.

And we're concerned with the Trump Administration, with their cuts to the Superfund program, the potential cuts of scientists in New Jersey who are working on cleanups down at the Edison Lab; with an Administration that seems to be siding with polluters more and more, over public health and cleanups. You know, we need to put pressure on our Congress and on our President to make sure that EPA stands up to the plan in place and gets it done, and holds these companies accountable. Because that's what's needed; this tragedy has gone on for far too long.

And thank you for taking action, but we need to do a lot more.

ASSEMBLYMAN EUSTACE: Thank you, Mr. Tittel.

Any questions?

SENATOR BATEMAN: Just a comment.

I thought the AG's Office was involved in this process. Jeff, you raise a good point if it's not.

MR. TITTEL: I haven't seen anything, so that's why I asked it. I don't know.

SENATOR BATEMAN: Maybe we should write to the Attorney General.

(Chairman Smith confers with staff)

SENATOR SMITH: There's a letter to both Chairs, dated April 17, from Stephan Finkel, Assistant Attorney General. And it says:

"Please accept this letter in response to your invitation to Attorney General Porrino, or appropriate representatives of the Attorney General's Office, to testify before the Joint Legislative Committee hearing on Tuesday, April 18, to provide our perspective on actions taken by corporations to avoid their Superfund obligations in New Jersey through Federal bankruptcy proceedings.

"As you know, this issue has ramifications related to the State's settlement of a civil action against numerous defendants in litigation over environmental contamination of the Passaic River. Specifically, as set forth in two pending resolutions -- Senate Resolution 107 and Assembly Resolution 219 -- concerns have been expressed over actions of YPF, S.A. in placing its subsidiary, Maxus Energy Corporation, into bankruptcy 'in an apparent attempt to avoid paying the company's environmental liabilities,' which includes responsibility for environmental remediation of the Passaic River rising out of the Lister site.

"The pertinent settlement agreement with Maxus, YPF-Repsol, and other settling defendants contains a neutrality clause in which the State agreed not to support Occidental Chemical Corporation, directly or indirectly, in connection with the prosecution of its cross-claims, or any claims based on the same operable facts, against the settling defendants, except as required by law. Similarly, the Consent Judgement entered by the court governing Occidental includes a covenant prohibiting the State from assisting or supporting Occidental, Maxus, Tierra, or Repsol, YPF



defendants in connection with the prosecution or defense of Occidental's cross-claims, except as required by law or a court of competent jurisdiction.

“Due to significant concern that testifying on this issue at the Joint Committee hearing could invite a contention that we have breached this clause by indirectly supporting Occidental's cross-claims -- placing in jeopardy the \$130 million received from those defendants as a result of the settlement -- we have decided that the appropriate course of action under these circumstances is to respectfully decline the invitation. Your understanding of our position in this matter is most appreciated.”

It is signed by Steve Finkel, Assistant Attorney General.

So I believe what the letter says is, we entered into a settlement agreement that says we're, at this point, not further litigating it.

We have a representative from Occidental Petroleum here, I think, who -- or OxyChemical -- who I think can express where the litigation is and how the various documents were discovered.

I think part of the big concern -- and I don't want to speak for Oxy as a party -- is that this settlement was entered into, but one of the parties has not come to the table with any money because they're going through bankruptcy. But the DEP appears to be bound by its settlement agreement; that's what it looks like.

MR. TITTEL: I mean, it's a shame, but--

And again, at the NRD claim, I hope they didn't give that away either, because it's again-- I mean--

SENATOR SMITH: It could be very substantial.

MR. TITTEL: Yes, and the EPA can also file it.

But, you know, again, I just feel that given the long history here -- that the people have been harmed--

SENATOR SMITH: No question.

MR. TITTEL: --and we need to make sure we can make them whole -- Argentina has to be held accountable, you know. I almost feel like saying, "Don't cry for us, Argentina; pay to clean up the river."

SENATOR SMITH: Pay your bill. (laughter)

MR. TITTEL: Right; thank you.

ASSEMBLYMAN EUSTACE: Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Jeff, just one quick question for you.

MR. TITTEL: Oh, sure, sure. Sorry.

ASSEMBLYMAN ROONEY: No worries.

Just a comment, with a question.

You spoke of two family members--

MR. TITTEL: Yes.

ASSEMBLYMAN ROONEY: --who have passed away--

MR. TITTEL: Yes.

ASSEMBLYMAN ROONEY: --due to liver disease.

MR. TITTEL: Yes, cancer.

ASSEMBLYMAN ROONEY: Is it your understanding that this chemical Superfund site in the Passaic River and Newark Bay is the most dioxin-contaminated water site in the country?

MR. TITTEL: As far as I know, it is. And dioxin from the Passaic River and Newark Bay has spread in fish as far south as Florida. It is probably one of the most pervasive and terrible sites in the country.

ASSEMBLYMAN ROONEY: So under the current proposal, it was 8.3 miles of river that was going to be cleaned up. And you spoke of 17 miles, or something--

MR. TITTEL: Yes.

ASSEMBLYMAN ROONEY: --greater than that.

MR. TITTEL: Yes, it is -- the total contamination.

ASSEMBLYMAN ROONEY: So I tend to agree with you that we do have an obligation. We have an obligation not only to the citizens of New Jersey but, more importantly, as you just mentioned, the rest of the country, you know?

So I agree with you. I just wanted to get you on the record saying that that is the most contaminated site in the country.

MR. TITTEL: Yes, as far we know it is.

And, you know, again, it's not simple. I mean, I think the EPA plan -- you know, we want it stronger, but it's a plan; it will help quite a bit. And that's the critical piece. And there are -- potentially, in the future, to go after the rest of the river. But we have to do something; we can't keep allowing this to stay the way it is.

ASSEMBLYMAN ROONEY: And you spoke about natural attenuation.

MR. TITTEL: Yes.

ASSEMBLYMAN ROONEY: So when was the last time that this site was active; do you now?

MR. TITTEL: Over -- not since the early 1970s.

ASSEMBLYMAN ROONEY: So typically, more than 30 years ago, natural attenuation could have been achieved in the--

MR. TITTEL: Right. Yes, there are still plenty of hot spots.

ASSEMBLYMAN ROONEY: Now we're speaking 50 years later, you know.

MR. TITTEL: Right, right.

ASSEMBLYMAN ROONEY: It's not happening.

MR. TITTEL: Right.

ASSEMBLYMAN ROONEY: So I don't think natural attenuation is a--

MR. TITTEL: No, that was their strategy.

ASSEMBLYMAN ROONEY: I get that.

MR. TITTEL: I consider-- That's a very cute buzzword for *the hell with doing anything*.

ASSEMBLYMAN ROONEY: Right; thank you.

Thank you, Mr. Chairman.

SENATOR SMITH: Thank you for your comments, Mr. Tittel.

For the record, Congressman Pascrell has submitted written testimony, which will be included in the record. So that will be part of the official record, as well as-- We're going to keep the record open for a couple of days, if there are additional submissions that people want to put in.

ASSEMBLYMAN WISNIEWSKI: Jeff, don't leave.

SENATOR SMITH: Okay; Assemblyman Wisniewski--

ASSEMBLYMAN EUSTACE: Assemblyman Wisniewski actually has a meeting.

Assemblyman Wisniewski.

ASSEMBLYMAN WISNIEWSKI: Thanks.

Jeff, I know you have to leave.

Just a real quick question.

MR. TITTEL: Sure.

ASSEMBLYMAN WISNIEWSKI: You had mentioned that the--

MR. TITTEL: I just left my iPad, so thanks for calling me back. (laughter)

ASSEMBLYMAN WISNIEWSKI: You had mentioned in your testimony that the contamination now has spread to other states.

MR. TITTEL: Yes.

ASSEMBLYMAN WISNIEWSKI: Is there a value or a procedure in getting those other states involved?

MR. TITTEL: I'm not sure. That would be something I think DEP and EPA would have to look into. But we know that sediments have spread into the Newark Bay, and into the ocean, and into fish that have gone everywhere.

ASSEMBLYMAN WISNIEWSKI: But you had said-- How far south has it spread?

MR. TITTEL: I couldn't give you-- There have been studies of it, and it's been fairly extensive. I'm not so sure how much the sediments have spread south, but north-- But I know they've spread into, at least, New York and to Delaware. And they have found fish-- And there's evidence of sediments even further out, over the years, because they can do chemical markers. But it has affected the region. And I know they found it -- they found dioxin from Newark they can trace back -- I mean dioxin from Newark in fish in Florida.

ASSEMBLYMAN WISNIEWSKI: But down to -- as far as Delaware--

MR. TITTEL: Right.

ASSEMBLYMAN WISNIEWSKI: --at this point in time.

MR. TITTEL: At least, yes; and far north, too.

ASSEMBLYMAN WISNIEWSKI: All right; thank you.

MR. TITTEL: Sure.

SENATOR SMITH: Okay.

Our next witness will be Mr. Frank Parigi, who is a representative of Glenn Springs Holdings, which is an affiliate of Occidental Chemical Corporation -- I think to provide some pretty unique insight into the whole process here, and current litigation.

If you would, Mr. Parigi.

**F R A N K A. P A R I G I, Esq.:** Good morning Chairman Smith, Chairman Eustace, and Honorable Committee members.

My name is Frank Parigi; I'm the Vice President and General Counsel for Glenn Springs Holdings, Inc. I am here representing Occidental Chemical Corporation today.

Glenn Springs is an affiliate of OxyChem, and both companies are subsidiaries of Occidental Petroleum Corporation. Glenn Springs manages legacy sites on behalf of OxyChem.

We are committed to working with the State of New Jersey, the United States Environmental Protection Agency, and other stakeholders to address sites like the Passaic River.

We appreciate the invitation to testify here today, and for your leadership in examining important policy issues on holding companies accountable for their cleanup responsibilities.

Because New Jersey has more Superfund sites than any other state, we know that this issue is of particular interest to New Jersey's citizens. We appreciate that there is bipartisan support for the Resolution before this Committee.

OxyChem has a plant in Pedricktown, New Jersey, where it makes PVC, a raw material used in household piping, construction materials, and medical applications. More broadly, OxyChem is a major American chemical manufacturer with operations in 12 states, as well as Canada and Chile. OxyChem makes PVC, resins, chlorine and caustic soda, key building blocks for a variety of plastics, pharmaceuticals, and water treatment chemicals.

Like you, we believe the issues examined today are not about right or left; they are about right or wrong. Because OxyChem is involved in litigation with Argentina's state-controlled oil company, YPF, and its wholly owned subsidiaries, Maxus Energy Corporation and Tierra Solutions, Inc. and others, my testimony today is limited to matters of public record.

In 1984 -- as we heard earlier today -- EPA designated the Lister Avenue facility as the *Diamond Alkali Superfund site*. OxyChem purchased the stock of Maxus' chemical business two years later, in 1986. It's important to underscore that this was 17 years after Diamond closed the Lister Avenue facility. Although OxyChem acquired other plants in this transaction, it never owned the Lister plant.

In 1986, Maxus affiliate Tierra owned the Lister site, and still owns it today.

As part of the 1986 transaction with OxyChem, Maxus retained financial responsibility for numerous environmental sites and issues across the country, including the Lister Plant. There is no question about Maxus' responsibility for the site and other sites; it has been confirmed by courts in New Jersey, Texas, and Ohio.

When YPF bought Maxus in 1995, it was fully aware of Maxus' obligations to OxyChem, and knew that Maxus' environmental liabilities were likely to be substantial. Very soon after YPF bought Maxus, one of YPF's outside lawyers -- who also served on the YPF board -- informed YPF that Maxus' indemnity obligation to OxyChem was uncapped, unlimited, and, with regard to sites like the Passaic, substantial.

As a result, YPF orchestrated and implemented a long-range plan to strip away \$2 billion of Maxus' valuable oil and gas assets and shield itself from Maxus' environmental liabilities. Today, Maxus has virtually nothing but liabilities.

The EPA has determined that the Passaic River has been polluted with dioxin, PCBs, mercury, and other contaminants. EPA has also identified hundreds of potentially responsible parties. In March 2016, the EPA selected a \$1.38 billion plan to address the lower 8.3 miles of the river. Between March and June of 2016, Maxus and Tierra had been meeting with OxyChem and EPA to negotiate an agreement to perform the design of the remedy, and keeping YPF informed of the status.

But late on the night of June 17, 2016, YPF put Maxus and Tierra into bankruptcy.



The timing of this bankruptcy filing was no coincidence. It was, we believe, part of YPF's master plan to attempt to make Maxus' environmental liabilities evaporate from YPF's balance sheet.

YPF also forced Maxus and Tierra into bankruptcy just one day before OxyChem was set to begin trial in New Jersey State court where, once again, OxyChem had to enforce its indemnity from Maxus.

At this trial, OxyChem also sought to hold YPF liable for Maxus' obligations. Because of the bankruptcy filing, the trial never happened.

After YPF threw Maxus into bankruptcy, OxyChem reached an agreement with EPA to design the remedy selected by EPA for the lower 8.3 miles of the Passaic River. The Passaic River wasn't the only site OxyChem had to take over from Maxus. OxyChem also began implementing an orderly transition of remediation sites at more than 50 other Maxus sites and projects in New Jersey and elsewhere.

Our objective is to ensure that work continues without delay and without adverse impacts on human health and the environment.

The bankruptcy filing immediately had an effect on the State of New Jersey and its citizens, and could have jeopardized the progress being made on cleanup of the Passaic and other sites. However, OxyChem immediately stepped in, in a responsible fashion.

If YPF, an Argentine state-controlled entity, can abandon its environmental liabilities in America, a dangerous precedent could be set. Other companies, foreign or domestic, would see YPF's scheme as a viable option to manage their balance sheets, which would harm American

citizens, communities, and corporations, as well as State and Federal government agencies.

It appears that YPF's conduct may have had another objective. Last August, the *Wall Street Journal* reported that during 2016, YPF completed a \$1.75 billion private bond issuance in the United States, using American capital markets for YPF's sole benefit. In other words, YPF raked in billions in American capital markets, at the same time that it forced Maxus to plead that it was "hopelessly insolvent" and unable to pay its environmental liabilities.

YPF publicly announced, in December 2016, that it intends to raise another \$1 billion during 2017, all while the Maxus bankruptcy continues.

We share the Committee's concern. YPF should not be allowed to profit from American capital markets at the same time it seeks to avoid paying its fair share of Superfund environmental costs in New Jersey and elsewhere in the United States.

OxyChem has a proven record of participating in the cleanup of Superfund sites and environmental remediation projects throughout the United States, even those where the liability was inherited from another company. OxyChem takes pride in being a responsible corporate citizen, and asks that all legally responsible parties pay their share and act responsibly.

Thank you for your time this morning. We are grateful that the Joint Committee of the New Jersey Senate and Assembly is examining these important issues. OxyChem supports the Committee's bipartisan

Resolution -- SR-107, AR-219 -- which demonstrates that these issues are not about right or left; they're about right or wrong.

We hope that the Resolution will be passed expeditiously, and I'm happy to answer any questions you may have.

SENATOR SMITH: So, if I might, let me start off with the first question.

Part of the documentation that we have had a chance to review -- there's a memo from a law firm named Andrews and Kurth, K-U-R-T-H, a Texas law firm, dated May 22, 1996. And I understand that this is a publicly available document, because it's now part of the litigation and part of the discovery. It appears to me that it lays out a plan to divest the assets so that there is an overall scheme to not pay the environmental liabilities. And it looks like it suggests a period of time to do this so that, in effect, the parties are encouraged to not settle, not develop a plan; but allow time to pass so the assets can be removed so that, in effect, you're setting yourself up for the bankruptcy portion of this.

Am I reading that incorrectly, or is that an actual plan to ultimately go forward with this scheme to remove assets and not pay your liabilities?

MR. PARIGI: Chairman, that's the way we've read the memo. When I read it, when others from Occidental have read it -- they were surprised and outraged that the plan was in place for so long and that it was implemented as it was.

I'm hesitant to opine too much more, in deference to the proceedings in the bankruptcy court and the State proceedings in the New Jersey State court. My anticipation is that if and when we're able to resume

the litigation against YPF in State court that those documents will see much more light of day than they have up to this point. And we look forward to that day.

SENATOR SMITH: All right. So one more question, and I'm sure others will have many questions.

We have a bankruptcy expert, who is going to be the next witness. But even with the general discussion by Professor Gold, he pointed out that bankruptcy is a process -- actually, I think, going back into the Constitution of the United States of America. That's where I think it gets its legal authority. But it was always designed to help debtors who had come on hard times, not necessarily through their own fault. And this was a way for them to reestablish themselves.

In general, do you think that the bankruptcy laws should be used to avoid responsibilities for environmental cleanup?

MR. PARIGI: I will also profess that I am not a bankruptcy lawyer. (laughter)

SENATOR SMITH: All right; well, then, maybe we'll save that for the--

MR. PARIGI: From a policy standpoint, in the situation that we're looking at now, it's not a company, an individual company that fell upon hard times. It was a multi-conglomerate, international corporation that took assets from a subsidiary that had large environmental liabilities, leaving it with nothing but the liabilities, and then put the subsidiary into bankruptcy.

SENATOR SMITH: Right; and ultimately, if this goes forward, who's picking up the tab?

MR. PARIGI: In the current scenario of the Passaic River, there are multiple contaminants -- dioxin, PCBs, mercuries, PAHs, others that EPA has investigated and are a part of the proposed clean-up plan; there are hundreds of PRPs -- potentially responsible parties -- that have been around. With the industrialization of the United States, the Passaic River has been used for a couple of hundred years for industry. So there are other PRPs that will have an opportunity to step up.

Immediately after the bankruptcy, Occidental Chemical Corporation, through Glenn Springs, began meeting with EPA and agreed to perform the design of the remedy for the lower 8.3 miles of the river. So we've been doing that since the end of last September, and we're making good progress on the design.

In this particular instance, I think there are enough PRPs that, if everyone steps up as they should, the remediation of the Passaic could continue on. The problem that we see is a dangerous precedent that the YPF maneuver brings to the forefront; and if allowed to succeed, could be a blueprint for other companies to use.

SENATOR SMITH: Okay.

ASSEMBLYMAN EUSTACE: Any questions? (no response)

SENATOR SMITH: Members? (no response)

ASSEMBLYMAN EUSTACE: Thank you much, sir.

ASSEMBLYMAN JOHNSON: Well, yes. (laughter)

I'm sorry, I do have--

Something you said that I found interesting.

A parent company purchased a subsidiary, and then took all the value out of it. And yet, that parent company has applied for U.S. bonds for funding -- for additional funding.

I think that that, somehow, should be prohibited. I don't know how we're going to do that in the State; I guess maybe a resolution of some sort, a draft requesting our Federal legislators to look into that. But if you're a parent company and you put your subsidiary into bankruptcy, and then later on you apply for money from U.S. citizens to continue your business, that doesn't make sense to me.

So I have to figure that out, somehow -- as to how we could address that.

ASSEMBLYMAN KARABINCHAK: Mr. Chairman?

ASSEMBLYMAN EUSTACE: Yes, Assemblyman Karabinchak, you have a question?

ASSEMBLYMAN KARABINCHAK: Yes. Well, I'm going to bounce a little bit off of what the Assemblyman just said. And I agree that this -- what this -- YPF now is looking to go back to the marketplace to get additional funding for additional revenues for their business, and yet, they're -- Maxus is the part of their company that's being considered bankrupt. I'm having a few problems; one, that Senator Smith just read about this legal firm laying out the plan to actually take the assets away from Maxus so it's absolutely empty.

To me, that's fraud; and I'm not an attorney, but to me -- to the public, that would be considered fraud.

Now, I've always promoted, in my whole entire life, accountability. And I believe that there should be accountability -- whether

it's YPF or anyone else, there should be accountability. And I have no problem suing a legal firm for what they've structured to hurt not just the Federal government, the State of New Jersey but, more important, the residents of this state. It's just appalling to me.

And I understand -- or, maybe I don't understand -- how the legal side works here -- that once you decide to go bankrupt, that there's no exemptions in the bankruptcy laws that state that-- Or maybe there should be; there should be an exemption that if you decide to go bankrupt, the one exemption in bankruptcy is if you're a polluter, an environmental cleanup is not going to be considered as part of bankruptcy. And that the funds -- they still have to be paid underneath that corporation, or that parent corporation, or the corporations, or the affiliates or whoever else there is. Because in any major corporation, you could have hundreds, and hundreds, and hundreds of subcompanies.

I guess I'm just making a statement; and I apologize. However, I still come back to there has to be accountability here.

Thank you, Mr. Chairman.

ASSEMBLYMAN EUSTACE: Thank you, Assemblyman.

And I do believe that's one of the main reasons we're here today -- is to raise the idea to our Federal representatives; and, hopefully, they'll clamp down on this and make sure that they are unable to walk away from their responsibilities -- not just to the State of New Jersey, but to the country as a whole.

Thank you, sir.

MR. PARIGI: Thank you.

ASSEMBLYMAN EUSTACE: Next up we have Professor Jay Meegoda, New Jersey Institute of Technology.

**JAY N. MEEGODA, Ph.D.:** Thank you.

I have been a Professor for the past 31 years, working in soil and sediment remediation.

I started helping New Jersey DEP back in 1990 with a major problem with petroleum contaminated soils -- the underground leaking storage tanks. We found a remedy to use it in construction, and it's been -- right now in practice.

And then we went to chromium-contaminated soils in Hudson County. And we worked with the EPA to find a good solution.

And then, in 1997, I started working with sediment decontamination, and it was funded by the U.S. National Science Foundation. And I also, currently, have another project -- again, with the U.S. National Science Foundation -- on an improved method of instituting remediation of contaminated soils.

So I got involved accidentally with this site as a member of the Millburn Environmental Commission. I happened to listen to the EPA, and I was very deeply interested in the ideas. And then I became a member of the CAG; and also had a forum -- a public forum at NJIT on the same topic.

So whatever I say is as a public citizen, not a representative of NJIT.

I was quite fortunate to look at all aspects of what EPA was looking at, and they had four different options of cleanup. One was do nothing, which is with the natural attenuation. The other one was deep dredging; because the Passaic River, before it was contaminated, it was a



navigational channel. And the Army Corps used to dredge on a regular basis. And after the contamination, the dredging was stopped.

So what happened was these contaminants were deposited; and also the lower part of the Passaic River -- 17 miles -- is a tidal river, which means the water flows both ways, twice a day, and it stops at the Dundee Dam. And so whatever happened on the Lister Avenue site, has spread all the way -- the 17 miles. And also, downstream, it has contaminated the bay -- Newark Bay.

So the second option was to completely dredge the river so that you come to the original navigational depth.

The third option was shallow dredging, which means we are going to leave -- the EPA is going to leave some of the -- the major part of the contaminants. And what they proposed was to have a layer of carbon and sand mixture, so that if anything releases from -- any of the contaminant releases from the deep sediment layers, it will be captured and it will not impact the river, and the fish, and the residents.

And the last option was -- which were hot spots, locate the hot spots and remove them and put a cover.

So the last three options all result in a substantial amount of sediment -- a very large quantity, substantial quantities. And they looked at three different options of getting rid of the sediments, and one was to treat and use it as a beneficial material; which is being considered and done in many parts of the world, including in Europe.

The other option is to -- it's called *confined disposal*. And Newark Bay has many locations where it is quite deep -- to dispose of it and cover it.

And the last option is to dewater the sediments and send it to another state.

So the EPA came up with the shallow dredging, which results in several million tons of sediment. And that has to be dewatered somewhere -- at a site in Newark -- and transported via rail to another part of the country, or maybe to Canada. And right now, they are developing the detailed designs.

ASSEMBLYMAN EUSTACE: Professor, if you don't mind, I have several questions.

DR. MEEGODA: Yes.

ASSEMBLYMAN EUSTACE: The shallow dredging results in a capping process--

DR. MEEGODA: Yes.

ASSEMBLYMAN EUSTACE: --with carbon and gravel, but--

DR. MEEGODA: Yes; actually, carbon and sand -- a mixture. And then, on top of that, you have a geomembrane, and then you put stone on top of that so that it will not wash off.

ASSEMBLYMAN EUSTACE: Right. So you sort of have an artificial riverbed when you're done.

DR. MEEGODA: Yes.

ASSEMBLYMAN EUSTACE: But underneath that is the original contamination.

DR. MEEGODA: That's right.

ASSEMBLYMAN EUSTACE: Right?

Now, water percolates in both directions in a river, right -- the river will flow back and forth, but it also percolates through the riverbed into an aquifer at some point, right?

DR. MEEGODA: Most of the time, the water percolates in the direction of the gravity -- which means it's always downwards.

ASSEMBLYMAN EUSTACE: So--

DR. MEEGODA: The chemicals can move upwards because -- chemical movement is governed by the concentration difference. In the river there is no-- Once it's treated, there is zero contamination; and then you have hot spots deep down.

ASSEMBLYMAN EUSTACE: Right.

DR. MEEGODA: So there are gradients, so they slowly move up. And so that's why they have this cap with carbon. It's a very effective material to capture most of the chemicals.

ASSEMBLYMAN EUSTACE: So the dioxin is sequestered; it doesn't percolate down into a water supply?

DR. MEEGODA: Theoretically, it should work. (laughter) If the--

ASSEMBLYMAN EUSTACE: Science -- we learn more every day, don't we? (laughter)

DR. MEEGODA: Yes.

We have to start; and this has been implemented in other places. And it's much less expensive than removing all the sediments.

ASSEMBLYMAN EUSTACE: Right; I do understand that. I was the Mayor of a small town that has a Superfund site that's been around

for 35 year, and we've been trucking thorium out to Utah for a long, long time.

DR. MEEGODA: Yes.

ASSEMBLYMAN EUSTACE: And they told us it was less expensive, and it's been costing the government 35 years of costs.

I like the idea of doing something; I'm just curious about what that layer is that we're leaving here.

DR. MEEGODA: So it's a deep layer, because it was originally a navigation channel. And it's all filled up with the sediments flowing down the river. And there will be a substantial quantity of chemicals in the river, even with the proposed remediation plan.

ASSEMBLYMAN EUSTACE: Thank you.

ASSEMBLYMAN ROONEY: Professor, just a little clarity for myself.

Theoretically -- as you said -- it should work.

DR. MEEGODA: Yes

ASSEMBLYMAN ROONEY: But isn't it true, even though we're speaking about a river, that water tables rise and fall?

DR. MEEGODA: So the water--

ASSEMBLYMAN ROONEY: So to the Chairman's question, you know, it could, theoretically, leak out, right? Leach out, in this case?

DR. MEEGODA: So the water always -- the Passaic River always flows.

ASSEMBLYMAN ROONEY: That's what I mean: *below* that -- below this capping.

DR. MEEGODA: Yes.

ASSEMBLYMAN ROONEY: You have a water table, right?

DR. MEEGODA: Actually, the water can release--

ASSEMBLYMAN ROONEY: The groundwater table?

DR. MEEGODA: The groundwater is actually the river level.

ASSEMBLYMAN ROONEY: Okay--

DR. MEEGODA: So it's above.

ASSEMBLYMAN ROONEY: --so it's not below that?

DR. MEEGODA: Yes.

ASSEMBLYMAN ROONEY: So we've studied that, and we know for a fact that there's no -- the water table is not below that in certain areas?

DR. MEEGODA: Around the river, the groundwater table is actually the river level -- the level of the river.

ASSEMBLYMAN ROONEY: Okay. You're sure of that?

DR. MEEGODA: Yes.

ASSEMBLYMAN ROONEY: Okay. (laughter)

Because I know in other parts of the state, that's not always the case, you know? The water -- the table isn't necessarily always the riverbed.

DR. MEEGODA: So let me qualify that.

There are -- sometimes you have deep aquifers, and they have different water levels. And most of them are isolated, and sometimes we drill wells and get the water.

But the water level for the sediment which is going to be affected -- it will be the river level for the Passaic River.

ASSEMBLYMAN ROONEY: Okay. But you are saying that there could be a water table below that -- below the sediment level.

DR. MEEGODA: Yes.

ASSEMBLYMAN ROONEY: Okay.

DR. MEEGODA: But that is, most of the time, not connected to one another. So there should not be any water movement between the two.

ASSEMBLYMAN ROONEY: Okay.

And part of this approved EPA final clean-up plan calls for approximately 3.5 million cubic yards of contaminated soil and sediment to be removed, bank to bank, over the eight miles. So that sediment, as you said, would be disposed off-site.

DR. MEEGODA: Yes.

ASSEMBLYMAN ROONEY: Out of state.

DR. MEEGODA: Out of state.

ASSEMBLYMAN ROONEY: You also mentioned Canada, potentially, right?

DR. MEEGODA: There is a potential, yes.

ASSEMBLYMAN ROONEY: Right.

DR. MEEGODA: I looked -- I did ask; I think it was probably going to Oklahoma, or maybe Canada.

ASSEMBLYMAN ROONEY: So do you have any idea what that process would entail? You mentioned, potentially, rail--

DR. MEEGODA: Yes.

ASSEMBLYMAN ROONEY: I heard the Chairman mention his small town -- of trucking to Utah, I believe you said.

ASSEMBLYMAN EUSTACE: We use trucks and rail.

ASSEMBLYMAN ROONEY: Yes. So do you have any idea what that proposal consists of, at this point?

DR. MEEGODA: So what will happen is, it is considered as a *hazardous waste* -- whatever we dredge is a hazardous waste. We are not treating it; we are simply transferring the problem to another state. And so it means that they have to be on a secured landfill, and there is liability forever.

ASSEMBLYMAN ROONEY: Okay.

So what we're doing is proposing taking a contaminate -- hazardous material, in your own words -- and giving it to somebody else.

DR. MEEGODA: That's right.

ASSEMBLYMAN ROONEY: It's their problem.

ASSEMBLYMAN ROONEY: Yes. And for that we pay \$400 a ton.

ASSEMBLYMAN EUSTACE: If I may interject -- Mayor, there are towns that actually solicit this sort of waste; it helps pay the bills. And it's not an unusual occurrence. It seems odd, but it is not an unusual occurrence.

ASSEMBLYMAN ROONEY: Thank you. Mr. Chairman.

ASSEMBLYMAN EUSTACE: Any questions for the Professor?  
(no response)

Thank you very much, sir.

DR. MEEGODA: Thank you.

ASSEMBLYMAN EUSTACE: Dave Pringle, Clean Water Action.

**DAVID PRINGLE:** Thank you, Mr. Chairman.

We very much support the Resolution, and support a lot of the testimony that Jeff from the Sierra Club provided. So I will try not to be too duplicative.

This situation in the Passaic River is obviously a tragedy that's been going on for -- even before Agent Orange in the late 1960s. And fortunately, Superfund came around and is a potential solution; but even that has been an incredibly torturous path. And now we have a whole new chapter with these bankruptcy proceedings.

And to put it in perspective, we-- One blue crab in Newark Bay has enough dioxin to give somebody cancer, and that's coming from Diamond Alkali. So there are a lot of problems out there in the Passaic River, but dioxin really is the driving contaminant; and it's especially shocking that they are now trying to-- Not surprisingly, but nevertheless shockingly, that they're trying to -- continuing to try to run away from it.

We were very supportive of -- and, in fact, I think it was our idea, or initiated in the McGreevey Administration -- to have outside counsel work with the State to go after some of these recalcitrant polluters on a contingency-fee basis. So that State litigation very much helped drive getting this far -- as far as it has, even though it's still very flawed. As Jeff pointed out, we and Assemblyman Rooney have been discussing-- This is the best option on the table -- this cleanup. But it is only addressing part of the problem. And any -- if you're not removing all the pollution, any remediation has risks and can fail. And any -- that permanent barrier on the riverbed isn't -- there's no guarantee it will-- It's certainly -- it's not going to be permanent; and how long it lasts -- whether it will be permeated



or not; when, and under what conditions-- We're talking about a tidal river here, and Hurricane Sandy and all can very drastically and quickly change the contours of a river, and we could-- Even if this was successful, at some point we could have a catastrophic failure of this remediation.

To put it in perspective, when EPA was pursuing this particular -- or considering the various options on the table, from attenuation to a more complete cleanup than this, the responsible parties suggestion was to do, basically, very little. Allow folks to fish, and then bring those fish to a fish market that the polluters ran; and they would hand in their contaminated fish and, in turn, they would be given a clean fish to eat. So that was their solution to cleaning up this river. I mean, that was only a couple of years ago.

So this situation is truly, truly sad. But it does have very far-reaching consequences that folks have talked about. This is truly a precedent-setting case, period, but especially given the overall national climate right now. You know, over 20 years ago now, the polluter-pays funding mechanism, the excise tax on the petroleum chemical industry went by the wayside, and that has cost us billions of dollars over the years, and sites are not getting cleaned up as a result. And now under the Trump Administration -- has proposed over a 30 percent cut to the Superfund program. It's already underfunded; sites are already-- Even without bankruptcies and litigation, these sites -- as successful as they've been -- the other cleanups are taking way too long.

And so we need drastic reform; and this hearing helps bring that home.

One potentially saving grace in all this is -- after the President of the Senate, the Majority Leader, and Assembly Speaker -- there are very few Federal legislators or politicians who can be a difference-maker more than Rodney Frelinghuysen, the Congressman from New Jersey, who is Chair of the Appropriations Committee. If he said, "Superfund will not be cut under my watch," he can singularly say that, and that would have a drastic change in the climate in D.C. And he has already done that on one issue -- wherever you are in the Affordable Care Act -- he obviously didn't do that alone. But given his role in Congress, if he stakes out a position, that will go a very long way.

And in New Jersey -- I'm not sure how much folks have talked about it here today; I missed Debbie's testimony -- but there are over 1,000 Superfund sites in the country; New Jersey has over 100 currently being cleaned up; 35 have been cleaned up, approximately. And that's partially a function of our industrial history and population density; but it's also a part--

And DEP, in the 1980s, was wise and saw the Federal Superfund program as an opportunity to fund our worst sites. So New Jersey was more aggressive and supportive of getting more of our sites listed than others. But we, more than any other state, literally live on top of (indiscernible) drinking water. And while this particular site is obviously downstream of drinking water intake, a lot of the Superfund sites are not.

So again, I want to thank you for bringing -- raising this. We need drastic reforms at the Federal level, in terms of bankruptcy law, and in terms of Superfund litigation. Because these sites, even in the best-case

scenarios, are taking way too long to clean up; and we have a long way to go.

SENATOR SMITH: Thank you for your comments.

Chairman Eustace and I are entering into the record the law office memorandum of Andrews and Kurth, dated May 22, 1996, which has the plan for removing assets from subsidiary corporations to avoid environmental liability.

And also a letter, dated October 11, 2016, from Oxy Petroleum Corporation to the then-Secretary of Commerce, Penny Pritzker, which lays out the possible interaction with the country of Argentina that might be able to bring us some relief.

So both of those will go into the record.

Our next witnesses are Dennis Hart and Ed Waters from the New Jersey--

ASSEMBLYMAN EUSTACE: Chemistry Council.

SENATOR SMITH: Chemistry Council.

**D E N N I S H A R T:** Good morning, Chairman Smith and Chairman Eustace, Assemblymen, Senators.

Thank you for allowing Ed Waters, myself, and the Chemistry Council of New Jersey to be here today.

The Chemistry Council is the fine companies in New Jersey that are in the business of chemical manufacturing, pharmaceutical manufacturing, oil refining, and oil transporting businesses.

Before I get into my real testimony, I just want to say that the Chemistry Council of New Jersey fully, 100 percent, supports the efforts of

both Chairman Smith, Chairman Eustace, and the entire -- both Committees. This is an important issue.

As a way of reference, I want to talk a little bit to show you my involvement in this type of issue. I've been involved, personally and professionally, in environmental issues in New Jersey for over 37 years. In the early 1980s, I was a lead investigator for DEP that uncovered the Ciba-Geigy contamination site, and that crime that was being put upon the citizens of Toms River and New Jersey.

I was part of the original DEP Task Force that ranked sites, with the MITRE Corporation, to submit them to EPA for scoring and for listing in the Federal Superfund.

In the early 1980s, I was there when Governor Kean and Commissioner Hughey went door-to-door on Lister Avenue to inform those citizens that their properties were contaminated with dioxin and had to be removed.

In 1986 I was part of the DEP team that set up the original private party/responsible party site remediation program. That started the program of having companies that were responsible admit to their responsibility, sign agreements, financial assurances, financial guarantees, and do the remediation so the citizens wouldn't have to be stuck with it.

What I am here today -- Ed and I are here today to say is, what Maxus, and YPF, and the government of Argentina are doing is nothing involved in that. They are brazenly -- and right in everybody's face in New Jersey and in this government -- just walking away from their responsibilities. This is not what bankruptcy was established for. Bankruptcy is for legitimate people, legitimate companies that need to

protect themselves, protect creditors, and have an orderly dissolution or payment of creditors. And that's not what this is. This is a blatant fraud.

YPF is out in the capital markets, right across the river, raising money. They're growing, they're expanding, supported by the Argentina government, by the citizens of New Jersey, and the other corporations are going to be stuck footing the bill. And any effort that the Chemistry Council can do to support your Committee -- we fully support your work. This is important; this is important that the current Administration notify the Argentina government that this is unacceptable. And it's important for the citizens of Lister Avenue -- who Jeff Tittel spoke about -- it's important for them to know that everyone in New Jersey stands up; that this is going to be taken care of.

And I am willing to answer any questions you may have.

SENATOR SMITH: Any questions for Mr. Hart? (no response)

ASSEMBLYMAN EUSTACE: Thank you very much.

MR. HART: And just-- Occidental is a member of our association; they are a fine member. And as I testified, they've stood up; they're doing their cleanups in New Jersey. They have a great facility that you should take a tour of and see where the manufacturing -- how they're contributing to the state.

And again, we support the efforts.

Thank you.

ASSEMBLYMAN EUSTACE: Thank you, gentlemen.

Captain Bill Sheehan, Hackensack Riverkeeper.

CAPTAIN WILLIAM “BILL” SHEEHAN: Good almost-afternoon. (laughter)

My name is Captain Bill Sheehan, and I am a Hackensack Riverkeeper.

I asked to speak this morning, after the invitations went out, because the Passaic River has been the source of pollution to the Hackensack also.

In 2015, Hackensack Riverkeeper filed a petition with the U.S. EPA to have the Hackensack River listed as a Superfund site. This stretch of the river I’m talking about is from Oradell, New Jersey, down to Newark Bay. And EPA did a comprehensive study of the river in 2016, where they took over 400 sediment samples and, not to my surprise, there were dioxin hits on all the samples that they took in the lower end of the river, down by where the Hackensack flows into Newark Bay. And that’s the confluence with the Passaic River.

I want to-- This is the most important cleanup taking place in the northeastern part of New Jersey today. I was encouraged, a few years ago, when Judith Enck, the Regional Administrator, came to Newark and announced that they had reached a decision on what the cleanup should look like for the 8.5 mile stretch. But I told her then, and I’m going to tell you now, that was not enough. The science that I’ve seen and the reports that I’ve read -- the dioxin has been moved around by the tide as far as up as the Dundee Dam in Bergen County, and as far south as Newark Bay.

In the 1990s, the dioxin coming from the Lister Avenue site actually brought our entire port almost to a standstill, because they were not allowed to dredge to bring the ships in anymore because of the dioxin

that was in the Newark Bay. That dioxin didn't fall out of the sky; that dioxin came down from the Passaic River and contaminated Newark Bay.

With my colleagues at Baykeeper, in the early 2000s, we tried to sue to get a cleanup going in Newark Bay. And we were thwarted in that when Newark Bay was added as part of the Passaic River Study Area. It was convenient for them then, politically, to add it to the Passaic River Study Area. And today, it seems to have fallen off the table.

But you know, I don't think I have to remind all of you how important the economy of the port is to the State of New Jersey. And when a polluter puts that port economy at risk, they need to be dealt with forthrightly. This has been going on for way too long, and I for one am willing to help you in any way that I can to go after these people and force them to stand up and do the right thing -- at least get this cleanup started.

I don't want to be here 20 years from now, still arguing over this issue. And I certainly want to make sure that both the Passaic River and the Hackensack River are returned to their former glory, where we'll be able to catch fish and eat them without worrying about getting sick, or people can not worry about getting wet if they get near the river, if they fall into the river. You know, nowadays you can't do that.

And we do everything we can to inform people of the dangers of eating the locally caught fish. I shouldn't have to do that; I should not have to do that. I've been doing it for over 20 years, and it's time to get this river cleaned up -- both the Passaic, and the Hackensack, and Newark Bay, where the two rivers form a confluence.

So thank you for giving me this opportunity.

Oh, and by the way, welcome to the Meadowlands. (laughter)  
It's a little late in the day, but I'm glad you're here. I'd like to see meetings like this take place more often up here in the northeast corner of New Jersey. Because I agree with the work that you do all the time, and it's difficult to make that trip down to Trenton all the time with the schedules that we have.

So if you can move some -- keep moving these Committee meetings up to this part of the state once in a while; it will help us address some of our local issues.

Thank you very much.

ASSEMBLYMAN EUSTACE: Thank you; thank you, Captain.  
I agree with you. This is a 10-minute drive for me. (laughter)

CAPTAIN SHEEHAN: Okay.

ASSEMBLYMAN EUSTACE: Any questions? (no response)

CAPTAIN SHEEHAN: Thank you.

ASSEMBLYMAN EUSTACE: Is there anyone who wishes to speak? (no response)

Okay.

SENATOR SMITH: Oh, we have somebody.

ASSEMBLYMAN EUSTACE: Are you going to speak, sir?

**S E R G I O R O D R I G U E S:** Yes, please.

ASSEMBLYMAN EUSTACE: Good. If you would take a seat, and give us your name.

MR. RODRIGUES: Sure; my name is Sergio Rodrigues. I didn't plan to speak here today, but I'm inspired by some of the things that were said today.



And so I thank you very much for giving me the opportunity to speak to you today.

I grew up in the Ironbound, and I've never had an opportunity to see people swimming in the Passaic River. I know all the old-timers of the previous generations -- they all talk about people swimming in the Passaic all the time. And for me, it's very sad, you know?

We're here talking about a polluting entity and its successors trying to get out of the liability of paying for the cleanup of poisons that they put in our river. And I think that's very sad to set a precedent to allow companies to get away with polluting our river -- my river, your river -- and then walking away, stealing billions of dollars of assets, spiriting them away, and then just leaving their responsibility for other people.

I know that there are many points of pollution in this river. But by toxicity and volume, the dioxin from the Diamond Alkali site is certainly up there. And much of that was in service of the Vietnam War. I don't see any reason why Diamond Alkali, or any of its successors-- And I would even reach out to the Department of Defense; they should be writing a check. Maybe they should start cleaning the river immediately. I mean, I can't believe 40 years have gone by, and we're still waiting for people to be able to swim in the river again. That's insane.

You know, we should ask the Department of Defense to just starting writing the checks and start cleaning up the river immediately, and going after -- and attaching the assets of all these other polluters that helped contribute to the polluted river. We shouldn't be living in a world where we can't fish in our river, where we can't swim in our river, where we can't even kayak in our river. I live in the Ironbound, and I go out to Manhattan

to put people on kayaks for free -- for free in the river all the time. I help swimmers swim in the Hudson all the time for all kinds of competitive swimming races or for even the New York City Triathlon. And we don't do these things here in New Jersey, in the Passaic River, because it's polluted. How can we allow such a vital waterway to stay polluted and allow these companies to get away with poisoning our environment and walking away from their responsibility? We shouldn't let that precedent be set.

And that's the only thing I ask you today.

ASSEMBLYMAN EUSTACE: Thank you; thank you, sir. We appreciate your testimony.

That's it for the public portion; thank you.

SENATOR SMITH: So Chairman, with your permission, the Senate side would like to go forward with the release of the Resolution.

Prior to doing that, let me suggest one tiny change.

In Section 3, we're urging the Federal government to change CERCLA; but also, I think we should add in there a change to the Federal bankruptcy statutes as well. So that would be one change, and I think that's minor enough we can do that -- ask Judy to do it.

I'd also like to point out to our members that this Resolution -- in addition to reciting what we found out in today's hearing and the documents that we have before us, it asks that six things be done.

The first was that there is a request to our New Jersey State Commission of Investigation that they perform an investigation, all right? I believe that some of this may rise to the level of some environmental crimes under our State statutes, and the SCI should take a look.

Number 2, it asks the DEP to give to the Legislature a report of any other sites -- any Superfund sites where Maxus Energy is a potentially responsible party; tell us what the impacts of a bankruptcy declaration may be on the remediation at those sites, and place on other responsible parties, so that we know where else in New Jersey we can be looking forward to this issue.

Number 3, it urges the Congress -- Senate and the House -- to make adjustments to CERCLA -- the Comprehensive Environmental Response, Compensation, and Liability Act -- to prevent foreign corporations from avoiding their Superfund liabilities; and also will now include modifying the Federal bankruptcy statutes to do the same.

And then number 4, it asks the SEC to initiate a review of the public statements and disclosures made by YPF -- that's the Argentinian corporation that files with our SEC so they can do bond, they can raise billions of dollars in the United States -- to determine if there is inaccurate information provided to shareholders, especially with regard, not only to their overall financial condition, but also with respect to these environmental shenanigans.

Number 5 -- it asks the U.S. Attorney General -- the top Federal AG -- and the New Jersey Attorney General to investigate any potential violations of Federal or State laws by YPF or Maxus, including, but not limited to, Federal or State Racketeer Influenced and Corrupt Organizations acts -- RICO -- and pursue all appropriate legal remedies.

And then finally, it asks if copies of this Resolution-- And by the way, we won't just send copies; we'll also send the transcript and the attached documents from today's procedure to the Secretary of the Senate,

to the President of the United States, the Speaker, the Minority Leader of the U.S. House of Representatives, the Majority and Minority Leaders of the U.S. Senate, each member of the New Jersey Congressional delegation, the U.S. Attorney General, the Chairman of the SEC, the New Jersey Attorney General, the Commissioner of the New Jersey Department of Environmental Protection, and finally, the Executive Director of the New Jersey State Commission of Investigation.

This Senate Resolution was sponsored by myself, Senator Bateman; co-sponsored by Senators Scutari, Sarlo, and Diegnan.

And unless, on the Senate side, there's any need for any further discussion--

Yes, sir; Senator Bateman.

SENATOR BATEMAN: Mr. Chairman, if I may, very briefly.

SENATOR SMITH: Yes, sir.

SENATOR BATEMAN: I thank both the Chairs for this hearing. I think this is very important.

This doesn't have to be part of the Resolution, but if we could somehow transmit to a couple of our Congressman -- maybe Congressman Lance, since he serves on the House Energy Committee; possibly Congressman Frelinghuysen, because he's a Chairman of the Appropriations Committee; and either Congressman LoBiondo or Bonnie Watson Coleman-- I'm looking for a bipartisan letter, that they can take a copy of this Resolution, send it to the President-- Because as you know, he's meeting on April 27 with the President of Argentina. Just maybe, they could do a letter from their stationary -- or the two United States Senators

-- just saying, "Mr. President, obviously this is a very important issue. If there's an opportunity to raise it with the President of Argentina."

SENATOR SMITH: So let's put that in both of our courts.

SENATOR BATEMAN: Okay.

SENATOR SMITH: You call the *R* side; I'll call the *D* side.

SENATOR BATEMAN: I'll do that.

SENATOR SMITH: And we'll see if we can get them to do a joint-- The only problem with the 27th, they won't have the transcript.

SENATOR BATEMAN: By the way, I'm not sure they need the transcript. I think a copy of our Resolution--

SENATOR SMITH: The Resolution will do the trick.

SENATOR BATEMAN: I'm sure that most of the Congressmen and Senators are very familiar with this issue.

SENATOR SMITH: Right.

SENATOR BATEMAN: I think a letter from them to the President to the United States would be--

SENATOR SMITH: Might be really helpful. I agree with your-- That's a great suggestion

SENATOR BATEMAN: So I will work up -- I'll work on my Republican counterparts.

SENATOR SMITH: Okay; and I'll work on the *Ds*.

And then since you brought up the idea, you can draft the letter.

SENATOR BATEMAN: Absolutely. (laughter)

SENATOR SMITH: All right.

SENATOR BATEMAN: Of course, Mr. Chair.

SENATOR SMITH: All right; and on that note--

Yes, sir -- Senator Thompson.

SENATOR THOMPSON: Mr. Chairman, I would like to be added as a co-sponsor.

SENATOR SMITH: Terrific.

**SENATOR LINDA R. GREENSTEIN (Vice Chair):** And I would as well.

SENATOR SMITH: We want to make sure we get slips to the Senators so they can be co-sponsors.

SENATOR BATEMAN: And I'll move the Resolution.

SENATOR SMITH: Senator Bateman moves the Resolution.

SENATOR THOMPSON: Second.

SENATOR SMITH: And seconded by Senator Thompson, as amended.

And Judy, if you would take a roll call vote, please.

MS. HOROWITZ (Committee Aide): On Senate Resolution No. 107, with Senate Committee amendments; Senator Thompson.

SENATOR THOMPSON: Yes.

MS. HOROWITZ: Senator Bateman.

SENATOR BATEMAN: Yes.

MS. HOROWITZ: Senator Greenstein.

SENATOR GREENSTEIN: Yes.

MS. HOROWITZ: Senator Smith.

SENATOR SMITH: Yes. And the Resolution is released unanimously.

Chairman Eustace.

ASSEMBLYMAN EUSTACE: Oh, we're going to move along the same line, surprisingly enough, Chairman. Thank you very much.

SENATOR SMITH: All right.

ASSEMBLYMAN EUSTACE: Carrie, would you-- This is with amendments, which you've just heard.

Carrie, would you read those, please?

ASSEMBLYMAN JOHNSON: I move to release the Resolution, as amended.

And we need a second.

ASSEMBLYMAN KARABINCHAK: Second.

ASSEMBLYMAN JOHNSON: There we go.

ASSEMBLYMAN EUSTACE: Thank you.

Roll call, please.

MS. CALVO-HAHN (Committee Aide): Thank you.

On the motion to release AR-219, with proposed Committee amendments to be identical to the Senate version; Assemblyman Rooney.

ASSEMBLYMAN ROONEY: Yes; and I'd also like to be added as a co-sponsor.

ASSEMBLYMAN EUSTACE: Thank you, sir.

ASSEMBLYMAN ROONEY: Can we just-- One last thing.

And I heard the Senator speak to where the Resolutions should go. What about sending a copy of this transcript and the Resolutions to the judge handling this bankruptcy?

SENATOR SMITH: You start to get into some--

ASSEMBLYMAN ROONEY: No?

ASSEMBLYMAN JOHNSON: No.

ASSEMBLYMAN ROONEY: Okay.

SENATOR SMITH: I think there could be a little bit of an ethical issue. We're not supposed to be influencing judges--

ASSEMBLYMAN EUSTACE: Yes, we don't want to wade into that.

SENATOR SMITH: --especially in pending litigation.

ASSEMBLYMAN EUSTACE: Right.

And it's actually one of the things we're prohibited from doing.

SENATOR SMITH: Yes.

ASSEMBLYMAN ROONEY: Just a question.

ASSEMBLYMAN EUSTACE: Yes.

SENATOR SMITH: Great idea, but not kosher. (laughter)

MS. CALVO-HAHN: Assemblyman Karabinchak.

ASSEMBLYMAN KARABINCHAK: Yes, Mr. Chairman; and I'd like to be added also on to this, to pass it.

MS. CALVO-HAHN: Assemblyman Wisniewski left his vote in the affirmative.

Assemblyman Johnson.

ASSEMBLYMAN JOHNSON: I'm a "yes," and also would like to be included on this Resolution; and also on the letter that comes out from this Committee.

MS. CALVO-HAHN: Chairman Eustace.

ASSEMBLYMAN EUSTACE: Yes, and I want to thank my Committee members. I was alone on this bill just a minute ago. Thank you very much for joining me. (laughter)

ASSEMBLYMAN JOHNSON: You have a lot of friends now.



SENATOR BATEMAN: See? The process works.

ASSEMBLYMAN EUSTACE: And I appreciate that we've done some very important work here today.

The Bill is released.

SENATOR SMITH: Thank you; the meeting is adjourned.

**(MEETING CONCLUDED)**