

# Committee Meeting

of

## ASSEMBLY JUDICIARY COMMITTEE

*"The Committee will receive testimony from invited guests on the proposed \$225 million settlement agreement between the New Jersey Attorney General's Office and Exxon Mobil Corporation for the environmental damage caused by Exxon's refinery operations in Bayonne and Linden"*

### Assembly Bill 4307

*Increases required public notice from 30 days to 60 days for settlements entered into by DEP pursuant to Spill Compensation and Control Act*

### Assembly Bill 4281

*Amends Fiscal Year 2015 budget to provide one-half of certain environmental damage amounts recovered are appropriated for costs of remediation, restoration, and clean up*

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**LOCATION:** Committee Room 12  
State House Annex  
Trenton, New Jersey

**DATE:** March 19, 2015  
10:00 a.m.

### MEMBERS OF COMMITTEE PRESENT:

Assemblyman John F. McKeon, Chair  
Assemblyman Joseph A. Lagana  
Assemblywoman Annette Quijano  
Assemblyman Benjie E. Wimberly  
Assemblyman Jon M. Bramnick  
Assemblyman Michael Patrick Carroll



### ALSO PRESENT:

Miriam Bavati  
Rafaela Garcia  
*Office of Legislative Services*  
Committee Aides

Kate McDonnell  
*Assembly Majority*  
Committee Aide

Kevin Logan  
*Assembly Republican*  
Committee Aide

*Excerpt 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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JOHN F. McKEON  
*Chair*

GORDON M. JOHNSON  
*Vice-Chair*

JOSEPH A. LAGANA  
BENJIE E. WIMBERLY  
MICHAEL PATRICK CARROLL  
HOLLY SCHEPISI

RAFAELA GARCIA  
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**New Jersey State Legislature**  
**ASSEMBLY JUDICIARY COMMITTEE**  
STATE HOUSE ANNEX  
PO BOX 068  
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**R E V I S E D**  
**C O M M I T T E E N O T I C E**

TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE  
FROM: ASSEMBLYMAN JOHN F. McKEON, CHAIRMAN  
SUBJECT: COMMITTEE MEETING - MARCH 19, 2015

*The public may address comments and questions to Rafaela Garcia, Miriam Bavati, Committee Aides, or make bill status and scheduling inquiries to Denise Darmody, Secretary, at (609)847-3865, fax (609)292-6510, or e-mail: OLSAideAJU@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.*

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**The Assembly Judiciary Committee will meet on Thursday, March 19, 2015 at 10:00 AM in Committee Room 12, 4th Floor, State House Annex, Trenton, New Jersey.**

\*The committee will receive testimony from invited guests and the public on the proposed \$225 million settlement agreement between the New Jersey Attorney General's Office and Exxon Mobil Corporation for the environmental damage caused by Exxon's refinery operations in Bayonne and Linden.

The following bills will be considered:

- |   |   |
|---|---|
| A-4008<br>Singleton/Mukherji/<br>Pintor Marin/Wimberly/<br>Sumter               | Requires DOC report to contain information concerning treatment and reentry initiative participation.     |
| A-4265<br>McKeon/Pintor Marin/<br>Jasey/Caputo/Giblin/<br>Tucker/Spencer/Oliver | Permits municipalities to establish five-year residency requirement for police officers and firefighters. |

(OVER)

Assembly Judiciary Committee

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March 19, 2015

A-4281 McKeon/Schaer/Prieto *S-2791 Sarlo (pending referral)	Amends Fiscal Year 2015 budget to provide one-half of certain environmental damage amounts recovered are appropriated for costs of remediation, restoration, and clean up.
A-4306 Burzichelli S-685 Lesniak/Whelan	Reduces number of voters for whom person can serve as messenger; limits to three number of voted mail-in ballots transmittable by bearer; modifies conviction standard under vote by mail law.
A-4307 McKeon	Increases required public notice from 30 days to 60 days for settlements entered into by DEP pursuant to Spill Compensation and Control Act.

Issued 3/13/15

\* Revised 3/18/15

(S2791 has been added.)

(Added public testimony on the proposed settlement.)

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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## ASSEMBLY, No. 4307

# STATE OF NEW JERSEY

## 216th LEGISLATURE

INTRODUCED MARCH 16, 2015

**Sponsored by:**

Assemblyman JOHN F. MCKEON  
District 27 (Essex and Morris)  
Assemblywoman ANNETTE QUIJANO  
District 20 (Union)

**SYNOPSIS**

Increases required public notice from 30 days to 60 days for settlements entered into by DEP pursuant to Spill Compensation and Control Act.

**CURRENT VERSION OF TEXT**

As introduced.



(Sponsorship Updated As Of: 3/20/2015)

A4307 MCKEON, QUIJANO

2

1   AN ACT concerning certain settlements pursuant to the "Spill  
2   Compensation and Control Act," and amending P.L.2005, c.348.

3

**4 BE IT ENACTED by the Senate and General Assembly of the State**  
**5 of New Jersey:**

6

7       1. Section 2 of P.L.2005, c.348 (C.58:10-23.11e2) is amended  
8      to read as follows:

9       2. At least [30] 60 days prior to its agreement to any  
10 administrative or judicially approved settlement entered into  
11 pursuant to P.L.1976, c.141 (C.58:10-23.11 et seq.), the Department  
12 of Environmental Protection shall publish in the New Jersey  
13 Register and on the New Jersey Department of Environmental  
14 Protection's website the name of the case, the names of the parties  
15 to the settlement, the location of the property on which the  
16 discharge occurred, and a summary of the terms of the settlement,  
17 including the amount of any monetary payments made or to be  
18 made. The Department of Environmental Protection shall provide  
19 written notice of the settlement, which shall include the information  
20 listed above, to all other parties in the case and to any other  
21 potentially responsible parties of whom the department has notice at  
22 the time of the publication.

23 (cf: P.L.2009, c.60, s.36)

24

25        2. This act shall take effect immediately.

26

## STATEMENT

29

30        Current law requires the Department of Environmental  
31 Protection to provide at least 30 days public notice prior to agreeing  
32 to an administrative or judicially approved settlement entered into  
33 pursuant to the “Spill Compensation and Control Act,” P.L.1976,  
34 c.141 (C.58:10-23.11 et seq.). This notice is to be published in the  
35 New Jersey Register and on the department’s website and is to  
36 include the name of the case, the names of the parties to the  
37 settlement, the location of the property on which the discharge  
38 occurred, and a summary of the terms of the settlement, including  
39 the amount of any monetary payments made or to be made. This  
40 bill would increase this timeframe for public notice from at least 30  
41 days to at least 60 days prior to the department agreeing to the  
42 settlement.

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

# ASSEMBLY, No. 4281

## STATE OF NEW JERSEY 216th LEGISLATURE

INTRODUCED MARCH 16, 2015

Sponsored by:

Assemblyman JOHN F. MCKEON  
District 27 (Essex and Morris)  
Assemblyman GARY S. SCHAEER  
District 36 (Bergen and Passaic)  
Assemblyman VINCENT PRIETO  
District 32 (Bergen and Hudson)  
Assemblywoman ANNETTE QUIJANO  
District 20 (Union)  
Assemblyman BENJIE E. WIMBERLY  
District 35 (Bergen and Passaic)  
Assemblywoman MARLENE CARIDE  
District 36 (Bergen and Passaic)

Co-Sponsored by:

Assemblywoman Lampitt and Assemblyman Eustace

### SYNOPSIS

Amends Fiscal Year 2015 budget to provide one-half of certain environmental damage amounts recovered are appropriated for costs of remediation, restoration, and clean up.

### CURRENT VERSION OF TEXT

As introduced

(Sponsorship Updated As Of: 3/27/2015)

A4281 MCKEON, SCHAER

2

1   **AN ACT** amending "An Act making appropriations for the support  
2       of the State Government and the several public purposes for the  
3       fiscal year ending June 30, 2015 and regulating the disbursement  
4       thereof," approved June 30, 2014 (P.L.2014, c.14).

5  
6       **BE IT ENACTED** by the Senate and the General Assembly of the  
7 State of New Jersey:

9       1. The following language provision in section 1 of P.L.2014,  
10 c.14, the annual appropriation act for fiscal year 2015, is amended  
11 as follows:

42 DEPARTMENT OF ENVIRONMENTAL PROTECTION

**40 Community Development and Environmental Management**

**44 Site Remediation and Waste Management**

## **CAPITAL CONSTRUCTION**

## 29-4815 Environmental Management

12  
13 Except as otherwise provided in this act and notwithstanding the  
14 provisions of any other law or regulation to the contrary, the first  
15 \$50,000,000 and one-half of any additional amounts in natural  
16 resource, cost recoveries and other associated damages recovered by  
17 the State, along with such additional amounts as may be determined by  
18 the Director of the Division of Budget and Accounting, in consultation  
19 with the Attorney General, to be necessary to pay for the costs of legal  
20 services related to such recoveries, shall be deposited into the  
21 Hazardous Discharge Site Cleanup Fund established pursuant to  
22 section 1 of P.L.1985, c.247 (C.58:10-23.34), and are appropriated for:  
23 direct and indirect costs of remediation, restoration, and clean up;  
24 costs for consulting, expert, and legal services incurred in pursuing  
25 claims for damages; and grants to local governments and nonprofit  
26 organizations to further implement restoration activities of the Office  
27 of Natural Resource Restoration. Recoveries in excess of the amounts  
28 appropriated pursuant to this paragraph, consistent with the terms and  
29 conditions of applicable settlement agreements or court rulings, shall  
30 be deposited in the General Fund as general State revenue.

31 (cf :P.L.2014, c.14, s.1)

32

33 2. This act shall take effect immediately.

34

35

## STATEMENT

37

38 This bill amends the Fiscal Year 2015 annual appropriation act  
39 to ensure that one-half of all amounts of natural resource recoveries  
40 and associated damages recovered by the State, in excess of \$50  
41 million, are deposited into the Hazardous Discharge Site Cleanup  
42 Fund and are appropriated for: direct and indirect costs of remediation.

**EXPLANATION** – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

**Matter underlined thus is new matter.**

**A4281 MCKEON, SCHAER**

3

1 restoration, and clean up. These appropriated funds are also to be  
2 available for costs for consulting, expert, and legal services  
3 incurred in pursuing claims for damages; and grants to local  
4 governments and nonprofit organizations to further implement  
5 restoration activities of the Office of Natural Resource Restoration  
6 in the Department of Environmental Protection. Without the  
7 enactment of this bill, all amounts of natural resource recoveries  
8 and associated damages recovered by the State in excess of \$50  
9 million during this fiscal year, will be deposited in the State  
10 General Fund as general State revenue.

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pnf: 1-62

**(This is an excerpt of the Assembly Judiciary Committee Meeting held March 19, 2015, regarding the discussion of the ExxonMobil proposed settlement, and Assembly Bills 4307 and 4281.)**

**ASSEMBLYMAN JOHN F. McKEON (Chair):** Welcome, everyone. Sorry we're starting a couple of minutes late.

We will start with a roll call.

I do want to start with -- before we go there -- that Assemblywoman Schepisi is not here today. She's had a certain health episode; and at least I have, and I know many of us have ,reached out to her to wish her the best. We miss her, and hope that she'll be back soon.

But we do welcome the Assembly Minority Leader, Assemblyman Bramnick. Welcome; thank you for being here, and we look forward to working together today.

**ASSEMBLYMAN BRAMNICK:** Thanks, Chairman.

**ASSEMBLYMAN McKEON:** Roll call, please.

**MS. GARCIA (Committee Aide):** Assemblyman Bramnick.

**ASSEMBLYMAN BRAMNICK:** Present.

**MS. GARCIA:** Assemblyman Carroll.

**ASSEMBLYMAN CARROLL:** Here.

**MS. GARCIA:** Assemblyman Wimberly

**ASSEMBLYMAN WIMBERLY:** Here.

**MS. GARCIA:** Assemblyman Lagana.

**ASSEMBLYMAN LAGANA:** Here.

**MS. GARCIA:** Assemblywoman Quijano.

**ASSEMBLYWOMAN QUIJANO:** Present.

MS. GARCIA: Assemblyman McKeon

ASSEMBLYMAN McKEON: Present.

MS. GARCIA: Thank you.

ASSEMBLYMAN McKEON: All right. We have an aggressive agenda. We're going to begin with the first of what will be hearings relative to the Bayway settlement. We will then move forward with our regular agenda, including several pieces of legislation that are somewhat related to that circumstance.

We had an invited list of individuals; we decided to expand beyond that invited list. But beyond the Mayor of Linden and the Mayor of Bayonne, we also have Debbie Mans from Baykeeper. Thereafter, we're going to open it up to others, but we want to keep it to -- hopefully keep this hearing to no more than an hour or so, as we do have other components of business to get through. So we'll see how many others sign up, and we'll deal with, maybe, time limitations thereafter.

So again, thank you, everyone, for being here; and thank you to the Speaker for vesting the Judiciary Committee with the authority to look into something that's very critical to the State of New Jersey -- both as it relates to this particular site, and as it relates to our perspective on a going-forward basis as to how we're going to deal with individuals who pollute our environment.

And I'm going to ask you all for a deference, knowing -- for about five or six minutes. I want to set us up, the best we can, as to what the goals are of the Committee and what this is all about.

So the Bayway -- just as it relates to the history, if you don't already know -- is a total of about 1,600 acres; 1,300 acres in Linden and

228 acres in Bayonne. The Linden site had been operated as a refinery from 1909 through 1972; it was sold in 1993. And the Bayonne site -- it goes back to, actually, 1879 through 1972, where they operated as a refinery. Beyond the refinery, at some point in the 1950s it was interconnected between those two particular towns that sit on the Hudson Estuary. There were petrochemical plants that were involved; there were smelting facilities -- you name it, it happened there.

The owner, if you will, or responsible party relative to that history of operation is ExxonMobil. I believe Phillips Conoco owns it currently, but the circumstances regarding the pollution are the responsibility of that company and all of its predecessors. I guess they go back to Standard Oil.

I'm not going to get into the great ecological detail, but keep in mind: Over 7 million gallons of petrochemicals were spread throughout that site through that period of time. Liquid plumes, that were the contaminates, were taken, I think, on 17 different readings and occasions into the aquifer of Bayonne's groundwater. Anything from chromium, to arsenic, to mercury; toxic substances -- whether they're compounds or chemicals -- are replete throughout that section. I don't think there's any argument about any of that.

So how do we find ourselves here? Going back to what was the public trust document in 1977, this Legislature went forward with something known as the *Spill Act*. And the Spill Act required that polluters like this restore, replace, and clean up the ecological hazards that they created. In 1979 the legislation was amended, then all the way to 1990

when a component was added known as -- we all say *NRD*, but it's Natural Resource Damages.

And what was that? It was an expansion on just cleanup; really, frankly, to create a hammer on behalf of the people of the State of New Jersey to get individuals who were polluters to clean up sooner, as well as to, again, compensate the State and the people of the state relative to the damage that was done.

So what *NRD* did was *a*) number one, said there had to be remediation; the Spill Act always did. Basically, there had to be cleanup to standards. It said there had to be restoration. And what restoration meant is that primary restoration -- meaning it had to return to precondition discharge. That makes sense, right? And then the third part was replacement. Now, the first two -- remediation, meaning the cleanup and restoration -- primary restoration -- are really the economic damages, if you will. This is what it costs to clean up; this is what it's going to cost to restore it as to the way it used to be.

The third part is really the noneconomic damages -- the replacement of services. There's a large timeframe, going back 125 years, when the 14 million people, alone, who live in the Hudson-Raritan Estuary were without all of the benefits of the ecosystem -- you know, anything from the human use, the flood and surge protection, the habitat. So that's what that third component of the statute was about; that is the State law. So those three things.

So let's fast forward a few years to 2002. And Governor McGreevey, with Commissioner Brad Campbell, went forward with an initiative saying, "Hey, we're going to look at all the sites throughout the

State of New Jersey and we're going to use NRD, if you will, as the hammer to get them cleaned up and to be able to get just compensation. And what we're going to do is, we're going to open up a two-year period for the polluters -- the bad actors -- to come forward and agree with us. This isn't about wanting to litigate for 12 years -- we don't want to litigate. What we want to do is we want you to resolve and settle this with us." And many, many of the bad actors made those settlements, resulting in a lot of cleanups that wouldn't have already or otherwise happened without the NRD hammer that was out there.

Well, one of the bad actors who decided not to make an agreement or deal was ExxonMobil, relative to the Bayway site -- which, by far, is really the worst ecological site. And that's saying something, frankly, as far as the history of New Jersey and a lot of the Superfund sites, sadly, that have been here -- the Passaic River and many of the other sites. But the largest, by far.

And ExxonMobil, in 2004 -- if that was even their name then -- said that they were going to stonewall. They weren't making any deal.

So henceforth -- basically 12 years of incredibly contentious litigation -- 2007-- The Appellate Division said, and made it clear, in 2007 that ExxonMobil would be responsible for the second (*sic*) two parts of those damages: primary restoration, as well as the replacement services. And it went to the Appellate Courts; cert was denied by the Supreme Court. So that changed. We won; the State won as of that fight that Exxon went forward.

They continued to litigate and, in 2009, the State won again because ExxonMobil was saying, "Well, listen. We may be responsible; that

might be what that finding is, but it will be -- it can only be from 2002 and forward," or 1999 forward -- whatever they would try to say is as it relates to when there were amendments to those laws. The court said, "No; uh-uh. You're responsible under the law retroactively back to the time when this occurred, and for that whole and complete period."

So what happened: The State's case continued to get stronger. And as it became stronger, and as the State continued to be stonewalled, they went forward with a damages trial -- a damages-only trial with liability having been established. That damages-only trial -- very capably handled by outside counsel and a combination of internal professionals out of the Attorney General's Office -- went on for 55 trial days; three, four months -- whatever it might have been. Final briefs, which -- I'm bleary-eyed for a reason -- I've gotten through; there are about 800 pages of briefs, which I appreciate the Attorney General's Office's cooperation in providing that to us to preliminarily take a look at -- were finalized in November.

It's my own subjective view -- reading those briefs, and not all that subjective having heard from some of the attorneys who have been involved -- the State's case went in very, very well. Components of the Exxon experts admitted, before the trial judge on damages only, that there were components of the statute that they didn't look to as it related to the statutory damages guidelines, based on their reports that they put forward.

Now, what report did the State put forward? The State, during trial, principally, with a number of experts, utilized a world-renown expert, Dr. John (*sic*) Lipton. And Dr. John Lipton put into evidence, under the rigors of trial, \$2.63 billion as it related just to primary restoration -- just for putting things back the way that they were before the bad actor polluted to

the extent they did; and another \$6.3 billion and some change relative to compensatory restoration for those 100 years or so. And it gets very complicated; he didn't always use 1869, or a lot of different benchmarks, depending on the type of damages it was. But the bottom line is the State put in an expert who did an excellent job and an excellent presentation, showing \$9 billion of damages after this three-month trial -- or 55-trial-day-trial.

And thus was the settlement.

This hearing isn't about -- certainly not at this phase -- as to who negotiated the settlement, and for what reasons, or any kind of motivations. I'm not touching any of that. We're just going to look to the merits of the settlement. And the \$9 billion that was up on the board after 12 years of contestuous litigation was settled for \$225 million. And that's where we find ourselves.

Now, we haven't seen the full, complete detail of the settlement. We've seen different things come from through the press and otherwise. We know that it will be published no later than April 8. It could have been before; it could be tomorrow. I was hoping that it would be published before this hearing, which would make our job and our task even more defined and more clear.

So we don't have those details, but we did get a letter from the Attorney General making it clear that primary restoration is not a part of what was agreed to by ExxonMobil; but rather, they've agreed to clean up the property, as they are required to do under the law, as they have been doing by a consent decree going all the way back to 1991.

So let's make it absolutely clear, as we understand it from the letter we got just this morning from the Attorney General: The total sum of this settlement is \$225 million beyond the cleanup that was already entered into. So there's no primary damage -- primary restoration that's also a part of it. If it was, we might all be looking at this in a lot different way.

Now, let's talk about attendance of today's hearing. The Attorney General was invited, as was Commissioner Martin. I respect both of those gentlemen; both of those gentlemen spent a significant amount of time speaking to me directly, relative to their position on this. But at the end of the day -- and I will explain to you why, and they can speak for themselves -- felt that it wasn't appropriate at this juncture to appear before this Committee. And the reasoning was that if they were here to justify -- in whatever way they were going to -- the \$225 million settlement versus the \$9 billion that was put forward in the damages trial, and the judge rejected it, then they would find themselves in a compromised position in having to go back to the drawing board and to continue to litigate this matter -- having made their opinions known.

I don't know if I agree with them -- as they have made their opinions known, certainly, through the press and through advancing this to the stage of asking for the settlement to be approved -- but I do respect it. And, again, I respect both of the individuals' offices and the integrity of the two individuals as people.

If they were here, I think they'd say it's the largest NRD settlement in the State's history; and that might be true. But it's the largest problem, by far, of any. And again, in the wake of the 14 years -- or 12

years, at least -- that Exxon has put us through, everybody can draw their conclusions after we get through testimony, and then the next step of this.

Once this is published, under our laws -- and at this point the Commissioner has limited it to a 30-day review period -- there is a public comment time. And I'm certain there will be interest groups, stakeholders, and otherwise who may be, in a nonpartisan and intelligent way -- will weigh in to the Commissioner; the Commissioner will be in a position to have to respond to that public comment, and that will all go into the evaluative process of the judge.

The standard review of the judge is in the public interest, with due deference to that of the agency -- meaning the Commissioner. I'm hopeful, at a minimum, that Commissioner Martin will make certain that he keeps very much an open mind as it relates to the comments that will come through this time, as it relates to the big picture policy issues that will come in light of this kind of a settlement.

Now, one of the pieces of legislation -- one of the goals of this Committee is to ask and to beseech this Administration, the Attorney General, and the Commissioner to expand the 30-day review period. I don't know how any intelligent person could reasonably argue that, after 125 years in the making, after 12 years of litigation, and after a 55-day trial, to allow the public -- the 9 million of us here in New Jersey -- just a 30-day window to comment could be equitable. We're going to move a piece of legislation today that will make that number at least a minimum of no less than 60 -- expanding it from the current law, from 30 to 60. But the Commissioner has the discretion to expand that to 60, to 90 days --

whatever he thinks is fair to allow everyone to have the opportunity to really look at this and make a comment. And it's too important not to.

The second aspect of this -- and, again, I would like this Committee to hear both from the Attorney General and from the Commissioner -- but I'd also like to hear from the career attorneys out of the AG's Office who have lived this for the last 12 years. I'd like to hear from the attorneys out of Louisiana who have litigated this. Whether that will be done through subpoena; whether that will be done at some point voluntarily; whether the settlement, if it's approved, will happen in hearings that will occur thereafter -- it's too important not to vet.

There's another aspect that this Committee is going to think about -- and that is oversight. There was one of the recent cases where documents appeared where DuPont, in a cleanup, said-- and this is from them, "We pulled the wool over DEP's eyes. We buried them in paper." Now, I don't mean to cast aspersions to DEP and not being capable of overseeing such an incredible project as it relates to just the cleanup component, but that's critical here. It's critical as to the discretionary standards that might be there, and what the cleanup is actually going to be. And it's critical as to whether or not we've got the manpower and ability to actually look over it. If anything, DEP has been down by a significant number of staff and other professionals who would have the expertise to oversee whatever cleanup is going to continue to occur.

Another point that we will go through will be budgetary. Now, the Governor's budget is out; I'm privileged now to sit on the Budget Committee. It doesn't speak specifically as to why, but this year's budget shows \$110 million that's going to go into the General Fund that came

from environmental cleanups. You know, \$50 million that's going to be used as it should be, of that sum, from environmental cleanup; and another \$60 million that will project to be attorney fees and costs. Now, you add those numbers up and it's \$220 million. I don't know for certain, but I'm going to assume that there's no other major environmental settlements out there, and that that must reference, specifically, what the plan is at it relates to this \$225 million. And I think, in and of itself, that's inappropriate; and we're going to move on a piece of legislation today, that's already come out of the Senate, as it relates to taking a more significant portion of anything that comes out of an environmental award and make sure it gets spent where it should be -- and that's to environmental restoration.

The last piece of what this Committee is going to do -- and, again, I want to make it clear before I panic everybody that this isn't going to all happen today -- is talk about the NRD program in total. How many initiatives have there been by the Christie Administration for the past six years relative to new NRD cases? What does our compilation of NRD cases look like, going back to 2002: allocation of resources versus the benefit of what's come in, relative to not only from a financial perspective but the bigger picture -- the bigger picture of how that's been used to incentivize bad actors to come forward and do the right thing, right away.

And to me, at the conclusion of this -- forgetting about the sum of money for a moment, that \$225 million -- that's what this is really about. This is about having stood toe-to-toe with Exxon, winning every step of the way, and then at the last moment when they were faced with those number of billions, to take a step back. And that's just the absolute wrong signal for everybody -- bad actor that's out there in the future.

So with that, we have, again, several invited witnesses who I will call.

The first will be Mayor Armstead of the great City of Linden. Mayor Armstead will tell you that he's not necessarily an expert in environmental law and/or in settlements, so his role here is to set forth the perspective of the people of the great city that he represents.

Yes -- please, Mayor. And I know that you haven't been Mayor for 125 years, but you represent a legacy of a community that's dealt and lived with this for an awfully long time.

**M A Y O R D E R E K A R M S T E A D:** Thank you.

First, I'd like to thank you for inviting me here.

**UNIDENTIFIED MEMBER OF AUDIENCE:** Could you turn your mike on, please?

**MAYOR ARMSTEAD:** Okay. How do I turn it on?

Good morning. Thank you for inviting me here; I really appreciate it.

My name is Derek Armstead; I am the Mayor of the great City of Linden. My family has resided in this town for over 90 years. I would like to think of myself as part of Linden's past, its present, and with any luck, part of its future.

I have children -- five children -- who live in Linden. I have aunts and uncles who still reside in the town. And what has happened here in Linden -- it's a travesty. We have polluted estuaries, and polluted creeks, polluted ponds throughout our town. My father, and his brothers and sisters -- they were avid hunters and avid fishermen, and they really were able to utilize the land in Linden. And that's something that will no longer

happen -- will never happen again in Linden unless we hold the people responsible for it accountable.

I am deeply concerned with the Governor's deal with regards to the settlement, which I think is pennies on the dollar. And secondly, I just don't trust the large corporations to be responsible enough to clean up. I don't trust them any more than I would trust my 8-year-old daughter to clean her room.

Oversight is required. I just hope and sincerely pray that the United States Senate and the -- I mean, the New Jersey Senate and the State Assembly do what is necessary to hold ExxonMobil accountable. Again, Linden has suffered, I think, more than any other of the towns that are affected by the pollution; and I just feel that your oversight is going to be required.

ASSEMBLYMAN McKEON: Mayor, thank you very much.

Not necessarily as Mayor, but as a citizen of the community, could you give us a general overview of odors, of eye irritation, of air, of--?

MAYOR ARMSTEAD: One of the areas that has been, I would say, specifically hit hardest is an area off of Southwood Avenue. It abuts right to the refinery, and there is a large creek that runs through the remainder of the town. If you were ever to go there -- go down Southwood Avenue -- the smell is horrific. When we have large storms you can actually see the oil that has been there for years; it actually comes to the surface.

We do have some wildlife and some fish in our streams, but I would never think of trying to bring one home for dinner.

ASSEMBLYMAN McKEON: Mayor, thank you for taking the time to come down here. As we talked about the -- we appreciate, and we'll

take your charge and make certain that we fulfill our responsibility to do all that we can to make certain that the right thing is done for the people of this great state and your great city.

MAYOR ARMSTEAD: I just want to conclude with one thing. These waterways -- they belong to the people. We're the owners of the waterways, not the Exxons and the other corporations that foul them up. And they have a responsibility to restore them to what I feel is an adequate -- adequately enough so that the people can appreciate them again. And I just don't see that happening, and I just don't trust any corporation -- specifically, ExxonMobil -- to do what I think is right.

ASSEMBLYMAN McKEON: Okay. Mayor, thank you.

Anybody have any specific questions for the Mayor?

Assemblyman.

ASSEMBLYMAN WIMBERLY: Thank you, Chairman.

Mayor, you mentioned -- and the Chairman, in his great overview -- mentioned some of the issues with this. Are there any health issues, or anything that's been documented as far as cancers, or anything along that nature, of the residents of Linden over this long period of time?

MAYOR ARMSTEAD: Well, I'm not certain that the cancer rate is any higher than anywhere else in that overall area. But with pollution, there does come adverse effects to the community's health. I'm not sure if-- I mean, my grandfather lived -- my grandmother lived to 97; I'm not sure had she not been in Linden, maybe she would have made it to 107. We have no way of determining that.

ASSEMBLYMAN WIMBERLY: Thank you, Mayor.

MAYOR ARMSTEAD: You're welcome.

ASSEMBLYMAN McKEON: Mayor, thank you.

Any other questions?

Majority Leader -- Minority Leader.

ASSEMBLYMAN CARROLL: From your mouth to God's ear.

(laughter)

ASSEMBLYMAN BRAMNICK: Welcome, Mayor. Thanks for being here.

And all of us are seriously concerned about the issues you raised and the pollution. And I think that-- Let me compliment the Chairman by indicating that this hearing is not about motives, but it's about facts.

Do you have any information at all concerning the history of the negotiations here between Exxon, the McGreevey Administration, the Corzine Administration, or this Governor's Administration?

MAYOR ARMSTEAD: I do know that legal action was taken to attempt to hold ExxonMobil accountable. I do know that there was an \$8.9 billion settlement that was proposed. And I do know that somehow it came down to \$200 million, which I think is not fair. And again, I'll say that I do not trust a corporation to be responsible to clean up. You have to have oversight. And I think if we were to be given the \$8.9 billion that we could do a pretty good job of making sure and guaranteeing that the land is cleaned up adequately.

ASSEMBLYMAN BRAMNICK: And I appreciate your comments. I just wanted to know whether you were familiar at all with the negotiations over the past 10 years between prior administrations and Exxon, and Governor Christie's Administration and Exxon. Do you have any specific information concerning those negotiations?

MAYOR ARMSTEAD: Well, not necessarily--

ASSEMBLYMAN BRAMNICK: Whether this is a fair or unfair settlement -- are you familiar with any of those negotiations?

MAYOR ARMSTEAD: Well, not necessarily the specifics of the negotiations, but I will tell you this. That number was bantered about pretty frequently. We felt very comfortable that if that kind of money were to be received for the settlement, that we would have a pretty good chance to clean up these estuaries in Linden. And it was a surprise to me when the information came about that we were settling for \$200 million, which I thought was--

ASSEMBLYMAN BRAMNICK: Understood. Do you have any reason to believe that the judge who has to make a determination whether this settlement is fair is impartial or partial in any way? Do you have knowledge concerning this judge or his inability to be fair?

MAYOR ARMSTEAD: Well, I don't know the judge personally, but I would certainly hope that he's impartial -- being a judge. I just don't feel, again, that the money that is being offered is adequate to clean up the properties. You should--

ASSEMBLYMAN BRAMNICK: I'm clear as to your position. I'm trying to determine, as we move down this process, whether the process with public comment and a Superior Court judge making the determination -- whether or not that's a fair process when it gets to the Superior Court judge's courtroom. So at least on those facts, you have no reason to believe this judge would be unfair, correct?

MAYOR ARMSTEAD: I don't think he'd be unfair. I think he may take a different -- have a different opinion if he would come to Linden.

We could put our boots on and we could walk through some of the marshes in that town. I'm sure that he'd have a different opinion.

ASSEMBLYMAN BRAMNICK: And just my final question -- and thank you, Mr. Chairman.

Have you looked at any prior settlements -- either in New Jersey or throughout the country -- regarding those who pollute and the plaintiffs?

MAYOR ARMSTEAD: Well, it seems to me that history has shown us that the people who pollute are looking to get off as light as they possibly can. We have some other contaminated areas in town; our GAF property, for instance. And it seems to me that corporations feel that they can just put a membrane over polluted land and cover it with dirt, and that's going to suffice and take care of the problem. But what is actually needed, in many cases, is real cleanup. You know, they have the soil removed. And particularly in this case, this soil along the estuaries in Linden should be removed and we should think about restoring some of the native plant species back to the area.

ASSEMBLYMAN BRAMNICK: Thank you, Mayor. Thank you, Mr. Chairman.

ASSEMBLYMAN McKEON: Thank you.

Any other questions for the Mayor? (no response)

Seeing none, you have our abiding respect -- all of us who serve in public service know the person on the front line is always the Mayor.

MAYOR ARMSTEAD: Exactly.

ASSEMBLYMAN McKEON: So congratulations, and continued success.

MAYOR ARMSTEAD: Thank you, thank you.

ASSEMBLYMAN McKEON: Okay.

Debbie Mans of New Jersey/New York Baykeeper.

Debbie, welcome. In the invitation, Ms. Mans requested -- or asked if she could use a PowerPoint, which is our pleasure.

Deb, you look nervous. Come on.

**D E B B I E M A N S:** I'm concerned about how I'm going to work the laptop and speak -- so it's just--

ASSEMBLYMAN McKEON: You know you're among friends and colleagues, all who respect you. So just relax.

MS. MANS: Thanks; thank you for inviting me.

My name is Debbie Mans, and I'm the Executive Director and Baykeeper for New York/New Jersey Baykeeper. And since 1989 we have been protecting, preserving, and restoring the Hudson-Raritan Estuary, which includes the Arthur Kill, Kill van Kull, and Newark Bay.

The Hudson-Raritan Estuary, where the rivers meet the sea, represents a rich and diverse waterway. The Estuary is home to many resident and migratory species and, most importantly, acts as a nursery for fish and wildlife.

However, the long history of human use of the harbor has come with many environmental impacts and challenges. The majority of the region's historic wetlands and much of its forests and grasslands have disappeared in the last century.

The Bayway Refinery has been in operation since 1909 and is located in the cities of Linden and Elizabeth, west of the Arthur Kill -- which is that tidal straight between Staten Island and New Jersey, in case

folks don't know -- and covers approximately 1,300 acres. Industrial activities at Bayway have included oil refining, distillation, catalytic cracking, finishing, and blending processes to produce petroleum products such as butane, propane, gasoline, liquid petroleum gas, jet and diesel fuels, heating oil, mineral oils, and asphalt, plus other chemical processing.

The Bayonne Refinery currently covers some 288 acres in Bayonne on the Kill van Kull and the Upper Bay of New York Harbor. And that refinery has been in operation since 1877. Industrial activities at the site have included crude oil distillation, petroleum storage, chemical and asphalt manufacturing, and wax production

ExxonMobil contaminated, damaged, or destroyed 551 acres of intertidal salt marsh connected with subtidal and intertidal creeks; 626 acres of freshwater forest and meadow habitat; and 149 acres of upland forest at the Bayway site alone in their bid to dump toxic waste at little to no cost to themselves.

ExxonMobil uses Morses Creek as a discharge trench for the refinery's wastewater, and it also receives contamination from other facility operations and discharges. These documents I'm showing now are taken from court documents that we obtained through a court file review at the courthouse. And they are available on our website.

Sediments ranging in thickness from 1 foot to 11 feet are characterized as "gelatinous, oily emulsion overlaying gray silt." In Bayonne, a sheetpile dam was installed in an attempt to slow down the migration of oil and contaminated sediments into the Kill van Kull, essentially turning Platty Kill Creek into an oil collection basin.

At the sites, petroleum products and refinery waste products were spilled, discharged, or discarded on the ground and in the water. Chemical wastes were generally routed into low-lying wetland areas adjacent to refinery operation. Dredge materials that were then used to fill salt marshes commonly contained high concentrations of petroleum products, chemicals, and metals. Today, many of these dredge fill areas still look and smell like petroleum waste.

Almost 600 organic contaminants have been detected in soil and/or sediment samples at the refineries. As the State's expert witness reported, "Groundwater contamination is pervasive, and soil and sediment contamination is ubiquitous at the Bayway Refinery. To eliminate sources and pathways, and to restore the ecological integrity of the site, soils and sediments throughout the site must be replaced with clean materials."

But ExxonMobil has something different in mind. In internal Exxon documents obtained through a file review of the court materials, it specifically states that, "The key to lowering costs is to change the rules of the game."

Exxon further states that, "In 1995, we screened a wide range of options for the long-term remediation of the site. The key regulatory issue for the project is whether or not we can negotiate a non-permanent solution versus a permanent solution with the State. A permanent solution, in DEP terms, is a remedial action for which, upon completion, the land use is unrestricted. The State prefers permanent remediation, but the regulations allow non-permanent solutions.

"As you can see, there is a large premium for the treatment or permanent fixes. Containment, in combination with a long-term

management program, is the most cost-effective approach.” And in the second document, that I don’t show here but, again, is on our website, Exxon states, “We are targeting a soil-only cover in our approach.”

Exxon documented that its key strategies for the Bayway site included, among others, utilizing variances to regulations to obtain flexibility; focus on groundwater to reduce scope of soils investigation; relax groundwater standards and minimize treatment requirements; and limit requirements for contaminated soils through isolation, containment, and administrative controls.

Anyone who thinks that ExxonMobil will complete a comprehensive cleanup of these sites is dreaming.

New York/New Jersey Baykeeper has been closely following the natural resource damages lawsuit against ExxonMobil for several years, and we can envision a different future than the one planned by ExxonMobil. As certified by the State, in 2002 the DEP initiated a natural resource damages initiative in order to address the liability of responsible parties for the restoration of natural resources contaminated by hazardous substances. When a natural resource has been damaged or destroyed by a discharge of a hazardous substance, restoration requires that the resource be returned to the condition it was in prior to the discharge. This is called *primary restoration*.

The estimated cost of onsite restoration at the Bayway and Bayonne sites, implemented over the course of many years, is \$2.5 billion. If a resource cannot be restored, the public is entitled to the replacement of the lost resource and its services. Between the time of the discharge and the completion of the restoration or replacement, the public has been deprived

of the uses, values, and benefits that the resources would have provided. This loss is often termed *compensatory restoration*.

The total cost of offsite replacement actions or compensatory restoration for the Bayway and Bayonne sites is \$6.364 billion.

Again, in the State's own certification, "Implementation of the proposed restoration plans would result in the return of natural resources damaged and destroyed by ExxonMobil's discharging of hazardous substances. Tidal wetlands are one of the most productive ecosystems on the planet, and their restoration, especially in the highly urbanized and developed region of northeastern New Jersey, is an important goal of the Department of Environmental Protection, and extremely important to the citizens of New Jersey. Restoration would provide the Arthur Kill region, which currently has limited open space and recreational opportunities associated with functioning natural ecosystems, with unparalleled public use potential that has been unavailable due to the degree of the contamination at and adjacent to these sites."

This is what must happen next. We need a meaningful public process. This litigation has taken place for over 10 years and has generated over a dozen boxes of materials at the Union County Courthouse alone. Thirty days is simply not enough time to have a meaningful public review and comment of this complex contaminated site. Typically, these types of public reviews are given more time and have public hearings in the impacted communities.

We need a transparent public process. The proposed settlement wraps in sites that were not part of the original litigation, including pending and potential NRD claims involving refinery operations

in Paulsboro, and NRD claims pertaining to 16 additional facilities and ExxonMobil's retail service stations. Information on those sites, pending NRD claims, and how the State reached a settlement in those cases that have been included in this settlement must be made available.

Generally, NRD settlements are publically noticed in the New Jersey Register, then have a 30-day public comment period. New Jersey DEP then prepares a responsive document to public comments; and submits that document, along with its recommendation to accept or reject the settlement based upon a review of public comments, to the judge.

Here, New Jersey DEP Commissioner Bob Martin has short-circuited this process by already publically supporting the settlement in a joint press release with the Acting Attorney General, which calls the settlement "historic" and the largest in the history of the state. What value is there in having a public comment period when the agency has already publically drawn its conclusions on the settlement?

The law requires more than a checking of the box, especially when the litigation was brought over our natural resources that the New Jersey DEP holds in trust for us. The public is the check on New Jersey DEP, and we must ensure that there is no bias by the State agency before the public process has even begun.

In the words of one our New York/New Jersey Baykeeper members, "For far too long, too many urban residents took industrial contamination for granted as a part of urban living. Your efforts will help urban residents to understand that they should be able to enjoy their natural resources for recreation and education. Settlement monies should

be invested where the contamination occurred to restore environmental resources."

There are very real consequences to communities, wildlife, and the environment from sites like Bayway and Bayonne, and we need a government that looks out for our interests, not the corporate interests.

Thank you for the opportunity to testify today on this important matter.

ASSEMBLYMAN McKEON: Thank you, Ms. Mans, for that scholarly presentation.

Now, I have a couple of things I'd like to point to, and ask you to expand on them.

The AG, again, was good to us in getting us those trial briefs and reply briefs, and all that. But we have a dearth of information regarding those 16 other sites. You seem to know a little bit more than that. And just so it's clear -- beyond the Bayway settlement, there are 16 separate sites that are also a part of this settlement where Exxon -- that \$225 million encompasses environmental damages for those as well.

MS. MANS: Well, so if you look in the fine print of the Attorney General's press release a couple of weeks ago you will see, kind of at the end, this listed. So I'm just taking information I obtained in that press settlement (*sic*). And I know nothing more about those sites except that somehow we're seeing them settled.

ASSEMBLYMAN McKEON: Okay.

The second question is: I'm assuming that you're familiar with Dr. Lipton's report that was the primary basis of the State's damages case?

MS. MANS: Yes.

ASSEMBLYMAN McKEON: And you reference the \$2.6 billion that, again, was economic damages to the extent of the primary restoration. Can you just expand upon that again, relative to what that would do concerning the loss of these resources for the past 125 years?

MS. MANS: Right. So you can't do a restoration on the site unless you clean it up, and remove the contamination, and get back to the wetlands that have been buried. And this can be done; I mean, it's not like a pie in the sky idea. And so the \$2.6 billion includes the cost of excavating and properly disposing of the contamination. So it's very clear, when you have a settlement of \$225 million, that will not allow you to do restoration on the site because it's not nearly enough money to do the removal of the contamination.

ASSEMBLYMAN McKEON: Questions for Ms. Mans?

Absolutely -- Minority Leader Bramnick.

ASSEMBLYMAN BRAMNICK: Thank you for being here, and I thought your presentation was very articulate, and we appreciate the work that you do.

The questions I have -- maybe you can clarify some information that was brought to us by the *New York Times* online today.

MS. MANS: Yes.

ASSEMBLYMAN BRAMNICK: They apparently talk about a history of negotiations here by the Democratic Administration, and now by the Christie Administration. It appears that some demands were made -- at least if we believe the *New York Times* -- in the hundreds of millions, which is somewhat in line in terms of the hundreds of millions this case was settled. In addition, there is some comment that I read that Bradley Campbell, the

prior DEP Commissioner, indicated after a successful Union County Courthouse victory -- said, "We could have damages in the hundreds of millions."

Is there anything you know about the history of these negotiations, where all of the prior Attorneys General and/or Commissioners apparently demanded hundreds of millions, as opposed to many billions? Do you have any information concerning those prior negotiations, or why that would have been, prior -- if it's true, why the demands would have been in the hundreds of millions?

MS. MANS: You know, I don't have any personal information about the negotiations, but I can say, on two points: One, so for example, I think the *New York Times* also references the Corzine Administration's offer was made before the 2009 letter opinion from the judge which allowed the retroactive application of the Spill Act. So that allowed the State to not just look to when the Spill Act was enacted, but to go back to the start of the contamination. And so that really changes the number of the lost use compensation, because now you can go back 100 more years. And the formula that is used-- I mean, these numbers don't come out of thin air. There's a formula that's used, and used by the Federal government to assess natural resource damages. That, then, was applied over 100 years, as opposed to that. So I think that's one thing to keep in mind.

And the second thing -- with respect to former Commissioner Campbell's remarks -- those were done prior to the release of the expert report on the natural resource damages -- the Lipton report -- which I think, for the first time, quantified the number. So I think those two things, just

as an outsider, that you need to keep in mind when people talk about those numbers.

ASSEMBLYMAN BRAMNICK: If we were to learn that the prior negotiations incorporated a belief that it would include restoration -- or should I say, would include damages before the Spill Act, the date of the Spill Act -- would that be disconcerting to you if any administration had demanded hundreds of millions, as opposed to billions? Would that-- If they knew, or they believed that, included in that damages would be things before the Spill Act -- which was a 2009 determination-- That would be disconcerting too you if the demands were made within the hundreds of millions even if they knew all the facts that you just told us about, correct?

MS. MANS: Well, I-- You know, I'm not sure I can agree with your hypothetical, because they didn't. I mean, they didn't have the opinion from the courts saying-- And, you know, that was precedent, I believe, for the State. So I don't think if I -- I am an attorney, but I don't practice in New Jersey -- I would be applying a standard that had not yet, as you know -- a precedent been set in the State.

ASSEMBLYMAN BRAMNICK: That's a fair answer.

MS. MANS: Okay.

ASSEMBLYMAN BRAMNICK: Are you familiar with any of the other litigation throughout the country regarding Exxon and the results of litigation against Exxon nationally in these types of cases?

MS. MANS: You know, I don't know, personally, too much. I do talk to other waterkeeper organizations, obviously, internationally and nationally, and we do know that the *modus operandi* of Exxon is to offer zero. And I understand that. But that-- We had won the case; New Jersey won

the case on liability, so I think -- You know, it's hard to compare those cases.

ASSEMBLYMAN BRAMNICK: Thank you. I just have one--

ASSEMBLYMAN McKEON: Let the witness finish her answer.

ASSEMBLYMAN BRAMNICK: Sure; of course, your honor.

ASSEMBLYMAN CARROLL: Thanks, Judge.

ASSEMBLYMAN BRAMNICK: Sorry about that; you're absolutely-- (laughter) Sorry about that.

So with respect to Exxon, I would agree with you that my experience in observing Exxon is they very rarely settle; they litigate for as long as they can, from what I understand; and they appeal everything. So all of the decisions, including the 2009 decision, were subject to a subsequent appeal -- or should I say, a later appeal.

So we understand we're dealing with a company that litigates quite a bit, and very difficult to settle with. At least, that's your understanding, correct? That they tend not to settle very easily, correct?

MS. MANS: I don't know anything specifically about this case, but--

ASSEMBLYMAN BRAMNICK: Generally, I think what you indicated is that they're -- that they do litigate for a long period of time. And as you said, offer zero; and those litigations do go on for a long time. That's fair?

MS. MANS: Yes, they do have the resources to do that.

ASSEMBLYMAN BRAMNICK: Right. Thank you very much. I appreciate your time.

MS. MANS: Thank you.

ASSEMBLYMAN McKEON: We can take judicial notice that Exxon is an aggressive litigation monster. And until they're forced and are up against it, don't want to pay.

ASSEMBLYMAN BRAMNICK: Absolutely. And the reason I'm asking this question is, we're looking at this settlement in a global way. Clearly the damages are serious; and I don't doubt that. I'm trying to determine here whether or not this is a case that the settlement here -- that apparently is going to go before the court -- has any rational basis whatsoever; or is it fair. And that's the reason I ask the questions.

Thank you.

ASSEMBLYMAN McKEON: And Minority Leader, we have the same goal.

ASSEMBLYMAN BRAMNICK: Thank you; that's terrific.

MS. MANS: Yes, and just-- And in response-- Yes, go ahead.

ASSEMBLYMAN BRAMNICK: I'm sorry; sorry about that. I didn't want to interrupt the witness.

ASSEMBLYMAN McKEON: Is there a question, or--

MS. MANS: Yes, just in response to that. I mean, we've never seen a damage claim this high in New Jersey. So I think to try to compare it to other NRD claims is hard to do. I think the largest one I know of is the Passaic River one -- and as a site with many different defendants, that settled for \$355 million total just, you know, over the last year or so. But that -- the damages claimed there weren't anywhere near \$8.9 billion.

ASSEMBLYMAN McKEON: Well, if I may, with the prerogative of the Chair, I'm going to correct you.

MS. MANS: Oh, okay,

ASSEMBLYMAN McKEON: The Passaic River case, as it relates to the NRD damages, has not been heard yet. That's been reserved--

MS. MANS: Oh.

ASSEMBLYMAN McKEON: --on the basis that it's a Superfund site and Federal is preempting. So the NRD chapter isn't written as it relates to the Passaic River yet.

MS. MANS: Thank you.

ASSEMBLYMAN BRAMNICK: Thank you, Chairman.

ASSEMBLYMAN McKEON: Question?

ASSEMBLYWOMAN QUIJANO: Yes, I have a question.

Do you have a sense of Exxon complying with the two Administrative Consent Orders to remediate both the Bayonne and Bayway sites?

MS. MANS: So we're still trying to obtain documents and reviewing the documents that we have. But that ACO was signed 24 years ago; and to my knowledge, what they have done is done site investigation, some soil stabilization, and pump and treat of groundwater. If Exxon were here today, I'm sure they could provide you with more details.

ASSEMBLYMAN McKEON: Okay.

ASSEMBLYWOMAN QUIJANO: I have a second question.

ASSEMBLYMAN McKEON: Please. And I know that you're--

ASSEMBLYWOMAN QUIJANO: And I apologize for my voice.

ASSEMBLYMAN McKEON: The whole State has a great interest in this, but you a particular one as the towns and the area is in your District.

ASSEMBLYWOMAN QUIJANO: Yes. How extensive would you say the groundwater contamination is?

MS. MANS: So the documents reveal, especially in the Bayonne site, that it's extensive. There are 7 million gallons of petroleum product -- waste -- that's either in the soil or floating on top of the groundwater in plumes underneath the Bayonne site.

ASSEMBLYWOMAN QUIJANO: Okay. And you also said -- wait a minute -- in your presentation that the Morses Creek site was used also -- it received contaminates from other areas?

MS. MANS: So it-- My understanding is that in addition to the petroleum waste, it was also used as a discharge trench from the other facility operations and discharges. So it wasn't just oil production and refining at the Bayway; it was a lot of chemical processes as well. And actually, the Bayway site now currently is a site that accepts millions of gallons of crude oil from the Bakken fields, via the waterfront, at this point. So just to put in context the scope of the site and its current operations.

ASSEMBLYWOMAN QUIJANO: Okay, thank you.

ASSEMBLYMAN McKEON: Any other members?

Assemblyman.

ASSEMBLYMAN LAGANA: Thank you, Chairman. Thank you for your testimony.

ASSEMBLYMAN McKEON: Assemblyman, if you need to, you can take an Uber up and down to the Transportation Committee. (laughter)

ASSEMBLYMAN LAGANA: That's a whole other issue.

The way I see it, obviously there are three aspects of this claim: There's the cleanup, there's the restoration, and then there's the compensatory restoration. Is that correct?

MS. MANS: The cleanup is under -- it's not part of the litigation. It's under the oversight of New Jersey DEP as a separate track.

ASSEMBLYMAN LAGANA: And their liability has already been established on the cleanup. Exxon -- however long it takes, whatever it takes -- they have to clean up this property, correct?

MS. MANS: That's my understanding of it -- well, under the Administrative Consent Order. And it just depends on your definition of how *clean* is *clean*.

ASSEMBLYMAN LAGANA: My next question is geared towards restoration, which I think is a very important part in this whole scenario.

Now, logically, time-wise, what does restoration look like? I know the number you put on it is \$2.5 billion. What does a restoration of the site look like? I mean, what are we hoping to achieve at the end of the day with a restoration?

MS. MANS: Right. So the Lipton report that was part of the court documents outlines a conceptual restoration design. And they looked at the inactive areas of the site; and it's hard to tell, because it's iced up. But this is a view -- again, looking over Morses Creek, which we know is

contaminated. So for example, you could be removing the contamination, restoring the ecological functions of this creek, and additionally doing a lot of wetland restoration on the site. We know underneath all of that contamination there's still, what they call, *marsh meadow mats*. So you know the system is there; it wants to -- if given the chance, it can come back. But you, again, need to clean it up to do that.

And we know that wildlife is in the area. I mean, I think folks have a perception about the Arthur Kill and Linden -- that it's just all paved; but it's not. And there are beautiful pockets of natural resources in and around that area. In the harbor we know that harbor herons forage in this area. So we're also putting wildlife at risk from exposure to the contamination.

ASSEMBLYMAN LAGANA: And the cost estimate of that was \$2.5 billion?

MS. MANS: For the primary restoration on site, yes.

ASSEMBLYMAN LAGANA: And the compensatory restoration would be \$6.3 billion -- which would, basically -- because of the damage caused at the (indiscernible), correct?

MS. MANS: Correct. And so that was-- They calculated looking at offsite mitigation, and then they listed -- I should say, the experts listed a number of opportunities in the area to do restoration work.

ASSEMBLYMAN LAGANA: So the actual settlement that we've been hearing about -- the \$225 million -- what is your understanding as to how this would -- where this would go? I mean, what would this be used for?

MS. MANS: You know, I have no idea, because the State won't release any of the details of it.

ASSEMBLYMAN McKEON: I have that answer. Most of it's going into this year's budget.

MS. MANS: Right.

ASSEMBLYMAN LAGANA: Thank you.

MS. MANS: Thanks.

ASSEMBLYMAN McKEON: Any other questions for Ms. Mans?

ASSEMBLYMAN CARROLL: Chairman, if I may?

ASSEMBLYMAN McKEON: Of course.

ASSEMBLYMAN CARROLL: Thanks.

You're an attorney, I think. Did you have a chance to read Exxon's brief in this case?

MS. MANS: I haven't had a chance to read all the briefs.

ASSEMBLYMAN CARROLL: I can't say I blame you. Going on at great length, as the Chairman said, it's many, many, many pages.

But I just pulled it up in front of me again. Any time you have litigation, there's always, of course, a possibility that they're actually right. Is that correct?

MS. MANS: Of course.

ASSEMBLYMAN CARROLL: And are you aware of any other cases that the State has ever tried for natural resource damages?

MS. MANS: The Passaic River case. Is that what you mean?

ASSEMBLYMAN CARROLL: That's not been tried, has it, Mr. Chairman?

MS. MANS: Well--

ASSEMBLYMAN McKEON: I think it was tried -- not to a conclusion.

ASSEMBLYMAN CARROLL: Okay. Well, have there been any cases which have gone to a judge's decision for natural resource damages claims in New Jersey that you're aware of?

MS. MANS: You know, not that I'm aware of, off-hand.

ASSEMBLYMAN CARROLL: Well, if I told you that there were two and we lost them both, would that be the kind of thing that would tend to inspire confidence in the outcome of this particular case?

MS. MANS: I guess I would ask, again, the specifics of those cases and whether it's appropriate or fair to apply them to a case where the liability had already been won, and that they had moved into a damages phase.

ASSEMBLYMAN CARROLL: I understand that.

MS. MANS: I mean, I think-- Yes, I don't want to--

ASSEMBLYMAN CARROLL: Okay. I just-- Again, I'm just looking at the points that Exxon is raising and, again, not being a judge and not having sat through it, I don't know whether or not they're going to prevail or what have you. But they-- And again, Mr. Chairman, you've read them too; it amounts to basically a full-throated assault on the evaluation methods that the expert used, whether or not there was any appropriate baseline upon which the evaluations could be made, etc.

And in any litigation, of course, whenever you have a situation in which you are putting your life into the hands of a guy wearing a black robe, you're probably making a mistake because you don't know how those

things are going to go. It's not quite like going to Atlantic City, but it's close.

Now, there is the possibility, of course, that at the end of the day we could get nothing. Is that correct?

MS. MANS: There's always a risk, yes.

ASSEMBLYMAN CARROLL: And based upon the risk of getting nothing, versus the possibility -- or the certainty of getting \$225 million today, or perhaps getting a judgment-- Again, Mr. Chairman, I think you were correct that although the case -- the State won both the cases in the Appellate Division, it lost, in both, in the Law Division, originally. And so you have a judge who has twice ruled against the State, and was twice -- or, at least in this case, twice appealed, and twice reversed. It's entirely possible -- again, in this particular case -- we'd get nothing today; perhaps there will be an appeal. Maybe we'll get \$1 billion today, \$2 billion today. They'll appeal it for 20, or for 10, 15 years like they did with the Exxon Valdez, or what have you. In your opinion, is the bird in the hand of \$225 million a reasonable settlement to this particular case?

MS. MANS: Again, I-- You know, I just don't think this is fair questioning. Because I listened to your press conference, and you guys were at great pains to say, "Who are we--? We didn't sit in on this to do that." So, you know, I have a hard time understanding how you can flip that and say, "Well, you were--" How is that okay?

ASSEMBLYMAN CARROLL: Are you opposed to the settlement, is my question.

MS. MANS: I'm opposed to the settlement.

ASSEMBLYMAN CARROLL: And you just said you didn't sit on it, so why are you opposed to it?

MS. MANS: Because based on what we understand the liability was determined, and the expert reports submitted by the State about what the damages were, there doesn't seem to me to be a logical relationship between the State's settlement proposal and Exxon. And, of course, if it all goes into the budget, then we're left with nothing.

ASSEMBLYMAN CARROLL: That's an entirely separate matter which we can discuss in another forum.

MS. MANS: All right.

ASSEMBLYMAN CARROLL: But coming back to--

ASSEMBLYMAN McKEON: We're discussing that in this forum today, when we move that bill.

ASSEMBLYMAN CARROLL: Oh, perhaps.

But again, coming back to it again -- if the Corzine Administration was willing to take a \$150 million in cash, and some unknown figure in projects -- which had nothing, by the way, to do with this particular site -- would you say that given that history, that a subsequent settlement acceptance of \$225 million in cash, plus the cleanups, is consistent?

MS. MANS: Again, I think we're looking at a choice or a decision that was made before the expert report on actual damages.

ASSEMBLYMAN CARROLL: When was that expert report done -- do you know, offhand?

MS. MANS: I don't have it in front of me; I think it was November 2006 -- the Stratus report.

ASSEMBLYMAN McKEON: I have it with me; I think you're right.

ASSEMBLYMAN CARROLL: Well, 2006?

ASSEMBLYMAN McKEON: That's when the report was--

ASSEMBLYMAN CARROLL: If I told you that the Corzine Administration made an offer in 2008, would that change your mind?

ASSEMBLYMAN McKEON: Well, now, hold on a minute.

MS. MANS: It sounds like you have information I don't have, so--

ASSEMBLYMAN McKEON: Now, may I-- Excuse me; I'm the Chair.

Are you purporting to have facts from the Corzine Administration?

ASSEMBLYMAN CARROLL: Yes.

ASSEMBLYMAN McKEON: I'm just asking.

ASSEMBLYMAN CARROLL: Just based on what I saw in the *New York Times* today, Mr. Chairman. And as we know, they're never wrong. (laughter)

ASSEMBLYMAN McKEON: So here's my point to everyone. None of us, quite frankly -- beyond philosophically and looking at the facts as we know them to be -- as lawyers are in a specific position right now -- we will be -- but right now to judge. We can circumstantially put things together to say "what were we thinking about," but until we get through trial transcripts, maybe have independent counsel assist with this, I'm going to defer on that final judgment. And I don't think it's fair to put the witness in the position to do the same thing.

ASSEMBLYMAN BRAMNICK: Mr. Chairman, just a quick comment.

ASSEMBLYMAN McKEON: And just for the record, the Corzine Administration -- I think 2009 was last that that Administration was in charge. And there have been five or six years -- five or six painful years; I'm just kidding -- since that time and a 55-day trial--

ASSEMBLYMAN CARROLL: I thought it was 66.

ASSEMBLYMAN McKEON: So different circumstances. And nobody -- and I don't mean to get into this now -- but Minority Leader, nobody knows better than you, relative to what we both do in our practices. A demand based on circumstances is the demand. But after my expert gets on the stand and says, "Yes, he does have a serious brain injury," any negotiations go away. And that's what happened here. The State put on a great damages case where they put \$9 billion, and, notwithstanding that it was refuted by Exxon, to my understanding -- and I'll get to the bottom of reading every one of those trial transcripts -- we had a darn good chance of winning. And that doesn't even get into the philosophical part of the fact that Exxon was allowed to settle this -- basically, what interest would have been going back to 2002 when they should have done the right thing.

ASSEMBLYMAN CARROLL: Okay. May I just ask a question on that, then? Because, Mr. Chairman, again, if I may. Presumably if the trial court judge finds the -- or was going to rule that there were \$9 billion worth of damages or so, he will tell us to go take a flying leap and will not accept the settlement. Because he would then find it's not in the public interest.

ASSEMBLYMAN McKEON: I have no doubt that the judge will do what is fair and reasonable; but remember what that standard is, counsel. The standard is best interest with due deference to the agency. So the judge, like with any other settlement, when both parties come and say, "This is what we want to settle it for," and if the standard is due deference to the agency -- and this being Commissioner Martin -- then I think the likelihood is that he's going to approve it. But, I mean, that's up to the judge, and not for us to get in the midst of.

ASSEMBLYMAN BRAMNICK: Just a quick comment, Mr. Chairman; thank you.

First, let me applaud you, Debbie Mans, for saying that not all the facts were out, and you were, though opposed to it -- as a lawyer, you were indicating we should wait and see what the ultimate facts are -- at least that's what I heard when you were asked some questions by Michael Patrick Carroll. And I think the Chairman said the same thing -- that there have been some negotiations over a long period of time.

My concern has been the rhetoric that has been in the newspaper, where there have been attacks on the individuals -- whether it be the Attorney General, or the Counsel to the Governor, or the Governor -- that there were some motives here that went beyond the best interests of the State of New Jersey. So I'm glad that today we're looking at this in an objective and measured way. And I think that's really important when we look at a settlement like that, and I think the facts will come out to determine whether this is fair and reasonable.

So I want to thank the Chairman for his comments.

ASSEMBLYMAN McKEON: And thank you for making them, and I don't think you had heard any of that rhetoric out of this Committee

--

ASSEMBLYMAN BRAMNICK: No, absolutely not.

ASSEMBLYMAN McKEON: --and any of these individuals.

ASSEMBLYMAN BRAMNICK: And I respect the Chairman, and what you said today, as well as you. And I think that's a really good starting point to look at these facts specifically to this case.

ASSEMBLYMAN CARROLL: Mr. Chairman, could I ask one more question?

Just to follow up on what my colleague said -- is the proposed-- I was listening to your case; I pulled up Bayway on Google Earth to see what it looks like. Is the proposal for the cleanup you're talking about consistent with the operation of a refinery?

MS. MANS: Yes. They specifically looked at the inactive portion of Bayway. As you can tell, it's a huge site.

ASSEMBLYMAN CARROLL: That understates it, yes.

MS. MANS: Yes. So that's specifically laid out in the expert report with the restoration opportunities -- is that they understand, and we understand, that's an active facility that employs a lot of people and that is important to the region. And we've always understood within our estuary there's an operating port. And what you need to figure out is how you make sure that the people who chose to live in this area are protected, and that the wildlife is protected, and that the environment is restored in conjunction with economics.

ASSEMBLYMAN CARROLL: Thank you.

MS. MANS: Thank you.

ASSEMBLYMAN McKEON: Well, there will be no further questions, but I will give you a chance, with knowing there will be no further questions, if you need to clarify anything as characterized by--

MS. MANS: Right. I do want to clarify-- I do not have a New Jersey license, so I certainly don't want the Assemblyman to think that I'm opining as an attorney practicing in New Jersey on whether or not this settlement is good. And as I pointed out, there are a lot of questions around it, because it includes sites not included in the litigation. So it could turn out to be much worse than we anticipate.

ASSEMBLYMAN McKEON: We usually never let our ignorance get in the way of us giving an opinion. (laughter) So we appreciate your caveat.

Thank you very much for your presentation.

We have one last witness who signed up -- Mr. Tittel of the Sierra Club.

Jeff.

J E F F T I T T E L: Thank you; and I appreciate this opportunity.

Because there's a lot of history here, and I wanted to talk a little bit about the history of natural resource damages. Because I think it's important to put it into context.

And the reason I want to do that is because, I think, to know where we've been and how we got here are critical.

But I wanted to start out and say I grew up in Hillside; and I had -- my dad and my uncle worked across the street at the GM assembly plant for many years. And I have many friends who worked at the Exxon

refinery, and actually have a friend of mine who is still there who is head of the union.

And so I know it intimately; I remember when I was a kid we were in downtown Linden the night an empty gasoline tank blew and broke windows all around us. And I remember the smell of the plant and everything else. And so I have a long history there; and the same thing in Bayonne, because I have family over there as well.

And so the point that I want to make is, in dealing with Linden and the damages that that community has faced -- and Bayonne too -- since I've been active in the Sierra Club, we fought a medical waste incinerator there; a hazardous waste incinerator; a coal plant -- many, many different toxic sites -- so, you know, it's a community that has seen a lot of problems.

It also has some wonderful areas. There's a wonderful nature center where there's a former landfill that's been cleaned up and the wetlands remediated. And one of my members has been involved for years in doing that. So it's an interesting mix where you can actually -- in New Jersey it's probably one of the few places where you can have an endangered species on a Superfund site. We have that kind of history.

But I wanted to go into the history of this a little bit. In New Jersey, natural resources are held-- And I know we've had this discussion -- as part of the Public Trust; that that doctrine is within the body of New Jersey's practice, if not spirit. We won an important Supreme Court case many years ago on the Hudson River waterfront based on that. These natural resources -- that include wetlands, tidal marshes, groundwater, stream corridors, areas touched by tides -- belong to all of us and are held in trust by the government for the people. It doesn't belong to you; it doesn't

belong to the Executive Branch; it doesn't belong to the Judiciary Branch -- it belongs to the people in this room and the people in the state.

One of the most, I think, forward-looking bills that this State ever passed -- and was a model for Federal legislation -- was the Spill Act. And the concept of natural resource damages being in there, is that when that use is lost, the public has a right to be compensated from a chemical spill, whether it's delivered accidentally -- it doesn't matter.

And that's really what this is all about. It's about those hundreds and hundreds of acres of wetlands that have been contaminated by oil or other chemicals. It's about groundwater in the millions of gallons that have been contaminated. And it's about fisheries that have been impacted by it, and the wild fowl of the -- and migratory birds that use those wetlands.

What's also critical too, and why we think restoration is so much more important than just remediation, is that you return those uses not only to the people, but to the environment for helping fisheries and for migratory birds. But also, in a tidal state, these areas are critical to absorb stormwater, and tidal surges, and floods. And, quite frankly, one of the reasons the storms get so bad and the flooding gets so much worse is because areas that were tidal, that were wetlands that used to absorb that stormwater, have been filled in and therefore the water goes somewhere else, into someone's home. And, in these cases, in these areas, because these wetlands have been so contaminated, bringing that contamination with them into peoples homes and basements. And that's why I think it's critical.

When I started with the Sierra Club, I was very much involved in the Natural Resource Damage program. At that time, the Whitman Administration saw this as a very important way of compensating the public for that loss in use, and it was also part of her belief and goal in preserving open space and the environment -- it was a major part of it. And I sat there, as part of a stakeholder process, with Rick Gimello, who was head of Site Remediation; and Jim Hall, who was head of Natural Resources. And the concept that was put in place was that it was based on science and formulas. You contaminate  $X$  number of gallons of water; that loss is -- the raw value of that water is worth this much -- that's one price. Each wetland, to restore it, costs this much; that's the next price. And it was actually done as part of a program in DEP with staff. What happened was, because of many -- I'll just say, *outrage* by some in the regulating community -- they didn't like the fact that if they went to get a No Further Action Letter on the site that they cleaned up, and they were going to sell or redevelop, they would have to pay their NRDs. It was almost like an automatic trigger.

And so in 2001, when DEP was going to lose jurisdiction over numerous contaminated sites because the statute of limitations was run out, language was added to that bill to say that NRD could not be collected through program. It was actually something where Rich Bagger, at that time, led the fight against it, and it went back and forth between the Senate--

ASSEMBLYMAN McKEON: Jeff, I'm going to ask you--

MR. TITTEL: Okay.

ASSEMBLYMAN McKEON: We appreciate--

MR. TITTEL: I just wanted to give you--

ASSEMBLYMAN McKEON: Please, because we have a lot of other business to get to.

MR. TITTEL: Okay. I just wanted to give that history, because I think it's important so you know.

So after that point, NRD could only be collected basically through litigation. And that's why in 2004 these cases were filed, and that's why, in 2007, more cases were filed -- 120.

So I just wanted to give you a little of that history, because I think it shows how we got here.

I don't know-- And one of my biggest concerns besides what's happening in Linden and in Bayonne -- I've been trying to identify what are those other sites. And from my knowledge of Exxon facilities in New Jersey, some of the ones I had identified originally: the Paulsboro, for the press, the former Mobil facility down there. But Exxon also had a chemical plant in Edison that closed; they have an oil distribution terminal here in Trenton; they had one in Carteret; a research facility that's still operating in Clinton. So I think those are the types of sites that are probably part of the settlement too. And many of them have had tremendous impacts to the environment, and impacts to the groundwater and tidal wetlands as well. And I think that's something that this Committee needs to clarify.

Also we've been involved, for many years, with the MTBE situation -- when these tanks that were supposed to be good replacement tanks turned out -- they were leaking, and groundwater throughout New Jersey from hundreds of gas stations contaminated groundwater. And I know that Exxon and Mobil's facilities in places like Ridgewood, and Bloomingdale, and Butler have contaminated groundwater there.

But we don't know that list. There's at least 300 to 400 of these gas stations in New Jersey; and how many of them leaked, and how much groundwater has been contaminated I think is still a big question out there. And I think that's something for this Committee and for the Attorney General's Office to lay out, because, quite frankly, we think that's sort of important to know what the extent of the settlement may be.

And that's part of where my concern lies, because we don't know that. You know, we do know a lot about the Bayonne and Linden situations, but as I said there are many facilities out there.

We believe that restoration works much better than remediation, because under remediation it's not a cleanup. And institutional controls will fail -- when you bring in fill and you put in a vinyl liner, they will eventually fail, especially in tidal- and flood-prone areas. So one of the concerns that we have is, if we don't restore the wetlands in the Bayonne and Linden areas, in particular, come the big storm whatever controls were put in place could just wash out -- including the fill, including the liners -- putting those contaminates back into the environment. And that's a real concern that we have, as well, as part of it.

We also believe in the principle of polluter pay. And we believe that if you've -- not only do you have to clean up your mess, but because of our law and because of our far-reaching goals that we have set in this State, that you need to pay that compensation. We also-- You know, we can talk about that later with the other bills, but historically the money from natural resource damages has gone back to those communities, or back into environmental programs. And I just want to give you a little list of some of the things that NRD monies has done environmentally.

They've paid for the State to buy skimmers in the Delaware River to clean up oil spills. They've been used to remediate contaminated wells in places like Toms River. They've been used to buy open space, and create urban parks and access to our waterfronts and riverfronts. And so there's been a lot of positives from NRD.

And the last thing that I want to leave this Committee with is that we should find out the status of all those 120 cases that were filed in 2007. I know there are still issues out there like the Ciba-Geigy facility down in Toms River, which contaminated a lot of groundwater. There have also been new sites or other areas that have been added to the list since then. We tend to gain new hazardous sites every year. And there are places like Troy Chemical in Newark, and White Chemical in Newark, and others where I have no idea if anything has been filed. And I think that's part of what the Judiciary Committee should also be looking at to see: What is the status of the cases that have been filed; which have been settled; is anything happening with-- And what other important cases may be out there that should be filed? Because we have no idea.

And so we had opposed the settlement because we felt, quite frankly -- and again, I'm not a lawyer, but I've been involved, I was there when Campbell filed these suits originally -- that the public needs to be made whole. I don't know what the final judgment would be; you mentioned earlier about hundreds of millions-- It could be \$200 million, it could be \$900 million, it could be more. We don't know what that number will be. But we do know what the damage has been and what the cost of that damage has been, from that report. But we also don't know what the

damages from all these other sites is, and how much does that also add to that cost.

And I want to leave it there, because I know you have a long agenda. You have a lot of work to do, because we have a lot of unanswered questions.

ASSEMBLYMAN McKEON: Thank you, Mr. Tittel.

If there are any questions -- which I will discourage? (laughter)  
Seeing none, that's all who formally--

Mr. Wolfe, would you want to defer? I'll call you first at the next hearing. What do you think?

**B I L L W O L F E:** (off mike) I submitted written testimony. I'd like to clarify just one point.

ASSEMBLYMAN McKEON: Well, I'll allow you. I didn't see -- we didn't see the written testimony; we'll make sure-- Unless it's here and I just haven't put my eyes on it. But please clarify it.

Mr. Wolfe.

MR. WOLFE: Sure. Bill Wolfe.

We have been long involved, and had done a series of reports on the Natural Resource Damage program -- one of which we petitioned the Comptroller of this Administration, in 2012, to do exactly the analysis that you suggested you're going to go forward with. So that would be a very important point to look at.

And in particular, to Mr. Carroll's point -- while I don't agree with his position, he made a valid point. And part of-- There were three legal cases we cited, and they were all losses. And the State was told-- And in 2004, the State entered into a settlement in one of the cases, with a

judge, that said that they would promulgate regulations to implement this program and make it more enforceable, both legally and scientifically.

And some of those vulnerabilities that Exxon was asserting -- and I read excerpts of their brief -- some of the legal vulnerabilities and technical vulnerabilities could have been remedied had the State adopted regulations that adopted methodologies to quantify and calculate things like loss use and functional value. And they have refused to do so.

So we were hammer and tongs in 2004; and in 2007, and then again in 2012. Finally, so frustrated again in the wake of three courts cases -- one of which included Exxon; and they're in my written testimony that I sent to you guys.

ASSEMBLYMAN McKEON: All right; we'll make sure we get through it.

You said you were clarifying a point, and I let you get up here.

MR. WOLFE: That's the point. But the thing is, it needs to be public-- I think it's a terrible settlement; I think it's a terrible deal. But the point is, there are valid arguments that can strengthen the program and it not be firing on one cylinder. So this pennies on the dollar claim is a structural problem in that program-- And I disagree with the Republican side on this question, but they're making valid points. And if we're going to go forward, we need to strengthen and improve that program. That's been my interest from the get-go, and I've been willing to acknowledge the dirty laundry -- that there are some weaknesses in the program and how it's administered.

Thank you.

ASSEMBLYMAN McKEON: Thank you very much.

All right, we have-- Well, what I'm going to do-- Obviously, we're not moving on any conclusions or anything else at this juncture. I will allow each of my colleagues, if they so choose, to -- I won't call it a closing statement -- but to express their final thoughts as it relates to this issue, knowing that we have a couple of pieces of legislation that we're going to move on right now; and try to set a little bit of a roadmap of what the future will be, when I'll -- conclude those remarks.

ASSEMBLYMAN CARROLL: Just--

ASSEMBLYMAN McKEON: So why don't you start?

ASSEMBLYMAN CARROLL: Just very briefly, in response, so to speak.

ASSEMBLYMAN McKEON: Well, this is everything.

ASSEMBLYMAN CARROLL: I understand.

ASSEMBLYMAN McKEON: So whether it's in response, or if it's in-- This is your chance.

ASSEMBLYMAN CARROLL: I just-- I frankly (indiscernible), don't have a position on whether the settlement is a good idea or not.

ASSEMBLYMAN McKEON: Okay.

ASSEMBLYMAN CARROLL: I mean, I didn't sit in the court; I'm not the lawyer; I didn't read all the-- Unlike you, I didn't sit through-- You said you were going to look at 66 volumes of trial transcript. I can promise you, I'm not going to do that.

ASSEMBLYMAN McKEON: I'm going to hopefully do it with some help.

ASSEMBLYMAN CARROLL: There's no test on this later on.

So again, I just want to be clear: I don't have a position on whether the settlement is a good idea or not. I'm going to defer to those people who actually sat through the trial, who know the cases, know the weaknesses of the case. And what troubles me about this, Mr. Chairman, in all honesty, is the turning of what amounts to a litigation matter into something that has become a little bit -- not this Committee -- but it certainly is a media circus. I don't remember the last time that, for example, the other house adopted a resolution which urges a position in a litigated case. That's, to my knowledge, unprecedented.

And, again, I can't speak to whether or not we're going to win, whether we're going to lose, whether it's a good idea, whether it's a bad idea. I'm just willing to defer to the good judgment of those people we entrust with making those decisions.

ASSEMBLYMAN McKEON: Thank you.

Minority Leader.

ASSEMBLYMAN BRAMNICK: Mr. Chairman, let me compliment you on how you handled this hearing in an objective and fair way. And let me say that you and I have been adversaries -- our firms -- on cases. And you and I both know that third parties and observers make comments on all kinds of cases. But you and I know, until you're in the middle of the litigation, or the middle of trial, or before a jury, that we never know the outcome, we never know whether we should settle a case, unless we're in the trial or litigation ourselves. And that's why I want to continue to see the rhetoric to be fair, which you've actually conducted yourself in this hearing in that way. And I hope we continue down that road until all the facts come out.

Thank you, Chairman.

ASSEMBLYMAN McKEON: Thank you.

Assemblyman.

ASSEMBLYMAN LAGANA: Thank you, Mr. Chairman.

I also want to thank the witnesses for providing excellent testimony today.

I think one thing we can all agree on is that all the facts are not before us. We don't know exactly what the settlement says: does it include restoration, does it not include restoration? Where is this \$225 million going to go? Is it going to be used for other purposes? We really don't know.

But I think what we should probably all agree on, and most importantly -- and Chairman, you mentioned early on -- is the public comment section -- the public comment aspect, I should say. Thirty days, I don't believe, is enough time. I think that given the gravity and the enormity of what we're dealing with here -- I think at least 60 days is more proper. So I would -- obviously I'm going to support that. And when the settlement does come out, I hope it's good for the residents of New Jersey. I hope we can all agree that there was damage, liability has been found, and how much is it going to cost to make us whole.

So thank you again for having this hearing, and I want to thank my colleagues over here for a great discussion.

ASSEMBLYMAN McKEON: Thank you.

Assemblyman.

ASSEMBLYMAN WIMBERLY: Thank you, Chairman.

I also want to thank you for how you've handled this hearing. Everybody who testified today has brought more light to the situation as far as being an informant -- in particular, the Mayor of Linden. I think, you know, as the Assemblyman said, the people having a voice in this for more than 30 days, I think, is a plus; and have the input from -- the major impact that it's going to have on the people who are actually living in the situation, and the people of New Jersey.

So I look forward to continuing to gather information, and support your position and the Committee's position on this as it moves forward.

Thank you.

ASSEMBLYMAN McKEON: Thank you, Assemblyman.

Assemblywoman.

ASSEMBLYWOMAN QUIJANO: Thank you.

First, I want to thank you, Chairman, for the way that you handled today's Committee hearing. The issue is more important than just a few people; and it is of utmost importance to the people in my area.

Thank you to Mayor Armstead for coming today. I appreciate your testimony, and those who were also here to testify.

Of interest were a couple of the Linden residents who I spoke to last week. And as we banter around numbers -- \$225 million, the \$8.9 billion, former cases, if settlement from previous cases can be compared to this -- they don't understand that. As we discussed, primary restoration and compensatory restoration, the residents don't understand that. What they do understand is that their neighborhoods smell; when there's a flood, they can see the oil in the water that rises around their homes; the water was --

there was leakage in the water system; and they haven't been able to use certain areas in Linden.

So after we have all these discussions, the real point is, how are the citizens of both Linden and Bayonne going to be whole? There's been discussions about where does the money go. The citizens want to know when their backyards are going to be livable; when they can actually use the areas in Linden. And to them, we can talk about all the numbers, but what they really want to know is, what is the State of New Jersey doing?

So I look forward to working with you, Chairman McKeon, and getting to the bottom of everything that occurred, and trying to make sure that we are the best stewards of our natural resources.

So thank you very much.

ASSEMBLYMAN McKEON: Thank you.

Thanks to all; Kate is another attorney; just about everybody in the room, right? And you, Lloyd, and the staff are amazing people. I know we all feel that way; and I'm certain, on the Republican side they too had a lot of good advice and counsel through this process.

I'll just take two more minutes to comment. You know, it's interesting -- Assemblyman, you said what's the media circus about? Well, it's about time; it's about time that people seemed to be engaged in an environmental issue and are showing some passion and understanding. And, obviously, it has to do with the breadth of what's been fouled for several generations. But I'm glad that there's media scrutiny here and that people feel very passionately about this.

Just a few points on the negotiations, and I raised this with my colleague, the Minority Leader, a moment ago. Things change. The

Corzine Administration hasn't been around -- I don't know what the *New York Times* is reporting, but assuming it all to be accurate, that there was a \$500 million offer, or demand, made five years ago -- that was five years ago. That was certainly before 2009 when the expansion of the damages was found, as a matter of law, to go back as much as 120 years. It was before, again, a 55-day damage trial where the State, very successfully, put \$9 billion up on the board, as they would say. And from my understanding, that Exxon, notwithstanding them being very aggressive, didn't do so well in knocking that down or refuting anything in the alternative -- regardless of what it might say in their briefs.

So that's not a fair way to look at it. That's what we would have taken then; I bet you we would have taken \$225 million back in 2002 when, in good faith, we tried to negotiate with the bad actor and they said no.

Now, as it relates to other settlements -- Assemblyman, you mentioned the two: one is Union Carbide that we lost; \$30 million was the demand. And another was the Essex -- Sussex cleanup, I think, and that was an \$8 million demand. So although, yes, you could always lose a case, they were different. They weren't liability; they weren't damages-only trials, and the scope of those were much different than this.

And I do mention, again, our friends at Exxon. And yes, 19 years they litigated the Valdez matter. And ultimately, it resolved: 90 percent of what they got nailed for got knocked out, but it was still \$500 million. And guess what? That was not as bad, not even as close to as bad -- meaning the ecological issues that flowed from that -- than the Bayway. You know, we talk about BP, and we can see the oil spewing out. And yes,

it's in an estuary, and we know where the oysters come from, and it looks bad. But at least we could see it. Here, for 120 years, there's been every contaminant and compound known to man that's been found in some way, shape, or form -- let alone, 7 million gallons of oil -- that has been allowed to lie fallow and move through the natural ecosystem to bring and heed destruction.

I have no question that the judge will be partial (*sic*), but I do have a concern during this comment process that the judge's standard is with due deference. And I hope, again -- although it's appropriate for Commissioner Martin to express his opinion, that his mind remains open as he looks to the outcry of the people who we all represent.

The 16 sites is a different thing; I don't think I'm giving up any confidences, because again the Commissioner and the Attorney General have been good in speaking with me. I don't think the MBE piece is a part of those; but, nonetheless, it's 16 sites. And that calls for transparency -- and we need to know that, certainly, through this paucity of a public comment period -- once this thing gets published, so as to see how much sweeter the deal is on the other side of things.

And then, this is my editorial comment, just twice. As a lawyer, as someone who really is trying so hard -- and I mean this from the bottom of my heart, we all do -- not to be partisan, but to be statesmen here -- because this too important for it to be anything other than that -- we need trial transcripts. We'd likely need independent counsel to help any of us to be able to get through those to have a good understanding and idea before we maybe shoot -- as opposed to, you know -- and then aiming later. And

I'm going to work with the Speaker and with both sides of the house to see that happens.

But the editorial comment in me is twofold: You know, one is that for \$225 million, I'd rather lose. I would literally rather lose than to ratify the behavior of a bad actor who stonewalled, given the chance many, many times to do the right thing by the people. And I would rather lose. And guess what? Exxon doesn't pay \$225 million voluntarily if they weren't, like, "Uh-oh." They know what went through in that 55-day trial. And although they may have used every other appellate court that they might have found, and maybe tried to find their way on constitutional grounds to the U.S. Supreme Court, and this might run another five years -- well, I would have rather negotiated with a \$9 billion or at least a \$3 billion for primary restoration judgment in my hand -- just like any other one would -- than to the contrary. And I think that would have been the right thing to do.

And the last piece of editorial comment -- and then we'll move on -- everybody's talking about who's a lawyer, not a lawyer, who has a-- You don't have to be a lawyer. Look; just take a look. Know what's gone on for a number of generations and the depth of the wrong that was done. And then look at that sum of money. And it just doesn't feel right. And I think that pushes the day more than anything else, relative to the good judgment of the citizens of this state and what they're feeling.

All right. So with that, we have an agenda to get through. We're going to get through to the two bills relating to this; maybe take, literally, a five minute break, and then move forward with the residency and two other tangential bills.

I see a lot of our colleagues in the uniformed services, and I apologize, but you're getting an additional civics lesson today.

Okay, so let's move on. We're going to move on the A-4307. I always want to call you Madam Clerk. We're going to go backwards: A-4307 -- that increases the public notice from 30 to 60 days, as it relates to this matter. And I hope the minority party will encourage this Administration to voluntarily open up that timeframe beyond the 30 days. But this would do so as a matter of law.

MS. GARCIA: Let me take the roll.

ASSEMBLYMAN McKEON: Yes. Unless you need to make magic words -- roll call.

MS. GARCIA: Roll call.

On Assembly Bill 4307, Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: Yes.

MS. GARCIA: Assemblyman Carroll.

ASSEMBLYMAN CARROLL: Mr. Chairman, just as an aside.

I'm going to vote yes on this because 60 days is fine, 30 days is-- It doesn't really matter much one way or another. The one thing that concerns me is that it's a one-size-fits-all. You may need 30 days -- or 60 days on a case that's \$9.8 billion. Do you really need 60 days on a case that's \$750,000? So I'll support it, but I would strongly suggest that before it goes to the floor you might want to consider making the comment period related to the size of the case.

ASSEMBLYMAN McKEON: And I appreciate your "yes" vote and that comment. And I guess the one-size-fits-all because -- think of this

case, as big as it is, where they're putting a 30-day number. I hate to leave that discretion; at least make 60 a minimum.

MS. GARCIA: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Yes.

MS. GARCIA: Assemblyman Lagana.

ASSEMBLYMAN LAGANA: Yes.

MS. GARCIA: Assemblywoman Quijano.

ASSEMBLYWOMAN QUIJANO: Yes.

MS. GARCIA: Chairman McKeon.

ASSEMBLYMAN McKEON: Yes.

MS. GARCIA: The bill is released.

ASSEMBLYMAN McKEON: Okay, we're going to go to 4281, where the Speaker and the Budget Chair have joined as primary sponsors. This is a companion bill to a bill that's already gotten out of the Senate, with respect to requiring that the first \$50 million of any settlement relative to environmental damages will go to environmental causes; and that at least 50 percent of any money in excess of that will, too, go to environmental remediation, as opposed to the general budget.

It does compromise to the extent that if, in theory, there was a \$200 million settlement, \$50 million would initially go to the environment, and then the remaining \$100 million would be split between the two -- as opposed to what is allowed by the law now, where everything would go to the general budget if it was so -- if the Administration was so inclined, with the exception of the first \$50 million. Hopefully I explained that well.  
(laughter)

Roll call.

MS. GARCIA: Thank you.

Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: No.

MS. GARCIA: Assemblyman Carroll.

ASSEMBLYMAN CARROLL: No.

MS. GARCIA: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Yes.

MS. GARCIA: Assemblyman Lagana.

ASSEMBLYMAN LAGANA: Yes.

MS. GARCIA: Assemblywoman Quijano.

ASSEMBLYWOMAN QUIJANO: Yes.

MS. GARCIA: Chairman McKeon.

ASSEMBLYMAN McKEON: Yes.

ASSEMBLYMAN CARROLL: Mr. Chairman, has this been second referenced?

ASSEMBLYMAN McKEON: I don't know what the plan is.

UNIDENTIFIED MEMBER OF COMMITTEE: Yes.

ASSEMBLYMAN CARROLL: Okay, thank you.

MS. GARCIA: And I'll take the roll call on the Senate bill now.

ASSEMBLYMAN McKEON: Yes.

MS. GARCIA: Thank you.

Assemblyman Bramnick.

ASSEMBLYMAN BRAMNICK: No.

MS. GARCIA: Assemblyman Carroll.

ASSEMBLYMAN CARROLL: No.

MS. GARCIA: Assemblyman Wimberly.

ASSEMBLYMAN WIMBERLY: Yes.

MS. GARCIA: Assemblyman Lagana.

ASSEMBLYMAN LAGANA: Yes.

MS. GARCIA: Assemblywoman Quijano.

ASSEMBLYWOMAN QUIJANO: Yes.

MS. GARCIA: Chairman McKeon.

ASSEMBLYMAN McKEON: Yes.

MS. GARCIA: The bill is released.

ASSEMBLYMAN McKEON: All right; we have three bills left.

The first one, in order now, will be the residency bill. Let me see if I have my list of witnesses as it relates to that. I will-- I know there are a number of people here who had an interest in the first part of our hearing, so when I say *five minutes*, I mean, literally, a five-minute break.

It is now-- I'll make it a seven-minute break. It is two minutes before noon; at five after, I will hit this gavel and we will begin that part of the hearing. And hopefully it will go pretty quickly.

(END OF EXCERPT)