

APPENDIX



June 22, 2015

Testimony of Madeline Emde, Representing New Jersey Audubon Society, in support of SRC 163:

Thank you for the opportunity to Testify. My name is Madeline Emde and I am a conservation associate for New Jersey Audubon (NJA). New Jersey Audubon was founded in 1897 and is one of the oldest and largest conservation membership organizations in the State. New Jersey Audubon fosters environmental awareness and a conservation ethic, protects New Jersey's birds, other animals, and plants, especially endangered and threatened species, and promotes preservation of New Jersey's valuable natural habitats.

New Jersey Audubon has worked extensively to protect habitats across New Jersey and has been an advocate and responder in protecting New Jersey's wildlife, wetlands, and other natural resources from oil spills. NJA was involved in clean up and recovery efforts after both the 1996 Anitra Oil Spill and the 2005 Athos Spill. For example, following the Athos Spill, NJA mobilized staff and volunteers with the New Jersey DEP and the United States Coast Guard for on-site assessment of birds and wetlands. As a result, NJA has significant experience with the impact of various spills and discharges on birds, wetlands, and other wildlife and habitats.

New Jersey Audubon has also supported statutory and regulatory efforts to protect New Jersey's natural resources from hazardous spills. NJA supported the passage of the Spill Act because of its experience with the impact of spills on habitat and species, particularly threatened and endangered species. NJA also proposed important reforms to the Oil Pollution Act of 1990 to limit oil spill risks in the future.

Natural Resource Damages are an incredibly important statutorily authorized program that came as a result of our State's experiences with incremental spills and discharges and our history of industrialization. NRD requires polluters to go beyond cleanup and pay for restoration and compensation for the public loss of use of the natural resources. It recognizes incremental pollution which can be just as devastating as catastrophic spills.

Everyone has a right to use the public resources, including private individuals and companies, but not to the detriment of others citizens. When that happens, compensation needs to occur.

Raiding of funds is a significant and widespread issue and has been for several Administrations. The court decision in Camden V. Byrne (in 1980) allowed appropriations bills to override all other statutes, permitting this raiding of funds previously dedicated for one purpose to be utilized for another. Voter-approved Constitutional amendments, therefore, are the only way to protect funds for their intended purposes.

We strongly support this resolution and the amendments to the resolution that were passed through committee two weeks ago. We hope that funds from NRD will continue to be used with attention paid to the nexus between the injury and the use of the payment. This can be within the same community, through another geographical tie, through a connected watershed, in lands that protect a water source used by the impacted community or by identifying a resource that is used by the impacted population. We believe it is important that there be a connection between the injury and the use of the funds.

Thank you for the opportunity to testify in support of this important resolution.

OLSaideSEN

From: debbie@nynjbaykeeper.org [debbie@nynjbaykeeper.org] **Sent:** Thu 6/18/2015 3:21 PM
To: OLSaideSEN
Cc: 'Sandra Meola'
Subject: SCR 163
Attachments:

Judy

Please accept these comments on behalf of NY/NJ Baykeeper in support of SCR 163, which amends the Constitution to dedicate all State moneys received from settlements and awards in cases of environmental contamination for certain environmental purposes.

It is unfortunate that the state of affairs in New Jersey has led to the need for this constitutional dedication, but it is necessary because we need to ensure that the current, and all future, Administrations adhere to the intent and objective of the laws under which these environmental claims were brought.

The Spill Compensation and Control Act was passed in 1977 to protect and preserve the State's lands and waters and promote the health, safety and welfare of the people of New Jersey; that the tourist and recreation industry dependent on clean waters and beaches is vital to the economy of this State. Under the Act, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction. N.J.S.A. 58:10-23.11a.

The Legislature intended "to control the transfer and storage of hazardous substances and to provide liability for damage sustained within this State as a result of any discharge of said substances, by requiring the prompt containment and removal of such pollution and substances, and to provide a fund for swift and adequate compensation to resort businesses and other persons damaged by such discharges." N.J.S.A. 58:10-23.11a

The Legislature declared "that many former industrial sites in the State remain vacant or underutilized in part because they have been contaminated by a discharge of a hazardous substance; that these properties constitute an economic drain on the State and the municipalities in which they exist; that it is in the public interest to have these properties cleaned up sufficiently so that they can be safely returned to productive use; and that it should be a function of the Department of Environmental Protection to facilitate and coordinate activities and functions designed to clean up contaminated sites in this State." N.J.S.A. 58:10-23.11a

The legislature appointed the state as trustee of the lands and waters of the state, established rules for the proper transport, storage and disposal of hazardous chemicals and prioritized the rapid clean up of spills to protect and compensate injured citizens and businesses.

The diversion of moneys collected by the State through settlements or awards for legal claims based on environmental contamination goes against the objective of the law under which they were brought and strikes a significant blow to the basic tenets of fairness and equity for all our State's residents. Contaminated sites will not be cleaned up, wetlands and waterways will not be restored, public access to natural resources will not be provided and impacted communities will not be made whole if the State continues to divert these monies to plug gaps in the general state budget. It will pay state employees, fill potholes, fund pensions and schools. All of these are noble, and they are why we pay state taxes. They are not, however, why we settle environmental litigation.

Deborah A. Mans, Baykeeper & Executive Director

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