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# *Committee Meeting*

of

## ASSEMBLY JUDICIARY COMMITTEE

*“The Committee will receive testimony from members of the public on the proposed \$225 million settlement agreement between the Attorney General and ExxonMobil for the environmental damage caused by Exxon’s refinery operations in Bayonne and Linden”*

*The following resolution will be discussed:*

### ASSEMBLY RESOLUTION No. 242

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**LOCATION:** Bayonne Municipal Council Chambers  
Bayonne, New Jersey

**DATE:** June 3, 2015  
10:30 a.m.

#### **MEMBERS OF COMMITTEE PRESENT:**

Assemblyman John F. McKeon, Chair  
Assemblyman Gordon M. Johnson, Vice Chair  
Assemblyman Joseph A. Lagana  
Assemblyman Benjie E. Wimberly

Assemblyman Jason O’Donnell



#### **ALSO PRESENT:**

Rafaela Garcia  
*Office of Legislative Services  
Committee Aide*

Kate McDonnell  
*Assembly Majority  
Committee Aide*

Kevin Nedza  
*Assembly Republican  
Committee Aide*

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

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JOHN F. McKEON  
Chair

GORDON M. JOHNSON  
Vice-Chair

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

RAFAELA GARCIA  
MIRIAM BAVATI  
Office of Legislative Services  
Committee Aides  
(609) 847-3865  
(609) 292-6510 fax

**New Jersey State Legislature**  
**ASSEMBLY JUDICIARY COMMITTEE**  
STATE HOUSE ANNEX  
PO BOX 068  
TRENTON NJ 08625-0068

**COMMITTEE NOTICE**

**TO: MEMBERS OF THE ASSEMBLY JUDICIARY COMMITTEE**  
**FROM: ASSEMBLYMAN JOHN F. MCKEON, CHAIRMAN**  
**SUBJECT: COMMITTEE MEETING - JUNE 3, 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 Wednesday, June 3, 2015 at 10:30 AM in the City of Bayonne Municipal Council Chambers, 630 Avenue C, Bayonne, New Jersey 07002.**

The committee will receive testimony from members of the public on the proposed \$225 million settlement agreement between the Attorney General and ExxonMobil for the environmental damage caused by Exxon's refinery operations in Bayonne and Linden.

*Any individual presenting written testimony is asked to provide 12 copies to the Committee at the meeting.*

Issued 5/28/15

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# ASSEMBLY RESOLUTION No. 242

## STATE OF NEW JERSEY

### 216th LEGISLATURE

INTRODUCED MAY 14, 2015

**Sponsored by:**

Assemblyman JOHN F. MCKEON  
District 27 (Essex and Morris)  
Assemblyman JOSEPH A. LAGANA  
District 38 (Bergen and Passaic)  
Assemblyman TIM EUSTACE  
District 38 (Bergen and Passaic)  
Assemblyman BENJIE E. WIMBERLY  
District 35 (Bergen and Passaic)  
Assemblyman GORDON M. JOHNSON  
District 37 (Bergen)  
Assemblywoman L. GRACE SPENCER  
District 29 (Essex)  
Assemblywoman ANNETTE QUIJANO  
District 20 (Union)  
Assemblywoman MILA M. JASEY  
District 27 (Essex and Morris)  
Assemblyman VINCENT PRIETO  
District 32 (Bergen and Hudson)

**Co-Sponsored by:**

Assemblymen Caputo, O'Donnell, Mainor, Giblin, Fuentes, Mazzeo,  
Garcia, Singleton; Assemblywoman Lampitt; Assemblyman Danielsen,  
Assemblywomen Pinkin, Sumter; Assemblyman Taliaferro,  
Assemblywoman Pintor Marin; Assemblymen Diegnan, Gusciora,  
Assemblywomen Muoio, Stender; Assemblymen Wisniewski, Schaer,  
Green, Greenwald, Conway, Mukherji, Coughlin; Assemblywomen  
Jimenez, Tucker; Assemblymen Wilson, Benson, DeAngelo, Burzichelli,  
Holley; Assemblywoman Caride; Assemblyman Moriarty and  
Assemblywoman Vainieri Hufle

**SYNOPSIS**

Opposes proposed \$225 million settlement in lawsuit brought by NJ against ExxonMobil for natural resource damages at Bayway and Bayonne oil refinery sites and certain other sites in NJ.

**CURRENT VERSION OF TEXT**

As introduced.

1 AN ASSEMBLY RESOLUTION opposing the proposed \$225 million  
2 settlement in a lawsuit brought by the State of New Jersey  
3 against ExxonMobil for natural resource damages at the Bayway  
4 and Bayonne oil refinery sites and at certain other sites in New  
5 Jersey.

6  
7 WHEREAS, The "Water Pollution Control Act," the "Spill  
8 Compensation and Control Act," and the common law in New  
9 Jersey all require the State of New Jersey to act as a trustee on  
10 behalf of its citizens with respect to its natural resources and give  
11 the State the authority to collect money damages as compensation  
12 for the destruction of natural resources resulting from the release of  
13 hazardous substances into the environment; and

14 WHEREAS, Prior to the last decade of the 20th century, this authority,  
15 was generally not exercised by the State; and

16 WHEREAS, Society has become increasingly aware of the damage  
17 being caused to natural resources as the result of longstanding  
18 abuses of the environment; and

19 WHEREAS, In or about 2001, the New Jersey Department of  
20 Environmental Protection (DEP) undertook a comprehensive effort  
21 to address more than 4,000 potential claims for natural resource  
22 damages; and

23 WHEREAS, From 2004 to 2009, the State made 151 claims for natural  
24 resource damages, but since Governor Christie took office only one  
25 such claim has been made; and

26 WHEREAS, Since the late 19th century, ExxonMobil Corporation  
27 (ExxonMobil) or its predecessors operated oil refineries and  
28 associated facilities in Linden, New Jersey (the "Bayway facility"  
29 or "Bayway site") and Bayonne, New Jersey (the "Bayonne  
30 facility" or "Bayonne site"), and the operation of those facilities  
31 resulted in large, damaging, and documented discharges to the  
32 environment; and

33 WHEREAS, During the course of operations at these facilities, millions  
34 of gallons of crude oil and refined products, seven to 17 feet thick  
35 in some cases, and containing hazardous substances such as  
36 polycyclic aromatic hydrocarbons (PAHs), chromium, and arsenic,  
37 were lost through improper disposal of wastes, spills, and leaks; and

38 WHEREAS, In 1977 alone, at least seven million gallons of oil were  
39 released into the soil and groundwater underlying a portion of the  
40 Bayonne site; and

41 WHEREAS, In 1991 ExxonMobil entered into an Administrative  
42 Consent Order (ACO) agreeing to remediate the Bayway and  
43 Bayonne sites, and under that ACO and subsequent ACOs, which  
44 continue in force, ExxonMobil must thoroughly investigate and  
45 fully remediate contamination at both facilities, and the 1991 ACO  
46 specifically further provides that the State is not waiving any of its  
47 rights to pursue claims for natural resource damages; and

1 WHEREAS, Between 2001 and 2004, DEP engaged in settlement  
2 discussions with ExxonMobil in an effort to address the injuries to  
3 natural resources, including loss or impairment of ecological  
4 functions and the deprivation of natural resource services such as  
5 water supply, recreation, and ecological services, resulting from  
6 discharges from the Bayway and Bayonne facilities, but those  
7 settlement discussions were ultimately unsuccessful; and

8 WHEREAS, In 2004, DEP instituted litigation against ExxonMobil  
9 seeking recovery for natural resource damages, and among other  
10 things the lawsuit sought compensation from ExxonMobil for the  
11 contamination and loss of use of more than 1,500 acres of wetlands,  
12 marshes, meadows, and waters; and

13 WHEREAS, A number of important court rulings have been made in  
14 the case since it began, including a ruling in 2007 that  
15 compensatory damages can be part of a natural resource damages  
16 claim, a ruling in 2009 that the "Spill Compensation and Control  
17 Act" can be applied retroactively, and a ruling in 2013 that, as a  
18 matter of law, ExxonMobil caused the injuries at issue, and that a  
19 damages-only phase of the trial would begin in 2014; and

20 WHEREAS, DEP's own experts have estimated that restoration of  
21 former wetlands, meadows, forests, and intertidal habitat, and  
22 compensation for decades of contamination, at the Bayway and  
23 Bayonne sites would cost \$8.9 billion, including \$2.6 billion for  
24 primary restoration and \$6.3 billion for compensatory damages, and  
25 \$1.2 million for assessment costs; and

26 WHEREAS, Over a period of 56 days in 2014, the damages phase of the  
27 trial was conducted in the Law Division of the Superior Court, and  
28 in January 2015 it was reported that the judge having jurisdiction  
29 over the litigation was prepared to issue a ruling; and

30 WHEREAS, In March 2015 it was publicly reported that the State and  
31 ExxonMobil had negotiated a settlement, and on April 6, 2015,  
32 DEP published notice of a proposed settlement in the matter of *New  
33 Jersey Department of Environmental Protection v. Exxon Mobil  
34 Corporation*, Docket No. UNN-L-3026-04; and

35 WHEREAS, The elements of the proposed settlement are as follows:

- 36
- 37 • DEP will release ExxonMobil from all natural resource  
38 damages claims and from liability under any other theories  
39 of law from the Bayway and Bayonne facilities, including  
40 areas to which any contaminants discharged from those  
41 facilities may have migrated;
  - 42 • The natural resource damages claims relating to surface  
43 waters in the vicinity of the two refineries are dismissed  
44 without prejudice to DEP's ability to reassert those claims,  
45 provided that DEP will not do so until a formal natural  
46 resource damages assessment has been completed and DEP  
47 has identified any and all other potentially responsible  
48 parties against whom it would bring claims in addition to  
49 ExxonMobil;

- 1 • Any decision on the remediation of Morses Creek will be  
2 deferred until the cessation of refining operations at the  
3 Bayway facility (Morses Creek is a waterbody located  
4 immediately adjacent to the Bayway facility, which receives  
5 processed wastewater discharge from that facility and which,  
6 according to proofs offered by DEP, has been heavily  
7 impacted over the decades during which the refinery has  
8 operated);
- 9 • ExxonMobil is released from all natural resource damages  
10 claims and/or liability under any other theory of liability  
11 relating to all ExxonMobil retail stations throughout the  
12 State of New Jersey, except for claims relating to the release  
13 of MTBE (a gasoline additive used to improve air quality),  
14 which is the subject of separate litigation between DEP and  
15 ExxonMobil;
- 16 • ExxonMobil is released from any and all natural resource  
17 damages claims and/or for any other theory of liability  
18 relating to the following 16 different facilities owned or  
19 operated by ExxonMobil throughout the State of New  
20 Jersey:
- 21
- 22 1. Atlantic City Terminal 98-ACP: 2141 Absecon Blvd,  
23 Atlantic City
  - 24 2. Atlantic City Terminal #3001: New Jersey &  
25 Magellan Aves., Atlantic City
  - 26 3. Edison Research Lab: 2195 Route 27, Edison
  - 27 4. Edison Synthetics Plant: 2195 Route 27, Edison
  - 28 5. Flemington Terminal: 198 Routes 202 & 31,  
29 Flemington
  - 30 6. Florham Park Facility: 180 Park Ave, Florham Park
  - 31 7. Trenton Terminal #29005: 2785 Lambertson Rd,  
32 Hamilton
  - 33 8. Linden Technical Center: 1900 E Linden Ave, Linden
  - 34 9. Linden Terminal #29074: 3700 S Wood Ave, Linden
  - 35 10. Long Branch Terminal: 160 West End Ave, Long  
36 Branch
  - 37 11. Morristown Municipal Airport Fuel Farm: 8 Airport  
38 Rd, Morristown
  - 39 12. Paulsboro Terminal #3045: 800 Billingsport Rd,  
40 Paulsboro
  - 41 13. Paulsboro Lube Plant #29004: 1001 Billingsport Rd,  
42 Paulsboro
  - 43 14. Former Tomah Facility: 32 Pennsgrove-Pedricktown  
44 Rd, Pedricktown
  - 45 15. Pennington Facility: 311 Pennington-Rocky Hill Rd,  
46 Pennington
  - 47 16. Teterboro Airport Fuel Farm: Malcom Ave,  
48 Teterboro

- 1 • ExxonMobil will pay the State of New Jersey the sum of  
2 \$225 million in settlement for all of its liability as described  
3 above;
- 4 • Each party is to bear the costs and expenses incurred in the  
5 litigation which, in the case of the State of New Jersey, is  
6 estimated to be in the range of \$44 million to \$50 million;
- 7 • DEP reserves all other rights against ExxonMobil with  
8 respect to liability for future cleanup and removal costs at  
9 the Bayway, Bayonne, and former Paulsboro facilities and at  
10 all ExxonMobil sites throughout the State of New Jersey;  
11 and

12 **WHEREAS**, The proposed settlement allows DEP to re-file a claim for  
13 damage to surface water bodies adjacent to or impacted by the  
14 Bayway and Bayonne facilities, but the DEP may do so only if it  
15 first prepares a complete natural resource damages assessment and  
16 identifies all parties who are potentially responsible for the  
17 contamination of surface waters in advance of re-filing a claim; and

18 **WHEREAS**, These requirements are an extra burden to the State, are  
19 unique to this settlement, and effectively amount to a de facto  
20 forfeiture of DEP's claims for damage to surface waters; and

21 **WHEREAS**, At the Paulsboro facility, three groups of defendants were  
22 alleged to have been responsible for natural resource damages to  
23 groundwater, and in 2009 one of DEP's experts estimated primary  
24 restoration costs of all groundwater to be \$81 million, and another  
25 DEP expert estimated compensatory restoration costs to be \$3.2  
26 million; and

27 **WHEREAS**, One of DEP's experts on the Paulsboro facility aspect of  
28 the case estimated ExxonMobil's share of primary restoration costs  
29 to be \$12.4 million, or about 15% of the total, and another DEP  
30 expert estimated ExxonMobil's share for compensatory restoration  
31 costs to be between \$300,000 and \$2.1 million; and

32 **WHEREAS**, Little or no information has been made available to the  
33 public on the extent of natural resource damages that may have  
34 occurred at the various retail gas stations included in the proposed  
35 settlement; and

36 **WHEREAS**, The "Spill Compensation and Control Act," at  
37 N.J.S.A.58:10-23.11e(2), requires that DEP shall, at least 30 days  
38 prior to its agreement to any administrative or judicially approved  
39 settlement, publish in the New Jersey Register and on its website  
40 the name of the case, the names of the parties to the settlement, the  
41 location of the property on which the discharge occurred, and a  
42 summary of the terms of the settlement, including the amount of  
43 any monetary payments made or to be made; and

44 **WHEREAS**, The Commissioner of the DEP has indicated that he intends  
45 to provide public comments received by the DEP in response to the  
46 Notice of Proposed Settlement to the judge presiding over the case;  
47 and

48 **WHEREAS**, That judge must ultimately decide that the proposed  
49 settlement is in the public interest; and



1   **WHEREAS**, After considering all public comments it receives, the DEP  
2   can decide to withdraw from the proposed settlement agreement if  
3   the comments disclose facts or considerations which show that the  
4   agreement is inadequate; and

5   **WHEREAS**, The Assembly Judiciary Committee has considered 56  
6   days of trial transcripts, the post-trial briefs of both parties to the  
7   lawsuit, expert reports prepared for both parties, various legal  
8   opinions on natural resource damages, and earlier court rulings in  
9   the case, and has examined numerous documents in the DEP's case  
10   file room with the understanding that an undetermined number of  
11   the documents were previously removed by the DEP because of the  
12   department's assertion that they were privileged; and

13   **WHEREAS**, The Assembly Judiciary Committee has also held two  
14   public hearings where committee members heard from legal and  
15   environmental experts and a local official on the proposed  
16   settlement; and

17   **WHEREAS**, Both the Assembly Budget Committee and the Senate  
18   Budget and Appropriations Committee during their budget  
19   deliberations extensively questioned the Attorney General and the  
20   Commissioner of the DEP on the subject of the proposed  
21   settlement, although their testimony was limited by their self-  
22   proclaimed ethical and legal obligations concerning the case; and

23   **WHEREAS**, The proposed \$225 million settlement agreement is  
24   inadequate because it fails to address the decades-long  
25   contamination of important ecological resources surrounding major  
26   metropolitan areas, and does not fairly compensate the State and the  
27   public for that contamination; and

28   **WHEREAS**, The Christie Administration has not fully disclosed the  
29   rationale for settling the case for approximately three percent of the  
30   \$8.9 billion which DEP's experts calculated to be the value of  
31   natural resource damages; and

32   **WHEREAS**, No verifiable rationale has been offered for the inclusion  
33   of the 16 ExxonMobil sites and the approximately 1,700 retail  
34   service stations unrelated to the litigation in the proposed  
35   settlement; and

36   **WHEREAS**, The Governor has a duty to protect the natural resources of  
37   the State, which are held in trust by the State for the people, and,  
38   consequently, must ensure that the proposed settlement agreement  
39   is withdrawn and that the State obtains the maximum compensation  
40   possible from Exxon; now, therefore,

41  
42   **BE IT RESOLVED** by the General Assembly of the State of New  
43   Jersey:

44  
45   1. This House opposes the proposed \$225 million settlement in  
46   a lawsuit brought by the State against ExxonMobil for natural  
47   resource damages caused by pollution at the Bayway and Bayonne  
48   oil refinery sites and at certain other ExxonMobil sites in New  
49   Jersey, because it is inadequate and thus violates the public trust.

1       2. The court presiding over the case of *New Jersey Department*  
2 *of Environmental Protection v. Exxon Mobil Corporation*, Docket  
3 No. UNN-L-3026-04, is respectfully urged to reject the proposed  
4 \$225 million settlement agreement between the parties because the  
5 agreement shocks the conscience in light of undisputed evidence of  
6 significant damage to, and loss of, the State's natural resources  
7 caused by pollution at the Bayway and Bayonne oil refinery sites  
8 and at certain other ExxonMobil sites in New Jersey.

9  
10       3. The New Jersey Attorney General and the Commissioner of  
11 Environmental Protection are urged to withdraw immediately from  
12 the proposed \$225 million settlement agreement because it is  
13 inadequate:

14  
15       4. The Governor is respectfully urged to take all appropriate  
16 action to fully protect the natural resources of the State which are  
17 held in public trust, ensure that the proposed \$225 million  
18 settlement agreement between the State and ExxonMobil is not  
19 finalized and is withdrawn, and direct the Attorney General and the  
20 Commissioner of Environmental Protection to obtain the maximum  
21 compensation possible from ExxonMobil for the devastating  
22 environmental damage incurred at the Bayway and Bayonne oil  
23 refinery sites and at certain other ExxonMobil sites in New Jersey.

24  
25       5. Copies of this resolution, as filed with the Secretary of State,  
26 shall be transmitted by the Clerk of the General Assembly to the  
27 Superior Court judge presiding over the case of *New Jersey*  
28 *Department of Environmental Protection v. Exxon Mobil*  
29 *Corporation, Docket No. UNN-L-3026-04*, the Governor, the  
30 Attorney General, and the Commissioner of Environmental  
31 Protection.

32

33

34

#### STATEMENT

35

36       This resolution expresses the General Assembly's opposition to  
37 the proposed \$225 million settlement in a lawsuit brought by the  
38 State of New Jersey against ExxonMobil for natural resource  
39 damages at the Bayway and Bayonne oil refinery sites and at certain  
40 other sites in New Jersey..

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**ASSEMBLYMAN JOHN F. McKEON (Chair):** Thank you, everyone, for being here.

I know that Assemblyman Wimberly is in Bayonne and somewhere circling Township Hall, so we'll acknowledge him when he comes forward.

So Madam Clerk (*sic*), if you can just take a roll call.

MS. GARCIA (Committee Aide): Thank you.

Assemblyman Lagana.

**ASSEMBLYMAN LAGANA:** Here.

MS. GARCIA: Assemblyman Johnson.

**ASSEMBLYMAN GORDON M. JOHNSON (Vice Chair):**

Here.

MS. GARCIA: Assemblyman McKeon.

**ASSEMBLYMAN McKEON:** Present.

MS. GARCIA: And Assemblyman Wimberly is on his way.

And Assemblyman O'Donnell is here.

**ASSEMBLYMAN O'DONNELL:** Here.

**ASSEMBLYMAN McKEON:** Okay, I am super--

**UNIDENTIFIED MEMBER OF AUDIENCE:** (off mike)

Excuse me, but we can't hear very clearly back here.

**ASSEMBLYMAN McKEON:** Oh, gosh, I'm sorry. How is that? Is that better? Because I just--

**UNIDENTIFIED MEMBER OF AUDIENCE:** That's much better.

ASSEMBLYMAN McKEON: All right, thank you. I'm not used to being elevated. We're always on the same level. It's usually the Senate that sits a little bit higher. (laughter)

I just thought apropos -- yesterday President Obama gave two posthumous Medals of Honor. One of those individuals, Sergeant William Shemin, literally was born and was raised here in Bayonne. And as with all Medal of Honor winners, his story was a compelling one. He had, under machine gun fire -- back in World War I -- in the no mans land, four or five different times went putting his own life in peril to take wounded colleagues back behind the Allied lines.

He was born here in Bayonne in 1896. The Bayonne site that we're talking about today had operated 20 years before -- starting in 1879, to put perspective on all of this.

So with that, the favorite son of Bayonne, Mayor Jimmy Davis -- on behalf of this Committee, we really appreciate you and your staff's hospitality in hosting what we think is an important opportunity for members of the public to be heard prior to the judge making their decision on this very important matter. So I know, Mayor Davis, that you'd -- we would like you just to address us all -- maybe not on the topic, as much as to welcome us to your great city.

And as you start, Mayor, Assemblyman Wimberly has arrived. Thank you, Benjie.

**MAYOR JAMES M. DAVIS:** Thank you.

Chairman McKeon and members of the Committee, thank you for agreeing to host this important meeting in our community. As you know, Bayonne has a long history with the oil and gas industries. While in

the past Exxon served as a job center for our local economy, it now presents an environmental issue. It is an issue that needs to be fully discussed with the residents who are directly impacted, and I thank you for allowing our residents the opportunity to be part of the process.

Bayonne has always sought to have a balance with its industrial neighbors -- for example, IMTT has been a long-term supporter of local programs, donating time and money to our Little League, the BEOF, our Board of Education, and local charities.

My concern, and the concerns of the residents I have spoken with, is the long-term impact that this proposed settlement will have on the city. I trust with the public servants such as yourselves, our concerns will be addressed.

I would also like to take this opportunity to personally thank Senator Lesniak for his tireless efforts in standing up for the little guy and fighting against big corporations. I know that with his support and leadership that the residents of Bayonne are being well represented.

Thank you, once again, for taking this time to address this important issue and protecting the quality of life of our residents.

Thank you. (applause)

ASSEMBLYMAN McKEON: Thank you, Mayor.

Mayor, thank you, and I promise to be out of your parking spot within the next three or four hours. (laughter)

MAYOR DAVIS: Excellent. It's all yours, all day.

ASSEMBLYMAN McKEON: Before, as I -- very shortly I'm going to call upon Senator Lesniak as the first witness -- I just want to give

Assemblyman O'Donnell a chance just to say hello, as we're here in his hometown.

Jason.

ASSEMBLYMAN O'DONNELL: Chairman, thank you.

Good morning, and I apologize in advance for the parking issues that I'm sure you struggled with today. But in Bayonne, not unlike the rest of Hudson County, we struggle with that.

I want to welcome everyone here to Bayonne today -- the city which I consider the greatest city in the State of New Jersey. I know you guys may have some issue with that, but this is an important issue. As the Mayor alluded to earlier, the oil industry, for a century, dominated our economy, dominated the lives of the people here in the City of Bayonne. Unfortunately, what we're left with today is the pockmarks and the scars after the oil companies picked up and left town. So, not only for Bayonne and Linden, it's important that we get this right for the entire State of New Jersey so that this cannot go on. This type of conduct by our businesses, by our corporations cannot be allowed to continue.

So again, I thank you all for being here and taking the interest. Chairman, thank you for taking on this extremely complicated and tough topic. (applause)

ASSEMBLYMAN McKEON: Thank you very much, Assemblyman.

A man that certainly needs no introduction -- I don't know where he went to.

SENATOR RAYMOND J. LESNIAK: (off mike) I'm right here.



ASSEMBLYMAN McKEON: The great Senator from Union County, Senator Lesniak.

SENATOR LESNIAK: Thank you, Chairman; thank you very much. Thank you for that loud, resounding applause. (laughter) That's okay.

Chairman, members of the Committee, thank you very much for having this hearing. Thank you very much, Mayor Davis, for those kind words and for hosting this meeting.

I have a somewhat unique perspective, I believe, on this matter since I grew up in the Bayway section of Elizabeth; I represented the City of Linden for 25 years; and I played accordion at Saint John's in Bayonne many times at their picnics.

So what I would like to do, at this time, is read into the record the official comments that I'll be making with DEP in the hope that they will take notice, and certainly with the expectation that the judge will take notice and reject this settlement.

The Consent Judgment between the New Jersey Department of Environmental Protection and ExxonMobil Corporation is not fair, reasonable, or adequate based on the evidence at the trial. The lack of an adequate assessment of damages at the facilities, which were not litigated, but released from natural resource damage liability; and the misleading, deceptive, and untruthful statements made by State representatives call into question the settlement negotiations between the parties. Indeed, Mr. Chairman and members of the Committee, I will be filing over 22,000 signatures of residents of the State of New Jersey who signed my petition calling for the rejection of this settlement.

There were misleading, deceptive, and untruthful statements made by DEP Commissioner Martin and Acting Attorney General Hoffman. The deceptive statement by DEP Commissioner Martin and Acting Attorney General Hoffman that this settlement is on top of separate, uncapped costs to remediate is not true. The separate uncapped costs to remediate were not a part of the litigation, and were settled pursuant to Administrative Consent Orders signed by ExxonMobil years ago. Likewise, with the other sites released from liability, remediation is established under the Spill Fund, not under the settlement.

The misleading statement by Acting Attorney General Hoffman that the proposed settlement represents the single largest environmental settlement with a corporate defendant in New Jersey history, although accurate, is misleading; because, in truth, it is the only environmental damage litigation -- not only in this state, but in this nation -- involving over 100 years of pollution and damage to our environment.

Indeed, an untrue statement by Acting Attorney General Hoffman that this settlement reinforces ExxonMobil's requirement to clean up the Bayway and Bayonne sites -- the truth is the clean-up requirement not only did not need reinforcement, the settlement itself did not reinforce it. It had nothing to do with their requirement to clean up the site. This settlement and the litigation only involves restoration damages to restore the wetlands, the marshlands-- And, by the way, these wetlands and marshlands, Chairman and members of the Committee, are buffers against flooding, against storm surges. They've been destroyed; they have to be restored. And also compensatory damages for loss of use of the entire area during these years because of the contamination; it has nothing to do with

the remediation. ExxonMobil is required to do the remediation under separate laws; it was not part of this litigation.

Likewise, DEP touted in a release that it requires ExxonMobil to remediate Morses Creek at the Linden refinery site once its operations conclude. That's a gift to ExxonMobil. Because instead of requiring that this remediation be done within a reasonable time now, it's some time in the future whenever the operations end -- and that could be 10 or another 100 years from now that ExxonMobil's being let off the hook by this settlement.

Another particularly misleading, deceptive, and untrue statement is that the Christie Administration has argued it was hamstrung by the fact that former Governor Jon Corzine had lowered the ceiling on any damages by offering Exxon a \$550 million settlement. The truth of the matter is, that offer -- which, indeed, is more than twice that was settled for anyway -- that offer was prior to a decision by the Appellate Division that stated that ExxonMobil indeed is required -- is liable for compensatory damages. A lower court had said they were not, and that's when the Corzine Administration started these negotiations. After that, the Appellate Division said, "Yes, you are," thereby putting \$5.4 billion more into play. They didn't explain that.

Another thing is that they were undermined by two serious defeats in similar cases. Likewise, those cases dealt with liability and damages. They lost two cases, but they dealt with liability and damages. Liability is totally established in this case. It has been established for years. The only thing we're talking about here is damages. So to draw the

comparison about two cases that were lost by the State that dealt with liability is totally inappropriate and a poor excuse for a weak settlement.

Likewise, Chairman and members of the Committee, the \$225 million is actually, for Exxon-- I don't know the exact figure, but reduce it by 35 percent Federal corporation tax and 9 percent State corporation tax; because in the settlement, amazingly, they refer to *alleged damages*. There are no alleged damages. There are damages. But by putting in *alleged*, the Christie Administration allows Exxon to take State and Federal corporate tax breaks, reducing the settlement not to 3 cents on the dollar, but 1.4 cents on the dollar in terms of what they have to pay. Just by that little thing *alleged* -- which is shocking that they would think that they could get away with saying that these are alleged damages. Nobody disputes that these are damages.

And as has been well stated, 16 other sites are thrown in -- weren't part of the litigation; and, indeed, the DEP Chairman (*sic*) denied my OPRA request for assessments and priority rankings, that they have, so that we could properly -- and the public can properly -- evaluate, "Well, what are we giving up here? How many hundreds of millions of dollars -- maybe even billions?" We don't know. They said, "Well, they're minor, they're minor." Well, then, why don't you show us the information to determine that. And a trial judge won't know that either, and that's why I believe the trial judge will deny this settlement.

And lastly, all the gasoline stations -- I think Jeff Tittel will talk more about that -- that are being released from natural resource damage liability. The bottom line here is the State put on a good case: an eight-month trial; the post-trial briefs submitted by the State were well done; the

expert testimony was well established; the foundation was laid. And \$8.90 billion is being reduced to \$225 million, less 44 percent.

One last thing: The settlement allows ExxonMobil to sue the Linden Roselle Sewerage Authority -- that is, the taxpayers of the cities of Linden and the Borough of Roselle -- and the New Jersey Turnpike Authority for contributions. So that this settlement could even be less than 1.4 cents on the dollar and puts public entities at risk. Again, there was no reason to do that, except to give-- Basically, from what I see, the lawyers for ExxonMobil wrote this settlement agreement. That's the only way I could see it.

There are substantial and good reasons to reject this settlement, Mr. Chairman. Thank you. (applause)

ASSEMBLYMAN McKEON: Senator Lesniak, thank you for your leadership. Please, you can applaud now. (laughter) (applause)

We all thank you for your leadership, and in part have been inspired to get into our own evaluative process based upon our great misgivings. And much of what you just reflected is set forth in the Assembly Resolution that was -- not unanimously, but 45 to 17, with 9 abstentions -- even with some bipartisan support, passed.

But that having been said, you just taught us something that we hadn't picked up on -- and that was the alleged damages, and the fact that there's the tax break on top of it. So it goes from bad to worse.

SENATOR LESNIAK: Mr. Chairman, let me thank you for your leadership in getting the time extended from 30 days to 60 days. Because, as you can see, this was all needed to ferret out information for the

public; and we still don't have all the information that will be needed to evaluate this.

ASSEMBLYMAN McKEON: You and I and our very capable staffs spent some time in that big room with just boxes in it.

SENATOR LESNIAK: Exactly.

ASSEMBLYMAN McKEON: That was their supposed way of allowing us in.

SENATOR LESNIAK: And they have priority rankings; they have it, but they won't give it to us.

Thank you.

ASSEMBLYMAN McKEON: We're going to defer the Committee -- there's not going to necessarily be any questions of witnesses today, although if any of my members have something they would like to bring up to the Senator, please do so.

Yes, Assemblyman.

ASSEMBLYMAN JOHNSON: Thank you, Chair.

You stated that we have no questions, but I have -- I need some for clarification from Senator Lesniak.

ASSEMBLYMAN McKEON: Please.

ASSEMBLYMAN JOHNSON: And thank you, Senator--

ASSEMBLYMAN McKEON: We do have questions, as I said.

(laughter)

ASSEMBLYMAN JOHNSON: We do have -- I have questions.

I think that some of--

UNIDENTIFIED MEMBER OF AUDIENCE: (off mike)  
Could you please speak louder into the mikes, because it's hard to get back here.

ASSEMBLYMAN JOHNSON: Oh, okay. Sorry.

UNIDENTIFIED MEMBER OF AUDIENCE: The acoustics aren't that good.

ASSEMBLYMAN JOHNSON: (louder) How about now?

UNIDENTIFIED MEMBER OF AUDIENCE: That's better.

ASSEMBLYMAN JOHNSON: All right, yes. I'll use my Bergen County voice. (laughter) Okay.

UNIDENTIFIED MEMBER OF AUDIENCE: I'm a senior; I don't hear as well as you young guys.

ASSEMBLYMAN JOHNSON: Understood, understood.

SENATOR LESNIAK: By the way, she's 79 years old. Give *her* a big hand.

ASSEMBLYMAN JOHNSON: Oh, 79? (cheers and applause)

Senator -- and this is for people who are not attorneys and not trained in law, such as myself -- you mentioned settlement versus litigation. Had this case been litigated, do you feel that the award would have been much higher than \$225 million?

SENATOR LESNIAK: Just on a legal terminology -- it was litigated. If the case was left to the judge to determine, after eight months of litigation-- In my opinion this case is worth billions.

ASSEMBLYMAN JOHNSON: Okay. And because the State settled for \$225 million-- And how much is that, how many cents on the dollar is that?

SENATOR LESNIAK: That's 3 cents on a dollar.

ASSEMBLYMAN JOHNSON: So because the State settled for 3 cents on the dollar; threw in other sites -- other retail sites; also put the term in *alleged damages*, which-- Can you explain that a little bit more too? The alleged damages, and how that affects the corporate taxes that they pay?

SENATOR LESNIAK: Sure, sure. By putting in *alleged damages*, ExxonMobil will have an opportunity to claim that this was a business expense. If it were *damage*, it would be considered more of a penalty where they couldn't claim it as a business expense.

ASSEMBLYMAN JOHNSON: Okay. I have--

SENATOR LESNIAK: And that reduces it to 1.4 cents on a dollar that Exxon has to actually pay.

ASSEMBLYMAN JOHNSON: Right, yes. So now it's a business decision; okay.

So, Chair, I'll finish with that. I mean, there are many more questions up here, but I'll finish my questioning.

Thank you, Senator.

SENATOR LESNIAK: Thank you, Assemblyman.

ASSEMBLYMAN McKEON: Any other members, while Senator Lesniak is here? I know he has another matter to attend to.

SENATOR LESNIAK: Well, I'm actually going back to Elizabeth to practice my accordion. (laughter) It's been a long time.

Thank you very much for having this hearing. I applaud you for it. (applause)



ASSEMBLYMAN McKEON: I'm going to just take a minute of everybody's time to explain what our goals are today, and what this Committee has done thus far.

This is our third hearing; we had two very extensive hearings in Trenton. And beyond the witnesses that we heard from, it included the fact that we had retained, as a Committee, environmental experts and attorneys who practice in the environmental law field. We secured the 57 days of trial transcripts; and between staff and our own review of those went through those trial transcripts. We read the legal precedent over the 10 years of the litigation to understand the various roles, or the place that we found ourselves in. We went through the expert reports submitted by both sides. We went through the post-trial briefs. And then, added to that, to the extent that they permitted us to, during Budget hearings we questioned Attorney General Hoffman and DEP Commissioner Martin. Beyond that -- again, I give staff just all the credit, along with all of us who did our best. You know, we went into a room the DEP opened for us -- about the size of this podium, that was just filled with bankers' boxes of documents -- just to try to discern the other 16 non-Bayway sites and what was given up; let alone the other 1,800 retail Exxon sites throughout the State of New Jersey.

Based on all of that, we synthesized our thoughts and our findings into an extensive Resolution. If anybody's interested in seeing that Resolution, it's left up on the dais for anybody to go through. As I mentioned to the Senator, that was brought before the full Assembly and it was adopted 45 to 17 to 9 -- to the credit of those Republican members who voted for it, with some bipartisan support.

We confirmed through the Attorney General's Office that that Resolution will be placed on the record and given to the judge for their consideration.

One of the things that Commissioner Martin said during the Assembly Budget hearings, when I asked about how many people had weighed in to the DEP -- objecting or speaking one way or the other to the settlement -- he said most of it was form letters. And to me, with due respect, that was very dismissive of what individuals felt. And so as opposed to being, kind of, in that bubble of Trenton, we thought that it was important to come out to the community -- to the community that was most affected in the form of the Hudson-Raritan Estuary, and the literally 15 million people who live in that area on both sides of the river, including New York -- to give them a chance to go on the record, to speak beyond just something that was submitted in writing.

So I want each and every one of you to know -- who will be witnesses today -- that if you have submitted something in writing, that's great. Over and above that, we're going to reduce what happens today to a transcript, and we've been given confirmation that it will be delivered in a timely way -- with this Friday, June 5, as the deadline -- to the DEP Commissioner and to the court so that your opinions and statements will be made known and be on the record.

And as the Senator alluded to, this never had anything to do with the cleanup. Since 1991, Exxon -- because it's the law; people would have gone to jail otherwise -- agreed, based on a supervision that happened -- well beyond when all of us are gone; it will be another three generations before the cleanup is concluded -- that cleanup already had to happen.

This is about damages; this is about compensation for the, literally, hundreds of years -- three or four generations of the people who live in this area who have been denied use of the premises. It's about restoration -- what it would cost. The cleanup is going to happen; but think of the clean-up as being a parking lot, to a great extent, that's just going to, hopefully, encapsulate all of the poison -- for lack of a better term. They'll never restore the estuary that was in place, the ecosystem; the important component that a lot of people suffered during Sandy for that reason -- that would have been a buffer, a natural buffer to storm surge.

You are the folks who suffered those damages, and you are the folks who we should hear from -- as should the judge.

So with that, I'm going to start by calling on Jeff Tittel, who has been very helpful through this process in what is a very detailed and complicated area -- using his expertise accumulated from many years of service -- to provide us with information.

So Jeff, you'll be our first witness.

**J E F F T I T T E L:** Thank you.

I want to thank the Committee for, again, holding this hearing. It's very rare to see Legislators willing to stand up to truth, to power. And it's good to see because this deal really sells out the taxpayers and the environment of New Jersey. But I think, even worse, leaves communities that have been impacted without getting the resources and benefit they should get from the damages.

You know, as a kid growing up in Hillside I used to see the Bayway plant. And every once in a while it would spew stuff out, and we

would have to clean it off the windshield of our car and our lawn. I remember when a tank blew up there, and it looked like a mushroom cloud.

So I grew up there. And, you know, a kid from Newark and Hillside -- I used to come over to Bayonne a lot to go to the Hudson River Park and other things. And I always remember my grandparents talking about how Bayonne, at one time, was a resort community. And now the Christie Administration is trying to create a polluter's holiday here and throughout the state.

When you look at the scope and level of this deal, you get to see the magnitude of the sellout that it really is -- and the misinformation from this Administration. If the Governor was Pinocchio, with what this Administration has been saying his nose would be in San Diego, heading somewhere towards Hawaii by now. And I think that's the point that I want to try to get at today, because it's really about the concept of natural resource damages, the litigation, and what it means to New Jersey -- not only Bayonne and Linden, but throughout the state. There are sites from Cape May up to High Point with gas stations; there are toxic sites in almost every one of your districts -- in Teterboro, out in Morristown, in Atlantic City, in Trenton, in Pennington. So throughout New Jersey there are sites that are toxic that have been impacted by this.

And, you know, the Administration has been trying to hide behind this concept that they still have to clean up the site. What they're forgetting and what they're really -- again, misinformation -- is that what they're calling *cleanup* is remediation. What the lawsuit called for was *restoration*. A big difference. In remediation, since it's not residential, you can cap it, bring in fill, put a vinyl lining in, pave and wave, and walk away.

With restoration, you have to clean out your mess and restore those wetlands to where they were ahead of time -- before the pollution hit them. And that's critical, one, because coastal wetlands, which these are, are critical habitats for fisheries and for migratory birds; but they are also our first line of defense against flooding and storm surges. So when you think about Hurricane Sandy, and you think about Bayonne, and Elizabeth, and other places getting hit, had those wetlands been restored it would make a difference. And that's true throughout the state.

But the concept of natural resource damages comes from the Public Trust Doctrine that's been part of New Jersey law since Colonial days -- that lands that are touched by the tides belong to all of us. That's why we have beach access and the Hudson River Walkway.

It also says that there are other resources that belong to all of us: water, because all of the waters in New Jersey belong to the people, including groundwater, fisheries. And when the Spill Act was passed it was a monumental act at the time, and Superfund was based on it. It said that if you destroy resources that belong to all of us, you have to compensate the people for the loss of that resource. Not the politicians, not the government -- the people. And what we see here is an Administration where the Governor said that this was a good deal -- he meant for Exxon, not for the people of New Jersey. Just on the two sites alone -- you talk about \$8.9 billion worth of damages and restoration; \$2.7 billion was for restoration, by the way. And then with a wave of his magic wand he decided to throw in 16 other sites and over 800 gas stations. It could be as high as 1,700; we can't get a real counting. And all those communities are now included in this sellout.

And I just wanted to touch base a little bit on that, because I think what you really have to understand is that this affects a lot of places. One area in particular is Paulsboro, in South Jersey, where there's almost 950 acres that have been impacted in some form by the three different sites that are part of that one site down there. The Paulsboro oil terminal, where we found, in DEP's own files, over \$81 million worth of damages -- in a 2009 report -- to groundwater alone; plus 63 acres of contaminated soil; plus we found that there's other impacts there as well. It went into a park and into the river. So in DEP's own documents, they're talking about close to \$100 million in damages on just that one site. And yet, DEP then turns around and in a 2013 report says, "Well, their liability may be only \$1.1 million;" you know, chump change.

In Paulsboro there's also the Lube Plant. It's considered a C2 site, which means impact to groundwater, multiple contaminants, benzene, volatile organics, impact to soils. But they say there's no -- DEP -- wave the magic wand -- no damages. And there's another site there that's part of an old refinery that goes back to the days of (indiscernible) when Mobil was called Standard Oil of New York. And that thing is as dirty and as complex as a Superfund site, with all kinds of contaminants. And then down the road in Pedricktown is Tomah Chemicals, which is as dirty as a Superfund site, with literally hundreds of chemicals, including heavy metals, in the soils and the water -- into the environment. And yet, we're waving a magic wand, "No damages." And I think that's really troubling.

The other part that's troubling -- and then I want to get into some documents that I have -- is that the purpose of the settlement is not to help the people of New Jersey, the environment, or the taxpayers. It's really

to help the Christie Administration get off the hook with some of their friends. I mean, when you look at the connections between the law firm that represents Exxon and the Christie Administration -- they're there. You can look at Exxon's relationship with the RGA -- they're there. This is what this is about.

The other piece -- to us -- which is troubling, is the language that was in this current budget that's in next year's budget, which says that all monies that come in for natural resources damages -- the first \$50 million can go to lawyers and environmental programs; after that it can go into the General Fund. The problem with the first piece is, of that \$50 million, \$40 million to \$45 million will go to the lawyers -- so leaving somewhere between \$5 million and \$10 million to go for compensation. And the rest is going to go into a black hole in the budget to pay for tax cuts, or transportation, or debt service, or who knows.

And the problem is that the people of this State are being shortchanged. The people of Bayonne are being shortchanged. The people of Bayonne, who have been impacted by pollution for decades, may not see a penny out of this settlement if it goes forward the way it is -- even though they have had to deal with pollution in the groundwater, pollution in the wetlands, air pollution over the decades. And they may not see one penny, and that is unconscionable.

On top of that, that same language is in the current budget proposed by this Administration. So we hope it gets taken out. But the point that I'm trying to make is that this is a dirty deal, done dirt cheap. And the people in every one of these communities should be outraged, because they're the ones losing out -- as are the rest of the taxpayers.

Because money from natural resource damages has historically gone to do some very good things in New Jersey. It was used to remediate the well field in Toms River; it was used to buy Open Space; to clean up and restore wetlands; it was used to buy oil skimmers on the Delaware River to help clean up oil spills -- and on, and on, and on. And these communities will be sold out by this Administration.

But the main point that I wanted to get into is some documents that I have in my own files. Because DEP, when we were asking, and did file reviews, said, "We don't know what you're talking about. We don't have any information." So I just want to bring out -- and I have them electronically, too, that were sent to the Committee. But I worked on natural resource damages with Assistant Commissioner Gimello; and Jim Hall, the Assistant Commissioner of Natural Resources in the Whitman Administration. We developed a system and program for it. And if you polluted *this* much, you paid *that* much. It was very simple; it was based -- similar to the report that's in this file, that the State used in the case before the Christie Administration decided to settle a case that they were winning.

You know, it's kind of like Tom Brady at the end of the Super Bowl handing the ball off to the other side for them to run for a touchdown and win. It's not exactly how you do business in the legal field.

So what I have here is that, first and foremost, every contaminated site in the State of New Jersey was given a number, and then put into what was called the *Remedial Priority System* scoring system. It's in the computers of the DEP. And every site-- And I have here Parkway Friendly Service Station in Fair Lawn, and it says, "Excavated, removed 7 underground tanks in 1990; discharge of gasoline; PCBs (*sic*) and PCE



found at 1,500 parts per billion; plume not delineated; potable wells within 1,000 feet.”

And every time there’s an event-- Here’s a gas station, a Shell station in Paterson. “Ongoing discharge; 3 inches thick; no removal action yet; underground storage tanks leaking.”

So every time there’s an enforcement action, it was put in. There are documents-- Here’s another gas station: “Approximately 450 gallons that was discharged from open valves contaminating groundwater,” and on and on. And we know they have it for every site, because I have one here. Exxon station in Kearny: xylene, MTBE, benzene, tertiary butyl alcohol in the groundwater; in the soil: benzene, xylene -- exceeding, exceeding, standards, exceeding standards.

You know-- And then I have here a confidential internal ranking of the City of Linden that was done for a caseworker at DEP. Her name was Zoe Kelman; she’s now -- she’s left the Department, but she had given me this a while ago. Every site in Linden got scored. And here’s the note; it says that, “These sites may be active, but they were all scored for NRD.” There’s a note from the field worker who carried the city.

So every site in Linden got scored. And the reason I’m saying that -- for natural resource damages -- and the reason I’m saying that is because in this list, where DEP says they have no information, I have -- besides the Tosco and Bayway refineries -- just give me a second -- I have a Mobil Service Station on Edgar Road that’s been scored. I have an Exxon Station on Route 1 that says, “In 1992, a leaking hydraulic fuel at lift tank; post-exam sample 23,000 parts per million TPHC; gasoline has also been detected,” in DEP’s documents. Here -- “Exxon Research Center, Linden;

case was scored by M. Walters, updated by C. Pfleiderer, 12/07/2001.” So those documents exist; yet, somehow, they don’t. And that’s sort of the point that I’m here to talk about, and I’ll leave copies of this and I sent it electronically to the press.

Because it seems as if they’re trying to mislead the public and mislead this Committee on the settlement. Because there are a lot of damages out there; there are a lot of sites that have been impacted. And yet, they say they don’t have that information. Well, how come I found this stuff in my files? They have a computer system that has every site that’s been scored; thousands of sites, every gas station -- every one of those 16 sites. And from that information you can determine natural resource damages.

And that’s really why I’m here, because I think what this Administration has done is unconscionable. And the damage and impact to these communities, from one end of the state to the other, is shameful. That this Administration cares more about Exxon than they care about the people of New Jersey, than they care about the taxpayers and making us whole.

And the point that I want to say is that the concept that they -- in this settlement, that they call it *alleged pollution*. Yes, I stepped in that alleged pollution up past my ankles in Linden, you know? People in every one of these communities -- they know that the pollution is not *alleged*; they’ve seen it firsthand. They’ve lived with it, they’ve breathed it, they’ve seen it in their streams, they’ve seen it in their water supplies. And many of these towns have had to also do well remediation because of the pollution from many of these sites throughout the state.

And I just want to close with just one or two points -- which are that I think that this Legislature needs to have subpoena power to get to the bottom of this and hold those officials accountable. Two, I think we need to go back and change the laws. When I was involved with the Natural Resource Damage program, it could be done through a program where you could actually go to DEP, and before you got your No Further Action letter or sold your property you had to pay your damages. In 2000, when DeFrancesco was Acting Governor, they changed the law -- that said you could only do it through litigation. We should go back to being able to collect in two programs so we don't have to go to court; so we can actually assess the pollution damages through a program, and we don't need to go through these kinds of charades that this Administration has now turned the court system into.

We have had thousands of people comment; more than 2,000 of our members have submitted comments -- and they were not form letters, they were comments -- and thousands more. And I think that this Legislature needs to go out and, one, change it back to program; dedicate the monies from settlements so that they're not stolen by this Administration or future administrations; so the people who have been damaged are made whole again, that the communities that have been impacted get those resources that they need. And that is your job.

And I hope you get to the bottom of this, and I hope together we can stop this sell-out of New Jersey. Because I think that's the only way we can do it. We have to get the judge to block it, and we're going to try to go to court to do that. But I think this Legislature needs to stand up for the

people of New Jersey, and for the taxpayers, and for the environment -- because the Christie Administration sure is not.

Thank you. (applause)

ASSEMBLYMAN McKEON: Thank you, Jeff.

Any questions for Mr. Tittel? (no response)

Jeff--

ASSEMBLYMAN O'DONNELL: Chairman?

ASSEMBLYMAN McKEON: Oh, yes -- certainly.

ASSEMBLYMAN O'DONNELL: One question, if I may?

ASSEMBLYMAN McKEON: Sure.

ASSEMBLYMAN O'DONNELL: Through the Chair, Mr. Chairman.

Jeff, thank you so very much for your testimony here today. You are the foremost expert in Trenton, and I appreciate you being here.

A quick question -- and we're not going to change this Governor's mind. I firmly believe this should be taken out of the hands of the Governor -- or future governors, quite frankly. What is the prohibition, if any, other than financial, for local communities to file the NRD action?

MR. TITTEL: Well, unfortunately, you could do a citizen's suit for damages, but New Jersey is very limited. The problem is that natural resource damages are a section of the Spill Act, so it's a power that's given to the State DEP in what we call the *Spill Act Monitor*, who is actually in DEP and an NRD monitor. So unfortunately, because it's contamination of public waters and public resources, it's a State function. So you maybe need another Governor.

ASSEMBLYMAN O'DONNELL: From your lips to God's ears.

Thank you.

ASSEMBLYMAN McKEON: Any other questions? (no response)

Jeff, thank you. Nobody can deliver chemical compounds with such inflection as you. That was pretty good. (laughter)

Before I call the next witness, just a note: A part of Mr. Tittel's testimony, just to understand: Of the \$225 million, if the settlement is approved, \$50 million of it will go to attorney fees, leaving \$175 million. And of that \$175 million, \$125 million of it will go the General Fund and have nothing to do with environmental cleanup. So what we're talking here, for 120 years of extensive damage that we ourselves, as a State, said was worth \$9 billion, is basically \$50 million. That's important to recognize.

Okay. Peggy Wong, of the Hudson County Waterfront Conservancy.

**P E G G Y W O N G:** Chairman and Committee members, I thank you for holding this meeting and giving me a chance to speak.

Even though I'm here representing Hudson River Waterfront Conservancy, the reality is our constituency is the residents of every town along the 18-and-a-half mile stretch of this Walkway. And the Walkway-- And I am departing from my prepared remarks, in case you're looking at my handout, because I wanted to explain, for those of you who may not know, the Hudson River Waterfront Walkway is mandated by the State. And that mandate is due to the fact that, as Jeff said, the access to the waterfront -- whether it's urban waterfront along Hudson County and Bergen County, or down at the beach -- down the shore, as we call it -- access to the waterfront

is a benefit or a right of every citizen in our state. And for us, the Hudson River Waterfront -- it goes back to Roman times, the Public Trust Doctrine.

Now, I've given you a map which we have gone to great trouble to prepare for our visitors. The map is two-sided; and it is two-sided because 18-and-a-half miles takes a two-sided map. And you will see, on one side, Bayonne. And on that you will see a red outline of the incomplete walkway. And as you can see, there's quite a bit in Bayonne.

ASSEMBLYMAN McKEON: Ms. Wong, let me just stop you for a second.

Everybody's good with following what they have?

Okay; all right, thanks. We just wanted to make sure we catch up with you.

MS. WONG: And right now we're talking about just this area. Obviously, the industrial parts of Bayonne are separate, and hopefully they will be developed, in time.

But the State says that if anyone wants to come along and develop any part of the waterfront, they must -- they are required -- I mean, there is no *ifs*, *ands*, or *buts* about this -- they are required to install a walkway. And the Walkway is roughly 16 feet wide with a 14-foot buffer. So you're talking about roughly 30 feet. And there are design requirements and design guidelines that the State gives out.

So I want to go to that explanation because, to understand my remarks you have to understand that the Walkway is a mandate. But it's a mandate that's an amenity to the residents of New Jersey. And we know for a fact that when the residents discover this Walkway -- and we get visitors, not just from Hudson or Bergen counties; we get them from Essex,

Union County; we get them from out of state -- New Yorkers -- they are overwhelmed by the vision and the sight of this Walkway, and the views from New Jersey.

So what we are concerned about with this settlement is-- As you see, on the third page of my handout there's a map of this area -- of Bayonne -- that goes up to the Bayonne Bridge. And I've hand-noted the sites that are contaminated -- or, at least, they are on the list in the settlement agreement.

Now, up until the settlement agreement was publicized recently, we had no idea where in Bayonne the contamination was. It was very difficult to find that information out. So with the settlement agreement we saw on page 5 and 6 that these sites are identified. And when we looked on the map, we realized how much of it surrounds our Walkway; and also, not only our existing Walkway, but our proposed Walkway. And we hope to complete this Walkway-- Up until now, we had hoped to complete it in our lifetime. And the completion -- by that, it goes up to Bayonne Bridge. That is the start and end of our Walkway, and it goes from there all the way up to Fort Lee in Bergen Count, to the George Washington Bridge. It is a magnificent Walkway, but it is not complete here in Bayonne.

I will tell you my personal view is that with this settlement -- and now what I've heard today that there's actually a \$50 million pie that's going to be sliced up -- and we are afraid that any priority that's given to the completion of our Walkway, where there's so much contamination -- our priority will be very low on the list.

And that's why I say to you this Walkway will not be completed in your lifetime or your children's lifetime. That's what we're facing, and it's a shame. It's not the worst in all of this. I mean, there are areas that are contaminated where people's health and lives are being affected; we realize that. But this is, on its own, a worthwhile amenity to the State; it adds to the quality of life for our citizens, it brings revenue into the State with our visitors. So it is a worthwhile endeavor. But, as I said, with a \$50 million pie -- how many ways can you slice it? And we know we'll be at the very bottom of the list. With a larger settlement, we have the hopes of getting this work done -- hopefully in our lifetime.

And so the only thing I have to say -- and I've really grossly departed from my prepared remarks, but I think you can read for yourselves what I had to say there -- the only thing I can say to you is do what you can to bring this to the attention of your legislative colleagues and the court system. Lots of priorities; we realize that. But one of the priorities is completion of the Walkway.

And I want to say that the New Jersey DEP works with us closely on this. So it's kind of ironic that on one hand they're helping us to complete the Walkway; but on the other hand, they may be hindering us. And I say *maybe*; I have some hopes for Commissioner Martin. But the point is that we do work with them. And some of the people who are in the Bureau of Enforcement, Coastal Land Use and Enforcement are wonderful people. They are very dedicated to getting the Walkway completed. But they answer to Commissioner Martin who, in turn, answers to Governor Christie, as we know.

So that is my presentation, and I hope that--



ASSEMBLYMAN McKEON: Ms. Wong--

Go ahead; I'm sorry. I thought you were finished.

MS. WONG: --and I hope that you realize that when you're talking about the settlement, and keep in mind the Walkway. Because it's never going to be completed if the settlement remains as is.

ASSEMBLYMAN McKEON: Ms. Wong, we appreciate your thoughtful remarks. Your written testimony, as we noted, will be submitted to the court so they can take that into consideration. And just listening to you, we can tell that the citizens of this area are very blessed to have an advocate like you.

MS. WONG: Thank you. (applause)

ASSEMBLYMAN McKEON: Ed Potosnak, New Jersey League of Conservation Voters.

**ED POTOSNAK:** I just wanted to check to see if it was morning or afternoon.

I want to say good morning; I'm Ed Potosnak from the New Jersey League of Conservation Voters. I want to thank you, Mr. Chairman and distinguished members of the Committee, for having this hearing on an important issue right here in the local community -- one of which is disaffected by this toxic deal put forward by the Christie Administration.

We support the Resolution which rejects the settlement of just \$225 million, instead of the \$9 billion that's estimated to restore the lands that were ruined by ExxonMobil. And it's a really important issue because, as folks know, New Jersey has a toxic legacy. We have many sites that need to be cleaned to ensure good, strong, healthy atmospheres for our children and future generations to grow up; but also economic vitality and

competitiveness. They're really critical for businesses continuing to be here. Clean water in a state that's dependent on clean water for our industries, like pharmaceuticals and manufacturing -- it's an important issue.

And we're really pleased to see so many people in the public come out against this deal. We have collected, along with New York/New Jersey Baykeeper, over 7,500 comments opposed to this deal. And the reason we see that from both Democrats, and Republicans, and Independents -- which my organization represents -- is because no matter how you look at it, this deal stinks. The deal with ExxonMobil not only lets the polluter off the hook in a state that traditionally has had a very strong polluter-pays principle, where we make sure those responsible pay to make right what they've ruined-- And this has been a turn on that tradition, and people are speaking up.

The other thing that's really good to see, in a very unfortunate environment, is the Legislature's reaction -- leaders in our community, like Assemblyman McKeon, and Senator Lesniak, and many others speaking out against what is a really toxic deal. Because it makes it clear that there is alignment between the voters who are speaking out and sending their comments in, and the legislators. And it's important to see that unity if we're going to stop this from going forward.

I wanted to talk about one other issue -- and it was raised a little bit earlier, but I kind of wanted to drive it home. And that is the budget -- on page D-128, where there's language in there that diverts any settlement funds in excess of \$50 million to the General Fund. That's not only important to this, whatever happens at the end of the day, but it's also

important when we look forward to other kinds of settlements. And we've seen negative ramifications in the Passaic River cleanup settlement as well.

So just to make it really clear: The language says that any money beyond \$50 million goes to the General Fund. Out of the \$50 million, legal fees can be taken -- which are extensive in some of this litigation -- leaving very little money to actually restore the lands that were damaged. So last year the Legislature put language in and, just prior to that, they said one-half of anything in excess of \$50 million would go towards the restoration -- the NRD work, the natural resources damages. The problem is our Governor has the ability to do a line item veto, and he just crossed out that *one-half* and left us with what the original -- this \$50 million language.

And so we have sent letters to many members of the Budget Committee and other leaders in the Legislature, along with other environmental groups, to totally eliminate that language. And I'm asking you, on behalf of the very many people who have spoken out on this deal, and others who are disaffected by environmental pollution, to remove that language from this year's budget. We understand it's a difficult year; many things are happening within the budget. But if you all, knowing that you are so concerned about this, can also set your eyes on that language -- zero it out; it can't be there at all. Because with the gimmickry of the line item veto, sometimes good intentions end up having very bad results.

And we've seen money that could have gone to restore the Passaic, where my father grew up swimming and fishing. I think there was just a news report I put on my Facebook -- we learn a lot of things -- the carp in Newark -- you know, and folks with the flooding -- coming out of

the river. My dad grew up eating those fish. And our future generations, if we restore those lands, will have that same opportunity. (applause)

But it's up to legislators, it's up to leadership, it's up to all of us to make sure we make decisions today to make sure that those fish are free of toxins, and we can once again use the waters recreationally and enjoy them. And that's for our grandchildren and their children. And that's really critical.

So I want to thank you for this. The people have spoken. This toxic deal stinks. And all together we're united against it, and we thank you very much for your time. (applause)

ASSEMBLYMAN McKEON: Thank you.

Any questions for Ed? (no response)

Thank you for your kind words, and for your thoughtful testimony and continued leadership on this and other matters.

MR. POTOSNAK: Thank you, Mr. Chairman.

ASSEMBLYMAN McKEON: As I call the next witness I just note, based on Ed's testimony, that this Legislature -- both the Senate and the Assembly -- passed a bill that at least took 50 percent after the first \$50 million of any environmental settlement and kept it to be spent for environmental remediation. But that was vetoed by Governor Christie a couple of weeks ago.

Marion Cooney of Bayonne.

Ms. Cooney.

**M A R I O N R. C O O N E Y:** Good morning; maybe it's morning, maybe it's afternoon.

ASSEMBLYMAN McKEON: It's still good morning.

MS. COONEY: I just prepared a little paper -- and you have it in front of you -- showing you what Bayonne was like prior to Exxon coming in -- I should say *Standard Oil* -- coming into Bayonne. The information comes from Dr. Walter Robinson, who wrote the definitive book on the history of Bayonne, *The Historical Heritage of Modern Bayonne*.

On the first page, second paragraph, when Bayonne was first settled by the Europeans, they saw “large deposits of oyster and clam shells at many places along our shores,” especially where Exxon took over and built its refinery.

When the explorers came in they saw Bayonne and Staten Island shores -- the land, they told us, was pleasant with grass and flowers and goodly trees. When Exxon came, that disappeared.

On the second page, you see a picture, or a map, of Bayonne and the marshlands that were spoken about by the other speakers. And you see much of that area that Exxon took over -- the Constable Hook area -- has the marshlands which helped to prevent the flooding. That was destroyed by the Exxon refinery.

On the second page after that there's a map showing you Bayonne in 1961. That was when the book was written, and you see the area where the marshland was is taken over by Exxon.

Then on the other page, “*The Standard*” and the *City of Bayonne*, you see a picture of the ships that were taking the oil from Bayonne, and it mentions -- this was in the 1870s -- when Rockefeller purchased the land at Constable Hook. “The Bayonne plant was to become the largest refinery in the world by any standard -- number of people, products, and land area. At its zenith, the refinery covered 650 acres of land. It produced every oil

product known. At its height, the refinery processed 77,000 barrels of oil a day -- a tremendous amount for its time.

“At one point, it had 13 piers handling the largest tankers afloat. It employed as many 5,500 people. And like the town itself, it ‘mothered’ the promised-land dreams of thousands of immigrants streaming to America,” who found jobs down at Exxon -- or, I should say, Standard Oil.

On the final page I have a picture of what it looked like. This is an artist’s rendition of Bayonne and the refinery -- the “largest and brightest jewel in the crown of the Standard Oil Empire.”

I think that Bayonne has contributed so much to Exxon and the wealth of this company that they owe us to have a remediation of the soil. And we demand it as citizens of Bayonne who have contributed so much to Exxon.

Thank you, and that’s all I have to say. (applause)

Are there any questions? I was a teacher, so I’ll say, “Are there any questions?” (laughter)

ASSEMBLYMAN McKEON: I love this; I want you to go on forever.

ASSEMBLYMAN JOHNSON: Yes.

ASSEMBLYMAN McKEON: It’s just amazing.

MS. COONEY: Pardon? I can’t hear you.

ASSEMBLYMAN McKEON: Your presentation is wonderful. We appreciate it.

MS. COONEY: Thank you so very much.

ASSEMBLYMAN McKEON: Thank you for all your hard work.

Michael Ruscigno (indicating pronunciation). Did I say that right?

**MICHAEL RUSCIGNO:** Ruscigno, that's good.

ASSEMBLYMAN McKEON: All right; Michael, from the Bayonne Nature Club.

MR. RUSCIGNO: Good morning, Chairman and Committee members.

Let me start, I've been in Bayonne for over 20 years now, and my wife and I started the Bayonne Nature Club when we first retired. It was funny because we contacted the American Littoral Society when they were doing a spill spotter class. And I told them we were with the Bayonne Nature Club and we would like to do a class for the members. She said, "Okay, fine." She hung the phone up, looked around the room, and said, "Bayonne Nature Club? Was this a joke or are they for real?" Because the history of Bayonne is such an industrial wasteland, and the oil refineries, and what it was. But, no, there is a Bayonne Nature Club here.

And Bayonne itself had a lot of industry, and now with its new neighbors coming in -- that we've actually been working with and taking part in what they've been doing. I'll say the Bayonne Golf Club, for one, which was a garbage dump, a huge garbage dump that has now been capped. They're also working with the waterway itself to clean it up, and they planted things that will bring fish in. The fish will bring the birds, naturally. And they're working diligently on this. And they have, I believe,

a few miles out -- that they've been working on this by remediating the soil under the water. They actually own that part of it.

Then you also have the Rutkowski Park area which was redone, which is beautiful boardwalk on the west side. This Park is the home of many, many wildlife birds. But this, too, was a contaminated site by the Department of Transportation. And I believe they gave it over to the City. And Honeywell was responsible for it. And Honeywell now is cleaning it up, been cleaning it up, and it's clean. It's a beautiful area where we go bird watching.

Then you have the situation with the Passaic River, where Agent Orange was dumped during the Vietnam War when they were creating it and building it. The Hackensack River Keeper is working diligently now to get the Passaic River cleaned up.

These are companies that have contaminated and are responsible. At Bergen Point over here in Bayonne you have the Texaco site. These are all oil names. Now it's going to be a development. They're working hard to clean it up. They're going to put people there – apartments, parkland. And this is the company that poisoned it, and they're getting to pay it back.

Now, you have these companies that are working diligently to get this cleaned up. And now Exxon gets a free pass to say, "No, you can leave."

And the wildlife they brought back here-- We've had King Rails over here by the Golf Course. They're not usually in this area. We have Yellow-Crowned Night Herons. You have Snowy Owls that are visiting this area now. I mean, the wildlife is incredible. Yellow-Crowned



Night Herons are nesting over at Rutkowski Park; Yellow Legs, Great Blue Herons, Egrets. This area is working to bring back this wildlife. And the City and everything is working hard to bring in developers to show them that we're cleaning this area up and making these other companies pay. Exxon should not be given the right to walk away. (applause)

This deal stinks as bad as the bank vaults in hell where Exxon and Mobil keep their money. You must say "no" to this deal and say "yes" to the people of Bayonne, and "yes" to the people of New Jersey, and "yes" to a clean environment for our young kids to live on this planet.

Thank you. (applause)

ASSEMBLYMAN McKEON: Sir, just to keep you for a minute. And you've lived here, as you said, for many, many years. The two of us can still remember President Kennedy, so we've been around for a little bit longer.

Just from a perspective of the neighborhood: Any smells, any issues like that, that have affected the quality of life? I know how much people who live in Bayonne love it here, and they should. So I don't mean to ask that in a way as if it would be a negative. But has there been just that kind of impact in your lifetime?

MR. RUSCIGNO: The smells have changed. I mean, when they do a clean up and everything, it's taken care of. But you still go to contaminated areas, and you can just see the plight more or less. Down by the Hook Road area, where the refineries are, you have huge, rusted out oil tanks that are sitting there. And now, again-- And I haven't seen these areas that are supposed to be -- that Exxon has or developed-- I mean, there

is no, kind of, tourist map saying, "This is a contaminated area or not." But the smells have definitely changed, I mean, from – better.

We all know the industry has left this country. The water has changed and the smells have changed, yes.

Now, also, on this -- I forgot to bring this up -- over here by the Golf Course, where they have changed the soil and water remediation -- just May 28 there were hundreds of horseshoe crabs coming into this inlet, laying their eggs and everything; which is just a remarkable thing to see, when you hear about that going on in the Delaware and all these other exotic places. But here in Bayonne, horseshoe crabs are coming in laying their eggs, which also -- Ruddy Turnstones come and land to eat the eggs, so it's part of that whole system. And Bayonne now is being brought back into that system, and that's why Exxon must pay that price to keep that link going and keep it stronger. (applause)

ASSEMBLYMAN McKEON: Thank you very much for your testimony.

And just for the record, there is no tourist map of that site, you're right. As a matter of fact, Exxon denied this Committee's request to tour the site. They wouldn't allow us on.

MR. RUSCIGNO: Unbelievable.

Thank you so much.

MS. WONG: (off mike) Go on our Walkway.

ASSEMBLYMAN McKEON: Tim Dillingham, of the American Littoral Society.

Some of that testimony, Tim, will segue into what you stand for, I'm sure.

**TIM DILLINGHAM:** Thank you, Mr. Chairman and members of the Committee.

My name is Tim Dillingham. I'm the Executive Director of a conservation organization called the American Littoral Society that Mike just referred to. The word *Littoral* means "of or pertaining to the shore," so our work and our mission focuses on estuaries, natural resources that are found there in the communities that live beside them.

I want to thank you for having this hearing today, as well as the Resolution itself. I think this is tremendously important for a number of reasons. One, as Mike sort of, I think, tried to capture, there is a wonderful estuary here in the New York-New Jersey Harbor, and it's recovering. It has value, it contributes to the life of our communities, it contributes to our economy. It's not forgotten. The program that Mike described is one that we've created to try to help folks keep an eye on issues of industrial pollution in the bays, in Arthur Kill, and other areas; working with our friends -- with the Baykeeper and other places.

But I think, more importantly, on this settlement it could have tremendous and broad-reaching impact. It is a lousy deal for New Jersey. It is a lousy deal for the environment, and it misses opportunities to advance the protection and the restoration of our coastline, and all the benefits that it might bring both to the natural world, as well as to the communities that have great interest in them.

You've heard a lot of testimony. I know you've done a tremendous amount of work on your own in investigating this issue, which is captured very well in the Resolution. And I thank the Chairman and all the members who are cosponsors of that bill.

The bottom line here is that the facts contradict the scope of the proposed settlement that Governor Christie's Administration has put forward. The settlement agreement itself, and the standard that the Court will ultimately use, speaks to a settlement agreement or a resolution that's fair, that's reasonable, and that's in the public's interest. And this settlement that's been proposed by the Administration is none of those things. I think it's very easy to pick up the State's own facts, the reports that were prepared at the initiation of this litigation with Exxon, to understand the extent of both the past damage, what's been lost, what the continuing impacts are, what the costs are to clean that up.

The idea of NRD is about compensation for the restoration and replacement of the lost values, or injuries, or destruction of natural resources and natural resource services. And that's really what this should be focusing on. When you read this report-- When you look at the status report and you look at the pages and pages of chemicals that are still present -- that are contaminating these communities, that pose an ongoing risk -- it's not very hard to understand the \$225 million, even if it was kept whole, is not going to protect or restore this site; nor does it serve adequately to hold Exxon accountable for the pollution and their irresponsibility on this site in the past.

The public is at a bit of a disadvantage trying to assess the appropriateness of including the other sites that have been lumped into this settlement, because there is no information available on them. So on that matter, your opposition to the settlement, your urging the Court to reject it is appropriate and right on the mark.

As I said, if you look at the facts that the State itself developed and collected, that's the benchmark against which any adequacy of this settlement should be judged, and it's clear that it falls short. What's reasonable is the restoration of the destroyed environment here in Bayonne and Linden, and compensation for the losses to the public. The State's own facts contradict the scope of the settlement that's being proposed. And I think the work that you've done -- that you've captured, again, in the Resolution -- tells me, as an advocate for the protection of the environmental coast, that you understand that, that you're being responsive to the public's outrage over this issue, and you're very much on the right path.

Just in closing, I would say the broader significance of this is: We have a historic legacy of contaminated sites of 300-and-some years -- 350 years of not taking care of the coastline, of not taking care of the environment. This is not the final landscape. As we go forward, we should be investing in the restoration of the environment for all the values that it brings us. We know that a recovering estuary has added economic value; people have wanted to come back to it.

Peggy spoke about the Hudson River Walkway and its popularity, as well as its sort of foundation for real estate development or redevelopment of communities. As the water gets cleaned up, people come back along with the fish, along with the birds. And so this may be New Jersey's industrialized landscape, but there is tremendous natural value here that shouldn't be neglected. It should be cleaned up. And the State's policies, in terms of how we deal with historic contamination like this -- how we hold polluters accountable -- needs to be aimed at restoring, and

protecting, and enhancing that environment for all the values that it brings us in the public's interest.

So I think it's clear that our interest, that the public's interest is best served by having an objective arbiter make a decision about this; and in our minds, that's the judge. This needs to go back. This settlement should not stand. It should be reconsidered and really should go back to the judge who understands the facts, who has a long history in natural resource damage and environmental issues because of his experiences in State government -- and really to ensure that the public gets a fair deal out of holding Exxon account, and making sure they pay for the hundred years of damages they've done to this very special place along our coastline.

Thank you, Mr. Chairman. I appreciate the opportunity to comment, share my thoughts. And thank you very much for providing an opportunity for members of the community who live here to offer their thoughts. Because I think that's often something that doesn't happen, and all of these decisions get made on their behalf sometimes.

ASSEMBLYMAN McKEON: Tim, thank you very much for your thoughtful testimony, as always.

Any questions for Mr. Dillingham? (no response)

Seeing none, I just want to acknowledge the presence of Debbie Mans, who has testified before, of the New Jersey Baykeeper -- has testified at one of our previous hearings.

I'd then like to call on Matthew Zwerling.

**MATTHEW ZWERLING:** Hi, my name is Matthew Zwerling. I am 20 years old, and I just finished my sophomore year at the University of Florida.

So being in Florida, I get the question a lot of where I'm from. And whenever I say New Jersey -- saying that people outside of New Jersey view New Jersey poorly is a bit of an understatement. People view New Jersey as kind of an industrial waste dump and the Turnpike. And they also see New Jersey as a government with a lot of corruption. This deal kind of supports both of those stereotypes for New Jersey to the rest of the country.

Showing a State that has \$9 billion worth of damages done, then settles for only \$225 million -- that screams corruption to the rest of the country, and the same thing with New Jersey being viewed as an industrial waste dump.

What I'm seeing so much is a race to the bottom in this country in terms of environmental regulations and holding companies accountable for the damage they do. But as a 20-year-old, as I grow up and I'm deciding where I want to live in life, I'm not looking for who has the least -- the most lax regulations. I'm looking for the places in this country that still have some of the natural beauty of the state that this world had for millions of years before we came and did what we did.

Also, I hope this board doesn't see this attendance as reflective of the true public opinion of this matter. I have two parents who would love to be here and testify, but both of them were out of the door for work before I woke up this morning. And I was still able to get here for the 10:30 appointment with an hour drive. So the people of New Jersey are working hard, and those are the ones who are going to be affected most by this settlement.

Thank you very much. (applause)

ASSEMBLYMAN JOHNSON: Thank you for your testimony.

There are no questions.

Next we have Nicole Dallara, from Clean Ocean Action, testifying. You are opposed to the settlement it says.

**N I C O L E D A L L A R A:** “Yes” for the Resolution, but opposed to the settlement.

Is it still the morning or the afternoon? I don’t know.

Hi, members of the Committee and the Chairman. Thank you for the opportunity to speak today.

My name is Nicole Dallara, and I am the Outreach and Communications Coordinator for Clean Ocean Action. We are a coalition of organizations that work to improve and protect the ocean and marine waterways of the New York and New Jersey region.

The math is clear: ExxonMobil reported profits over \$33 billion in 2014, with total assets calculated at nearly \$350 billion. The proposed settlement is for \$225 million; and that not only exempts ExxonMobil from all natural resource damages claims and liability from the Bayway and Bayonne facilities, but 16 other different facilities owned or operated by Exxon. To say that this is a clear win for a multi-billion dollar corporation is an understatement.

The Bayway and Bayonne facilities sit at the edge of the Arthur Kill. This contamination continues to affect downstream waters, including the ocean, and aquatic and marine life that depends on an in-tact ecosystem. We urge the New Jersey Department of Environmental Protection to reject the proposed settlement and ensure that this cleanup, and any future settlements, address the full scale of ecological and economic harm.



The proposed settlement would constitute a failure: a failure to provide for the remediation of a heavily polluted ecosystem; a failure to provide help and protect the health of Union and Hudson County residents who have lived near the two sites for decades; as well as a failure to protect the aquatic and marine environment.

Thank you for your time. (applause)

ASSEMBLYMAN JOHNSON: Thank you for your presentation.

Any questions? (no response)

Thank you for your presentation.

Andrew Willner, Sustainability Solutions.

**A N D R E W W I L L N E R:** Mr. Chairman and members of the Committee, my name is Andrew Willner, and I have a small environmental consulting company now. Previously I was the Baykeeper and Executive Director of New York-New Jersey Baykeeper for 20 years. And I'm pleased that my successor, Debbie Mans, has been before this Committee several times. I can't begin to approach the cogency which we -- I'm sure she has testified.

But I would like to put this on a more personal basis. In January of 1990, I was called early in the morning by the then-director of the American Littoral Society, Derry Bennett, and he said, "Andy, there has been a major spill into the Arthur Kill from the Exxon plant in Linden." I said, "Okay, Derry, what do we do when something like this happens?" He said, "I don't have a clue." So we invented as we went along.

I showed up at the site with no credentials. I started picking up dead, oiled birds with my, then, very young daughter. I met some people

from the New Jersey DEP who were also out there picking up birds, for lack of anything else to do. And I followed the process of trying to come to terms with what you -- how you restore and how you hold accountable a polluter who pollutes what's essentially an industrial waterway.

Well, biologists who know a whole lot more than I do about this waterway explained to me that the Arthur Kill, being a tidal strait, as part of an estuary, has the exact same wildlife and the exact same ecological services as any other body of water within the estuary. So we based our advocacy, for a settlement that recognized the value of those resources, on the fact that this was an identical water body and deserved the same kind of consideration that any other water body did.

For the rest of my career at Baykeeper, we advanced the idea of the public trust -- that people were -- that the government of New Jersey, and the government of any state that's a Public Trust state, acts as a trustee. We give over, as a people, to the governor and the commissioner of the Department of Environmental Protection a trusteeship over natural resources. And it's been explained before, but this is an ancient common law theory and a set of statutes that goes back to the Roman times, and was first articulated in the Magna Carta and brought to this country by European colonists.

And what it essentially says is that when somebody damages those common resources, they have to compensate the public adequately for the loss of those resources. In this particular case, Exxon has polluted that site for more than 100 years. The damages, I thought, that were brought through an investigatory and judicial process, were very low compared to the actual damages that they caused. And I was completely taken aback by

a former U.S. Attorney who turned everything on its head and, instead of prosecuting diligently, gave Exxon a pass.

And I have to believe that the fact that when Governor Christie was the -- or I guess he continues to be the head of the Republican Governor's Committee -- received a \$500,000 contribution, and certain law firms that represent Exxon are in many ways affiliated with interests of the Governor, that this was an outright case of an abrogation of the public trust, if not outright corruption.

So I encourage this Committee to continue its extraordinary work and to make known to the public how badly they're being treated in this kind of scandalous settlement.

I'd be happy to answer questions and stay for a few minutes. And I thank you for your consideration.

ASSEMBLYMAN McKEON: Mr. Willner, thank you for your testimony.

Any members have any questions of this witness on the record? (no response) Or we'll speak to you maybe off the record when we've completed.

MR. WILLNER: Thank you.

ASSEMBLYMAN McKEON: I have just one more witness signed up. (applause)

I got nervous. I thought you were clapping because there was only one more witness. (laughter)

Evelyn Sabol.

**EVELYN SABOL:** I'm the last one?

ASSEMBLYMAN McKEON: Yes, Ms. Sabol, you'll bat cleanup, unless there is anybody else who hasn't signed up who would like to speak.

Ms. Sabol is a Bayonne resident.

MS. SABOL: Yes, I will be very brief.

I'm born and raised in Bayonne. I'm 79 years old.

I'm here today because Exxon had provided me and my family with a roof over our heads, with clothes on our back, and food for our brood.

During the Depression years, which was in the '30s, the Standard Oil of New Jersey -- they cut the working hours from eight hours a day to four hours a day so the fathers would have enough money to provide for their families. They also -- Standard Oil of New Jersey also offered stock options, which made many people rich in Bayonne so that they could buy houses and continue living here.

Exxon was not the only oil refinery down at Constable Hook Road. They had gas companies, chemical companies, garbage dumps. There were many factories down there. We had the Navy base during the war years.

So when I read that Exxon was going to be fined \$9 billion, I considered it a shakedown. I just couldn't believe after all that Exxon did for the residents in Bayonne -- and I've been here 79 years, and I've seen all the taxes that they paid, all the help that they gave -- helped people, families. They were just wonderful. They gave jobs to so many people in Bayonne. They really built Bayonne.

My father couldn't even speak English when he came here, and they gave him a job as a wax presser, and he was so happy to have a job. And the churches -- the people in the churches -- they all worked for Exxon. Everywhere you went, people worked for Standard Oil of New Jersey, which later turned to Exxon. So I think Exxon made Bayonne great.

And since what I heard here today -- I just want to mention about some of the politicians. I think they should be concentrating on creating jobs and not trying to destroy big business.

And I just want to thank you for the opportunity for me to tell you.

ASSEMBLYMAN McKEON: It's our pleasure, and we respect your opinion.

MS. SABOL: Thank you.

ASSEMBLYMAN McKEON: There is another witness, Joseph DiGiorgio, Bayonne resident.

Mr. DiGiorgio.

**J O S E P H D i G I O R G I O:** Good afternoon.

I'm not a public speaker, so excuse me.

ASSEMBLYMAN McKEON: I'm sure you'll be wonderful.

MR. DiGIORGIO: I've lived in Bayonne mostly my whole life.

And I remember President Kennedy too, Mr. McKeon.

(laughter) So we're about the same age, I guess.

I remember when I was about 10 years old. We were down behind Marist High School, which is where the Rutkowski Park is now. We decided we were going to make an underground fort, my friends and I. And I was digging down in the ground, and I struck oil. I ran home and told my

parents, “We’re rich. I struck oil.” (laughter) It happened to be sludge. I was digging oil up from the soil in the ground 40 years ago, 45 years ago.

ASSEMBLYMAN McKEON: Can I ask you a question? Tell me how close your property that you’re talking about would have been to the Exxon site?

MR. DiGIORGIO: The Exxon was on the other side of Bayonne, but the water was covered with oil. The slicks in the oil on the water -- I don’t know where it came from -- Newark, or Linden, or wherever -- but it was all in that area. We used to swim in the water and come back with a coating of oil on us. I remember putting my fishing pole in the water and sitting there never catching a fish because there were no fish in the water. The water was completely polluted. There was zero oxygen level, I was told by the EPA one day, in the water.

I want to make it very short and sweet. When I walk my dog at night, I’m obligated to clean up after him. (applause) Exxon has been walking their dog in Bayonne for a hundred years; they’ve yet to clean up after him. I think it’s about time they put the time, effort, and the money into the proper way they should do it, rather than trying to slip out the back door and run away before they get caught not cleaning up after their big dog. (laughter)

Thank you very much. (applause)

ASSEMBLYMAN McKEON: Wonderful public speaker. Thank you very much, sir.

I appreciate everybody’s time and effort; and again want to acknowledge Mayor Davis for the hospitality of the great people of this great city.

The Legislative Committee, through our Resolution, and the Legislature, on a whole, has spoken regarding what our, hopefully, fact-backed opinions are concerning the settlement.

As I promised everybody who testified today, what you stated will be synthesized. I don't know exactly about how the dog comment will go over (laughter), but it will be synthesized and forwarded to the Court, for the sake of the judge to take into consideration when making his decision.

And for him, we'll all say a little prayer for wisdom.

Any other members of the Committee who would like to have a general comment before we adjourn? (no response) We're good?

Jason, thank you, as one of the sons of Bayonne, for being here with us today.

And to my Committee members, I know over and above -- especially a few of us who also serve on Budget -- this part-time job has been a full-time job. And we'll be in Trenton tomorrow with a full agenda for several committees. So thank you for making yourselves available for this extra work that -- the burden of love that we all took on.

And, Kate, you're amazing.

And Lloyd, you too.

The entire staff, and OLS as well.

Thank you. We stand adjourned.

**(MEETING CONCLUDED)**