



NJ DEPARTMENT OF LAW &
PUBLIC SAFETY

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Court Approves Final Settlement in Passaic River Litigation; Occidental Chemical to Pay \$190 Million to Resolve Liability

State Has Recovered \$355 Million from All Passaic River Settlements

TRENTON – Acting Attorney General John J. Hoffman and Department of Environmental Protection (DEP) Commissioner Bob Martin announced today that a Superior Court judge has approved a \$190 million settlement with Occidental Chemical Corporation that resolves the company's liability for contamination of the Passaic River.

Approved by Superior Court Judge Sebastian P. Lombardi on Tuesday, the Occidental settlement is the third and final settlement in the Passaic River litigation, a series of settlements in which the State obtained costs and damages from multiple parties responsible for contaminating the river.

Altogether, the State has recovered a total of \$355.4 million from the three Passaic River litigation settlements, over and above the cost of remediation.

"The Occidental settlement approved today, along with the two Passaic River litigation settlements that preceded it, represents a tremendous victory for the citizens of New Jersey," said Acting Attorney General Hoffman. "As a result of these three settlements, not only will the Passaic River be cleaned up at no cost to New Jersey taxpayers, but the State also has recovered more than \$150 million that it expended over many years of exhaustive legal and environmental effort to clean up the River. We are pleased to have achieved all of this while also prevailing on the settling parties to pay millions of dollars for natural resource restoration projects to benefit the affected residents."

Among other terms, the Occidental settlement calls for \$50 million of Occidental's payment to fund natural resource restoration projects in and around the Newark Bay Complex. A total of \$67.4 million from all Passaic River settlements will be dedicated to such projects.

"Cleaning up the lower Passaic River is a top environmental priority for New Jersey, one that is vital to the health and safety of people who live and work along the river and who have long had to bear the burden of this pollution," Commissioner Martin said. "Those responsible for the pollution must be accountable for the expense of the remediation, and not the taxpayers of New Jersey. We continue to stand firm in that commitment, will continue to work closely with the U.S. EPA to get this cleanup project started as soon as possible, and strongly support the settlement being announced today."

Occidental Chemical is a legal successor to Diamond Shamrock Chemicals Company. In a prior court proceeding, Diamond Shamrock was found to have intentionally dumped hazardous pollutants into the Passaic River. In 2011, a Superior Court Judge entered a judgment against Occidental holding it liable for certain of the State's Passaic-River-related clean-up and removal costs because of its status as legal successor to Diamond Shamrock. Among other hazardous substances, Diamond Shamrock discharged dioxins - a known carcinogen -- into the river from its plant on Lister Avenue in Newark.

In announcing the Occidental settlement today, Acting Attorney General Hoffman and Commissioner Martin explained that the federally conceived and supervised Passaic River cleanup would most likely be funded by the responsible parties, and that the settlement payments made to New Jersey are in addition to what the responsible parties are required to pay to fund remediation of the river.

The EPA has proposed a \$1.7 billion plan for cleanup of the lower eight miles of the river. Under a federal law known as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), it is possible EPA could call on New Jersey to bear a 10 percent share of the cleanup cost. However, as part of the Occidental settlement, Occidental has agreed to cover the State's share, if assessed.

"In short, the Occidental and other settlement payments are above and beyond the funds used to clean up the Passaic River," said Acting Attorney General Hoffman. "That is, the responsible parties will clean up the river at their own expense, while the State will receive a total of \$355 million, plus a guarantee to cover any costs to the State in the unlikely event those cleanup costs are assessed under CERCLA."

The amount of the Occidental guarantee ranges between \$210 million and \$400 million because it depends on the outcome of Occidental's pending claim for indemnification from Maxus Energy Corp., as well as related claims by Occidental against other original defendants in the Passaic River litigation. Occidental also has assumed responsibility for any future State cleanup costs at the Newark Lister site, and for any future State costs within the Newark Bay Complex (upon demonstrating those costs are related to discharges from the Newark plant.)

Last year, Judge Lombardi approved two other settlements in the Passaic River litigation totaling \$165.4 million. The first settlement resulted in payments to the State totaling \$130 million by several non-discharging defendants, including Spanish oil company Repsol, S.A., and Argentina-based energy conglomerate YPF, S.A., YPF Holdings, Inc. and YPF International. Also party to that settlement were CLH Holdings, Inc., Maxus Energy Corporation, Maxus International Energy Company and Tierra Solutions, Inc. The second settlement involved 261 third-party defendants -- including 70 municipalities and other public entities that were sued and brought into the State's case by Maxus Energy Corporation and Tierra Solutions, Inc. Under that settlement, the third-party defendants paid a total of \$35.4 million to the State.

Acting Attorney General Hoffman and Commissioner Martin noted that the State had four primary goals when it brought the Passaic River Litigation nearly a decade ago:

- recovery of millions of dollars the State had spent to address the contamination of the Passaic River
- recoupment of lost tax revenues that the State suffered from reduced economic activity around the former plant site
- ensuring that the parties responsible for the pollution -- and not New Jersey taxpayers -- would be held accountable for any future State expenses related to the remediation
- reimbursement of the State's environmental litigation costs

"Through the Occidental agreement and the other two Passaic River litigation settlements," Hoffman said, "all of these hard-fought goals have been achieved."

The State is represented in the Passaic River litigation by Acting Attorney General Hoffman, Deputy Attorney General John F. Dickinson of the Division of Law, Special Counsel Jackson, Gilmour & Dobbs, P.C. of Houston, Texas, and Special Counsel Gordon and Gordon, of Springfield, New Jersey. DEP reminds residents that harvesting blue claw crabs from the waters of the lower river and Newark Bay is prohibited due to the contamination. The DEP continues to engage in coordinated, multi-language awareness and education efforts reinforcing the ban.