

Resolution Calling on Authorities to Investigate, Ensure Accountability for Superfund Site Cleanup Liability Advances

TRENTON – An identical resolution sponsored by Senators Bob Smith and Christopher “Kip” Bateman in the Senate and Assemblyman Tim Eustace in the Assembly urging relevant federal and State authorities to investigate actions taken by an Argentinian state-owned oil company to discharge Superfund obligations through bankruptcy proceedings advanced in a joint legislative committee meeting today.

The resolution, SR-107/AR-219, urges the New Jersey State Commission of Investigation to examine actions taken by YPF S.A., and its subsidiary Maxus Energy Corporation, to use United States bankruptcy proceedings in an apparent attempt to avoid responsibility for environmental liabilities related to the cleanup of the Diamond Alkali Superfund site, the Passaic River, and other Superfund sites in New Jersey. The resolution also calls on the United States Attorney General and the New Jersey Attorney General to investigate any potential violations of federal or State law by YPF S.A. and Maxus, including any violations of the federal or State racketeer influenced and corrupt organizations (RICO) acts, and to pursue all appropriate legal remedies.

“We have an obligation to hold those responsible for environmental contamination and for dumping toxins into our ground and water accountable for paying their fair share of the cleanup costs,” said Senator Smith (D-Middlesex, Somerset), chair of the Senate Environment and Energy Committee. “Bankruptcy laws are designed to help those who have a legitimate need for protection from creditors, not to assist companies or individuals to avoid paying for environmental damages that they caused. We need to hold these bad actors accountable and set a precedent that New Jersey will not allow this to happen now or in the future. This is about protecting our environment for future generations of New Jerseyans and sending a clear message that we will not allow any company to cheat our residents or sidestep its obligations.” “Companies that engage in environmental contamination should not be able to hide behind bankruptcy laws. These laws are meant to protect companies and individuals who have a legitimate need for protection from creditors; not lucrative companies that want to avoid responsibility for the damage they have caused,” said Eustace (D-Bergen/Passaic). “If a company engages in reckless actions, there should be consequences. We need to send a clear message that such irresponsible behavior, and devious tactics to avoid liability will not be tolerated.”

“This is a clear attempt by YPF S.A. to avoid responsibility for this immense clean-up and to shift the cost to New Jersey taxpayers,” said Senator Bateman (R-Hunterdon, Mercer, Middlesex and Somerset). “We’ve worked for years to advance measures that preserve our invaluable open space and ensure future New Jerseyans can live in a clean and healthy environment. We cannot allow businesses that have profited by creating some of the most polluted sites in our state to avoid their financial obligations to clean up the messes they created.”

The Argentinian state-owned oil company, YPF S.A., acquired Maxus Energy Corporation (formerly the Diamond Alkali Company) in 1995, presumably with full knowledge of the environmental liabilities it would inherit with this acquisition after the EPA and the NJ DEP found high levels of toxins and hazardous substances at its former site in Newark and in the Passaic River and placed the site on the Superfund National Priorities List in 1984. In June 2016, YPF placed Maxus under bankruptcy following the EPA’s announcement of its Record of Decision in March 2016 to remediate contaminated sediments found in the lower 8.3 miles of the Passaic River, a part of the Diamond Alkali site, at a cost of \$1.38 billion. The toxins and hazardous substances continue to affect the soil, groundwater, air, surface water, and building structures at the site.

The legislation also urges the New Jersey Department of Environmental Protection to prepare a report for submission to the Legislature that would include a listing and description of all Superfund sites where Maxus Energy Corporation is a potentially responsible party, an assessment of the potential impacts a bankruptcy declaration may have on the pace of the remediation at those sites, and the added burden this declaration would place on other potentially responsible parties and taxpayers. The report would also include an examination of the precedent that YPF S.A.’s actions would set for other companies facing Superfund obligations.

In addition, the resolution calls on the US Congress to request a report from the United States Government Accountability Office that would examine current Superfund obligations tied to foreign, state-owned corporations and any actions those corporations may be taking to avoid paying their environmental liabilities in the United States including, but not limited to, the use of bankruptcy proceedings. It also urges Congress to make appropriate changes to the federal "Comprehensive Environmental Response, Compensation, and Liability Act" to prevent foreign corporations from avoiding their Superfund liabilities.

The resolutions cleared the Senate Environment and Energy Committee and the Assembly Environment and Solid Waste Committee unanimously.