

CITIZENS ADVISORY COMMITTEE

of the New York – New Jersey
Harbor & Estuary Program

To: Office of Record Access, NJ Department of Environmental Protection

Cc: Management Committee and Policy Committee of the NY-NJ Harbor & Estuary Program
Honorable Sebastian P. Lombardi, J.S.C.
Honorable Christopher Christie, Governor of New Jersey
NJDEP Commissioner Robert Martin
NJDEP Deputy Commissioner David Glass

From: Co-Chairs of the Citizens Advisory Committee of the New York-New Jersey Harbor & Estuary Program

Re: Occidental Settlement

Date: October 14, 2014

Office of Record Access
NJDEP
Attn: Passaic Occidental Comments
P.O. Box 420, Mail Code 401-06Q
Trenton, NJ 08625-0420

Dear Sir or Madam,

The Citizens Advisory Committee (CAC) of the New York New Jersey Harbor & Estuary Program (HEP) writes to oppose the settlement agreement between New Jersey DEP (NJDEP) and Occidental Chemical Corporation. The damage done to the Passaic River and to New Jersey residents who live in its watershed is immense and Occidental's role in this destruction is significant. The proposed \$190,000,000 settlement, if dedicated to improving the river and offsetting the damage caused to the environment and to New Jerseyans, would mark a substantial victory for the state. However, the State directs that Natural Resource Damages (NRD) and cost recoveries in excess of \$50,000,000 default to the State General Fund. This means that \$140 million will go into the State's general fund-which does nothing to restore the river or compensate the specific citizens who suffered injury.

The Spill Compensation and Control Act was passed in 1977 to protect and preserve the State's lands and waters and promote the health, safety and welfare of the people of New Jersey; that the tourist and recreation industry dependent on clean waters and beaches is vital to the economy of this State. Under the Act, the State is the trustee, for the benefit of its citizens, of all natural resources within its jurisdiction. N.J.S.A. 58:10-23.11a. We believe that this settlement is not in the public interest, does not further the goals of the Spill Act, does not satisfy the State's trust obligations and should not be approved. Additionally, NJDEP has already collected past costs for legal and administrative fees on this case under the prior judicially approved settlements under the same litigation. Any additional resources arising from a settlement must be spent on projects that will restore or protect the natural resources.

We urge NJDEP, trustee of the lands and waters of the state, to reject this settlement. Using a specific injury to a powerless minority to collect millions of dollars to offset a budget deficit is inappropriate and unjust. If the Department does not reject the settlement, it should amend it so that the full \$190,000,000 is dedicated to offsetting the damages inflicted by Occidental Chemical Corporation.

Citizens Advisory Committee Co-Chairs

Meredith Comi, NY/NJ Baykeeper ✧ meredith@nynjbaykeeper.org ✧ 732-888-9870
Rob Buchanan, Village Community Boathouse ✧ avironvoile@gmail.com ✧ 917-656-7285

The fate of this settlement is important for the entire region since there are other potential natural resources damage settlement cases in both states. We urge the State of New Jersey to set the standard for the region that the settlement monies be used entirely for improving natural resources and offsetting the damages caused to the environment.

The Citizens Advisory Committee (CAC) of the New York New Jersey Harbor & Estuary Program (HEP) is an advisory committee established to support and advocate for the HEP, a national estuary program. The CAC is an official committee of the Management Committee first convened by the US Environmental Protection Agency, Region II; NY State Department of Environmental Conservation; and NJ Department of Environmental Protection for the HEP and Bight Restoration Programs.

The purpose of the CAC is to: 1) provide guidance and advice to the Management Committee on Program decision-making on behalf of the diverse stakeholders in the NY-NJ Harbor Estuary and NY Bight; 2) promote public awareness and understanding of the Program's issues, goals, and recommendations; 3) assist the Management Committee in developing and implementing the Comprehensive Conservation and Management Plan (CCMP) as required by Section 320 of the Water Quality Act of 1987.

Sincerely,

The Citizens Advisory Committee, New York-New Jersey Harbor & Estuary Program.

This letter has been adopted by the HEP CAC following procedures established in its bylaws (<http://www.harborestuary.org/pdf/CAC%20Bylaws-Revision-Jun-03-11-F.pdf>). CAC members who have voted in support of this letter include (but not limited to):

Meredith Comi, NY/NJ Baykeeper, NJ co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program
Rob Buchanan, Village Community Boathouse, NY co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program

Shino Tanikawa, New York City Soil and Water Conservation District, NY alternate co-chair, Citizens Advisory Committee of the NY-NJ Harbor & Estuary Program

Donald Chesley

Dr. Merryl Kafka, NYSMEA

Harvey Morginstin, PE-Ret. Secretary Passaic River Boat Club

Manuel Russ

In addition, this letter has been endorsed by non-voting CAC members and non members, including:

David L. Burg President, WildMetro

Morton Orentlicher

NOTE: The New York-New Jersey Harbor & Estuary Program is a partner program and its members occasionally have conflicting positions on regulatory and management issues. One of the Program's roles is to facilitate the exchange of ideas and to work towards resolution of these issues. The opinions of individual agencies or committees do not necessarily reflect the opinion of the Program as a whole.

The Citizens Advisory Committee provides guidance and advice to the New York-New Jersey Harbor & Estuary Program Management Committee on Program decision making on behalf of the diverse stakeholders in the region. Its membership and meetings are open to all interested parties in the region that use, or have concerns about, the New York-New Jersey Harbor Estuary and New York Bight. The Citizens Advisory Committee is the only body in the New York-New Jersey Harbor & Estuary Program that can adopt official positions on issues and topics. These official Citizens Advisory Committee positions are adopted by a majority vote of Citizens Advisory Committee members. Citizens Advisory Committee positions do not necessarily reflect the opinion of the New York-New Jersey Harbor & Estuary Program or its members and partners.