

ASSEMBLY RESOLUTION No. 219

STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 28, 2017

Sponsored by:

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District 40 (Bergen, Essex, Morris and Passaic)

SYNOPSIS

Urges relevant federal and State authorities to investigate actions taken by Argentinian state oil company to discharge Superfund obligations through bankruptcy proceedings.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/12/2017)

1 **AN ASSEMBLY RESOLUTION** urging relevant federal and State
2 authorities to investigate actions taken by Argentina’s state-
3 owned oil company, YPF S.A., to discharge its Superfund
4 obligations in New Jersey through federal bankruptcy
5 proceedings.
6
7 **WHEREAS**, The federal “Comprehensive Environmental Response,
8 Compensation, and Liability Act” (CERLA), also known as
9 Superfund, provides for the cleanup of some of the nation’s most
10 contaminated hazardous waste sites; and
11 **WHEREAS**, Due to its long history of chemical and other industrial
12 manufacturing, New Jersey has more Superfund sites than any other
13 state in the country; and
14 **WHEREAS**, Beginning in the 1940s, and continuing for several
15 decades, the Diamond Alkali Company (later Maxus Energy
16 Corporation) owned and operated a facility at 80-120 Lister Avenue
17 in Newark, New Jersey that manufactured agricultural chemicals,
18 including the herbicide known as “Agent Orange”; and
19 **WHEREAS**, In 1983, the United States Environmental Protection
20 Agency (EPA) and the New Jersey Department of Environmental
21 Protection found high levels of dioxin, an extremely toxic
22 byproduct of agricultural manufacturing processes, at the 80-120
23 Lister Avenue site and in the Passaic River; and
24 **WHEREAS**, The EPA placed the Diamond Alkali site on the Superfund
25 National Priorities List in 1984, beginning a decades-long effort to
26 clean up the site and ensure the cooperation of responsible parties;
27 and
28 **WHEREAS**, Subsequent studies showed that the Diamond Alkali site
29 contains a large number of other hazardous substances including
30 semi-volatile and volatile compounds, herbicides, pesticides,
31 polychlorinated biphenyls (PCBs), and metals, which affected and
32 continue to affect the soil, groundwater, air, surface water, and
33 building structures at the site; and
34 **WHEREAS**, Contamination from the Diamond Alkali site also affected
35 large portions of the Passaic River, leading to prohibitions and
36 advisories on fish and crab consumption for the tidal Passaic River
37 and Newark Bay; and
38 **WHEREAS**, In 1995, Argentina’s state-owned oil company, YPF S.A.,
39 acquired Maxus Energy Corporation (“Maxus”), presumably with
40 full knowledge of the environmental liabilities it would inherit with
41 this acquisition; and
42 **WHEREAS**, In March 2016, the EPA announced its Record of Decision
43 (ROD) to remediate contaminated sediments found in the lower 8.3
44 miles of the Lower Passaic River, a part of the Diamond Alkali site,
45 at a cost of \$1.38 billion; and
46 **WHEREAS**, Shortly after the ROD was issued, in June 2016, YPF S.A.
47 placed Maxus into bankruptcy, in an apparent attempt to avoid
48 paying the company’s environmental liabilities; and

1 **WHEREAS**, The bankruptcy proceedings followed a series of
2 transactions in which YPF S.A. stripped billions of dollars in assets
3 out of Maxus, leaving it unable to perform its Superfund
4 obligations for the Diamond Alkali site and other Superfund sites in
5 New Jersey; and

6 **WHEREAS**, In August 2016, YPF S.A. completed a successful bond
7 issuance in which it raised \$1.75 billion from investors; and

8 **WHEREAS**, The State of New Jersey has an interest in ensuring that all
9 parties responsible for environmental contamination pay their fair
10 share of cleanup costs; and

11 **WHEREAS**, Federal bankruptcy laws are designed to assist companies
12 and individuals who have a legitimate need for protection from
13 creditors, not to assist or protect profitable companies seeking to
14 avoid environmental liabilities; and

15 **WHEREAS**, Given the scale of the remediation costs at the Diamond
16 Alkali site, and the dangerous precedent YPF S.A.'s actions could
17 set for future Superfund sites, an investigation into YPF S.A.'s
18 actions, and those of its subsidiary Maxus, is necessary; now,
19 therefore,

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21 **BE IT RESOLVED** by the General Assembly of the State of New
22 Jersey:

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24 1. This House urges the New Jersey State Commission of
25 Investigation to examine actions taken by Argentina's state-owned
26 oil company, YPF S.A., and its subsidiary Maxus Energy
27 Corporation, to use United States bankruptcy proceedings in an
28 apparent attempt to avoid responsibility for environmental liabilities
29 related to the cleanup of the Diamond Alkali Superfund site, the
30 Passaic River, and other Superfund sites in New Jersey.

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32 2. This House urges the New Jersey Department of
33 Environmental Protection to prepare a report for submission to the
34 Legislature that would include a listing and description of all
35 Superfund sites where Maxus Energy Corporation is a potentially
36 responsible party; an assessment of the potential impacts a
37 bankruptcy declaration may have on the pace of the remediation at
38 those sites and the added burden this declaration would place on
39 other potentially responsible parties and taxpayers; and an
40 examination of the precedent that YPF S.A.'s actions would set for
41 other companies facing Superfund obligations.

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43 3. This House urges the United States Congress to request a
44 report from the United States Government Accountability Office
45 that would examine current Superfund obligations tied to foreign,
46 state-owned corporations and any actions those corporations may be
47 taking to avoid paying their environmental liabilities in the United
48 States including, but not limited to, the use of bankruptcy

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1 proceedings. This House further urges Congress to make
2 appropriate changes to the federal “Comprehensive Environmental
3 Response, Compensation, and Liability Act” to prevent foreign
4 corporations from avoiding their Superfund liabilities.

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6 4. This House urges the United States Securities and Exchange
7 Commission to initiate a review of public statements and
8 disclosures made by YPF S.A. regarding the environmental
9 liabilities of its subsidiary, Maxus Energy Corporation, to determine
10 if inaccurate information was provided to shareholders and
11 prospective investors regarding YPF S.A.’s overall financial
12 condition.

13
14 5. This House urges the United States Attorney General and the
15 New Jersey Attorney General to investigate any potential violations
16 of federal or State law by YPF S.A. and Maxus, including, but not
17 limited to, any violations of the federal or State racketeer influenced
18 and corrupt organizations (RICO) acts, and pursue all appropriate
19 legal remedies.

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21 6. Copies of this resolution, as filed with the Secretary of State,
22 shall be transmitted by the Clerk of the General Assembly to the
23 President of the United States, the Speaker and Minority Leader of
24 the United States House of Representatives, the Majority and
25 Minority Leaders of the United States Senate, each member of the
26 New Jersey Congressional delegation, the United States Attorney
27 General, the Chairman of the United States Securities and Exchange
28 Commission, the New Jersey Attorney General, the Commissioner
29 of the New Jersey Department of Environmental Protection, and the
30 Executive Director of the New Jersey State Commission of
31 Investigation.

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34 **STATEMENT**

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36 This resolution would urge relevant federal and State authorities
37 to investigate actions taken by Argentina’s state-owned oil
38 company, YPF S.A., to discharge its Superfund obligations in New
39 Jersey through federal bankruptcy proceedings.

40 Beginning in the 1940s, and continuing for several decades, the
41 Diamond Alkali Company (later Maxus Energy Corporation) owned
42 and operated a facility at 80-120 Lister Avenue in Newark, New
43 Jersey that manufactured agricultural chemicals, including the
44 herbicide known as “Agent Orange.” In 1983, the United States
45 Environmental Protection Agency (EPA) and the New Jersey
46 Department of Environmental Protection found high levels of
47 dioxin, an extremely toxic byproduct of agriculture manufacturing
48 processes, at the 80-120 Lister Avenue site and in the Passaic River.

1 Consequently, the EPA placed the Diamond Alkali site on the
2 Superfund National Priorities List in 1984, beginning a decades-
3 long effort to clean up the site and ensure the cooperation of
4 responsible parties.

5 In 1995, Argentina's state-owned oil company, YPF S.A.,
6 acquired Maxus Energy Corporation, presumably with full
7 knowledge of the environmental liabilities it would inherit. In
8 March 2016, the EPA announced its record of Decision (ROD) to
9 remediate contaminated sediments found in the lower 8.3 miles of
10 the Lower Passaic River, a part of the Diamond Alkali site, at a cost
11 of \$1.38 billion. Shortly after the ROD was issued, YPF S.A.
12 placed Maxus into bankruptcy, in an apparent attempt to avoid
13 paying the company's environmental liabilities. This action
14 followed a series of transactions in which YPF S.A. stripped
15 billions of dollars in assets out of Maxus, leaving it unable to
16 perform its Superfund obligations for the Diamond Alkali site and
17 other Superfund sites in New Jersey. Despite this, YPF S.A.
18 recently completed a successful bond issuance in which it raised
19 \$1.75 billion from investors.

20 The State of New Jersey has an interest in ensuring that all
21 parties that are responsible for environmental contamination pay
22 their fair share of the cleanup costs. Federal bankruptcy laws are
23 designed to assist companies and individuals who have a legitimate
24 need for protection from creditors, not to assist or protect profitable
25 companies seeking to avoid environmental liabilities. Given the
26 scale of the remediation costs at the Diamond Alkali site, and the
27 dangerous precedent YPF S.A.'s actions could set for future
28 Superfund sites, an investigation into YPF S.A.'s actions, and those
29 of its subsidiary Maxus, is appropriate.