EPA’s Proposed Settlement is Major Step Forward in Cleanup of Passaic River

*OxyChem Continues to Mislead Public in Effort to Shirk its Responsibility*

For decades, OxyChem has gone to great lengths to avoid responsibility for the environmental harm caused by years of illegal discharges of dioxin and other toxic chemicals to the Passaic River from its former Agent Orange manufacturing plant in Newark, New Jersey. As a result of these discharges, the Lower Passaic River stands as **one of the most dioxin-contaminated rivers in the world** today.

Despite numerous court proceedings finding OxyChem to be primarily responsible for the contamination in the river—and a recent EPA-sponsored allocation that found **OxyChem more than 99% responsible**—OxyChem continues its campaign of denial and finger-pointing. OxyChem’s latest statements to the press include calculated misstatements that taxpayers—not OxyChem— will have to pay to clean up the River if the Court approves EPA’s settlement.

After several years of detailed review by a neutral allocator and arms-length negotiations, EPA and 85 parties reached a $150 million settlement that will help jumpstart cleanup efforts. That settlement is pending before a district court in New Jersey. OxyChem, which declined to participate in EPA’s allocation, is now making **a last-ditch desperate effort to derail the settlement**. In so doing, OxyChem resorts to scare tactics aimed at purposefully misleading the public into believing that the settlement will result in the municipalities and their taxpayers being left “holding the bag” to fund future cleanup efforts.

OxyChem’s latest media blitz is punctuated by recent full-page paid advertisements in the *Washington Post* and *NJ Spotlight* that were replete with lies and half-truths. **It’s time for OxyChem to stop playing games and take responsibility for its pollution in the River.** Here are a few examples of the misstatements in OxyChem’s recent media campaign:

|  |  |
| --- | --- |
| **What OxyChem Claims** | **The Reality** |
| EPA is proposing to let polluters “off the hook.” | The 85 settling parties have agreed to pay ***hundreds* of times more** than their fair share of the cleanup costs, as determined by EPA’s allocator.[[1]](#footnote-1) It is OxyChem—far and away the biggest polluter of the River—who wants to be let “off the hook” for paying its fair share.[[2]](#footnote-2) |
| The proposed settlement will leave New Jersey | The EPA’s allocator **determined OxyChem is over 99% responsible** for the cleanup.[[3]](#footnote-3) **It is OxyChem—not** |
| taxpayers “holding the bag” for a significant portion | **New Jersey taxpayers—that is responsible for the** |
| of the cleanup costs | **remaining cleanup under the EPA’s proposed** |
|  | **settlement.** |
|  | **OxyChem is the only party who benefits from** |
| EPA’s proposed settlement will “delay the river’s cleanup even further.” | **delaying cleanup.** In fact, OxyChem has spent tens of millions of dollars on hired guns that have successfully delayed the cleanup for decades to avoid |
|  | having to pay to fix the problems it caused. |
| The EPA’s settlement is “protecting corporations at the expense of the people.” | For decades, OxyChem’s corporate predecessor Diamond Alkali dumped Dioxin – also known as Agent Orange – into the river.[[4]](#footnote-4) **OxyChem has spent millions to delay cleanup and skirt its responsibility**. The proposed settlement would force OxyChem to finally take responsibility. |
| The settlement funds will not go towards cleaning up the River, but instead “will be used to pay for EPA’s costs.” | This is what EPA said in court filings: “The proposed consent decree before this court is a settlement with 85 parties for $150 million, **which EPA expects to use for the cleanup of the Passaic River[.]”**[[5]](#footnote-5) “The availability of settlement funds will allow EPA to pay for cleanup work at the Site when it determines that doing so will advance the cleanup in an efficient and effective manner.”[[6]](#footnote-6) |
| Under recent United States Supreme Court decisions, EPA was not authorized to use the third-party neutral allocation to support the settlement | None of the recent Supreme Court decisions OxyChem relies on has any bearing on the United States’ authority or basis for the allocation or the settlement. Nor do any of the cases have any bearing on the Court’s ability to consider the allocation or the settlement. Each of those cases was based on administrative agency action, not the type of judicial proceeding at issue here. |

1. *See* Final Allocation Recommendation Report [https://bit.ly/3FGJYoT] [↑](#footnote-ref-1)
2. *See United States Mem. in Reply to Intervenor Occidental Chemical Corp.’s Opposition to the United States’ Motion to Enter Consent Decree* at 37-38, ECF No. 337 [↑](#footnote-ref-2)
3. *See* Final Allocation Recommendation Report [https://bit.ly/3FGJYoT] [↑](#footnote-ref-3)
4. *See, e.g., Mem. in Support of United States of America’s Motion to Enter Consent Decree* at 11-13, ECF No. 288-1 (citing *Diamond Shamrock Chemicals Co. v. Aetna Cas. & Sur. Co. et al.*, 609 A.2d 440, 447-49 (N.J.Super.A.D. 1992) [https://bit.ly/3MqQhAT]); *Diamond Shamrock Chemicals Co. v. Aetna Cas. & Sur. Co. et al.*, Civ. Action No. C-3939-84 (Sup. Ct. N.J., April 12, 1989) [https://bit.ly/3SkjL7n] [↑](#footnote-ref-4)
5. *U.S. Resp. to Occidental Chemical Corp. Mot. to Intervene* at 1, ECF No. 84 [https://bit.ly/47gYX4G]; *see also* Letter from E. Wilson, Deputy Director, Region 2 Emergency and Remedial Response Division, to M. Backus, Senior Vice President and General Counsel, Occidental Petroleum Corp., November 28, 2017 (“While [EPA] may at a future point conclude that some PRPs…are eligible for cash-out settlements, any such cash-out would be based on such parties’ fair share (with an appropriate premium), and monies recovered would go towards funding of the OU2 remedial action. Importantly, EPA expects future cash-out settlements to be in the form of a judicial consent decree or decrees, subject to public comment and federal court review and approval.”) [https://bit.ly/3Mm0oqM] [↑](#footnote-ref-5)
6. *Declaration of Alice Yeh*, EPA Region 2 Remedial Project Manager, ¶ 65, ECF No. 288-5. [↑](#footnote-ref-6)