

# SENATE RESOLUTION No. 107

## STATE OF NEW JERSEY 217th LEGISLATURE

INTRODUCED FEBRUARY 27, 2017

**Sponsored by:**

**Senator BOB SMITH**

**District 17 (Middlesex and Somerset)**

**Senator CHRISTOPHER "KIP" BATEMAN**

**District 16 (Hunterdon, Mercer, Middlesex and Somerset)**

**Co-Sponsored by:**

**Senators Scutari, Sarlo, Diegnan, Greenstein and Thompson**

**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: 5/2/2017)**

- 1 **A SENATE 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” (CERCLA), 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 Senate of the State of New Jersey:*

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

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

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

1 appropriate changes to the federal “Comprehensive Environmental  
2 Response, Compensation, and Liability Act” to prevent foreign  
3 corporations from avoiding their Superfund liabilities.

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

12  
13 5. This House urges the United States Attorney General and the  
14 New Jersey Attorney General to investigate any potential violations  
15 of federal or State law by YPF S.A. and Maxus, including, but not  
16 limited to, any violations of the federal or State racketeer influenced  
17 and corrupt organizations (RICO) acts, and pursue all appropriate  
18 legal remedies.

19  
20 6. Copies of this resolution, as filed with the Secretary of State,  
21 shall be transmitted by the Secretary of the Senate to the President  
22 of the United States, the Speaker and Minority Leader of the United  
23 States House of Representatives, the Majority and Minority Leaders  
24 of the United States Senate, each member of the New Jersey  
25 Congressional delegation, the United States Attorney General, the  
26 Chairman of the United States Securities and Exchange  
27 Commission, the New Jersey Attorney General, the Commissioner  
28 of the New Jersey Department of Environmental Protection, and the  
29 Executive Director of the New Jersey State Commission of  
30 Investigation.

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33 STATEMENT

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

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

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

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

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