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NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION,

Plaintiff,

v.

EXXON MOBIL CORP.,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
UNION COUNTY

Docket No. UNN-L-3026-04

CIVIL ACTION

MOTION TO INTERVENE BY NY/NJ BAYKEEPER, NEW JERSEY SIERRA CLUB, CLEAN WATER ACTION, DELAWARE RIVERKEEPER, DELAWARE RIVERKEEPER NETWORK, ENVIRONMENT NEW JERSEY, NATURAL RESOURCES DEFENSE COUNCIL, AND NEW JERSEY AUDUBON; SUPPORTING BRIEF

PRELIMINARY STATEMENT

For over a century, Defendant ExxonMobil Corp. (Exxon) and its predecessor corporations polluted lands and waters at the Bayway and Bayonne refineries in New Jersey. The damage spans 1,800 acres. Plaintiff New Jersey Department of Environmental Protection (the Department) sued Exxon for its extensive damage to the State's natural resources, Dep't Post-Trial Br. 1-3, and this Court held Exxon liable for that damage. At the subsequent remedy trial, the Department sought $8.9 billion from Exxon to restore and replace the natural resources damaged and destroyed at the refinery sites.

But after trial and before this Court had an opportunity to rule, the Department inexplicably abandoned its duty as trustee of the State's natural and financial resources; together with Exxon, it proposed a settlement (Settlement) requiring Exxon to pay only $225 million, or less than three cents on the dollar. The Settlement amount is suspiciously low in light of the environmental devastation Exxon has wrought at the refinery sites. Compounding the problem, the Settlement proposes to release Exxon from natural-resource-damage liability at over 800 retail gas stations and sixteen additional sites throughout New Jersey—even though none of those additional sites was part of the Department's case.

Because the Department has failed to protect the public, New York / New Jersey Baykeeper, the New Jersey Sierra Club, Clean Water Action, Delaware Riverkeeper, Delaware Riverkeeper Network, Environment New Jersey, Natural Resources Defense Council, and New Jersey Audubon (collectively, the Environmental Intervenors) move, pursuant to Rule 4:33-1 or, alternatively, Rule 4:33-2, to intervene as plaintiffs to oppose entry of the Settlement.

ENVIRONMENTAL INTERVENORS

Each of the Environmental Intervenors is committed to protecting and restoring the natural resources of New Jersey, and thus has a strong interest in this proceeding.

NY/NJ Baykeeper

New York / New Jersey (NY/NJ) Baykeeper is a nonprofit, membership-based environmental organization that advocates for the preservation, protection, and restoration of the Hudson-Raritan Estuary. Certification of Debbie Mans ¶ 2. It seeks to end pollution, improve public access to natural resources, conserve and restore public lands, restore aquatic habitats, carry out public education, and work with federal and local regulators and citizen groups as partners in planning for a sustainable future for the Hudson-Raritan Estuary watershed. Id. ¶ 6. Baykeeper members and supporters, including more than 2,400 members in Northern New Jersey, use New Jersey waters, meadows, and wetlands for swimming, wading, fishing, birding, boating, kayaking, and a variety of other recreational, professional, and aesthetic purposes. Id. ¶¶ 4, 7. In response to the Department's request for public comments on the Settlement, Baykeeper members provided over 2,400 comment letters in opposition. Id. ¶ 11.

New Jersey Sierra Club

The New Jersey Sierra Club (Club), or Sierra NJ, is a nonprofit organization dedicated to protecting and restoring the environment. See Certification of Jeff H. Tittel ¶¶ 3, 5. The Club has over 18,000 members in New Jersey, including 500 members in Hudson County and 1,300 in Union County. Id. ¶¶ 3-4. The Club has been active in addressing pollution at the Bayway and Bayonne refinery sites. See id. ¶¶ 11-17. At the Bayway site, the Club has been involved in worker safety, toxic chemical cleanup, and

reporting of air and water pollution violations for over twenty-five years. Id. ¶¶ 11-12. At the Bayonne site, the Club challenged the Department's original cleanup and redevelopment proposal, and later fought for public access to the redeveloped site. Id. ¶¶ 14-16. The Club and 3,300 of its individual members and supporters submitted comments opposing the Settlement. Id. ¶ 25.

Clean Water Action

Clean Water Action (CWA) is a 1.2-million-member organization that works to protect the environment, health, economic well-being, and community quality of life. Certification of David Pringle ¶¶ 4, 6. Its goals include ensuring clean, safe, and affordable water; preventing health-threatening pollution; creating environmentally safe jobs and businesses; and empowering people to make democracy work. See id. ¶ 7. CWA organizes grassroots groups and coalitions, campaigns to solve environmental and community problems, and undertakes extensive advocacy to prevent water pollution and hold polluters accountable for the damage they cause to natural resources. See id. ¶¶ 8-21. More than 2,000 CWA members submitted letters, on-line communications, and postcards to the Department objecting to the Settlement in this matter. Id. ¶ 19.

Delaware Riverkeeper

The Delaware Riverkeeper is a full-time, privately funded ombudsman who is responsible for the protection of the waterways in the Delaware River Watershed. First Certification of Maya van Rossum ¶ 1. The Delaware Riverkeeper leads efforts to prevent pollution and protect waters in the Delaware Watershed and advocates for the State of New Jersey to pursue natural resource damages and to invest recovered monies in the restoration

and protection of natural resources affected by water pollution. See id. ¶¶ 6, 22, 23, 26, 28-34.

Delaware Riverkeeper Network

The Delaware Riverkeeper Network is a nonprofit environmental organization that champions the rights of communities to a Delaware River and tributary streams that are clean and healthy. See Second Certification of Maya van Rossum ¶¶ 2, 8, 11-15. The organization works throughout the four states of the Delaware River watershed (New Jersey, New York, Pennsylvania, and Delaware), see id. ¶¶ 6, 9-10, and has members who live and recreate in areas directly influenced by Exxon sites included in the Settlement, see, e.g., id. ¶ 27. The Delaware Riverkeeper Network helps decision makers and citizens address environmental threats in their own communities; restores damaged streams, wetlands, and ecosystems; collects water-quality data needed to secure sound decision-making; and enforces environmental protection laws when necessary. See id. ¶¶ 5, 9, 15, 16, 20, 30.

Environment New Jersey

Environment New Jersey is one of the state's largest citizen-based advocacy organizations, and is committed to protecting New Jersey's environment for future generations by protecting the state's land, air, and water, and by promoting a clean energy future. Certification of Doug O'Malley ¶¶ 2-3. Environment New Jersey and its members work to build public support for the application of state and federal law to maintain the nation's waterways. Id. ¶ 7. The organization has over 20,000 dues-paying citizen members, including more than 1,700 members in Union County, 300 members in Hudson County, and 300 members in Gloucester County. Id. ¶ 4. Because Environment New Jersey's

members actively use the natural environment, they place a high premium on reporting environmental degradation, seeking action from state government agencies, and maintaining public access to environmental areas held in the public trust. Id. ¶ 15.

Natural Resources Defense Council

Natural Resources Defense Council (NRDC) is a public interest environmental advocacy organization with approximately 300,000 members in the United States, including more than 8,000 in New Jersey. Certification of Gina Trujillo ¶¶ 3-4. Its mission is "to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends." Id. ¶ 5. Pursuant to NRDC's mission, ensuring safe and sufficient water ranks among its top institutional priorities. Id. ¶ 6. NRDC has dedicated significant resources to protecting the natural environment in New Jersey and the surrounding region. Id. ¶ 8. Over the last decade, NRDC has litigated cases to prevent air pollution and soil contamination in Bayonne, New Jersey, and Staten Island, New York; remediate dioxin contamination of Newark Bay, New Jersey; and remediate chromium contamination of soil in Jersey City, New Jersey. Ibid. NRDC members submitted more than 3,600 comment letters opposing the Settlement. Id. ¶ 10.

New Jersey Audubon

New Jersey Audubon (NJA) is a privately supported, not-for-profit, statewide membership organization incorporated in New Jersey. It has more than 18,000 members. Certification of Eric Stiles ¶¶ 2-3. Founded in 1897 as one of the oldest independent Audubon societies, NJA fosters environmental awareness and a conservation ethic; protects New Jersey's birds, mammals, other animals, and plants, especially endangered and threatened species; and promotes preservation of New Jersey's valuable natural habitats. Id.

¶ 4. NJA accomplishes this by engaging in research, education of children and adults, on-the-ground stewardship, and policy and advocacy at the state and federal levels. Id. ¶ 5. NJA members benefit from healthy wetlands in New Jersey, which serve as critical habitats for wildlife and support important recreational activities, including hiking and bird watching. Id. ¶ 9.

BACKGROUND

In 2004, the Department sued Exxon pursuant to the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 to 23.24 (Spill Act), and New Jersey common law, claiming that Exxon had illegally discharged petroleum products and other hazardous substances into, and damaged the lands and waters at, the Bayway and Bayonne refinery sites. See N.J. Dep't of Envtl. Prot. v. Exxon Mobil Corp., 393 N.J. Super. 388, 397 (App. Div. 2007). The Superior Court held that Exxon was strictly liable for the extensive natural resource damage at these sites; Exxon did not appeal that ruling. See id. at 397-98 (discussing Superior Court ruling).

At the subsequent remedy trial, the Department sought $8.9 billion to finance restoration and replacement of the natural resources Exxon had damaged and destroyed. See Dep't Post-Trial Br. 283. In support of its claims, the Department presented evidence that Exxon had discharged over 600 different chemicals into the environment and devastated "approximately 1,800 acres of wetlands, marshes, meadows and waters." Id. at 3. After the trial on damages, the Department filed a brief with this Court that repeated its demand for $8.9 billion and characterized the pollution caused by Exxon as "staggering and unprecedented in New Jersey." Ibid.

Before this Court had a chance to rule, the Department abruptly changed course. Instead of demanding the $8.9 billion it had maintained was necessary to restore and replace the natural resources Exxon had damaged and destroyed at Bayway and Bayonne, the Department joined Exxon in proposing a damages award of only $225 million, or less than three cents on the dollar. See Comments of Environmental Intervenors in Opposition to Proposed Exxon Mobil Bayway Settlement 1, 8 (June 5, 2015) [hereinafter Comments], appended as Ex. C to Certification of Susan J. Kraham.

The Settlement amount is woefully short of what the Department is legally entitled to receive and obligated to recover. The Bayway and Bayonne sites, which span hundreds of acres, are heavily polluted. At trial, the Department's witnesses described unlined pits and former mudflats more than ten feet deep in oily wastes; sludge lagoons; chemical-laced soils; and areas where petroleum has leached from underground and hardened, asphalt-like, on the surface. See Dep't Post-Trial Br. 3, 6, 143-54.

As the Department asserted throughout trial and in its post-trial brief, remedying the extreme, widespread, and long-running damage Exxon has caused will cost billions of dollars. See Comments 21-22. Nowhere in the Settlement or accompanying public notice has the Department explained how the deep discount it suddenly proposes to give Exxon is fair, reasonable, in the public interest, or consistent with governing law. See generally Settlement (entitled Proposed Consent Judgment), Ex. B. to Kraham Cert.; Notice of Proposed Consent Judgment [hereinafter Public Notice], Ex. A to Kraham Cert. Yet the Settlement releases Exxon from natural-resource-damage liability at the Bayway and Bayonne sites under not only the Spill Act, but also the New Jersey Water Pollution Control Act, the Oil Pollution Act, the Comprehensive Environmental Recovery, Compensation

and Liability Act (CERCLA), and "any other state or federal common law." Settlement 9-10.

The Settlement would release Exxon from responsibility for much more than the damage and destruction of natural resources it caused at the refinery sites, which—as the Department argued through the remedy trial and after—would alone cost $8.9 billion to restore or replace. See Comments 21. The Settlement *also* releases Exxon from liability for natural resource damages at more than 800 other sites; and it does so even though, as far as the public is aware, the Department has yet to assess or value natural resource damages at all but one of those locations. See Settlement 4-19; Comments 22-23.[1] In addition, the Settlement defers remediation at Morses Creek, a heavily polluted waterway the Bayway refinery uses as an open sewer for cooling water, until the refinery stops operating. Settlement 20 ¶ 13; Public Notice 3 ¶ 2; Comments 23. Finally, the Settlement provides that all $225 million will be held in a segregated account within the State's Hazardous Site Discharge Cleanup Fund until the Settlement becomes final, but does not specify how the funds may be spent after that. Settlement 13 ¶ 5. It is thus unclear whether, or what portion of, the Settlement funds will actually be used to restore or replace natural resources Exxon has damaged or destroyed.

The Department has publicly announced the Settlement and solicited comments. See generally Public Notice. In response, more than 11,000 members and other supporters of the Environmental Intervenor groups have submitted comments urging the Department to withhold or withdraw its approval. Mans Cert. ¶ 11 (2,400 letters); Tittel Cert. ¶ 25 (3,300

[1] Exxon would retain potential liability for methyl *tert*-butyl ether (MTBE) discharges from the gas stations and other sites. Id. ¶¶ 9, 10.

communications); Pringle Cert. ¶ 19 (2,000 letters, online communications, or postcards); Trujillo Cert. ¶ 10 (3,600 comment letters). The Department will review the public comments, see Public Notice 4, and then, alongside Exxon, presumably ask the Court to enter judgment on the Settlement. Environmental Intervenors wish to be heard in opposition, to urge the Court to reject the sweetheart deal the Department and Exxon are poised to present.

ARGUMENT

Environmental Intervenors meet the applicable standards for both intervention as of right and permissive intervention.

I. The Court Should Grant Intervention as of Right

Environmental Intervenors seek to intervene to participate as plaintiffs in any proceedings relating to the Court's consideration of the Settlement. In addition, should the Court enter a judgment approving the Settlement, Environmental Intervenors seek the right to appeal as a party.

N.J. Court Rule 4:33-1 provides that:

> Upon timely application anyone shall be permitted to intervene in an action if the applicant claims an interest relating to the property or transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

R. 4:33-1; see also Am. Civil Liberties Union of N.J., Inc. v. Cnty. of Hudson, 352 N.J. Super. 44, 67 (App. Div.), certif. denied, 174 N.J. 190 (2002) (quoting Meehan v. K.D. Partners, L.P., 317 N.J. Super. 563, 568 (App. Div. 1998)). The Rule is "construed quite liberally," and if the movant meets all four of the Rule's criteria, "a court must approve an

application for intervention as of right." Am. Civil Liberties Union of N.J., Inc., supra, 352 N.J. Super. at 67. Environmental Intervenors satisfy all four criteria.

A. The motion to intervene is timely given the circumstances of the case

The timeliness of a motion to intervene must be judged by "the issues raised as a consequence of the" proposed order being challenged. Warner Co. v. Sutton, 270 N.J. Super. 658, 666 (App. Div. 1994); see also United States v. Alcan Aluminum, Inc., 25 F.3d 1174, 1181 (3d Cir. 1994) ("[T]imeliness is not just a function of counting days; it is determined by the totality of the circumstances.").

Warner is instructive on the issue of timeliness. In that case, the intervenors knew of the ongoing litigation for four years prior to seeking intervention, but did not attempt to participate during that time. Warner, supra, 270 N.J. Super. at 661-62. The Appellate Division nonetheless held as timely their motion to intervene to appeal an amended consent decree. Id. at 668-69. The court concluded that the intervenors reasonably believed that, prior to entry of the consent decree, the government defendants were sufficiently protecting their interest. Id. at 665. The court found that it was not until the amended consent order was released to the public that the intervenors knew its precise terms; only then did it become clear that the intervenors' interests diverged from the original parties' interests. Ibid.

The facts here are remarkably similar. Environmental Intervenors reasonably believed that the Department's original litigating position, maintained through trial and post-trial briefing, would protect their interests and the interests of all New Jersey citizens. They first learned the terms of the Settlement when the Department released it to the public on April 6, 2015. Thus, even though they have been aware of the ongoing litigation, only recently have their interests diverged from the Department's. See Warner, supra, 270 N.J.

Super at 665; see also In re Acushnet River & New Bedford Harbor Proceedings re Alleged PCB Pollution, 712 F. Supp. 1019, 1023-24 (D. Mass 1989) (granting intervention to challenge settlement three-and-a-half years after litigation began, because interests of original parties and intervenors diverged only after disclosure of settlement terms).

Immediately after learning of the Settlement on April 6, 2015, Environmental Intervenors analyzed the Settlement terms and prepared extensive comments in response to the Department's Public Notice. See Comments. Several days after submitting their comments, they filed this motion to intervene. Id. at 1. This is not a case in which Environmental Intervenors have "slept on [their] rights," Meehan, supra, 317 N.J. Super. at 567, but one in which the movants have exercised their right to intervene "with diligence and promptness," Warner, supra, 270 N.J. Super. at 663 (internal quotation marks omitted). Environmental Intervenors seek only to challenge the legality and sufficiency of the Settlement, not to reopen trial proceedings or otherwise relitigate the case.

For these reasons, the motion to intervene is timely.

B. Environmental Intervenors have a profound interest in restoration and replacement of the lost resources, and the Settlement threatens that interest

Entry of the Settlement would impair the interests of Environmental Intervenors, who are nonprofit entities devoted to environmental protection and restoration. See supra 2-6; Mans Cert. ¶¶ 2, 5-6; Tittel Cert. ¶¶ 3, 5-8; Pringle Cert. ¶¶ 3-4, 7-8, 12; First van Rossum Cert. ¶¶ 1, 5-6; Second van Rossum Cert ¶¶ 1-2, 5, 8; O'Malley Cert. ¶¶ 8-10; Trujillo Cert. ¶¶ 3, 7-10; Stiles Cert. ¶¶ 2, 4, 6; Warner, supra, 270 N.J. Super. at 664 n.1. Members of the Environmental Intervenor groups support this mission, and also live, work, or recreate near the waterways and wetlands that Exxon has damaged and destroyed. Mans

Cert. ¶¶ 7-8, 10; Tittel Cert. ¶¶ 4, 12-14; Pringle Cert. ¶¶ 4-6; Second Van Rossum Cert. ¶¶ 3-4, 6, 10; O'Malley Cert. ¶¶ 4, 10, 12, 14; Trujillo Cert. ¶¶ 4, 7, 11; Stiles Cert. ¶¶ 9-10.

The Settlement would release Exxon from liability for natural resource damages at over 800 sites in New Jersey, and would fail to provide anywhere near the funds needed, by the Department's own pronouncements, to restore the Bayway and Bayonne sites. In addition, the Settlement does not even require the Department to spend Exxon's payment on restoration projects. See Settlement 13 ¶ 5. These terms are directly contrary to the abiding interests that Environmental Intervenors are constituted to protect.

Courts liberally grant intervention to environmental organizations seeking to protect their members' interests in natural resources, public access, and participation. See, e.g., Warner, supra, 270 N.J. Super. at 668-69. It is well-established that environmental nonprofits possess a cognizable interest in proceedings that pose a threat to the environmental, aesthetic, or recreational interests of their members. See, e.g., Kleissler v. U.S. Forest Serv., 157 F.3d 964, 970-72 (3d Cir. 1998) (requirement that environmental movant hold an interest in the proceeding should be interpreted flexibly); Pub. Interest Research Grp. of N.J. v. Star Enter., 771 F. Supp. 655, 661-62 (D.N.J. 1991) (cognizable injury can implicate environmental, aesthetic, or recreational interests); see, e.g., Warner, supra, 270 N.J. Super. at 659, 664 n.1 (environmental organizations had an interest in challenging the settlement sufficient to meet the Rule 4:33-1 criterion, because several of their members lived near the site and the organizations were public interest groups committed to protection of the environment and wildlife). Environmental Intervenors here fit comfortably within New Jersey's liberal rule.

C. The Department does not adequately represent the interests of Environmental Intervenors

The Department does not, and cannot, adequately represent Environmental Intervenors' interests. Although the Department initially brought this case against Exxon to obtain fair and reasonable compensation for the company's damage and destruction of natural resources at the Bayway and Bayonne sites, it has since forsaken that pursuit.

Environmental Intervenors believe, and wish to persuade the Court, that the Settlement is wholly insufficient to cover the natural resource damage caused by Exxon, and is far less than what the Department is entitled and obligated to recover under law. For pennies on the dollar, the Department has traded substantial and valuable environmental claims against Exxon. By doing so, it has breached its duties under the Spill Act and the public trust doctrine to manage its natural and fiscal resources for the public's benefit.

Because the Department has effectively abdicated its duty to recover from Exxon the funds necessary to restore and replace the natural resources the company has damaged or destroyed at the two refinery sites, plus the more than 800 other locations covered by the Settlement, its interests have diverged from those of Environmental Intervenors. The Environmental Intervenors wish to *oppose* the Settlement they expect the Department and Exxon jointly to present to the Court. Under these circumstances, the Department cannot possibly represent the Intervenors' interests. See In re Acushnet River, supra, 712 F. Supp. at 1023-24 (granting intervention where settlement terms created divergence of interests between environmental groups and existing parties); Warner, supra, 270 N.J. Super. at 665 (holding that Town's interests diverged from intervenors' when intervenors sought to invalidate settlement they believed undermined environmental standards at the disputed site).

II. If the Court Denies Intervention as of Right, It Should Grant Permissive Intervention

Alternatively, the Court should grant permissive intervention under Rule 4:33-2. Pursuant to this Rule, "anyone may be permitted to intervene . . . if the claim or defense and the main action have a question of law or fact in common," ibid., and if the intervention will not "unduly delay or prejudice the rights of the original parties," Meehan, supra, 317 N.J. Super. at 568 (quoting Atl. Employers Ins. Co. v. Tots & Toddlers Pre-Sch. Day Care Ctr., Inc., 239 N.J. Super. 276, 280 (App. Div. 1990)). As with intervention as of right, the standard for permissive intervention should be "liberally construed." Am. Civil Liberties Union of N.J., Inc., supra, 352 N.J. Super. at 70 (quoting Zirger v. Gen. Accident Ins. Co., 144 N.J. 327, 341 (1996)). Factors to be considered are "the promptness of the application, whether or not the granting thereof will result in further undue delay, whether or not the granting thereof will eliminate the probability of subsequent litigation, and the extent to which the grant thereof may further complicate litigation." Ibid. (citation omitted).

Environmental Intervenors meet the test for permissive intervention. Their application is prompt; it precedes presentation to the Court of the Settlement, and follows closely on public disclosure of the Settlement terms. If they are permitted to intervene, Environmental Intervenors will address solely the salient question the Court must decide: Should the Settlement be approved or disapproved? This involves questions of law and fact that are identical to those the existing parties will have to address.

Intervention will not unduly delay these proceedings or prejudice the rights of the primary parties. Environmental Intervenors seek simply to brief and argue orally that, under prevailing law, the Court should refuse to approve the Settlement the Department and Exxon propose. Environmental Intervenors recognize that they did not participate in the

trial, and will therefore not offer views as to the credibility of the parties' expert witnesses or offer expert evidence of their own. Rather, they will present a legally driven perspective that neither primary party will offer.

That perspective is straightforward: Based on undisputed facts and prevailing law, the Settlement is unfair, unreasonable, and contrary to the public interest, the Spill Act and public trust doctrine, which obligate the Department to manage its natural and fiscal resources for the public's benefit. The Department is agreeing, after trial, to give up more than ninety-seven percent of its natural-resource-damage claim for Bayway and Bayonne, and in the bargain to let Exxon off the hook for natural resource damages at more than 800 other sites. Because this maneuver is startling on its face, before filing this motion, Environmental Intervenors independently evaluated Exxon's main post-trial legal arguments to limit damages. They did so to assess whether litigation risk could provide a plausible explanation for the Department's virtual surrender. It does not.

Exxon's principal legal arguments are weak or wrong. For example, the Spill Act (1) empowers the Department to recover costs to restore and replace all natural resources damaged and destroyed at Bayway and Bayonne, including resources on privately held uplands; (2) does not require the Department to link damages to specific Exxon discharges; (3) does not compel the Department to quantify the adverse change from pre-discharge conditions at the sites; and (4) does not oblige the Department to value individual services provided by resources Exxon damaged and destroyed at the sites. See Comments 8-19. The invalidity of Exxon's central legal arguments to limit damages underscores the inexplicable nature of the Settlement.

Environmental Intervenors seek the opportunity to join the case as plaintiffs and make these and other pertinent arguments opposing entry of the Settlement. Intervention will assist the Court, by providing a substantive critique of the Department-Exxon proposal, and lending adversarial sharpness to the important decision the Court must make.

While it is true that a challenge to the Settlement may prolong somewhat the proceedings in this Court, and on appeal should the Environmental Intervenors choose to pursue one, delay itself is insufficient to justify denial of intervention. See, e.g., In Re Acushnet River, supra, 712 F. Supp. at 1025 (finding environmental group's intervention to present briefing and oral argument in opposition to proposed settlement would "not cause undue prejudice or delay to the existing parties," where group sought to address unresolved natural-resource-damage issues on which "another view of the law will merely sharpen the debate").

There is a strong public interest in obtaining a fair and adequate Settlement. This interest outweighs any prejudice flowing from the marginal delay caused by a successful motion to intervene, particularly when "[v]iewing the matter in the context of this entire massive litigation." Ibid. Any delay generated by permitting Environmental Intervenors to participate will be inconsequential compared to the length of time this case has been pending. Challenging the Settlement is a "relatively small part of this litigation," and any "possible undue prejudice that may result to the existing parties . . . is insufficient to offset the strong arguments for permitting intervention." Ibid.

It is difficult to discern any real prejudice to either primary party from the modest delay intervention may cause. Especially in light of the public importance of this case, and

the fact that only Environmental Intervenors will provide resistance to the Settlement, an incremental delay is not "undue" within the meaning of the permissive intervention rule.

Because Environmental Intervenors have demonstrated that they meet the criteria of Rule 4:33-2, the Court should grant permissive intervention if it denies intervention as of right pursuant to Rule 4:33-1.

CONCLUSION

For the reasons set forth above and in their supporting papers, Environmental Intervenors urge the Court to grant them leave to intervene as plaintiffs to challenge the validity of the Settlement.

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Respectfully submitted,

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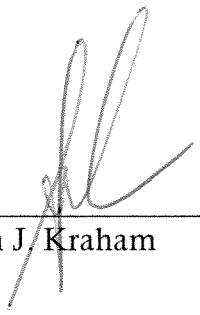
Dated: June 8, 2015



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