Congress of the United States

Washington, DC 20515

November 13, 2026

Adam R.F. Gustafson
Principal Deputy Assistant Attorney General
Energy and Natural Resources Division
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Re: Public Comment on Proposed Consent Decree, United States v. Environmental Resource Holdings, LLC, D.J. Ref. No. 90-11-3-07683/20

Dear Mr. Gustafson:

Thank you for your work to advance this next stage of the cleanup of the Lower Passaic River as part of the Diamond Alkali Superfund Site. Communities living along the Passaic River have borne the injustice of historic pollution for far too long, and this cleanup is essential to protecting the health of the people we serve and restoring their access to the river.

Polluters should pay for toxic contamination that they leave behind in our communities. Having previously urged the Department of Justice ("DOJ") and Environmental Protection Agency ("EPA") to prioritize this cleanup, we are encouraged to see this long-awaited $125 million commitment come to fruition. At the same time, we recognize that years of additional work and billions of dollars needed to fully realize the cleanup fall far beyond the scope of this agreement. We therefore believe that it is essential that the consent decree does not prejudice DOJ's ability to recover the full funding necessary to remediate and restore the river.

Prior to September 2025, the New York-based Occidental Chemical Corporation ("OxyChem NY") held the vast majority of the billions of dollars of liability stemming from the disposal of toxic waste directly into the Passaic River.[1] A recent corporate restructuring divided OxyChem NY into Environmental Resource Holdings, LLC ("ERH") – which received those environmental liabilities – and the Occidental Chemical Corporation Texas ("OxyChem TX") – which received all assets.[2] Like many others, we are concerned that this restructuring may facilitate legal maneuvers intended to allow these entities to evade remaining cleanup costs.

We believe that it would be both unjust and legally dubious to shield valuable corporate assets from cleanup obligations, prompt further litigation, and leave taxpayers footing the bill for corporate pollution in their communities. But this possibility is particularly relevant to the consent decree because OxyChem TX is not currently a party to the settlement.[3] We understand that some have suggested that finalizing this agreement with ERH alone could risk prematurely cementing liability and therefore jeopardize additional avenues for cost recovery.

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[1] United States v. Alden Leeds, Inc., No. 2:22-cv-07326, ECF No. 393, 13–15 (D.N.J. December 18, 2024).
[2] Occidental Petroleum Corporation. Annual Report on Form 10-K for the Fiscal Year Ended December 31, 2025. Filed with the U.S. Securities and Exchange Commission, 2026.
[3] United States v. Environmental Resource Holdings, LLC, No. 2:26-cv-11675, Proposed Consent Decree, ECF No. 2-1 (D.N.J. Sept. 10, 2026).

We also acknowledge the advantages of entering into this agreement now, including initiating a construction process expected to take approximately three years before in-river work can begin.[4] Moreover, the consent decree preserves ERH's future cleanup obligations and the government's right to pursue claims against parties not subject to the agreement.[5] We therefore seek additional assurances to ensure that this agreement protects taxpayer interests and the long-term outlook for achieving full remediation of the river.

We request a response to the following questions:

1. What is the rationale for entering into the consent decree now and as structured, particularly the decision to enter into the agreement solely with ERH?

2. Why is OxyChem TX not party to the consent decree?

3. What financial assurances have DOJ and EPA received from ERH? Please share all documents received regarding the assets and liabilities of ERH and OxyChem TX.

4. Can ERH fulfill the full remaining cleanup obligations beyond the scope of this consent decree?

5. In your view, could this consent decree prejudice future liability claims against other potentially responsible parties, such as OxyChem TX?

6. In your view, could this agreement impact any future consent decree with New Jersey municipalities and public entities, especially with respect to costs they may incur?

Thank you for your attention to this matter and for continuing our shared work to protect the health and welfare of the communities that we serve.

Sincerely,

Robert J. Menendez
Member of Congress

LaMonica McIver
Member of Congress

Nellie Pou
Member of Congress

[4] Michael Sol Warren, "Cleanup of NJ's Passaic River Inches Forward with $125M Settlement," Gothamist, September 16, 2026,.
[5] United States v. Environmental Resource Holdings, LLC, No. 2:26-cv-11675, Proposed Consent Decree, ECF No. 2-1 (D.N.J. Sept. 10, 2026).