

\$225M Exxon Deal Offers Blueprint for Pollution Review

Law360

08.27.2015

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ExxonMobil Corp.'s \$225 million pollution settlement with state environmental authorities, approved by a New Jersey judge this week, is notable not only for its size and the level of public scrutiny it endured, but also the guidance it provides companies facing similar claims for natural resource damages, attorneys say.

Superior Court Judge Michael J. Hogan noted Tuesday in his 82-page ruling that state courts had never adopted a standard for reviewing consent judgments under the New Jersey Spill Compensation and Control Act, so he applied the federal Comprehensive Environmental Response, Compensation and Liability Act's judicial review test for natural resource damages claims at issue in the case.

Using the federal standards of procedural and substantive fairness, reasonableness and public interest, he determined the \$225 million figure to be a "reasonable compromise" and approved the state Department of Environmental Protection's methods to estimate damages to 1,500 acres of wetlands from the oil giant's refineries in Linden and Bayonne. The settlement also covers smaller NRD claims at 15 other sites and methyl tertiary-butyl discharges at a slew of gas stations.

The settlement—which followed 11 years of litigation, including more than 60 days at trial—is also noteworthy for withstanding objections by a coalition of environmental groups and Sen. Raymond J. Lesniak, D-Union, who contend the figure undervalues damage originally pegged at \$8.9 billion by a state expert. ExxonMobil and DEP officials have reiterated that the settlement does not include remediation costs, which the oil giant is still obligated to pay.

Judge Hogan in his ruling commended the DEP as acting in "good faith" by answering to the public comments and allowing the groups and Lesniak, who joined the litigation as friends of court, to submit briefs and argue motions.

"What [the approval of the settlement] tells me and what it tells my clients is that, in an environmental [law] setting—which always evokes emotions, raw emotions—you can negotiate with the state fairly and appropriately and you can settle these claims with the state, knowing that the settlement will not be overturned or rejected by the court even in the circumstance where that settlement may be roundly criticized in public comments," McCarter & English's Lanny S. Kurzweil said.