

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2013-111

Council Meeting Date: 03-11-2013

Date Adopted: 03-11-2013

TITLE: RESOLUTION AUTHORIZING SETTLEMENT OF LITIGATION ENTITLED THE NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL. V. OCCIDENTAL CHEMICAL CORPORATION, ET AL., DOCKET NO. ESX-L-9868-05 (PASR) SUBSTANTIALLY IN ACCORDANCE WITH THE TERMS OF A PROPOSED CONSENT JUDGMENT AND RELATED DOCUMENTS

Councilperson Galluccio submitted the following resolution, which was duly seconded by Councilperson Muñoz.

WHEREAS, the Borough of New Providence is a third party defendant in litigation entitled the New Jersey Department of Environmental Protection, et al. v. Occidental Chemical Corporation, et al., Docket No.ESX-L-9868-05(PASR) (the Passaic River Litigation); and,

WHEREAS, the New Jersey Department of Environmental Protection, the Commissioner of the New Jersey Department of Environmental Protection, and the Administrator of the New Jersey Spill Compensation Fund (collectively, "Plaintiffs"), have offered to settle directly with all Third Party Defendants, including the Borough of New Providence; and,

WHEREAS, on behalf of the Borough of New Providence, counsel executed a Confidentiality Agreement and Memorandum of Understanding with Plaintiffs which, among other things, allowed for settlement negotiations between the Borough of New Providence and Plaintiffs and for the development of settlement documentation, provided that the negotiations and the documents generated during the course of those negotiations were to remain strictly confidential; and,

WHEREAS, negotiations between Plaintiffs and Third Party Defendants, including the Borough of New Providence, have resulted in the preparation of a proposed Consent Judgment and related settlement documentation; and,

WHEREAS, the Mayor and Borough Council of the Borough of New Providence have reviewed with counsel the proposed Consent Judgment and related settlement documentation in Executive Session at the meeting of February 11, 2013; and,

WHEREAS, the proposed Consent Judgment and related settlement documentation continue to remain strictly confidential in accordance with the Confidentiality Agreement and Memorandum of Understanding executed by counsel on behalf of the Borough of New Providence until such time as they are published by Plaintiffs in accordance with the Consent Order on the Approval Process for the Proposed Consent Judgment entered by the Court on January 24, 2013 ("Consent Order"), a copy of which is annexed hereto as Exhibit "A"; and,

WHEREAS, the proposed Consent Judgment and related settlement documentation may be subject to change depending on the outcome of the approval process outlined in the Consent Order; and,

WHEREAS, the Mayor and Borough Council of the Borough of New Providence desire to approve the proposed settlement as reflected in the proposed Consent Judgment and related settlement documentation and allow for the approval process to move forward in accordance with the Consent Order.

NOW, THEREFORE, LET IT BE RESOLVED by the Mayor and Borough Council of the Borough of New Providence as follows:

1. All of the foregoing "Whereas" clauses are incorporated by reference as if set forth at length herein.
2. The Borough of New Providence hereby authorize the settlement of the Passaic River Litigation substantially in accordance with the terms set forth in the proposed Consent Judgment and related settlement documentation reviewed by the Mayor and Borough Council in Executive Session at the meeting of February 11, 2013.
3. The Borough of New Providence counsel and all other appropriate Borough of New Providence officials and personnel are authorized to prepare any and all related documents and perform all tasks, which will effectuate the purposes of this Resolution.
4. The appropriation of any and all settlement sums shall be the subject of a subsequent resolution to be adopted by the Mayor and Borough council of the Borough of New Providence after the finalization of the approval process set forth in the Consent Order and in accordance with the proposed Consent Judgment.
5. This Resolution shall take effect immediately and/or as required by law.

APPROVED, this 11th day of March, 2013.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
LESNEWICH			X	
MUÑOZ	X			
ROBINSON	X			
HERN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 11th day of March, 2013.

Wendi B. Barry, Borough Clerk