

THE PASSAIC RIVER LITIGATION

A CASE FOR EARLY RESTORATION

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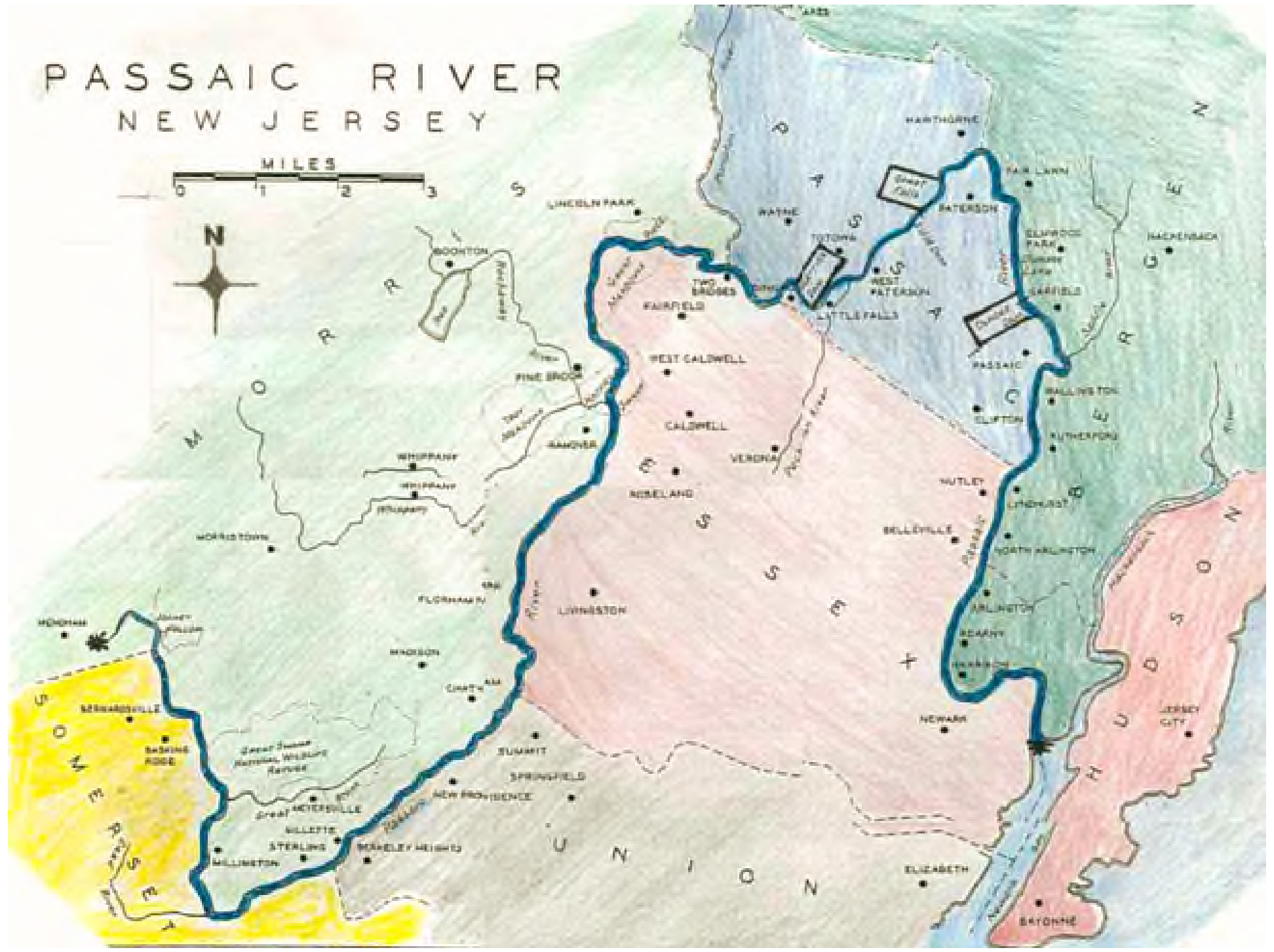


“NEW JERSEY’S BIGGEST CRIME SCENE”

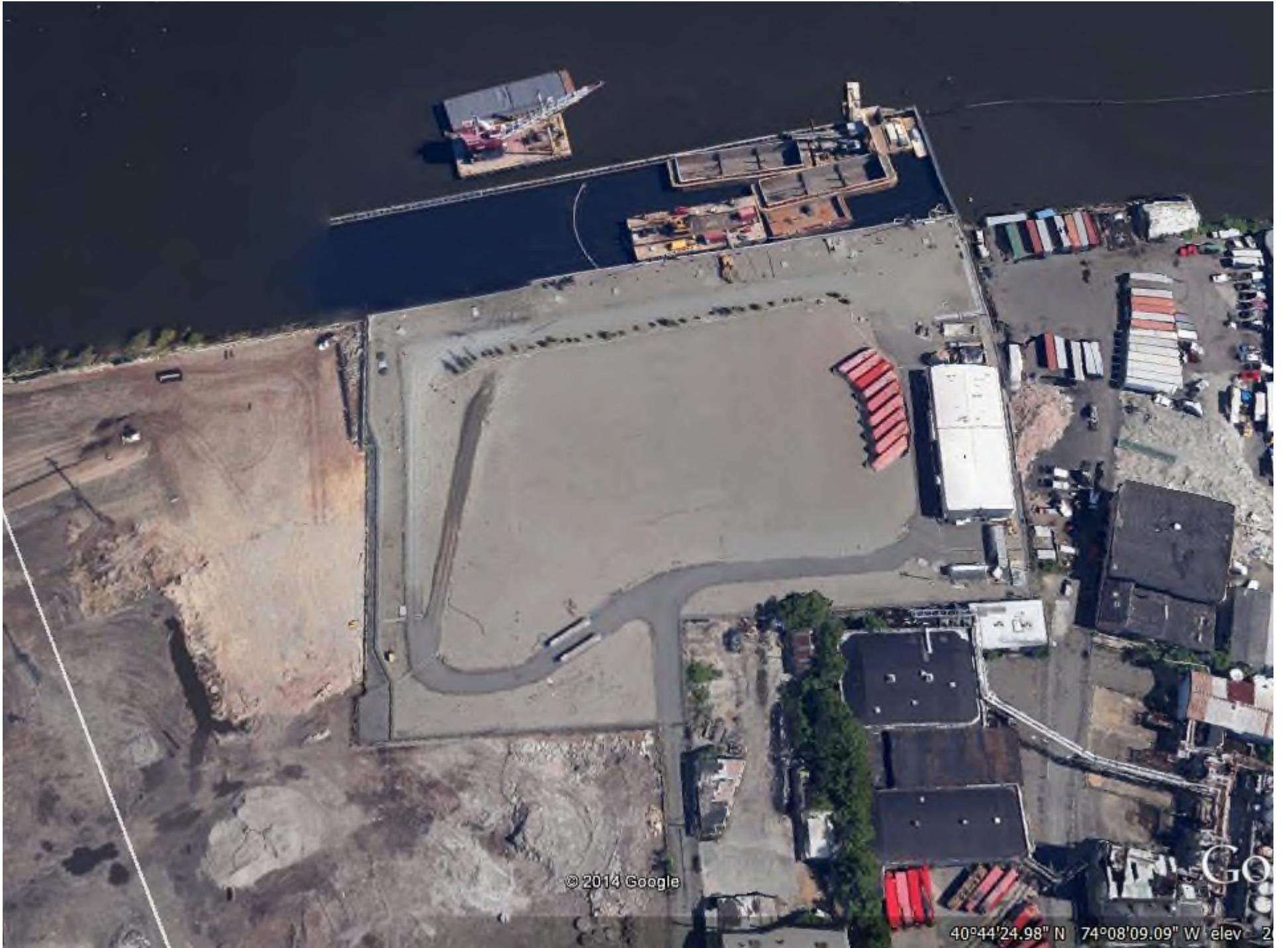
*United States Senator Cory Booker on the
Passaic River*

**Kelley
Drye**

PASSAIC RIVER NEW JERSEY







© 2014 Google

40°44'24.98" N 74°08'09.09" W elev 2



10-29-76

5-50

GS-VDUW



DANGER!



DO NOT CATCH! DO NOT EAT!

**BLUE CLAW CRABS
IN NEWARK BAY COMPLEX MAY CAUSE
CANCER**

**AND MAY HARM BRAIN DEVELOPMENT
IN UNBORN AND YOUNG CHILDREN**

Fines up to \$3,000 could be imposed (N.J.A.C. 7:25-14,18A)







THE DEFENDANTS SEE THE PROBLEM

**Kelley
Drye**

“WHEREAS, the **potential threat [of the dioxins] is of such magnitude** that the coordinated efforts of local, regional and State agencies must be taken immediately to insure the protection of the public health and welfare.... I, Thomas H. Kean, Governor of the State of New Jersey ... **do hereby declare a state of emergency.**” Executive Order 40, June 1, 1983.

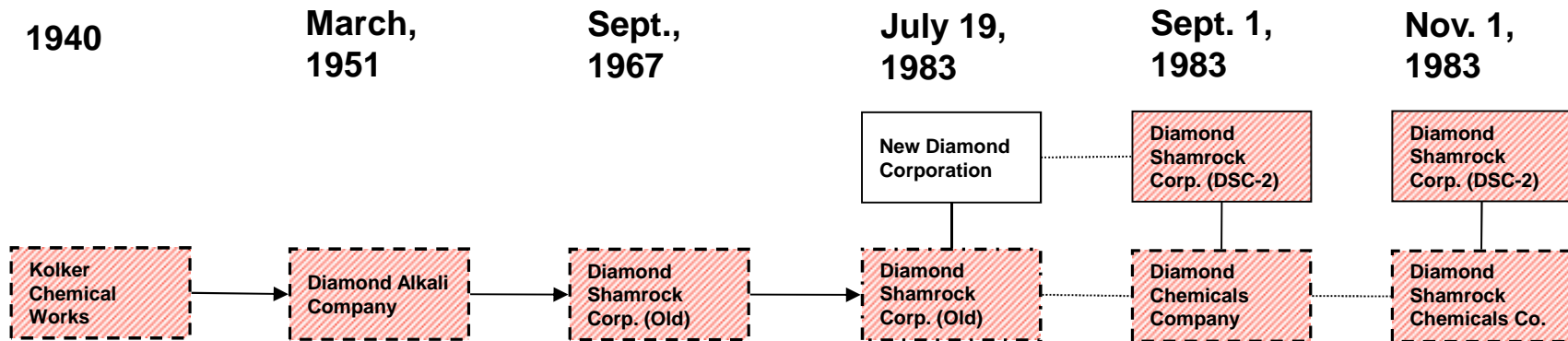
THE EFFORTS TO STRAND THE LIABILITIES

The Defendants See the Problem....

- Internal documents reveal that the defendants understood the size and scope of the problem
- Estimated billions for the remediation of river
- Decided in the 1980's to
 - "Own the Science" of dioxins
 - Co-opt the EPA process
 - Deploy "Smoke Screen" of pointing at third-parties
- July 19, 1983 – create new parent company
- 1984-87 – Corporate restructurings to isolate liabilities
- 1992 – Lose insurance coverage case (1993 Supreme Court)
- 1995-98 – Move key oil & gas assets overseas

Plaintiffs' Second Amended Complaint

Alleged History of Lister Site Ownership & Corporate Structure: 1940 - 1983



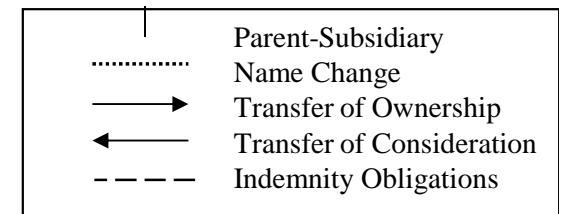
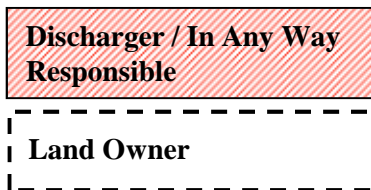
Production Era



June 1, 1983: Executive Order 40

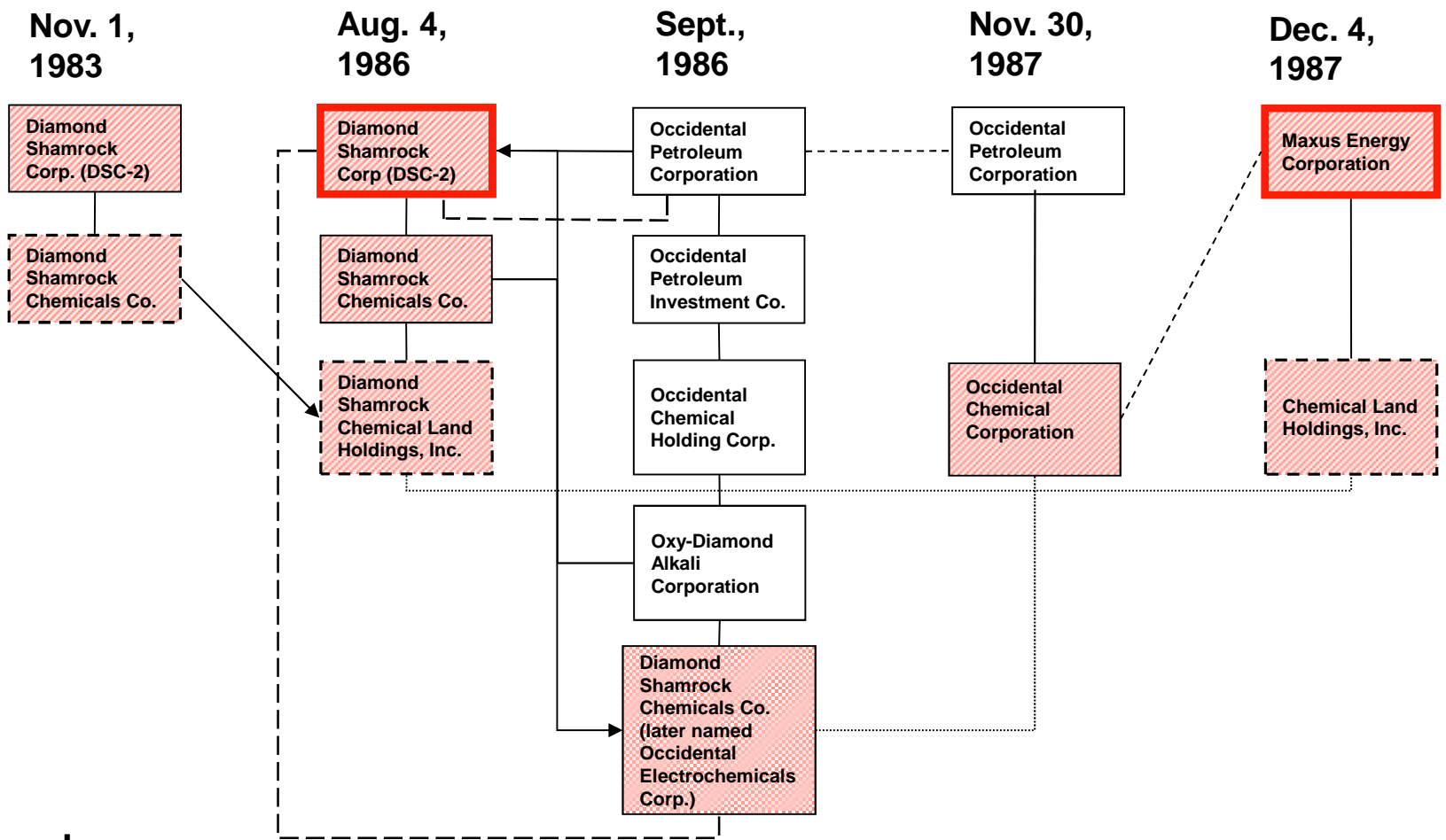
Discharges

Legend



Plaintiffs' Second Amended Complaint

Alleged History of Lister Site Ownership & Corporate Structure: 1983 – 1987



Legend

Discharger / In Any Way Responsible

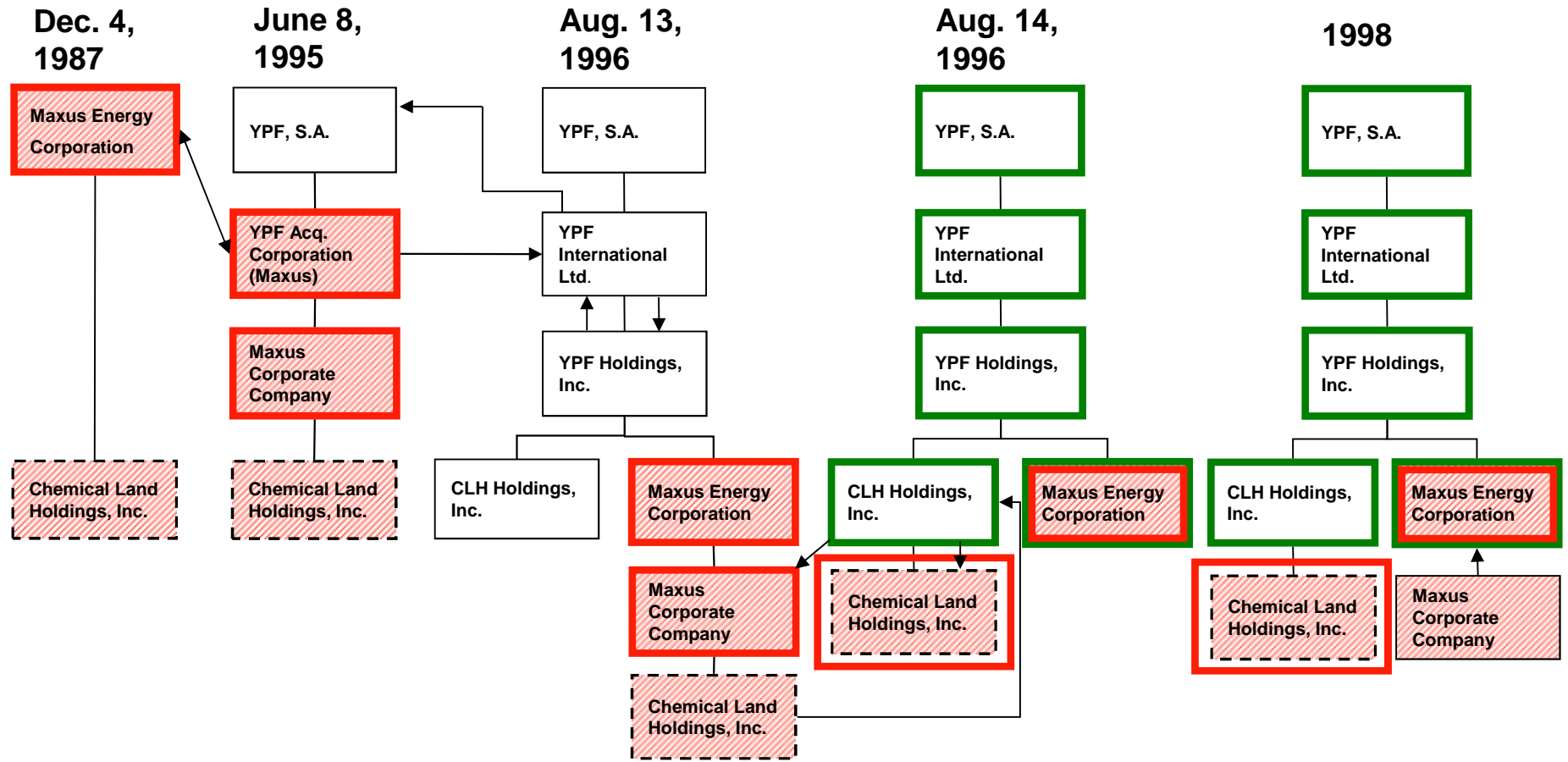
Land Owner

Contractual Assumption of Environmental Liabilities

| Parent-Subsidiary
 Name Change
 → Transfer of Ownership
 ← Transfer of Consideration
 - - - Indemnity Obligations

Plaintiffs' Second Amended Complaint

Alleged History of Lister Site Ownership & Corporate Structure: 1987 – 1998



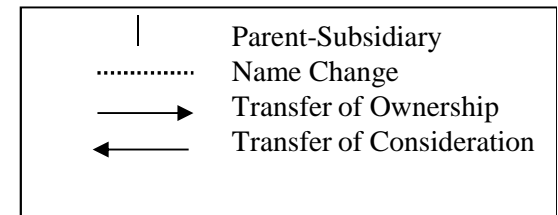
Legend

Discharger / In Any Way Responsible

Contractual Assumption of Environmental Liabilities

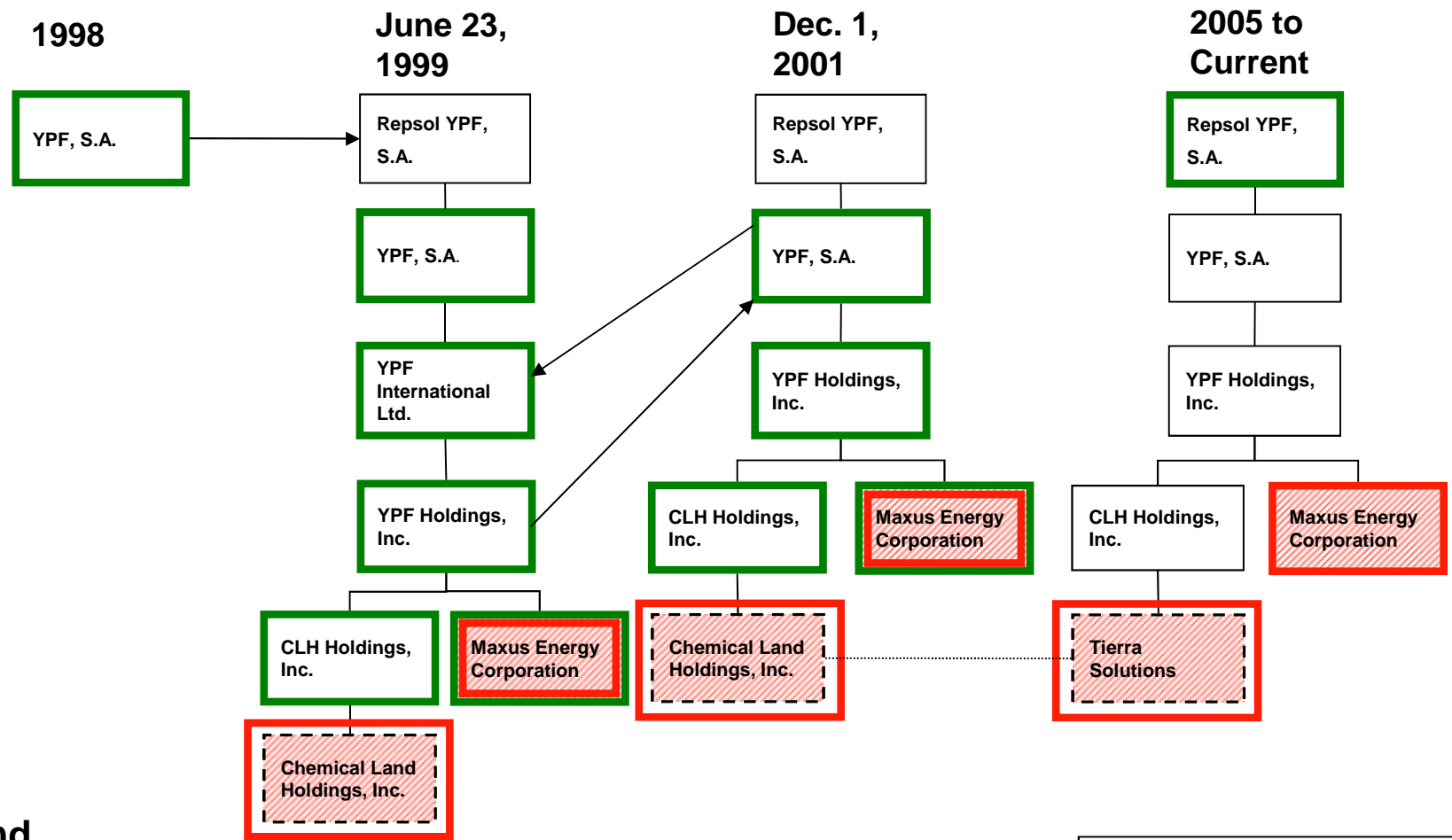
Land Owner

Contribution Agreement & Other Funding



Plaintiffs' Second Amended Complaint

Alleged History of Lister Site Ownership & Corporate Structure: 1998 – Current



Legend

- Discharger / In Any Way Responsible
- Land Owner

- Contractual Assumption of Environmental Liabilities
- Contribution Agreement & Other Funding

- Parent-Subsidiary
- Name Change
- Transfer of Ownership
- Transfer of Consideration

THE STATE DECIDES TO ACT

**Kelley
Drye**

Sunday Star-Ledger

7WX12

FINAL EDITION

TODAY'S FORECAST: A beautiful day,
with lots of sunshine.



at 7 A.M. **73°**

at 2 P.M. **89°**

at 7 P.M. **85°**

DETAILS,
PAGE 38

AUGUST 6, 2006

\$1.25

WWW.NJ.COM

THE NEWSPAPER FOR NEW JERSEY

As dioxin spreads through state waterways, the DEP accuses two firms of intentionally avoiding a long-mandated cleanup **THE LONG, POISONOUS WAIT**



ED MURRAY/THE STAR-LEDGER

Richard Jack, left, and Andrew Willner of New York-New Jersey Baykeeper waded into the Passaic River, which has been tainted with dioxin. Signs, right, in Riverbank Park in Kearny warn people not to eat crabs from the river.

BY ALEXANDER LANE
STAR-LEDGER STAFF

In 1992, a New Jersey appellate court handed down a famously scathing opinion.

For almost two decades ending in 1969, a three-judge panel found the Diamond Shamrock Chemicals Co. had rel-

stepped up complaints that the companies' studies are scientifically unsound, and have been carefully designed to help the companies avoid the potential \$1 billion cost of removing their toxic waste from the river. They say federal officials, under intense pressure from lobbyists, have allowed the companies to postpone a cleanup perhaps indefinitely, and structure it so taxpayers will shoulder much of



Ironbound, is covered in cement now, and topped with pot-

State's 2005 Directive & Litigation

- Source Control Dredge Plan & Directive
 - Address the Source & Scope of Dioxins
 - Dredge Remedy in Source Zones
- Lawsuit against Diamond and Foreign Parents:
 - Past Costs
 - Declaratory Relief for Future State Costs
 - Economic Damages
 - Disgorgement and Punitive Damages
 - NRD Assessment Costs
 - Fraudulent Transfers & Alter Ego Findings
 - Attorneys Fees and Litigation Costs

Key Litigation Battles & Milestones

- Removal based upon Federal Preemption
- Federal Court Motions to Dismiss the State's Claims
- Motions to Dismiss for Lack of Personal Jurisdiction
- State Court Motions to Dismiss the State's Claims
- Joinder of 300 Third-Parties
 - State's Claims against Third-Parties Reserved
 - State's Claims for Natural Resource Damages Reserved
- Attempts to kill the State's litigation
 - Political Pressures & Tactics
 - Third-Party Practice
- Argentina's Repatriation of YPF & the Foreign Sovereign Immunities Act Issues

Defendants Poured Resources & Lawyers Into the Litigation

First-Tier Defendants

- Andrews & Kurth
- Vinson & Elkins
- Drinker Biddle & Reath
- Archer & Greiner
- Gable Gotwals
- Munger, Tolles & Olson

Foreign Parent Companies

- Bracewell & Guiliani
- Greenbaum, Rowe, Smith & Davis
- DLA Piper
- Kirkland & Ellis
- Weil Gotshal & Manges
- Chadbourne & Parke

The State's Approach

- Discovery & Privilege Battles
 - **35,000** Page Privilege Log
 - Experts & Publications to **"Own the Science"**
 - **"Common Interests"** of the Foreign Defendants
- Dismiss the Counterclaims against the State
- Summary Judgment Against OCC
- Summary Judgment Against Tierra
- Summary Judgment Against Maxus
- Aggressively Pursue Fraudulent Transfers & Alter Ego
- Neutralize the Third-Parties: Contribution Protection
- Amazing Expert Team and Damages work
- Trial Ready

SETTLEMENT OF THE PASSAIC LITIGATION



Results of the State's Litigation

- Settlement with 300 Third-Party Defendants
- Settlement with Repsol/YPF/Maxus Parties
- Settlement with Occidental Chemical Corporation
- Together, the three settlements resulted in:
 - **\$355.4 Million** in Past Costs & Damages
 - **\$67.5 Million** in NRD Restoration Projects
 - **\$400 Million** in protection against State FFS Costs
 - **Hundreds of Millions** in anticipated Economic Activity
 - Protection and reopeners for all other future State costs subject to OCC Motion for Summary Judgment
- \$1.7 Billion remediation going forward under EPA direction

Reprinted from

The New York Times

Opinion

April 15, 2014

A Cleanup Plan for a Toxic River

By THE EDITORIAL BOARD

The inventory of pollutants at the bottom of the Passaic River, which meanders for 90 miles through northern New Jersey, is long and truly frightening. More than a century of industrial activity has deposited PCBs, pesticides and other contaminants into sediment that, in some places, is 15 feet deep. Among the worst of the poisons is dioxin, generated in part by a plant in Newark that produced Agent Orange and other deadly pesticides during the 1960s.

Now, after years of study, the Environmental Protection Agency has proposed a cleanup plan for a dangerously fetid eight-mile stretch from Belleville to Newark. This will be no small task. The agency calls it the largest cleanup in the 33-year history of the federal Superfund law, with a projected cost of \$1.7 billion that puts it in roughly the same range as General Electric's cleanup of the PCB's in the upper Hudson River.

The E.P.A.'s plan is ambitious, necessary, long overdue and definitely good news for those who believe that humans should again enjoy this once-thriving waterway. It also shows that Superfund, in which

Congress has shown steadily declining interest, still matters when it comes to the long and difficult battle against industrial leftovers. The cleanup has bipartisan support in New Jersey, including from Gov. Chris Christie, a Republican, and Democratic members of Congress.

If approved, after a 60-day public comment period, the project would involve bank-to-bank dredging to remove 4.3 million cubic yards of contaminated sediment, after which the river bed would be capped. The task would take at least five years, and — according to Judith Enck, the agency's regional administrator — it would mean excavating enough contaminated mud to fill New Jersey's MetLife Stadium, twice over.

Under the law, so-called responsible parties — companies that polluted the river — will be required to foot the bill. These include corporations like Honeywell International, Pfizer, Tiffany and others that either polluted the river themselves or acquired companies that did so in the past.

Needless to say, some of the companies are not pleased. One group of 67 companies calling themselves

the Cooperating Parties Group has complained that the federal plan would take decades, not five years, would disrupt commercial activity and deny public access to the river. The group's alternative plan is to clean "hot" spots along 17 miles of the river, a plan that E.P.A. finds insufficient to remedy the most polluted areas downstream.

Company representatives have also suggested a fish exchange — a program that would allow people to swap contaminated fish caught in the Passaic for healthy ones. (Catching crabs in parts of the lower river is prohibited, and people are warned not to eat the fish they catch.)

Instead of proposing such diversions as fish swaps, the cooperating companies should face up to their full responsibilities. Meanwhile, the E.P.A. should step up its efforts to identify other businesses that appear to be hiding from their duty to clean up the mess left by their predecessors. It is well past time to rehabilitate one of America's oldest industrial dumping grounds.

APPLYING RESTORATION RECOVERIES TO THE RIVERFRONT PARK PROJECTS & PUBLIC ACCESS











Passaic Riverfront Park



Legend

Passaic Riverfront Park

-  Priority Land Acquisition A
-  Future Passaic Riverfront
-  Existing Open & Public Space



Passaic Riverfront Park

Priority Acquisition Properties

1) Palmer Industries Inc.
(3.57 Acres)
Block 2442, Lot 3
3.57 Acres

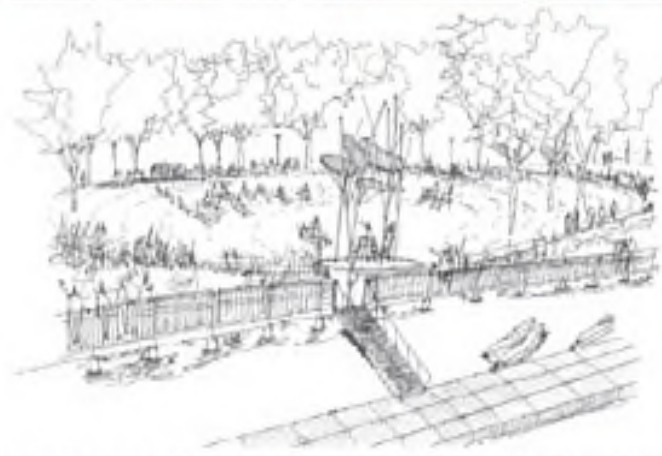
2) ORFAC Property Management
(2.32 Acres)
Block 2442, Lot 2
2.32 Acres

3) RAR Development
(5.53 Acres)
Block 2473, Lots 1 & 2
Block 2025, Lot 20
Block 2473.01, Lot 4

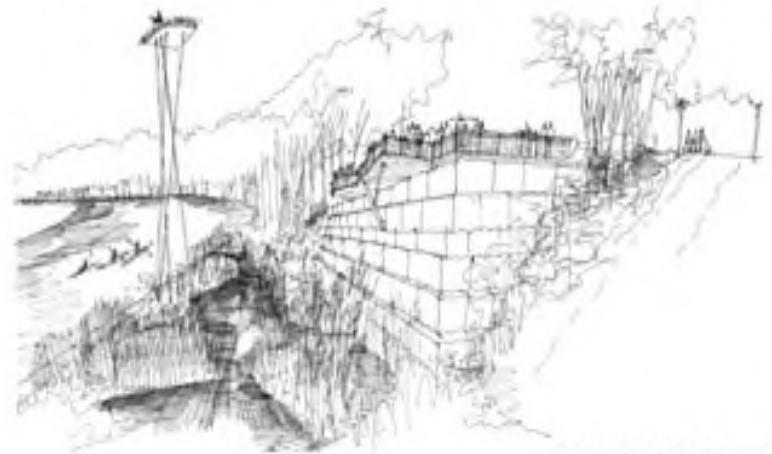
Legend

- Tax Parcels
- Existing Open Space





PICNIC LAWN, PERFORMANCE PAVILION, BOARDWALK, AND FLOATING BOAT DOCK



OVERLOOK AND OSPREY ROOK





A large crowd of people is gathered on a grassy area near a river. In the background, there is a stage with several red poles and a building. The text "Newark 2014 returns to its river!" is overlaid in large, yellow, stylized letters.

Newark 2014 returns to its river!

Download the full 2014 Newark
Riverfront Event Calendar!











RIVERFRONT YOGA

A photograph of three people practicing yoga in a grassy park meadow. On the left, a man with a white beard and a white turban sits in a meditative pose on a blue mat. In the center, a woman in a red long-sleeved shirt sits on a blue mat. On the right, a woman in a patterned tank top sits on a pink mat. The background shows a clear blue sky with light clouds, several tall stadium-style light poles, and a chain-link fence. The scene is brightly lit, suggesting late afternoon or early evening.

MONDAYS 6-7PM AT THE
RIVERFRONT PARK MEADOW WITH
NEWARK YOGA MOVEMENT!

NEWARK PADDLE DAYS 2015

KAYAK ON THE PASSAIC RIVER

SUN, JULY 19TH @ 10AM

SAT, AUG. 8TH @ 10AM

FREE RESERVATIONS CONTACT: (201) 341-8311 OR
NEWARKBOATTOURS@GMAIL.COM

18+



NEWARK
RIVERFRONT
REVIVAL



 NEWARK
RIVERFRONT
REVIVAL





2015: Newark Riverfront Park is Honored with the EPA Smart Growth Award

- Award given annually for creative, sustainable initiatives that better protect the health and environment of our communities while strengthening local economies.
- The 2015 award is presented to projects in three categories: Plazas, Parks, and Public Places; Corridor or Neighborhood Revitalization; and Built Projects.
- Riverfront Park was honored in the **Category: Plazas, Parks, and Public Places**

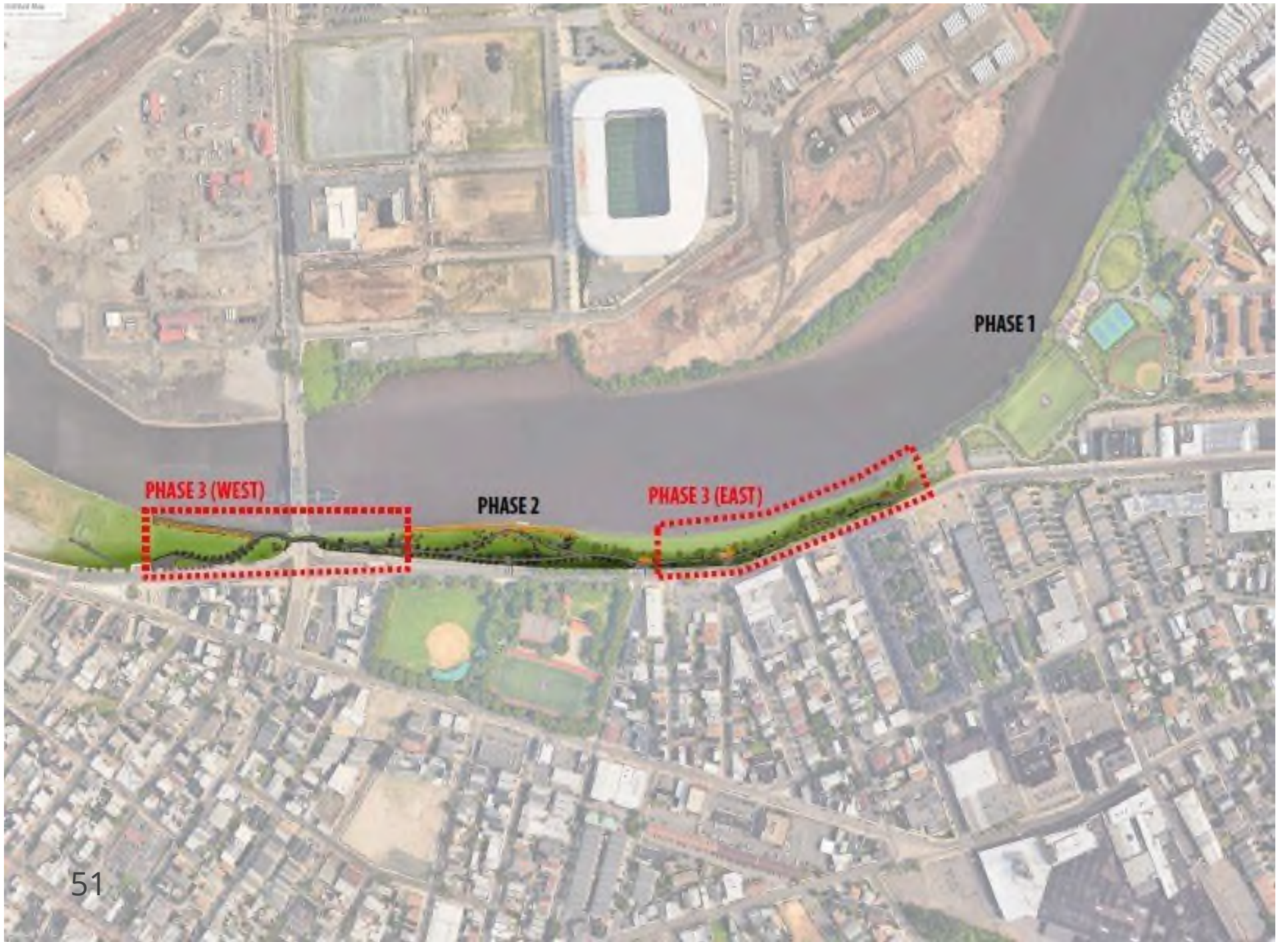
2015 EPA Award for Riverfront Park

“Riverfront Park fulfills a decades-long movement to reclaim the Passaic riverfront for the people of Newark, N.J. Situated on the cleaned-up site of a former metal smelting plant, the park provides Newark’s **only public access to the river and outdoor recreational space** for a neighborhood where the amount of green space dedicated for use as parks is far below the national average. The 19-acre park is the result of a public engagement process that included more than 6,000 people. It is expected to attract new economic development, particularly to downtown Newark, and will eventually be part of a string of riverfront parks and trails that will stretch for five miles.”

Work Begins On \$8M Newark Waterfront Park Project Near Passaic River (October 11, 2016 Expansion)

Newark's Riverfront Park will have a boardwalk, walkway system, a fitness zone, an overlook with seating and a bikeway, officials say.









“THIS WEEKEND, CELEBRATE NEWARK’S RIVERFRONT WITH A FULL DAY OF ACTIVITIES AT RIVERFRONT PARK” (July 13, 2017)

- Saturday, July 15, 2017 Newark’s Riverfront Park will celebrate “River Day” with a full day of activities.
 - Kayak on the Passaic River.
 - Chess with Newark Chess Club, terrarium building, a magic show, face painting, fitness, and performances. DJ Scotty Nevers will provide the musical backdrop.
 - At dusk, Riverfront Park will host a movie night, showing Finding Nemo in the meadow.
 - Riverfront Park provides a host of other programming throughout the summer, including dance and fitness activities, weekly chess, adult kickball, karaoke and the popular riverfront house party with DJ Omar Abdullah.



Riverfront KARAOKE NIGHTS

THUR JULY 27 6-9PM
DJ EDDIE OF ELITE SOUNDS

THUR AUG 31 6-9PM
HIP-HOP EDITION W/RHYMEANTICS

@THE ORANGE STICKS
RIVERSIDE OF 726 RAYMOND BLVD.



55



NEWARKRIVERFRONT

NEWARKRIVERFRNT

CONTACT US:
NEWARKRIVERFRONT@GMAIL.COM
NEWARKRIVERFRONT.ORG

PAISLEY PARK: PRINCE PARTY

SUNDAY, AUGUST 6TH 4-8^{PM}
AT THE ORANGE STICKS
RIVERSIDE OF 726 RAYMOND BLVD.

DJ MAX-JEROME + DJ DARRIN DEE

PERFORMANCE BY
CHARISA THE VIOLIN DIVA

SHOW YOUR LOVE BY DRESSING PRINCE STYLE!
DRESS IN PURPLE OR DRESS LIKE PRINCE
PRIZE GIVEN TO THE BEST PRINCE COSTUME



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QUESTIONS?

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