

**Presentation of Attorney General Designee Claude Earl Walker
Thirty-First Legislature of the Virgin Islands
Earle B. Ottley Legislative Chambers, St. Thomas, VI
December 16, 2015**

Nearly four (4) years have passed since Virgin Islands residents awoke to the news that their largest employer—Hovensa—was shutting down its operations. Since that time, many of the Territory’s citizens and other businesses have severely suffered. Today, I am pleased to appear before you to announce that a viable solution exists to offer hope to the residents of the Virgin Islands.

The very first assignment that Governor Kenneth Mapp gave to me, on my first day in office, was to ensure that the people of the Virgin Islands were able to assert our claims over the operation and shut-down of the HOVENSA refinery, and to protect the interests of the Virgin Islands in negotiating a future facility. To accomplish this mission, I knew the most appropriate course of action would be to look for a team of legal, environmental, and other skilled experts suited for this type of high-stakes challenge. The team I chose was led by skilled litigator and former District of Columbia Attorney General Linda Singer, who specializes in representing government entities in high-stakes, complex litigation like this, and is at a highly-respected national law firm, Cohen, Milstein, Sellers and Toll, and noted St. Croix attorney, Joel Holt, who is an extremely skilled litigator and is well-known to many of you. Because this type of litigation is extremely costly, it was also important for me to find a national law firm that would fund the litigation, and all related proceedings, including bankruptcy and environmental experts. Furthermore, the firm had to agree to take this case on a contingency basis, whereby, the law firm would only receive compensation if we won the case or it was settled in our favor.

This strategy avoided a situation in which I would have to come repeatedly before the Legislature for money to fund this litigation. As you know, this legislature appropriated \$1 million dollars to fund this case, and I can assure you that this amount is not nearly enough to fund a case of this magnitude. Attorneys Holt and Singer worked on a contingency basis, so the Virgin Islands was able to avoid any direct expenditure and leverage far more in direct services and expenses from the outside legal team that I put together.

In addition to Attorneys Singer and Holt, I had a team of environmental lawyers at the Venable law firm, environmental experts at Industrial Economics, a firm based in Cambridge, MA, our bankruptcy attorney, Thomas Macauley, in Wilmington, Delaware, and our transactional team, Attorneys Peter Hiebert and Geoffery Eaton, at Winston and Strawn, all of whom did outstanding jobs in representing us in fast-paced bankruptcy proceedings in the Virgin Islands and in Delaware, in negotiations with Hovensa and consultations with the U.S.EPA. Our team also performed brilliantly in our dealings with the bidders – all of which had to be addressed simultaneously. All of these experts, of course, were aided by the skilled staff at the Virgin Islands Department of Justice and Department of Planning and Natural Resources.

I cannot recall ever seeing such a large and complex case such as this one, being settled so quickly. Normally, these cases take many years to settle or go to trial. But Hess was checkmated from the beginning by the very decisive leadership of Governor Mapp, and so together, our collective abilities were able to hit Hess with a quick and credible legal blow with our lawsuit filed against Hess on September 14th, only three (3) months ago. That act on our part was key to the Virgin Islands' ability to secure a highly beneficial resolution today.

If Governor Mapp did not authorize me to sue Hess, in the Superior Court of the Virgin Islands, on St. Croix, then I can assure you that we would not be here today, before you, discussing this \$800 million dollar settlement. Bear in mind, when we first met with Hess in NYC to discuss the sale and settlement, the sale price was \$195M and the Government was focused on payment of \$40M natural resources settlement and the money it was owed for its payment in lieu of taxes (PILOTs) (\$13.5M) and the commission on the sale of the Refinery (which would have been around \$37M).

In discussing these issues with you today, it is important to keep in mind that there are separate elements to the global resolution of this matter, all of which fit together and support each other. First, there's the Government's Operating Agreement with ArcLight. This agreement calls for an initial cash payment of \$235 million; ongoing annual payments; a commission if the operation is sold; a sizeable charitable commitment; and other advantageous elements. Additionally, it includes access to the facility's fuel rack at prices no higher than ArcLight offers to its other customers. Given prices for fuel in the Virgin Islands, this was a major concern of mine. Second, there is the settlement arrangement reached with Hovensa. Together, the agreements between ArcLight and Hovensa will provide a beneficial outcome to this long awaited resolution. Provisions from the dual agreements will address both the environmental challenges as well the long-term financial hopes and aspirations of the Territory.

First, in arriving at any agreement, it was imperative that we address the environmental concerns as well as the existing structural remnants of the now non-functioning refinery. This was accomplished by our environmental team, and was comprised of both specialized environmental counsel and the highly regarded consulting firm, Industrial Economics. That team has reviewed every key assessment and report on the site and met regularly with the EPA to understand and make sure we addressed every environmental issue on the site. Additionally, we met with Hovensa's environmental team and the experts retained by ArcLight. Finally, our team looked at what steps were taken to address the close-down of refineries elsewhere in the United States.

It was Governor Mapp mission to hold Hovensa, in the first instance, accountable for these issues and then look to ArcLight to address whatever issues remained which Hovensa could not resolve. It was imperative that Hovensa demonstrate and execute a plan to fully clean the site before it leaves. That plan has been presented to our team, and audited by an outside firm retained by Hovensa. We have demanded that Hovensa purchase an environmental insurance policy of \$50M to cover remediation of any unknown environmental issue that may only be revealed in time. Though we do not believe that there is contamination under the refinery structure, we are unable to confirm that and want, in particular, to make sure that have a safeguard if there is either soil contamination under the refinery or any marine issues. Additionally, we will require that Hovensa provide the payment of a \$4.875 million SEP fund set aside for DPNR as part of the Consent Decree between the US EPA, DPNR and Hovensa for prior violations of the Clean Air Act. We wanted to make sure that money did not disappear in the bankruptcy and that DPNR had adequate time to spend those funds. Hovensa will also be required to set up an environmental response trust to address environmental issues after its bankruptcy, which will hold the funding needed to address the issues described above. The GVI will have the right to approve the trustee

for that trust. The Hovensa agreement will also ensure that it pay for a study of the marine environment around the refinery. Our investigation revealed that there had been no testing of Limetree Bay and we want to make sure we are aware of and can reasonably address any contamination and have a baseline against which to judge future operators.

The former refinery and its surrounding location are subject to an extensive treatment and monitoring plan under the Resource Conservation and Recovery Act (RCRA), which requires it to “pump and treat” contaminated ground water. Hovensa has installed over 70 recovery wells, and more than 600 monitoring wells that it tests for groundwater contamination. Over the more than thirty years that Hovensa has operated this corrective action, it has removed approximately 44 million gallons of hydrocarbon. An estimated 195,628 gallons of recoverable hydrocarbon currently remains under recovery. The RCRA corrective action, which will continue for another 20-30 years, will address past water and any soil contamination on the Refinery. We have not found evidence that there is any other contamination on the site.

A critical goal of ours was to ensure that the refinery purchaser take over the operation of the groundwater pump and treatment operation. ArcLight has agreed to assume that obligation and will be able to draw on the \$36M financial assurance Hovensa had been required to put up to fund it. ArcLight will provide the power over the next 20-30 years to run the RCRA corrective action, which is valued at \$15M. This frees up more money to be spent on the actual clean-up on the site.

In addition, ArcLight will take down any unused portion of the refinery structure, and the dismantling will be certified by an independent environmental firm. ArcLight will dismantle the refinery, at a cost of approximately \$15M. This will prevent St. Croix from being left with a rusting eyesore and potential hazard. ArcLight and Hess will contribute \$30M in additional resources (beyond \$36M in existing financial commitments, or a total of \$66M) to short-term and long-term clean-up.

Other requirements of the proposed agreements include Hovensa's transfer to ArcLight and ArcLight's transfer to the Government 330 acres of land, 121 units of housing, the community center, and the vocational education school, which we value at about \$36M. It has also been agreed that PDVSA and HOVIC will waive their tax claims against the GVI. This was a very important issue for the Government for several reasons: (1) our potential exposure in litigation for claims of \$368M, plus the costs of defending ourselves in litigation; (2) the principle that we did not wish to be negotiating while PDVSA and HOVIC held a gun to our head; (3) our desire to bring closure to our relationship with Hovensa.

In return for all of this, the Government will release its claims against Hess, including in the lawsuit we filed in September, its potential claims against PDVSA, on which we had issued subpoenas and were reviewing documents, and all other potential claims against these entities – Hess, HOVIC, PDVSA, PDVSA-VI, and Hovensa.

In addition, our team has asked the EPA for permission to turn any unused part of the site into a brownfield or give it some other status that would allow a future user to put it to constructive use, without the deterrent of liability for past damages. Hovensa has agreed to cooperate in that process, and we have received positive assurances from EPA. There will be extensive conversations about the various permits that need to be issued to ArcLight, and modified or surrendered by Hovensa. That will be an ongoing process led by DPNR.

Before I close, I would like to address one other concern that I read last week which concerns the timeframe for the ratification of these agreements. While I can certainly appreciate this body's need to thoroughly understand the intricacies of such a prodigious commitment, I would also like to remind its members the window to consummate this agreement will expire shortly. I do not believe that time—standing alone—should be a reason to sacrifice a sound and productive solution.

In the end, the heart of the question is not whether the Governor Mapp has achieved the perfect remedy—for God alone has that power—the question, rather, is whether we have achieved the best possible remedy to this monumental dilemma that has plagued our Territory for the last four years. All told, we have secured a package, between the operating agreement with ArcLight and the settlement with Hovensa, worth \$800M to the Government and people of the Virgin Islands. This global settlement arrangement is sound legally, practically, environmentally, and economically and I urge the 31st Legislature to ratify it today.

Let me be clear, respectfully, this honorable body must act during this special session or else the entire deal will fall apart by the end of this month. It will be a lost opportunity for the People of the Virgin Islands. So, the failure act will have catastrophic consequences for the U.S. Virgin Islands. It will be, forever, a lost opportunity for the People of the Virgin Islands. No doubt about it, the failure to act will have dreadful results for the entire Virgin Islands. I go to St. Croix at least twice a week, and it is sad to see, often, grown men just standing around, under trees, on a Monday morning – with nothing to do. This is what happens when work disappears. This is not about any special interest – this is about restoring the People’s hope, and so, in closing, I beg you to vote in favor of this transaction for the sake of the People of the Virgin Islands. This ends my testimony, and I look forward to your questions.