EPA UPDATE –YEAR IN REVIEW

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A. INTRODUCTION

In 2010 we commemorated a number of important milestones in the environmental field. Not only did we celebrate the 20th Anniversary of the Pollution Prevention Act (discussed below) but on December 11th we also commemorated the 30th Anniversary of the passage of the Comprehensive Environmental Response, Compensation, and Liability Act -- otherwise known as CERCLA or Superfund. As of the drafting of this article, a total of 1,627 sites have been listed on the National Priority List (NPL). While we have made considerable progress on the remediation of such sites, having cleaned 67 percent of the sites nationwide, much work remains. Over the years, a total of 346 sites deleted from the NPL with 1,281 sites are in various stages of remediation. As of October 2010, there are 62 proposed sites awaiting final agency action for a total of 1,343 final and proposed NPL sites. Considering the challenges presented by a number of sites in this EPA region alone - - *e.g*., the Hudson River PCBs Site, the Gowanus Canal, Newtown Creek, Onondaga Lake, and the Passaic River - - the next few decades will undoubtedly be busy ones.

In 2010 we also marked the 40th Anniversary of Earth Day and the creation of EPA. The first Earth Day in 1970 was one of the largest and arguably most successful grassroots demonstrations in the nation's history. By the end of the year, EPA was created and tasked with both cleaning up the environmental damage already in existence and establishing guidelines to help prevent additional damage. Soon after, Congress passed a series of environmental laws including the Clean Air Act and the Clean Water Act and we embraced the environmental decade. The new laws, policies and innovations followed that vastly improved our environment and benefitted every single American. Today our water and air are cleaner and we are diligently cleaning up blighted properties. As a nation, we are recycling more, companies continue to 'go green' and the general population is more environmentally aware. However, we cannot afford to become complacent. Every day new chemicals are introduced into our products, food and environment, specialized waste streams increase and we are presented with new and perhaps more complex dilemmas. From climate change, to mountaintop mining, to the proliferation of confined animal feeding operations, just to name a few, our environmental challenges are both numerous and daunting. We all need to remain committed to confronting the new environmental challenges, encouraging innovation and educating ourselves and others so that we will leave the next generation a cleaner, healthier environment.

While we celebrate these anniversaries and our past accomplishments in 2010, we were also focused on our long-range goals. In October EPA released its strategic plan for fiscal years 2011 through 2015. The plan presents five strategic goals for advancing the Agency's mission along with cross-cutting strategies that seek to adapt the EPA's work to meet the anticipated environmental protection needs. The Agency's five strategic goals for advancing its mission are: taking action on climate change and improving air quality; protecting America's waters; cleaning up communities and advancing sustainable development; ensuring the safety of chemicals and preventing pollution; and enforcing environmental laws. In addressing these priorities, EPA will continue to affirm the core values of science, transparency and the rule of law. The plan

also includes new benchmarks that track progress against Administrator Jackson's seven priorities such as "taking action to reduce emissions of greenhouse gases and adapt to climate change, protecting America's waters, increasing the use of smart growth and sustainable development strategies in communities, building and maintaining strong state and tribal partnerships, working for environmental justice, and ensuring that chemical health and safety information is available to the public." More information on EPA's strategic plan is available at: http://www.epa.gov/ocfo/plan/plan.htm.

B. PROTECTION AND RESTORATION

1. Preventing Pollution

In commemoration of the 20th anniversary of the Pollution Prevention Act, we should each consider how we can minimize pollution and waste in our own lives. While this goal presents considerable challenges, EPA, in conjunction with its partners, has been improving and expanding its many pollution prevention programs over the years to better assist the environmentally-conscious consumer. For example:

ENERGY STAR is a joint program of the EPA and the U.S. Department of Energy which helps consumers save money while protecting the environment through energy efficient products and practices. With the help of ENERGY STAR, Americans have saved enough energy in 2009 alone to avoid greenhouse gas emissions equivalent to those from 30 million cars — all while saving nearly $17 billion on their utility bills. For more on how you can reduce your energy use, see: http://www.energystar.gov/

Programs such as WasteWise (a partnership program that seeks to reduce municipal solid waste through innovative waste prevention and recycling techniques) and 'Plug-In To eCycling' (a partnership program between EPA and leading consumer electronics manufacturers, retailers, and mobile service providers that promotes opportunities for individuals to donate or recycle their electronics) have eliminated billions of pounds of solid waste. For more information on these programs, see: http://www.epa.gov/wastes/partnerships/wastewise/about.htm and http://www.epa.gov/osw/partnerships/plugin/index.htm

By simply looking for the WaterSense label you can easily find and select water efficient products that are backed by third party, independent, testing and certification. Since the program's inception in 2006, WaterSense has helped consumers save a cumulative 46 billion gallons of water and $343 million in water and sewer bills. For more on how you can save, see: http://www.epa.gov/WaterSense/

EPA's green electronics, green chemistry, green engineering and Design for the Environment (DfE) programs have reduced the use of toxic materials in everyday items like computers and household cleaners, giving consumers a real choice to use less toxic products. From laundry detergents to pet care products, see which products are better for the environment, at: http://www.epa.gov/dfe/

While these programs and initiatives are a step in the right direction, EPA will continue to work with states, local governments, international organizations, environmental groups and industry to identify additional pollution prevention opportunities. For more programs, policies and consumer tools, see EPA's Pollution Prevention page at: http://www.epa.gov/p2/

2. Supporting Sustainable Design & Green Building

Good news for local governments trying to go green - - EPA has released a Sustainable Design and Green Building Toolkit for Local Governments (the 'Toolkit'). The Toolkit is designed to assist local governments in identifying and removing barriers to sustainable design and green building practices.[2] The Toolkit contains an Assessment Tool (to help governments identify barriers or resistance to sustainable design practices), a Resource Guide (which contains links to existing organizations, documents and information that can aid in making codes and ordinances more supportive of sustainable design), and an Action Plan (which will help communities develop their implementation strategy for improving their regulatory and permitting structure. The Toolkit can be downloaded at: www.epa.gov/region4/recycle/green-building-toolkit.pdf

3. Promoting Environmental Justice and Increased Public Involvement

a. Draft Policy on Consultation and Coordination with Indian Tribes

Pursuant to Executive Order 13175, in November 2009 President Obama directed all federal agencies to develop plans to assure regular and meaningful consultation and collaboration with tribal officials. Soon after, EPA began soliciting input from tribes on the development of its consultation policy. The 'Proposed EPA Policy on Consultation and Coordination with Indian Tribes'[3] seeks to accomplish several objectives: 1) establish clear agency standards for the tribal consultation process; 2) designate individuals across EPA responsible for serving as points of contact for both tribes and agency employees to promote consistency and coordination in the consultation process; and 3) establish a management oversight and reporting structure to help ensure accountability and transparency.[4]

EPA plans to release a subsequent proposed policy after consideration of tribal input received during the comment period. For more information on this policy and related environmental information, see EPA's American Indian Tribal Portal at: http://www.epa.gov/indian/.

b. EPA Releases Rulemaking Guidance on Environmental Justice

In July 2010, EPA released an interim guidance document to help EPA staff incorporate environmental justice into the agency's rulemaking process. The document, entitled, 'Interim Guidance on Considering Environmental Justice During the Development of an Action,'[5] seeks to advance environmental justice for low-income, minority and indigenous communities and tribal governments who have been historically underrepresented in the regulatory decision-making process. The guidance also outlines the multiple steps that every EPA program office can take to incorporate the needs of overburdened neighborhoods into the agency's decision-making, scientific analysis, and rule development.[6]

EPA continues to seek public feedback on how to best implement and improve the guide. To view the interim guidance and submit feedback, see: http://www.epa.gov/environmentaljustice/resources/policy/ej-rulemaking.html. For additional information policy and guidance documents, reports and environmental justice grant information, see: http://www.epa.gov/environmentaljustice/.

c. Increased Public Participation in the Hazardous Waste Cleanup Process

In May 2010, EPA launched an initiative to help communities more effectively participate in government decisions related to land cleanup, emergency preparedness and response, and the management of hazardous substances and waste. The Community Engagement Initiative (CEI) plan lays out specific steps EPA is taking to provide communities with better information and opportunities and influence decisions on environmental cleanups.[7]

The plan includes activities that will help EPA improve transparency and collaboration, enhance technical assistance to communities, better explain the hazards of environmental problems to affected communities, and connect with communities that have been historically underrepresented in this area. The plan is intended to be a working document and specific actions will be refined as EPA receives feedback from the various stakeholders. EPA will periodically evaluate the initiative's progress and results, and will regularly post this information on its website. More information on the CEI, see: http://www.epa.gov/oswer/engagementinitiative

4. Tracking Toxics

a. Greater Access to Chemical Information

As part of EPA's commitment to increase public access to information on chemicals and their associated risks, in March 2010, EPA began providing free web access to the TSCA Chemical Substance Inventory.[8] This inventory contains a consolidated list of thousands of industrial chemicals maintained by EPA. The data will also be available on Data.Gov, a website developed by the Obama Administration to provide public access to important government information.

While currently, there are more than 84,000 chemicals manufactured, used, or imported in the U.S. listed on the TSCA Inventory, EPA is unable to publicly identify nearly 17,000 of these chemicals because the chemicals have been claimed as 'confidential business information' by the manufacturers. EPA has challenged many of those claims and has taken an aggressive stance in

order to provide greater transparency on these chemicals and the risks they pose.[9] For more information about EPA's efforts on increasing transparency on chemical information see: http://www.epa.gov/oppt/existingchemicals/pubs/enhanchems.html. For access to the entire TSCA Inventory, please visit, http://www.epa.gov/oppt/newchems/pubs/invntory.htm

In April 2010, EPA released a database, called ToxRefDB, which allows scientists and the interested public to search and download thousands of toxicity testing results on hundreds of chemicals. ToxRefDB captures 30 years and about $2 billion of toxicity testing results and provides the detailed data in an accessible format.[10] Now anyone interested in chemical toxicity can query a specific chemical and find all available public hazard, exposure, and risk-assessment data, as well as previously unpublished studies related to cancer, reproductive, and developmental toxicity.[11] The database's toxicity information forms the basis for pesticide risk assessments when combined with other sources of information, such as those on exposure and metabolism.[12] While providing greater public access to this information is an important goal, it is also hoped that such access can assist with current toxicity research projects and reduce the need for animal testing. To run a search on ToxRefDB, go to: http://actor.epa.gov/toxrefdb.

Continuing the trend of increased transparency on chemical information, in May 2010, EPA added more than 6,300 chemicals and 3,800 chemical facilities regulated under TSCA to his public database called Envirofacts.[13] The Envirofacts database is EPA's single point of access on the Internet for information about environmental activities that may affect air, water and land in the U.S.[14] The database includes not only general facility facts and aerial images, but also includes links to other information, such as EPA's inspection and compliance reports. In the months ahead, EPA intends to make additional facility information available to the general public. To run an Envirofacts search, go to: http://www.epa.gov/enviro/.

b. More Chemicals to be added to the Toxics Release Inventory (TRI)

In April 2010, EPA proposed to add 16 chemicals to the TRI list of reportable chemicals, the first expansion of the program in more than a decade. TRI, established as part of the Emergency Planning and Community Right to Know Act (EPCRA), is a publicly available EPA database that contains information on toxic chemical releases and waste management activities reported annually by certain industries and federal facilities.[15] The TRI currently contains information on nearly 650 chemicals and chemical groups from about 22,000 industrial facilities in the United States. The chemicals that EPA is proposing to add to the TRI have been classified as "reasonably anticipated to be a human carcinogen" by the National Toxicology Program in their Report on Carcinogens.[16] For a list of the 16 chemicals, see: http://www.epa.gov/tri/lawsandregs/ntp_chemicals/index.html. For more information on TRI, see EPA's TRI homepage at: http://www.epa.gov/tri.

5. BP / Deepwater Horizon Oil Spill

The BP/Deepwater Horizon oil spill in the Gulf of Mexico spill ranks as one of the worst man-made environmental disasters in our country's history. According to recent estimates, the spill is by far the world's largest accidental release of oil into marine waters.[17] While the well was declared 'dead' in September and it is no longer spewing oil into the Gulf, the spill has

dramatically affected not only the environment but also the livelihood and futures of millions of the area's residents. The media attention has subsided but the lawsuits, claims processing and environmental response actions continue.

Since April, EPA has been one of many agencies providing support to the U.S. Coast Guard-led federal response to the oil spill. EPA has been closely monitoring and responding to both actual and potential public health and environmental concerns in the region. The agency has been focusing its efforts on: collecting samples for chemicals related to oil and dispersants in the air, water and sediment; supporting and advising Coast Guard efforts to clean the reclaimed oil and waste from the shoreline and nearby regions; and has been closely monitoring and tracking the effects of the chemical dispersants in the subsurface environment.

EPA will continue to post environmental data from the impacted coastline, including air quality, water and sediment samples on its website. For links to the data, information on the dispersant use and EPA's continuing response efforts, see EPA's BP Spill webpage at: http://www.epa.gov/bpspill/. Additional information can be found on the official federal government website for spill response and recovery at: http://www.restorethegulf.gov/.

In addition to responding to environmental concerns, in August 2010, EPA announced that it would be providing $200,000 in environmental justice grants to help support the communities in the gulf region directly affected by the disaster. The grants will provide funding to help develop educational materials on seafood safety, oil exposure, and how to address and adapt to the spill's long-term effects. Providing grant funding directly to local organizations will help to ensure that information is distributed through a trusted network of organizations that will continue to support the region's rebuilding efforts. [18]

In September 2010, the Obama administration put forward an aggressive restoration plan, including a call for dedicated funds, to help strengthen the gulf region's environment, economy, and health. The restoration plan, written by Navy Secretary Ray Mabus, recommended that Congress dedicates a significant amount of any civil penalties obtained from parties responsible for the oil spill into a Gulf Coast Recovery Fund to go toward addressing long-term recovery and restoration efforts.[19] To manage the funds and to coordinate recovery projects, the report recommended that Congress authorize a Gulf Coast Recovery Council, comprised of representatives from the states and federally recognized gulf tribes, who would work to ensure that local governments and citizen stakeholders also play a critical role in such recovery and restoration. On October 5, 2010, President Obama signed an Executive Order formally creating the Gulf Coast Ecosystem Restoration Task Force.[20] The Task Force, chaired by Administrator Jackson, will coordinate restoration programs and projects in the region.[21] For more on the Report's recommendations, see:
http://www.restorethegulf.gov/sites/default/files/documents/pdf/gulf-recovery-sep-2010.pdf

In November, EPA released two peer reviewed reports concerning dioxins emitted during the controlled burns of oil (also called in situ burning) during the BP/Deepwater Horizon oil spill. The term 'dioxins' is used to describe a group of hundreds of potentially cancer-causing chemicals that can be formed during combustion or burning. The reports found that while small amounts of dioxins were created by the burns, the levels that workers and residents would have

been exposed to were below EPA's levels of concern.[22] Both reports and Q&As about both reports are available at: http://www.epa.gov/research/dioxin/.

6. Cleaning Up Superfund and Brownfield Sites

a. Superfund Update – Annual Summary and the "Polluter Pays" Principle

In **March 2010**, EPA released its annual summary of the Superfund program's fiscal year (FY) 2009 progress. The report shows that the program continues to make significant progress in cleaning up the country's most complex, uncontrolled or abandoned hazardous waste sites.[23] In FY 2009, which ended on September 30th, EPA completed all of its construction projects at 20 sites, for a cumulative total of 1,080 sites with construction completed. Additionally, EPA listed 20 new sites and proposed adding 23 sites to the NPL.[24]

With the influx of $582 million in funds from the American Recovery and Reinvestment Act of 2009, EPA began new construction at 26 sites and provided additional support to ongoing construction activities at 25 other sites. EPA also conducted or oversaw more than 368 emergency response and removal actions to address immediate threats to communities, such as cleaning up spills and releases of hazardous material.[25] Underscoring EPA's commitment to the "polluter pays" principle, the agency secured commitments from potentially responsible parties to conduct more than $1.99 billion in future response work, and to reimburse EPA for $371 million in past costs.[26] For more on the Superfund National Accomplishments Summary, see: http://www.epa.gov/superfund/accomp/numbers09.html

And speaking of the "polluter pays" principle, in June 2010, EPA sent a letter to Congress in support of reinstating the lapsed Superfund taxes. As discussed in the letter, if reinstated, the Superfund tax would provide a "stable, dedicated source of revenue for the program and increase the pace of Superfund cleanup" while ensuring that parties who benefit from the manufacture or sale of substances that typically cause environmental problems at hazardous waste sites, and not taxpayers, help bear the cost of cleanup.[27]

Since the expiration of the Superfund taxes in December 1995, program funding has been largely financed from General Revenue transfers to the Superfund Trust Fund, thus burdening the taxpayer with the costs of cleaning up a considerable number of hazardous waste sites.[28] The current administration is proposing to reinstate the taxes as they were last in effect on crude oil, imported petroleum products, hazardous chemicals, and imported substances that use hazardous chemicals as a feedstock, and on corporate modified alternative minimum taxable income. Under the administration's proposal, the excise taxes and corporate environmental taxes would be reinstated for a period of 10 years beginning in January 2011.[29]

b. Motors Liquidation Company (f/k/a General Motors (GM) Corporation) Bankruptcy Settlement

As discussed in our prior column, the automotive sector bankruptcies have presented the United States with a unique set of challenges. Aside from the billions of dollars infused into Chrysler and General Motors in order keep the companies afloat through their respective reorganizations,

the U.S. and the affected states have been heavily involved in sorting out the real estate, including the contaminated shuttered plants, industrial facilities and other real estate holdings, left with the reorganizing entities. After much effort and negotiation, a settlement has been reached in the Motors Liquidation Company (f/k/a General Motors (GM) Corporation) bankruptcy case.

i. Brief Procedural History

On June 1, 2009, General Motors and certain subsidiaries filed voluntary petitions for relief under chapter 11 in the United States Bankruptcy Court Southern District of New York. Motors Liquidation Company (MLC or 'Old GM') was formed to deal with GM's liabilities.[30] On July 5, 2009, an order was entered approving the sale of substantially all of the debtors' assets to a new and independent company (now known as General Motors Company or 'New GM'). The sale closed on July 10, 2009[31] and MLC retained certain real property from the sale to New GM.

On November 28, 2009, DOJ filed Proofs of Claim on behalf of the EPA, the Department of Interior, and the National Oceanic and Atmospheric Administration, alleging that it had incurred past response costs and may incur future response costs under CERCLA at specified properties owned by Old GM. The U.S. also alleged that debtors have liabilities in connection with several properties to implement closure, post-closure work, corrective action, and to perform any necessary action pursuant to any imminent and substantial endangerment to health or the environment as required by RCRA. EPA's claims are mostly attributable to estimated future response costs.[32]

ii. Overview of the Settlement

On October 20, 2010, EPA, the U.S. Department of Justice, and the Unites States Attorney for the Southern District of New York, along with 14 states (including New York and New Jersey) and the Saint Regis Mohawk Tribe announced that MLC had agreed to resolve its liabilities at 89 sites for approximately $773 million.[33] The agreement settles certain proofs of claim of the U.S., the states and the tribe in the GM Corporation bankruptcy matter relating to liabilities under CERCLA, RCRA and the Clean Air Act.

Pursuant to the settlement, MLC has agreed to transfer ownership in 89 properties, 59 of which are known to have been contaminated with hazardous substances or waste,[34] to an Environmental Response Trust (the Trust). The Trust will initially be funded with $773 million in cash and other assets. The Trust will conduct, manage, and fund the cleanup at sites pursuant to budgets approved by the lead agencies and reimburse the governments for certain costs.[35] In addition, the settlement and the Trust place an emphasis on community involvement and productive reuse, that will enable the trustee to potentially redevelop, sell and/or transfer the properties back to the communities for productive use.[36]

This Settlement affects only the specified 89 properties and does not affect the Proof of Claims filed against MLC by the U.S. and various states relating to sites other than the 89 properties at issue. Also, it does not affect the general unsecured claims held by the U.S. against MLC for past costs and natural resource damages relating to the properties that are being placed in the trust.[37]

iii. Funding of Specific Sites & Public Comment

More than half of the cleanup funds to be paid to the Trust will be provided for the environmental remediation of sites in Michigan and New York. In Michigan, which will have the largest number of properties in the trust, approximately $160 million has been allocated for the cleanup of 36 properties containing hazardous wastes or other hazardous substances.[38] Sites in New York State will receive a total of $154 million. The General Motors (Central Foundry Division) Superfund Site (a/k/a GM Massena) located in St. Lawrence County, [39] will receive approximately $120.8 million in dedicated cleanup funds. In its filings, the U.S. alleged that GM operated an aluminum diecasting plant at the Massena Site from 1959 to 2009, and that it disposed of hazardous substances including PCBs at the Site. The St. Regis Mohawk Tribe, whose lands are affected by the contamination emanating from the Site, is also a party to the settlement.[40] EPA will remain the lead-agency for, and oversee the cleanup at the Massena Site. In addition to the GM Massena Site, 3 other properties in New York State will receive funding: 1) GM-Inland Fischer Guide ("IFG") Facility, located in Syracuse, New York ($31,121,812); 2) the adjacent Ley Creek PCB Dredging Site ($1,882,342) and; 3) the Tonawanda Engine Landfill in Tonawanda, New York ($0). The GM-IFG Facility and the Ley Creek PCB Dredging Site are State-lead sites and are part of the Onondaga Lake Superfund Site.[41] Currently, no environmental remediation is planned at the Tonanwanda Engine Landfill, however, should new information arise or should conditions change that require environmental remediation, the site is eligible for certain funds.

The settlement, filed with the U.S. Bankruptcy Court for the Southern District of New York, is subject to a 30-day public comment period and final court approval. For more information on the settlement and the funding of particular properties, see EPA's website at: http://www.epa.gov/compliance/resources/cases/cleanup/cercla/mlc/index.html

c. National Priorities List (NPL) Sites

i. Hudson River PCBs Dredging Update

The first phase of the long-awaited dredging of the Upper Hudson River, which was conducted by General Electric Company (GE) and overseen by EPA, concluded in November 2009. At the end of Phase 1, nearly 300,000 cubic yards of PCB-contaminated sediment and debris had been removed from the river. Although the volume of dredged sediment exceeded established goals for Phase 1, not all of the dredge areas originally targeted for Phase 1 were completed (10 out of 18 areas were completed), due to sediment contamination in some areas that was deeper than expected and the presence of woody debris.[42] Phase 2 will begin with the dredge areas that could not be completed during Phase 1. Habitat reconstruction work began in the completed Phase 1 areas in spring 2010, and will continue in 2011.

In March 2010, EPA released a detailed technical assessment of the Phase 1 dredging to a panel of independent scientific experts for review. The EPA report and a similar one prepared by GE were submitted to the panel in accordance with the agreement under which GE performed the first phase of the dredging. The EPA and GE reports evaluated the first phase of the dredging with respect to EPA-established engineering performance standards for resuspension of PCBs,

residual contamination, and the dredging production rate. The reports detailed the effectiveness of the first phase of dredging, as well as the challenges encountered during the project. EPA's report also laid out the Agency's proposed modifications to the engineering performance standards for Phase 2. During the independent peer review, EPA also sought public comments on the reports. These comments were provided to the panel members for consideration during their evaluation.

The peer review panel publicly discussed its views on the reports in May 2010. On September 10, 2010, the panel issued a report in which the panel recommended changes to each of the performance standards for Phase 2 of the project. EPA is currently considering the panel's recommendations as it determines the changes to the performance standards that should be made for Phase 2. EPA will inform GE about any modifications required during the second phase of the dredging project, and GE will then have the option to agree to conduct Phase 2. If the company agrees to perform Phase 2, the work will be carried out under the terms of the consent decree. If GE does not agree to conduct the Phase 2 dredging, EPA fully reserves all of its enforcement authorities, including its right to direct the company to perform the dredging and/or sue in district court to require GE to perform Phase 2 or to reimburse EPA for its costs if the Agency conducts Phase 2 using government funds.

EPA's report is available at http://www.hudsondredgingdata.com/report; GE's report can be found at http://www.hudsondredging.com. The peer review panel's report is available on both websites. Additional information on the Hudson River PCBs Superfund Site can be found at: http://www.epa.gov/hudson.

ii. Newtown Creek is added to the NPL

On September 27th, EPA added Newtown Creek in New York City to the NPL. The listing will allow EPA to conduct a comprehensive evaluation of the creek to determine the appropriate remedial response. [43]

In the mid -1800s, the area adjacent to the 3.8-mile Newtown Creek was one of the busiest hubs of industrial activity in New York City. More than 50 industrial facilities were located along its banks, including oil refineries, petrochemical plants, fertilizer and glue factories, sawmills, and lumber and coal yards. The creek was crowded with commercial vessels, including large boats bringing in raw materials and fuel and taking out oil, chemicals and metals. In addition to the industrial pollution that resulted from all of this activity, in 1856, the city began dumping raw sewage directly into the creek. Despite the contamination, the creek remained one of the busiest ports in the nation through World War II. Some factories and facilities still operate along the creek, and various adjacent contaminated sites have contributed to its contamination. Today, as a result of its industrial history, including countless spills, the creek is horribly polluted.[44] Potentially harmful contaminants such as pesticides, metals and PCBs have been detected in the creek along with volatile organic compounds. [45]

EPA had previously evaluated specific sites along the creek and published a report in September 2007 that contained a review of past and ongoing work being conducted to address the Greenpoint oil spill as well as recommendations regarding future work.[46] The state of New York

referred the site to EPA due to the complex nature of the contamination. EPA's investigations and cleanup are expected to focus on the sediments in the creek and on identifying and addressing sources of pollution that continue to contribute to the contamination.

For more information on the Site, visit http://www.epa.gov/region02/superfund/npl/newtowncreek/.

iii. Work continues at the Gowanus Canal

Since the Gowanus Canal, located in Brooklyn, was listed on the NPL in March 2010, EPA has completed the primary fieldwork for the remedial investigation. The Canal has been severely impacted by contamination in the sediment as a result of its long industrial history. Over 1,300 samples have been collected and over 9,000 analyses will be conducted by various laboratories to determine the extent of the contamination.

EPA recently finished collecting deep sediment, surface sediment and surface water samples. Specifically, EPA collected 517 deep sediment samples, 54 surface sediment samples, and 81 surface water samples. EPA has also taken water and sediment samples from the combined sewer overflow (CSOs) pipes that discharge stormwater and sewage into the canal during storm events. In addition, more than 200 fish specimens (including striped bass, eel, white perch, blue crab, etc.) were collected from the canal for tissue analysis. Air samples were collected at street level and boater's breathing level along the canal. All of this data will be used to perform an ecological and human health risk assessment, which EPA anticipates completing in early 2011.

Additionally, 88 monitoring wells were installed along the canal and sampled in order to study the ground water influence on the contamination and to obtain data about possible sources of contamination from the properties abutting the waterway. Soil samples were collected while installing certain monitoring wells and groundwater samples were collected from all wells. The sampling effort was completed in late July 2010, when water level measurements were taken in all 88 wells. During the Fall, EPA continued to investigate the sources of approximately 200 non-CSO pipes which discharge into the Canal.

For the latest news and information on the Gowanus Canal, visit EPA's website at: http://www.epa.gov/region2/superfund/npl/gowanus.

iv. The Black River is Listed on the NPL

In September 2010, EPA placed a section of the Black River, which runs through the villages of Carthage and West Carthage in Jefferson County, New York, on the NPL. The Black River empties into the eastern end of Lake Ontario.[47] Sediment in the river and along its banks is contaminated with PCBs and other chemicals. PCBs, which can accumulate in the tissue of fish, may cause cancer and can affect the immune, reproductive, nervous and endocrine systems. The Black River is a popular location for recreation and fishing and people often consume the River's fish.[48]

Active and inactive paper mills, a machine shop, the Carthage/West Carthage sewage treatment

plant, and a hydroelectric power plant are currently located along the Black River. In February 2000, the New York State Department of Environmental Conservation (NYSDEC) issued a report that evaluated the sediment in the Black River, its tributaries, and other tributaries discharging directly into the Eastern Lake Ontario drainage basin. The report identified the presence of PCB-contaminated sediment immediately downstream of the sewage treatment plant. As a follow-up to this study, NYSDEC issued another report that focused on the sediment contamination in the Black River and confirmed the presence of elevated levels of PCBs.[49]

The state referred the Site to EPA for further investigation in 2006. The Agency subsequently collected sediment samples from the River, as well as along the banks. Results confirmed the presence of elevated levels of PCBs. In addition to PCBs, polychlorinated dibenzo-p-dioxins,and polychlorinated dibenzofurans were found in river sediments. A full investigation will be conducted to determine the nature and extent of the contamination.

The listing of the Black River, brings the number of Superfund sites in New York state to 86. For more information about the Site, visit: http://www.epa.gov/region02/superfund/npl/blackriver/index.html. For more information on other Superfund sites in New York State, visit http://www.epa.gov/region02/cleanup/sites/.

v. The Passaic River Cleanup

In January 2009, EPA announced the selection of a cleanup plan for the first stage of a two-phased project to remove dioxin-laden sediment from the lower Passaic River. The cleanup plan, outlined in a January 2009 Action Memorandum, involves mechanical dredging of 40,000 cubic yards of sediment with mechanical dewatering of the sediments. The plan implements a 2008 agreement between EPA, Occidental Chemical Corporation and Tierra Solutions, Inc. under which the companies agreed to remove, in two phases, a total of 200,000 cubic yards of contaminated sediment from the portion of the river in front of the Diamond Alkali Superfund Site in Newark. The removal design plan was recently submitted to EPA and field work for first phase is scheduled to start in 2011. The work is expected to take approximately one year to complete. Further information on this project can be found at EPA's Passaic River website at http://www.epa.gov/region2/passaicriver/.

vi. Raritan Bay Slag Superfund Site

In April 2010, EPA announced that it will begin a full investigation of the contamination at the Raritan Bay Slag Superfund Site in Old Bridge and Sayreville, New Jersey.[50] The Site currently consists of three areas that contain lead slag from blast furnace bottoms, a byproduct of metal smelting, which was used to construct a seawall and a jetty along the southern shore of the Raritan Bay in Old Bridge Township and Sayreville, and areas of Margaret's Creek in Old Bridge. The Site was listed on the NPL in November 2009 after sampling revealed elevated levels of lead in portions of the Site. Some samples contained between 15 to 20 percent lead.[51]

On September 25, 2009, EPA entered into an Inter-Agency Agreement with the U.S. Army Corp of Engineers to conduct the Remedial Investigation/Feasibility Study (RI/FS). The remedial investigation is underway and it is estimated that it will be completion in winter 2012. EPA will

then develop a cleanup plan for public review after completion of the full RI/FS.[52]

b. Brownfields Job Training Program

In April 2010, EPA announced that it was awarding more than $2 million in job training grants for environmental cleanups in communities across the country.[53] EPA's Brownfields Job Training Program helps train people for jobs in the assessment, cleanup and redevelopment of brownfields properties, including abandoned gas stations, old textile mills, closed smelters, and other abandoned properties. In New York State, The Research Foundation of the State University of New York in Buffalo and the Workforce Investment Board of Herkimer, Madison and Oneida Counties, New York have each been selected to receive $200,000 in federal grant funds under this program. Both organizations will recruit students from among unemployed and underemployed residents in local areas, and provide them with the skills they need to find environmental jobs cleaning up contaminated sites in their communities.[54]

Since 1998, EPA has awarded more than $33 million in brownfields job training funds. The program prepares workers for employment in the new green economy, and ensures that the economic benefits derived from brownfields redevelopment remain in the affected communities. As of February 2010, more than 5,300 individuals have been trained through the Brownfields Job Training Grant Program, and 3,400 have been placed in full-time employment in the environmental field.[55]

More information on brownfields job training grants: http://www.epa.gov/brownfields/job.htm. More information on EPA's Brownfields Program: http://www.epa.gov/brownfields/

C. SCIENCE AND REGULATION

1. Air

a. Reducing Greenhouse Gas Emissions

EPA Finalizes the 2008 National U.S. Greenhouse Gas Inventory
In April, EPA released the15th annual U.S. greenhouse gas inventory report, which shows a drop in overall emissions of 2.9 percent from 2007 to 2008.[56] The downward trend is attributed to a decrease in carbon dioxide emissions associated with fuel and electricity consumption. Total emissions of the six main greenhouse gases in 2008 were equivalent to 6,957 million metric tons of carbon dioxide. The gases include carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride. Though overall emissions dropped in 2008, emissions are still 13.5 percent higher than they were in 1990.[57]

EPA Rejects Claims of Flawed Climate Science
In July, EPA denied 10 petitions challenging its 2009 endangerment finding about the threat of greenhouse gases.[58] The petitions to reconsider EPA's endangerment finding claim that climate science cannot be trusted, and assert a conspiracy that allegedly invalidates the findings of the Intergovernmental Panel on Climate Change (IPCC), the U.S. National Academy of Sciences, and the U.S. Global Change Research Program. After months of serious consideration of the

petitions and of the state of climate change science, EPA found no evidence to support these claims. In contrast, EPA's review concluded that climate science is credible, compelling, and growing stronger.[59]

EPA and DOT Announce Next Steps toward Tighter Tailpipe and Fuel Economy Standards for Passenger Cars and Trucks

In October, the U.S. Department of Transportation's (DOT) National Highway Traffic Safety Administration (NHTSA) and EPA recently announced that they will begin the process of developing tougher greenhouse gas and fuel economy standards for passenger cars and trucks built in model years 2017 through 2025.[60] This will build on the success of the first phase of the national program covering cars from model years 2012-2016. A recent Notice of Intent (NOI) issued by the agencies, in cooperation with the California Air Resources Board (CARB), includes an initial assessment for a potential national program for the 2025 model year and outlines next steps for additional work the agencies will undertake. Next steps include issuing a supplemental NOI that would include an updated analysis of possible future standards by the end of 2010. As part of that process, the agencies will conduct additional study and meet with stakeholders to better determine what level of standards might be appropriate. The agencies aim to propose actual standards within a year. For more information on the NOI, the technical assessment, and submitting comments: http://www.nhtsa.gov/fuel-economy and http://www.epa.gov/otaq/climate/regulations.htm.

EPA and DOT Propose First Greenhouse Gas and Fuel Efficiency Standards for Trucks and Buses

EPA and DOT recently announced the first national standards to reduce greenhouse gas emissions and improve fuel efficiency of heavy-duty trucks and buses.[61] EPA and DOT's National Highway Traffic Safety Administration (NHTSA) are proposing new standards for three categories of heavy trucks: combination tractors, heavy-duty pickups and vans, and vocational vehicles. The categories were established to address specific challenges for manufacturers in each area. For combination tractors, the agencies are proposing engine and vehicle standards that begin in the 2014 model year and achieve up to a 20 percent reduction in carbon dioxide (CO2) emissions and fuel consumption by 2018 model year. For heavy-duty pickup trucks and vans, the agencies are proposing separate gasoline and diesel truck standards, which phase in starting in the 2014 model year and achieve up to a 10 percent reduction for gasoline vehicles and 15 percent reduction for diesel vehicles by 2018 model year (12 and 17 percent respectively if accounting for air conditioning leakage). Lastly, for vocational vehicles, the agencies are proposing engine and vehicle standards starting in the 2014 model year which would achieve up to a 10 percent reduction in fuel consumption and CO2 emissions by 2018 model year. The program is projected to reduce GHG emissions by about 250 million metric tons, save 500 million barrels of oil over the lives of the vehicles produced within the program's first five years, and provide $41 billion in net benefits over the lifetime of model year 2014 to 2018 vehicles.

EPA Proposes Rules on Clean Air Act Permitting for Greenhouse Gas Emissions

In August, EPA proposed two rules to ensure that businesses planning to build new, large facilities or make major expansions to existing ones will be able to obtain Clean Air Act permits that address their greenhouse gas (GHG) emissions.[62] In the spring of 2010, EPA finalized the

GHG Tailoring Rule, which specifies that beginning in 2011, projects at large industrial facilities, like power plants and oil refineries, that will increase GHG emissions substantially will require an air permit. The recently proposed rules are a critical component for implementing the Tailoring Rule.

In the first rule, EPA has proposed to require permitting programs in 13 states to make changes to their implementation plans to ensure that GHG emissions will be covered. All other states that implement an EPA-approved air permitting program must review their existing permitting authority and inform EPA if their programs do not address GHG emissions. Because some states may not be able to develop and submit revisions to their plans before the Tailoring Rule becomes effective in 2011, in the second rule, EPA has proposed a federal implementation plan, which would allow EPA to issue permits for large GHG emitters located in these states. This would be a temporary measure that is in place until the state can revise its own plan and resume responsibility for GHG permitting. The agency hopes to finalize these rules prior to January 2, 2011, the earliest date that GHG permitting requirements will be effective.

b. Reducing Pollution from Mobile Sources

EPA Promulgates New Emissions Limits for Stationary Diesel Engines

Earlier this year, EPA promulgated the first standards for formaldehyde, benzene, acrolein and other toxic air pollutants from certain stationary diesel engines.[63] These pollutants are known or suspected to cause cancer or other serious health problems and environmental damage. The emission limits apply to existing diesel engines meeting certain criteria for age, size, and use. EPA estimates that more than 900,000 of the engines generate electricity and power equipment at industrial, agricultural and other facilities. The engines also are used in emergencies to produce electricity and pump water for flood and fire control. Emergency engines used at most residences, hospitals and other institutional facilities, and commercial facilities such as shopping centers are not covered by this rule. To meet the emissions requirements, owners and operators of the largest of the engines will need to install emissions controls, such as catalysts, to engine exhaust systems. Emergency engines covered by this rule need to comply with operating requirements that will limit emissions. EPA estimates that the rule will reduce annual air toxics emissions by 1,000 tons, particle pollution by 2,800 tons, carbon monoxide emissions by 14,000 tons, and organic compound emissions by 27,000 tons when fully implemented in 2013.

c. Reducing Pollution from Stationary Sources

EPA Proposes to Cut Mercury Emissions from Sewage Sludge Incinerators

EPA recently proposed cuts in emissions of mercury, particle pollution and other harmful pollutants from sewage sludge incinerators, the sixth-largest source of mercury air emissions in the United States. Sewage sludge incinerators are typically located at wastewater treatment facilities. The proposed standards would apply to both multiple hearth and fluidized bed incinerators. Units incinerating sewage sludge at other types of facilities such as commercial, industrial and institutional incinerators will be covered under different air pollution standards. Overall, the proposal would cut mercury emissions from these units by more than 75 percent. EPA estimates that the proposal would yield health benefits ranging from $130 million to $320 million in 2015, with annualized costs estimated at approximately $105 million for all currently

operating units to comply with the proposal standards. The rule will be finalized in 2011 and become effective in 2015. For more information, visit: http://www.epa.gov/ttn/oarpg/new.html.

EPA Issues First National Limits on Mercury and Other Toxic Emissions from Cement Plants

EPA is issuing final rules that will protect Americans' health by cutting emissions of mercury, particle pollution and other harmful pollutants from Portland cement manufacturing, the third-largest source of mercury air emissions in the United States.[64] This action sets the nation's first limits on mercury air emissions from existing cement kilns, strengthens the limits for new kilns, and sets emission limits that will reduce acid gases. This final action also limits particle pollution from new and existing kilns, and sets new-kiln limits for particle and smog-forming nitrogen oxides and sulfur dioxide. The rules are expected to yield $7 to $19 in public health benefits for every dollar in costs. When fully implemented in 2013, EPA estimates that the rules will reduce mercury pollution by 16,600 pounds per year (92%), total hydrocarbons by 10,600 tons per year (83%), particulate matter by 11,500 tons per year (92%), acid gases by 5,800 tons per year (97%), sulfur dioxide by 110,000 tons per year (78%), and nitrogen oxides by 6,600 tons per year (5%).

EPA Proposal Cuts Pollution from Power Plants in 31 States and D.C.

In July, EPA proposed regulations to replace and improve upon the 2005 Clean Air Interstate Rule (CAIR), which the U.S. Court of Appeals for the D.C. Circuit ordered EPA to revise in 2008. The new proposal, called the transport rule, would target power plant pollution that drifts across the borders of 31 eastern states and the District of Columbia, and would reduce power plant emissions of sulfur dioxide (SO2) and nitrogen oxides (NOx) to meet state-by-state emission reductions. By 2014, the rule and other state and EPA actions would reduce SO2 emissions by 71 percent, and NOx emissions by 52 percent, over 2005 levels, resulting in more than $120 billion in annual health benefits, including avoiding an estimated 14,000 to 36,000 premature deaths, 23,000 nonfatal heart attacks, 21,000 cases of acute bronchitis, 240,000 cases of aggravated asthma, and 1.9 million days of missed school or work. The transport rule also would help improve visibility in state and national parks and would increase protection for ecosystems that are sensitive to pollution, including streams in the Appalachians, lakes in the Adirondacks, estuaries and coastal waters, and red maple forests. These benefits would far outweigh the annual cost of compliance with the proposed rule, which EPA estimates at $2.8 billion in 2014. EPA expects that the emission reductions will be accomplished by proven and readily available pollution control technologies already in place at many power plants across the country. For more information, visit: http://www.epa.gov/airtransport.

EPA Sets Stronger National Air Quality Standard for Sulfur Dioxide

In June, EPA issued a final new, one-hour health standard for sulfur dioxide (SO2), to reduce short-term exposure to SO2. The new standard is 75 parts per billion (ppb), a level designed to protect against short-term exposures ranging from five minutes to 24 hours. EPA is revoking the current 24-hour and annual SO2 health standards because the science indicates that short-term exposures are of greatest concern and the existing standards would not provide additional health benefits. EPA is also changing the monitoring requirements for SO2 to ensure that monitors will be placed where SO2 emissions impact populated areas no later than Jan. 1, 2013, and changing the Air Quality Index to improve states' ability to alert the public when short-term SO2 levels

may affect their health. EPA estimates that, upon full implementation, the rule will provide health benefits worth between $13 billion and $33 billion annually, including the prevention of 2,300 to 5,900 premature deaths and 54,000 asthma attacks a year, at an estimated cost of $1.5 billion. EPA expects to identify or designate areas not meeting the new standard by June 2012. For more information, visit: http://www.epa.gov/air/sulfurdioxide.

EPA to Cut Mercury, Other Toxic Emissions from Boilers, Solid Waste Incinerators
In June, EPA proposed a number of rules that would, among other things, cut U.S. mercury emissions by more than half and significantly cut other pollutants, including several air toxics, from boilers and process heaters at large industrial facilities and smaller facilities, including commercial buildings, hotels, and universities, and from commercial and industrial solid waste incinerators.[65] The rules would also require facilities with boilers to conduct energy audits to find cost effective ways to reduce fuel use and emissions. Smaller facilities, such as schools, would not be included in these requirements, but they would be required to perform tune-ups every two years. The proposed rules are estimated to yield more than 5 dollars in public health benefits for every dollar spent, and when fully implemented, would yield combined health benefits estimated at $18 to $44 billion annually, at an estimated annual costs of $3.6 billion for installing and operating pollution controls required under these rules. In September, EPA announced that it would postpone the planned issuance of the rules for one month, until January 16, 2011, to consider additional emissions data collected during the initial comment period.

2. Water

a. Surface Water Quality

EPA Issues New Guide to Improving Stormwater Management
EPA recently issued a new guide for improving the effectiveness of urban stormwater permits in the Chesapeake Bay watershed and the mid-Atlantic Region.[66] The permits are issued by the states and EPA to local municipalities and other permit holders to control water pollution from runoff. EPA evaluated the effectiveness of dozens of stormwater permits, and found that many municipalities' stormwater management plans are out of date and have not been fully implemented, and that permits don't always contain clear milestones for assessing progress or ensuring that water quality standards for local streams and water bodies would be met. The guide calls for, among other things, municipal storm sewer system permits to address 11 elements, including post construction performance standards, accounting for discharges from federal facilities, reducing turf grass fertilizer, retrofitting to reduce existing discharges, clear accountability mechanisms, implementing limitations to meet water quality standards and local waterways and Bay pollution budgets (TMDLs), and clear and enforceable action milestones.

EPA Proposes New Permit Requirements for Pesticide Discharges
In June, in response to the Sixth Circuit Court of Appeals' 2009 ruling in *National Cotton Council, et al. v. EPA*, EPA proposed a new NPDES permit for pesticide discharges to waters of the United States.[67] The proposed permit, released for public comment and developed in collaboration with states, would require all operators to reduce pesticide discharges by using the lowest effective amount of pesticide, preventing leaks and spills, calibrating equipment, and monitoring for and reporting adverse incidents. Additional controls, such as integrated pest

management practices, are built into the permit for operators who exceed an annual treatment area threshold.

EPA estimates that the pesticide general permit will affect approximately 35,000 pesticide applicators nationally that perform approximately half a million pesticide applications annually. The draft permit covers the following pesticide uses: (1) mosquito and other flying insect pest control; (2) aquatic weed and algae control; (3) aquatic nuisance animal control; and (4) forest canopy pest control. It does not cover terrestrial applications to control pests on agricultural crops or forest floors. The agency plans to finalize the permit in December 2010, and it will take effect April 9, 2011. For more information on the draft permit, visit: http://www.epa.gov/npdes.

EPA Initiates Rulemaking to Reduce Harmful Effects of Sanitary Sewer Overflows
In May, EPA initiated a rulemaking to better protect the environment and public health from the harmful effects of sanitary sewer overflows (SSOs) and basement backups. EPA is considering two possible modifications to existing regulations: (1) establishing standard National Pollutant Discharge Elimination System (NPDES) permit conditions for publicly owned treatment works (POTWs) permits that specifically address sanitary sewer collection systems and SSOs; and (2) clarifying the regulatory framework for applying NPDES permit conditions to municipal satellite collection systems. Municipal satellite collection systems are sanitary sewers owned or operated by a municipality that conveys wastewater to a POTW operated by a different municipality. As a part of this effort, the agency is also considering whether to address long-standing questions about peak wet weather flows at municipal wastewater treatment plants to allow for a holistic, integrated approach to reducing SSOs while at the same time addressing peak flows at POTWs. For more information, visit: http://cfpub.epa.gov/npdes/home.cfm?program_id=4.

EPA and New York State Announce Ban on Boat Sewage Disposal to New York Canal System
In May, EPA Region 2 and the New York State Department of Environmental Conservation (DEC) announced that the entire New York State Canal System is now a "no discharge zone," which means that boats are banned from discharging sewage into the canals. Boaters must instead dispose of their sewage at specially designated pump-out stations. This action is part of a comprehensive strategy by EPA and New York State to eliminate the discharge of sewage from boats into any of the state's waterways. In June, New York State petitioned EPA for a determination on whether adequate facilities exist for the pumping and disposal of vessel sewage on the New York side of the Long Island Sound, so that the State can add the Sound to its designated no discharge zones. That petition is under consideration. For more information about no discharge zones, visit http://www.epa.gov/region02/water/ndz/index.html.

b. Drinking Water Quality

EPA Proposes Updating Drinking Water Rule to Better Protect Public Health
EPA is proposing to revise a national primary drinking water regulation, the 1989 Total Coliform Rule, to achieve greater public health protection against waterborne pathogens in the distribution systems of public water systems. The revised rule will better protect people from potential exposure to dangerous microbes because it requires water systems to take action when monitoring results indicate that contamination or a pathway to contamination may be present.

Water utilities are required to regularly monitor for microbial contamination in the distribution system. Although microbes detected in monitoring are not necessarily pathogens themselves, the detection can indicate that there is a pathway that would allow pathogens to enter the system, such as a water main break or an opening in a storage tank. Under the proposed rule, when monitoring results are positive, systems must find and fix any pathways leading to microbial risk. For more information about the proposed rule, visit: http://water.epa.gov/lawsregs/rulesregs/sdwa/tcr/regulation_revisions.cfm.

3. Waste and Toxic Substances

EPA Rule Increases Protection from Lead-Paint Poisoning

In July, EPA issued a new final rule requiring all contractors performing renovation, repair or painting work in homes built before 1978 to follow lead-safe work practice requirements. The lead-safe work practices include dust control, site clean up and work area containment. The new rule removes a provision from existing regulations that allowed owner-occupants of pre-1978 homes to "opt-out" of having their contractors follow lead-safe work practices if there were no children under six years of age in the home. EPA has eliminated the so-called opt-out provision because improper renovations in older homes can create lead hazards resulting in harmful health effects for residents and visitors in these homes, regardless of age. The rule also requires certification of training providers and lead-safe work practice certification for individuals involved in the construction and remodeling industry. To date, EPA has certified 254 training providers who have conducted more than 16,000 courses and trained an estimated 320,000 renovators in lead-safe work practices. For more information, visit: http://www.epa.gov/lead.

D. Compliance & Enforcement

The following is a small sample of the enforcement actions taken by EPA Region 2 in New York State over the past year. For a statistical summary of Region 2's compliance and enforcement activities for 2010, please visit: http://www.epa.gov/region02/capp/10results.html.

1. Multimedia

EPA Region 2 Continues Multimedia Enforcement Action against Tonawanda Coke Corporation

As discussed in the last EPA Update, Region 2 discovered numerous violations of the Clean Air Act, Clean Water Act, and Resource Conservation and Recovery Act at the Tonawanda Coke Corporation (TCC) coke plant, in Tonawanda, New York. Since the last article, the Region has issued numerous information requests and administrative orders directing TCC to come into compliance with the applicable laws.

In January, EPA issued an Administrative Compliance Order to TCC, under Section 113(a)(3) of the Clean Air Act, for violations of Sections 112 and 114 of the Act, and of provisions in the National Emission Standard for Benzene Emissions from Coke By-Product Recovery Plants, 40 C.F.R. Part 61, Subpart L; the National Emission Standard for Equipment Leaks (Fugitive Emission Sources), 40 C.F.R. Part 61, Subpart V; the National Emission Standard for Benzene Waste Operations, 40 C.F.R. Part 61, Subpart FF; the National Emission Standards for Coke Oven Batteries, 40 C.F.R. Part 63, Subpart L; and the facility's title V operating permit. The

order required TCC to take actions to comply with these regulations, including, among other things: enclose and seal all openings on various coking process units and duct gases from these units to a control system that will recover or destroy benzene in the gas; properly calibrate leak detection equipment and perform the required leak detection monitoring; properly calculate the facility's total annual benzene quantity in the facility's waste streams and report the results to EPA; and submit approvable emission test protocols for measuring the facility's total fugitive benzene emissions and the facility's stack emissions.

In February, Region 2 issued another Administrative Compliance Order to TCC, under Section 113(a)(1) of the Clean Air Act, for violations of 6 N.Y.C.R.R. Part 214, the federally enforceable New York State Implementation Plan (SIP) for by-product coke oven batteries. The order requires TCC to comply with the SIP by operating both of the facility's wet quench towers with a baffle system designed to effectively reduce particulate emissions during quenching. The order also required TCC to submit engineering drawings of its recently installed baffle systems, along with a detailed engineering analysis of the baffle systems' effectiveness in reducing particulate emissions during quenching, to demonstrate compliance with the SIP, as well as conduct sampling of its quench tower make-up water, and using the arithmetic average of the four samples to determine its compliance with the SIP.

In April, EPA issued an Administrative Compliance Order to Tonawanda Coke Corp. regarding violations of the "General Duty Clause" of Section 112(r)(1) of the Clean Air Act at Tonawanda Coke's facility in Tonawanda, New York. The Order finds that Respondent failed to satisfy §112(r)(1) by failing to properly inspect, maintain, and/or keep in good repair equipment at the facility which would prevent future releases of substances which are regulated pursuant to Section 112(r), and by failing to comply with government regulations at the facility. The Order requires Respondent to undertake certain actions to come into compliance with Section 112(r)(1), including the repair and maintenance of certain equipment, conducting an assessment into the root causes of two incidents at the facility and submittal of a report and schedule to EPA.

In July, EPA and TCC entered into a Consent Agreement and Final Order to resolve TCC's violations of the Resource Conservation and Recovery Act. The CAFO requires TCC to correct its improper handling of coal tar sludge (a hazardous waste). Under the terms of a follow-up agreement, TCC has agreed to remove four damaged tar storage tanks and contaminated soil, stop dumping and mixing tar sludge inappropriately, and properly recycle or dispose of associated materials.

In August, Region 2 ordered the coke manufacturing facility to comply with its Clean Water Act permit. Specifically, the order directs TCC to remedy its ongoing discharges of excessive amounts of cyanide in its process wastewater into the Town of Tonawanda's sanitary sewer system, which ultimately discharges from the town's wastewater treatment facility into the Niagara River. EPA also ordered TCC to properly monitor and treat the wastewater that results from the coke-making process, and to complete the overdue installation of pollution controls and control contaminated stormwater runoff from its coal piles.

And, in September, TCC concluded air pollution testing, under order from EPA, which showed that the plant is a major source of hazardous air pollutants, specifically benzene, under the Clean

Air Act, and that the majority of benzene being emitted from the facility is from fugitive emissions from leaks in the process area.[68] The Region is working with TCC and DEC to ensure that the plant installs all appropriate air pollution controls.

2. Air

Region 2 Settles Clean Water Act Civil Complaint for Violations at Chromium Plating Facility

In April, EPA Region 2 signed a judicial Consent Judgment (CJ) with Nassau Chromium Plating Co., Inc. to resolve past violations of the Clean Air Act and the National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, 40 C.F.R. Part 63, Subpart N (Chromium Regulations). The violations occurred at the defendant's chromium electroplating facility in Mineola, New York, and include: (1) failing to properly monitor chromium electroplating tanks to ensure they are in compliance with emissions limits; (2) failing to operate and maintain the tanks, including air pollution control equipment and monitoring equipment, in a manner consistent with good air pollution control practices and with a maintenance plan to minimize emissions of hexavalent chromium; and (3) failing to maintain required records, including records of maintenance, malfunctions, and ongoing compliance.

Prior to signing the CJ, Defendant came into compliance with the Chromium Regulations by ensuring that all tanks are properly monitored, by submitting an operation and maintenance plan for the tanks, which EPA approved in September 2009, and by ensuring that all required records are maintained. Because the defendant is now in compliance with the Chromium Regulations, the CJ does not require further injunctive relief, but requires the defendant to maintain compliance with all applicable requirements of the Chromium Regulations, and provides for stipulated penalties for violations of these requirements while the CJ is in effect. The CJ also requires the defendant to pay a $4,000 civil penalty to resolve the past violations. EPA and DOJ agreed to this penalty amount only after the defendant demonstrated significant financial hardship in accordance with EPA's "ability to pay" policy.

3. Water

Region 2 Settles Clean Water Act Administrative Complaint for Violations at a Concentrated Animal Feeding Operation in Copake Falls, New York

In March, 2010, Region 2 entered into a Consent Agreement and Final Order with Berkshire Valley Dairy, LLC, settling an administrative complaint for violations of the Clean Water Act and the regulations governing the operation of large concentrated animal feeding operations. The Respondent is a dairy farm that confines approximately 1000 mature dairy cows and 300 heifers and heifer calves. On April 21, 2009, and again on May 7, 2009, EPA conducted Compliance Evaluation Inspections of the facility and observed numerous violations of the CWA and its implementing regulations, including the discharge of manure to a tributary of Roeliff Jansen Kill and numerous failures to adequately document and implement a comprehensive nutrient management plan, best management practices, inspections, and proper operations and maintenance of the facility. On June 29, 2009, EPA issued an Administrative Order directing the Respondent to correct its violations, and on January 12, 2010, EPA issued an administrative Complaint, proposing to assess a penalty of $12,000. Under the March 10, 2010 settlement, the

Respondent paid a penalty of $8,100.

Region 2 Settles Clean Water Act Administrative Complaint for Construction Stormwater Violations in the Bronx

In April, Region 2 issued a Consent Agreement and Final Order settling its administrative complaint against Vornado Realty Trust for violating the Clean Water Act by failing to obtain a New York State Construction General Permit for a construction project that disturbed more than 1.5 acres at 1770-1778 East Gunn Hill Road, in the Bronx, and discharged polluted stormwater to the Hutchinson River. Under the terms of the agreement, Vornado will pay a civil penalty of $28,000.

City of Oswego, New York, to Invest $87 Million in Upgrades to Sewer System to Comply with Clean Water Act

In May, EPA and the New York State Department of Environmental Conservation announced that, to resolve long-standing problems with unpermitted sewer overflows, the city of Oswego, New York, will invest an estimated $87 million in improvements to its west side sewer system, which includes both combined and sanitary components. The system, which serves approximately 10,000 people, is designed to transport the city's sewage to a wastewater treatment plant for treatment prior to discharge into Lake Ontario. Overflows from the system discharge raw sewage directly to water bodies and can be a major source of water pollution. The improvements to the city's sewer system, to be implemented under the settlement lodged in federal court in Syracuse, N.Y., will significantly reduce the number of sewer overflows. Specific measures include at least 75 percent separation of the combined system into sanitary and stormwater components, in order to prevent high volumes of rainwater from overwhelming the treatment plant, a 50 percent expansion of the west side waste water treatment plant's treatment capacity, disconnection of catch basins to reduce the inflow of rain water into the existing sanitary sewer system, major improvements to its operation and maintenance program, and sewer financing reforms.

The city also will pay a penalty of $99,000. The settlement resolves claims against the city by both the United States and the state of New York.

4. Waste and Toxic Substances

Region 2 Settles RCRA Complaint for Violations at Gasoline Service Stations in the Adirondack Region

In June, Region 2 entered into a Consent Agreement and Final Order with P.J. Hyde & Son ("Hyde") for its failures to comply with RCRA regulations relating to underground storage tanks at six service stations. Under the terms of the settlement, Hyde is required to come into compliance, pay a penalty of $16,000, and undertake a three-pronged Supplemental Environmental Project ("SEP"). The first prong of the SEP requires Hyde to conduct two annual independent third party audits of the four facilities it still owns and an audit at two other service stations it does not own or operate. The second prong requires Hyde to install and operate for at least one year electronic line leak detectors ("ELLDs") on all pressurized pipes at the four facilities which it owns and to install ELLDs on piping at the other two stations. The final prong requires Hyde to install and operate, for at least one year, a central monitoring system for the four facilities it owns.

Region 2 Settles RCRA Complaint for Violations at Ceramics Facility in Olean, New York
In September 28, 2010, Region 2 settled a RCRA administrative complaint which had alleged violations of the regulations concerning hazardous waste at a facility owned and operated by Advanced Monolythic Ceramics, Inc., in Olean, New York. Respondent stored hazardous waste without a permit, failed to make hazardous waste determinations, and failed to comply with hazardous waste manifest requirements. Under the terms of the settlement, Respondent agreed to correct its violations and pay a penalty of $33,000.

Region 2 Settles TSCA Administrative Complaint for Violations at Chemical Supplier in New York, New York
On March 23, 2010, Region 2 entered into a Consent Agreement and Final Order with Special Materials Company (SMC) regarding its failure to submit information on the company's importation of chemicals. Under the terms of the agreement, SMC agreed to pay a penalty of $65,000.

Region 2 Settles TSCA Administrative Complaint for Violations by Residential Landlord in Brooklyn and Manhattan
In March, Region 2 entered into a Consent Agreement and Final Order with Wolfe Landau, a residential landlord of property in Brooklyn and Manhattan regarding its failure to provide required lead warning statements, lead-based paint disclosure statements, statements of risk assessment, and certifications. Under the terms of the agreement, Respondent came into compliance, and paid a $20,000 penalty.

Region 2 Settles TSCA Administrative Complaint for Violations by a Chemical Importer in Tarrytown, New York
In August, Region 2 entered into a Consent Agreement and Final Order resolving an administrative complaint against Ampacet Corporation of Tarrytown, New York, for its failure to submit information on the company's importation of chemicals. Under the terms of the agreement, Respondent corrected its violations, developed an ambitious environmental management systems plan for several of its domestic facilities, and paid an $80,000 penalty.

EPA Orders Removal of PCB-Contaminated Materials from Massena, New York Site and Decontamination of Buildings before Demolition

On August 26, 2010, EPA ordered Motors Liquidation Company (MLC), formerly the General Motors Corporation (GM), to remove materials and soil contaminated with PCBs from portions of the General Motors Central Foundry Division Superfund site in Massena, New York.[69] MLC intends to demolish several buildings at the site, a former GM plant, that are contaminated with PCBs, which pose significant threats to human health and the environment. Under the order, MLC will be responsible for additional sampling, decontamination of the building and its contents, demolition of the building, removal of PCB-contaminated soil beneath the building. PCBs have been found in the plant's equipment, the piping and concrete flooring, and in tunnels and soil located underneath the buildings.

Additionally, in connection with the facility closure and GM's bankruptcy (discussed above),

GM or MLC donated and auctioned off manufacturing equipment and office furniture from the facility, some of which has been shown to contain PCBs. MLC will be collecting these items at no cost to the buyer or recipient. EPA encourages those who have received such items to contact MLC's hotline at 1-800-414-9607 to arrange for return of the items.[70]

E. CONCLUSION

EPA's first year under a new President, a new Administrator and a new Regional Administrator has yielded significant improvements in the quality of the environment and human health, and in the empowerment and engagement of all Americans in the work for a healthier world. As EPA celebrates its 40th anniversary, it is reflecting on its incredible successes and recommitting to addressing the remaining challenges. For more information on what's new in EPA, Region 2, to report environmental violations or to sign-up to follow us on Twitter or Facebook, visit our website at http://www.epa.gov/region2/.

Marla E. Wieder is an Assistant Regional Counsel with the New York/Caribbean Superfund Program, and Chris Saporita is Assistant Regional Counsel with the Water and General Law Branch of the United States Environmental Protection Agency, Region 2, in New York City.

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[1] Any opinions expressed herein are the authors' own, and do not necessarily reflect the views of the U.S. Environmental Protection Agency.
[2] EPA Press Release, New Toolkit to Help Local Governments with Green Building Practices, July 21, 2010.
[3] Proposed EPA Policy on Consultation and Coordination with Indian Tribes, June 9, 2010, available at http://www.epa.gov/indian/pdf/consultation-letter-policy-0610.pdf.
[4] EPA Press Release, EPA Seeks Comments on Consultation Policy with Indian Tribes, June 21, 2010.
[5] Interim Guidance on Considering Environmental Justice During the Development of an Action, July 2010, available at http://www.epa.gov/compliance/ej/resources/policy/considering-ej-in-rulemaking-guide-07-2010.pdf.
[6] EPA Press Release, EPA Releases Rulemaking Guidance on Environmental Justice, July 26, 2010.
[7] EPA Press Release, EPA Expands Public Participation on Hazardous Waste Cleanup, May 20, 2010.
[8] EPA Press Release, EPA Makes Chemical Information More Accessible to Public / For the first time TSCA chemical inventory free of charge online, March 15, 2010.
[9] Id.
[10] EPA Press Release, EPA Opens Access to Chemical Information/Searchable database on chemical hazard, exposure and toxicity data now available, April 29, 2010.
[11] Id.
[12] Id.
[13] EPA Press Release, EPA Adds More Than 6,300 Chemicals and 3,800 Chemical Facilities to Public Database Unprecedented access provided for the first time, May 17, 2010.
[14] Id.
[15] EPA Press Release, EPA Proposes Adding More Chemicals to Toxics Release Inventory List / First program chemical expansion in more than a decade, April 6, 2010.
[16] See Addition of National Toxicology Program Carcinogens - Proposed Rule, at http://www.epa.gov/tri/lawsandregs/ntp_chemicals/index.html
[17] Robertson, Campbell and Krauss, Clifford, Gulf Spill Is the Largest of Its Kind, Scientists Say, The New York Times (The New York Times Company), August 2, 2010 at http://www.nytimes.com/2010/08/03/us/03spill.html?_r=1&fta=y.
[18] EPA Press Release, EPA Announces $200,000 in Environmental Justice Grants to Support Communities Directly Affected by BP Oil Spill, August 9, 2010.

[19] EPA Press Release, Obama Administration Moves Long-Term Gulf Plan Forward / Mabus recovery plan focuses on funding, governance, involvement / EPA Administrator to lead ecosystem task force, September 28, 2010.
[20] EPA Press Release, President Obama Signs Executive Order Officially Forming Gulf Coast Ecosystem Restoration Task Force / EPA Administrator Lisa P. Jackson to oversee national transition from emergency response to coastal recovery in the gulf , October 5, 2010.
[21] Id.
[22] EPA Press Release, EPA Releases Reports on Dioxin Emitted During Deepwater Horizon BP Spill/Reports find levels of dioxins created during controlled burns were below levels of concern, November 12, 2010.
[23] EPA Press Release, EPA Announces Superfund Cleanup Progress for FY 2009, March 4, 2010.
[24] Id.
[25] Id.
[26] Id.
[27] EPA Press Release, EPA Supports Superfund "Polluter Pays" Provision / Agency submits administration's guidance to Congress, June 21, 2010.
[28] Id.
[29] Id.
[30] On June 5, 2009, an order was entered in the bankruptcy court approving the sale of substantially all of GM's assets to MLC; the sale closed on July 10, 2009. As per the Master Sale and Purchase Agreement, the sale included 115 properties (99 non-manufacturing properties and 16 manufacturing properties). Note that the number of properties has since been refined.
[31] See, the Motors Liquidation Company website at < http://www.motorsliquidationdocket.com/ >.
[32] EPA's MLC Bankruptcy Settlement website at:
http://www.epa.gov/compliance/resources/cases/cleanup/cercla/mlc/index.html
[33] Id.
[34] Press Release, United States Attorney, Southern District of New York, United States Announces Approximately $773 Million Settlement with GM to Resolve Environmental Liabilities, October 20, 2010, available at http://www.justice.gov/usao/nys/pressreleases/October10/gmenvironmentalsettlementpr.pdf.
[35] EPA's MLC Bankruptcy Settlement website at
http://www.epa.gov/compliance/resources/cases/cleanup/cercla/mlc/index.html
[36] Id.
[37] Id.
[38] Press Release, United States Attorney, Southern District of New York, United States Announces Approximately $773 Million Settlement with GM to Resolve Environmental Liabilities, October 20, 2010, http://www.justice.gov/usao/nys/pressreleases/October10/gmenvironmentalsettlementpr.pdf.
[39] For more in formation on the General Motors Central Foundry Division Superfund Site, see http://www.epa.gov/region02/superfund/npl/0201644c.htm.
[40] Press Release, United States Attorney, Southern District of New York, United States Announces Approximately $773 Million Settlement with GM to Resolve Environmental Liabilities, October 20, 2010, http://www.justice.gov/usao/nys/pressreleases/October10/gmenvironmentalsettlementpr.pdf.
[41] For more information on the Onondaga lake Superfund Site, see NYSDEC's website at http://www.dec.ny.gov/chemical/8668.html and EPA's website at http://www.epa.gov/region02/superfund/npl/onondagalake/index.html.
[42] For a quick summary of the first phase of the dredging, see EPA's Phase 1 Dredging Factsheet, November 2009, at http://www.epa.gov/hudson/EndofPhase1.pdf.
[43] EPA Press Release, EPA Makes Final Decision: Newtown Creek is added to Superfund List, September 27, 2010.
[44] Id.
[45] Id.
[46] Newtown Creek/Greenpoint Oil Spill Study, Brooklyn, New York, September 12, 2007, available at http://www.epa.gov/region02/superfund/npl/newtowncreek/newtowncreek_review.pdf.
[47] EPA Press Release, EPA Places a Section of the Black River in Jefferson County, N.Y. on the Superfund List, September 27, 2010.
[48] Id.
[49] Id.

[50] EPA Press Release, EPA to Begin Full Investigation at Raritan Bay Slag Superfund Site, April 7, 2010.
[51] Id.
[52] EPA's NPL Fact Sheet, Raritan Bay Slag, available at http://www.epa.gov/region02/superfund/npl/0206276c.pdf.
[53] EPA Press Release, Administrator Jackson Announces $2 Million in Brownfields Job Training Funds to Clean up Our Communities, April 10, 2010.
[54] EPA Press Release, EPA to Provide Grants to Support Brownfields Job Training: Programs will Prepare Upstate New York Residents for Green Jobs, April 14, 2010.
[55] Id.
[56] EPA Press Release, EPA Finalizes the 2008 National U.S. Greenhouse Gas Inventory, April 15, 2010.
[57] See http://www.epa.gov/climatechange/emissions/usinventoryreport.html
[58] EPA Press Release, EPA Rejects Claims of Flawed Climate Science, July 29, 2010.
[59] See http://epa.gov/climatechange/endangerment/petitions.html
[60] EPA Press Release, EPA and DOT Announce Next Steps toward Tighter Tailpipe and Fuel Economy Standards for Passenger Cars and Trucks, October 1, 2010.
[61] EPA Press Release, DOT, EPA Propose the Nation's First Greenhouse Gas and Fuel Efficiency Standards for Trucks and Buses A win for the environment, economy and energy efficiency, October 25, 2010.
[62] EPA Press Release, EPA Proposes Rules on Clean Air Act Permitting for Greenhouse Gas Emissions, August 12, 2010.
[63] EPA Press Release, Final Rule Reduces Air Toxics from Existing Stationary Diesel Engines, February 18, 2010.
[64] EPA Press Release, EPA Sets First National Limits to Reduce Mercury and Other Toxic Emissions from Cement Plants, August 10, 2010.
[65] 75 Fed. Reg. 31,896
[66] EPA Press Release, EPA Issues New Guide to Improving Stormwater Management: Local Streams, Chesapeake Bay to Benefit, August 3, 2010.
[67] EPA Press Release, EPA Proposes New Permit Requirements for Pesticide Discharges, June 2, 2010.
[68] For a copy of the DIAL testing report prepared by TCC's contractor, go to www.epa.gov/region02/capp/TCC/tonawanda_docs.html.
[69] EPA Press Release, EPA Orders Removal of PCB-Contaminated Materials from Massena, N.Y. Site and Decontamination of Buildings Before Demolition, August 26, 2010.
[70] Id.