

# EPA Update

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## I. Introduction

Notwithstanding the financial crisis, the resulting federal and state budget constraints, and admonitions to “do more with less,” EPA continues to use all of the tools and resources at its disposal to protect public health and the environment to the best of its ability. We might not actually be able to “do more with less” but we certainly continue to try. Here are some of the highlights of EPA’s spring 2012 work.



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## II. Superfund—In Appreciation of Remediation

### A. The Hudson River PCBs Superfund Site Cleanup and Five-Year Review Report

The third season of Hudson River dredging got under way in May 2012. The cleanup of the Hudson River is being undertaken in two phases. Phase 1 of the project was conducted by General Electric Co (GE) with oversight by EPA from May to November 2009. During this phase, approximately 283,000 cubic yards of PCB-contaminated sediment were removed from a six-mile stretch of the Upper Hudson River near Fort Edward, New York. After an extensive evaluation by an independent panel of scientists and input from a broad range of stakeholders, EPA developed plans for the second part of the cleanup. Phase 2 involves removing the remainder of the contaminated river sediment targeted for dredging. Phase 2, Year 1 was conducted from June to November 2011 along a one-and-one-half mile section of the River south of Ford Edward. Approximately 363,000 cubic yards of contaminated sediment were removed, exceeding the target of 350,000 yards established for the 2011 season.<sup>1</sup> The dredging target for 2012 (Phase 2, Year 2) is 350,000 cubic yards of sediment, which likely will be exceeded as a result of processing facility improvements that will help to increase productivity. It is estimated that the second phase of the project will take five to seven years to complete. For more on the remediation, see: <http://www.epa.gov/hudson>.

Superfund cleanups are pivotal for protecting public health and the environment,” said Judith A. Enck, EPA Regional Administrator. “The Hudson River PCB cleanup is accomplishing just that, while also creating 500 new jobs. This project illustrates the many benefits of the EPA’s Superfund program.

On June 1st, EPA finalized the first five-year review report to determine whether the remedial actions at the site are protective of public health and the environment and functioning as designed. This five-year review was conducted for the Remnant Deposits (operable unit 1) and the in-river sediments (operable unit 2) of the Upper Hudson River. The Report concluded that the remedy at the formerly exposed Remnant Deposits Site currently protects human health and the environment as the in-place containment and cap system prevents human exposure, and the perimeter fencing and signage continue to be maintained. However, in order for the remedy to be protective in the long term, institutional controls need to be implemented to ensure that future use of the area does not compromise the integrity of the cap or result in unsafe exposures. The Report also concluded that the dredging remedy selected in the 2002 ROD, which is currently under construction, is expected to be protective of human health and the environment upon completion. In the interim, human exposure pathways that could result in unacceptable risks are being controlled. EPA anticipates that once the institutional controls have been implemented at OU1 and the dredging and Monitored Natural Attenuation remedy have been completed at OU2, the remedies will be protective of human health and the environment. To review the Report, see: <http://www.epa.gov/hudson/pdf/Hudson-River-FYR-6-2012.pdf>.

In response to the Report, environmental groups and other stakeholders have urged the agency, in part, to expand the dredging to include additional areas of contamination (about 136 acres) below the Thompson Island Dam. EPA has noted that in each dredge season GE takes additional river-bottom samples near the project perimeters and GE has extended the dredging footprint by nearly 1.5 acres in this season. In addition, GE took river-bottom core samples in the areas to be dredged in 2013 and maybe 2014, and those results may lead to an expansion of the dredging in some areas.

## B. Agreement Reached on the Dewey Loeffel Landfill, Rensselaer County

On April 11, EPA announced that it has entered into an agreement with GE and SI Group, Inc. (formerly Schenectady Chemicals, Inc.) to collect and properly dispose of contaminated groundwater and liquid leaching from the Dewey Loeffel landfill that is threatening several nearby drinking water wells. The leachate seeping from the landfill and the groundwater are contaminated with volatile organic compounds (VOCs). EPA is currently collecting the contaminated liquid waste and sending it off-site for disposal. Under the agreement, GE and SI will take on the collection and removal of the waste and the construction of a treatment plant adjacent to the landfill. The waste will continue to be sent off-site until the construction of the treatment plant is completed. Treated water from the new system will be discharged to surface water only after the EPA verifies that the treatment system is working effectively and is capable of meeting stringent state discharge limits. GE and SI Group have agreed to reimburse EPA for certain costs, including an upfront payment of \$800,000.<sup>2</sup> In addition, EPA expects to undertake a comprehensive long-term study of the soil, groundwater, surface water and sediment associated with the site in the near future. For more information on this site, see: [www.epa.gov/region2/superfund/npl/dewey](http://www.epa.gov/region2/superfund/npl/dewey).

## C. Eighteen Mile Creek, Niagara County, New York Added to the NPL

On March 13, EPA added nine new hazardous waste sites to the National Priorities List (NPL), including Eighteenmile Creek (contaminated creek) in Niagara County, New York. In addition, EPA proposed to include 10 additional sites, including the Orange Valley Regional Ground Water Contamination (contaminated groundwater plume) in Orange/West Orange, New Jersey.<sup>3</sup>

Since 1983, 1,663 sites have been listed on the NPL. Of these sites, 359 sites have been cleaned up, resulting in 1,304 sites on the NPL as of July. There are also 59 proposed sites awaiting final agency action. For more information about Superfund sites in New York and New Jersey, please visit: [www.epa.gov/region02/superfund](http://www.epa.gov/region02/superfund).

## D. Agreement Reached for the Lower Passaic River in New Jersey

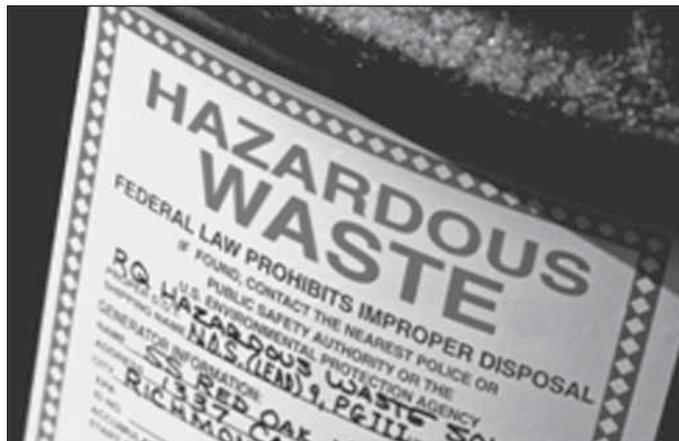
On June 18, EPA announced that it has reached agreement with 70 parties to remove approximately 16,000 cubic yards of highly contaminated sediment from a half-mile long area of the Passaic River in Lyndhurst, New Jersey. High levels of contaminants, including PCBs, mercury and dioxin, are present in the sediment. The work, which includes the removal of contaminated sediment, installation of a protective cap over the excavated area and testing of sediment treatment technologies, is scheduled to begin in spring 2013. Under the agreement, the parties will conduct and pay for the cleanup work and EPA's costs in overseeing it. The cost of the work to be performed is

estimated at \$20 million, in addition to the costs of EPA oversight.<sup>4</sup> The agreement and additional information on the Lower Passaic River restoration project are available at [www.epa.gov/region02/superfund/npl/diamondalkali/](http://www.epa.gov/region02/superfund/npl/diamondalkali/) or [www.ourpassaic.org](http://www.ourpassaic.org).

## III. RCRA & TSCA—Transitioning to Electronic Reporting and Tracking Systems

### A. Toxic Substances Control Act (TSCA)—Electronic Reporting

On April 13, EPA announced a proposed rule to require electronic reporting for certain information (e.g. submission of information relating to chemical testing, health and safety studies, and other data) submitted to the agency under TSCA. Electronic reporting will increase the speed with which EPA can make information publicly available, increase accuracy, and provide the public with quicker access to chemical information.<sup>5</sup> When final, EPA will only accept data, reports, and other information submitted through EPA's Central Data Exchange, a centralized portal that enables streamlined, electronic submission of data via the Internet. EPA solicited comments on the proposed rule and has been offering training opportunities, including webinars, for potential users to become familiar with the new requirements.<sup>6</sup> For more information, see: [www.epa.gov/oppt/chemtest/pubs/SIGNED\\_eTSCA\\_NPRM\\_FRdocument\\_2012-03-30.pdf](http://www.epa.gov/oppt/chemtest/pubs/SIGNED_eTSCA_NPRM_FRdocument_2012-03-30.pdf).



### B. Resource Conservation Recovery Act (RCRA)—The Paper Manifest System

After much discussion and little objection, we may finally be transitioning away from paper manifests used to track waste shipments and disposal under RCRA to a tracking electronic system. EPA has estimated that the RCRA cradle-to-grave manifest system generates approximately 2 million to 5 million forms per year, resulting in an annual paperwork burden that exceeds \$200 million. This long overdue transition to an electronic tracking system seems to be one of the few concepts on which both Democrats and Republicans can agree. A June 2012 congressional hearing on this issue and the proposed legislation (S. 710) that would direct the EPA Administrator

to establish a hazardous waste electronic manifest system was described as “one of the shortest and least contentious hearings this Congress.”<sup>7</sup> The legislation also authorizes the Administrator to impose a fee on the users of the new system, authorizes the creation of a revolving fund, paid for by the regulated community, to allow the Administrator to pay for costs incurred in developing, operating, maintaining, and upgrading the system, and requires the Administrator to periodically report on the financial status of the revolving fund. The bill also requires that facilities receiving hazardous waste also report their waste handling so that a state can track waste that was generated in or shipped through the state. On August 3, 2012 the bill passed through the Senate, without amendment, by unanimous consent.<sup>8</sup> For more on the Hazardous Waste Electronic Manifest System, see [www.epa.gov/osw/hazard/transportation/manifest/e-man.htm](http://www.epa.gov/osw/hazard/transportation/manifest/e-man.htm).

#### IV. Brownfields Redevelopment and Green Buildings

##### A. Brownfields Update

It’s never too early to start your 2013 planning. The National Brownfields 2013 Conference will be held in Atlanta, Georgia from May 15th through the 17th. The conference, cosponsored by EPA, is the largest and most comprehensive forum for the examination of issues important to community revitalization and the assessment, cleanup and redevelopment of contaminated properties. For more information on the conference, see: [www.brownfieldsconference.org/en/home](http://www.brownfieldsconference.org/en/home).

On May 31, 2012, EPA, through its Brownfields Program, provided a total of \$970,000 to New York City and Ogdensburg, New York to clean up abandoned and contaminated sites. New York City received \$650,000 to support a revolving loan fund from which the city will provide loans and sub-grants to support cleanup of contaminated sites in the five boroughs. Grant funds also will be used to oversee fund management activities and provide technical support for the program. The City of Ogdensburg received \$320,000 to assess sites with hazardous substances and petroleum contamination throughout the city. Grant funds also will be used to conduct community outreach and cleanup planning activities.<sup>9</sup> In addition to these grants, EPA will also be providing \$2.8 million to Newark and Jersey City to help with their efforts to assess and redevelop properties in their area.<sup>10</sup>

In the Spring of 2012, EPA also announced a total of more than \$69.3 million in new Brownfields grants that will assist in the ongoing effort to place contaminated parcels back into reuse and boost the local economies. The 214 grantees receiving grants through the Brownfields Assessment, Revolving Loan Fund, and Cleanup Grants programs include tribes and communities in 39 states across the country.<sup>11</sup> Information on grant recipients can be found at: [www.epa.gov/brownfields](http://www.epa.gov/brownfields). For more on EPA’s Brownfields Program, see: [www.epa.gov/brownfields/](http://www.epa.gov/brownfields/).

EPA estimates that there are an estimated 450,000 abandoned and contaminated waste sites in the United States. In 2011, EPA’s Brownfields Program leveraged 6,447 jobs and \$2.14 billion in cleanup and redevelopment funds. Since the beginning of the program, EPA’s brownfields investments have leveraged more than \$18.3 billion in cleanup and redevelopment funding from a variety of sources and have resulted in approximately 75,500 jobs. More than 18,000 properties have been assessed, and over 700 properties have been cleaned up.<sup>12</sup>



##### B. Green Buildings—Energy Star Rankings Released

In April 2012, EPA released its list of cities with the most Energy Star buildings in the United States. Los Angeles, Washington, D.C., Atlanta, Chicago, San Francisco ranked in the top five, just beating out New York, which took 6th place. By the end of 2011, the nearly 16,500 Energy Star certified buildings across America have helped save nearly \$2.3 billion in annual utility bills and prevent GHG emissions equal to emissions from the annual energy use of more than 1.5 million homes.<sup>13</sup>

Cities with the Most Energy Star Buildings in the U.S.			
2011 Rank	Metro Area	ENERGY STAR Certified Buildings	Annual Cost Savings (millions)
1	Los Angeles	659	\$149.8
2	Washington, DC	404	\$118.6
3	Atlanta	359	\$55.0
4	Chicago	294	\$86.8
5	San Francisco	270	\$99.6
6	New York	261	\$135.5
7	Houston	231	\$79.7
8	Dallas-Fort Worth	178	\$39.2
9	Riverside, Ca.	164	\$17.9
10	Boston	161	\$61.1
<a href="http://www.energystar.gov/ia/business/downloads/2011_Top_Cities_chart.pdf">www.energystar.gov/ia/business/downloads/2011_Top_Cities_chart.pdf</a>			

Energy use in commercial buildings accounts for nearly 20 percent of U.S. GHG emissions at a cost of more than \$100 billion per year. Energy Star certified buildings use an average of 35 percent less energy and are responsible

for 35 percent less carbon dioxide emissions than typical buildings.<sup>14</sup> For more on Energy Star certified buildings, see: <http://energystar.gov/buildinglist>. For more on earning the Energy Star label for commercial buildings, see: <http://energystar.gov/labeledbuildings>.

## V. Climate Change and Air

### A. Climate Change Mitigation

#### 1. Big Win for EPA in D.C. Circuit on Greenhouse Gas Regulations

The biggest news on climate change this past quarter was the D.C. Circuit's unanimous decision on June 26, 2012, in *Coalition for Responsible Regulation v. EPA*,<sup>15</sup> to uphold EPA's landmark greenhouse gas (GHG) regulations. The three-judge panel either denied or dismissed petitions challenging four EPA GHG rules, including EPA's Endangerment and Cause or Contribute Findings for GHGs ("Endangerment Finding"),<sup>16</sup> Light Duty Vehicle GHG Emissions Standards ("Light Duty Rule"),<sup>17</sup> Reconsideration of Interpretation of Regulations That Determine Pollutants Covered by Clean Air Act Permitting Programs ("Timing Rule"),<sup>18</sup> and Prevention of Significant Deterioration and Title V GHG Tailoring Rule ("Tailoring Rule").<sup>19</sup>

The court rejected the Petitioners' challenge to EPA's reliance in the Endangerment Finding on assessments by authoritative bodies on climate change, such as the Intergovernmental Panel on Climate Change, the U.S. Global Change Research Project, and the National Research Council. The court noted that "this is how science works... EPA is not required to re-prove the existence of the atom every time it approaches a scientific question." The 82 page opinion cites extensively to the authority of the Supreme Court's decision in *Massachusetts v. EPA*<sup>20</sup> as a basis for upholding EPA's GHG regulations. In one instance, for example, the court invoked *Massachusetts v. EPA* as authority to reject the Petitioners' argument that EPA had discretion to delay regulation of GHGs after making the Endangerment Finding. ("If EPA makes a finding of endangerment, the Clean Air Act requires the Agency to regulate the emissions of the deleterious pollutant from new motor vehicles. 549 U.S. at 543."<sup>21</sup>) The D.C. Circuit also concluded that Petitioners did not have standing to challenge the Tailoring and Timing Rules as they fell far short of establishing the "irreducible constitutional... elements" of standing because Petitioners could not show injury in fact. The court noted that, "indeed, the Timing and Tailoring Rules actually mitigate Petitioners' purported injuries."<sup>22</sup>

In testimony on June 29, 2012, following the D.C. Circuit decision, EPA Assistant Administrator Regina McCarthy stated that EPA's regulatory actions on climate change have been shown to reflect good science and law but they are also good policy.<sup>23</sup> She remarked that, since 1970, the history of the Clean Air Act has demonstrated that clean air and a healthy economy go hand in hand.

#### 2. EPA Proposes First Clean Air Act Standard for Carbon Pollution from Future Power Plants

In another major development on climate change, EPA published its proposed Standards of Performance for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units on April 13, 2012 (signed on March 27, 2012).<sup>24</sup> EPA proposed the rule pursuant to Section 111 of the Clean Air Act, the statutory program referred to as the New Source Performance Standards (NSPS).<sup>25</sup> EPA's rule applies only to new power plants over 25 megawatts and reflects an ongoing trend in the power sector toward cleaner technologies that will become the next generation of power plants.<sup>26</sup> EPA's rule will ensure that this trend continues.

The proposal does not dictate the kind of fuel that future power plants can burn, but it limits their emissions to 1,000 pounds of CO<sub>2</sub> per megawatt-hour. New natural gas combined cycle (NGCC) plants can meet this standard without add-on controls and, in fact, 95% of those plants built since 2005 would meet the standard. EPA determined that 1,000 pounds of CO<sub>2</sub> per megawatt-hour satisfies the statutory requirement to establish a "standard of performance" under Section 111(a) of the Clean Air Act and is based on NGCC as the "best system of reduction" that has been adequately demonstrated.<sup>27</sup> New plants that burn coal or petcoke would have to use add-on technology, such as carbon capture and storage, to meet the standard. The proposed rule includes a 30-year averaging period that would provide flexibility for sources wishing to phase in controls.

Due to economic and other factors related to gas and coal power generation, EPA and DOE expect that most plants built in the next ten years will likely meet the standard even in the absence of the rule. Current investment decisions in the power sector suggest that the proposed rule will not have notable costs and is not projected to have an impact on electricity prices or reliability.<sup>28</sup> Upon signing the proposed rule, EPA Administrator Lisa P. Jackson commented that "Right now there are no limits to the amount of carbon pollution that future power plants will be able to put into our skies—and the health and economic threats of a changing climate continue to grow. We're putting in place a standard that relies on the use of clean, American made technology to tackle a challenge that we can't leave to our kids and grandkids."<sup>29</sup> The public comment period on the rule ended on June 25, 2012 and EPA received nearly 13,000 comments.<sup>30</sup>

#### 3. EPA Finalizes Step 3 of Tailoring Rule

On July 12, 2012, EPA published its final rule for step 3 of the Tailoring Rule.<sup>31</sup> The Tailoring Rule was promulgated on June 3, 2010<sup>32</sup> and was recently upheld by the D.C. Circuit (see related news item above). The rule raised the Clean Air Act applicability thresholds of 100 and 250 tons per year (TPY) to 75,000 and 100,000 TPY for GHGs, measured in carbon dioxide-equivalent (CO<sub>2</sub>e). EPA promulgated the Tailoring Rule to avoid overwhelming the

capabilities of state and local permit programs with the many GHG sources that would have otherwise become subject to review.

The July 12 action was the third step in phasing in GHG applicability in the Prevention of Significant Deterioration (PSD) and Title V Clean Air Act programs. It follows step 1, which began on January 2, 2011 and applied to GHG sources that were required to obtain a PSD permit for other pollutants anyway, and step two, which went into effect on July 1, 2011. Step 2 applied PSD permit requirements to new facilities with GHG emissions of at least 100,000 tons per year (tpy) CO<sub>2</sub>e and existing facilities that emit 100,000 tpy of CO<sub>2</sub>e and make changes that increase the GHG emissions by at least 75,000 tpy of CO<sub>2</sub>e.<sup>33</sup>

The purpose of step 3, among other things, was to determine whether EPA could lower the threshold to as low as 50,000 tpy of CO<sub>2</sub>e and, as a result, bring additional, smaller GHG sources into the PSD and Title V programs. In the July 12 action, EPA decided that it would not lower the thresholds established in the first two steps because state and local agencies have not had sufficient time and opportunity to develop the necessary infrastructure, expertise and capacity for GHG permitting, and EPA and the states have not had the opportunity to develop streamlining measures that would improve permitting implementation.<sup>34</sup> The July 12 rule also includes a streamlining procedure for sources that would like to develop plant-wide applicability limits for GHGs. As of May 21, 2012, EPA and state permitting authorities had issued 44 PSD permits addressing GHG emissions. These permits require implementation of energy efficiency measures at new facilities and existing facilities that make major modifications. The July 12 final rule and additional information can be found at: <http://www.epa.gov/nsr/actions.html>.

## **B. National Ambient Air Quality Standards Developments**

### **1. EPA Settles NAAQS Deadline Suit on Particulate Matter**

In accordance with Section 113(g) of the Clean Air Act, EPA published notice on June 26, 2012 of a proposed consent decree settling two lawsuits alleging that EPA had violated a nondiscretionary duty to complete a five-year review of the National Ambient Air Quality Standards (NAAQS) for particulate matter.<sup>35</sup> EPA is required to review each NAAQS pollutant at five-year intervals and revise as may be appropriate.<sup>36</sup> Under the terms of the settlement, EPA agreed to sign a notice of final rulemaking by December 14, 2012, setting forth its final decision on its review of the particulate matter NAAQS and promulgating revisions and/or new NAAQS as may be appropriate. The public comment period expired on July 26, 2012.

### **2. EPA Proposes New NAAQS for PM<sub>2.5</sub>**

Related to EPA's settlement of the NAAQS deadline suit for particulate matter, on June 14, 2012 EPA proposed

to strengthen the annual NAAQS for fine particulate matter by revising the PM<sub>2.5</sub> standards from 15 to 12 micrograms per cubic meter. EPA also proposed setting a separate fine particle standard to improve visibility in urban areas, updates and improvements to the national PM<sub>2.5</sub> monitoring network and updates to the Air Quality Index.<sup>37</sup> In its review leading to the strengthened standards, EPA examined thousands of studies, including 300 epidemiological studies that demonstrate adverse health effects even in areas meeting the current PM<sub>2.5</sub> NAAQS. The proposed rule and additional information is available at <http://www.epa.gov/airquality/particlepollution/actions.html>.

### **3. EPA Finalizes Revisions to the Cross-State Air Pollution Rule**

On June 12, 2012, EPA finalized revisions to the Cross State Air Pollution Rule (CSAPR) that will, among other things, increase the budgets of SO<sub>2</sub> and NO<sub>x</sub> for 13 states, including New York.<sup>38</sup> After EPA issued the final CSAPR on July 6, 2011, the Agency identified discrepancies in certain data assumptions that affected the calculations of the budgets of the 13 states. On December 30, 2011, the D.C. Circuit stayed CSAPR pending appeal but left in place the Clean Air Interstate Rule (CAIR), which is the predecessor to CSAPR. Oral arguments on the challenges to CSAPR were held in the D.C. Circuit on April 13, 2012. A decision on CSAPR is expected this summer. In the June 12 final rule, EPA revised the 2012 and 2014 final budgets for New York and other states. These revisions were promulgated so that the CSAPR program is ready for implementation if and when the D.C. Circuit lifts the stay. The final rule is available at <http://www.gpo.gov/fdsys/pkg/FR-2012-06-12/pdf/2012-14251.pdf>.

### **4. EPA Finalizes Actions in the NY-NJ-CT Ozone Nonattainment Area**

On June 18, 2012, EPA finalized four independent actions related to the New York-Northern New Jersey-Long Island (NY-NJ-CT) one-hour and 1997 eight-hour ozone nonattainment areas.<sup>39</sup> EPA determined that the NY-NJ-CT one-hour ozone nonattainment area previously failed to attain the one-hour ozone NAAQS by its applicable attainment deadline of November 15, 2007, based on 2005–2007 monitoring data. However, the area is attaining the standard based upon 2008–2010 data, and 2011 data indicates that the area continues to attain the standard. EPA also determined that the NY-NJ-CT eight-hour ozone nonattainment area attained the 1997 eight-hour standard by the applicable deadline, June 15, 2010, based on 2007–2009 data, is currently meeting the standard based on 2008–2010 data, and continues to meet the standard based on indications from the 2011 data. In New York, the affected counties under the one-hour standard include Bronx, Kings, Nassau, New York, Queens, Richmond, Rockland, Suffolk, Westchester, and part of Orange County. No portion of Orange County is included in the eight-hour 1997 ozone standard designation.

In a separate action on May 21, 2012, EPA designated initial area designations for the primary and secondary eight-hour ozone NAAQS, pursuant to Section 107(d) of the Clean Air Act.<sup>40</sup> A chart with the final designations for all states, including New York, can be found at: <http://www.epa.gov/groundlevelozone/designations/2008standards/regs.htm>. A map of United States containing county-by-county designations can be found at: <http://www.epa.gov/groundlevelozone/designations/2008standards/final/finalmap.htm>.

## 5. EPA Wins Important NAAQS Victories in the D.C. Circuit

EPA recently won two cases in the D.C. Circuit involving challenges to the Agency's final rules on the SO<sub>2</sub> and NO<sub>2</sub> NAAQS. On July 17, the D.C. Circuit denied petitions of the American Petroleum Institute and the Utility Air Regulatory Group that challenged EPA's final one-hour NAAQS for NO<sub>2</sub>.<sup>41</sup> EPA had adopted the new NO<sub>2</sub> standard in 2010 as "the three-year average of the annual 98th percentile of the daily maximum 1-hour average concentration less than or equal to 100 ppb."<sup>42</sup> The D.C. Circuit found that EPA was not arbitrary and capricious in relying on the data and studies it used to set the new standard. The court also rejected the petitioners' argument that a statement in the preamble to the rule regarding permitting was final agency action subject to review. The court declined jurisdiction on the permitting issue because EPA had simply acknowledged in the preamble that it "had not yet, but 'w[ould] need to...carefully evaluate' the effect of the new NAAQS on the permitting process."

In a July 20 decision,<sup>43</sup> the D.C. Circuit dismissed and denied state and industry petitions challenging EPA's new 1-hour SO<sub>2</sub> NAAQS promulgated on June 22, 2010.<sup>44</sup> The 1-hour standard is intended to prevent asthmatics from being exposed to short-term bursts of SO<sub>2</sub> lasting five to ten minutes. The court determined that EPA was not arbitrary and capricious in adopting a 75 ppb standard pursuant to its duty to promulgate NAAQS that are "requisite to protect the public health" with an "adequate margin of safety." The court also found that EPA did not fail to follow notice-and-comment provisions of the Administrative Procedure Act when it included language in the preamble to the final rule about a hybrid method of determining attainment of the new standard. The court pointed out that EPA stated in the preamble that the Agency would solicit public comment prior to finalizing guidance on using a combination of modeling and monitoring to determine attainment. As a result, the court declined to exercise jurisdiction on this issue.

## C. Other Air Pollution Developments

### 1. EPA Releases Guidance on Fuel Availability Provisions for Ships Off the Coast of North America

On June 26, EPA released interim guidance for ship owners and operators clarifying how the United States

will implement the United Nations International Maritime Organization (IMO) requirement to limit air pollution from ships.<sup>45</sup> The IMO has officially designated waters off the coast of North America, known as the North American Emission Control Area (North American ECA), as an area requiring stringent international pollution standards for ships. The standards include fuel sulfur limits. The IMO requirement derives from Annex VI of the International Convention for the Prevention of Pollution from Ships (MARPOL) and is implemented in the United States under the authority of amendments to the Act to Prevent Pollution from Ships (APPS).

The North American ECA, which includes the Atlantic coast, limits the maximum sulfur content of fuel oil used by ships in the ECA will be limited to 1.00 percent m/m (10,000 ppm). This standard will change on January 1, 2015, to 0.10 percent m/m (1,000 ppm). EPA's June 26 guidance for ship owners and operators clarifies how the U.S. government will implement fuel availability provisions when ships are unable to obtain fuel that meets IMO sulfur in fuel standards and how ship owners and operators can make a fuel unavailability claim.<sup>46</sup>

### 2. EPA Phases Out Stage II Vapor Recovery at the Gas Pump: Replaced by On-Board Refueling Vapor Recovery Systems

On May 10, 2012, EPA issued a final rule that will eliminate the requirement for gas stations to have Stage II vapor recovery systems at the pump.<sup>47</sup> This rule applies to the ozone transport region, which includes New York. Stage II vapor recovery systems recover ozone-forming volatile organic compounds and toxics that are forced out of the tank when loading at the pump.<sup>48</sup> Due to a 1990 Clean Air Act Amendment requirement, beginning in 1998, newer vehicle fleets began to install on-board refueling vapor recovery systems (ORVR) that reduce VOC emissions during refueling by using a carbon canister that captures the vapors from the tank before they reach the pump. As of 2006, all new cars, pick-up trucks, vans, and SUVs are manufactured with ORVR, making Stage II vapor recovery systems at the pump redundant. Beginning later this year, states may begin the process of phasing out vapor recovery systems at the pump. This final rule will ensure that air quality and public health are protected while potentially saving the approximately 31,000 affected gas stations located in mostly urban areas more than \$3,000 each year when fully implemented. More information is available at: <http://www.epa.gov/air/ozone/pollution/>.

### 3. Port Authority of New York and New Jersey Honored by Northeast Diesel Collaborative

On April 12, the Northeast Diesel Collaborative, a partnership between the EPA, state agencies, and private and nonprofit groups honored several agencies and organizations from Massachusetts, New Jersey, New York and

Vermont.<sup>49</sup> Included in the honorees was the Port Authority of New York and New Jersey.

The Northeast Diesel Collaborative brings together the collective resources and expertise of EPA, several state environmental agencies and private sector companies to address emissions from existing diesel-powered vehicles and equipment. The Port Authority of New York and New Jersey was recognized for efforts under its 2009 “Clean Air Strategy for the Port of NY & NJ,” which was designed to reduce greenhouse gas and other pollutant emissions from all port-related sources.

The Port Authority incorporated input from local and state agencies, tenants and customers, as well as environmental and community stakeholders into its strategy. The Port Authority’s initiatives include its Truck Replacement Program, Truck Phase Out Plan, and the Ocean-Going Vessel Low-Sulfur Fuel Program. In recognition of the Port Authority’s efforts, EPA Region 2 Regional Administrator Judith A. Enck said that “pollution from diesel engines is linked to asthma, respiratory problems, heart attacks and even premature death, and is especially dangerous to children and the elderly. Reducing air pollution from diesel engines has enormous health benefits and translates directly into fewer hospitalizations, less missed days of work and school and a better quality of life for everyone.” For more information on the PANYNJ Clean Air Strategy, please visit: <http://www.panynj.gov/about/port-initiatives.html>. To learn more about the Northeast Diesel Collaborative, visit: <http://www.northeastdiesel.org>.

#### 4. EPA Announces \$20 Million in Grant Funding for Clean Diesel Projects

On April 23, EPA announced the availability of up to \$20 million in Fiscal Year 2012 grant funding to establish clean diesel projects aimed at reducing harmful pollution from the nation’s existing fleet of diesel engines.<sup>50</sup> An additional \$9 million will be available through direct state allocations. EPA estimates that for every \$1 spent on clean diesel funding, up to \$13 of public health benefit is realized.

While EPA has issued standards to make new diesel engines 90 percent cleaner, there are nearly 11 million operating older diesels that predate the standards and emit large quantities of nitrogen oxides and particulate matter. The Diesel Emissions Reduction Act (DERA) was passed in 2005 as part of broader energy legislation and then reauthorized in 2011. Since DERA was first funded in Fiscal Year 2008, EPA has awarded over 500 grants, many of which have gone to modernize older school buses, transit buses, heavy-duty diesel trucks, marine engines, and locomotives. In addition, many of the grants have gone to economically disadvantaged communities whose residents suffer from higher-than-average instances of respiratory ailments.<sup>51</sup> The closing date for receipt of proposals was June 4, 2012.

#### 5. EPA Finalizes New Air Standards for Oil and Gas Production Facilities

In response to a court deadline, EPA finalized standards to reduce harmful air pollution associated with oil and natural gas production.<sup>52</sup> The final rules include the first federal air standards for natural gas wells that are hydraulically fractured. The standards, which were required by Section 111 of the Clean Air Act (the New Source Performance Standards) and Section 112 of the Act (the National Emissions Standards for Hazardous Air Pollutants), were informed by important feedback from a range of stakeholders including the public, public health groups, states and industry.<sup>53</sup> The stakeholder process resulted in final standards that reduce implementation costs, are achievable, and can be met by relying on proven, cost-effective technologies that reduce emissions by 95% and processes already in use at approximately half of the fractured natural gas wells in the United States. The technologies will also make it possible for companies to collect additional natural gas that can be sold.

The rule has two phases. During the first phase, until January 2015, owners and operators must either flare their emissions or use emissions reduction technology called “green completions,” which are already widely deployed at wells. In 2015, all new fractured wells will be required to use green completions. EPA estimates that 13,000 new and existing natural gas wells are fractured or re-fractured each year. As those wells are being prepared for production, they emit volatile organic compounds (VOCs), which contribute to smog formation, and air toxics, including benzene and hexane, which can cause cancer and other serious health effects. In addition, the rule is expected to yield a significant environmental co-benefit by reducing methane, the primary constituent of natural gas. Methane, when released directly to the atmosphere, is a potent greenhouse gas, more than 20 times more potent than carbon dioxide. “The president has been clear that he wants to continue to expand production of important domestic resources like natural gas, and today’s standard supports that goal while making sure these fuels are produced without threatening the health of the American people,” said EPA Administrator Lisa P. Jackson.<sup>54</sup>

### VI. Water

#### A. Protection and Restoration

##### 1. EPA to Work with Drinking Water Systems to Monitor Unregulated Contaminants

On May 1, 2012, EPA published a list of 28 chemicals and two viruses that approximately 6,000 public water systems will monitor from 2013 to 2015 as part of the agency’s unregulated contaminant monitoring program, which collects data for contaminants suspected to be present in drinking water, but that do not have health-based standards set under the Safe Drinking Water Act. EPA has standards for 91 contaminants in drinking water, and the Safe Drinking Water Act requires that EPA identify up to

30 additional unregulated contaminants for monitoring every five years.

EPA will spend more than \$20 million to support the monitoring, the majority of which will be devoted to assisting small drinking water systems with conducting the monitoring. The data collected under the Unregulated Contaminant Monitoring Rule 3 (UCMR 3) will inform EPA about the frequency and levels at which these contaminants are found in drinking water systems across the United States and help determine whether additional protections are needed to ensure safe drinking water. State participation in the monitoring is voluntary, and EPA will fund small drinking water system costs for laboratory analyses, shipping and quality control.

The contaminants to be studied include total chromium and hexavalent chromium, also known as chromium-6. In January 2011, EPA issued guidance to all water systems on how to assess the prevalence of hexavalent chromium and in the March 2011 proposal for UCMR 3, EPA invited comments on whether the agency should include chromium in the final rule. Public comments received by EPA were strongly supportive of adding total chromium and hexavalent chromium for monitoring. Additional contaminants of concern were selected based on current occurrence research and health-risk factors. For more information, visit: <http://water.epa.gov/lawsregs/rulesregs/sdwa/ucmr/ucmr3/index.cfm>.

## **2. EPA Holds Citizen Science Workshops in New York and New Jersey**

On June 19 and 20, EPA held two day-long workshops in Manhattan and Edison, respectively, to share information about ways in which people can get involved in collecting environmental quality data in their communities. The workshops brought together representatives from federal, state and local government agencies, as well as experts from academia and community-based groups, to help educate the growing corps of “citizen scientists.”

Citizen science is a form of research that enlists the public in collecting a wide range of environmental data to expand scientific knowledge and literacy. Topics covered in the workshops included: starting a citizen science program; funding sources; community and government/academic partnerships; success stories; data interpretation and use and current and emerging monitoring tools and technologies. For access to the workshop presentation materials, visit: <http://www.epa.gov/region02/citizen-science/>.

EPA is currently developing a Citizen Science web site to promote collaboration, coordination and communication. The web site will feature links to news on current technology trends and monitoring, funding sources, technical resources, training opportunities, regulatory and academic partnerships, success stories, as well as an open forum discussion, to continue the dialogue among individual citizens, community groups, non-governmental

organizations, government agencies, and academia in Region 2 and beyond.

## **3. EPA Provides \$171,256 in Grants to New York State Groups to Educate People About Efforts to Restore Urban Rivers**

Also in June 2012, EPA announced that it will provide grants to three community organizations in New York State to help restore urban waters, support community revitalization efforts and protect the health of people living near these waterways. The grants will be awarded to the Hudson River Sloop Clearwater, Groundwork Hudson Valley and Rocking the Boat, which will focus on the Bronx River. The funding is part of the EPA’s Urban Waters program, which supports community efforts to restore and revitalize local canals, rivers, lakes, wetlands, aquifers, estuaries, bays and ocean areas and provide access to them.

The Hudson River Sloop Clearwater will receive \$59,855 to teach youth in the Fall Kill Watershed about watershed science and green infrastructure, and help them design signs to educate and inspire their communities. The organization will also provide technical guidance to about 100 local landowners on how they can prevent their properties from contributing to water pollution, and will consult with 20 homeowners about green infrastructure designs for their properties and implement the projects on 10 of them. Groundwork Hudson Valley will receive \$51,401 to conduct a series of community meetings, planning and training sessions and workshops in Westchester County to educate people living near the Saw Mill River community about water quality and green infrastructure. The organization will also conduct outreach to neighborhood residents and businesses, and conduct educational sessions with local students. Rocking the Boat will receive \$60,000 to work with local students and others in hands-on restoration, monitoring, and educational activities both on and around the Bronx River. For more information, visit: <http://www.epa.gov/urbanwaters/index.html>.

## **B. Regulation and Guidance**

### **1. EPA Releases Draft Permitting Guidance for Using Diesel Fuel in Oil and Gas Hydraulic Fracturing**

On May 4, EPA released draft underground injection control (UIC) program permitting guidance for class II wells that use diesel fuels during hydraulic fracturing activities. EPA developed the draft guidance to clarify how companies can comply with a 2005 law that exempted hydraulic fracturing operations from the requirement to obtain a UIC permit, except in cases where diesel fuel is used as a fracturing fluid.

The draft guidance outlines for EPA permit writers, where EPA is the permitting authority, requirements for diesel fuels used for hydraulic fracturing wells, technical recommendations for permitting those wells, and a description of diesel fuels for EPA underground injection

control permitting. The draft guidance describes diesel fuels for these purposes by reference to six chemical abstract services registry numbers. For more information, visit: <http://water.epa.gov/type/groundwater/uic/class2/hydraulicfracturing/hydraulic-fracturing.cfm>.

## **2. EPA Issues Post-Construction Compliance Monitoring Guidance**

Also in May, EPA issued final guidance on conducting effective post-construction compliance monitoring to assess the performance of measures implemented under long-term combined sewer overflow (CSO) control plans, as provided in EPA's 1994 CSO Control Policy. This guidance will assist CSO permittees in developing post-construction compliance monitoring plans that collect sufficient data for evaluating the effectiveness of CSO controls and assessing compliance with the requirements of the Clean Water Act. The Agency developed a draft of the guidance, and received comments from state National Pollutant Discharge Elimination System ("NPDES") authorities and other stakeholders. For more information, visit: [http://cfpub.epa.gov/npdes/home.cfm?program\\_id=5](http://cfpub.epa.gov/npdes/home.cfm?program_id=5).

## **3. EPA Releases Fact Sheet on the Economic Benefits of Protecting Healthy Watersheds**

EPA recently released a new fact sheet as part of its Healthy Watersheds initiative, describing the economic benefits of protecting healthy watersheds by highlighting examples from existing peer-reviewed literature and studies. EPA's Healthy Watersheds Initiative is intended to protect the nation's remaining healthy watersheds, prevent them from becoming impaired, and accelerate restoration successes. It encourages interested states to take a strategic, systems approach to protecting healthy watersheds that recognizes the dynamic and interconnected nature of aquatic ecosystems.

The fact sheet describes studies that demonstrate that protecting healthy watersheds can reduce capital costs for water treatment plants and reduce damages to property and infrastructure due to flooding, thereby avoiding future costs. Additionally, examples in the fact sheet show that protecting healthy watersheds can generate revenue through property value premiums, recreation, and tourism. This fact sheet directs readers to important resources to learn more about the substantial efforts to monetize ecosystem services from across the country. This fact sheet is also a resource for those doing outreach to promote the protection of healthy watersheds. It is available at: <http://www.epa.gov/healthywatersheds>.

## **4. EPA Announces Framework to Help Local Governments Manage Stormwater Runoff and Wastewater**

On June 5, EPA issued a new framework to help local governments meet their Clean Water Act obligations. The Integrated Municipal Stormwater and Wastewater Planning Approach Framework assists EPA regional offices, states, and local governments to develop voluntary storm

and wastewater management plans and implement effective integrated approaches that will protect public health by reducing overflows from wastewater systems and pollution from stormwater. In developing the framework, EPA worked in close coordination with a variety of stakeholders, including publicly owned treatment works, state water permitting authorities, local governments, and non-profit environmental groups. EPA's framework outlines new flexibility to pursue innovative, cost-saving solutions, like green infrastructure, and will help communities as they develop plans that prioritize their investments in storm and wastewater infrastructure. For more information, visit: <http://cfpub.epa.gov/npdes/integratedplans.cfm>.

## **5. EPA Withdraws Proposal to Collect Information About Concentrated Animal Feeding Operations**

July 20, EPA announced its withdrawal of a proposed rule that would have required information to be submitted to the EPA about concentrated animal feeding operations (CAFOs). EPA sought public comment on the proposal, and in light of comments received from states regarding the amount of CAFO information states already have and include as part of the CAFO permitting process, EPA decided that it will instead use existing federal, state, and local sources of information to gather data about CAFOs and help ensure that CAFOs are implementing practices that protect water quality. EPA also signed a memorandum of understanding with the Association of the Clean Water Administrators (ACWA) to facilitate the exchange of information. This collaborative effort between the EPA and ACWA will focus on identifying CAFOs and obtaining pertinent information about CAFOs on a state-by-state basis for use by both ACWA members and EPA. For more information: <http://cfpub.epa.gov/npdes/af/aforule.cfm#withdrawal>.

## **6. EPA Releases Green Infrastructure Permitting and Enforcement Fact Sheets**

On June 25, EPA released a series of six fact sheets on incorporating green infrastructure measures into NPDES wet weather programs. The series builds upon existing EPA authority, guidance and agreements to describe how EPA and state permitting and enforcement professionals can work with permittees to include green infrastructure measures as part of control programs. The six fact sheets and four supplements address stormwater permits, total maximum daily loads, combined sewer overflow long-term control plans, and enforcement actions. The series is available at: [http://water.epa.gov/infrastructure/green-infrastructure/gi\\_regulatory.cfm#permittingseries](http://water.epa.gov/infrastructure/green-infrastructure/gi_regulatory.cfm#permittingseries).

## **7. EPA Issues Final Clean Water Act Section 404 Enforcement and Coordination Strategy**

On July 11, in response to an October 26, 2009 report by the EPA Office of the Inspector General, the agency released its new Clean Water Act Section 404 Enforcement and Coordination Strategy. The strategy was piloted for

a year and revised based on feedback from EPA regional offices, headquarters and the Corps of Engineers. The key elements of the final strategy are (1) establishing nationally consistent enforcement definitions, (2) leveraging program resources to more systematically identify Section 404 violations, (3) establish a national framework to track complaints, referrals and repeat and flagrant violators, (4) strengthen coordination between EPA offices and other agencies involved in protecting our nation's wetlands and other aquatic resources, and (5) case prioritization and coordination. For a copy of the strategy, visit: <http://www.epa.gov/compliance/resources/policies/civil/cwa/cwa404enf-strategy.pdf>.

## C. Compliance and Enforcement

### 1. Great Gun Beach Public Water System

On April 2, 2012, EPA and officials for the Town of Brookhaven executed a Consent Agreement and Final Order that requires the Town to install a raw water tap to be used to monitor the quality of the drinking water being provided by its public water system, complete a solar power supplemental environmental project at a cost of \$35,280 to supply power to the Great Gun Beach, and pay a cash penalty of \$1,200. The settlement arises from an October 6, 2011, EPA Administrative Complaint against the Town's Parks Department for failure to monitor the public drinking source located at Great Gun Beach, as required by the Safe Drinking Water Act.

### 2. EPA Agreement with Amtrak Brings Greater Drinking Water Protections for Riders

In late April, EPA entered into an agreement with the National Railroad Passenger Corp. (Amtrak) to ensure safe and reliable drinking water for the railroad's passengers and crews. To better protect the riding public from illnesses caused by microbiological contamination, the agreement requires Amtrak to, among other things, monitor all the drinking water systems on its railcars for pathogens, properly maintain its disinfection and system flushing, and take necessary corrective actions.

### 3. EPA Enters into Consent Decree with Perth Amboy to Upgrade Sewer System

On June 6, the United States lodged a consent decree with the City of Perth Amboy, New Jersey, in which the City agreed to make major improvements in its combined sewer system to protect human health and water quality. Under the agreement, the City will reduce the amount of sewage and other pollutants that flow out of its 16 combined sewer points into the Raritan River and Arthur Kill. EPA alleged that Perth Amboy violated the Clean Water Act and its New Jersey Department of Environmental Protection discharge permit by failing to properly maintain and operate its sewer system, conduct regular inspections or have a pollution prevention plan in place. The City also violated a previously issued EPA order to address Clean Water Act violations.

It is estimated that almost 370 million gallons of sewage flow into the Raritan River and Arthur Kill River through Perth Amboy's combined sewer system each year. Under the agreement, Perth Amboy will spend about \$5.4 million for the repair, upgrade and expansion of the city's combined sewer system, and will pay a \$17,000 penalty. The City has also agreed to increase the amount of wastewater that reaches the treatment plant to reduce its combined sewer overflows into the Raritan River and Arthur Kill. The consent decree was subject to a 30-day public comment period that ended on July 23, and is subject to final court approval. It can be viewed at [http://www.justice.gov/enrd/Consent\\_Decrees.html](http://www.justice.gov/enrd/Consent_Decrees.html).

### 4. Homebuilder Toll Brothers Inc. to Pay \$741,000 Clean Water Act Penalty and Implement Company-Wide Stormwater Controls to Prevent Discharges of Sediment and Polluted Stormwater Runoff

On June 20, EPA and the U.S. Department of Justice announced that Toll Brothers Inc., one of the nation's largest homebuilders, will pay a civil penalty of \$741,000 to resolve alleged Clean Water Act violations at its construction sites, including sites located in the Chesapeake Bay Watershed. Toll Brothers will also invest in a company-wide stormwater compliance program to improve employee training and increase management oversight at all current and future residential construction sites across the nation.

The government's complaint alleged 600 Clean Water Act violations, the majority of which involved Toll Brothers' repeated failures to comply with permit requirements at its construction sites, including requirements to install and maintain adequate stormwater pollution controls, such as silt fences, phased site grading and sediment basins. Polluted stormwater runoff and sediment from construction sites can flow directly into the nearest waterway, affecting drinking water quality and damaging valuable aquatic habitats.

This settlement is the latest in a series of enforcement actions to address stormwater violations from residential construction sites around the country, and includes Toll Brothers sites in Arizona, California, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, New Jersey, New York, North Carolina, Nevada, Ohio, Pennsylvania, Rhode Island, South Carolina, Texas, Virginia and West Virginia.

The consent decree is subject to a 30-day public comment period and approval by the court, and can be viewed at: <http://www.epa.gov/compliance/resources/cases/civil/cwa/tollbrothers.html>.

## VII. Conclusion

From voluntary programs and collaboration with stakeholders, to science, remediation, regulation and enforcement, EPA continues to employ a variety of tools in its work to protect and restore America's public health and

environment. For more information on the issues, science and law behind the agency's work, visit [www.epa.gov](http://www.epa.gov), and to keep up with more local developments, visit Region 2's website, at: <http://www.epa.gov/aboutepa/region2.html>. You can also sign up for our various list-serves, podcasts, mobile apps, etc at: [www.epa.gov/epa-home/socialmedia.html](http://www.epa.gov/epa-home/socialmedia.html).

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