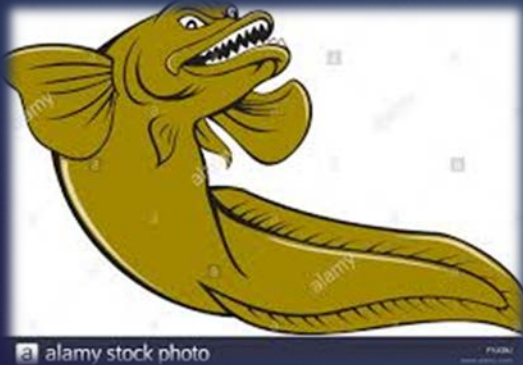


EPA REGION 2 UPDATE

NYSBA EELS Fall Meeting
September, 2019



WALTER MUGDAN
DEPUTY REGIONAL ADMINISTRATOR
US EPA REGION 2



EPA Strategic Plan 2018-2022

▶ Three major Goals:

- ▶ Core Mission
- ▶ Collaborative Federalism
- ▶ Rule of Law & Process

▶ Six overarching priorities:

- ▶ attainment of national ambient air quality standards;
- ▶ modernize aging drinking water and wastewater infrastructure;
- ▶ accelerate the pace of site cleanups and promote site reuse;
- ▶ comply with statutory requirements and mandatory deadlines of recently-amended TSCA statute for ensuring the safety of chemicals;
- ▶ increase environmental law compliance rates; and
- ▶ accelerate permit related decision-making.



EPA Policy on Federal/State Enforcement Partnerships

- ▶ Policy issued 7/11/2019; replaces January 2018 interim policy.
- ▶ Three major components:
 - ▶ Joint work planning
 - ▶ Strategic planning & targeting
 - ▶ Scheduling inspections
 - ▶ Consider enforcement response
 - ▶ Roles of states & EPA
 - ▶ Rapid elevation of issues

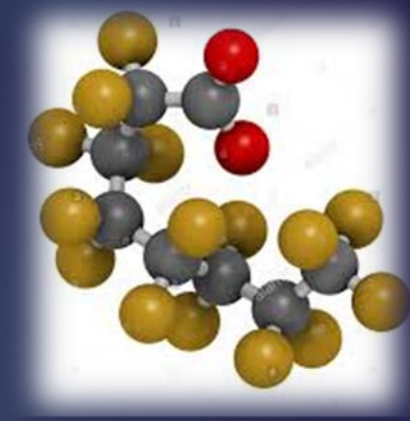


EMERGING CONTAMINANTS

- ▶ **PFAS** (per- and poly-fluoroalkyl substances)
 - ▶ **PFOA**
 - ▶ Teflon
 - ▶ Fire-fighting foam
 - ▶ Wide-spread; relatively easy to treat
 - ▶ **GenX**
 - ▶ Replacement for Teflon
 - ▶ Somewhat less easy to treat
 - ▶ **PFNA, PFOS, etc.**
- ▶ **1,4-dioxane**
 - ▶ Wide-spread; relatively difficult to treat



EMERGING CONTAMINANTS



- ▶ No federal regulatory standards
 - ▶ 70 ppt Health Advisory level for PFOA/PFOS
- ▶ State regulatory standards include:
 - ▶ NY: MCLs of 10 ppt planned for PFOA & PFOS; and 1 ppb for 1,4-dioxane
 - ▶ NJ: 13 ppt MCL for PFNA; proposed 14 ppt MCL for PFOA
 - ▶ NC: “Health goal” of 140 ppt for GenX
 - ▶ CO: 0.35 ppb for 1,4-dioxane in drinking water supplies
- ▶ Local regulatory standards
 - ▶ Rensselaer County, NY: 0.35 ppb for 1,4-dioxane discharge from Superfund site treatment plant located on County land.

EMERGING CONTAMINANTS

- ▶ EPA PFAS Summit, May 2018: EPA will --
 - ▶ Initiate steps to evaluate need for an MCL for PFOA & PFOS;
 - ▶ Convene federal partners and examine what is known about PFOA & PFOS in drinking water;
 - ▶ Begin necessary steps to propose designating PFOA and PFOS as “hazardous substances” through on or the available statutory mechanisms, including potentially CERCLA §102;
 - ▶ Develop groundwater cleanup recommendations for PFOA & PFOS at contaminated sites; and
 - ▶ Develop toxicity values for GenX and PFBS.



Notable R2 Enforcement Developments

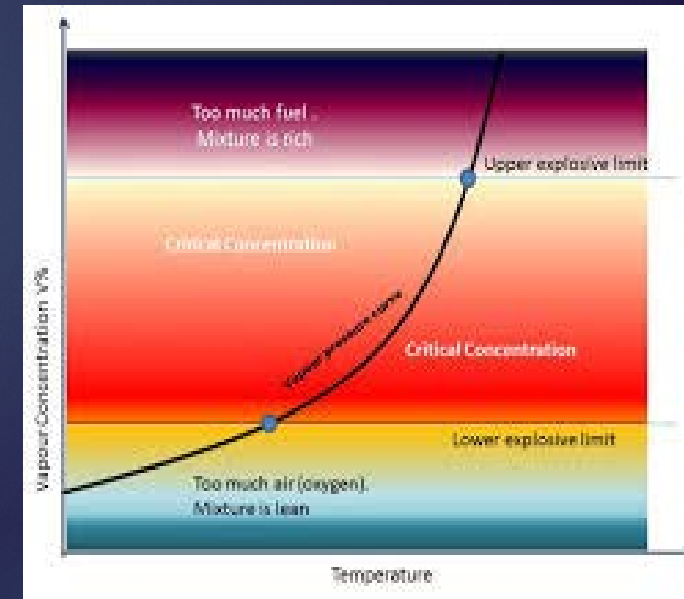
► Methyl Bromide Cases

- Esmond Family poisoned in May 2015 by illegal application of methyl bromide pesticidal fumigant
- Application carried out by Terminix franchisee
- Criminal prosecution of applicator, Terminix, others
 - Guilty pleas in all cases
- Civil investigations revealed other instances of illegal application
- Administrative enforcement actions initiated against twelve applicators & two distributors
 - Penalties and injunctive relief sought
 - Most now resolved



Notable R2 Enforcement Development

- ▶ *Total Petroleum* CAA §303 Emergency Order issued 5/20/2019
- ▶ Order addresses four tanks at Total's Guaynabo facility reported on 5/8/19 to have elevated Lower Explosive Limit (LEL) levels, indicating dangerous fire hazard
 - ▶ NFPA standard for such tanks: LEL not to exceed 25%
 - ▶ Five tanks had LELs between 39% and 100%
 - ▶ After 10 days only 1 tank had LEL <25%
 - ▶ Order required 4 tanks to be emptied, de-gassed within 3 days; then repair tanks; and not put tanks back into service without prior EPA approval



Notable R2 Enforcement Developments

- ▶ NYC Hillview Reservoir Cover Judicial Consent Decree
 - ▶ 90-acre reservoir is last stop for finished water before entering NYC distribution system.
 - ▶ Disinfection takes place upstream of Hillview, but reservoir is not covered so pathogens can enter water there.
 - ▶ *Giardia*, *Cryptosporidium* and other pathogens from animal waste
 - ▶ 1999 NYS administrative order required cover
 - ▶ 2005 federal SDWA regulation required cover
 - ▶ 2010 EPA administrative order required cover
 - ▶ 3/18/2019 judicial consent decree requires cover
 - ▶ Lengthy compliance schedule – cover to be installed NLT 2049
 - ▶ Cost likely to exceed \$1.6 billion
 - ▶ \$1 million civil penalty; \$50K payment + \$200K SEP to settle State claims



Notable R2 Enforcement Developments

- ▶ New York City Housing Authority Administrative Agreement
 - ▶ Judicial complaint & proposed consent decree filed EDNY on 6/11/2018
 - ▶ Cited multiple HUD & EPA violations, including violations of EPA's Renovation, Repair & Painting (RRP) rule applicable to lead-based paint
 - ▶ Court rejected proposed consent decree; parties thereafter negotiated administrative agreement.
 - ▶ Agreement is with HUD; EPA is not a party, but EPA lead-based concerns are addressed.
 - ▶ Agreement includes requirement for federal monitor.
 - ▶ Selected by HUD in consultation w/ US Attorney, NYCHA and City
 - ▶ Paid for by City
 - ▶ Monitor has broad powers to ensure action plans are implemented and compliance achieved



Interim Remedies at R2 Sediment Sites

- ▶ Berry's Creek -- \$332 M interim remedy selected Sept. 2018
 - ▶ Extensive mercury & PCB contamination
 - ▶ Contributes to contamination of Hackensack River
 - ▶ Dredge & cap upper section of creek
 - ▶ Additional Operable Unit(s) to follow
 - ▶ Interim remedy proposed by PRPs
 - ▶ All parties understand this is not the final remedy, and more work may be needed, including in the upper section of creek



Interim Remedies at R2 Sediment Sites

- ▶ Upper 9 Miles of Lower Passaic River (LPR)
 - ▶ LPR contaminated with dioxin, PCBs, other substances
 - ▶ EPA selected bank-to-bank dredge-and-cap remedy for lower 8 miles of LPR; \$1.4 billion project now in design; construction to begin ~2021.
 - ▶ PRPs proposed interim remedy (estimated \$300-\$500 M) for upper 9 miles, to include selected areas for dredge-and-cap
 - ▶ Focused Feasibility Study being performed by PRPs; draft FFS scheduled for 8/2019; proposed cleanup plan by 9/2020.
 - ▶ Accelerated process will allow use of cleanup infrastructure for lower 8 miles
 - ▶ All parties understand final remedy could require additional work



Early Remedy at a R2 Sediment Site

- ▶ Newtown Creek Superfund Site -- CSO Mitigation Project
 - ▶ 12/2018 EPA administrative consent order with NYCDEP
 - ▶ NYCDEP will perform Focused Feasibility Study evaluating CSO controls necessary for Superfund purposes
 - ▶ FFS expected to result in early selection of a CSO remedy, prior to selection of a site-wide remedy
 - ▶ FFS will evaluate NYCDEP's 2017 Clean Water Act Long Term Control Plan for Newtown Creek CSOs
 - ▶ LTCP proposed a \$1.4 billion CSO capture tunnel
 - ▶ NYCDEP hopes to demonstrate that LTCP proposal will be sufficient for Superfund



Interim Remedies at R2 Sediment Sites

- ▶ Newtown Creek Superfund Site – Lower Two Mile Study
 - ▶ 7/25/2019 EPA administrative consent order with five private PRPs (“Newtown Creek Group” or NCG)
 - ▶ NCG will perform FFS evaluating interim remedy options for lower two miles the five-mile Creek
 - ▶ FFS expected to result in early selection of interim remedy for that section of the creek, prior to selection of a site-wide remedy.
 - ▶ Anticipated that final remedy for lower two miles will be included in final site-wide remedy.

