



Department of
Environmental
Conservation

I Fought the Law and the Law Won- Regulatory Initiatives & Enforcement

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Deputy Commissioner and General Counsel

Play List

Police on My Back – Operation Trash Net

Straight to Hell – Tonawanda Coke

Should I Stay or Should I Go – FMC

Complete Control – Northrup Grumman Plume

Do it Now– Dunn Landfill

Cool Under Heat – Implementation of the 2019 Climate Leadership and Community Protection Act (CLCPA)



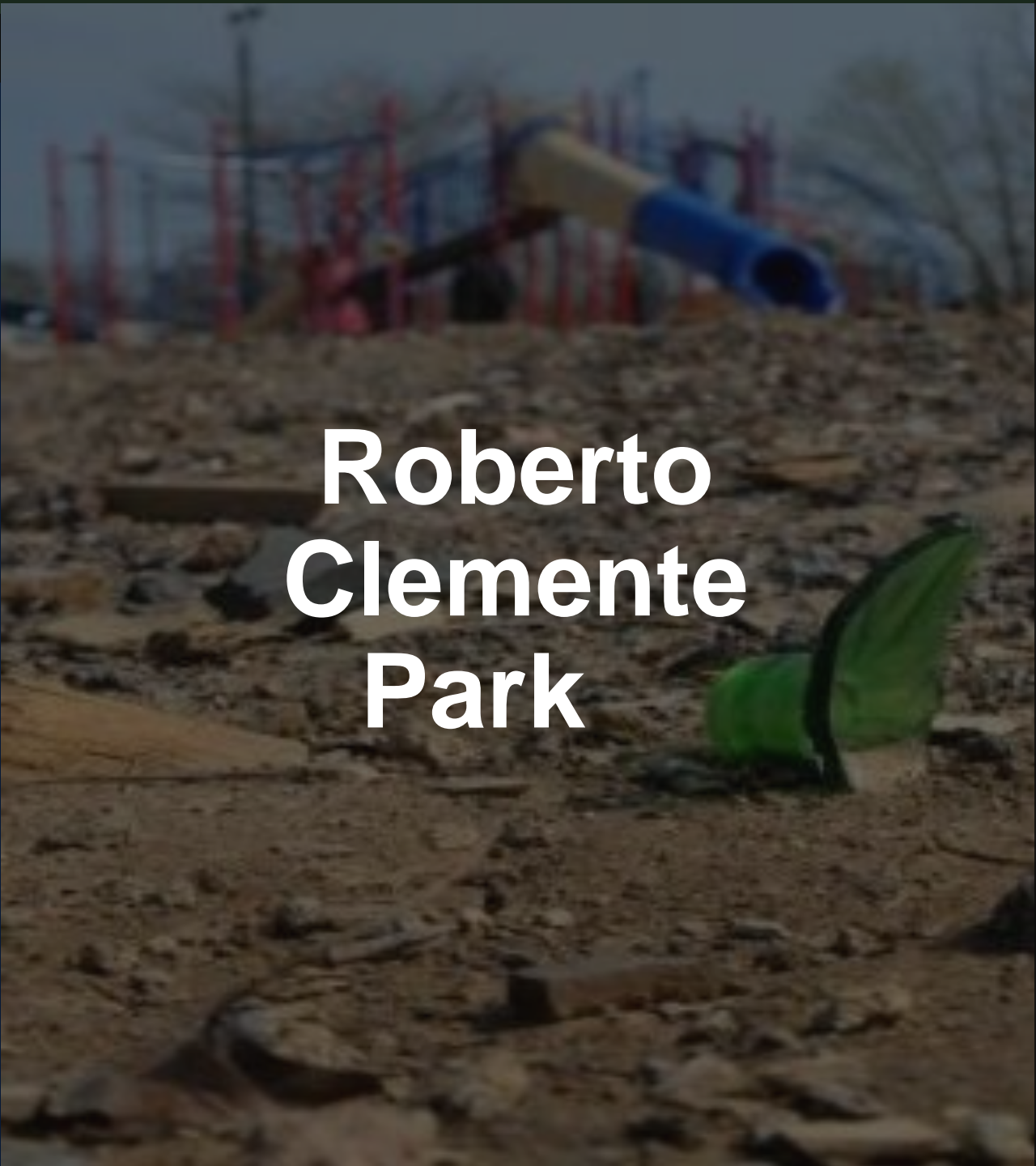


Illegal Disposal came to the forefront in 2014 after contaminated C&D was dumped at the Town of Islip's Roberto Clemente Park, resulting in the park's closure for several years

Material contained elevated levels of organic compounds, metals, pesticides, PCB's, asbestos, as well as physical contaminants



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Roberto Clemente Park



Illegal dumping of approximately
40,000 tons of C&D from NYC

Investigation revealed 4 sites in
Suffolk County that were the
dumping ground for the illegal
disposal of solid waste

Toxic Dumping Trial

4 sites in Suffolk County illegally dumped with contaminated solid waste

Roberto Clemente Park – Brentwood

Sage Street – Central Islip

Veterans Way – Islandia

Brook Ave – Deer Park



People v. Thomas Datre, et al

(Toxic Dumping Trial)

- Biggest Criminal Environmental Trial in Suffolk County
- 10 Defendants – individuals and corporations
- Special Grand Jury – Sept 2014 – November 2014
- 32 Count Indictment – ECL felonies, PL felonies dealing with environmental crimes and government corruption



People v. Datre (cont.)

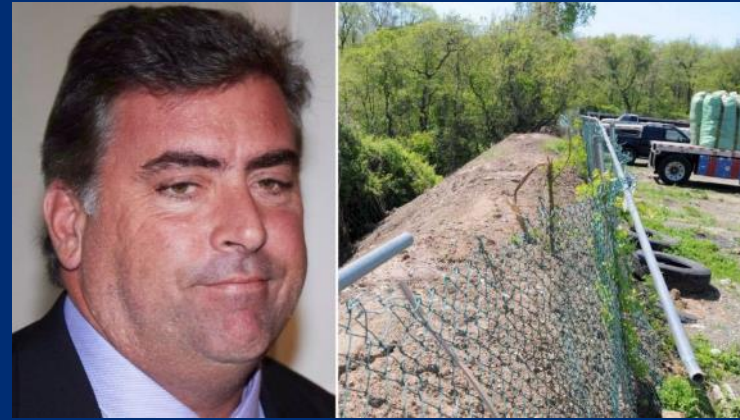
- Trial – February 2016- March 2016
 - 66 witnesses – 9 total DEC personnel testified for GJ & trial
 - 338 exhibits – majority was documentary evidence and photographs
- RESULT =



GUILTY

Datre Part 2

- People v. Ronald Ciancuilli
- Datre co-defendant who was severed from the first trial and had his own trial in May 2016
- RESULT=



GUILTY

Governor Cuomo Announces Results of Crackdown on Illegal Waste Dumping Throughout Long Island, NYC and the Mid-Hudson Valley

ENVIRONMENT

OPERATION TRASH NET

In 2017 DEC lead a multi agency crackdown on the illegal disposal of C&D waste and strengthened NY's solid waste regulations to deter illegal dumping, address the growing threat and protect NY's water quality, especially on LI



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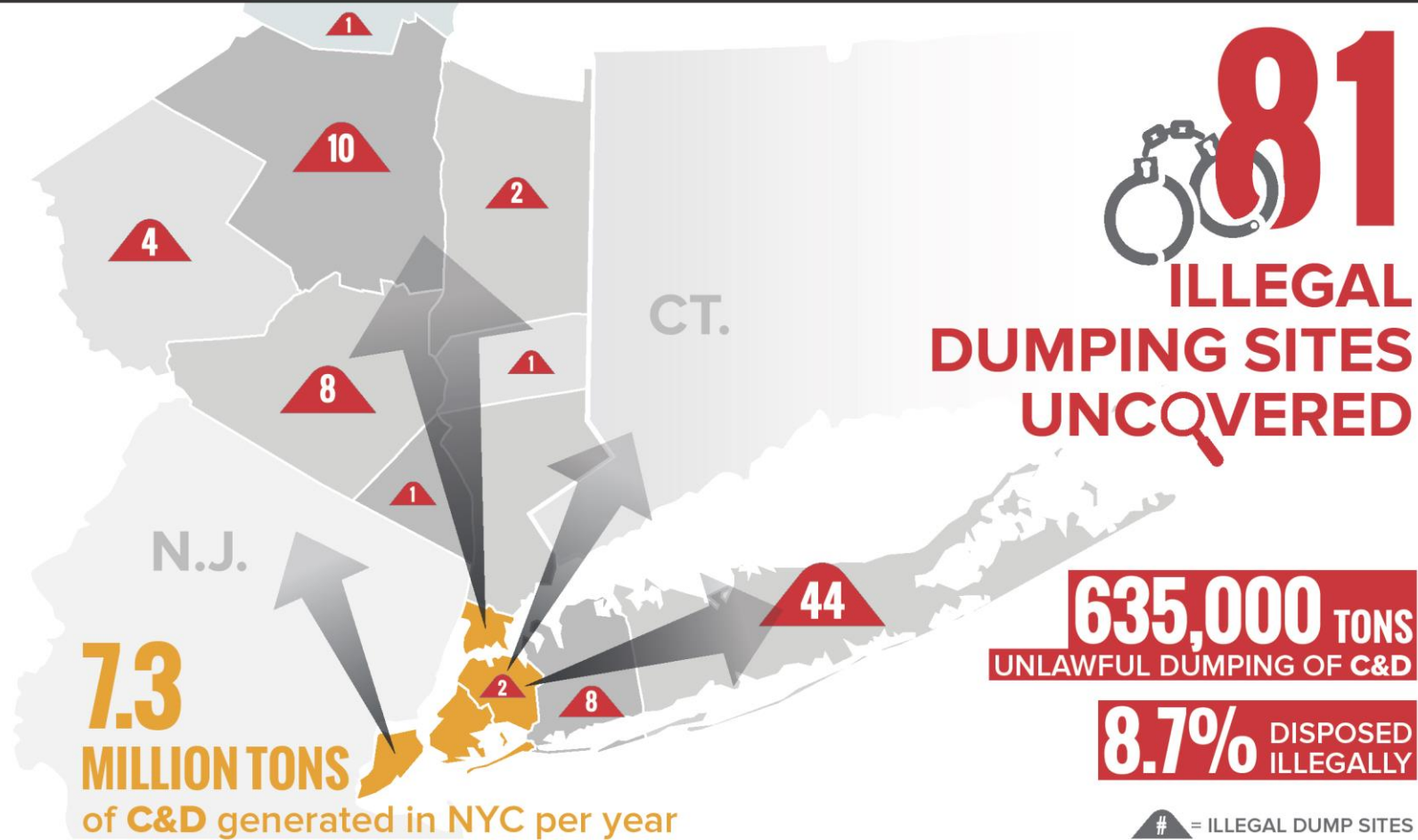


OPERATION TRASH NET

DEC's ECO's and DMM teamed up with district attorney's offices, NYS Police, State DOT and local law enforcement agencies to launch an enforcement blitz on LI and in the Mid-Hudson Valley on the illegal disposal of C&D and other solid waste violations.

This collaboration has spearheaded dozens of undercover details and truck surveillance operations to uncover dozens of crimes.

OPERATION TRASHNET

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635,000 TONS
UNLAWFUL DUMPING OF C&D

8.7% DISPOSED ILLEGALLY

 = ILLEGAL DUMP SITES



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Actions taken during Operation TrashNet on Long Island and in the Mid-Hudson Valley:

- Over 550 total tickets issued, and charges filed for various misdemeanors and other serious safety violations during enforcement actions
- More than 170 tickets issued for unlawful disposal of solid waste
- More than 40 trucking companies identified
- 81 new illegal dumping sites uncovered
- 26 trucks seized and impounded
- 53 search warrants executed



Operation Pay Dirt

Executed by the Suffolk County District Attorney's Office in partnership with the DEC in 2018:

- 24 offenders arrested
- 12 corporations charged with crimes
- 12 trucks seized
- Dozens of new illegal dump sites uncovered

Typical contaminants found in the illegally disposed fill:

- Metal
- Treated lumber
- Textile
- Slag
- Coal
- Ash
- Tile
- Wire
- Plastic
- Glass
- Foam insulation
- Asbestos



What's next?

- Monitoring and preventing illegal dumping remains a top priority of the DEC
- New regulations are being written and implemented to deter illegal dumping and protect our environment

DEC Strengthened Part 360 Solid Waste Management Regulations in 2017 Concerning C&D Debris

- Enhanced tracking for transport of C&D debris generated in New York City
- Required registration (Part 364) for transportation of C&D debris
- Expanded beneficial use determinations for select types of C&D debris
- Set limits on allowable storage volumes at C&D debris processing facilities
- Required analysis of all fill material leaving all C&D debris processing facilities

Strengthened regulations specific to Long Island

- Restricted-use and limited-use fill generated outside Long Island is now prohibited from being transported onto Long Island
- Restricted-use fill must meet general fill requirements for protection of groundwater
- Limited-use fill is prohibited from reuse

TCC - No Stranger to Enforcement

2009 - joint state and federal multi-media inspection that detected numerous federal and state laws.

2010 - DEC and EPA issued parallel administrative orders that required repairs and modification to TCC's by-products area due to the significant emissions of hazardous air pollutants, including benzene.

2015 - DEC and EPA reached a settlement with TCC on the remaining violations not covered by the 2010 Orders which was embodied in a federal Consent Decree. The settlement required the payment of a \$4 million penalty and numerous injunctive relief items.



Criminal Conviction – Second Criminal Prosecution Nationally Under the CAA

2010 - Criminal indictment issued against TCC and its environmental control manager for violating the CAA, RCRA and for obstruction of justice (concealing a pressure relief valve that released uncontrolled benzene).

2013 – TCC and its environmental control manager were guilty.

2014 - TCC was sentenced and required to pay a \$25 million dollar fine and given five years probation (\$12.5 million fine and \$12.2 million to fund two environmental studies). TCC's environmental control manager was fined \$20,000 plus sentenced to one year in prison.



DEC Administrative Enforcement Continued After the Criminal Conviction

DEC issued numerous Notices of Violation to and entered into 7 Orders on Consent with TCC from the sentencing in 2014 to 2018. The violations involved Title V permit violations, petroleum spills, chemical and bulk storage spills, SPDES violations and improper disposal of hazardous waste. These matters were in addition to several actions against TCC for non-compliance with the joint federal and state Consent Decree.



2018 Brought Significant Opacity and Other Violations

- Opacity violations started occurring at TCC on a regular basis in January 2018. Opacity exceedances then became a daily occurrence through the spring and fall of 2018.
- TCC also violated several CBS, PBS, SPDES and RCRA laws and regulations and its Title V permit for coke oven gas emissions during this time.



Sodium hydroxide spill



Weak Ammonia Liquor release due to hole in tank



PBS Discharges



TCC reported to DEC that it failed to perform a SPDES required sampling event “due to inattention to permit schedule.”

SECTION 1 **Appendix B**

New York State Department of Environmental Conservation
Division of Water

Report of Noncompliance Event

To: DEC Water Contact ROBERT SMYTHE DEC Region: 9

Report Type: ☐ 5 Day ☐ Permit Violation ☒ Order Violation ☐ Anticipated Noncompliance ☐ Bypass/Overflow ☐ Other

SECTION 2

SPDES #: NY-0002399 Facility: TONAWANDA COKE CORP.

Date of noncompliance: 1ST QTR 2018 Location (Outfall, Treatment Unit, or Pump Station): OUTFALL 004

Description of noncompliance(s) and cause(s): MISSED 1ST QUARTER 2018 SAMPLING EVENT ON OUTFALL 004 FOR WHOLE EFFLUENT TOXICITY FOR SPDES PERMIT REQUIREMENTS DUE TO INATTENTION TO PERMIT SCHEDULE

Has event ceased? NA If so, when? NA Was event due to plant upset? NO SPDES limits violated? NO

Start date, time of event: — am End date, time of event: —

Date, time oral notification made to DEC? JUNE 05, 2018 DEC Official contacted: ROBERT SMYTHE

Immediate corrective actions: SAMPLED / ANALYZED OUTFALL 004 AS SOON AS ERROR WAS IDENTIFIED. WILL CONTINUE QUARTERLY SAMPLING INTO 1ST QTR 2019 TO ACHIEVE 4 QUARTER/YEAR REQUIREMENTS FOR W.E.T. TESTING

Preventive (long term) corrective actions: MEET ALL PERMIT DEADLINE REQUIREMENTS

SECTION 3

Complete this section if event was a bypass:

Bypass amount: — Was prior DEC authorization received for this event? —

DEC Official contacted: — Date of DEC approval: —

Describe event in "Description of noncompliance and cause" area in Section 2. Detail the start and end dates and times in Section 2 also.

SECTION 4

Facility Representative: ROBERT KOLVER Title: PLANT SUPERINTENDENT Date: 6-08-18

Phone #: (716) 876-6222 Fax #: (716) 876-4400



Cease and Desist and Air Permit Revocation

TCC's continuous operation in conscious disregard for environmental laws led to the issuance of a Cease and Desist and Notice of Intent to Revoke TCC's air permits which was served in July 2018.

Rather than cease operations, TCC requested a hearing that was scheduled to begin on October 10, 2018.



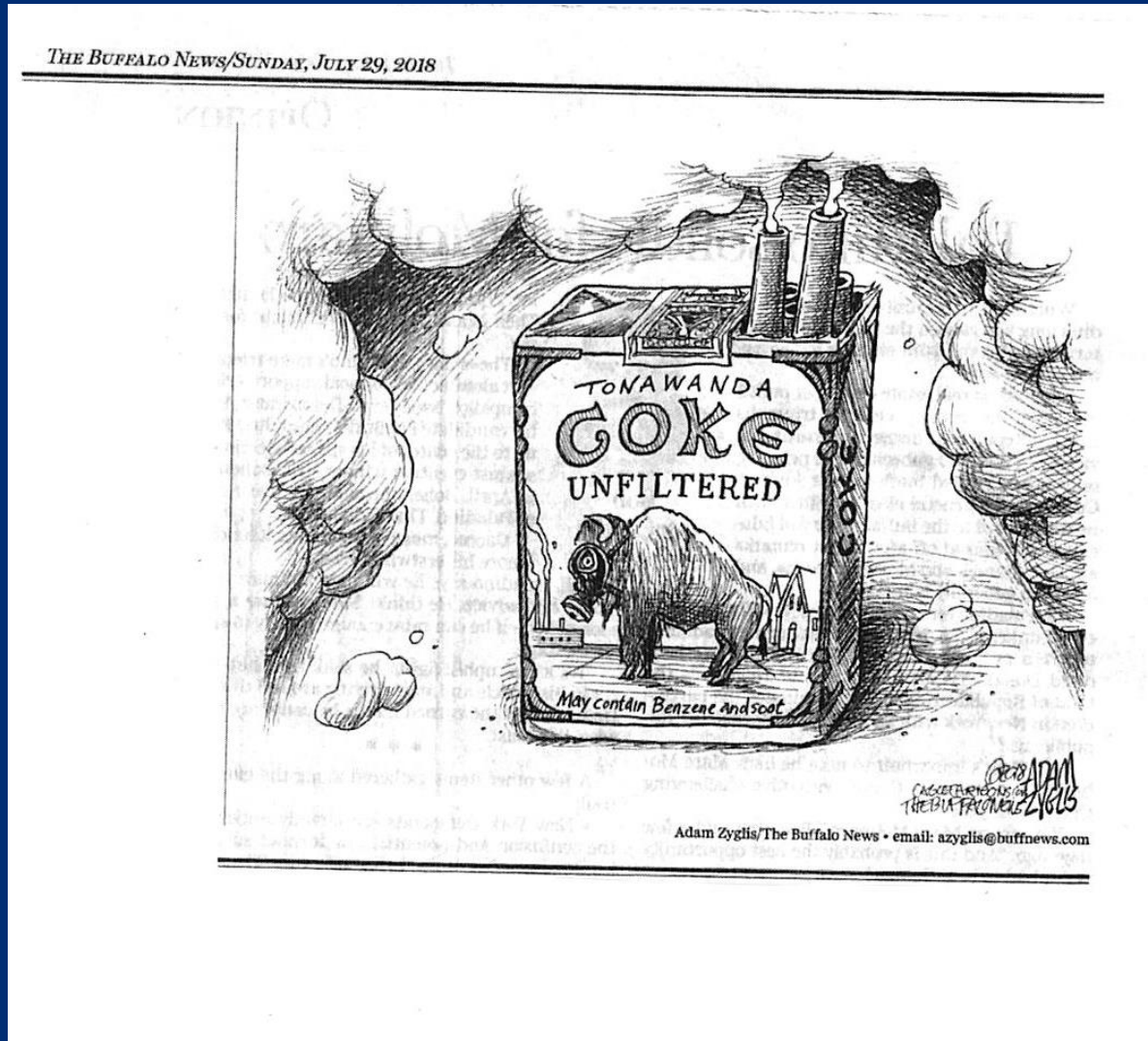
TCC Criminal Probation Violation

A few months after the service of the cease and desist/permit revocation notice, the federal probation department filed a petition alleging that TCC violated the terms of its probation due to the continued federal and state opacity limit violations and emissions of coke oven gas from the facility.

Following a hearing, Judge Skretny (who presided over the 2013 criminal trial) found that TCC violated the terms of its probation and required that TCC perform a battery stack test, undertake various repairs to the battery in an attempt to stop the opacity violations and required a third party compliance monitor.



Common Theme – Profits Over Environmental Compliance



Harsh Words from Judge Skretny

At the sentencing, Judge Skretny told TCC's President – “You cannot operate like this anymore. You cannot continue to shirk your environmental responsibilities. You cannot continue to elevate cost over compliance.”

He further stated that “with this present probation violation, Tonawanda Coke has failed this community again,” the “culture of profit over environmental consciousness appears to persist” and “put simply, Tonawanda Coke continues to place a low priority on environmental compliance.”



Permit Revocation Proceeding Settled

TCC agreed to shut down operations on October 10, 2018 – day that the proceeding was to begin.

TCC started shutdown procedures on October 14, 2018.

TCC filed for bankruptcy on October 15, 2018.

TCC vacated the site on October 28, 2018.



Chapter 11 Bankruptcy

The bankruptcy proceeding is on-going. Proofs of claims have been filed. The main secured creditor is Honeywell International (former owner and operator of the site) who holds mortgages on TCC's property for funds lent to TCC to pay the criminal fine.

TCC sold various assets last month at an auction.

DOJ recently served a motion for discovery to understand the disbursements made and funds owed to various sister and related corporate entities of TCC.

DEC and EPA Oversight Since Shutdown

The agencies have worked closely to ensure a safe shutdown of the operating components of the facility. Steps have also been taken to address possible incidents, including:

- stabilizing and/or eliminating areas of potential releases of contaminants
- properly storing various chemicals the remained after shutdown
- cleaning and decommissioning sumps and trenches in the process area



Oversight Efforts

- treatment of contaminated wastewater in process tanks
- excavation of impacted soils
- continuous operation and maintenance of the facility's stormwater management system
- negotiation with a former PRP regarding the removal of the abandoned coal tar storage tanks at the site across the road from the plant referred to as Site 108

Next Steps – Clean up and Future Redevelopment

DEC shares the common goal of implementing a comprehensive investigation and cleanup that is fully protective of public health and the environment in order to bring the site back into productive reuse.

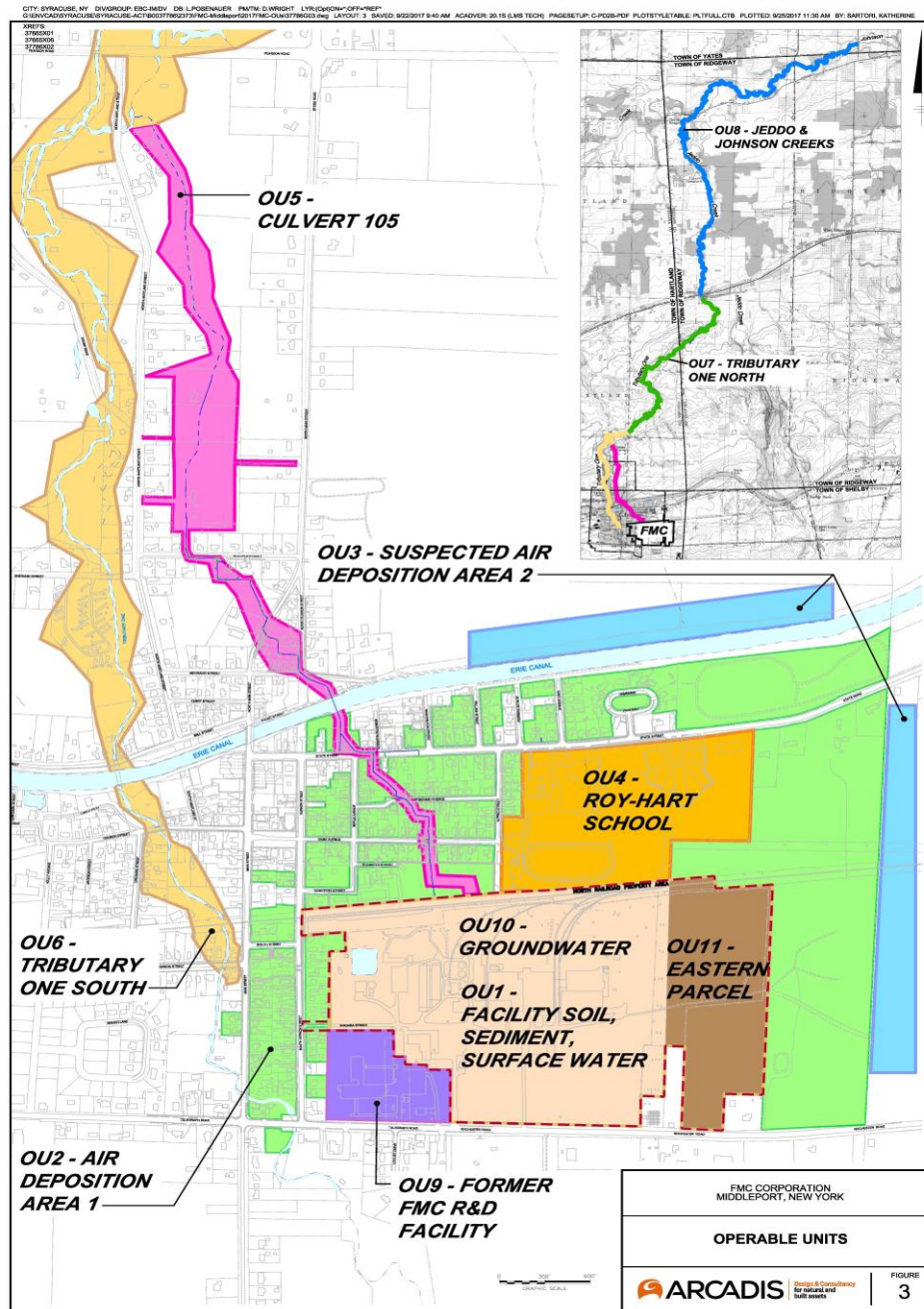
Options include the federal superfund program, the state superfund program, the brownfield cleanup program and/or a combination of these programs for various areas of the site.



FMC Corporation - Arsenic contamination in WNY

- FMC Corporation owns a 103-acre pesticide repackaging facility in Middleport, NY
- Historical pesticide manufacturing at the facility resulted in arsenic, DDT, and other hazardous waste contamination at the facility and in off-site areas (including residential yards and a school in the village)
- The facility is subject to RCRA permitting and compliance, and the off-site areas require investigation and remediation under state hazardous waste laws (Article 27, Title 13 of the ECL)
- From the early 1990s until recently, a minimal amount of remediation, other than interim actions, had been performed





FMC Site

11 Operable Units

Most are Off-Site



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FMC fought the Law

- After DEC issued a remedy decision for over 200 residences and a school (a decision which FMC believed was too stringent), FMC filed an Article 78 to challenge the decision
- FMC also sought to prevent the Department from implementing the remedy using its own state funds
- **And the law won...**After several appeals, the Court of Appeals ruled completely in the Department's favor: *FMC v. NYSDEC*, 31 N.Y.3d 332 (May 2018)



FMC then pursued settlement

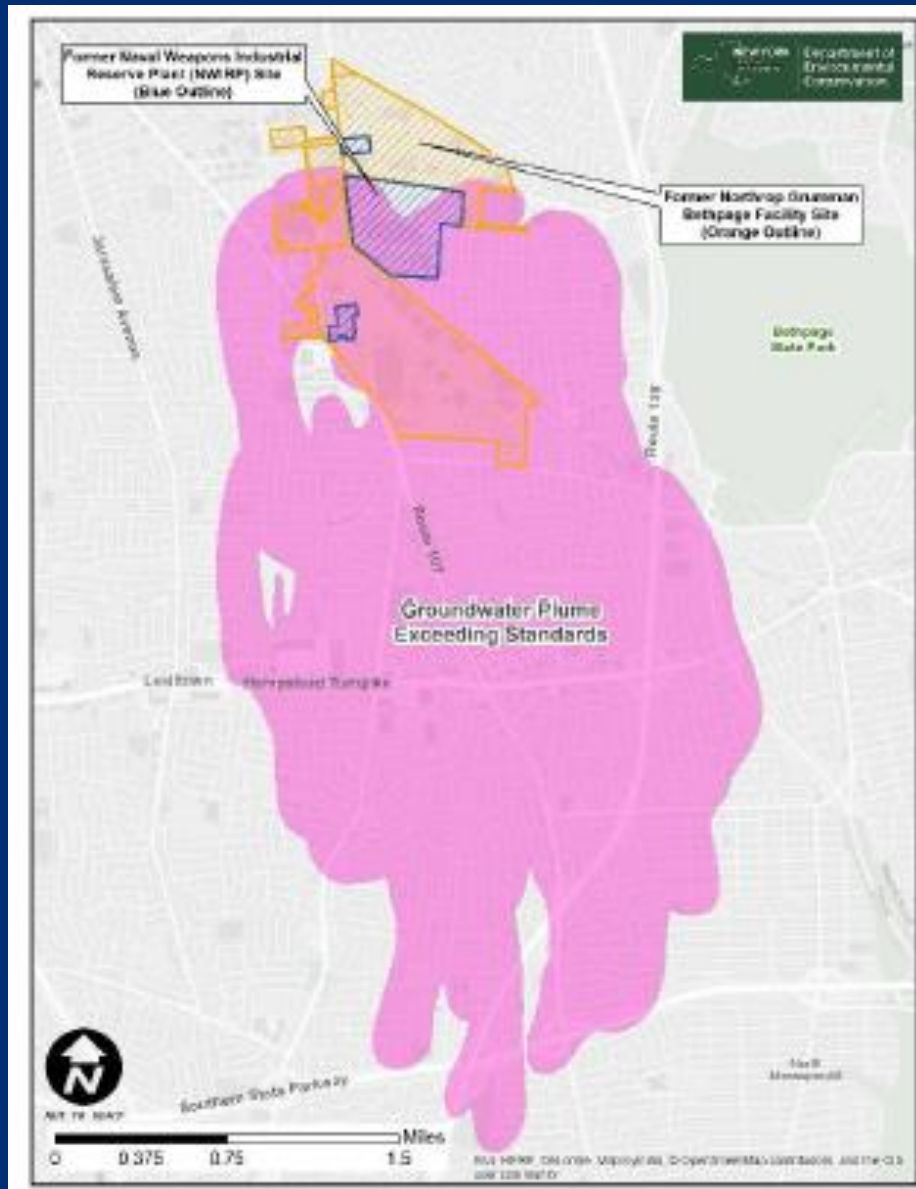
- After the loss at the Court of Appeals, FMC was facing a significant cost recovery case and many years of litigation and expert consultant costs to keep fighting
- FMC also received notices of violation for several on-site activities that violated state hazardous waste laws, including an unauthorized demolition of a building containing hazardous wastes
- On June 6, 2019, FMC and NYSDEC entered into a comprehensive consent order, one of the largest environmental enforcement settlements to date:
 - Payment of over \$31M for past NYSDEC costs
 - Payment of \$2.4M penalty and implementation of a \$1M Environmental Benefit Project
 - Posting of \$80M in Financial Assurance
 - Reimbursement of NYSDEC future costs and takeover of remediation after 2020 (finishing remediation of all OUs will likely cost over \$100M)



Northrup Grumman – Long Island Groundwater Plume

- A portion of Long Island's sole source aquifer, in and around the community of Bethpage, has been impacted by legacy contamination from previous industrial operations by Northrup Grumman and the US Navy
- A massive plume of contaminated groundwater, measuring approximately 2 miles wide and 4 miles long, has already impacted several water districts and could impact future water districts if not contained
- Previous remedial decisions by the DEC, including pumping and treating of contaminated groundwater by Grumman, the Navy, and several water districts, has been the main remedial approach





- Previous modeling and studies determined that levels of VOCs would attenuate – recent studies have shown minimal attenuation
- Also, older models showed the plume would not move considerably to the south – new modeling shows the opposite, the plume is moving
- Public sentiment – the plume should be contained, so that other water districts and the citizens that are served by them are not affected

Grumman – updated modeling and new amended remedy

- Legislation passed in 2014 seeking a reassessment of the feasibility of containment of the plume
- DEC, in conjunction with its contractors and the USGS, performed state-of-the-art modeling over the last several years, and in May of 2019 issued a supplemental feasibility study and a proposed amended remedy, which states that full containment is feasible and would be the action most protective of public health and the environment
- DEC anticipates issuing the final amended remedy shortly, and the Department will seek implementation of the amended remedy by the Navy and Grumman
- Entire approach to the Navy Grumman plume shows how government should work – base decisions on science and be willing to adapt to changes in technology and circumstances – USEPA should consider this approach to the Hudson River





Rensselaer, New York- Dunn Land Fill

Background

Facility: Sand and gravel mine with phased conversion to a construction and demolition (C&D) debris disposal facility

Location: Urban location in close proximity to public school and residential neighborhoods, within the viewshed of downtown Albany, on municipal border of City of Rensselaer and City/Town of North Greenbush

Primary Community Complaints: Dust, truck traffic, odors



DEC Enforcement – Order on Consent 2018

Violations:

- Use of unpermitted access points
- Off-site placement of mined material
- Off-site stormwater discharge
- Off-site dust migration

Assessed Civil Penalty:

- \$100,000

Environmental Benefit Project:

- \$225,000 for benefit of school and local community

Schedule of Compliance:

- Site stabilization
- Fugitive dust control plan
- Haulageways improvement
- Dust mitigation measures, including hydromulching, fencing, street sweeping, and truck washing



DEC Enforcement – Order on Consent 2019

- **Violations:**

- Failure to properly hydromulch wind-sided slopes of mine site
- Failure to properly apply water and approved dust palliatives to prevent dust from leaving mine site

- **Civil Penalty:**

- \$35,000

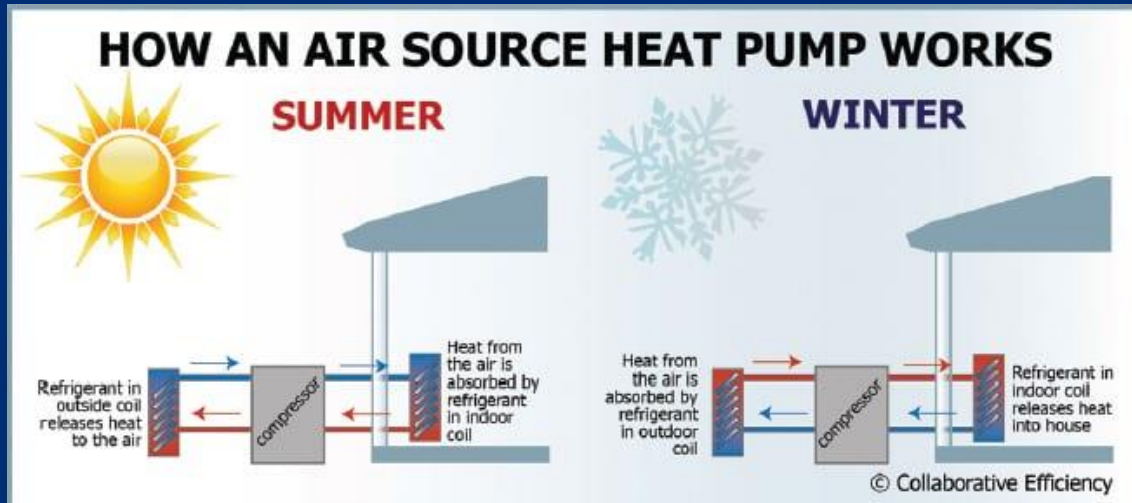
- **Schedule of Compliance:**

- Appointment of third-party monitor
- Revised Dust Control Plan
- Construction of soil berm (permit modification)



Climate Leadership and Community Protection Act (CLCPA)

2030		Statewide GHG Emissions Limit: 60% of 1990 levels
2030		Clean Energy Goal: 70% renewable energy
2030		Clean Energy Procurement Goal: 3,000 MWs of energy storage
2035		Clean Energy Procurement Goal: 9,000 MWs of offshore wind
2040		Clean Energy Goal: Net zero emissions for the electric sector
2050		Statewide GHG Emissions Limit: 15% of 1990 levels



January 2021	DEC	<p>DEC shall, pursuant to rules and regulations promulgated after at least one public hearing, establish a statewide GHG emissions limit as a percentage of 1990 emissions</p> <ul style="list-style-type: none"> • 2030: 40% below 1990 emissions • 2050: 85% below 1990 emissions
July, 2024	PSC	<p>PSC shall establish programs to require the procurement by the state's load serving entities of 6,000 MWs of solar generation by 2025, 3,000 MWs of energy storage by 2030, and 9,000 MWs of offshore wind by 2035</p>
January 2024	DEC	<p>DEC shall promulgate rules and regulations to ensure compliance with the statewide emissions reduction limits</p> <p>Before promulgating rules and regulations DEC shall:</p> <ul style="list-style-type: none"> • Hold no less than 2 public hearings • Consult with the council, the EJ Advisory Group, the Climate Justice WG, representatives of regulated entities. Community organizations, environmental groups, health professionals, labor unions, municipal corporations, trade associations and other stakeholders

Thank You

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