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Clean Water Rule: The Ebb and Flow of "Waters of the U.S."

The Environmental Protection Agency ("EPA") and the Army Corps of Engineers ("Army Corps") recently promulgated the "Clean Water Rule: Definition of 'Waters of the United States,'" which defines the scope of waters regulated under the federal Water Pollution Control Act ("CWA"). The definition of "Waters of the United States" provides jurisdictional limits for the EPA and Army Corps to address unpermitted discharges to the nation's water bodies in violation of the CWA. This includes the authority to regulate the discharge of pollutants, including sewage and industrial waste, via the National Pollution Discharge Elimination System ("NPDES") program under § 402 of the CWA, the discharge of oil and hazardous substances, and the discharge of dredge and fill material to wetlands under § 404 of the CWA. Water bodies that do not fall under federal jurisdiction are otherwise left to the jurisdiction of the state where the water is located. Nearly all states have assumed at least partial authority from the federal government to carry out permitting under § 402, including New Jersey and New York, yet only two states, New Jersey and Michigan, have assumed partial authority to carry out permitting under §

404.

The CWA makes illegal the "discharge of any pollutant" with certain exceptions, including pursuant to permits issued under CWA §§ 402 and 404. The statute defines a "discharge of a pollutant" as "any addition of any pollutant to navigable waters from any point source . . . ." The CWA defines "navigable waters" as "waters of the United States, including the territorial seas"; however, the CWA does not define the term "waters of the United States." The resulting void has spawned decades of court battles and has left the Army Corps with great latitude in determining the scope of its jurisdiction under the CWA when regulating discharges to wetlands under § 404. Under the current rule, in states without § 404 authority, such as New York, the Army Corps routinely conducts case-by-case jurisdictional determinations regarding wetlands and adjacent water bodies to decide whether they fall within the Army Corps' permitting authority. This precludes the ability of landowners and developers to make improvements upon or near federal wetlands without a § 404 permit, which may be in addition to permits or approvals needed under state law.

The EPA and Army Corps state that the intent of the Clean Water Rule is to provide greater clarity, consistency, and predictability to the regulated public earlier in the development process regarding the scope of "waters of the United States" in a way that is consistent with the CWA, Supreme Court precedent, and science. The new rule defines the following waters as "jurisdictional by rule": traditional navigable waters (such as rivers, lakes, and bays), interstate waters (including interstate wetlands), the territorial seas, and impoundments of, tributaries to, and waters adjacent to otherwise jurisdictional waters. The Clean Water Rule's new definitions for "tributaries" and "adjacent" waters have sparked the most debate, with critics of the rule claiming that they impermissibly expand the jurisdiction of the CWA. The rule also categorically excludes certain water bodies from the definition, including waters previously excluded in prior regulations and new categories the EPA states follow long-standing federal policy.

The Clean Water Rule also provides for the continuation of case-by-case jurisdictional determinations, where "waters of the United States" include waters having a "significant nexus" to traditional navigable waters, interstate waters, or the territorial seas, including those within the 100-year floodplain and 4,000 feet of the high tide line or ordinary high water mark of jurisdictional waters. The new rule states that water bodies, including wetlands, have a "significant nexus" if they, "either alone or in combination with similarly situated waters in the region, significantly affect the chemical, physical, and biological integrity" of traditional navigable waters, interstate waters, or the territorial seas.

The Clean Water Rule has already been challenged in numerous federal courts by approximately 30 states (but not New York and New Jersey), and industry groups stating that the rule is ultra vires and unconstitutional, and by environmentalists who challenge the categorical exclusions in the rule. In addition, separate legislative challenges

that would require the EPA to redraft the rule are making their way through each house of Congress.

On August 27, 2015, the day before the rule went into effect, a judge in a federal district court in North Dakota granted a request, made by thirteen states, for a preliminary injunction to halt the rule from going into effect in those states (Alaska, Arizona, Arkansas, Colorado, Idaho, Missouri, Montana, Nebraska, Nevada, New Mexico, North Dakota, South Dakota, and Wyoming). On September 4, 2015, the judge issued an order clarifying that the preliminary injunction is limited to the 13 states before the court in that case. Other district courts have denied preliminary injunction requests made by a dozen other states, where most of the actions filed have been consolidated before the Sixth Circuit Court of Appeals and await review.

The Clean Water Rule will not affect the scope of federal § 404 permitting authority in New Jersey because the NJDEP has already largely assumed the Army Corps' authority to issue § 404 permits for wetlands that are considered "waters of the United States." However, the EPA has always maintained the authority to review and comment on permits issued by the NJDEP that involve "major discharges" to "waters of the United States," including activities that require a draft general permit. Therefore, a broadening of the definition of "waters of the United States" by the Clean Water Rule may subject more NJDEP-issued permits to EPA review. As a result, careful evaluation of what additional waters may now be deemed jurisdictional or categorically excluded under New Jersey's application of the new rule is advised, especially regarding the NJDEP's application of the "significant nexus" test for development projects in New Jersey involving wetlands and buffer zones.

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Companies May Now Face CERCLA Liability for Air Emissions

In Pakootas v. Teck Cominco Metals, LTD, 2014 WL 7408399 (E.D. WA Dec. 13, 2014), the federal court in the Eastern District of Washington found that emissions of air pollutants that settle onto the land or water at a contaminated site may be considered a disposal, and thus may trigger arranger liability under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"). The Ninth Circuit has granted appeal on this issue; if the lower court decision is upheld it could result in an additional basis for CERCLA claims, increasing the complexity of such cases and possibly imposing liability on entities that otherwise would not have been exposed.

The Plaintiffs in Pakootas asserted CERCLA claims against Teck, a Canadian mining company, for discharging slag into the Columbia River that eventually polluted the Upper Columbia River ("UCR") Site located in the United States. The court found Teck responsible as an arranger under CERCLA for its discharges of slag into the river, a traditional CERCLA basis for liability. In December 2014, Teck filed a motion to dismiss Plaintiffs' allegations that air emissions could also provide a basis of recovery under CERCLA. Teck filed its motion in response to a decision by the Ninth Circuit that air emissions were not covered under the Resource Conservation and Recovery Act

("RCRA") from which CERCLA borrows its definition of disposal. See Center for Community Act and Environmental Justice v. BNSF Railway Company, 764 F.3d 1019 (9th Cir. 2014). The Pakootas court, however, did not agree with Teck's analysis and explained that under RCRA, disposal includes the placement of solid waste into or on any land or water that, in turn, may allow such solid waste to enter the environment, be emitted into the air, or discharged to any waters. The court found that CERCLA liability attaches when pollutants "come to be located" at a site. The court explained that the initial emissions from the Teck plant would not be considered CERCLA disposals, but once an emission from the Teck plant landed at the UCR Site, it would constitute a disposal; creating potential CERCLA liability. The court recognized that this issue had not been addressed by the Washington courts but could have significant consequences for the Pakootas parties, and therefore, certified its Order for immediate interlocutory appeal to the Ninth Circuit. The Ninth Circuit granted the appeal where it remains pending.

The pending Ninth Circuit decision has the potential to open up a new avenue of claims under CERCLA and result in air emitters from far ranging locations becoming potentially responsible parties. For those involved with contaminated sites, it is worth watching how the Ninth Circuit interprets disposal under CERCLA with respect to air emissions.

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Uncertainty in Clean Water Act Permit Shield Necessitates Close Review of Permit Terms

The CWA prohibits a facility from discharging pollutants from a point source (such as a pipe, drain, or other single, identifiable source of pollution) into the waters of the United States unless the facility obtains an appropriate permit. The CWA also provides a "permit shield," which protects a CWA permit holder from liability to both governmental agencies and the public if the permit holder has complied with the terms of its permit. Historically, the permit shield has protected a permit holder from liability for discharges of any and all pollutants that the permit holder disclosed to the permitting agency, regardless of whether or not the permit references all of the disclosed pollutants. See Piney Run Pres. Ass'n v. Cnty. Comm'r, 268 F.3d 255 (4th Cir. 2001).

The United States Supreme Court has noted that the purpose of the permit shield is "to insulate permit holders from changes in various regulations during the period of a permit and to relieve them of having to litigate in an enforcement action the question whether their permits are sufficiently strict." E.I. du Pont de Nemours & Co. v. Train, 430 U.S. 112, 138 n. 28 (1977).

Nonetheless, the Supreme Court recently created uncertainty about the permit shield by declining to renew a decision issued by the Ninth Circuit Court of Appeals that limited the scope of the permit shield defense. See Alaska Community Action on Toxics v. Aurora Energy Services, 765 F.3d 1169 (9th Cir. 2014). The case below

concerned a facility that had obtained a stormwater general permit and, in its application to the permitting agency, had disclosed the possibility of coal discharges. A citizen suit brought against the facility sought to impose liability on the facility for non-stormwater discharges of coal into a local body of water. The Ninth Circuit determined that the permit shield did not provide liability protection to the facility, even though the facility disclosed the possibility of coal discharges, because the terms of the general permit required the permit holder to eliminate non-stormwater discharges and did not otherwise allow non-stormwater discharges of coal.

The Ninth Circuit's decision has created uncertainty as to the scope of the permit shield protection provided by the CWA by finding an exception to the general rule that the permit shield protects a permit holder from liability for discharges of any and all pollutants that the permit holder disclosed to the permitting agency. This uncertainty is heightened because other Circuit Courts of Appeal have not yet weighed in on the issue of whether the general rule is limited in the context of stormwater general permits. Instead, circuits courts regularly have reaffirmed the general rule by providing facilities with protection from liability for pollutants not covered by their permits as long as they have been disclosed to the permitting agency.

In this uncertain landscape, facilities that discharge pollutants to the waters of the United States should carefully examine the terms of their permits and evaluate the applicability of the permit shield defense to their facility discharge.

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Supreme Court Decision in Michigan v. EPA is Merely a Delay to the MATS Rule, May Pave the Way for the Clean Power Plan

On June 29th, the United States Supreme Court issued a 5-4 decision in Michigan v. Environmental Protection Agency, 576 U.S. __ (2015). The central issue in the case was whether the Clean Air Act requires the EPA to consider costs when determining whether it is "appropriate and necessary" to regulate the emission of hazardous air pollutants from power plants, known as the Mercury Air Toxics Standards ("MATS") rule.

Although the EPA considered the costs that would be incurred to comply with the MATS rule, the Court found that the Agency violated Clean Air Act requirements by failing to consider costs when making the threshold decision as to whether it was appropriate and necessary to have a rule at all. The Court remanded the proceeding to the Court of Appeals for the D.C. Circuit to determine the fate of the MATS rule. The D.C. Circuit can either vacate MATS, or require the EPA to correct the defects in its rule making process by undertaking a new threshold analysis that considers costs, while leaving the MATS rule itself intact.

When considering costs as part of the threshold analysis, the Agency can include a broad range of factors. The

Supreme Court's decision notes that costs are more than just the direct expense of complying with regulations; any disadvantage could be considered a cost. By extension, the EPA can also consider the costs (and benefits) associated with impacts on human health and the environment.

Notably, neither the Supreme Court's decision, nor the ultimate decision of the D. C. Circuit, prevents the EPA from regulating the emission of hazardous air pollutants from power plants. As long as the Agency finds that the regulation is appropriate and necessary – and considers costs when making that finding – it can promulgate a rule that regulates these emissions. Thus, even if the D.C. Circuit were to vacate the MATS rule, the Agency could ultimately restart the process and promulgate a rule identical to MATS. In this way, the Supreme Court's decision is a delay, but not a roadblock to the EPA's regulation of hazardous air pollutants from power plants.

Even if the EPA ultimately does not re-promulgate MATS or similar regulation, the rule has already caused significant changes in the regulated community. Many older operating units that could not comply with the rule have already retired and will remain that way, while others have been retrofitted with scrubbers that will lower their emissions. In this way, the MATS rule has already effectively decreased mercury emissions from power plants.

The fate of the MATS rule may impact another EPA emissions rule: the Clean Power Plan ("CPP"), adopted on August 3, 2015. The CPP requires states to reduce carbon dioxide emissions from power plants. Initial challenges to the CPP argued that the rule could not be applied to power plants because those entities were already subject to the MATS rule, and the Clean Air Act prohibits double regulation. Those challenges were dismissed as premature because at the time they were asserted, the CPP rule had not yet been finalized by the EPA. The argument, however, remains viable and the challenge is ripe for judicial review now that the final CPP rule has been adopted. Nevertheless, if the MATS rule is no longer in effect at the time the challenge to the CPP reaches the court, then this argument will be moot.

Given the lasting effect the MATS rule has already had and the conflict it may pose to the CPP, EPA's loss at the Supreme Court may prove to be a victory for its regulatory goals.

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Court Awards Plaintiff Treble Damages for Property Owner's Failure to Remediate Contamination as Required by Contract

On March 30, 2015, the United States District Court for the District of New Jersey entered default judgment and awarded treble damages against a former property owner for its failure to investigate and remediate contamination that it caused and was required to cleanup in accordance with a purchase and sale agreement. Cyprus Mines Corp. v. M & R Industries, Inc., 2015 WL 1469529 (D.N.J. Mar. 30, 2015).

In 1987, Plaintiff Cyprus Mines Corporation ("Cyprus Mines") acquired from Defendant M & R Industries, Inc. ("M & R") an industrial property located in Winslow Township, New Jersey (the "Metec Site"). During its ownership, M & R had operated as a metal manufacturer and had installed two unlined ponds on the Metec Site to receive process waste from its hearth roaster operation. Throughout its operation, M & R discharged ammonium sulfate solutions containing hazardous substances into these ponds. Because of M & R's failure to install an impervious layer at the bottom of the ponds, hazardous substances leached into local groundwater and were released into the environment. As a result, in January 1987, M & R entered into an Administrative Consent Order ("ACO") with the New Jersey Department of Environmental Protection ("NJDEP") in which M & R agreed to investigate the Metec Site and implement an NJDEP-approved cleanup plan.

In the purchase and sale agreement ("PSA") between M & R and Cyprus Mines, M & R agreed to discontinue its discharge into the ponds, be solely responsible for complying with the requirements of the New Jersey Environmental Cleanup Responsibility Act (now, the Industrial Site Recovery Act), and to defend, indemnify and hold harmless Cyprus Mines against all associated liabilities. For a number of years, M & R had been performing a remedial cleanup of the site, but in March 2009, Cyprus Mines received a directive issued by the NJDEP indicating that M & R had failed to satisfy its obligations under the ACO.

In August 2009 and then again in April 2014, Cyprus sent written claims to M & R for indemnification pursuant to the PSA and notified M & R that it intended to pursue treble damages under the New Jersey Spill Compensation and Control Act (the "Spill Act"). When M & R failed to respond, Cyprus Mines filed suit as a means to force M & R to honor its commitments and reimburse Cyprus Mines for the substantial investigation and remediation costs it had incurred and would continue to incur in complying with the NJDEP Directive. Again, M & R failed to respond and Cyprus Mines asked the Court to enter default judgment.

Under federal law, once a valid claim has been asserted, three factors control whether a default judgment should be granted: (1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant's delay is due to culpable conduct. Here, Cyprus Mines brought claims for response costs under the CERCLA contribution provision, for cleanup and removal costs under the Spill Act, and for breach of contract for M & R's failure to adequately and completely investigate and remediate the Metec Site as required by the PSA. The Court determined not only that each of these claims was valid, but also that Cyprus Mines had satisfied the requirements for entry of default judgment. The Court further determined that M & R's actions were so prejudicial to the Plaintiff that it awarded treble damages under the Spill Act, thus requiring M & R to pay three times the damages incurred by Cyprus Mines. An award of treble damages under the Spill Act is relatively uncommon and requires a requesting party to satisfy a number of conditions, which Plaintiff was able to do here.

Although no groundbreaking ruling derives from the Court's decision, the case provides an excellent example of how indemnity provisions in contracts may be enforced in the courts. It stands as a stark reminder of how parties involved in purchases of contaminated or potentially contaminated property should appropriately protect themselves by securing meaningful environmental protections in the form of indemnities and releases through contract. Further, the Court's opinion provides a clear and concise roadmap to obtain contribution under CERCLA and the Spill Act as well as default judgment and treble damages against those nonresponsive parties that fail to live up to their contractual obligations.

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2015 Amendments to New York Brownfields Act

Earlier this year, New York State adopted significant amendments to its Brownfield Cleanup Program ("BCP"). The statutory amendments are designed to encourage the cleanup and redevelopment of brownfields while reforming the program's tax incentives to avoid unnecessary or excessive tax credits. The most significant amendments include:

1. A revised definition of "Brownfield site" that (i) creates a bright line test for qualification for the BCP, (ii) allows sites that are impacted by historic fill, migrating vapors or migrating groundwater to enter the program (albeit that the latter two categories of sites do not qualify for tangible property tax credits), (iii) requires applicants to demonstrate that the site is contaminated before being accepted into the BCP; and (iv) allows volunteers to bring orphan Class 2 Superfund and RCRA sites into the program;
2. Extension of the December 31, 2015 deadline for obtaining a Certificate of Completion ("COC") of cleanup in order to remain eligible for tax credits for cleanup and development expenses;
3. Focusing Redevelopment (Tangible Property) tax credits on blighted areas and away from portions of New York City where redevelopment assistance is not necessary;
4. Limiting Redevelopment (Tangible Property) tax credits to non-portable equipment, machinery and fixtures and to property with a useful life of 15 years or more while putting limitations on payments for related party service fees;
5. Focusing the Site Preparation credit on costs associated with investigation, remediation or qualification for a COC, and expanding it to cover costs to remediate asbestos, PCBs and lead in buildings remaining on-site and shifting other redevelopment costs to the redevelopment credit;
6. Eliminating the real property tax and environmental remediation insurance credits for sites accepted into the BCP after July 1, 2015;
7. Eliminating the requirement to pay New York State Department of Environmental Conservation oversight costs for volunteers; and

8. Creating a streamlined program for sites with limited contamination – called BCP-EZ – that would provide a release of liability but no tax credits.

Amendments to related regulations have also been proposed, although those changes are more limited, focusing on the definitions of "Brownfield site," "affordable housing project," "area mean income," "underutilized," and "substantial government assistance" in accordance with the statutory mandate. Specifically, the definition of "Brownfield site" has been revised to be consistent with the statutory revision, whereas the definitions of "affordable housing project" and "underutilized" were added to help determine which New York City sites will be eligible for tax credits (the "affordable housing project" definition will be used statewide for purposes of a five percent affordable housing tax credit bonus).

The new program requirements are applicable to sites that (i) either entered the BCP before June 23, 2008 and do not obtain a COC before December 31, 2017 or (ii) were accepted into the BCP between June 23, 2008 and July 1, 2015 and do not obtain a COC by December 31, 2019.

The amendments address several issues that had arisen under the BCP, provide more certainty, and are expected to increase the development of brownfield sites in the state. Nonetheless, the changes may create challenges as well. For example, prospective purchasers who want to confirm the eligibility of a site for the program will need to perform Phase II testing as part of due diligence. Similarly, once in the program, developers will need to keep strict accounting of costs for Site Preparation credits vs. Redevelopment credits. Developers who wish to take advantage of the program should consult counsel to ensure that all eligibility criteria are met and all available credits are sought.

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ISRA-Subject Parties are Cautioned to Proceed Carefully When Choosing How to Comply with ISRA

The NJDEP recently held in a Final Decision that Des Champs Laboratories, Inc. ("Des Champs"), which was required to comply with the Industrial Site Recovery Act ("ISRA") for a cessation of operations in 1996, is now precluded from obtaining a de minimis quantity exemption that it claims it was eligible for 19 years ago. R&K Associates, LLC v. New Jersey Department of Environmental Protection, OAL Dkt No. ESR-11666-13 (April 6, 2015). In 1996, when Des Champs triggered ISRA, the company chose to comply by obtaining a No Further Action letter ("NFA") from the NJDEP, but that NFA was later revoked. The company then attempted to obtain a de minimis quantity exemption, but has been precluded from doing so by this Final Decision.

ISRA requires the owner or operator of an industrial establishment to notify NJDEP upon ceasing operations or of the public release of its decision to cease operations, whichever occurs first. Upon notifying NJDEP, the owner or

operator must either pursue an exemption from ISRA, such as a de minimis quantity exemption stating that there has never been more than a certain small amount of hazardous substances present at the site, or to investigate and remediate the industrial establishment. At the time of its cessation, Des Champs elected to perform a preliminary assessment and then submit a negative declaration to the NJDEP certifying that there had been no discharge of hazardous substances at the industrial establishment. The NJDEP issued an NFA to Des Champs but later withdrew that NFA, asserting that local groundwater contamination originated at Des Champs's former facility, and directed the company to investigate and remediate. In response, Des Champs sought to obtain a de minimis quantity exemption, which would exempt the company from the obligation to remediate under ISRA.

After two appeals of the Department's decision denying Des Champs's de minimis quantity application and a hearing before an administrative law judge, NJDEP Commissioner Martin issued the final decision of the Department denying Des Champs's application. While careful to state the Final Decision applies only to the facts of this case, Commissioner Martin held that ISRA does not provide a legal avenue for a former owner or operator to "return to the start and conduct itself as if it were the current owner or operator undertaking the ISRA process for the first time." Indeed, the Final Decision holds that failure to pursue the exemption in response to the initial ISRA trigger operates as a waiver of the right to seek the exemption. Underlying the Department's determination was the fact that the preliminary assessment resulting in the issuance of the NFA was deficient. Accordingly, the Department found that Des Champs would have no factual basis today to support the de minimis exemption under the facts as they existed in 1996, when Des Champs triggered ISRA. The Department specifically stated it was not making a determination as to when an owner or operator becomes ineligible for the exemption, but that thirteen years is too long, especially if the documentation to support the application is missing or deficient.

Based upon this decision, owners or operators considering the potential avenues for ISRA compliance should carefully evaluate their course of action because it may be irreversible.

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Regulatory Update

New Jersey Department of Environmental Protection

Historic New Jersey Settlement Approved by Court

On August 25, 2015, a New Jersey Superior Court judge approved a $225 million settlement between the State of New Jersey and ExxonMobil ("Exxon") to address natural resource damage ("NRD") claims. Exxon's liability stems from a 2008 court ruling concerning the pollution of waterways, wetlands and marshes resulting from operations at its former Bayonne and Linden refineries.

The terms of the settlement, the second largest NRD settlement against a single corporate defendant across the country, were reached by the parties in February and posted to the New Jersey Register on April 6, 2015, triggering the start of a 60-day public comment period required for a settlement of this nature. The NJDEP received close to 16,000 comments, which were reviewed by the court prior to ruling on the settlement terms.

Commenting on the settlement prior to the court's decision, NJDEP Commissioner Bob Martin confirmed that Exxon must not only remediate, at its expense, the contaminated Bayonne and Linden refinery sites and other sites stipulated, but also other less contaminated sites. In addition, the settlement preserves NRD claims by the State against Exxon concerning the Arthur Kill, Newark Bay, 860 retail gas stations alleged to have discharged methyl tertiary-butyl ("MTBE"), the Lail Facility in Gloucester County, and Morses Creek upon the cessation of operations at the Linden facility. There is no cap on the amount Exxon must expend in order to complete the remedial work involved.

State Senator Ray Lesniak and various environmental groups attempted to block the settlement, arguing that the proposed settlement amount of $225 million is insufficient because it is far lower than the $9 billion originally sought by the State, the NRD claims surrounding the Bayonne and Linden refineries involve pollution stemming almost a century of operations and, in addition, the proposed settlement relieves liability for 16 additional sites and retail gas stations that were not included in the original case. Those efforts were rejected in a court ruling on July 13, 2015 on the grounds that Senator Lesniak did not satisfy the test to intervene and the environmental groups failed to appeal in a timely manner.

In its decision approving the settlement terms, the court found that the settlement was fair, reasonable and in the public interest, and that it "was the product of arm's-length, adversarial negotiations between two highly motivated, sophisticated parties."

For more information, please visit www.nj.gov/NJDEP, www.bloomberg.com and www.northjersey.com.

Facilities Damaged During Superstorm Sandy to be Rebuilt at Bayshore Regional Sewerage Authority

On May 18, 2015, the NJDEP commenced a $28 million project (the "Project") to rebuild facilities damaged by Superstorm Sandy at Bayshore Regional Sewerage Authority ("BRSA").

Approximately eight million gallons of wastewater per day is transported through BRSA's collection system from the municipalities of Aberdeen, Hazlet, Holmdel, Keansburg, Keyport, Matawan, Union Beach and the Morganville section of Marlboro, servicing approximately 83 thousand people. Critical buildings were flooded with sea water, and in order to prevent an overflow of sewage, many of their components required immediate restoration and replacement.

The Project consists of three phases, which will include restoring equipment and buildings, flood-proofing structures and elevating equipment. The Project will include additional mitigation measures such as the return online of the BRSA primary incinerator, upgraded with new dewatering and air emissions control equipment to ensure compliance with EPA's 2016 regulations for sewage sludge incinerators; prevention of future flooding of the two incinerator buildings; and restoration of BRSA's main and secondary pump stations and the return sludge building.

The NJDEP and New Jersey Environmental Infrastructure Trust ("NJEIT"), through its Statewide Assistance Infrastructure Loan ("SAIL") program, will provide funding for the Project. NJDEP and SAIL, as an independent financing authority in New Jersey, provide access to low interest, short-term bridge loans which allow vital projects to proceed in advance of federal aid in the immediate aftermath of a disaster.

The anticipated date of completion for all construction work is September 2016.

For more information, please visit www.nj.gov/dep or www.njeit.org.

Environmental Protection Agency

EPA's Division of Environmental Science and Assessment Welcomes New Director

Williamson to the position of Director of EPA's Region 2 Division of Environmental Science and Assessment ("DESA"). DESA provides oversight relating to the collection, analysis, and evaluation of data for EPA's monitoring programs. In addition, DESA houses an EPA laboratory that provides chemical, biological, and other support for drinking water, soil, and sediment analysis, and provides hazardous waste samples. DESA's responsibilities also include managing the Region's Quality Assurance Program, to ensure stringent quality requirements for all data generated.

Formerly the Director of the New York State Pollution Prevention Institute at Rochester Institute of Technology, Dr. Williamson has provided assistance to states, universities and hundreds of companies concerning waste reduction and decreased manufacturing costs. Judith Enck, EPA Regional Administrator, lauded Dr. Williamson as "a highly respected engineer with a strong environmental track record on pollution prevention."

Dr. Williamson is a former recipient of EPA's Environmental Quality Award in 2012 and the RIT's Principal Investigator Millionaire Award in 2013.

For more information, please see www.epa.gov.

Hudson River Dredging Draws to a Close

On May 7, 2015, EPA announced the start of the sixth and final season of the dredging of the Hudson River, one of

the most notable cleanups taking place in the River.

From approximately 1947 to 1977, operations at General Electric Company capacitor manufacturing plants in Fort Edward and Hudson Falls discharged an estimated 1.3 million pounds of PCBs into the Hudson River. The historic cleanup is being conducted by GE, which estimates that the cleanup has cost approximately $1 billion thus far and has created 500 jobs annually.

Each year, dredging is conducted 24 hours-a-day, 6 days per week, between May and November when the Champlain Canal is open, creating 500 jobs and using the services of more than 280 contractors, subcontractors, vendors and suppliers. The dredging work, which is anticipated to be concluded this year, has removed approximately 2.5 million cubic yards of PCB-contaminated sediment from a 40-mile stretch of the upper Hudson River. The contaminated sediment is conveyed via barge and land to a GE dewatering facility where it is processed and transported to approved out-of-state facilities for disposal. During the dredging project, EPA-required programs are used to monitor water quality at several locations downstream and air quality at the dredging locations.

During this final phase of dredging, GE will access approximately 250 cubic yards of PCB-contaminated sediment situated in complex areas such as shallow waters around islands and areas near dams. In addition, GE will spend an additional approximately $20 million investigating and developing cleanup options for PCB contamination along the shoreline areas of the Upper Hudson River.

For more information, please see www.epa.gov.

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New Jersey Legislative Update

Recently Enacted Environmental Laws

P.L.2015, c.35 (A2859) Codifies the Project Medicine Drop program. Requires the Division of Consumer Affairs to maintain secure prescription medicine drop-off receptacles at certain law enforcement agencies.

P.L.2015, c.51 (A3455) Amends the definition of Class II renewable energy in the Electric Discount and Energy Competition Act. This bill clarifies that Class II renewable energy is to include hydropower facilities with a capacity of greater than three megawatts but less than 30 megawatts.

P.L.2015, c.66 (A709) Requires pharmacies and prescribers to notify patients about how to ensure proper and safe disposal of unused prescription drugs.

Recently Introduced Environmental Bills

A4516 / S3054: Requires the NJDEP to offer to purchase and demolish certain contaminated residential property. Status: Pending in Assembly Environment and Solid Waste Committee; pending in Senate Environment and Energy Committee.

A4579: Makes changes to funding provisions for financial assistance and grants from the Hazardous Discharge Site Remediation Fund. Status: Pending in Assembly Environment and Solid Waste Committee.

ACR230 / SCR163: Amends the New Jersey State Constitution to dedicate all State moneys received from settlements and awards in cases of environmental contamination for certain environmental purposes. Status: Pending in Assembly Environment and Solid Waste Committee; passed by Senate.

ACR239 / SCR174: Urges the Congress and the President of the United States to enact H.R.1769 and S.901, Toxic Exposure Research Act of 2015. Status: Pending in Assembly Environment and Solid Waste Committee; pending in Senate Environment and Energy Committee.

AR242: Opposes the proposed $225 million settlement in lawsuit brought by New Jersey against ExxonMobil for natural resource damages at Bayway and Bayonne oil refinery sites and certain other sites in New Jersey. Status: Passed by Assembly; filed with Secretary of State.

S2973: Revises electronic waste recycling laws. Status: Out of Senate Environment and Energy Committee as a Substitute, second reading in Senate.

Updated Status of Previously Reported Environmental Bills

A1726 / S308: Amends the Flood Hazard Area Control Act to require the NJDEP to take certain actions concerning delineations of flood hazard areas and floodplains. Status: Passed both Houses; A1726 substituted for S308.

A1779: Clarifies that certain types of sewage and sewage sludge do not constitute hazardous substances under the Spill Compensation and Control Act. Status: Out of Assembly Environment and Solid Waste Committee, second reading in Assembly.

A3954 / S2981: Requires a maximum contaminant level to be established for 1,2,3-trichloropropane in drinking water. Status: Passed both Houses; A3954 substituted for S2981.

A4047 / S2660: Creates an Office of Sustainability. Status: Out of Assembly Appropriations Committee, second reading in Assembly; pending in Senate Budget and Appropriations Committee.

A4258 / S2172: Clarifies liability for discharges of hazardous substances from drilling platforms that enter New Jersey waters. Status: Passed by Assembly; out of Senate Environment and Energy Committee, second reading in Senate.

A4283 / S2858: Requires the owner or operator of certain trains to have discharge response, cleanup, and contingency plans to transport certain hazardous materials by rail. Status: Out of Assembly Appropriations Committee, second reading in Assembly; pending in Senate Budget and Appropriations Committee.

ACR226 / SCR158: Condemns, and strongly urges rejection of, the proposed $225 million settlement in lawsuit brought by New Jersey against Exxon Mobil for natural resource damages at Bayway and Bayonne oil refinery sites and certain other sites in New Jersey. Status: Pending in Assembly Judiciary Committee; passed by Senate.

AJR102: Urges the federal Occupational Safety and Health Administration to adopt recommendations of the U.S. Chemical Safety and Hazard Investigation Board. Status: Out of Assembly Labor Committee, second reading; Assembly substitution.

S2919 / A4307: Increases the required public notice from 30 days to 60 days for settlements entered into by NJDEP pursuant to Spill Compensation and Control Act. Status: Passed by Assembly; out of Senate Environment and Energy Committee, second reading in Senate.

S2978 / A4194: Authorizes mobile electronic waste destruction units to operate without an NJDEP permit. Status: Pending in Assembly Environment and Solid Waste Committee; passed by Senate.

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