THE NEW YORK STATE ENVIRONMENTAL ENFORCEMENT UPDATE
2014 ANNUAL REPORT

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INTRODUCTION

This publication had its origins over twenty-five years ago when the Environmental Law Section first published “The New York State Environmental Crimes Digest for the Years 1987 – 1989”, in collaboration with the old New York State Legislative Commission on Toxic Substances and Hazardous Wastes (edited by Section member Scott N. Fein, Esq.).

The 1989 “Digest” was in turn a continuation of an earlier “New York State Environmental Crimes Digest (1983-1987), which appeared in the Environmental Law Section Journal, Vol. 7, No. 4, December 1987, pp.6-11 (edited by Section members Michael Elder, Esq. and Scott N. Fein). The underlying theme of both publications was to collate enforcement information from disparate sources while assisting government attorneys, policy makers, regulators, defense counsel and the general public in evaluating the impact and effectiveness of environmental enforcement on environmental quality, public health and the economy.

Great credit must be given to these Section members and their collaborators at the time for undertaking the arduous task of compiling and editing these comprehensive publications. Such credit is especially warranted as these works were assembled in the ancient times before the advent of the internet. However, despite the many kudos issued at the time (the Digests were one of my standard desk references for many years), the compilation and reporting of New York’s Criminal (or civil) environmental issues fell to the wayside.

But in late 2012, Sam Capasso, the newly appointed Editor of “Envirosphere” the ELS blog, was seeking new blog content. As an addicted web browser and observer of the environmental enforcement scene, I volunteered and we quickly decided to publish and post the monthly “New York Environmental Enforcement Update.” The 2014 Annual Report is a compilation in e-book format of the second twelve monthly issues of the Environmental Enforcement Update as posted on the ELS blog (Volume 1, Issues 13-24).

The items that comprise the content of the 2014 Annual Report reflect one view of the broad topical environmental enforcement issues faced by New York practitioners, regulators and policy makers. Federal, state and local enforcement and policy are covered including certain administrative enforcement venues that are rarely reported or considered by the traditional environmental media (asbestos abatement and workplace environmental quality, for example). The main sources used for this Annual Report are included here under a separate entry in the Table of Contents. Where possible, publically accessible government sources are used for source materials with a secondary reliance on news media. I have also added commentary to assist the busy user who may not have time to explore the underlying hyperlinks and more in depth source materials.

However, the ability to gather enforcement information online is not comprehensive. Part of the lame excuse for this editorial decision is the time limitations
of the Annual Report’s staff. But, it is also due to real data gaps in publically reported environmental enforcement statistics. In particular, some of the largest state and local environmental agencies have simply stopped publically reporting environmental enforcement dispositions. Other information is distributed via the Freedom of Information Law or via obscure government reports which are issued without much fanfare or online access. We all can conjecture as to why this is so. But despite the technological revolution that makes the e-book format so useful, certain enforcement information was more freely available back when the original “Digest” was published in the old “hard copy” 1980’s. Regardless, the Environmental Law Section and the blog staff will continue to seek new and more informative links to assist our users in the future.

In closing, I would like to dedicate this 2014 Annual Report to the late NYSBA and Environmental Law Section member Louis A. Evans. Lou was one of the original environmental attorneys that defined New York environmental enforcement practice in both the public and private sectors. He generously imparted his wit and wisdom to the author and many others over his long career and service to the bar including during the early stages of this publication. He will be missed by all who knew him.

Michael J. Lesser, Esq.
May 18, 2015
HOW TO USE THIS E-BOOK

This e-book is published using Adobe 9.0 in pdf format. It is intended to be both a historical chronicle and a reference work for practitioners, government regulators, policy makers and the general public. Accordingly, the content of this e-book may be accessed in several ways:

- Chronologically by month;
- By linking within each month via the TAGS at the end of each chapter; and,
- By key word search (on tool bar) within the text of the document.

Of course, the original hyperlinking used for the individual blog items can still be used to reach original source materials and additional information. Where possible, publically accessible government web sites are used for source materials. At this writing, the links are operable. However, be aware that the web is always changing and sites can come and go or change format. For example, an election change at the Kings County District Attorney’s Office led to the disconnection of the pre-2014 web site (and all of its data). Hopefully, such events are the exception and public online information sources continue to remain informative and more or less accessible.
ABOUT THE NY ENVIRONMENTAL ENFORCEMENT UPDATE,
THE AUTHOR AND THE EDITOR

The NY Environmental Enforcement Update and the 2014 Annual Report are services presented by the Environmental Law Section of the New York State Bar Association which is based on a general survey of approximately twenty-five public government and media websites. These sources commonly report on news relevant to New York's environmental issues. But these publications are by no means comprehensive and are presented for educational purposes only. Neither the author, the editor, nor NYSBA make any guarantees as to the accuracy of the sources cited. Please contact Sam Capasso, the Blog Administrator and Editor of the NY Environmental Enforcement Update with any additional information or corrections.

Author Michael J. Lesser is currently Of Counsel to Sive, Paget & Riesel, P.C. in New York and was formerly an enforcement attorney in the Office of General Counsel of the New York State Department of Environmental Conservation. In particular, he was a criminal attorney and the counsel to the N.Y.S. Environmental Conservation Police. He holds a J.D. from Touro Law Center and has published numerous articles on environmental issues and administrative and criminal law.

Editor Samuel J. Capasso holds a J.D. and LL.M., Pace Law School, where he was a Theodore W. Kheel Research Scholar Fellowship and was awarded a Pace Law Merit Scholarship). He is currently on the staff of the Federal Emergency Management Agency (FEMA).
SELECTED SOURCES

New York State

N.Y.S. Adirondack Park Agency (APA) - http://apa.ny.gov/

N.Y.S.D.E.C Office of Hearings and Mediation Services –
http://www.dec.ny.gov/hearings/34828.html

N.Y.S.D.E.C Region 4 Enforcement Consent Orders
http://www.dec.ny.gov/regulations/45353.html

N.Y.S. Department of Labor
http://www.labor.ny.gov/pressreleases/pressreleases.shtm

N.Y.S.D.O.L Administrative Asbestos Decisions
http://labor.ny.gov/legal/adjudication-decisions.shtm

N.Y.S. Legislature ( Laws) - http://public.leginfo.state.ny.us/menuf.cgi
N.Y.S. Department of Parks, Recreation & Historic Preservation -
http://nysparks.com/
N.Y.S. Office of Governor Andrew M. Cuomo - https://www.governor.ny.gov/

N.Y. Local Government

New York City Department of Environmental Protection (NYCDEP) -

Albany Co. District Attorney -
http://www.albanycountyda.com/Media/PressReleases.aspx
Clinton Co. District Attorney -
Kings Co. District Attorney - http://www.brooklynda.org/
Nassau Co. District Attorney -
Onondaga Co. District Attorney http://www.ongovda.net/section/media/?cat=2
Suffolk Co. District Attorney -  

U.S. Federal Agencies

U.S. Environmental Protection Agency -  
http://www.epa.gov/enforcement/criminal/2013.html  
U.S. District Court, SDNY -  
http://www.justice.gov/usao/nys/pressreleases/?m=03&v=2013  
U.S. Department of Labor, Occupational Health & Safety Administration (OSHA)  

Susquehanna River Basin Commission -  http://www.srbc.net/  
Delaware River Basin Commission -  http://www.state.nj.us/drbc/

Media

Middletown Times Herald Record  http://www.recordonline.com/  
Albany times Union http://www.timesunion.com/  
Newsday  http://www.newsday.com/  
Syracuse Post Standard http://www.syracuse.com/poststandard/  
Buffalo News http://www.buffalonews.com/  
Rochester Democrat and Chronicle http://www democratandchronicle.com/  
Watertown Dailytimes http://www.watertowndailytimes.com/  
Plattsburgh Press-Republican http://www.watertowndailytimes.com/  
Binghamton Press & Sun http://www.watertowndailytimes.com/  

Miscellaneous

Fox News - http://www.foxnews.com/  
Time Warner Cable - http://www.rr.com/  
Weather Underground - http://www.wunderground.com/blog
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Crude Oil Swamps NY

Governor Cuomo issued an executive order directing several State agencies to undertake a complete review related to rail and water shipments of volatile crude oil from the Bakken oil fields in North Dakota. Governor Cuomo's Executive Order 125 directed DEC, the Department of Transportation, the Division of Homeland Security and Emergency Services, the Department of Health, and the New York State Energy Research and Development Authority to undertake a review of all security, health and environmental issues. These agency commissioners also sent a letter to several federal agencies urging new federal regulations regarding rail transportation to help protect New York communities.

In a related matter, DEC is considering the application of Global Companies Inc. to modify its Title V air permit to allow the installation of oil heaters to ease the transfer of crude oil in the Port of Albany.

Harbor at Hastings Settles on PCBs Clean Up

The Atlantic Richfield Company (ARCO) has agreed to enter into an Order on Consent to clean up contaminated soils and Hudson River sediment at the Harbor at Hastings site in Westchester County. ARCO's predecessor, released polychlorinated biphenyls (PCBs) during manufacturing operations at the site.

Clean Sweep NY Sees Continued Success

DEC collected 138,000 pounds of chemicals during the most recent phase of the Clean Sweep NY program, conducted in eleven counties in the Western Finger Lakes region. The program allows businesses, farms and schools to properly dispose unwanted or obsolete pesticides and other chemicals. The program rotates to different areas of the state on a schedule established by the agency.

Federal Enforcement

Enviro Lab Falsifies Documents (NDNY)

A commercial laboratory pleaded guilty to committing mail fraud for the falsification of over 3,300 laboratory results from 2008 through 2010, and was sentenced to pay a $150,000 fine and five years of probation. The defendant, Upstate Laboratories, had been a certified laboratory that performed chemical and environmental analysis of water and soil samples supplied by public and private clients. Falsified sampling results involved missed holding times, routine "backdating" of sample results and phony analytic reports.

Feds, Queens DA Chomp Down on Illegal Piranha Importer (EDNY)
In a joint federal, state and local prosecution, an individual and his solely-owned corporation, pleaded guilty in federal court in Brooklyn to violating the Lacey Act for deliberately mislabeling imported piranhas. The defendant instructed his tropical fish supplier to falsely label the dangerous and carnivorous piranhas as common and docile tropical aquarium fish. In 2011 and 2012, this scam falsely identified 39,548 piranhas, worth approximately $37,376, which were then sold to fish retailers in several states. The individual will pay a $3,000 fine while the corporation pays a $35,000 fine and as well as $35,000 in restitution to the DEC.

Rare CERCLA Pleas for Illegal Handling and Disposal of Asbestos (NDNY)

Two defendants pleaded guilty in federal court to conspiracy to violate the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) in relation to the illegal removal, handling, and disposal of asbestos from properties. The underlying indictment also charged the defendants with making false statements to law enforcement officers and retaliating against a witness. Defendants also failed to immediately report the release of asbestos from properties. The CERCLA crimes occurred during the course of an asbestos abatement of a buildings heating system. In the continuation of a current NY trend, this federal prosecution was based on a joint federal, state and local investigation.

Illegal Rhino Horn Trafficker Gets the Point (EDNY)

An Irish national was sentenced in federal court to serve 14 months for conspiracy to violate the Lacey Act for illegal rhinoceros horn trafficking. This prosecution is another result of Operation Crash which is part of a worldwide law enforcement effort to halt the illegal trade in the ivory of endangered species.

Feds Slam Suffolk Co. for $2 Million for UST Violations (EDNY)

The US Attorney for the Eastern District of New York and EPA Region 2 settled with Suffolk County for violating the federal leak prevention requirements for underground storage tanks at 35 County facilities. The violations involve 68 underground gas or waste oil storage tanks. The seriousness of the violations was enhanced as the tanks are located within the boundaries of a federally designated Sole Source Aquifer.

Ex-Manager Sentenced For Falsifying Nuclear Facility Records (SDNY)

The former Chemistry Manager of the Indian Point nuclear power plant was sentenced in the U.S. District Court to 18 months' probation and a $500 fine for engaging in deliberate misconduct. The defendant had concealed material facts from his employer and the Nuclear Regulatory Commission by fabricating test data, falsely showing that diesel fuel met NRC standards for particulate matter. The diesels are necessary for emergency power generation at the plant.

Two More Plead Guilty In NY-NJ Waste Industry Scheme (SDNY)
In an ongoing criminal action, two more defendants pleaded guilty in the SDNY for an illegal scheme to exert control over the commercial waste-hauling industry in the greater New York City metropolitan area. To date, 21 of the original 32 defendants have pleaded guilty. The two here were part of the Gambino Crime Family who participated with members of three different Organized Crime Families of La Cosa Nostra ("LCN") in a scheme to control various waste disposal businesses and commit various crimes as part of that scheme.

**OSHA/NYSDOL Report**

*Brooklyn Tank Recycler Cited After Employee Heat Death*

The U.S. Department of Labor's Occupational Safety and Health Administration ("OSHA") has cited Cooper Tank & Welding Corp., for eight health and safety violations following the heat-related death of a 64-year-old employee. The worker had been working for several hours on a conveyor line, sorting and recycling construction and demolition waste, when he reached a fatal level of exposure to excessive heat from environmental sources and recycling machinery. OSHA states that this incident could have been avoided through reasonable measure such as establishing and implementing a heat stress management program.

**DEC Region 4 Administrative Orders**

It is always worth noting that NYSDEC Region 4 is currently the only DEC Regional office that regularly posts all administrative enforcement consent orders and settlements. However, this data can be a useful window into the agency's enforcement policies statewide.

*In the Matter of Chazen Companies*
*Order, December 27, 2014*
*R4-2013-1105-132*

Respondent was assessed a $1,000.00 penalty for failing to report a petroleum spill in violation of 6 NYCRR Part 613.8. It is significant to note that the Respondent is an environmental consultant that failed to report a spill observed during the performance of a Phase II site investigation. Respondent was also deemed to meet the definition of a "person" for spill reporting purposes as defined by 6 NYCRR Part 612.1(c)(20).

*In the Matter of ARG Trucking*
*Order, January 27, 2014*
*R4-2013-1226-139*

Respondent violated 6 NYCRR 230.2 (f)(4) by failing to connect the vapor return line between a delivery truck and the vapor port for the underground tanks, during a gasoline fuel delivery and was assessed a civil penalty of $5,000.00.

*In the Matter of Town of Bethlehem*
*Order Modification, January 28, 2014*
*R4-2011-1109-143M*
Based on "good cause" shown by Respondent, NYSDEC agreed to a six-month extension of a technical compliance schedule in the original Order. The original Order pertained to engineering changes to be implemented on the municipal sewer system operated by Respondent.

In the Matter of SABIC Innovative Plastics US
Order, January 31, 2014
R4-2013-1230-140

Respondent a plastics manufacturer paid a civil penalty of $16,000.00, for 28 separate violations of various hazardous waste storage, handling and associated records violations in 6 NYCRR Parts 372 and 373. Respondent's liability was enhanced by being deemed a major hazardous waste generator. This scenario demonstrates the costly consequences of generating hazardous waste without regulatory guidance.

DEC Administrative Decisions and Orders

In the Matter of Robert Dalcamo
DEC File No. R1-20110613-196
Order, December 1, 2013

Respondent disposed of more than 70 cubic yards of solid waste at an unauthorized solid waste disposal facility, in violation of 6 NYCRR 360-1.5(a); and operated a solid waste management facility without a valid permit, in violation of 6 NYCRR 360-1.7(a)(1)(i). Upon granting a Motion for a hearing without an Order, the Commissioner assessed a civil penalty of $90,000, of which $45,000 was payable within thirty (30) days, and $45,000 suspended contingent upon compliance with the order. Respondent did not appear.

However, the Commissioner denied a staff request to impose a "lifetime ban" on Respondent from engaging in future environmental activities due to insufficient facts on the record. Staff's request relied primarily on Respondent's prior environmental enforcement record dating back to the early 1990s.

In the Matter of A & P Mart and Arundeep Vij
DEC File No. 12-33, R9-20120524-53A
Order, December 17, 2013

The Commissioner ruled in favor of the DEC's Motion for a Default Judgment where Respondents violated the terms of a relatively minor 2012 prior administrative consent order for petroleum tank paperwork violations. Respondents failed to pay the previously agreed upon $1,500 civil penalty and submit the required records and were assessed a combined new penalty of $7,000 (including the original penalty) for violating the underlying order. Respondent failed to appear.

In the Matter of Grand Concourse East HDFC (1003 Grant Avenue)
DEC Case No. PBS 2-601137NBT
Order, December 17, 2013
Respondent violated 6 NYCRR 612.2 for the failure to reregister a petroleum storage facility, within 30 days of the transfer of ownership of the facility to it and then failed to re-register its facility for approximately eighteen years. The Commissioner granted a Motion for a Default Judgment as Respondent did not appear and was assessed a civil penalty of $10,000 and ordered to submit a registration application to the DEC for the facility.

In the Matter of San Miguel Auto Repair Corp., Andre Moncion, Hector R. Cabrera, Genelly Cornelio, and Cristian Tejada
DEC Case No. CO2-20100615-18
Order, December 17, 2013

Respondents completed on-board diagnostic (OBD) II inspections of motor vehicles using noncompliant equipment and procedures in violation of 6 NYCRR 217-4.2. OBD inspections are critical for determining a vehicle's air pollution emissions compliance and the efficient performance of major engine components. A combined civil penalty of one hundred fifty thousand eight hundred seventy-five dollars ($150,875), was assessed against various defendants with the onus falling on the corporate defendant.

In the Matter of 735 Pelham LLC
DEC File No. R2-20110120-23
Order, December 18, 2013

In a significant holding, the Commissioner assessed respondent a total civil penalty of $150,000, with $80,000 payable and $70,000 suspended for substantive violations of an underlying 2008 administrative consent order for PBS and oil spill remediation violations. In particular, the Respondent's claims of good faith attempts to comply and remediate the oil spill were held to be "not credible."

In the Matter of U.S. Energy Development Corporation
DEC File No. R9-20111104-150
Ruling of the Chief ALJ Amending Discovery Schedule, December 31, 2013

The Chief ALJ issued a Ruling approving of a very detailed discovery schedule involving multiple subpoenas proposed by Respondent in this complicated case based on underlying alleged waterway violations.

In the Matter of Benaim, Raphy and Tovit, R.B. 175 Corp.
DEC Case No. R2-20120809-487
Order, January 27, 2014

Respondents were assessed a civil penalty of $62,500 (jointly and severally) for violations of an earlier 2009 Stipulation entered with DEC for the investigation and remediation of a petroleum spill at a former gas station site. The violations focused on a faulty and incomplete Remediation Investigation Report ("RIR") submitted by Respondent.

In the Matter of Mahoney, Patrick A.
DEC Case No. CO 7-20110601-100
Decision and Order, January 27, 2014

In a rare adjudicatory hearing brought under the ECL's fish and wildlife law and regulations (ECL Section 11-0533(7), 6 NYCRR 197.8), the DEC revoked a fishing guide's license for one year and assessed a penalty of $200 for violating the state's "no fighting in a public fishing area" prohibition (6 NYCRR Part 59.1). The revocation proceeding was based on the licensee's prior criminal conviction for assaulting a fisherman on the Salmon River.

Weird News

New Environmental Impact Issue! Elves?

Elves (a/k/a the "Little Folk") have been part of Icelandic folk customs since that country's founding in the Viking era. The importance of this local cultural issue recently became apparent when several proposed projects allegedly encroached on elven lands. To date, elves have not been spotted in New York.

Man Indicted for Attempt to Use Deadly X-Ray Weapon (NDNY)

A Galway, New York man has been indicted in the NDNY on several federal felony counts for the development of and plans to use a remotely-operated radiation-emitting device including attempting to produce and use a radiological dispersal device, in violation of Title 18, United States Code, Section 2332h(a) and (c)(1). Don't even ask.
DEC Proposes Environmental Monitor Policy

DEC proposed the first changes in its monitoring policy since 1992. The 60-Day Comment Period Runs to April 14, 2014. The use of Monitors has been periodically criticized as unfair and burdensome to regulated entities since its inception.

The four proposed criteria to determine the need for a monitor are where:

- environmental monitoring is required by law,
- the material at the site is a concern due to its characteristics or quantity,
- there are concerns with the compliance history or past practices of the regulated entity,
- DEC determines the regulated facility, site or activity needs additional oversight.

Proposed monitoring services will be provided by qualified:

- DEC employees who operate under DEC supervision;
- individuals who are employed by another governmental agency approved by DEC, operating under DEC supervision;
- entities whose services are directly contracted by DEC, operating under DEC supervision; and
- entities whose services are directly contracted by the regulated entity, subject to DEC's initial and continued right of approval, operating under DEC supervision.

NYCDEP Dry Cleaner Disclosure Rule Takes Effect

A new rule promulgated by the New York City Department of Environmental Protection (NYCDEP) took effect requiring the City's approximately 1,400 dry cleaners to post signs disclosing the primary chemicals used in the dry cleaning process. The signs are to list information including the chemicals and a link to information about their potential health effects.

Texas Fracking and Air Pollution Enforcement

While controversial authorized hydraulic fracturing, or "fracking," will not happen in NY before 2015 (at the earliest), it is worth noting that fracking derived air emission regulation and enforcement are significant issues in Texas' Eagle Ford Shale region.

Costco to Pay $60k for Selling Banned Pesticides

The Costco Wholesale Corporation will pay a civil penalty of $60,000 after a NYSDEC investigation revealed that the company sold banned pesticides which are specifically banned from sale on Long Island. The bans are especially relevant for the protection of Long Island's sole source aquifer. The company was also ordered to remove the pesticides at issue from all its...
stores throughout the region and to issue a recall notice to its member shoppers. If there were any doubts about the violation, the product's label literally read, "Not for sale, sale into, distribution and or use in Nassau, Suffolk, Kings and Queens counties of New York" (emphasis added). The penalty level was partially determined by the number of banned product containers in stock in Costco's stores (over 1,000 containers were estimated).

**Enforcement People in the News**

*Emily Lloyd Re-appointed NYCDEP Commissioner*

Ms. Lloyd returns to her old position as NYCDEP Commissioner in the new de Blasio administration after originally serving in that post from 2005 to 2009. Previously, she also served as the New York City Department of Sanitation Commissioner from 1992 to 1994.

**Federal Enforcement**

*Operation Crash Slams More Alleged Rhino Horn Smugglers (SDNY)*

This federal investigation continues to expose the international criminal conspiracy to smuggle ivory which based on these indictments allegedly stretches to Hong Kong and the Chinese mainland. Here, one of the defendants also allegedly tried to bribe a federal agent.

**OSHA/NYSDOL Report**

*Explosion at Syracuse Waste Water Treatment plant - Man Dies*

A September 2013 explosion at the Canastota Wastewater Treatment Plant killed one worker and injured another as contractors were attempting to replace piping inside a methane gas dome in a confined space. One contractor was issued three serious citations with $14,700 in proposed fines. The other was issued seven serious citations with $31,020 in fines. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

**DEC Region 4 Administrative Orders**

It is always worth noting that NYSDEC Region 4 is currently the only DEC Regional office that regularly posts all administrative enforcement consent orders and settlements. However, this data can be a useful window into the agency's enforcement policies statewide.

*In the Matter of Village of Athens*

*Modification of Consent Order, February 6, 2014*

*R4-2001-0313-35M5*

The Department lifted a moratorium on new sewer hookups and extended a compliance schedule for sewer line construction due to the Village's past performance and in deference to unavoidable cold weather delays.
In the Matter of Lowe's Home Centers  
Order on Consent, February 6, 2014  
R4-2013-0927-118

Respondent, a retailer, violated ECL 33-1301.1(b) by offering for sale, nine damaged containers of general use pesticides and was assessed a civil penalty of $1,000.

In the Matter of Cherry Valley-Springfield Central School District  
Order on Consent, February 7, 2014  
R4-2014-0110-2

Respondent municipality exceeded various SPDES permit parameter effluent limits on approximately sixty occasions in violation of the waste water treatment plant's SPDES permit and 6 NYCRR Part 750-1.4. A civil penalty of $25,313 was assessed with $5,063 payable and the balance suspended conditioned on compliance with the Order.

In the Matter of Town of Rotterdam  
Order of Consent, February 25, 2014  
R4-2014-0117-7

Respondent municipality violated 6 NYCRR Part 750-2.8(a)(2) by failing to maintain the above ground sewer main that was involved in two separate breaks and violated ECL Section 17-0803 when sewer main discharged untreated sewage in those incidents. A civil penalty of $2,200 was assessed.

DEC Administrative Decisions and Orders

A full listing of recent decisions can be found on the DEC website.

In the Matter of Corona Heights Trading Inc.  
Order, February 20, 2014  
DEC File Nos. R2-20090522-317 & R2-20090713-434

In an unusual legal repudiation, the Commissioner reversed the ALJ's report and held that a violation of an existing consent order can warrant a separate administrative penalty in addition to any unpaid or suspended penalties left over from the underlying consent order. The ALJ had originally found that the DEC was only entitled to an unpaid portion of the original payable penalty plus the suspended penalty for the violation of the Order due to a failure to remit the full payable penalty. The Commissioner disagreed and noted that the ALJ had confused the suspended penalty provision of the original order with stipulated penalties that set predetermined penalties between the parties. Based on the standard penalty criteria the Commissioner assessed an additional $5,000, for the violation of the consent order as an independent violation of ECL 71-2907(1) and ordered the payment of the remaining $10,500 combined unpaid and suspended penalty. Respondent did not appear in response to a 6 NYCRR 622.12, motion for order without hearing (granted by the Commissioner as well).
Respondents completed 979 onboard diagnostic (OBD) II inspections of motor vehicles using noncompliant equipment and procedures in violation of 6 NYCRR 217-4.2. OBD inspections are critical for determining a vehicle's air pollution emissions compliance and the efficient performance of major engine components. After a complex analysis based on past rulings, a combined payable civil penalty of $171,000, was assessed on a pro rata basis against various individual corporate and individual defendants. However, only $36,000 of the total was assessed against the individuals only because of the doubt cast on the legal existence of the corporate defendant.

Note: Based on prior holdings, the Commissioner continues to refuse to apply joint and several liabilities among the respondents in Part 217 OBD proceedings.

This ruling modifies this action's extensive discovery schedule including the service schedule for subpoenas below in the prior Chief ALJ Ruling of February 4, 2014.

The Chief ALJ granted Respondent's motion to issue a subpoena to another state agency in accordance with previous rulings in this action. Respondent (generators of hydraulic fracturing or fracking wastes upstream in PA.) seeks discovery from the NYS Office of Parks, Recreation and Historical Preservation to support its various defenses involving the causation of alleged stream pollution violations. The Chief ALJ had ruled that CPLR 3101[a] provided for the issuance of a subpoena duces tecum by leave of the ALJ pursuant to the Department's statutory grant of the subpoena power (see Matter of U.S. Energy Develop. Corp., Ruling of the Chief ALJ on Discovery Requests, Dec. 11, 2013, at 4-5 [citing ECL 3-0301(2)(h)]; see also ECL 71-1709[1]; see generally Matter of Irwin v Board of Regents of Univ. of State of N.Y. , 27 NY2d 292, 296-297 [1970]; Matter of Moon v New York State Dept. of Soc. Servs. ,207 AD2d 103, 105 [3d Dept. 1995]).

Weird News

Pot Farmer Gets 6 Years for Using Rat Poison, Other Nasty Stuff (E.D. of California)
A Mexican national was sentenced to six years in prison for among other offenses: releasing rat poison and FIFRA restricted use insecticides in connection with a large illegal marijuana farm in the Lilly Canyon area of the Sequoia National Forest.

Among the chemical poisons and restricted use pesticides used on the farm were: zinc phosphide, a substance so toxic that a single swallow can kill a small child, and; carbofuran, where the ingestion of a single grain will kill a bird and one quarter of a teaspoon is fatal to humans. Who says marijuana is harmless?!
**Issue 15 – NY Environmental Enforcement Update March 2014**

**Enforcement News**

*Tonawanda Coke Sentenced for CAA-RCRA Criminal Fine (WDNY)*

Tonawanda Coke Corporation was sentenced to pay a $12.5 million penalty and $12.2 million in community service payments for criminal violations of the Clean Air Act (CAA) and the Resource Conservation and Recovery Act (RCRA). The sentence followed a conviction in March 2013 on 11 counts of violating the CAA and three counts of violating the RCRA. The facility's Environmental Control Manager was sentenced to one year in prison, 100 hours of community service, and a $20,000 fine for 11 counts of violating the CAA, one count of obstruction of justice and three counts of violating the RCRA.

*SI Group Fined Again for Pollution Violations (R4)*

A Rotterdam, NY chemical manufacturer is paying its fourth state pollution fine in three years to the DEC. A $75,000 civil penalty was assessed with $10,000 suspended for water pollution releases to the Mohawk River as well as violations of SPDES and RCRA permits and the failure to timely report a hazardous substance release as per 6 NYCRR Part 595.4(a). Since March 2011, SI has been assessed a cumulative $275,000.00, for various water and air pollution violations at its main plant in Rotterdam. The Order on Consent is available online (see In the Matter of SI Group, No. R4-2014-0131, 3/19/14).

**Adirondack Park Agency - 2013 Legal Division Annual Report**

The APA Annual Report including 2013 enforcement statistics is now available via the APA web site.

**Proposed Part 570 LNG Public Hearing Summary Issued**

In the Matter of Part 570 (Liquified Natural Gas), the Hearing Report regarding the DEC proposal to establish a NY permitting program for the safe siting, construction, and operation of liquefied natural gas ("LNG") facilities and transportation of LNG, is now available.

**Enforcement People in the News**

*Environmental Bar Loses Pioneer David Sive*

The Environmental Law Section extends its condolences on the passing of David Sive to his family, friends and many colleagues. David's contributions to our profession are too lengthy to be listed here. Among his many accomplishments, he was a founder and significant contributor to the Environmental Law Section. His experience and wise counsel will be missed by all.
Steve Tambini, New Executive Director of Delaware River Basin Commission (DRBC)

Mr. Tambini, an experienced civil and environmental engineer, will be only the fourth executive director in the DRBC's 53-year history. The commission is represented by the basin states (Del., N.J., N.Y., and Pa.) and the U.S. Army Corps of Engineers' North Atlantic Division.

State and Local Enforcement

Illegal Tree Toppers to PAY for the View!

The NY Attorney General announced a court-ordered settlement that requires a Yonkers-based tree service to pay sanctions valued at $64,000 for illegally entering a State park in Westchester County and removing the tops of approximately 34 trees. Three private landowners who hired the tree trimmers to improve their views of the Hudson River (previously blocked by the trees in question) are contributing $24,000 toward this settlement. The company had previously been held liable in 2012 in Westchester Supreme Court for illegal entry into the park, unauthorized tree cutting in violation of NY environmental and public land laws, as well as for common law trespass.

Dead Bird Dumpers Nabbed

Two defendants were issued tickets by DEC for the illegal disposal of approximately 200 dead game birds on private land. The birds were the unused left-overs from a dinner held by a local bow hunting club. But, because the birds were legally harvested, the pair was cited for the illegal disposal of solid wastes as per 6 NYCRR Part 360, rather than a fish and wildlife violation.

Western NY Man Charged with 190 Alleged Wildlife Violations

The DEC and the US Fish & Wildlife Service executed a criminal search warrant against an individual that was alleged to be in unlawful possession of numerous live turtles and birds of prey among many other live animals and animal parts. Federal prosecution is pending for the illegal possession of bald and golden eagle parts. Defendant is a taxidermist.

Federal Enforcement

Feds File Suit for UST Violations (EDNY)

A federal civil RCRA complaint has been filed against two individuals and 15 related corporate entities for violations of the federal leak prevention requirements for underground storage tanks at four gas stations on Long Island as mandated under the RCRA. This prosecution may mark a new trend as the underlying violations are usually prosecuted under state rather than federal law.

Operators Foul Up Water System in SDWA Action (SDNY)

Defendants operated a public water system serving a development in Deerpark, Orange County and admitted to violations of the Safe Drinking Water Act ("SDWA") by failing to monitor and
treat water, make reports, take corrective action, and maintain a certified operator. The defendants agreed: to provide the Government with a lien on property in the amount of $50,000; to turn over all records relating to the water utility to new operators; and to never again own or operate a public water system. The deficiencies led to "boil water" orders for water consumers among other problems.

_Bankrupt Kodak Reaches CERCLA and RCRA Bankruptcy Settlement (SDNY)_

The bankrupt Eastman Kodak Corporation entered three settlements in Chapter 11 proceeding resolving serious environmental liabilities incurred under various federal environmental laws at several Kodak locations. Kodak will fund a $49 million trust for clean-up at the Eastman Business Park site and the Genesee River. DEC also agrees to fund any additional costs of clean-up between $49 million and $99 million and Kodak and DEC each agreed to pay half of any costs above $99 million. Historically, Kodak commenced industrial operations at some of these sites in the late 19th century.

_OSHA/NYSDOL Report_

_Hazardous Chemical Exposure Violations_

Diversified CPC International Inc. was cited by OSHA for 15 serious violations of the process safety management standard at the chemical manufacturer's Sparta, NJ production facility. The company faces $73,500 in proposed penalties for exposing workers to hazardous chemical risks. The majority of the violations relate to potential hazards stemming from the use of liquefied petroleum gases, fluorocarbons and dimethyl ether.

_DEC Region 4 Administrative Orders_

It is always worth noting that NYSDEC Region 4 is currently the only DEC Regional office that regularly posts all administrative enforcement consent orders and settlements. However, this data can be a useful window into the agency's enforcement policies statewide.

_In the Matter of SI Group, Order, R4-2014-0131-17, 3/19/14_

(see Enforcement News above)

_In the Matter of St. Mary's Healthcare Order, R4-2014-0115-5 Order, 3/25/14_

Respondent failed to make a hazardous waste determination for generated wastes including: Lindane soap; used Nicotine patches; and packing material for the drugs Nicotine and Warfarin, in violation of 6 NYCRR Part 372.2(a)(2). Respondent had been disposing of the wastes with its regular commercial trash and was assessed a civil penalty of $7,999.00 with $6,400 payable and the rest suspended. This is another example of a non-industrial commercial operator that may not be aware that its business practices invoke state and federal hazardous waste regulation.
DEC Administrative Decisions and Orders

In the Matter of Best Alignment Auto Repair, Inc., and Mohamed C. Diallo
Order, 3/20/14
DEC Case No. CO2-20100615-29

Respondent violated onboard diagnostics (OBD) standards and 6 NYCRR 217-4.2 by operating an official emissions inspection station using equipment and procedures not in compliance with Department procedures and standards for 128 vehicle inspections using noncompliant equipment and procedures and was assessed a civil penalty of $30,000.

In the Matter of Fordham Road Concrete Corp., and Arthur George Reis
Ruling, 3/4/14
R2-20130930-432

In an interim ruling, the ALJ again demonstrated the limits of a Department Motion for an Order without Hearing (6 NYCRR Part 622.12) by applying the summary judgment standard and concluding that staff's motion must, in large part, be denied because of issues if fact raised by Respondent. DEC had commenced an action for numerous petroleum discharge and PBS violations. A number of violations remain to be adjudicated and a final hearing report will combine the results of this Ruling and future findings for all violations.

In the Matter of Anderson, George and Douglas Anderson
Order, 3/6/14
DEC Case No. R9-20110922-36

The Commissioner granted staff's motion for a 6 NYCRR Part 622.12 Order without hearing and held Respondents jointly and severally, to have violated ECL Part 23-2711(1) by mining without the required ECL permit. Upon review of the Department's Civil Penalty Policy DEE-1, the Commissioner raised the assessed civil penalty from $50,000 (the ALJ's recommendation) to $80,000, due to the severity of the violation and past history of non-cooperation among other factors. Respondent was also ordered to either submit a permit application or cease mining and undertake reclamation.

In the Matter of Bardin, Cindy A.
Order, 3/5/14
DEC Case No. OHMS 2013-68159

This Administrative Order follows a court ordered administrative hearing following a denial of a licensee's application to renew two special fish and wildlife licenses issued by the DEC Division of Fish, Wildlife & Marine Resources (DFWMR) issued in accordance with Article 11 of the ECL.

The DFWMR Director had denied the renewal requests by letter, citing noncompliance with: the license conditions; a previous consent order; and violations of the ECL. The licensee then sought relief via a CPLR Article 78, after the DEC denied a request for a hearing. Note: neither the ECL
nor DEC regulations provide for a hearing for the denial of a license renewal in this license category.

The Supreme Court agreed that no statutory or regulatory provision requires a hearing to under these circumstances. However, the Court "analogized the facts in this case to those involving revocation of a license," and then held that a hearing must be held as a matter of due process. (see Matter of Bardin, Sup Ct, Washington County, March 8, 2013, Pritzker, J., Index No. 19481).

Subsequent to the Hearing, the Commissioner still upheld the original denial of the requests to renew the licenses. The former licensee had held licenses to possess wild animals including mountain lions and tigers and bears (Oh my!).

_In the Matter of Ash, Jeffrey_
_Order, 3/5/14_
_Dec Case No. OHMS 2013-68434_

In a special license renewal denial situation similar to the Bardin hearing (above), the licensee also commenced a CPLR Article 78 to challenge the denial and seek a hearing not offered by law. However, here the licensee and the DEC entered into an Order of Settlement discontinuing the Article 78, and compelling an administrative hearing on the denial. Regardless, the outcome of the Hearing was the same as in the Bardin matter as the Commissioner upheld the original denial due to various dangerous incidents involving the former licensee's possession of wild animals, including bears.

_In the Matter of Mahopac Scrap and Recycling Inc., and William R. Boyar, Sr._
_Order, 3/5/14_
_Dec Case No. CO 3-20111215-13_

Respondent owner-operator, but not the dissolved corporation, was held to have violated 6 NYCRR 360-12.2(d) and assessed a $5,000 for failure to file an annual report for calendar year 2010 for the a solid waste management facility at 205 Myrtle Avenue, Mahopac Falls, New York.

**Weird News**

_Banning Electric Car Stores_

Electric car manufacturer Tesla favors stores or mall kiosks to retail its electric cars. Such operations are much cheaper and faster to establish and do not require extensive inventory, parts and service departments or a large lot and building to contain all of those components. Several states have already banned Tesla style retail stores at the behest of the auto dealership industry (which is compelled to maintain all of the overhead that Tesla does not). The New York’s legislature was also weighing such a legal ban despite the state's commitment to the reduction of greenhouse gases. But, at press time, state leaders and lobbyists may have reached a compromise
to allow Tesla to retain its five existing NY retail stores. The Update will continue to follow this matter.

*Cow Flatulence on the Greenhouse Gas Reduction Agenda*

We all knew *this* was coming. Peeeyew!
Enforcement News

US Supreme Ct. Upholds EPA Interstate Air Pollution Regulation

The Supreme Court reversed the ruling of the Court of Appeals, and upheld the Clean Air Act's "good-neighbor" provision which requires EPA to regulate air pollution from power plants in upwind states when that air pollution impacts downwind states. The Supreme Court further held that EPA's approach to determining each state's relative responsibility for reducing such pollution was a permissible one under the Clean Air Act. NY Attorney General Schneiderman actively supported the EPA position along with other "downwind" states.

Record Settlement in Tronox Fraudulent Conveyance Bankruptcy Case

The US entered into a settlement agreement with the Kerr-McGee Corporation and related entities, in a fraudulent conveyance case brought in the bankruptcy of Tronox Inc. and its subsidiaries ("Tronox"). In December 2013, the Court ruled that historic Kerr-McGee Corporation ("Old Kerr-McGee") fraudulently conveyed assets to New Kerr-McGee to evade its debts, including its liability for environmental clean-up at contaminated sites around the country. Pursuant to the settlement agreement, the defendants agree to pay $5.15 billion to settle the case, of which approximately $4.4 billion will be paid to fund environmental clean-up and for environmental claims. This is reputedly the largest environmental settlement in a contamination case. At least one former Kerr-McGee settlement site is in NY.

Mayor De Blasio Proposes Major Updates to the NYC Air Code

New York City's proposed the most significant changes in the City's Air Pollution Control Code since 1975. The proposed revisions will update emission standards and focus on pollution sources that currently have little or no emission control requirements including: particulate matter generated by commercial char broilers, fireplaces, food trucks, and refrigeration vehicles. The New York City Council Committee on Environmental Protection will hold a hearing in the near future to codify the revisions to the Air Code.

Adirondack Park Agency ("APA") Releases FY 2013 Report

The APA, a significant state environmental agency, has issued its annual report for 2013. In particular, see pp. 12-13, for the report's legal and enforcement summaries.

USDOJ Announces FY 2013 Report and Accomplishments

The Justice Department's Environment and Natural Resources Division (ENRD) released its Fiscal Year (FY) 2013 Accomplishments Report, detailing its work to enforce environmental and wildlife laws.
**Haz. Waste Crack Down on Retail Chains Continues (Alameda Co. Superior Court)**

In a California civil prosecution of interest, Lowe's Home Centers LLC will pay $18.1 million to resolve a civil enforcement action alleging that more than 118 of its California stores illegally handled and disposed of hazardous waste over a six-and-a-half-year period, according to the California's Department of Toxic Substances Control. Lowe's illegally disposed of hazardous waste, including pesticides, batteries, fluorescent bulbs and other toxic materials. The chain stores routinely sent items such as spilled or returned paint or damaged batteries to local landfills that were not permitted to receive the materials. Similar enforcement initiatives against chain retailers have been gradually appearing in New York (Note: see another Lowe's settlement below).

**Lowe's Settles Violations for Lead Generated by Home Renovations (U.S. District Ct. for the Southern District of Illinois)**

Lowe's Home Centers has agreed to implement a comprehensive, corporate-wide compliance program at more than 1,700 stores nationwide (including New York) to ensure its contractors minimize lead dust from home renovation activities, as required by the federal Lead Renovation, Repair and Painting (RRP) Rule. The company will also pay a $500,000 civil penalty, which is the largest ever for violations of the RRP Rule, as part of the settlement.

The RRP Rule, which implements the federal Toxic Substances Control Act (TSCA), is intended to ensure that owners and occupants of housing built before 1978, receive information on lead-based paint hazards before renovations begin, and that renovators are properly trained and certified by EPA. Recently, EPA has conducted a nationwide crackdown for RRP violations.

**2014-2015 NYS Environmental Budget News**

The legislative highlights (and lowlights) of the 2014 NYS environmental budget items include: An increase of the Environmental Protection Fund to $162 million, which is a $9 million increase from 2013 (but still less than requested by the Assembly and Senate; State Parks (NYSOPR &HP) receiving $92.5 million in additional capital funds; and, the failure of the Assembly, Senate and the Governor to reach consensus on Brownfield Cleanup Program reforms and funding the Brownfield Opportunity Areas (BOA) program. BCP negotiations will continue for the rest of the 2014 legislative session.

**Need A Summer Read?**

Try "The Rule of Nobody, Saving America from Dead Laws and Broken Government," Philip K. Howard, WW Norton & Company.
Enforcement People in the News

NYSDOH Commissioner Nirav Shah Resigns Suddenly

State Health Commissioner Dr. Nirav Shah is leaving his post to become senior vice president and chief operating officer for clinical operations for the southern California region of the Kaiser Foundation Health Plan. Dr. Howard Zucker will assume his duties as Acting Commissioner. He formerly worked as a professor of anesthesiology at Albert Einstein College of Medicine. The impact on the progress (or lack thereof) of the DOH's endless review of natural gas horizontal hydraulic fracturing or fracking is unknown.

DEC ECO Kinney Named Officer of the Year

The National Wild Turkey Federation (NWTF) has named Environmental Conservation Officer (ECO) Jerry Kinney, "2013 New York Officer of the Year." NWTF is an international grassroots, non-profit organization that supports scientific wildlife management and wild turkey hunting. NWTF annually recognizes an officer who has demonstrated outstanding service and contributed significantly to conservation law enforcement.

DEC ECO Grisolini Inducted into Hall of Fame

The New York State Outdoorsmen Hall of Fame (NYSOHOF) presented Environmental Conservation Officer (ECO) Ricardo Grisolini with the "Dave Pierce Memorial Award" which recognizes an individual involved in conservation who has worked closely with youth.

Federal Enforcement

CAA False Statement Conviction (WDNY)

A defendant pleaded guilty to being an accessory after the fact to a false statement under the Clean Air Act. The charge carries a maximum penalty of one year in prison, a fine of $125,000 or both. Defendant was employed as an air sampling technician and a project monitor, and was certified by the New York State Department of Health to conduct asbestos project monitor and air sampling duties. During an abatement project, the defendant colluded with others to falsify the status of asbestos removal in records required under the Clean Air Act (CAA).

Virgin Islands Enters Agreement for Clean Air Act Compliance

(U.S. District Ct. for the U.S. Virgin Islands)

Under a civil enforcement agreement with EPA Region 2, and the USDOJ, the Virgin Islands Water and Power Authority (VIWAPA) entered an agreement to comply with the federal Clean Air Act (CAA) for the Estate Richmond Generating Facility on St. Croix. Compliance will reduce nitrogen oxides (NOx) and particulate matter (PM) emissions. VIWAPA has already spent approximately $4 million to come into compliance with pollution control requirements and
will spend at least $2 million more per year to maintain compliance. VIWAPA will also pay a $700,000 civil penalty as part of the agreement.

Fishy Pair Plead Guilty to Fluke Fraud, and Records Falsification (EDNY)

In related pleas, a commercial fish dealer and a fisherman pleaded guilty for systematically under-reporting fluke (summer flounder) harvests as part of a federal Research Set-Aside (RSA) conservation program. The defendants falsified hundreds of records from 2009 to 2011, as part of a scheme to sell illegally harvested fluke. Each will be subject to fines and restitution in excess of $500,000.00 (final totals to be determined).

OSHA/NYSDOL Report

Hazardous Explosive Dust in New Windsor, NY

A manufacturer of cabinets and countertops was cited by OSHA for 13 serious violations of workplace health and safety standards. A serious violation occurs when there is substantial probability that death or serious physical harm could result from a hazard about which the employer knew or should have known.

Combustible dust was found on plant pipes, equipment, supports and ductwork. In addition, while spraying adhesives on countertops and molding during the manufacturing process, employees were overexposed to the hazardous chemical methylene chloride. OSHA proposed fines totaling $51,800.

DEC Region 4 Administrative Orders

It was obviously hazardous waste enforcement month at this DEC office. What these light industry facilities appear to have in common was an EPA identification number and their lack of understanding about the minutia of the state and federal hazardous waste regulatory scheme. Despite, the high maximum penalties allowed under ECL Section 71-2705(1)[$37,500, per violation], DEC was quite reasonable in its overall penalty calculations. It is always worth noting that DEC Region 4 is the only DEC Region that regularly releases administrative consent orders. Thus, that office gives at least a limited window into actual DEC enforcement policies.

In the Matter of SUNY Oneonta
Order on Consent, 4/28/14
File No. R4-2014-0219-25

Respondent was ordered to pay a civil penalty of $5,499.00, for eight violations of the hazardous waste regulations including the failure to:

- To make waste determination - 6 NYCRR 372.2(a)(2);
- To properly mark or close hazardous waste containers - 6 NYCRR 372.2(a)(8)(i)(a)(2);
- To have a TSDF designated in writing - 6 NYCRR 372(b)(2)(i);
- To have a transporter designated in writing - 6 NYCRR 372.2(b)(2)(iii);
• To have a written job descriptions for the staff - 6 NYCRRR 373-3.2(g)(4)(ii);
• To have a documented training program - 6 NYCRR 373-3.2(g)(1)(ii);
• To maintain training records - 6 NYCRR 373-3.2(g)(5); and,
• To maintain a contingency plan - 6 NYCRR 373-3.4(c)(5).

In the Matter of Electro Fiber Technologies
Order on Consent, 4/21/14
File No. R4-2014-0313-73

Respondent was ordered to pay the odd civil penalty amount of $3,248.00 for miscellaneous hazardous waste regulatory violations including failures to:

• Properly mark accumulation dates on hazardous waste drums 6 NYCRR 372.2(a)(8)(ii)(2);
• Have a closure plan 6 NYCRR 373-1.1(d)(1)(iii) and (iv);
• Properly prepare a hazardous waste manifest - 6 NYCRR 372.2(b)(2)(ii);
• Have a written TSDF authorization - 6 NYCRR 372(b)(2)(i);
• Have a written transporter authorization - 6 NYCRR 372.2(b)(2)(iii);
• Have a written job descriptions for hazardous waste management staff - 6 NYCRRR 373-3.2(g)(4)(ii);
• Have a complete contingency plan - 6 NYCRRR 373-3.2(g)(4)(ii); and,
• Properly prepare a required notice for a hazardous waste shipment - 6 NYCRR 376.1(g)(1)(ii).

In the Matter of Tecta American Weather Guard, LLC
Order on Consent, 4/2/14
File No. R4-2013-0120-12

Respondent was ordered to pay a civil penalty of $5,000.00, for: failure to make a determination that piles of ignitable solid waste stored at its facility were D001 hazardous waste in violation of 6 NYCRR Part 371.1(f)(7)(i) and 6 NYCRR Part 372.2(a)(2); and storage of greater than 1,000 kilograms of non-acute- hazardous waste without a permit is a violation of 6 NYCRR 371.1(f)(7)(i).

DEC Administrative Decisions and Orders

In the Matter of Strano Freddy, Joe Stancampiano, and John Dunsmoor
Order of Disposition
DEC Proceeding No. OHMS 67612, 4/29/14

This case is example of an attempt to use the Department's rarely invoked eminent domain powers. Here, DEC was presented with a petition pursuant to ECL 15-1983, which sought to allow the owner of agricultural lands to attain an easement or right of way over another person’s property for drainage purposes. In such cases the Department may use the procedures consistent with the Eminent Domain Procedure Law (EDPL) to make a determination as to whether eminent domain is necessary for the drainage of the petitioner's land. If applicable, the
Department may then assess the amount of compensation due from the petitioner to the affected landowners.

However, the parties settled their dispute regarding the maintenance of a clogged drainage ditch and the matter was dismissed by the Office of Hearings. But, the dismissal order does outline the history of an obscure and unusual part of the ECL and the state's land use enforcement practices.

*In the Matter of Supreme Energy Corporation, Supreme Energy, LLC and Frederick Karam
DEC Case No. 7-1780
Decision and Order, 4/11/14*

This lengthy, meandering and sometimes acrimonious case took almost seven years to reach a conclusion as the Hearings Office and the litigants wrestled with numerous evidentiary, discovery and legal issues. In the end, the Commissioner held that Respondents failed: to obtain a MOSF license in violation of Navigation Law § 174(1)(a); to maintain adequate secondary containment at the facility, in violation of Navigation Law § 174(3); and, to pay license fees and surcharges on barrels of petroleum product transferred to the facility, in violation of Navigation Law § 174. However, the import of this Order lies in the combination of high penalties and the application of joint and several liability to the individual corporate officer respondent. Specifically, the Order analyzes and applies the doctrines of corporate veil piercing and responsible corporate officer liability.

Overall, the Respondents were jointly and severally assessed a total civil penalty of $1,269,517, including: $234,900, for the failure to obtain the MOSF license; $469,800, for the failure to maintain adequate secondary containment; and $564,817, for the failure to pay license fees and surcharges plus an additional 1% fee on nonpayment of monthly license fees and surcharges pursuant to Navigation Law §§ 174(7) and 192.

**Weird News**

*Toxic Water Supply Panics Chinese City*

This is yet another cautionary environmental tale from over-industrialized China.

*First Cow Tipping, Now Smart Car Flipping*

*Why?*

*NY is Not Hog Heaven*

DEC formally adopted a new regulation that prohibits hunting or trapping of free-ranging Eurasian boars. This follows recent new legislation on the subject. New York's own version of the boar war continues.
Pirates Invade the Bronx! ("Radio Pirates," that is)(SDNY)

The US Attorney and the FCC continue to crack down on New York's illegal "pirate" radio stations (operated with the willful and knowing intent to broadcast without an FCC license). Note: the Update has previously reported on the enforcement war being waged against the pirates of the air waves.
Enforcement News

EPA to Review All Consent Decrees as per 2014 -2018 Strategic Plan

As part of EPA’s FY 2014-2018 Strategic Plan, the agency has set the goal of reviewing the compliance status of 100 percent of open consent decrees by 2018. EPA claims that it reviewed only 91 percent in FY 2013. It behooves those who took advantage of any past lax enforcement of existing decrees to review their compliance status ASAP.

RCRA TSD Financial Assurance Does Not Apply to Subsequent Owners

In the Thompson Corners LLC et al. v. DEC, et al. decision it was decided that the subsequent owner of a former hazardous waste treatment, storage, disposal facility ("TSDF") is not liable for the failure to maintain financial assurance for remediation costs because the current owner had never been required to have a TSD permit. The court found that the DEC could only assess liability against parties that were actively involved in waste operations. Specifically, "As mere subsequent owners of property where a former TSD facility was present, petitioners do not fall within the purview of such requirement." The original TSD permit expired in the early 1990's when the permit holder ceased operations. Petitioners took subsequent ownership in 2005, from another party in the chain of title. Originally, DEC had also imposed civil penalties for this regulatory violation under ECL Article 71.

Kodak Bankruptcy Settlement Ensures Clean Up

DEC announced that remediation will continue after Kodak’s Bankruptcy Settlement via the establishment of an "Environmental Trust" that will be established to continue the cleanup the Kodak’s Eastman Business Park and the Genesee River. In a unique bankruptcy settlement approved by the U.S. Bankruptcy Court, Kodak is required to establish and fund a $49 million environmental trust. If the fund is depleted, New York State will cover costs up to $50 million for additional remediation or environmental protection. If total cleanup costs exceed $99 million, Kodak and DEC will each be responsible for 50 percent of the remediation costs.

Schenectady Sewage Settlement Furthers Economic Development

In an arrangement with both significant environmental and economic impacts, the DEC and the City of Schenectady entered into a water pollution Order which will allow new sewer connections for a General Electric Co. battery plant, the former ALCO brownfield site on Nott Street (a possible casino location), and for the adjacent Town of Glenville. The Order addresses improvements to an outfall pipe from the City’s sewage treatment plant ("POTW") that discharges into the Mohawk River.
NYSDOT Derailment Reporting Enforcement for Oil Trains

The dramatic increase of the interstate rail transport of crude oil through N.Y. has led to the re-emergence of the NYS Transportation Law as an element of environmental enforcement. Specifically, Article 5, Sections 115-135, regulates rail transport. Section 131, allows for 5,000 fines per violation for failure to report derailments within one hour of occurrence. NYSDOT enforces these laws.

Based on this legal authority, Canadian Pacific Railroad was fined the maximum of $5,000, for not reporting a derailment of oil tank cars near Albany for almost five hours. There were no injuries or oil releases.

Due to recent tragic derailments of similar oil tank cars in Canada and several states, increased environmental scrutiny and strict regulatory enforcement for such trains and train yards are now a NYS priority.

Alleged Asbestos Dumping in Brentwood Park

In another cautionary tale for municipalities, high levels of asbestos were detected in an estimated 32,000 tons of debris dumped at an Islip Town park in Brentwood, Suffolk County. An expensive cleanup is guaranteed. Early reports indicate that the illegal dumping may have originated with the Town's acceptance of "free fill" for the park and an adjacent property. The Suffolk County District Attorney is leading the investigation.

Modern Trojan Horse of Asbestos Surprises City of Troy

Yet another municipality is suffering the financial and liability impact of an unplanned asbestos release and abatement related to a demolition or development project. A criminal investigation into the release is being conducted by the DEC and EPA. In addition, the demolition property has been posted by the NYS Department of Labor (which oversees asbestos abatement and permits) and all demolition and cleanup work ceased as officials took samples.

NY Forest Rangers 2013 Annual Report Includes Enforcement Data

The Forest Rangers are one of the two police agencies operating within DEC. While the Rangers are best known for fire-fighting and rescue work on state lands, they still have significant enforcement responsibilities on state lands including Navigation Law and VTL enforcement (see, arrest and ticket summary on p. 48 of the Annual Report).

Nitrogen Pollution Impacts NY Coastal Wetlands

DEC recently released a report illustrating the harmful impacts of nitrogen pollution on Long Island's salt water wetlands and other waterways. Sewage and septic wastes account for most of the nitrogen loading noted in the report. Increased regulatory efforts to reduce nitrogen releases are likely. The complete report entitled "Nitrogen Pollution and Adverse Impacts on Resilient Tidal Marshlands," is available on the DEC website.
Enforcement People in the News

John Cahill, Former DEC Commissioner Runs for AG

John Cahill, the Chief of Staff to former Governor George Pataki has announced that he will challenge incumbent AG Eric Schneiderman in the 2014 elections. But, he is best remembered in the environmental community as the former DEC Commissioner and the past General Counsel of that agency during the Pataki administration.

DEC Staff Changes

Eugene ("Gene") Kelly, the longtime DEC Region 4 Director will be leaving DEC by mid-May. Gene has served with distinction in many positions with DEC and the Attorney General's office in his more than 20 years of government service.

Alison Crocker left counsel's office at DEC after many years to become the Chief of the Real Property Bureau in the Attorney General's office. Alison has held many management positions with the DEC including as the agency's General Counsel.

Finally, Timothy Duffy has been appointed as the DEC Director of the Division of Law Enforcement as the department's chief law enforcement officer. He has also served the agency for many years in a number of law enforcement capacities around the state.

NYC Recycling Czar Moves On

Ron Gonen, the city's deputy commissioner of sanitation, recycling, and sustainability during the Bloomberg administration, is leaving the de Blasio administration to run a $100 million recycling fund.

State and Local Enforcement

Town Fined For Unreported Landfill Leachate

The Town of Colonie was assessed a $6,000 civil penalty by the DEC for the failure to report permit violating leachate levels in a retention pond. The permit requires that leachate leaks run below 20 gallons a day over a 30-day average. However, by contractual arrangement the private landfill operator will pay the penalty rather than the Town.

Surfs Up for Illegal Surf Clam Diggers

Three men were charged by the Nassau County District Attorney with illegally harvesting undersized surf clams. Under ECL Article 13, it can be a crime to illegally take, possess, sell and traffic in undersize Atlantic Ocean surf clams. DEC Conservation Officers led the criminal investigation.
Federal Enforcement

U.S. v. Cemex Concretos, Inc. et al. (U.S. District Court for Puerto Rico)

Defendants entered into a federal consent decree under the Clean Water Act ("CWA"), 33 U.S.C. § 1319(b), for allegedly violating CWA Section 402(p), 33 U.S.C. § 1342(p), for violations of a Multi-Sector General Permit for unauthorized storm water discharges at 19 industrial facilities in Puerto Rico. Defendants denied liability but agreed to pay a civil penalty of $360,000.00 and to undertake a compliance plan. Defendants also agreed to undertake a Supplemental Environmental Project by donating 401 acres valued at approximately 2.5 million dollars to the Puerto Rico Department of Natural and Environmental Resources for conservation purposes. Defendants are in the cement business.

Organized Crime Defendants Sentenced for Attempted Control of the Carting Industry (SDNY)

The U.S. Attorney's office for the Southern District of New York continues its ongoing multi-defendant (Carmine, Sarcinella, and Cali) prosecution against an organized crime conspiracy to control the New York-area carting industry. Four more defendants were sentenced to between 5 months and 18 months for various crimes associated with the unlawful enterprise.

Last of Nine Convicted for CAA Criminal Asbestos Abatement (WDNY)

Defendants (Johnson, Manuszewski, and Towers) were involved in various capacities with the asbestos abatement of multiple residential apartment towers. Intentional CAA violations included numerous unsafe ACM handling and abatement procedures.

OSHA/NYSDOL Report

NYSDOL Administrative Asbestos Decisions

The Commissioner accepted the hearing Report and Recommendation of the Hearing Officer and issued an Order assessing a $9,000 civil penalty for various asbestos abatement violations of Labor Law Article 30 or Industrial Code Rule 56 ("12 NYCRR § 56") at multiple sites. Violations included failure to maintain negative pressure, containment and incidental disturbance of asbestos containing materials ("ACM"). Note that NY Labor Law § 909 (1) (b) provides for the assessment of a civil penalty only of not more than the greater of 25% of the monetary value of the contract upon which the violation was found to have occurred, or $5,000.00 per violation. Previous NYSDOL administrative asbestos decisions may also be found on the NYSDOL website.
DEC Region 4 Administrative Orders

In the Matter of Mallinckrodt LLC
Order on Consent
R4-2014-0319-77, 5/1/14

Respondent was held to be in violation of more than one dozen hazardous waste handling, storage and paperwork violations and was assessed a civil penalty of $7,499.00 (far below the potential legal maximum of $37,500, per violation allowed as per ECL Section 71-2705(1). Violations included:

- 6 NYCRR Part 372.2(b)(2)(ii) - hazardous waste manifest errors;
- 6 NYCRR Part 372.2(a)(8)(i)(a) - open or unlabeled hazardous waste containers;
- 6 NYCRR Part 372.2(a)(8)(ii) - unauthorized hazardous waste storage over 90 days;
- 6 NYCRR Part 373-3.9(f) - failure to post no smoking signs;
- 6 NYCRR Part 373-3.4(c) - incomplete contingency plan.

DEC Administrative Decisions and Orders

It is always worth noting that NYSDEC Region 4 is currently the only DEC Regional office that regularly posts all administrative enforcement consent orders and settlements. However, this data can be a useful window into the agency’s enforcement policies statewide.

In the Matter of U.S. Energy Development Corporation
Ruling of the Chief Administrative Law Judge
File No. R9-20111104-150, 5/9/14

The discovery in this case of alleged interstate stream pollution continues to grind on. Previously, the Chief ALJ had held that only the ALJ had the authority to issue subpoenas pursuant to 6 NYCRR Part 622, to employees of state agencies other than DEC. Here, Respondent's motion for leave to conduct depositions of OPR & HP (Parks) staff was denied in its entirety because the Respondent made, "no compelling argument supporting the conclusion that use of depositions is necessary to further evaluate staff's case and prepare a defense."

Weird News

NY "Gets Medieval on Your [fill in the blank]"

Crossbows are now legal in New York State for hunting although subject to a myriad of conditions and restrictions. (paraphrase attributed to "Pulp Fiction," the Quentin Tarantino movie).

Talk About Being Stunned in Court!

An attorney introduced an electrifying new technique into the court room.
More on China's Air Pollution

Sadly, Chinese traffic cops now must hunt for semi-banned super high emission vehicles on their hazy smog riddled byways and highways.
Enforcement News

EPA Fines US Department of Energy for Nuke Releases

The DOE paid a $155,000 fine for twice allowing radiation to escape into the air during the cleanup of 1950s-era radioactive waste at Knolls Atomic Power Labs. DOE admitted to eight separate CAA violations of National Emissions Standards for Hazardous Air Pollutants (NESHAPs) involving the release of various radioactive pollutants formerly generated by the Niskayuna (near Schenectady) facility.

San Juan, PR Faces Huge Fines for Sewage Releases

According to the San Juan Star, the EPA commenced an action against the City for alleged sewage releases into local waterways in violation of the Clean Water Act (CWA). EPA Region 2, which has jurisdiction over Puerto Rico as well as New York, seeks penalties retroactive to 2013, as the City allegedly ignored prior warnings about these releases. In general, a glance at the stories in the Star indicates that Puerto Rico is in extremely dire economic, as well as environmental, straits.

EPA Proposes Plans to Cut Power Plant Carbon Emissions

Not without controversy, EPA proposed guidelines to cut carbon emissions from existing power plants. However, current data indicates that NY will be among the least impacted states because less than 10% of its power generation relies on coal as a carbon emitting fuel.

NY Waterways 15th Worst in Nation! Room for Improvement?

The Environment New York Research & Policy Center finds that industrial dischargers released 5,303,190 lbs. of toxic chemicals into New York's waterways in 2012. This gives the state's waterways the dubious distinction of being the 15th worst in the nation, according to the report entitled "Wasting Our Waterways."

DEC Issues Bogus "Clean Fill" Alert!

The re-emergence of scammers offering so-called "clean" (but really contaminated) fill for construction projects has compelled DEC Region 1 to issue an unusual warning to the public. Counsel with clients on Long Island (and elsewhere) should take heed.

NY Cracks Down of Illegal Ivory Trade

State leaders reached an agreement on a new law to fight the state's illegal ivory and rhinoceros horn trade by imposing tougher penalties and increased limitations on purchases and sales. The enforcement effort against the illegal ivory trade is a priority for both state and federal law enforcement agencies.
DEC Issues Norlite Draft Permit, Public Comment Sought

The DEC announced the start of a public comment period for a draft hazardous waste permit and cleanup proposal for the Norlite, LLC corporation in Cohoes, Albany County. Without much fanfare, DEC continues enforcement and remediation as part of the 6 NYCRR Parts 373,374 permit renewal process for hazardous waste transfer storage and disposal facilities (TSDF).

Invasive Species Compel New Boat Cleaning Enforcement

The DEC issued new regulations that require boaters to remove all visible plant and animal materials from boats, trailers and associated equipment, and to drain boats prior to launching from DEC lands. This regulation is expected to reduce the rate at which invasive species are introduced to state lands.

NYC Issues 2013 Hazardous Materials Annual Report

The New York City "Community Right-to-Know Laws," (Local Laws 26 and 92), Report features the results of approximately 8,900 NYCDEP inspections of facilities that store hazardous materials within the City.

Pesticide Releases Remain DEC Priority on Long Island

The DEC issued "The Long Island Pesticide Pollution Prevention Strategy" highlighting the continued issue of pesticide releases in Long Island. The final report and executive summary provide a regulatory plan for the protection of both surface waterways and the region's sole source aquifer and drinking water resources.

How Far Can a Site "Look Back" Look Back?

Despite being on the state Registry of Inactive Hazardous Waste Sites as a Class 2 (significant threat) site for 31 years, DEC is back at the former Al Tech Specialty Steel property for more environmental investigation. The 68 acre site is near a tributary of the Hudson River in Colonie, Albany County. To liberally paraphrase an old saw, old hazardous waste sites never die, they simply ... fade into another site investigation.

Legislative News

The less than scintillating end of the 2014 legislative session left a number of Bills passed by the Legislature awaiting signature by the Governor at press time including:

- S7878/A10135 - Brownfields Cleanup Program tax eligibility extension and 100 million dollars appropriated to the state superfund;
- S6617-B/A6558 - The Community Risk and Resiliency Act would require consideration of the effects of climate change and extreme weather events before issuing state permits and allocating infrastructure funds.
Despite public outcry and sponsors in both houses, Bill No. S7718/A9926, amending the Environmental Conservation Law to compel financial assurance by oil train facilities for spill and accident costs ultimately languished at the end of session. The status and text of all session laws can be found online at the Legislature's law site.

**Enforcement People in the News**

*DEC Water Engineer Recognized*

The Department commended water engineer Larry Lepak of the Kirkwood office for being awarded the Public Service Excellence Award by the NYS Academy for Public Administration for outstanding performance by a public servant.

*NYCDEP Promotes Two Environmental Policemen*

The New York City Department of Environmental Protection promoted Justin Kight to the rank of Captain and environmental police officer Justin Romer to detective specialist. Since 2002, DEP has doubled the size of its Police Division to its current 200 sworn members.

**State and Local Enforcement**

*Roberto Clemente Park Update, More Toxic Sites Discovered (Suffolk Co.)*

The Suffolk County District Attorney continues to investigate what has become a multiple contaminated site situation that started with the discovery of 50,000 tons of including asbestos, heavy metals and pesticides that had been used as fill material at this public park. Sampling results confirmed the disposals. The sites are in or near environmental justice communities.

*Suffolk Co. Homes Built on Contaminated Fill!*

The Suffolk County District Attorney's office continues to investigate the origins of illegally released contaminated soils in an Islandia cul-de-sac. The location was used for the construction of affordable housing for returning veterans. This investigation is an outgrowth of the Roberto Clemente Park toxic fill investigation (see above item).

*DEC "spears" Illegal Spear fishermen*

A commercial boating captain and his crew pleaded guilty to illegal spearfishing in waters off Valiant Rock in Block Island Sound. The Captain will pay a $15,000 fine and must participate in community service programs.

*DEC Seizes Exotic Animals*

DEC seized 20 animals from an allegedly unauthorized sanctuary, located in Sinclairville, (Western) New York as part of a joint effort with the United States Department of Agriculture's Animal and Plant Health Inspection Service (USDA) and the International Fund for Animal
Welfare (IFAW). The animals included 12 tigers, 3 lions, 3 bears and 2 wolves, which were placed with licensed facilities pending further investigation and possible prosecution.

**Federal Enforcement**

*EPA Illuminates Buffalo's Bad Bulb Management*

Under an [Agreement with EPA](#), The City of Buffalo will host nine community recycling events to collect fluorescent light bulbs, electronic waste, and household hazardous waste from city residents. The City will also pay a $21,094 penalty and spend at least $79,000 on the recycling events. The underlying [hazardous waste violations](#) involved the unlawful handling and disposal of various waste chemicals and waste fluorescent bulbs which are classified as such due to the mercury content of the bulbs.

**U.S. v. Gordon (EDNY)**

Defendant was sentenced to 30 months imprisonment and 2 years of supervised release, for smuggling elephant ivory into the United States in violation of the [Lacey Act](#) and related laws. He will also pay a fine of $7,500 and forfeit $150,000, and approximately one ton of elephant ivory seized by agents from defendant's Philadelphia store.

**U.S. v. Hawkins (WDNY)**

A Buffalo, N.Y. man was convicted of a misdemeanor for being an accessory after the fact to a false statement in violation of the [Clean Air Act](#) (CAA). He was sentenced to one year probation. The defendant had been employed as an air sampling technician and a project monitor. During an asbestos abatement process, he and his co-defendants created false project logs to document the progress at the Kensington Towers abatement project. Accurate work logs are required to be maintained under the CAA.

**U.S. v. Smith (WDNY)**

The owner of a Pennsylvania company pleaded guilty to violating the federal [Clean Water Act (CWA)](#). The charge carries a maximum penalty of one year in prison, a fine of $25,000 per day of violation, or both. The defendant released demolition debris into a local river during the demolition of condemned buildings on either side of the river.

**U.S. v. Li (District Court of N.J.)**

The owner of a Chinese antique business was sentenced to serve 70 months in prison for heading an illegal ivory smuggling conspiracy in which rhino horn and elephant ivory objects worth more than $4.5 million were smuggled from the United States to China. This prosecution is part of the long running "Operation Crash" which has previously led to additional [federal convictions under the Lacey Act](#) and other federal laws.
DEC Region 4 Administrative Orders

In the Matter of Selkirk Cogen Partners
Order of Consent
File No. R4-2014-0522-1 20'

Respondents were assessed a civil penalty of $7,000.00, for a violation of an air permit condition as per 6 NYCRR 201-6.5(a)(2) by exceeding the NOx (nitric oxide) hourly and pounds per hour limits for a single air emission source. Respondents own and operate a co-generation power facility in Selkirk, New York.

In the Matter of Ruby Lake Glass, LLC
Order of Consent 6/16/14
File No. R4-2014-0507-113

Respondent was assessed a civil penalty of $1,160, for violations of 6 NYCRR 201-1.2 (a) for operating an air pollution control device without a permit; and for the reintroduction of collected air contaminants from the control device to the atmosphere. Respondent uses a cyclone device to collect, recycle and salvage fine particulate glass. This collected glass particulate then goes into a collection bag at the bottom of the cyclone.

In the Matter of the Town of Colonie
Order of Consent
R4-2014-0402-100

The Town was penalized for exceeding leachate release parameters at the Town landfill in violation of its 6 NYCRR Part 360 solid waste permit. The Town was assessed a civil penalty in the amount of $26,000, with $6,000 of the civil penalty due upon entry of the Order and the balance suspended, and payable for the failure to comply with Order's "Schedule of Compliance." The compliance schedule focuses on leachate control and management.

Weird News

Harley Davidson Goes Electric!

America's famous motorcycle brand goes green with an electric prototype. The image of the "Easy Rider" does not come to mind.

Birds Attack Blondes in British Park!

Was Hitchcock's movie ("The Birds") based on fact?

Former Reality TV Star Attempts Extortion for Negligence at Nuke Facility

A Tennessee man was charged with extortion for threatening to publicize alleged negligent practices at a federal nuclear materials facility. Now that should be a reality TV show.
Even More Smart Car Tipping in San Francisco!

As reported in the April Update, somebody in the City by the Bay has a problem with the tiny eco-friendly "smart cars."

Goats Go Get Invasive Species!

DEC has called out a brigade of ten goats to munch away at the invasive plant species that have populated the Oak Brush Plains State Preserve at Edgewood in Suffolk County. Locals will remember this property as the former Edgewood State Hospital. BAAaaaah!

Florida News? Am I in the Right Place?

Relax! Recently, I visited Southwest Florida where I spoke with representatives of the Florida Department of Environmental Protection and local public interest groups. The impact of man-made nutrient discharges into the Myakka and Peace River basins is a high priority issue among the locals. Florida's environmental agencies are organized differently from New York's. But the following should help if the environment of Southwest Florida of interest:

Florida State Government

Florida Department of Health

Florida Department of Environmental Protection (includes state parks)

Florida Fish and Wildlife Conservation Commission

Southwest Florida Water Management District

Florida Water Management Districts (in general)

Charlotte Harbor National Estuary Program
Issue 19 – NY Environmental Enforcement Update July 2014

The month's Update introduces a new feature: EPA Region 2 Administrative Settlements/News.

Enforcement News

GE Settles Hudson River Liability

General Electric Co. (GE) will pay $7.95 million to settle part of a federal lawsuit filed in 2009 by several Saratoga County municipalities that shut down or switched water suppliers when GE began dredging PCBs from the Hudson River. This river dredging is part of the federally mandated $1 billion Hudson River NPL Site dredging project (an element of GE’s CERCLA settlement with EPA).

Corning Enters Consent Order for Historic Contamination Study

Corning Incorporated entered an Order with DEC to perform an environmental study on local properties including a school. Elevated levels of lead and other contaminants were discovered during a soil excavation undertaken as part of the Corning-Painted Post East High School expansion project. Ash, glass and brick with hazardous levels of lead and cadmium were also detected.

Seasonal Shut Down of Indian Point Nuke Plant Proposed to Save Fish

DEC made this controversial proposal as part of the operator's SPDES (water discharge) permit applications to prevent harm to Hudson River fish populations. The shutdowns would occur during the state's peak power summer usage periods.

Diesel Truck Inspections in Albany EJ Area

DEC Conservation Police conducted a diesel truck pollution prevention detail in South Albany as part of Operation ECO-Quality. This Operation has helped environmental justice (EJ) communities evaluate and address environmental conditions via vehicle checkpoints and roving patrols to inspect diesel trucks for compliance with clean air standards and other relevant laws. DEC also inspects small and mid-sized regulated air emission sources in low-income and minority communities as part of the program.

LI Garbage Truck Shortage Means Garbage Trains?

DEC issued an unusual 30 day "Emergency Authorization" permitting the temporary establishment of a rail trans-loading operation at an industrial site in Brentwood, Suffolk County. This would alleviate a backlog of solid waste on eastern Long Island. The emergency allows for the loading of wrapped bales of solid waste into rail cars with sealed lids to facilitate the removal of the stockpiled solid wastes.

DEC Pesticide Policy Takes Effect
As previously announced in June DEC released the Long Island Pollution Prevention Strategy (Strategy), the plan for a new pesticide pollution prevention approach on Long Island. The overall goal of the Strategy is to protect water quality from pesticide-related impacts while continuing effective pest management on Long Island.

**DEC Cracks Down on Illegal Hudson River Fishing**

During April-May, DEC Officers stopped more than 400 fishermen and ticketed about 60, as part of "Operation River Run," an effort to protect the spring migrations of fish species in the Hudson River watershed, including eels. The illegal taking of young eels has increased substantially due to the large demand of the Asian food market.

**DEC Workers Spied on by Management**

DEC staff has filed a union grievance challenging the state's use of surveillance cameras to enforce work place time rules.

**DEC Warns about Phosphorus Limits**

DEC has made several press releases reminding the public that new limits and restrictions are in place related to phosphorus limits. DEC reminds all that the recent detergent and fertilizer runoff prevention law is in effect. Recall also that the related dishwater runoff restrictions are in effect as well.

**Bug Infested Firewood Seized/Destroyed**

The DEC and the NYS Department of Agriculture and Markets (DAM) confiscated and destroyed infested firewood and ash logs located at an Ulster County firewood dealer. The goal is to prevent an additional infestation of the emerald ash borer (EAB), an invasive Asian species that kills trees. This continues the state's war against this environmental and economic threat.

**Legislative Update**

**Geologists May Now Certify Remediation Projects**

A proposed law that would provide for the professional licensing of geologists has passed both houses of the legislature and awaits action by the Governor (See, Bill Nos. A 4753D / S 3810D, [http://public.leginfo.state.ny.us/menugetf.cgi](http://public.leginfo.state.ny.us/menugetf.cgi), enter Bill No. for text/status). Currently, only NY "Professional Engineers" are licensed to certify most environmental remediation projects performed under DEC supervision.

**Enforcement People in the News**

**DEC Gets New Assistant Commissioner of Administration**
Jeffrey Stefanko has been appointed as the new Assistant Commissioner of Administration for the DEC. His duties will include directing all staff and programs within the Office of Administration, which includes the Divisions of Management and Budget Services and Operations.

**DEC Lieutenant Receives EPA Bronze Medal**

DEC Lieutenant David Clarke received the US Environmental Protection Agency's (EPA) Bronze Medal for outstanding work related to the illegal dumping of 8,100 tons of construction and demolition debris. That material was dumped on a property in Frankfort, N.Y.

**ECO Sean Reilly is "Officer of the Year"**

DEC Environmental Conservation Officer (ECO) Sean Reilly received the 2013 "Officer of the Year" award from the Northeast Conservation Law Enforcement Chiefs Association (NECLECA).

**DEC Oil Attorney Goes to Worker's Compensation**

DEC Attorney Scott Caruso (f/k/a Scott Owens) is leaving the agency for a position as staff attorney with the NYS Worker's Compensation Board. Scott spent much of his legal career addressing petroleum spill and petroleum bulk storage enforcement and regulation. His expertise will be missed (source: telephone call with Scott Caruso).

**State and Local Enforcement**

**Upstate Waste Carting Company Settles AG Antitrust Charges**

The NY Attorney General's office entered into a settlement with a waste hauler resolving restrictive contracting practices and unlawful restraint of competition. The settlement agreement also requires more open business practices in order to rejuvenate competition in the industry.

**Federal Enforcement**

**Under Reported Fluke Convictions is No Fluke (EDNY)**

A federally-licensed Long Island fish dealer and its employees pleaded guilty today in federal court to federal felonies stemming from their role in systematically under reporting fluke (summer flounder) harvested as part of the federal Research Set-Aside (RSA) Program. The crimes included falsification of records and Lacey Act false labeling. The defendants will be subject to between $222,000 and $276,000 in combined fines, restitution and community service.

**Onondaga Lake NPL Clean Up Continues**

EPA proposed a PCB cleanup plan for Lower Ley Creek portion of the Onondaga Lake NPL Site located in the Town of Salina.
Responsible Parties Continue Mercury Clean Up

The Second Phase of cleanup work is to start at the Mercury Refining NPL Site located in the Towns of Colonie and Guilderland near Albany. The cleanup of the Site is being conducted by responsible parties with oversight by the EPA at an estimated cost of $9.3 million.

PR Junkyard Must Control Waste Liquids

EPA Region 2 reached a legal settlement with an auto junk yard in Puerto Rico for alleged violations of federal hazardous waste law. Respondent will make site improvements to control runoff and invest $133,000 to install equipment that will clean, remove and store of hazardous liquids generated by scraped vehicles. It will also pay a $29,000 penalty.

IBM Settles Up for Clean Up

The District Court of the Southern District approved a legal settlement agreement between EPA and International Business Machines Corp. (IBM). IBM will cleanup and reimburse EPA for past costs at the Shenandoah Road Groundwater Contamination NPL Site in East Fishkill. IBM previously used the site for an industrial cleaning operation that allowed waste chemicals to be released into a septic tank and pit.

Cleaning Co. Hit with $375k Pesticide Penalty

EPA Region 2 reached a settlement with Air Techniques, Inc. of Melville, resolving federal pesticide violations. Respondent is a wholesale cleaner and used a surface disinfectant to clean instruments, equipment and surfaces in dental offices and medical facilities, sold unregistered pesticides and imported pesticides into the U.S. without proper notification. The company will pay a $375,000 penalty.

DEC Region 4 Administrative Orders

DEC Region 4, is currently the only DEC Regional office that regularly posts all administrative enforcement consent orders and settlements. While limited in scope, this data can be a useful window into the agency's enforcement policies statewide.

In the Matter of Terri Gargano d/b/a Scott's Lawn Service
Order on Consent
DEC No. R4-2014-0506-112

Respondent violated ECL §33-1301.8-a by engaging in the commercial application of pesticides without being registered with the Department. A civil penalty of $1,000.00 was assessed in accordance with ECL § 71-2901(1).
DEC Administrative Decisions and Orders

In the Matter of Florence Edelstein, Commissioner's Order
DEC File No R2-20130513-183

Respondent guaranteed an adverse holding by failing to respond or file an answer to a DEC enforcement action involving petroleum bulk storage violations at 25 NYC residential properties. Most conspicuous was the failure to accurately register each facility, in violation of 6 NYCRR 612.2, which resulted in a combined assessed penalty of $113,500.

However, most interesting was the Commissioner's modification of the ALJ's hearing report to hold:

- That where a discrepancy exists in total violations between the staff's initial Notice of Violation (NOV) and the following motion papers, the motion papers govern; and
- That the period of penalty calculation (per day) runs from the last date of staff's inspections (of the 25 properties) to the filing date of the complaint (not through the course of the proceeding). The Commissioner did note that this calculation period is "conservative."

In the Matter of Green Thumb Lawn Care, Inc., Commissioner's Order, 7/10/14
DEC File No. CO7-20060824-1

This matter involves an Article 33 enforcement case that fizzled down to a quibble over penalty calculations after more than ten years of administrative and civil litigation. What remains however is an interesting dissertation on the right (or lack thereof) of the DEC to recover attorney fees in an administrative enforcement hearing. Specifically, the Commissioner held that "Absent statutory or other legal authority, or a written agreement, that specifically authorizes the recovery of attorneys' fees - and staff has not cited any such legal authority or agreement - such fees are not recoverable." It should be noted that general cost recovery authorities do exist elsewhere in the ECL. But, the pesticide enforcement provisions at ECL § 71-2907, do not specifically provide for attorney fee recovery.

Weird News

How Many I.C.E Agents Does it Take to Seize a Land Rover? Answer Below!

A Guilderland, NY man was surprised when ten (count em! ten!) Immigration and Customs Enforcement (ICE) Special Agents of the Office of Homeland Security seized his used British-made Land Rover light truck. Allegedly, the vehicle had been unlawfully imported by a previous owner and did not meet U.S. emissions and safety standards. But does it take ten agents to fetch one light truck?
Giant African Land Snails Arrive in SoCal by Air (You Have Been Warned! Again!)

As noted in prior issues of the Update, this truly gross invasive species is spreading. But, now we also learn that it is an eatable West African delicacy. Bon appetit!

Pythons Continue Stranglehold on Florida Ecosystem

This destructive and dangerous invasive species continues to make itself at home in parts of Florida. Solutions are few.
Enforcement News

NY Law Combats Illegal Ivory Trade

Governor Cuomo signed a new law to combat the illegal ivory trade. The law bans the sale of elephant ivory and rhinoceros horns, with limited exceptions for certain antiques.

Litigators, FOILers Beware! State Deletes Emails After 90 Days

New York State has instituted a new and "aggressive" email retention policy that will have emails automatically deleted after 90 days, subject to over 200 exception categories. The system is to be administered individually by each state employee (emphasis added). Therefore, unless an employee proactively saves an email it will be deleted if the policy is properly followed. The deletion policy is even more aggressive for emails generated by the Governor's Office.

E-Waste Swamps Recyclers Despite NY Law

NY e-waste recyclers have been overwhelmed by the numbers of old TVs and computer monitors containing cathode ray tubes (CRT) that have been dumped into an unprepared marketplace despite a 2010 law meant to ease recycling.

Nationwide, a new toxic environmental phenomenon is emerging: abandoned e-waste dumps.

Adirondack Park Agency Issues 2013 Annual Report (Includes Enforcement)

Pages 13-14 provide the "APA" Report's legal and enforcement summaries for 2013.

DEC Extends PBS/CBS Proposed Regulations Comment Period

For the first time in almost two decades, DEC has proposed significant changes to update and consolidate Petroleum Bulk Storage (PBS) and Chemical Bulk Storage (CBS) regulations. The proposed changes would clarify existing requirements while broadening the reach of this extensive regulatory and enforcement scheme.

More on Roberto Clemente Park Illegal Dumping

The plot thickens as investigators probe how large quantities of hazardous substances were transported and dumped in an environmental justice neighborhood in Brentwood, L.I.

L.I. Garbage Train Update

As previously reported, a garbage transportation and storage crisis continues in Suffolk County as a shortage of first trucks and now even trains have created a solid waste storage issue in Brentwood in central L.I. This has led to charges of environmental racism by community leaders.
Brentwood is an environmental justice community that has recently been beset with environmental problems (see, dumping item above).

**Oil Continues to Raise Tensions in Port of Albany**

Global Companies, an energy products company with terminals in the area, recently experienced an oil spill that, though fully contained, heightened tensions about oil transport in the area.

Additionally, Global Companies submitted a permit application to modify its Air Title V Facility permit to allow the company to heat petroleum products, including crude oil, residual fuel and biofuels at its facility at the Port of Albany. Due to broad public and community interest, the agency extended the Title V Air Permit comment period.

**Ohio and Pennsylvania Crack Down on Oil/Natural Gas Drillers**

Pennsylvania and Ohio authorities have recently brought a series of enforcement actions against oil and natural gas producers which may be instructive if horizontal hydraulic fracturing or "fracking" ever comes to NY:

- The Penn. DEP commenced administrative action for improperly monitoring wastewater containment pond leaks in Washington County in southwestern Pennsylvania.
- An Ohio federal judge sentenced a former owner of an oil and gas services contractor to 28 months in jail and a $25,000 fine for deliberately dumping fracking waste in violation of the federal Clean Water Act (CWA). The defendant had already pleaded guilty to one count of making an unpermitted discharge after ordering an employee to discharge toxic wastewater more than 30 times.

**State and Local Enforcement**

**NYC Hit with 960K EBP for State Water Pollution Violations**

The Attorney General and DEC entered an agreement with New York City for $960,000 in Environmental Benefit Projects ("EBP") to improve the water quality of the upper East River and Long Island Sound. The funding represents a partial resolution of penalties assessed for the failure to comply with a previously established schedule to upgrade nitrogen pollution controls at a wastewater treatment plant in Queens. The schedule was first included in a 2006 court settlement that required the City to upgrade nitrogen controls at eight of its 14 wastewater treatment plants.

**Nassau Co. DA Gets Conviction for Releases to L.I. Sound**

A Nassau County landowner pleaded guilty to one count of Endangering Public Health, Safety or the Environment in the 5th Degree, ECL Section 71-2710 (B Misdemeanor) and was sentenced to a conditional discharge with an agreement that he will finish the clean-up of his Glen Cove property under the supervision of DEC. He had released toxic automotive fluids into the ground of his salvage yard. State law requires that fluids like gasoline, motor oil, and transmission fluid
be drained and property stored for disposal before disassembling vehicles. The property is located near waterways leading to L.I. Sound.

_Aptly Named "Dirtman" Held Liable for Illegal Dumping_

The Attorney General won a _State Supreme Court ruling_ holding a landowner and his contractor liable for illegally operating a landfill and discharging pollution into the Croton Falls Reservoir. The contracting company was unfortunately, but prophetically, named "Dirtman."

_In Case You Missed It! NJ Company Hit with 160K Bottle Bill Penalty!_

Back in January 2014, the N.Y. Attorney General’s office entered a _significant settlement_ with a New Jersey-based company for repeatedly violating New York's Returnable Container Act a/k/a the _Bottle Bill_. An investigation by the AG and DEC revealed that the company collected deposits on beverage containers it sold in NEW YORK STATE but failed to remit 80% of the unclaimed deposit money as required. The company paid a penalty of just under $160,000.

_White Water Rafting Enforcement_

Among the more obscure areas of environmental enforcement is the state's regulation of white water raft guides and outfitters. Several _recent safety violations and a fatality_ have raised the enforcement profile of this segment of the recreation industry.

_Federal Enforcement_

_NYC Croton System Water Settlement Modified (EDNY)_

Several federal and state agencies reached a settlement with New York City to modify a _federal consent decree_ originally entered in November 1998 which required the City to construct a filtration plant for its Croton drinking water supply.

Previously, the City completed construction of a filtration plant and will commence operations no later than May 17, 2015. The _consent decree_ provides for stipulated penalties of $65 million if the deadline is not met and also requires the City to monitor the Croton System and implement NYC watershed protection measures.

_Buffalo Area Contractors Sentenced for Criminal CAA Violations (WDNY)_

Several _additional defendants were sentenced_ for asbestos related criminal violations of the Clean Air Act ("CAA") associated with the Kensington Towers Apartment Asbestos Abatement Project:

_Earnest Johnson_ was sentenced to two years of probation for related CAA violations. Note: he was the president of the asbestos abatement company hired to conduct asbestos abatement activities at the Kensington Towers abatement project.
**Rai Johnson** was convicted of violating the Clean Air Act ("CAA") Asbestos Work Practice Standards, was sentenced to time served, 160 days, and two years of supervised release. The defendant was a supervisor at an asbestos abatement company hired to conduct asbestos abatement activities at six buildings at the Kensington Towers Apartment Complex in Buffalo. Each building contained approximately 63,000 square feet of regulated asbestos containing material. Defendant had created phony daily asbestos abatement logs.

**Evan Harnden** was convicted of a misdemeanor charge of being an accessory after the fact to a false statement under the Clean Air Act, was sentenced to one year probation. The defendant had been employed as a state certified air sampling technician and a project monitor. He certified the phony daily abatement log created by defendant Rai Johnson (see above).

**Brian Scott** was also convicted of a misdemeanor charge of being an accessory after the fact to a false statement under the Clean Air Act, and was sentenced to one year probation. Like defendant Harnden above, he certified phony daily asbestos abatement logs for the Kensington abatement project.

**DuPont Settles CAA Violations in Tonawanda (WDNY)**

Under a [legal agreement reached with EPA](https://www.epa.gov/), DuPont will increase compliance with the Clean Air Act, and the Emergency Planning and Community Right-to-Know Act ("EPCRA") at its Yerkes chemical manufacturing facility in Tonawanda, New York. DuPont will also test the smoke stack emissions and pay a civil penalty of $440,000. The company also installed equipment to reduce the emissions of hazardous air pollutants (HAPs) at the facility.

**Another Rhino Horn Smuggler Indicted (SDNY)**

A Canadian antiques dealer was [indicted for conspiring to smuggle](https://www.fisheries.noaa.gov/) rhinoceros horn, elephant ivory and coral. This indictment is part of the ongoing federal crack-down against the illegal ivory trade known as "Operation Crash."

All species of rhinoceros are protected under U.S. and international law and trade in rhinoceros horn is regulated under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), a treaty signed by over 170 countries.

**Yonkers Paint Co. Pays RCRA Fines for Leaky Drums (EPA, R2)**

A Yonkers paint company has been penalized $90,000 for having approximately 100 corroded and leaking paint and solvent containers in [violation of the Resource Conservation Recovery Act ("RCRA")](https://www.epa.gov/) among other federal hazardous waste law violations.

The violations came to light after a [fire caused a release](https://www.epa.gov/) into the nearby Saw Mill River.

**OSHA/NYSDOL Report**

**Tonawanda Explosion Leads to OSHA Fine**
OSHA assessed $161,100 in fines following a coke oven gas explosion in a Tonawanda facility that collapsed brick walls, damaged electrical equipment and injured several employees.

**OSHA Fines Metal Company for Employee Chromium Exposure**

Employees of a Fonda, N.Y. aluminum extruding plant were unsafely exposed to chromium, and other work place hazards. The company faces $53,000 in fines.

**DEC Region 4 Administrative Orders**

*In the Matter of Pest Mall*

*Order on Consent*

*R4-2014-0616-124*

Pest Mall is a Georgia mail order company which provides "Do It Yourself" pest control products to exterminators and consumers. In an internet sting operation, DEC staff placed an online order with Pest Mall for an unregistered pesticide (in New York). This, despite a warning on Pest Mall's website that the very same product was "Not For Sale to CT, NY." The delivery constituted a violation of ECL Sections 33-0701 and 33-1301(1)(a) for unlawful distribution and sale of an unregistered (in N.Y.) pesticide.

As per ECL Section 71-2901(1), Pest Mall was assessed a penalty of $2,000, of which $1,000, was payable and $1,000, suspended pending the completion and issuance of a "Standard Operating Procedure" to prevent the online sale of unregistered pesticide products to New York State customers.

**Weird News**

*Solar Energy Plants Burn Birds*

A truly sad phenomenon has emerged due to the expanding use of solar reflectors to generate steam and then electricity.

*California Water Wasters Sent to Water School!*

A California town is enforcing drought driven water shortage regulations by forcing violators to attend "Water School" to learn the error of their ways.

*Poison Giant Hogweed Invades NY*

DEC is continuing its fight against all invasives. This invasive and toxic plant can grow to between 8 to 14 feet tall and has sap that can burn like acid. Ouch!

*Flesh Eating Bacteria Invade Florida Waters!*

First sharks, then gators and now this. Beware!
The Red River ... of China - Not Texas!

It's true! Rivers can run red (at least polluted Chinese rivers can).

Kissing Bugs Invade US: But No Romance Results!

Yuck! Here is one bugger you don't want to invite over. Perhaps their other name, assassin bug, is more appropriate.

Sharknado 2

The ultimate environmental hazard returns to invade New York City via this Grade "Z" TV movie sequel. Root for the sharks.

Pollution Makes Male Bass Change Sex

I say no more.
Editorial Note: This Update introduces a new section: Energy Enforcement News. The increased federal, state and local involvement in the mining, processing, transportation and storage of fossil fuels is expanding and certainly requires additional focus in the Update.

**Enforcement News**

*Roberto Clemente Park Public Meeting*

The DEC held a public hearing to explain the proposed remediation plan for this illegal asbestos dump site located in a central Suffolk County environmental justice community. Excavation is the primary remedy.

*NY Crime Reports Show Steep Decline in Haz. Waste Prosecutions, 2006 to 2013*

A review of hazardous waste and substance reports compiled by the NYS Division of Criminal Justice Services indicates that the criminal prosecution of related crimes has declined and virtually ceased in all categories between 2006 and 2013. The report shows that 2011 is the year when criminal prosecutions dramatically dropped. However, the Reports do not address non-hazardous waste or federal criminal prosecutions.

*NY AG Supports Broader CWA Jurisdiction*

The NY Attorney General joined eight states in endorsing a proposed federal rule that clarifies and broadens the definition of waterways subject to the jurisdiction of the Federal Clean Water Act (CWA). Currently, certain waterways are omitted from federal jurisdiction.

"Oxy" Pays 190 million to NJ

Occidental Chemical Corp. will pay New Jersey $190 million for past cleanup and removal costs generated by the Passaic River pollution generated by the former Diamond Alkali NPL Site. The settlement, if approved, will bring the total amount recovered by New Jersey to $355.4 million.

*Costco Zapped for Nationwide Freon Releases*

Costco Wholesale Corp. has agreed to pay $335,000 and spend almost 2 million to cut its emissions of greenhouse gas chemicals from refrigeration equipment at more than half of its stores nationwide, according to documents filed in California federal court by the EPA. That agency alleged Costco violated the federal Clean Air Act (CAA) by failing to repair leaks of the Refrigerant R-22. Costco will fix refrigerant leaks and make improvements at 274 of its stores at an estimated cost $2 million over the next three years. (The settlement references a number of Costco locations in N.Y.)
18 Billion Fine Possible for BP Gulf Explosion and Spill

This disposition is noteworthy as the growth in the size of environmental fines and penalties continues ever upward.

Hazardous Waste Violator Seeks Permit Renewal

A draft 6 NYCRR Part 373 hazardous waste permit for MPM Silicones has been presented for public comment. MPH is a large silicone manufacturing facility in the towns of Waterford and Halfmoon in Saratoga County where hazardous wastes are treated and stored. The facility is under extra scrutiny due to past federal and state enforcement violations.

Uranium Exposure Study Ongoing at Former NL Industries Site

Despite the passage of almost three decades of investigation and clean up, health studies for this former depleted uranium processing plant near Albany still continue. Partial results are available from the NYSDOH.

NY Intervenes in Green House Gas Case

The NY Attorney General is filing a motion to intervene in a court challenge to a 2010 settlement agreement with the federal Environmental Protection Agency (EPA). The 2010 settlement agreement is being challenged by a coalition of 12 states, many of which are in coal-producing regions.

NYC Recycling Crackdown

Under the new Mayoral administration, reported recycling violations increased 47 percent in 2014, when compared to last year's data.

New NYS Invasive Species Regulations in Effect

The latest regulations issued to fight invasive species were developed by DEC in cooperation with the NYS Department of Agriculture and Markets. Since 2011, $30 million in state funds has been allocated toward preventing the spread of invasive species in NY.

Susquehanna River Basin Commission Issues 2013 Annual Report

The inner workings of the SRBC are revealed for Susquehanna River devotees.

Energy Enforcement News

Global Partners Permit Comment Period Extended

DEC extended the public comment period for the controversial Global Companies permit application at the Port of Albany for an additional 60 days due to broad public and community
interest. Global previously submitted a permit application to modify a Title V Air Facility permit to allow the company to heat petroleum products, including crude oil transshipped through the Port of Albany facility.

_Underground Gas Storage Controversy in the Finger Lakes Region_

There is a growing regulatory conflict involving the use of old salt caverns for the storage of propane and perhaps surplus natural gas in the future.

_Big Wind to be Studied On L.I. Coast_

In the continuing quest to harvest the substantial wind resource of the Long Island coast, a consortium will study how to best harvest energy generated by ocean winds off the coast of Long Island.

_USDOT Proposes New Rules for Securing Crude Oil Trains_

A unit of USDOT proposed new rules to prevent crude oil and hazardous material trains from being left unattended and unsecured on the tracks. In the Federal Railroad Administration's latest proposed change, the agency proposed that such railroad cars should not be left unattended unless specific brake safety procedures are followed.

_Jt. Federal-State Crude Oil Train Inspections_

NY and federal regulators completed a targeted crude oil tank car and rail inspection due to the dangers of crude oil transport. The inspections included 766 crude oil tank cars and approximately 167 miles of track. Nine hazardous materials violations were issued and 658 defects were detected overall.

_Legislative News_

_New Waterway Invasive Species Law Signed_

New legislation prohibits the launch of watercraft in New York State without taking reasonable precautions to prevent the spread of aquatic invasive species. The bill (A9619-B, S7851-B) advances current efforts by the State and private organizations to halt the introduction and spread of invasive aquatic species into New York's waters.

_TRIS Ban Enacted_

A NY law now bans the sale of products containing TRIS (aka THAM), a cancer-causing chemical used as a flame retardant in consumer products. The law (A4741/S3703-B) expands the definition of TRIS to include an additional chemical, TDCPP (TRIS(1,3-dichloro-2-propyl) phosphate). It also prohibits the use of TRIS in numerous types of consumer child care products. TRIS alternatives are now available to the industry.
New Wood Construction Notice Bill Protects Firemen

A new state law (A1896/S6675) requires property owners to notify their local governments whenever a newly constructed or rehabilitated residential structure is comprised of a truss type, pre-engineered wood or timber construction. In a fire, such structures become fragile and can collapse with little or no warning.

Enforcement People in the News

DEC Region 4 Director Now At Harris Beach

Eugene "Gene" Kelly, formerly the DEC Region 4 Regional Director is now Senior Counsel to Harris Beach PLLC in Albany.

NYS AG Section Chief Now At Pace Law

Environmental Law Section member Janice Dean bid farewell as Section Chief in the N.Y.S. Attorney General's EPB Toxics and Cost Recovery Section to become Chief of Staff to Pace Law Dean David Yassky in White Plains.

DEC ALJ Now Board Member For Non-profits

Hon. Helene Goldberger recently retired as an DEC Administrative Law Judge and is now a Board Member for both the Mohawk Hudson Land Conservancy and the E.N. Huyck Preserve. Ms. Goldberger is also a former N.Y.S. Assistant Attorney General. (Help Preserve Land During Development, Albany Times Union 9/21/14, page D-1)

Harris Beach Energy Attorney Now Director of Commission on Rural Resources

Environmental Law Section member Jillian D. Kasow has accepted a position as Director of the N.Y.S. Senate Legislative Commission on Rural Resources in Albany. Formerly, she had worked at Harris Beach PLLC on the firm's energy industry team.

State and Local Enforcement

Criminal Conviction for NYSDOH Rip Off

A felony guilty plea was entered by a former NYS Department of Health (DOH) contract employee for padding his bills and stealing more than $110,000 from the state. He pleaded guilty to one count of offering a false instrument for filing in the first degree, PL 175.35, a Class E felony. He will reimburse the state $110,000 and is expected to receive 30 days in jail and five years' probation with community service.
**NYSDOH Zaps Negligent Water Testing Lab with $525K Settlement**

The NYS Health Department settled a case with a privately operated laboratory due to a "flaw in test procedures" which raised serious questions about the credibility of some pollutant sampling at the Dewey Loeffel Landfill Superfund waste site in Nassau, Rensselaer County. The $525,000 settlement consists of two components: a civil penalty of $275,000 and $250,000 to fund environmental cleanups in Schenectady County where the lab is located.

**DEC Penalizes Norlite for Stinky Incinerator Violations**

The only commercial hazardous waste incinerator in NY will pay penalties of nearly $30,000 for environmental violations including those for a recent airborne chemical release. As part of a settlement with DEC, the Norlite Corp. will also pay $64,000 for environmental benefit projects ("EBP") to be selected in the area near the plant. The Consent Order is more fully described in the Region 4 Section below.

**Fulton Co. Man Pleads Guilty to Environmental Violations**

A Fulton County Court sentenced a man to pay a $15,000 fine for violating the NYS Environmental Conservation Law. The DEC Conservation Police's Bureau of Environmental Crimes Investigation Unit ("BECI") conducted a two-year investigation of a vehicle dismantling operation which revealed the release of hazardous substance fluids and debris on site. The Fulton County District Attorney's Office prosecuted and the defendant pleaded guilty to Endangering the Public Health, Safety or the Environment in the fourth degree, a Class A misdemeanor, ECL 71-2711, and unlawfully operating a solid waste management facility, ECL 71-2703(2), also a Class A misdemeanor. The defendant was also ordered to clean up the site under the supervision of DEC.

**OSHA/NYSDOL Report**

**Ice Plant Fined for Ammonia Violations**

Arctic Glacier USA Inc., a Brooklyn, N.Y. ice plant, was fined $264,700, by OSHA for 19 violations of workplace safety standards following a comprehensive inspection which noted deficiencies in the plant's process safety management (PSM) program. OSHA’s PSM standard includes the regulation of ammonia used in the plant's refrigeration system.

**Federal Enforcement**

**Asbestos Dumpers Convicted Under CAA & CWA (WDNY)**

A defendant was convicted of violating the Clean Air Act ("CAA") and sentenced to two years of probation and a fine of $100,000. An additional defendant was also sentenced to one year probation and a fine of $25,000 for violating the Clean Water Act ("CWA"). The corporate defendant was also ordered to form an environmental training program for its employees. A $5,000 penalty was also paid to the Occupational Safety and Health Administration ("OSHA") to
resolve related violations. Defendants were engaged in the demolition of buildings containing asbestos on either side of the Chadakoin River.

**Concrete Slurry Discharges Lead to CWA Convictions (NDNY)**

Several defendants pleaded guilty for violations of the Clean Water Act ("CWA") related to the process of hydro-demolition to renovate concrete structures. Hydro-demolition uses high pressure water to remove concrete from buildings. The waste-water created contains a slurry of industrial waste which included CWA pollutants. The pollutants were released into the Susquehanna River.

**Asbestos Release Criminal Sentencing (NDNY)**

A New York property owner and his manager were sentenced to 21 months for conspiring to violate the Clean Air Act ("CAA") for the unsafe removal of asbestos during renovations, for releasing asbestos into the environment, and for failing to notify the authorities about asbestos releases in violation of both the CAA and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). The prison sentences will be followed by two years of supervised release and the owner must also pay a $25,000 fine.

**EPA Hits SUNY Downstate Med. With Hazardous Waste Complaint (EPA R2)**

EPA Region 2 issued a legal complaint against Brooklyn's SUNY Downstate Medical Center for violating parts of the federal RCRA law for the improper management and storage of hazardous wastes generated and stored in improperly labelled or corroded and leaking containers. Proposed fines may exceed $150,000.

**Gowanus Canal Cleanup Settlement Proposed (EPA R2)**

EPA Region 2 proposed a $20 million CERCLA settlement with a party to undertake the remediation on the banks of the Gowanus Canal which will include the removal of 17,500 yards of contaminated soil.

**Storm Sewer Releases Stopped in PR (EPA R2)**

EPA Region 2 settled Clean Water Act violations associated with unlawful water pollutant releases into the municipal storm sewer system of Culebra, Puerto Rico. In the settlement, up to forty homes will also be connected to the local sewer system (POTW).

**Several Buffalo Gas Stations Pay $287K for PBS Tank Penalties (EPA R2)**

The owners and operators of four gasoline stations in the Buffalo, New York area have been ordered to pay the EPA a total of $287,100 in penalties. New Yorkers that think that state petroleum bulk storage ("PBS") tank enforcement is onerous should take heed of this parallel and rather draconian EPA Region 2, enforcement action. The violations cited are very similar to those in state regulations in 6 NYCRR Parts 612, 613.
DEC Region 4 Administrative Orders

In the Matter of the Enterprise Terminals & Storage LLC
DEC File No. R4-2014-0820-139
Order on Consent, Sept. 9, 2014

Respondent owns and operates a propane gas pipeline that runs through Bethlehem in Albany County. However, local residents were subjected to a rotten egg odor generated by a related pipeline facility due to the additive mercaptan (which creates that aroma for safety reasons). DEC alleged violations of the generic air nuisance regulation as set forth in 6 NYCRR Part 211.1, and assessed a civil penalty of $5,000.

In the Matter of Moonlight Horticultural Services
DEC File No. R4-2014-0715-128
Order on Consent, Sept. 10, 2014

Respondent, a commercial pesticide applicator, was assessed a $500 civil penalty for a violation of 6 NYCRR 325.40 (a)(5) for failing to provide the correct address of the treated premises in the written commercial lawn care contract.

In the Matter of RWC, Inc.
DEC File No. R4-2014-0722-131
Order on Consent, Sept. 10, 2014

Respondent, a commercial herbicide applicator, violated 6 NYCRR 325.1 (s)(4) by failing to post visual notifications markers prior to applying pesticides within 100 feet of a town park and two private dwellings.

In the Matter of Norlite Corporation
DEC File No. R4-2014-0017-6
Order on Consent, Sept. 3, 2014

Respondent, a manufacturing and hazardous waste management facility, was assessed a civil penalty of $29,600, and ordered to fund an Environmental Benefit Project (EBP) in the amount of $64,000 for the benefit of the City of Cohoes. The Department will have the "sole discretion to determine the appropriate use of the EBP funds" in accordance with EBP policy (CP-37).

Hazardous waste (RCRA) and air pollution violations include:

- 6 NYCRR Part 211.2, due to public nuisance for the accidental release of methyl methacrylate vapor;
- Respondent's failure to have a Hazardous Waste sign affixed to Tank 200 B is a violation of 6 NYCRR Part 373-2.10(e)(4) and a Condition of the permit;
- 6 NYCRR 373-2.2(g) (4) for failing to record consistent information in its inspections logs;
• failure to update its Best Management Practices Plan as per a Permit Attachment Special Condition;
• a violation of a Permit Attachment Special Condition by not updating its Fugitive Dust Control Plan to reflect the removal of the silos;
• a violation of a Permit General Condition by failing to maintain the required information on the website;
• 6 NYCRR 374-3.2 (d) (4) (i), by having openings in each of the two boxes of a Universal Waste (spent fluorescent lamps);
• 6 NYCRR 373-3.28 (g) (1), by not having port cap on a pump sampling port.

In Matter of Hageman Fire Department, Inc.
DEC File No. R4-2014-0718-130
Order on Consent, Aug. 25, 2014

The DEC determined that the Hagaman Volunteer Fire Department (F.D.) improperly authorized the open burning of debris at a privately owned site without a permit in violation of the open burning air pollution regulations at 6 NYCRR 215.2, 215.3.

The FD was assessed a civil penalty of $500 with $400 suspended based on a Schedule of Compliance which required that: the FD shall not recommend or authorize any open burning in violations of 6 NYCRR 215; and, it will mail a DEC approved notice to all FD residents advising about the state's open burn regulations.

DEC Administrative Decisions and Orders

In the Matter of 3840 Orloff Ave. Corp.,
DEC CASE NO. 2-602087BT
Commissioner's Order, Sept. 12, 2014

The Commissioner granted the Department's motion for a default judgment pursuant to 6 NYCRR 622.15, for failing to answer or appear. Respondent was then ordered to pay a civil penalty of $7500, for a violation of 6 NYCRR Part 612.2, for failing to re-register its petroleum storage facility. The registration certificate had expired in 2010.

Weird News

Tragic Rare Bear Attack Fatality in NJ

This sad story raises several questions about wildlife management and hunting policy in states that abut NY.

Drought Compels California Ground Water Use Laws

California is taking extreme steps to combat what is a record extreme drought (see next item).
Don't Cry for Me Argentina (Argentine Ants That Is)!

Extreme weather can impact native species, creating a window of opportunity for invasive species. The already difficult case of the "Argentine Ant" infestation has been **exacerbated** by the extreme drought in most of the Western states.

Cooking Oil Pirates Strike on L.I.

As **previously reported**, this new environmental crime is spreading due to the rising demand for recycled cooking oil as an alternative fuel. Recently, Suffolk is being **targeted** by cooking oil pirates. ARRRGGGggggggg!
Enforcement News

*Drums Along the Mohawk - Riverkeeper to Patrol the Mohawk River*

The public interest group, Riverkeeper has vowed to start patrols to search for water pollution on the Mohawk as it already does along the Hudson River.

*NY AG to Challenge Nuke Storage Rules*

The NY Attorney General joined other states to challenge recently issued Nuclear Regulatory Commission (NRC) rules that govern the long-term storage of highly radioactive nuclear wastes on-site at reactors (including the three Indian Point reactors in Westchester County) for 60 or more years after the reactors close.

*Cuomo Admin. Allegedly Edits Fracking Study*

Officials in the Governor's office may have altered an otherwise objective study in order to frame the controversial natural gas extraction process known as hydraulic fracturing (fracking) in a more favorable light.

*Norlite Continues - Hazardous Waste Incinerator Permit Reissue Challenged*

Due to numerous health complaints and a serious history of past environmental violations, local environmental groups have demanded that the Norlite facility comply with a list of operating requirements before DEC reissues a hazardous waste Transport, Storage, Disposal Facility (TSDF) permit.

*DEC to Use Discretionary Enforcement for Greenhouse Gas Emissions*

In an enforcement guidance letter issued by the New York State Department of Environmental Conservation (DEC), the agency will exercise enforcement discretion for parts of 6 NYCRR Parts 201 and 231, as these pertain to the regulation of greenhouse gas (GHG) emissions due to the recent U.S. Supreme Court decision in Utility Air Regulatory Group (UARG) v. EPA. In that case, the Court held that EPA may not treat GHGs as an air pollutant for purposes of determining whether a stationary source is a major source required to obtain a Prevention of Significant Deterioration ("PSD") or Title V permit. DEC will exercise discretion as outlined until the courts and EPA clarify the status of GHG in the major facility air permit and enforcement schemes.

*NYC CEQR Database*

The Mayor's Office of Environmental Coordination website now allows for online searches of the City Environmental Quality Review (CEQR) project records database for CEQR projects filed from January 1, 2005 to the present.
National Grid Enters CERCLA Settlement in Saratoga

The utility will undertake an estimated $6.5 million environmental cleanup of coal tar polluted soil and ground water at a former manufactured gas facility under a proposed settlement with the EPA.

NYSDOH Commissioner Issues Rare Emergency Ebola Order

Acting State Health Commissioner Howard Zucker issued a rare Commissioner's Order requiring medical facilities to follow protective protocols to prevent the spread of the Ebola virus. This action was part of the state's overall response to the Ebola threat.

In a related Ebola matter, DEC also issued instructions for the handling and disposal of regulated medical waste (RMW) that may be contaminated by the Ebola virus. The information includes links to relevant NYSDOH and federal regulations and guidance.

State Agency Sued for Administrative Overkill

A NY liquor retailer has sued the NYS Liquor Authority (SLA) for enforcing rules involving out of state liquor sales. The SLA had cited the retailer using a New York regulation that says it can revoke, cancel or suspend a liquor license due to "improper conduct by the licensee." For the environmental practitioner, the case should provide insights into the limits of the state's administrative authority to bring enforcement and impact license decisions.

EPA Head Visits Lake Champlain

EPA Administrator Gina McCarthy vowed to continue efforts to clean up Lake Champlain on a visit to the Lake for a meeting with Vermont residents and politicians. It was unclear if NY representatives were present or even invited.

NYSDOH Sampling Lab Fined for Negligent Results

Local residents were upset to say the least over the $525,000 settlement between the NYS Department of Health and a private contract laboratory for improperly handled water tests at the Dewey Loeffel Landfill superfund site. The site is on the EPA National Priority List (NPL).

EPA Region 2 Administrative Announcements

Here is a brief summary of the major announcements of the month made by EPA Region 2.

- **Saratoga Superfund Settlement**
  - EPA announces proposed settlement with Niagara Mohawk Power Corporation for cleanup of Saratoga Springs Superfund site. The value of the cleanup work is estimated at $6.5 million.

- **Lead Checks Offered**
  - EPA encourages Newburgh families to have soil checked for lead.
• **L.I. Sound Gets Better**
  o Water quality **improves** in Long Island Sound as nitrogen pollution declines.

• **Olean Well Field Cleanup Proceeds**
  o EPA **finalizes** changes to cleanup plan to address VOCs at the Olean well field Superfund site on the Alleghany River in Cattaraugus County in New York.

• **Cidra, Puerto Rico Site Cleanup Proceeds**
  o EPA **finalizes** cleanup plan for Cidra, Puerto Rico Superfund site of VOC-contaminated drinking water.

• **Onondaga Lake - Lower Ley Creek Cleanup Proceeds**
  o EPA **finalizes** cleanup plan for lower Ley Creek portion of Onondaga Lake Superfund site, with $17 to $25 million to be spent to address PCBs.

• **GE Agrees to More Hudson River Study**
  o EPA **announces** agreement with GE to further investigate upper Hudson River floodplain and conduct a comprehensive study costing about $20.5 Million.

• **Newburgh Site to be Removed from Superfund List**
  o EPA **proposes** to remove Newburgh, NY site from Superfund list. The proposal involves $45 million to be spent to address a bankrupt metal processing site on the Hudson River.

**Energy Enforcement News**

*Improved Crude Oil Cars are Now Used in Albany*

Global Partners, the operator at the Port of Albany, has **stated** it is now only accepting upgraded and sturdier model DOT-111 crude oil tank cars to transport oil from the Bakken fields of North Dakota via the Port. This is a marked safety improvement over the previous models.

*More Enforcement Demanded after Selkirk Propane Car Derailment*

In a development related to the Port of Albany oil train controversy, vigilance was also demanded after a misplaced piece of safety equipment triggered the **derailment** of 18 railroad cars at the nearby Selkirk rail yard. The derailed cars included empty propane tanker cars.

*Bomb Train Protesters Petition for Summary Abatement*

Those seeking to stop the movement of crude oil trains through the Port of Albany sought to have the DEC Commissioner **invoke** the rarely used emergency remedy of Summary Abatement (*ECL Section 71-0301*)

In general, if the commissioner **may order** the cessation of an activity if he finds that it is causing, engaging in or maintaining a condition or activity which presents an imminent danger to the health or welfare of the people of the State, or results in or is likely to result in irreversible or irreparable damage to natural resources. It is unclear whether the Commissioner is swayed by proponents of this action.
Crude Oil Train Safety Ltr. Sent to N. Dakota Gov

The DEC and NYSDOT Commissioners sent a letter to the North Dakota Governor in support of proposed North Dakota regulatory changes that would require oil producers to remove volatile gases from Bakken crude oil prior to shipping the oil across by rail to New York and other locations. This process reduces the ignitability of the oil.

Joint Crude Oil Train Spill Response Exercises Held

As part of the agencies increased awareness of potential crude oil train spills, DEC conducted a joint oil spill training exercise with Canadian Pacific (CP) railroad, and the Albany Fire Department on the Hudson River to implement emergency response plans for the Port of Albany and other locations.

Port of Albany Air Study Attacked

Experts issued a report which heavily criticized DEC conclusions about the air quality in and around the Port of Albany. This controversy also relates to the continued use of the Port by crude oil trains.

Albany Locals Demand Crude Oil Trains Slow Down

Local officials are calling on the federal transportation secretary to use his emergency authority to limit speeds on crude oil trains that pass through the Port of Albany even before new safety requirements take effect nationwide.

DEC Crude Oil Train Timeline

DEC has provided a handy summary of New York’s efforts to address the issues surrounding the increase in crude oil train traffic through Albany and the Port of Albany in the particular.

LNG Draft Regulation Comment Period Extended

The DEC sought public comments on revised proposed regulations for the construction and operation of liquefied natural gas (LNG) facilities in New York State. A 30-day public comment period will begin Nov. 12 and run through Dec. 12. DEC proposes to restrict permitting to facilities with a capacity of no more than 70,000 gallons (the safety threshold used by the National Fire Protection Association (NFPA).

Legislative News

Community Risk and Resiliency Act (A06558/ S06617-B)

The Governor signed the Community Risk and Resiliency Act (CRRA) to strengthen state preparedness for the effects of climate change and help protect communities against severe weather and sea level rise in the wake of Hurricane Sandy and other recent natural disasters. The
Act requires State agencies to consider future physical climate risks caused by storm surges, sea level rise or flooding in certain permitting, funding and regulatory decisions.

**Enforcement People in the News**

*Passing of Two Prominent ELS Figures*

The Environmental Law Section mourns the losses of Ernest J. Ierardi and Frank P. Grad.

Ernie Ierardi was a Past Chair of the Environmental Law Section ('84-'85) and a partner in the law firm now known as Nixon Peabody. He was also an early leader in environmental and utility law and held numerous prestigious professional positions. He was held in high regard by both the American Bar Association and NYSBA.

Professor Grad was an environmental law pioneer and Columbia University Professor Emeritus. His accomplishments and contributions to the practice of law are too numerous to list here.

The Section extends its condolences to the families and friends of these two extraordinary individuals.

*New DEC Region 4 Director*

The DEC has promoted Keith D. Goertz to be the new Regional Director of the agency's Region 4 office in Rotterdam. Previously, he had served as Acting Region 4 Director since May 2014.

*DEC Commissioner Moves into Energy Storage Policy*

Former DEC Commissioner Denise Sheehan is now a Senior Policy Advisor for The New York Battery and Energy Storage Technology Consortium (NY - Best).

*Brownfields Advocacy Group Gets New Leadership*

New Partners for Community Revitalization (NPCR) has elected longtime Environmental Law Section member, Val Washington, to be the new president and board chair. She will replace Jody Kass a widely-regarded expert on state and national brownfields policy and co-founder of the organization.

*2014 NY Wildlife Officer of the Year Announced*

DEC Environmental Conservation Officer (ECO) Mark Colesante of Auburn, Cayuga County, received the 2014 "Officer of the Year" award from the Shikar-Safari Club International, a conservation-based sportsmen organization.
State and Local Enforcement

Chemical Co. Assessed $400k Pollution Penalty by DEC

A Schenectady chemical manufacturer will pay a $400,000 state pollution penalty for air pollution and other violations as per a settlement entered with the DEC. The company also agreed to hire an outside engineer and will test its air emissions stacks for levels of volatile organic compounds (VOC), nitrogen oxide (NOx), carbon monoxide (CO) and soot. This is the fifth major enforcement action in four years brought against the company brought by DEC.

Drug Co. Pays $45k State Air Pollution Penalty

A Rensselaer drug research plant paid a $45,000 state air pollution fine to the DEC for emitting more than 11 times the legal limit of a toxic solvent toluene (more in the DEC Region 4 Administrative Orders Section below).

Tappan Zee Contractor Zapped for Pollution at Port of Coeymans

A company that started work at the Port of Coeymans on the new Tappan Zee Bridge project without necessary state environmental permits has been slammed with a $10,000 fine and also must pay $55,000 to a DEC-selected environmental benefit project (EBP). The violation was first discovered by the Hudson River watch dog group, the Riverkeeper (more in the DEC Region 4 Administrative Orders Section below).

NY AG Sues to Collect Bottle Bill Deposits

The Attorney General commenced a lawsuit alleging that a Monroe County-based beverage company violated provisions of New York's Returnable Container Act, a/k/a the "Bottle Bill," after the company allegedly collected container deposits but failed to remit almost $80k in unclaimed deposits to the State.

Federal Enforcement

Dumping Poultry Offal is Awful for Ramapo River! (SDNY)

The U.S. Attorney and EPA Region 2 entered into a consent decree settling a civil lawsuit against a poultry processing plant in Orange County for violations of the Clean Water Act ("CWA"). The defendants discharged poultry slaughterhouse waste into storm drains, sewers, and Ramapo River tributaries near the Village of Kiryas Joel. Defendants will pay a civil penalty of $330,000 and will submit preventative emergency operation and corrective action plans.

$16 Million Newtown Creek Bankruptcy Settlement (SDNY)

The U.S. Attorney and the EPA Region 2 entered into a settlement agreement with a bankruptcy trust on behalf of Getty Petroleum related parties which resolves Getty’s CERCLA and OPA liabilities at the Newtown Creek Superfund Site in Brooklyn and Queens.
Fish Monger Jailed, Pays $500k to NYS Conservation Fund

A federally-licensed fish dealer from Brooklyn was sentenced today in federal court for one count of wire fraud for his role in systematically under-reporting fluke (summer flounder) harvested as part of the federal Research Set-Aside (RSA) Program. He will serve four months in prison followed by three years of supervised release, pay a $6,000 fine, and pay $15,000 towards community service and $510,000 in restitution to the Marine Resources Account of the New York State Conservation Fund. He was also ordered to surrender his federal dealer license and was banned from accessing a NOAA computer system.

DEC Region 4 Administrative Orders

In the Matter of SI Group
Order of Consent
DEC Case No. R4-2014-0131-17

Respondent owns and operates a major chemical manufacturing facility in Rotterdam, Schenectady County and was assessed a civil penalty of $400,000 for air pollution permit, hazardous waste handling and chemical bulk storage (CBS) regulatory violations. These include numerous violations of 6 NYCRR Parts 200, 227, 372.2, 373-3.3 and 598. Respondent has an extensive ECL violation history (see above item in Enforcement News).

In the Matter of PGS Millwork
Order of Consent
DEC Case No. R4-2014-0131-17

Respondent, an architectural and woodworking business in Greenport, Columbia County was assessed a civil penalty of $2,500, for twelve hazardous waste record, manifest, signage and safety regulatory violations including parts of 6 NYCRR Parts 372.2, 374-3.2 and 376.1. Many of the violations involved the handling and disposal of waste (HID) lamps which can contain the heavy metal mercury and other toxic materials.

In the Matter of Fortitech Inc.
Order of Consent
DEC Case No. R4-2014-0610-122

Respondent, a Schenectady food nutrient formulator was assessed a civil penalty of $900, for eight hazardous waste record, manifest, signage and safety regulatory violations including parts of 6 NYCRR Parts 372.2, 374-3.2. Many of the violations involved the handling and disposal of waste fluorescent lighting which can contain the heavy metal mercury and other toxic materials. Respondent was also cited for failing to file a hazardous waste exemption notice for recycled electronics in violation of 6 NYCRR Part 371.1(c)(7).
In the Matter of Aramark Management Services  
Order of Consent  
DEC Case No. R4-2014-0821-140

Respondent, a pesticide applicator for Hartwick College in Oneonta, was assessed a civil penalty of $1,500, for violations of 6 NYCRR Parts 325.40(h), 325.26(a) and 325.2(d), for failing to place visual notification markers in treated areas, not possessing proper product labels and not having a proper business registration for the applicator's truck.

In the Matter of AMRI Rensselaer  
Order of Consent  
DEC Case No. R4-2014-0917-153

Respondent, a Rensselaer a drug manufacturer was assessed a civil penalty of $45,000, for exceeding emission standards for toluene during mandated air pollution stack tests in violation of 6 NYCRR 201-6.5(a) (2). This activity constitutes a failure to comply with conditions of the facility's Title V air permit. (see Enforcement News item above).

In the Matter of Tappan Zee Constructors  
Order on Consent  
DEC Case No. R4-2014-0902-144

Respondent applied for a permit (including a storm water runoff plan) for dredging a portion of the Port of Coeymans to allow for the off-loading and loading of bridge sections for transport for use in the construction of the new Tappan Zee Bridge. By commencing operations without a final water permit, Respondent violated 6 NYCRR 750-1.4(b). But, in a rare instance of prosecutorial discretion, DEC also citedRespondent for violating SEQRA regulations at 6 NYCRR 617.3(a) (for commencing construction of the project and disturbing the site prior to complying with SEQRA). To do this, DEC had to invoke the ECL universal enforcement section at ECL 71-4003, which applies to ECL sections that do not have specific enforcement provisions by law. Respondents were assessed a civil penalty of $10,000 and was ordered to fund an environmental benefit project (EBP) valued at $55,000. The violations were initially reported by the Hudson River Keeper organization.

In the Matter of Columbia County  
Order on Consent  
DEC Case No. R4-2014-0715-129

Columbia County, the operator of a publically owned treatment works (POTW) was assessed a civil penalty of $2,800 for exceeding its State Pollutant Discharge Elimination System Permit (SPDES) effluent limits in violation of 6 NYCRR 750-2.1(e). The periodic discharge monitoring reports (DMR) required by the permit indicated the violations.
DEC Administrative Decisions and Orders

In the Matter of Seymour Excavating Inc. and Burton D. Seymour
Commissioner's Order, September 29, 2014
DEC Case No. R6-20130419-13

The Commissioner's granted staff's motion for a default judgment against Respondent corporation pursuant to 6 NYCRR 622.15 and assessed a civil penalty of $14,000, for mining without a permit in violation of the Mined Land Reclamation Act (MLRA) ECL 23-2711(1) and 6 NYCRR 421.1(a), for violating a previous Order on Consent and the failure to file a valid reclamation bond. Respondent was also ordered to submit documentation and a reclamation plan. However, the Commissioner dismissed all causes of action against the corporate CEO for staff's failure to produce evidence of individual liability.

PBS Tank Administrative Hearing Defaults

In the following six administrative enforcement cases, the Commissioner granted Staff's Motion for a default judgment pursuant to 6 NYCRR Part 622.15 and assessed a civil penalty of from $5,000 to $10,000, for the failure to register a petroleum bulk storage (PBS) tank in violation of 6 NYCRR 612.2. Penalties varied based on the length of the time the tank was not properly registered.

In the Matter of 101-09 West 115th Street Housing Development Fund Corporation
Commissioner's Order, October 14, 2014
DEC Case No. 2-469750BT

In the Matter of 2477 Grand Ave, Corp 2477 Grand Ave, Corp.
Commissioner's Order, October 14, 2014
DEC Case No. PBS 2-609696C

In the Matter of 163 Lefferts Place Housing Development Fund Corporation
Commissioner's Order, October 6, 2014
DEC Case No. PBS 2-608521YW

In the Matter of 75 & 81 Orchard Associates LLC
Commissioner's Order, October 6, 2014
DEC Case No. PBS 2-097721NBT

In the Matter of EV 1st Avenue Properties Owner, L.P.
Commissioner's Order, September 29, 2014
DEC Case No. 2-609074YW

In the Matter of XHiku, LLC
Commissioner's Order, September 22, 2014
DEC Case No. 2-605692NSC
Weird News

Giant Crab Spotted in UK? Debunked!

This viral image brought to mind an earlier environmental exploration of our primal fear of gigantic crustaceans - "Attack of the Crab Monsters."

Bill Gates Needs New Operating System - Shovel 1.0

The world's richest man has been cited by Wellington, Florida for the improper storage of horse manure at his home and storing manure too close to a waterway.

More Giant African Land Snail News

To follow up on past items, this real life monster and invasive species continues to slowly - ever so slowly - slime its way up the Florida coast.

More Big Foot News

Approximately 20% of Americans believe that the mythical Sasquatch exists. This and other fascinating Big Foot facts were bandied about at the recent Chautauqua Lake Bigfoot Expo held in Chautauqua, New York. See you there next year.
Enforcement News

Two Car Companies Pay Highest CAA Civil Penalties Ever

Car manufacturers Hyundai and Kia (the "Companies") used inaccurate data to falsely demonstrate compliance with Clean Air Act (CAA) emissions standards. They also miscalculated higher fuel economy and lower greenhouse gas emissions (GHG). The Companies then used the dubious GHG data to claim more GHG emission credits than they were entitled to.

Hyundai and Kia will pay a civil penalty of $100 million, forfeit 4.75 million metric tons' worth of GHG credits (worth hundreds of millions of dollars), and be required to implement training and audit testing of new vehicles.

New Environmental-Health Threat - Asbestos in Talc

Talc, the soft powdery mineral that is used in a myriad of common consumer products, can contain high levels of toxic asbestos. A number of users have already claimed injuries due to exposure to products containing talc.

The federal Food and Drug Administration ("FDA") has been slow to respond to the threat due to weak laws and restricted regulatory authority over talc and talc products.

State-NYC Expand Environmental Navies

In separate announcements, NYC and the State announced that the NYC Department of Environmental Protection ("NYCDEP") and various state and local agencies have received new vessels to enhance environmental compliance, regulatory enforcement and boating safety.

States Endorse Proposed New EPA Ozone Standards

A number of states - including New York - submitted a letter urging the federal Office of Management and Budget to support EPA's proposal to strengthen the national ambient air quality standards for ozone with a national primary standard of 60 to 70 parts per billion.

New State E-Mail Retention Policy Blamed for Lost Documents

As first raised in an item posted last month, the state's new radically shortened email retention policy (90 days) has already been blamed for the loss of email documents in litigation involving the Governor's Office and DEC.

Hudson River Estuary Plan Released

DEC released "The Hudson River Estuary Habitat Restoration Plan" as a guide for restoration and protective actions along the River from Troy to the Tappan Zee Bridge.
Court Orders SLA Licensee Back to Agency Hearing

In a case that may define the parameters of state administrative authority, the State Supreme Court remanded a NY liquor retailer's challenge to state enforcement authority back to the State Liquor Authority (SLA). Recall from a previous post that the liquor retailer is testing an SLA imposed ban on out of state sales.

Leadership Challenged at Lake George Park Commission

The Governor's Office is attempting to oust the Commissioner of the state's smallest state environmental agency for mysterious reasons. Intrigue has ensued. More next month.

Toxic Toys Invade NY!

The discovery of toys containing hazardous substances has drawn the attention of state officials including the Attorney General. The toys appear to be mostly small, cheap and imported from China. Look for related legislation in the 2015 session.

CWD Threatens NY Deer Population

DEC amended its Chronic Wasting Disease (CWD) regulations to prohibit the importation of certain parts of white-tailed deer, elk or moose taken in the state of Ohio where an outbreak has occurred. CWD is a lethal and incurable disease that can and has devastated wild deer herds in other parts of the country. Exposure of healthy to diseased animals spreads this disease.

States Denied Credit for Past Greenhouse Gas Reductions

New York and other states are miffed that proposed federal rules to cut greenhouse gases (GHG) are unfair because the proposed limits don't give their states enough credit for past voluntary reductions when compared to states that have effected little or no reductions to date.

Mining CEO Personally Indicted for Mine Explosion (West Virginia)

The CEO of a West Virginia Mine that exploded in 2010, killing 29, was indicted for numerous federal mining and securities violations including for making false statements after the disaster.

AT&T To Pay $52M in E-Waste Settlement (California)

Telecom giant AT&T Inc. agreed to pay $51.8 million in civil penalties and compliance costs to resolve California allegations that it unlawfully disposed of hazardous electronics waste with general solid wastes over a nine-year period. The wastes consisted of discarded electronic equipment, batteries, aerosol cans and hazardous chemicals used by technicians at over 200 distribution and service locations in that state. This is yet another example of hazardous waste enforcement against non-traditional non-industrial waste generators.
Fishing and SARBOX? An Unusual Legal Bouillabaisse! (Florida)

A Florida commercial fisherman was prosecuted and convicted under the federal Sarbanes-Oxley (SARBOX) security law for "shredding documents" by throwing back 72 undersized grouper before reporting to investigating US Fish and Wildlife officers. But is a fish equivalent to a document under the plain language of the statute? The U.S. Supreme court will weigh in on this rather fishy issue in this term as the fisherman appeals his conviction.

Energy Enforcement News

North Dakota Regulators Rule on Crude Oil Safety

New Yorkers concerned with the safety of crude oil trains in the Port of Albany were relieved to discover that the North Dakota Industrial Commission has endorsed proposed new operating standards which decrease the volatility of oil extracted from that state's Bakken Oil field and shipped to the rest of the country including New York. This action will dramatically improve the safety of Bakken oil shipped from North Dakota. The new regulations are to be finalized next year.

Power Plant Conversion Questioned!

The NYS Public Service Commission continues to wrestle with a controversial proposal to partially convert NYSEG's coal fired power plant in Tompkins County to cleaner burning natural gas.

Proposed Amusement Park near Propane Storage Questioned

Activists have raised issue with the contemplated placement of the relocated Hoffman's Playland about one-tenth of a mile from a 630,000-gallon propane storage facility on Albany's waterfront. Many in favor of the park move are also firmly against the passage of crude oil trains through Albany despite the safety questions raised by both activities.

Revised LNG Rules Cap Storage Capacity

Under revised proposed rules, the DEC would limit the size of proposed storage facilities for super-cooled and liquefied natural gas (LNG). LNG storage in NY has been banned since the early 1970's after a tragic explosion at a Staten Island facility killed 40 people. DEC set a revised limit of 70,000-gallons after public comments raised safety concerns.

Orange Co. Crude Oil Facility Expansion Nixed

The same oil terminal company that operates at the Port of Albany dropped plans to add a rail-to-river unloading facility on the Hudson River in New Windsor, about 90 miles south of Albany.

Incoming Crude Oil Slows Into Port of Albany
A citizen's group that monitors crude oil trains arriving at the Port of Albany reports that the oil flow has significantly diminished in recent weeks. Falling oil prices and higher drilling costs are thought to be the cause of the downturn.

*Proposed Propane Storage in Salt Caverns*

DEC continues to advance the administrative process for the proposed use of old salt mining caverns in the Finger Lakes region near Watkins Glen for as an underground liquefied propane storage facility. Opponents have stressed safety and environmental concerns.

*Port Emergency Exercise*

Numerous federal, state and local agencies participated in planning exercises focused on possible responses to an oil spill emergency at the Port of Albany.

*Nuke Operator's Finances Challenged*

A number of citizen watchdog groups have claimed that Entergy Corp, the operator of two New England nuclear power plants, has inadequate finances. The same company operates nuclear plants in New York (Indian Point). One of the New England plants is scheduled to be closed by the end of 2014.

*Enforcement People in the News*

*NYS ECO of the Year*

The Update joins DEC and the New York State Rifle and Pistol Association (NYSRPA) in congratulating Environmental Conservation Officer (ECO) Scott Marshall for being named the New York State ECO of the Year.

*DEC ECOs Receive Award for Excellence*

The Governor commended members of the New York State Department of Environmental Conservation Police who received the Dave Cameron Award for Excellence in Environmental Crimes Enforcement and Education from the International Association of Chiefs of Police. The Award was presented to Lieutenant David Clarke and Investigators Fran D'Angelo, Mike Dangler and Mark Malone of the Bureau of Environmental Conservation Investigation ("BECI").

*State and Local Enforcement*

*Artistic Hair Care and Hazardous Waste*

The DEC investigated a release of 720 gallons of liquid ammonium hydroxide from the Zotos International Facility in Geneva, Ontario County. The spill occurred after an improper repair involving a storage tank. The highly caustic liquid discharged into a sewer outfall that eventually led to Seneca Lake. The company manufactures shampoo, hair dye and other grooming products.
Proposed New Bulk Storage Rules Hearing Report Issued

DEC has issued the administrative rule making public comment hearing report generated by proposed new regulations for petroleum and chemical bulk storage as well as used oil management. These reflect the first major regulatory and enforcement changes to these regulations in more than 20 years.

Federal Enforcement

NY Asbestos Inspector Sentenced (WDNY)

A NY-certified asbestos inspector was convicted of the misdemeanor charge of negligent endangerment under the CAA and was sentenced to one year probation. The Defendant had been involved in a scheme to create false asbestos abatement records as part of the Kensington Towers abatement project in Buffalo. He is the last defendant to be convicted and sentenced in this criminal matter. A number of federal and state enforcement and regulatory agencies cooperated and participated in this lengthy investigation.

Ivory Smuggler Sentenced (SDNY)

A Canadian antiques dealer pleaded guilty to attempting to smuggle rare black rhinoceros horns from New York to Canada as part of "Operation Crash," a nation-wide crackdown in the illegal trafficking in these items. The crime carries a maximum penalty of ten years in prison.

DEC Administrative Decisions and Orders

In the Matter of Rraci Real Estate Corp., Commissioner's Order, November 4, 2014
DEC File No. R2-20130905-379

The Commissioner granted the staff's motion for an order without hearing in lieu of complaint pursuant to 6 NYCRR 622.12, after Respondent failed to appear and also held that it violated a previous 2007 Order on Consent and therefore ECL 71-1929(1) for failing to comply with the corrective action plan (CAP) for an oil spill as directed. Respondent was also assessed a civil penalty of $50,000.

Of interest is that the Commissioner rejected the Administrative Law Judge's contention that ECL 71-1929(1) does not set forth enforceable requirements for a violator that "fails to perform any duty imposed by" orders of the Commissioner (citing, Matter of Raphy Benaim, et al., Order of the Commissioner, January 27, 2014, at 4 [failure to comply with stipulation is violation of ECL 71-1929]).

PBS Tank Administrative Hearing Defaults

In the following three administrative enforcement cases, the Commissioner granted Staff's motion for a default judgment pursuant to 6 NYCRR Part 622.15 and assessed a civil penalty of
from $7,500 to $10,000, for the failure to register a petroleum bulk storage (PBS) tank in violation of 6 NYCRR 612.2. Penalties varied based on the length of the time the tank was not properly registered.

In the Matter of Hop Hing Realty Corp., Commissioner's Order, October 24, 2014
DEC Case No. 2-607278AL

In the Matter of 1555 Seabury Place Housing Development Fund Corporation, Commissioner's Order, October 24, 2014
DEC Case No. PBS 2-330701SC

In the Matter of Hop Yick Company, Inc., Commissioner's Order, October 24, 2014
DEC Case No. PBS 2-607294AL

**Weird News**

*Groaning Frogs Found in NJ*

Recently, researchers discovered New Jersey frogs that groan and cough (like some of my relatives) rather than croak like the other frogs.

*Idaho Wolf Derby Cancelled*

To the disappointment of sports fans everywhere, the federal Bureau of Land Management (BLM) cancelled an Idaho wolf and coyote hunting contest (the "Derby") on public lands. This item is illustrative of the controversies that involve the use of public lands and, in particular, the management of predators.

*Chinese Diplomats Accused in African Ivory trade*

Chinese diplomats have been accused of active involvement in the illegal international ivory trade. Those that follow this blog know that foreign nationals are often named in domestic illegal ivory investigations (see item on Operation Crash, above). However, if true, the collusion of diplomats in this criminal activity would be a serious blow to world enforcement efforts.
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Enforcement News

NY Bans Fracking

New York's six year environmental review of high-volume hydraulic fracturing (a/k/a fracking) for the extraction of natural gas ended when Governor Cuomo essentially banned fracking in the state. State officials determined that there were still too many unanswered health and environmental questions to allow the practice to proceed. NY is the only state to ban the procedure thus far. The determination is based on the December 2014, NYSDOH health study issued on the subject.

ExxonMobil Funds More Awards at Greenpoint

The NY Attorney and the DEC announced $11 million in the latest round of grant awards made by the Greenpoint Community Environmental Fund (GCEF), a $19.5 million environmental improvement fund created from money obtained by the state in a 2011 settlement with ExxonMobil over its massive historic oil spill in Greenpoint, Brooklyn. These projects include a roof top outdoor classroom for school children, planting trees, and improving waste water management. This is unique variation of an environmental benefit project (EPB) to resolve an enforcement case.

EPA Will Treat Coal Ash as Solid Waste

EPA will regulate coal ash as solid waste rather than as more strictly controlled (and expensive) hazardous waste. By choosing to regulate coal combustion residuals under Subtitle D of the Resource Conservation and Recovery Act (RCRA), the EPA has put it to the states to decide if they want to establish permit programs. This ruling will be helpful to NY facilities that use coal ash.

2500 PEF Members to be Re-classified as Non Union Managers

In a bombshell determination, the Governor's office has determined that up to 2500 current union members of the Public Employees Federation (PEF) are to be reclassified as "at-will" management-confidential employees. An unknown number of those impacted work for DEC and other state environmental agencies. A legal challenge by PEF is likely.

NY Court of Appeals Upholds DMV Inspection License Revocation

The NY Court of Appeals upheld an administrative determination by the NYS Department of Motor Vehicles (DMV) to revoke the certified state inspection license of a Menands, NY motor vehicle inspection station. The station had been found to be using a donor vehicle to falsify air emission tests. Note, as previously reported by the Update, DEC has also brought administrative penalty enforcement actions against phoney inspection stations for violating NYS air pollution laws.
**NY Comptroller Reports DEC is in Trouble**

The OSC predicted dire consequences due to long term budget and staff cuts at New York's primary environmental agency.

**County Legislature Bans Toxic Toys**

Albany County became the first municipality in the NY to ban toys containing toxic materials. The enforcement and interpretation of such stringent local laws is controversial. More local bans are anticipated around the state.

**Nanotechnology - the Unknown Health and Environmental Risks**

While policy makers in NY have assigned nanotechnology a significant role in the state's economic development, there is still uncertainty about any health and environmental impacts due to the use of this technology. This has some groups, such as the Sustainable Investments Institute, calling for disclosure of nano-technology used by companies.

**NYC Trash is Too Dirty to Compost**

One of the facilities accepting NYC's organic waste recently lost its license due to being overwhelmed with non-organic residuals. The facility's lenient policies for accepting compost feedstock that was highly contaminated with plastic and other non-compostables was what attracted to the facility. NYC will now need to find an alternative facility or find ways to mitigate the highly-contaminated nature of its organic waste feedstock.

**NYC Climate Change Office Change**

The Mayor has combined the Office of Long Term Planning and Sustainability with the Office of Environmental Coordination to create a new Office of Sustainability that will undertake the city's efforts to mitigate climate change.

**AG Stops Cemetery Flooding**

The NY Attorney General's office obtained a court order forcing a property owner to cease the unpermitted diversion of storm water that flooded a nearby cemetery. The alleged water diversion flooded and damaged cemetery property and grave sites.

**Illegal Deer Hunting in Guilderland**

My hometown is not immune from environmental transgressions as a Guilderland, NY man was charged with allegedly using an illegal spotlight to hunt deer after dark with a crossbow.
**AG Prosecutes Cockfighting Ring**

The NY Attorney General announced the felony cruelty to animal convictions of two Ulster County men as the result of "Operation Angry Birds," the largest known investigation into organized cockfighting in New York history.

**Adirondack Park Agency Enforcement Report Issued**

The APA enforcement docket is now available.

**Energy Enforcement News**

*Inspectors Discover Faulty RR Switch Impacting Crude Oil Trains*

NYS and federal inspectors found a faulty track switch which could have derailed passing trains that routinely carry dozens of crude oil tankers through a large Albany County industrial park in Guilderland, NY. This is a direct result of the state's increased scrutiny of crude oil trains moving Bakken Shale generated crude oil to the nearby Port of Albany for transshipment.

*North Dakota Sets Crude Oil Volatility Std.*

NYS stakeholders are divided over whether new standards imposed by North Dakota regulators to decrease the volatility of Bakken Shale crude oil will be truly effective in decreasing the levels of oil flammability in transported oil. The overall goal is to prevent or limit catastrophic fires due to crude oil train accidents.

*Improvements to the Oil Spill Fund Contemplated*

The Governor and the Comptroller have commenced their annual policy debate over how to address the issues associated with the state's primary oil spill cleanup mechanism especially in light of the increased oil train traffic in NY.

*Governor Cuomo Issues Crude Oil Train Status Report*

The Governor's office issued a report that details the state's response to the safety and environmental issues associated with crude oil trains to and through NY.

*Constitution Gas Pipeline Comment Sought*

DEC sought comments on permit applications the agency received for the proposed, federally regulated Constitution Pipeline and an upgrade to the Iroquois Wright Compressor station in Schoharie County. The Constitution Pipeline is a proposed interstate natural gas pipeline that would traverse through Broome, Chenango, Delaware and Schoharie counties.
Feds Approve Constitution Gas Pipeline - Fight Guaranteed

The Federal Energy Regulatory Commission (FERC) approved construction plans for the Constitution Pipeline, which would begin in the Marcellus Shale fracking fields around Susquehanna County, Pennsylvania, just south of Binghamton (see item above).

Opponents of the pipeline have vowed to continue their opposition. This project is one of many proposed to move Marcellus Shale natural gas from Pennsylvania into the Northeast energy market.

Another NY Pipeline Proposed for Penn. Natural Gas

Unrelated to the Constitution Pipeline (items above), FERC is also reviewing an application for the Northeast Energy Direct pipeline which would also carry Marcellus Shale natural gas from Pennsylvania to New England via a route that travels across areas south of Albany. Local opposition has already developed to oppose the pipeline project.

Indian Point Risks Highlighted by U.S. Senate

NY Senator Gillibrand raised several safety issues about the Indian Point nuclear plant based on the potential exposure of the plant to hurricane and earthquake dangers.

Enforcement People in the News

Grisanti leaves Senate

Former NY State Senator and Chairman of the Senate Environmental Committee Mark Grisanti left the senate in 2014. As Senator, he sponsored many environmental initiatives and frequently spoke on legislative affairs at the ELS Legislative Forum. The Environmental Law Section wishes him well.

Long-time Long Island Senator Passes Away

Former NY State Senator Owen Johnson passed away after 40 years representing his Long Island district from 1972 to 2012. Among his many accomplishments was the legislation that created the state's Environmental Protection Fund.

Cruden Returns to DOJ

John Cruden has rejoined the Department of Justice as Assistant Attorney General for the Environment and Natural Resources Division.

New DEC Region 2 Attorney

Karen Mintzer has left private practice to become Regional Attorney for DEC Region 2 in Long Island City.
New Chief of NDNY Criminal Division

Elizabeth C. Coombe has been named the Chief of the Criminal Division of the United States Attorney’s Office for the Northern District of New York.

NY Legal Scholar Passes Away

The Environmental Law Section joins the rest of NYSBA in mourning the loss of Professor David D. Siegel. Those that write or edit legal materials were both inspired and indebted to this giant of legal scholarship. The Update template is loosely based on Prof. Siegel's monthly CPLR Update and a great debt is owed to his pioneering of the format.

State and Local Enforcement

Albany Co. Cement Plant Fined $100k

The LaFarge cement plant in southern Albany County has been hit with a $100,000 state penalty for more than fifty violations of state and federal water law including polluting a stream that runs to the Hudson River (see link to Order below).

Final AG Settlement in the "Dirtman" Investigation

The Attorney General and NYC DEP Commissioner announced a legal agreement with a Putnam County landowner to clean up an illegal landfill that discharged pollution into the Croton Falls Reservoir. The owner is required to clean up the site and pay $245,000 in penalties as part of a consent judgment entered in Putnam County Supreme Court. In July 2014, the Court had ruled that the owner and his contractor, "Dirtman," violated state environmental laws in creating and operating a landfill.

Suffolk County Toxic Dumping Indictments Issued

The Suffolk County District Attorney announced a 32 count indictment against various parties for their parts in the illegal dumping of solid and hazardous wastes at various locations in the Central Islip area. Several defendants were also tied to criminal indictments connected to Hurricane Sandy relief.

$181k Air Penalty with EBP Imposed on Port Operator

DEC imposed a civil penalty of $181,000 on Buckeye Albany Terminal, LLC for air permit violations relating to the transfer of ethanol at its Port of Albany facility. An administrative consent order also requires operational changes to ensure compliance. Part of the penalty, $145,000, will be put toward an Environmental Benefit Project (EBP) to be identified (see link to Order below).
AG Sues NYC Oil Storage Violator

The NY Attorney General has sued a NYC landlord for violations of state oil spill and petroleum bulk storage (PBS) laws related to the handling and storage of heating oil at residential properties. The complaint cited 90 violations at 25 properties around the City. The landlord had also failed to correct the violations or pay a $113,500 civil penalty, as previously ordered by the DEC.

Bottle Bill Deposits Ordered to be Paid

A Monroe County beverage company was ordered to pay the state nearly $80,000 in bottle deposits for repeatedly violating multiple provisions of New York's Returnable Container Act (a/k/a the Bottle Bill). Investigations revealed that, for more than two years, the company collected deposits on beverage containers it sold but then failed to pay the unclaimed deposits to the state.

Region 4 Administrative Orders

In the Matter of LaFarge
Order on Consent
DEC No. R4-2014-0916-150, 12/12/14

Respondent, the operator of a Portland cement plant in Albany County was assessed a civil penalty of $100,000.00, for numerous violations of water pollution permits (SPDES) and chemical bulk storage (CBS) regulations as set forth in 6 NYCRR Parts 750 and 596, respectively.

In the Matter of Prokopiak
Order on Consent
DEC No. R4-2014-0206-22, 12/9/14

Respondent, the operator of a scrap yard and automotive facility was assessed a total penalty of $7,500.00, with $2,500.00, suspended for compliance due to the disposal of solid waste without a permit and open burning without a permit in violation of 6 NYCRR Parts 360-1.5 and 215.3, respectively. The payable portion of the penalty was to be remitted in four equal payments of $1,250.00, each.

In the Matter of Nicholsen
Order on Consent
DEC No. R4-2014-1031-165, 12/8/14

Respondent, a Certified Pesticide Applicator employed by a golf course, was assessed a civil penalty of $1,500.00, for the failure to maintain pesticide records and improper application in violation of 6 NYCRR Sections 325.25 (a) and 352.2 (b), respectively.
**In the Matter of Apalachee**
**Order on Consent**
**DEC No. R4-2014-1113-168, 12/5/14**

Respondent was assessed a civil penalty of $1,640 for operating a salt dryer combustion unit at the Port of Coeymans, Albany County which emitted a detached particulate plume in violation of 6 NYCRR 201-4.1 (a) for operating a non-exempt air emission source without an air registration or permit.

**In the Matter of Buckeye Albany Terminal**
**Order on Consent**
**DEC No. R4-2014-0902-145, 11/19/14**

Respondent, an operator of a facility at the Port of Albany, was assessed a civil penalty of $181,000.00, of which $145,000.00 was to be used for a prospective Environmental Benefit Project (EBP) for air pollution violations associated with the handling of ethanol at the port. Respondent was found to be in violation of 6 NYCRR 200.7 for the improper operation of an emission control required by the facilities Title V federal and state air pollution permit (also see news item above).

**DEC Administrative Decisions and Orders**

**In the Matter of Alan Grout**
**Ruling of the Chief Administrative Law Judge on Motions**
**DEC File No. R4-2009-1120-176, December 12, 2014**

Here, the Chief ALJ addresses the common problem of typographical or insignificant errors in pleadings by applying CPLR 2001 standards as per previous civil and administrative law precedents which allow pleadings, "to be corrected, upon terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded." The Chief ALJ further concluded that Department staff should be permitted to correct the two clerical errors in its complaint regarding the correct nomenclature designation in the water regulations of the stream at issue in the matter.

**Weird News**

**Bizarre Animal Remains Found at Bizzaro Residence**

A drug raid on a Long Island home allegedly revealed 300 rotting deer hides and other miscellaneous and decomposing wild animal parts. Illegally possessed live snapping turtles were also discovered. Owner James Bizzaro had no reported comment.

**New NY Law Bans Tattoos on Pets (Not, Tattoos of Pets on Owners)**

NY residents can no longer extend their personal aesthetic to Fluffy or Mittens. NY has now protected pets from the growing practice of pet body modification and art.
A New Product Brand - NY State of Opportunity

New York State issued an 87-page manual to every state agency to introduce the new mandatory "State of Opportunity" motto and logo. The effort is part of a $217 million contract to advertise state economic benefit programs. Among the casualties is the long-used and well-known DEC environmental conservation (sky, land, water) logo.

Potential Bombs Close P.R. Wildlife Refuge

The federal government closed Playa Grande Beach, a part of the Vieques National Wildlife Refuge in Puerto Rico, to investigate the possible presence of old, but still explosive, military ordinance. Many parts of Vieques were historically used as a military bombing range.

Apes Are Not Legally Humans (or Are They?)

There is a low key, but passionate, international legal movement to establish human civil rights for captive great apes and elephants to improve the treatment of these creatures. A case brought on behalf of a privately owned chimpanzee recently failed in a NY court. However, in contrast, a court in Argentina found that a captive zoo orangutan did have such rights. So, the legal question seems to remain open for now.