EPA UPDATE

NYSBA EELS Annual Meeting
January, 2020

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US EPA REGION 2

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2020 EPA Budget

- **President's Budget for FY-2020:** similar to PresBud for FY-19, -18 and -17 … approx. 30%-33% overall reduction, and 40% reduction of staff and internal EPA funding.
- **Congressionally enacted budgets** have not adopted these cuts.
- **2020 Enacted budget:** EPA is funded at $9.057 B ($208 M above 2019), including:
  - $510 Million for Environmental Programs and Management Account, Geographic Programs ($53 M above 2019)
  - $1.85 B for Superfund ($25 M above 2019)

(Continued…)

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2020 EPA Budget

- $4.246 B for **State and Tribal Assistance Grants** ($115 M above 2019). This includes:
  - $2.77 B for Clean Water and Drinking Water SRFs
  - $87 M for diesel emission reduction grants
  - $89 M for Brownfields cleanups
- $60 M for **WIFIA** (Water Infrastructure Finance & Innovation Act)

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2020 EPA Budget – **PFAS FUNDING**

- $3 M increase in Research to support MCL development
- $1 M increase provided to Drinking Water program
- $10 M increase to support research on designation as hazardous substance
- $5 M increase in Research to support Sustainable and Healthy Communities
- $7 M increase in Public Water System Supervision Grants to support states
- $13 M in multipurpose grants to support PFAS work
- Committees direct EPA to brief them on establishment of PFAS MCLs w/in 60 days.

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Regional Reorganizations (2019)

- **All 10 regions now organized the same way, with divisions that have the same names.**
  - Separation of regulatory program & enforcement functions (was already so in R2).
  - Divisions for Air; Water; Superfund & Emergency Response; Land, Chemical & Redevelopment (RCRA, TSCA, FIFRA, EPCRA, Brownfields); Enforcement; and Regional Counsel.
  - Geographic program divisions in some regions: **Caribbean in R2,** Chesapeake Bay in R3, Great Lakes in R4, Gulf of Mexico in R4.
  - NEPA moves to ORA. **In R2:** ORA also includes Coordinators for Indian program, EJ, Communities, Children's Health, Agriculture.

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EPA Strategic Plan 2018-2022

- **Three major Goals:**
  - **Core Mission**
  - **Collaborative Federalism**
  - **Rule of Law & Process**

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

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EMERGING CONTAMINANTS

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

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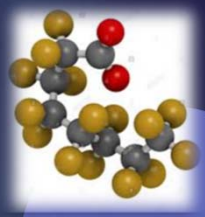
EMERGING CONTAMINANTS



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

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EMERGING CONTAMINANTS

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

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Federal PFAS Developments

- **11/25/2019:** EPA publishes ANPR on potential addition of certain PFAS to TRI list
- **12/3/2019:** EPA sends to OMB proposed "regulatory determination" for PFOS and PFOA in drinking water
  - *Positive determination would lead to development of MCLs*
- **12/20/2019: National Defense Authorization Act for 2020**
  - Prohibits use of PFAS-containing firefighting foam after 10/1/2024 at military bases
  - Prohibits use of such foam in training exercises effective immediately
  - Requires most public water supply systems to monitor for PFAS.
  - Adds PFAS (including Gen X) to TRI effective 1/1/2020
    - *May render moot EPA proposed regulatory announced in Nov. 2019*

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Federal PFAS Developments

- **Jan. 10, 2020:** House passes **PFAS Action Act** (w/ 24 GOP supporters).
  - Requires EPA to set drinking water standards for PFOA & PFAS
  - Requires EPA to designate PFOA & PFAS as CERCLA hazardous substances; and . . .
  - . . . requires EPA to determine within 5 years whether the agency will designate the entire class as hazardous.
  - Industries must disclose PFAS discharges into sewage systems.
  - $100 M in grants each year from 2021-2025 for POTWs to implement PFAS pre-treatment standards.

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AIR

- **6/19/2019:** EPA issued final **Affordable Clean Energy** rule (ACE), repealing and replacing the Obama-era Clean Power Plan.
  - Rule establishes emission guidelines for states to use when developing plans to limit CO_2 at coal-fired electric generating units.
- **1/6/20:** EPA announces ANPR for Clean Truck Initiative
  - Expect to propose further reductions in NOx emission limits (last updated in 2001).
- **Priority Air Goals:**
  - reduce # of non-Attainment Areas
  - reduce backlog of pending SIP Revisions.
    - R2 – reduced backlog by 14 actions in FY-19
  - DERA Grants
    - R2 2019 grants included 4 all-electric school buses in Bay Shore, LI.

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WATER

- **Priorities** include WOTUS; Lead; CSOs; Pathogens; Harmful Algal Blooms.
- **9/12/19 -- WOTUS Phase I:** EPA & USACE repeal 2015 rule defining Waters of the US under CWA
  - Agencies re-codified regulatory text that existed prior to 2015 rule
- **1/23/20 -- WOTUS Phase II:** EPA & USACE finalize **Navigable Waters Protection Rule** (proposed 12/2018); sets new WOTUS definition.
  - **4 categories federally regulated waters:**
    - territorial seas and traditional navigable waters;
    - perennial and intermittent tributaries;
    - certain lakes, ponds, and impoundments; and
    - wetlands adjacent to jurisdictional waters.

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WATER

- **WOTUS Phase II also identifies waters *not* subject to federal control, including:**
  - features that only contain water in direct response to rainfall;
  - groundwater;
  - many ditches, including most farm and roadside ditches;
  - prior converted cropland;
  - farm and stock watering ponds; and
  - waste treatment systems.

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WATER - Lead & Copper Rule (LCR)

- **11/13/2019:** EPA proposes revisions to **LCR** (first major revision since 2001)
  - Maintains current MCL Goal of ZERO and Action Level of 15 ppb.
  - Requires more comprehensive response at Action Level
  - Introduces trigger level of 10 ppb -- requires more proactive planning in communities with lead service lines (LSLs).
  - To identify areas with greatest potential for Pb contamination, all water systems must prepare & update LSL inventory.
  - Water systems required to "find-and-fix" causes of elevated Pb levels.

*See EPA **Fact Sheet** at:*
<www.epa.gov/sites/production/files/2019-10/documents/ lcr_proposal_vs._current_chart_draft.pdf>

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Region 2 Water Priorities

- **Priorities include Lead; CSOs; pathogen standards; NEPs; NYC Watershed**
  - **Long Island Sound**: Between 2015 and 2019, peak area of hypoxic waters in LIS averaged 89 square miles, less than half the pre-2000 average of 205 square miles.
  - **NYC Watershed**: Working with stakeholders to identify ultimate land acquisition goals
  - **Lead in Drinking Water**
    - **Newark . . . *It is NOT Flint!***

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Newark Drinking Water

- **10/2018:** Sampling finds that corrosion control treatment (CCT) in Pequannock service area was not effective.
  - Newark distributes 40,000 faucet-mounted (point-of-use or POU) filters, and 1,000 pitcher type filters, while determining how to optimize CCT.
- **5/2019:** Newark adjusts CCT; begins sequential sampling at 3 homes to determine effectiveness.
  - Pre-CCT unfiltered samples from 3 homes show elevated levels of lead.
- **7-8/2019:** Filtered samples from 2 of 3 homes (1 pitcher-type, 1 faucet-mounted) did not reduce lead levels as expected.
  - Filtered results were 50 ppb and 83 ppb.
  - Filters are certified to reduce lead to >10 ppb when incoming water is at 150 ppb or lower

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Newark Drinking Water

- **8/9/2019:** EPA recommends that Newark residents with LSLs or suspected LSLs be advised to use bottled water for drinking & cooking until agencies can be assured of reliable efficacy of the filtration devices.
  - **8/12/2019:** Newark begins distributing bottled water.
- **August – Sept. 2019:** Newark's contractor (CDM Smith), EPA & NJDEP collaborate to design & carry out study of efficacy of the filters when used in areas served by the Pequannock water supply in Newark.
  - **>1,600 separate samples collected from >300 residences where either faucet-mounted or pitcher-type filters were in use.**
  - **Final report issued 11/17 /2019**
  - ***EPA supports Newark's recommendation that POU filters, paired with flushing with the filter in the off position for at least five minutes, be used in the interim until the CCT in Newark is optimized and effectively reducing lead in tap water.***

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Newark Drinking Water

- Importance of flushing plus filtering shown by data: In all cases when the unfiltered lead levels were >150 ppb, filters in Newark did not reduce lead to 10 ppb or below.
- Concentrations in ***unfiltered, unflushed***, tap water samples were, on average, more than twice the lead levels in ***unfiltered, flushed*** tap water samples.
- Flushing with filter in off position for at least 5 minutes is expected to reduce lead concentrations to levels at which the results of the study indicate that filters will likely perform as expected, reducing lead levels to 10 ppb or below when properly installed and maintained.
- EPA also supports Newark's recommendation that residents who can use faucet-mounted filters should be advised to do so.

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Newark Drinking Water

- **March 2019: Newark launches one of the most ambitious LSL replacement programs in the nation**
  - **Expect full replacement of all ~18,000 LSLs in 18-24 months**
    - **Currently replacing 90+ LSLs/day**
    - **Expect to ramp up to 200 LSLs/day**
    - **> 5,700 LSLs replaced to date**
  - **100% government funded, even if part of LSL is privately owned**
    - **Cost is typically $5 K - $10 K per LSL; using SRF & County Bond funds**
  - **City ordinance requires residents to permit LSLs to be replaced**
  - **Extensive public outreach & education**

See: <www.newarkleadserviceline.com/replacement>

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SUPERFUND

- Strong administration interest in Superfund program.
  - **Administrator's Emphasis List:** Focus on timely achievement of specific, important next milestone. Sites taken off list once specified milestone is met.
    - R2 sites once or now on list: American Cyanamid, Berry's Creek; Upper 9 miles of Lower Passaic; UOP; Arsenic Mines.
  - **Administrator now signs RODs >$50 M.**
    - R2 sites include American Cyanamid, Berry's Creek, Matteo

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R2 Superfund Update

- **Gowanus Canal:**
  - **Cutoff Wall installation** at head end of Canal under way now.
  - Much **bulkhead replacement** completed and under way.
  - **Dredging & capping** remedial work anticipated to start late 2020.
- **Passaic River:**
  - **Lower 8 Miles: Remedial design** underway; construction to start 2021
  - **Upper 9 Miles: Interim remedy** under consideration (see below)
- **Grasse River:**
  - $260 M **dredging & capping** remedial construction started 2019
- **Hudson River PCBs:**
  - April 2019: EPA issues 2nd Five Year Review & Certification of Completion of Remedial Action
  - August 2019: NYS files lawsuit

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Interim Remedies at R2 Sediment Sites

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

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Interim Remedies at R2 Sediment Sites

- **Lower Passaic River** contaminated with dioxin, PCBs, Hg, etc.
- **Lower 8 Miles:** EPA selects bank-to-bank dredge-and-cap remedy in 2016; $1.4 B project; construction to begin 2021
- **Upper 9 Miles:** PRPs propose $300 - $500 M **interim remedy** in 2017; dredge-and-cap for selected areas
  - Focused Feasibility Study being performed by PRPs
  - Proposed cleanup plan by 9/2020
  - Allows use of cleanup infrastructure to be built for lower 8 miles
  - All parties understand final remedy could require additional work

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Interim Remedies at R2 Sediment Sites

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

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Early Remedy at R2 Sediment Site

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

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Notable R2 Enforcement Developments

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

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Notable R2 Enforcement Developments

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

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Notable R2 Enforcement Developments

- ***Total Petroleum* CAA §303 Emergency Order**
- **5/8/19:** Tanks at Total's Guaynabo, PR facility reported to have elevated Lower Explosive Limit (LEL) levels, indicating dangerous fire hazard
  - NFPA standard for such tanks: LEL not to exceed 25%
  - Five tanks had LELs between 39% and 100%
  - After 10 days 4 tanks still had LEL >25%
- **5/20/19:** EPA issues Administrative Order; requires:
  - 4 tanks to be emptied & de-gassed within 3 days; then repair tanks; and not put tanks back in service without prior EPA approval

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Notable R2 Enforcement Developments

- **Methyl Bromide Cases**
  - **May, 2015 -- St. John, USVI**: Esmond Family poisoned by illegal application of methyl bromide pesticidal fumigant
  - Application carried out by Terminix franchisee
  - Criminal prosecution of applicator, Terminix, others
    - Guilty pleas in all cases
  - Civil investigations revealed other instances of illegal application
  - Administrative enforcement actions initiated against 12 applicators & 2 distributors
    - Penalties and injunctive relief sought
    - Most cases now resolved

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