



**Department of  
Environmental  
Conservation**

## **CERCLA/RCRA Update at NYSDEC**

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**June 24, 2021 – Key Environmental Issues in EPA Reg 2, Virtual**

# DISCLAIMER

The views expressed by the speaker are his opinions alone and do not necessarily represent the position of the NYSDEC or the State of New York.



# Outline

- Remedial Programs; Attorney Roles; Cost Recovery
- Brownfield Program
  - Legislation coming; Regulatory revisions coming
- Emerging Contaminants
  - PFAS water and soil guidance values and standards
- Case Study on Indian Point closure
  - Ensuring funding for full decommissioning
  - Using RCRA to achieve full site restoration



# Remedial Programs

- Principally either State Superfund (ECL Art 27, Title 13) or Brownfield (Art 27, Title 14)
- EPA-lead cleanups where state has substantial interests (Hudson River, Gowanus Canal, Newtown Creek, etc.)
- RCRA Corrective Action Program (i.e. at Indian Point)
- Spills of petroleum or hazardous waste; MGP sites
- Emerging contaminant sampling and response (Article 27, Title 12 – CWIA; SSF as well, when needed)



# Attorney Roles & Cost Recovery

- Goals for each project attorney:
  - Secure agreement to clean up
  - Recover past and future state costs
  - Achieve environmental benefits or NR restoration
- If no agreement, referral to state superfund for state cleanup, cost recovery under CERCLA and state law – AG office involvement
- Current challenges
  - Too many sites, explosion of BCP program; ever expanding universe of EC sites

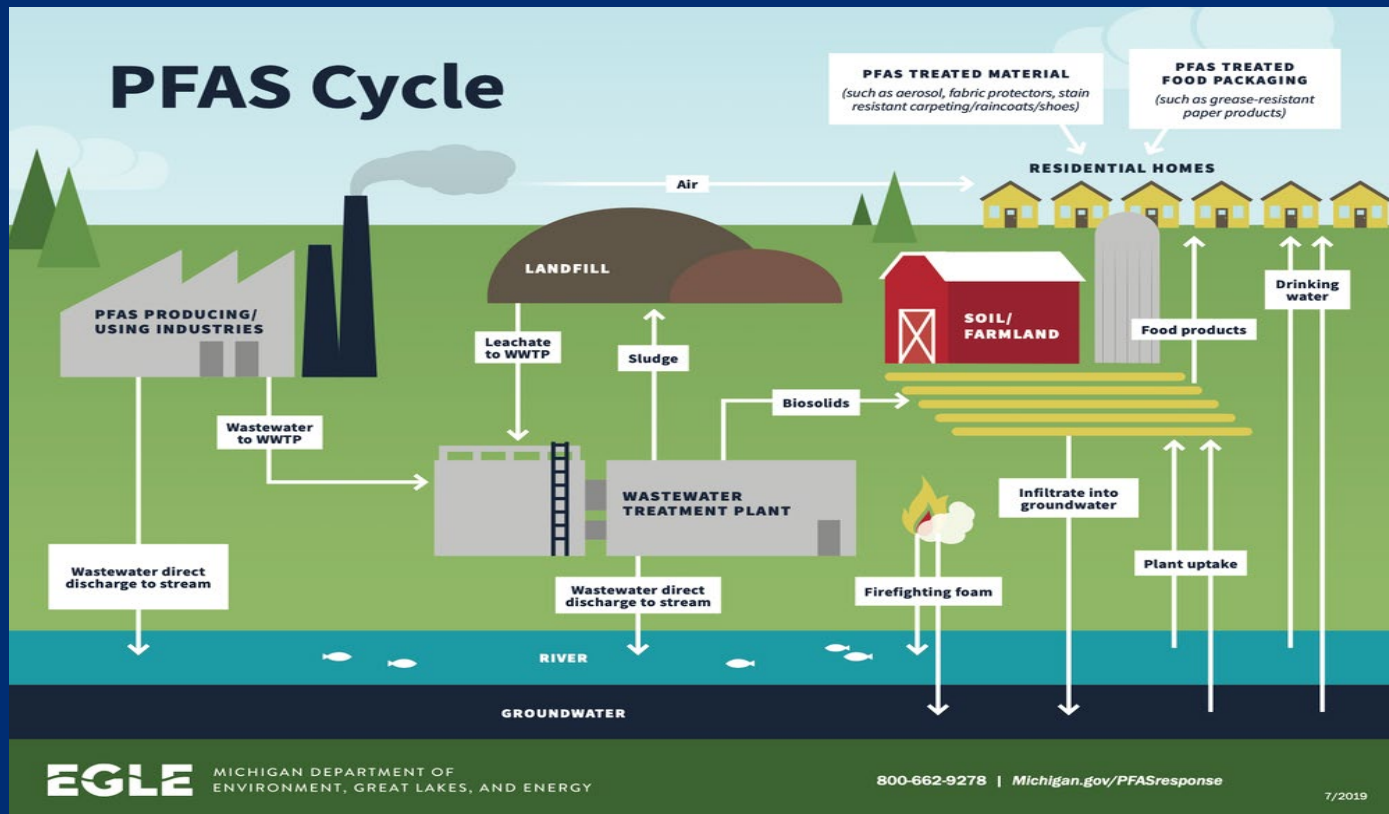


# Brownfield Program Updates

- Hugely successful in terms of sites completed (many hundreds) and tax credits issued (average is \$5M per site over life of program)
- Still many sites with minimal contamination, especially in NYC, entering the program
  - Resource pressure on staff, priority should be on highly-contaminated sites and EC sites
- Bill proposed to extend and tweak BCP, late in 2021 NYS leg session
- Regulatory updates coming soon, Part 375
  - Those updates include SCOs for PFOA and PFOS



# The New Pollution



# New York State Actions

Identification of PFAS and 1,4 Dioxane in drinking water supplies led to Aggressive Action

- WQRRT and DWQC Formation
- Funding through the Clean Water Infrastructure Act
- Inactive Landfill Initiative
- Emergency and Final Regulation of PFOA and PFOS
- Legislation limiting use of certain ECs in consumer products
- Banned use of PFAS containing Fire Fighting Foam during training
- Collection of PFAS containing Fire Fighting Foam from Fire Departments
- Lawsuit against manufacturers of AFFF (South Carolina MDL)
- Establishment of drinking water MCLs for PFOA, PFOS and 1,4- Dioxane





# NY State Regulations

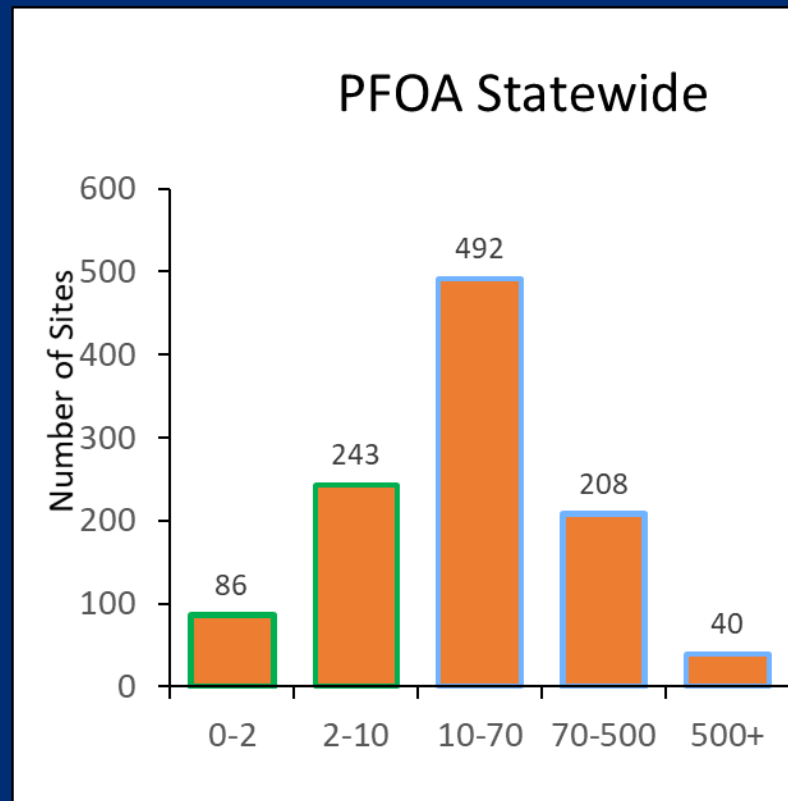
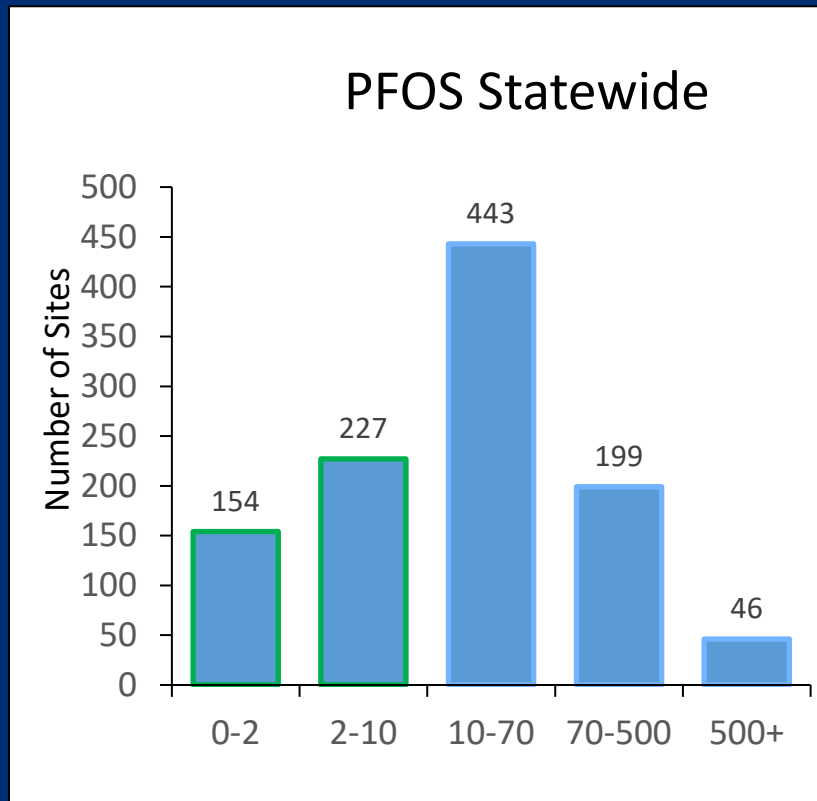
- **Hazardous Substances**
  - PFOA and PFOS listed as HS in 2016
  - Allows regulation within DEC Cleanup Programs
- **MCLs:** PFOA, PFOS, 1,4-dioxane,
  - Final MCLs adopted on August 26, 2020
    - PFOA: 10 ppt
    - PFOS: 10 ppt
    - 1,4-dioxane: 1 ppb



# EC Sampling Initiatives

- Directive to sample groundwater for ECs at all active remediation sites
- Over 1,400 EC projects created to track progress
  - SSF (over 1,020 sites)
  - Brownfields (442 sites)
- New sites are required to sample all media for ECs going forward

# Summary of Site-related Groundwater Data Collected



# Next steps on ECs for DEC

- Promulgate Soil Cleanup Objectives (standards) for PFOA and PFOS
- Issue guidance values for PFOA/PFOS in ambient groundwater and surface water
- Continue to lobby EPA to designate PFOA and PFOS (at a minimum) as CERCLA Haz substances
- Consider regulation of other PFAS substances
- Continue to work with other agencies, academia and technical associations to perform research and develop guidance and policy
- Continue to assess and address potential sources of contamination and research potential new cleanup techniques



# Indian Point Nuclear Plant



# Background

- 2017 Agreement reached between Cuomo Administration and Entergy
  - Indian Point to close in April 2021
- 2019 purchase agreement between Entergy and Holtec
  - Required “state agreement” before closing
- License transfer application to NRC – granted in 2020
- New York sued, concerned about lack of data, unknowns re rad and non rad contamination



# Indian Point ACO and Joint Stakeholder Settlement

## April 15, 2021 - Governor Cuomo Announces Settlement

- The agreement “provides for a transfer of the nuclear power facility to Holtec for a swift, complete and safe decommissioning and site remediation”
- Various Financial Assurance Mechanisms provided by Holtec
  - Min \$400M in DTF at 2031
  - Min \$360M at partial site release
  - 50 percent DOE recoveries go back into DTF
- ACO with DEC for full site remediation (i.e. RCRA corrective action)
- Pending federal litigation dismissed and PSC approval of joint proposal



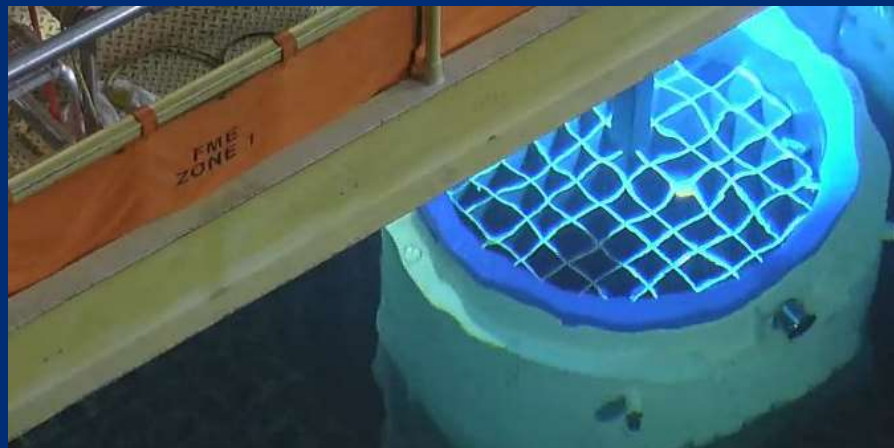
# Indian Point Closure – Radiological Decommissioning & Site Cleanup

- Parties to the Joint Proposal
  - State of New York, County of Westchester, Local Governments, Public Utility Law Project, Riverkeeper, Entergy
- Administrative Consent Order with DEC
  - Holtec originally desired BCP (eligibility concerns)
  - Parties are Holtec, new owners of IP, and DEC
  - RCRA corrective action consent order





# Decommissioning





Property Owned by State of New York

Independent Spent Fuel Storage Installation (Existing and Planned Expansion)

Indian Point Energy Center Property Boundaries



OPPORTUNITY

# Site Restoration (Corrective Action)

- Separate financial assurance for the non-rad cleanup in amount of \$140M (can go up or down depending on what is found)
- Holtec agrees to perform full cleanup under DEC remedial decision after adequate investigation and evaluation of alternatives
- Holtec agrees to meet state rad standard of 10 millirem (NRC is 25)
- Areas can be carved out over time for reuse
- Extensive public participation process



# Loss of Indian Point and other facilities to the grid

- What is wrong with nuclear power?
- Many plants in New York and across the globe meeting or exceeding their life expectancies (40-50 years)
- Bill Gates and Warren Buffet
  - Advanced Nuclear Power (untested); for example, a sodium-cooled reactor
  - Gates: nuclear “safer than oil, coal, and natural gas” and will be politically acceptable in the future



# Supreme Court ARCO case – Recognition of States Rights under CERCLA?

- EPA selected a remedy of 250 ppm arsenic in residential yards – New York State SCO is 16 ppm!!!!
- Justice Gorsuch decision – “Everything in CERCLA suggests that it seeks to supplement, not supplant, traditional state law remedies and promote, not prohibit, efforts to restore contaminated land.”
- “But maybe, too, good government and environmental protection would be better served if state law remedies proceeded alongside federal efforts.”



# Thank You

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