New York State: Contaminated Site Cleanup & Redevelopment

NYSDEC remedial programs conserve, improve and protect New York’s resources and environment.

May 19, 2023
NYSDEC Contaminated Site Cleanup & Redevelopment Update

• Program Overview and Update

• NYSDEC / USEPA Cooperation

• Emerging Contaminants
  • NYS Legal Framework
  • USEPA Regulatory Impact
NYSDEC Remediation Programs
NYS Remedial Programs - 6 NYCRR Part 375

- State Superfund (1979)
  - Enforcement Program – Statutory Obligation
  - Registry – Class 2 Significant Threat Sites
- Environmental Restoration Program (1996)
  - Municipalities
  - Dependent on Funding
- Brownfield Cleanup Program (2003)
  - Voluntary Program
  - Tax Credits
# NYS Remedial Programs 2021-22

<table>
<thead>
<tr>
<th>PROGRAM</th>
<th>COMPLETED 21-22</th>
<th>COMPLETED LTD</th>
<th>ACTIVE</th>
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<tr>
<td>SUPERFUND</td>
<td>6</td>
<td>1,943</td>
<td>925</td>
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<tr>
<td>BROWNFIELD</td>
<td>41</td>
<td>542</td>
<td>514</td>
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<tr>
<td>ERP</td>
<td>1</td>
<td>140</td>
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BCP 2022 Amendments

• New gateways for eligibility for tax credits in NYC:
  • Renewable Energy Facilities
  • Disadvantaged Communities
• Bump ups for tax credits statewide in above categories
• $50,000 application fee to enter the program
• Extended BCP through December 31, 2026
Upcoming Part 375 Revisions

- NYSDEC recognizes need for changes, clarifications, and modifications based on 15+ years of implementing the BCP
- Revisions increase consistency across remedial programs:
  - State Superfund Program (SSF)
  - Brownfield Cleanup Program (BCP)
  - Environmental Restoration Program (ERP)
Part 375 Revisions, cont.

- Revisions make needed updates to Soil Cleanup Objective contaminant tables
- The rulemaking package expired in April 2023
- A new rulemaking package will be released for public comment shortly
- Substantive changes were made to incorporate the 2022 amendments made to the BCP
NYSDEC – USEPA Cooperation
Federal Superfund in NYS

- Hudson River PCBs
  - Lower Hudson
  - Angler Surveys
- Gowanus Canal
  - Upland Sites
  - Natural Resource Damages Process
- Meeker Plume
  - Past NYSDEC Work
  - March 2022 NPL Listing
Legal Framework for Remediating PFAS
Mechanisms for Remediation

• ECL Article 27 Title 13 – The State Superfund Law

• ECL Article 27 Title 14 – The Brownfield Cleanup Program

• ECL Article 27 Title 12 – Drinking Water Contamination Sites

• ECL Article 56 Title 5 – Environmental Restoration Program
ECL Article 27 Title 12

• Enacted under the 2017 Clean Water Infrastructure Act
• Allows for the “Mitigation of Contaminants in Drinking Water”
• A Contaminant is defined as an “emerging contaminant” under Public Health Law § 1112
• Legislature included a list of chemicals that at a minimum should be included
Re-defined Emerging Contaminants

- February 24, 2022, Governor Hochul signed into law an update to Public Health Law § 1112
- Removed PFOA, PFOS and 1,4-Dioxane as “Emerging Contaminants”
- Added 23 new compounds
Drinking Water Contamination Sites “D” Sites

- Title 12 mitigation/remedial program similar to SSF
- D-Sites limited to Public Water Supplies
- Two D-Sites in NYS
- Sites where DOH needs to take “action to reduce exposure to an emerging contaminant . . . and has determined that the concentration . . . constitutes an actual or potential threat to public health”
NYS DOH Drinking Water Maximum Contaminant Levels (MCLs)

**Adopted**

- PFOA: 10 ppt
- PFOS: 10 ppt

**Proposed**

1. MCLs at 10 ppt for PFHxS, PFHpA, PFNA, PFDA (individual)
2. Notification Levels of 30 ppt for PFDoA, PFUnA, 11Cl-PF3OUDs, 9Cl-PF3ONS, GenX, PFHpS (cumulative)
3. Notification Levels for 100 ppt for PFBS PFHxA, ADONA, 4:2FTS, 6:2FTS, 8:2FTS, NFDHA, PFBA, PFEESA, PFMB, PFMPA, PFPeA, PFPeS (cumulative)
## Soil Cleanup Guidance Values

<table>
<thead>
<tr>
<th>Guidance Values for Anticipated Site Use</th>
<th>PFOA (ppb)</th>
<th>PFOS (ppb)</th>
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<tbody>
<tr>
<td>Unrestricted</td>
<td>0.66</td>
<td>0.88</td>
</tr>
<tr>
<td>Residential</td>
<td>6.6</td>
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<tr>
<td>Restricted Residential</td>
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<td>44</td>
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<tr>
<td>Commercial</td>
<td>500</td>
<td>440</td>
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<tr>
<td>Industrial</td>
<td>600</td>
<td>440</td>
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<tr>
<td>Protection of Groundwater</td>
<td>1.1</td>
<td>3.7</td>
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</table>
EPA’s Actions and New York
PFAS – Proposed CERCLA Hazardous Substances & MCLs

• In 2022, EPA issued a proposal to designate two widely used PFAS as hazardous substances under CERCLA

• In 2023, EPA proposed PFOA and PFOS MCLs at 4 ppt and MCL Goals of 0 ppt
EPA PFAS Regulatory Impact on NYS

• If finalized this will allow NYS the ability to seek cost recovery for remedial work performed related to PFOS or PFOA contamination

• It will also allow Responsible Parties to seek Contribution claims under CERCLA
Thank You

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