

Environment Law Overview

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Principal Federal Environmental Laws

- Clean Air Act
- Clean Water Act
- Resource Conservation and Recovery Act (RCRA)
- Toxic Substances Control Act (TSCA)
- Comprehensive Environmental Response, Cleanup and Liability Act (CERCLA or Superfund)

NYDEC Remedial Programs

- ECL Title 13 State Superfund Program (SSF)
- Navigation Law Oil Spill Program
- Environmental Restoration Program (ERP)
- Brownfield Cleanup Program (BCP)
- Petroleum Bulk Storage Act (PBSA)
- Chemical Bulk Storage Act (CBSA)











Clean Air Act

- Title I- Air Quality/ Emissions Standards
 - New Source Performance Standards (NSPS)
 - New Source Review (NSR) Permits
 - Risk Management Plans (RMPs)
- Title II Mobile Sources
- Title III- Hazardous Air Pollutants
- Title IV- Acid Rain Program
- Title V- State Operating Permits
- Title VI- Ozone Program (refrigerants)

NAAQS (Primary Pollutants)

- Sulfur dioxide
- Nitrogen dioxide
- Carbon monoxide
- Ozone
- Lead
- Particulate matter (PM)

New Source Performance Standards (NSPS)

- Pre-construction Permit Program
 - **Any physical change or change in method of operation which increases the amount of any air pollutant** regulated under CAA that was not previously emitted.
 - expressed in **hourly emissions rate** at maximum physical capacity before and after change
 - Hourly emission rate is **after controls** installed
- Reconstruction: at least 50% of total cost of a comparable new facility even if no increase in emissions
- Minor NSPS exempt from Title V
 - Purchase Emission Reduction Credits (ERCs)
- Best Demonstrated Technology (BDAT)

NSR Permit Program

- Construction of new **major** sources or modification of existing **major** stationary sources
 - physical change
 - change in the operation of a major source that results in
- Significant net increase in emissions that impacts air quality

HAPs

- Major Sources
 - stationary source or group of stationary sources
 - within a contiguous area and under common control
 - PTE 10 tpy or more of any HAP or 25 tpy or more of any combination of HAPs
- Area Sources-all other (smaller) sources of HAPs
- 189 HAPs (benzene, PCE, ACM, Toluene, metals)
- MACT
 - Pollution controls
 - Process changes
 - Materials substitution

Asbestos Containing Materials Renovations and Demolitions

- RACM thresholds to be disturbed:
 - 260 linear feet on piping
 - 160 square feet on other building components
 - 35 cubic feet of RACM when the length or area cannot be measured
- Ten Day Advance Notice
 - Must notify of change in start date
- Workpractices
 - Actual proof of emissions or visible dust not required but simply non-compliance with workpractices
- Licensed Contractors

Risk Management Plans-112(r)

- *threshold quantity of listed regulated substance*
- **General Duty Clause-** *Owners and operators of stationary sources with*
 - *regulated substances and extremely hazardous substances regulated under EPCRA*
 - *to identify hazards that may result from accidental releases and*
 - *take steps to ensure appropriate measures in place.*
- *Same duty as that required under OSHA.*

Title V Operating Permit Programs

- State permit program
- Incorporates all applicable requirements
- Applies to following sources:
 - major sources (100 TPY),
 - NSPS,
 - HAP MACT,
 - Title IV “affected sources”
 - PSD/NSR and
 - other stationary sources identified by EPA.
- PTE after emission controls
- “Synthetic” minor exempt (use enforceable emissions cap)
- Minor NSR
- Permit shield

Emissions Trading Strategies

- Verifiable emission reduction credits (“ERC”)-surplus registered emissions to sell or buy.
 - Offset- use ERC to offset emissions increase from modification to allow growth in non-attainment area
 - Bubble Policy-re-allocate emissions w/i plant for alternative emissions standard. Must result in net improvement in air quality
 - Netting Policy (intra-plant)- lower net emissions at expanding or modernizing plant to avoid NSR
 - Banking- saving surplus ERCs for later use
- Usually for same pollutant but sometimes for inter-related pollutants
- Usually within same air basin
- NOX trading for Ozone Transport Areas

Title VI - Stratospheric Ozone Protection

- Phaseout of chlorofluorocarbons and halons
- Reduction in use and emissions of other ozone-depleting substances
- Prohibits knowingly venting refrigerants
- Common Applications-
 - vehicle maintenance,
 - Building cooling and refrigeration systems

NYC ACM

- Asbestos Project- will disturb (e.g., remove, enclose, encapsulate) more than 25 linear feet or more than 10 square feet of ACM
 - Large Asbestos=260 linear feet or 160 sq/ft
- To obtain a DOB permit, an applicant must submit either a:
 - ASB-4 Form: job is exempt from asbestos investigation;
 - ACP-5 Form: “Not an asbestos project” form;
 - ACP-7 Asbestos Project Form
 - Conditional Close-out Form

Lead-Based Paint (40 CFR 745)

- **LBP Disclosure Rule**
 - Sellers, lessors and/or agents
 - written disclosure to purchasers and lessees about the known presence of lead-based paints (LBP).
 - No affirmative obligations to investigate
 - Target Housing (pre-1978)
 - Lead warning statement
 - Purchasers but NOT LESSEES must be given a 10 day inspection period
- **Pre-Renovation Lead-based Paint Information Rule (PLIR)**

NYC LBP

- The NYC Health Code prohibited the use of LBP since 1960 (24 RCNY § 173.13)
- Local Law 1(2004)- Owner Responsibilities
 - Investigate and Remediate Lead Hazards in units with children 6 yrs or under and common areas
 - Notify Tenants
 - Pre-1960 buildings (presumed to have LBP)
 - 1961 to 1977 buildings where the owner knows that there is LBP
 - Make Apartments Lead Safe on Turnover
 - Use LBP Work practices For Repairs and Renovations
 - actual or constructive notice of the condition

NYC LBP Annual Notice

- Must send notice between January 1 and January 16 each year inquiring as to presence of child
- Tenant must respond by February 1
- If no response, owner must inspect between February 6 and March 1 to determine presence of child
- If no access must notify DOHMH
- If there is a child, then must inspect to determine lead
- Hazards
- Must inform tenant of results of investigation

NYC LBP Repair and Renovation-

- 2 sq ft in a pre-1960 multiple dwelling or 1961-77 multiple dwelling where the owner has actual knowledge of lead paint:
 - In a unit with a child or
 - common areas of a building with a child
- Use certified workers
- Use third party for clearance dust test
- Provide clearance dust test results to tenants
- Relocate if necessary

NYC LBP Repair and Renovation

- more than 100 sq ft or the removal of two or more windows in a pre-1960 multiple dwelling or 1960-77 multiple dwelling where the owner has actual knowledge of lead paint:
 - In a unit with a child or
 - In common areas where there is a child in the building
- Use EPA workers
- Clearance dust test must be done by third party
- Provide clearance dust test to tenants
- Must relocate if necessary
- File with DOHMH 10 days prior to commencement

Responding To Tenant Complaints

- ask if there is child
- ~~TM~~ Inspect within 10 days
- ask tenant for acknowledgment of child
- ~~TM~~ perform room by room inspection
- ~~TM~~ record for each room whether surfaces are intact
- Where peeling paint is found, record condition of underlying surface
- Record any underlying defect
- ~~TM~~ Need not move furniture
- ~~SM~~ Send Notice of Violation within 10 days
- ~~TM~~ Leave lead pamphlet

Special Rules for Day-Care Centers

- Peeling lead paint is prohibited.
- Lead hazards must be remediated.
- Equipment must have lead free paint.
- If a non-complying condition is found, DOHMH must serve the operator with an order to remediate.
- If the order is not complied within 45 days, DOHMH must request an “agency of the City” to execute the order. That agency must execute the order in 45 days.
- Lead hazards must be remediated in compliance with DOHMH safe work practices

Clean Water Act Discharge Permits

- Discharge
 - Addition of pollutant
- Pollutants
 - Not include fluids to promote oil/gas production
- Point Source
- Waters of United States

SPDES Permits

- Individual vs General Permits
- Duty to Apply
- Effluent Limits
 - Technology (BCT, BPT, BAT, NSPS)
 - water quality-based standards
- Discharge Monitoring Reports
- Standard Conditions
- Special Conditions

Municipal SPDES Program

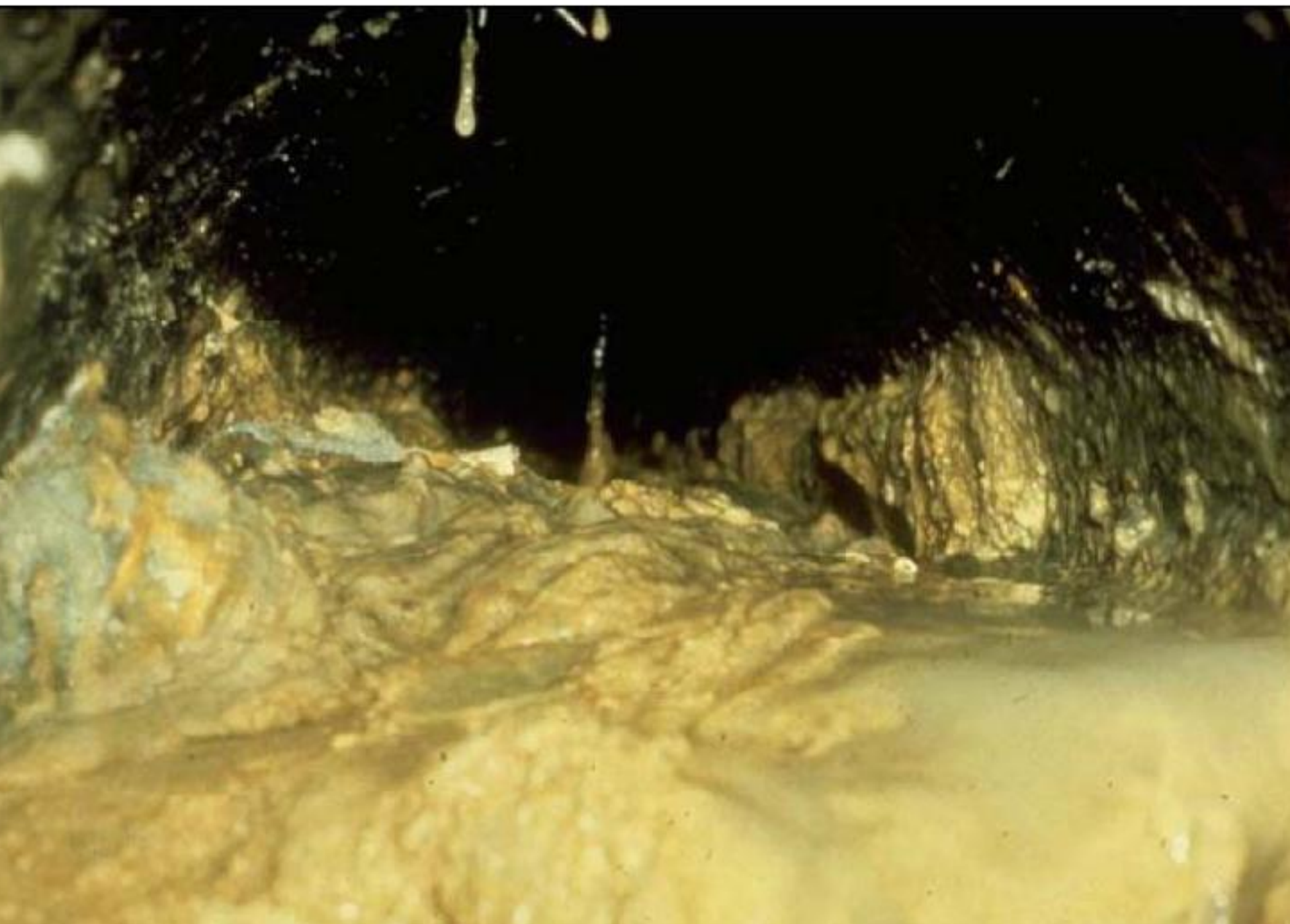
- Secondary Treatment
- Combined Sewer Overflows
- Sanitary Sewer Overflows
- Pretreatment
- Stormwater
- Biosolids (Sludge)-§503

Pretreatment For Indirect Dischargers

- To Prevent:
 - pass through
 - Treatment interference
 - Sludge contamination
- Three Types of Pretreatment Standards
 - General Discharge Prohibitions (403.5)
 - Categorical Standards (403.6)
 - Local Limits

Local Limits

- Addresses Pollutants of Concern (POC) reasonably likely to be discharged in amounts that will
 - cause interference or pass through
 - comply with NPDES/sludge requirements
- Industrial Users, Institutional and Commercial Users
- Enforced by POTW
 - State laws or local regulations/ordinance



Stormwater Permits

33 USC 1342(p)

- Owner or Operator Must Obtain permit for:
 - Stormwater Discharges associated with industrial activity (10 Categories)
 - SWPPPs
 - BMPs
 - “No Exposure” Certification
 - Individual or general permit
 - Stormwater Discharges From Construction Sites
 - No secured creditor exemption
 - Construction General Permit
- Municipal Separate Storm Sewer Systems (MS4)

Industrial Stormwater

- discharges from industrial plant yards;
- access roads and rail lines used to transport raw materials, waste material, or by-products used or created by the facility;
- storage areas (tanks, drums) for raw materials, and intermediate and final products
- residual treatment, storage, or disposal and shipping and receiving areas.
- manufacturing buildings;
- areas where industrial activity has taken place in the past and significant materials remain and are exposed to stormwater.

Multi-Sector General Permit (MSGP)

- Applies to 29 Industrial Sectors
- Operators File Notice of Intent (NOI)
- Comply with Standard Conditions
- Monitoring/Recordkeeping
- Implement General and Specific Control Measures/Water-Quality Based Effluent Limits/Protection of Endangered Species
- Submit Stormwater Pollution Prevention Program (SPPP) with NOI

Wetlands Program

- Discharge of Dredged or Fill Materials
 - Includes redeposit of dredged material other than “incidental fallback”
- Waters of the United States

Wetlands Permits

- Corps Issues with EPA Veto Authority
- Individual or nationwide
 - Pre-construction notice (PCN)
 - Jurisdictional Determination
 - ATFs
- No Practicable Alternatives
 - Presumption of alternative for non-water dependant activity

Compensatory Mitigation 404(b)(1) Guidelines

- Avoid
- Minimize
- Mitigate
 - restoration, establishment, enhancement or preservation
 - Permittee, Mitigation Banking or Fees-In-Lieu

Oil Pollution Act

- Discharge or Substantial Threat of Discharge of Oil
- From Facility or Vessel
- To Navigable Waters

OPA Liability

33 U.S.C. 2702(b)

- Joint and Strict
- Removal Costs Consistent with NCP
- Damages
 - NRD
 - economic losses from real or personal property
 - subsistence use,
 - lost revenue and profits
- Operating and Equipment Requirements
- Financial Responsibility

Defenses

33 U.S.C. 2703

- Affirmative Defenses
 - Act of God
 - Act of War
 - Third Party Defense
 - AAI
- Not Available Unless:
 - report spill as required by law
 - reasonable cooperation and assistance requested by gov
 - Fails to comply w/order without sufficient cause

Contribution

33 U.S.C. 2708

- Entitled to defense of limitation of liability
- Amounts exceed the limitation of liability

NY Navigation Law

- § 175 Spill Notification
- § 176- Cleanup and Contribution
- § 179- Environmental Protection and Spill Compensation Fund (“Oil Spill Fund”)
- § 181- Dischargers and Oil Spill Fund strictly liable
- § 181(5)- cost recovery by injured parties
- § 181-a Lien

Discharge

- “Discharge” is any intentional or unintentional act or omission
 - resulting in releasing, spilling, leaking, pouring, emitting, emptying or dumping of petroleum
 - to surface water,
 - into groundwater, or
 - onto land where might flow or drain into waters
 - into waters outside of NY that may damage land, water or natural resources of the state

Discharger

- Any person responsible for causing a discharge.
 - Owner or operator of tank system
 - Owner of property where oil spill occurred
 - Shareholders with “direct active, knowing involvement in acts/omissions causing discharge
- Third Party Defense and Secured Creditor Exemption Available (§181(4))
- Beware of Contract/Lease Provisions

Oil Spill Fund Claims

- Cost to restore, repair or replace real or personal property damaged or destroyed by discharge;
- Loss of Income;
- Reduction in Property Value;
- Loss of Tax Revenue (for 1 yr)
- Interest on loan(s) to offset economic harm from discharge

Eligibility

- Not a “Discharger”
 - Are USTs still present?
 - Comply with reporting obligations?
 - Comply with TP defense?
- Cleanup and removal costs result of discharge
- Claim filed within SOL
- Cleanup and removal consistent with NCP?

Statute of Limitations

- Section 182: Claims shall be filed no later than:
 - Three years after “date of discovery of damage,” nor
 - Ten years after the discharge causing the damage, regardless of date of discovery (spill report? tank test failure?)
- Claims may be filed to toll the SOL

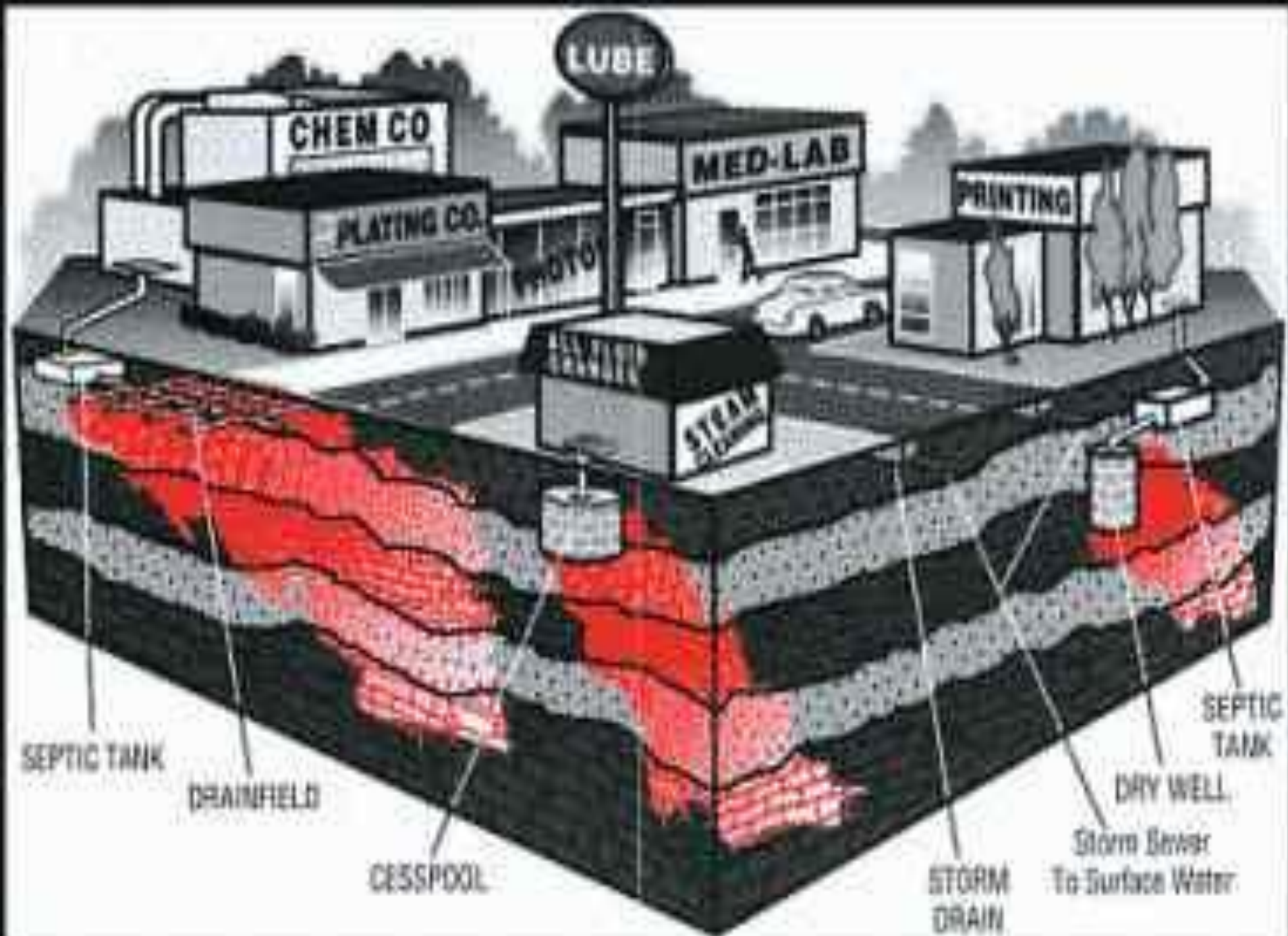
SWDA UIC Program

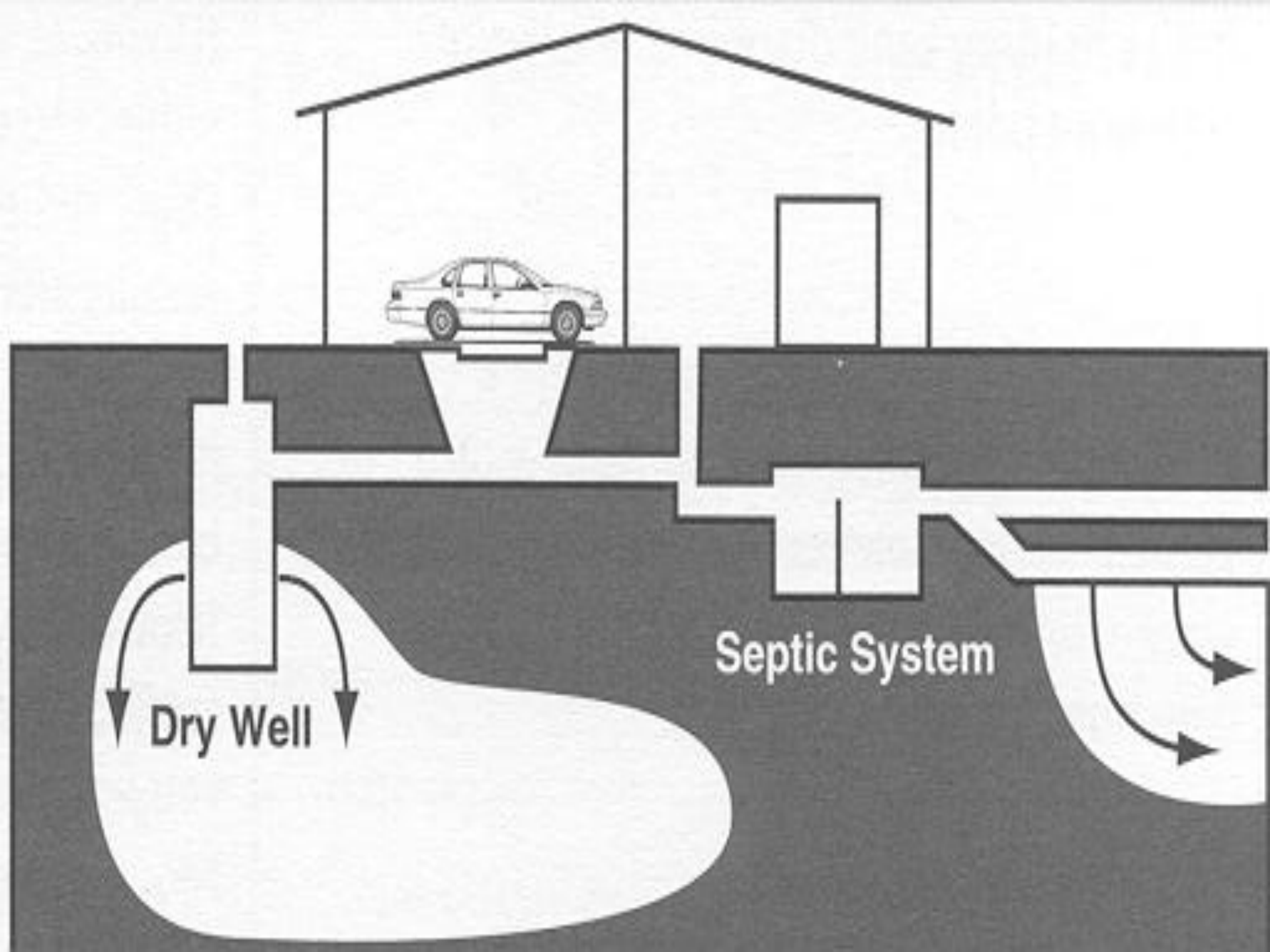
42 U.S.C. 300h

- Underground Injection
 - Subsurface emplacement of fluids by well injection
 - Endangers DWS if results or reasonably expected to result in presence of contaminants causing non-compliance or adversely affecting health §300h(d)(2)
- Fracking Exclusion- §300h(d)(1)(B)(ii)
 - Underground injection of fluids or propping agents (other than diesel fuels) pursuant to hydraulic fracturing related to oil, gas or geothermal production

UIC Well Types

- **Class I** –Deep injection wells used for Hazardous wastes, non-hazardous industrial wastewater and municipal wastewater
- **Class II** – inject fluids from oil & gas production for waste fluid disposal and enhanced recovery (ER)
- **Class III** –Inject fluids to dissolve minerals (uranium, copper, sulfur and salts)
- **Class IV** –Inject hazardous or radioactive waste into or above a USDW. Banned in 1984
- **Class V** – Any injection well that is not contained in Classes I –IV, or VI
- **Class VI** – Commercial-scale injection of carbon dioxide, termed geologic sequestration





Dry Well

Septic System

Motor Vehicle Waste Disposal Wells

- New motor vehicle waste disposal wells are banned (2000)
- Existing motor vehicle waste disposal wells are banned in regulated areas.
 - States may allow owners and operators to seek a waiver from the ban and obtain a permit.
 - Owners and operators must notify the UIC program Director 30 days prior to closing their motor vehicle waste disposal well.

Federal UST Program

- Regulated Underground Storage Tanks
 - Storage of petroleum or hazardous substance
 - Not apply to heating oil tanks used for on-site consumption
 - Not apply to tanks storing HW are subject to Subtitle C
 - Not apply to motor fuel tanks less than 1100 gallons at farms and homes

USTs Cont'd

- UST Design Standards
- Release Reporting-
 - Report spills or overflow of 25 gallons or more
 - Reportable quantity of hazardous substance
 - Suspected releases
- Corrective Action
- UST Closure
- Financial Assurance
- Secured Creditor Exemption for USTs

NY Petroleum Bulk Storage Act

- ECL Article 17, Title 10
- 6 NYCRR 612-614
- 1100 gallons (combined capacity)
- Tanks in Basements May be USTs if no weepholes or manhole
- Delegated Counties
 - Nassau, Suffolk, Rockland, Westchester and Cortland Counties

Chemical Bulk Storage Act

- ECL Article 40
- 1,000 hazardous substances
- Design and Operating Standards
- Release Reporting
- Corrective Action
- 6 NYCRR Parts 595-599

Hazardous Waste (RCRA)

- Generators
- Transporters
- Treatment, Storage and Disposal Facilities (TSDF)

Listed Hazardous Wastes (40 CFR 261.31 to 33)

- Four Listed Wastes
 - “F” List (common wastes from different industrial sectors)
 - “K” List (wastes from specific industries)
 - “P” List (Acute Unused or off-spec Commercial Chemical Product)
 - “U” Lists (Non-acute Commercial Chemical Product)
- Listing Criteria
 - Toxic Waste (T)
 - Acute Hazardous Waste (H)
 - Ignitable Waste (I)
 - Corrosive Waste (C)
 - Reactive Waste (R)
 - Toxicity Characteristic (E)

4 HW Characteristics

40 CFR 261.21 to .24

- Ignitability (D001 Waste Code)
 - Liquid with flashpoint less than 140 degrees F
 - Certain solids ignite thru friction and burn vigorously/persistently
 - Certain oxidizers
- Corrosive (D002 Waste Code)
 - Liquid with ph less than or equal to 2 or at least 12.5
 - Liquids that corrode steel
 - Not apply to solids

4 HW Characteristics Cont'd.

- Reactivity (D003)
 - Normally unstable and readily undergoes violent change
 - Reacts violently or forms explosive mixtures with water
 - Releases toxic gas when mixed with water
 - Cyanide or sulfide bearing waste that releases toxic gas when exposed to pH conditions between 2-12.5

HW Characteristic Cont'd

- Toxicity Characteristic (D004 to D043)
 - Uses Toxicity Characteristic Leaching Procedure (TCLP)
 - 40 Contaminants with threshold concentrations (e.g., metals)

Generators

- Three types
 - Large Quantity Generator
 - Small Quantity Generator
 - Conditionally Exempt Small Quantity Generator
- Closure Obligations
 - Run with land

TSDF

- Permitted or Interim Status
- Design and Operating Standards
- Closure for Hazardous Waste Management Units (HWMU)
- Corrective Action for HWMU and Solid Waste Management Units (SWMU)
- Financial Assurance
- Post-Closure

Federal Superfund (CERCLA) Liable Parties

- Four Categories of Liable Parties
 - Current and Former Owners
 - Current and Past Operators
 - Generators
 - Transporters
- Strict and Joint Liability
- Retroactive Liability

CERCLA Cause of Action

- Release
- Hazardous Substance
- Facility
- Response Costs Incurred Consistent with NCP
- PRP

CERCLA Affirmative Defenses

- Act of God
- Act of War
- Third Party
- Innocent Landowner (ILO)
- Bona Fide Prospective Purchaser (BFPP)
- Contiguous Property Owner (CPO)

Third Party Defense

- Release solely caused by third party
- Without direct or indirect “contractual relationship”
- Exercised Due Care
- Took Precautions Against Foreseeable Acts of Third Parties

Innocent Landowner Defense (ILO)

- Did Not Know or Had No Reason to Know of Release
- Perform Pre-Acquisition AAI
- Comply with Post-Acquisition Continuing Obligations
 - Cooperate and Provide Access for Persons Performing Response Actions
 - Comply With Land Use Controls (LUCs)
 - Provide Access to Persons Maintaining LUCs

ILO Cont'd

- Government Entity acquires title by
 - Escheat
 - Involuntary transfer or acquisition, or
 - Exercise of eminent domain authority by purchase or condemnation
- Acquired facility by inheritance or bequest
- Exercised due care and precautions
- Cooperation to persons conducting responses
- Not impede institutional controls

Elements of BFPP Defense

- Transactions after January 11, 2002
- Owners and tenants
- Threshold Criteria
 - Conducted AAI
 - Not PRP or affiliated with PRP by:
 - direct or indirect familial relationship
 - contractual or corporate relationship
 - Corporate Reorganization
 - Disposal took place prior to acquisition

BFPP Defense Elements cont'd

- Continuing Obligations
 - Complied with All Applicable Reporting Requirements
 - Undertake “Appropriate Care”
 - Cooperate and Provide Access to Persons Performing Response Actions
 - Comply With LUCs Provide Access for Persons Maintaining LUCs
 - Comply with EPA CERCLA Information Requests or Subpoenas

CPO Defense

- Owner did not cause, contribute, or consent to release
- Conduct “Appropriate Inquiry”
- Exercise “Appropriate Care”

Due Diligence Requirements

- All Appropriate Inquiries (AAI)
 - 40 CFR 312
 - Effective 11/1/06
- ASTM E1527-05 (transaction closing on/after 11/01/06)
- ASTM E1528 Transaction Screen Not AAI

Elements of AAI

- Inquiry by Environmental Professional (EP)
- Interviews with past and current owners, operators or occupants
- Review of historical sources to determine past uses of property (e.g., chain of title)
- Searches for recorded environmental liens
- Review of federal, state and local environmental records
- Visual inspection of property
- Specialized knowledge or experience of user/defendant
- Relationship of purchase price to value of land in uncontaminated condition
- Commonly known or reasonably ascertainable information about property
- Obviousness of presence or potential presence of contamination and ability to detect by appropriate investigation

107 Cost Recovery

- EPA, State and Indian Tribe May Recover:
 - Costs to respond to releases of hazardous substances
 - No recovery for costs responding to releases of pollutants or contaminants-42 USC 9604(a)(3)
 - Registered Pesticides Applied Per FIFRA-42 U.S.C. 9607(i)
- State
 - Local Government not considered state for NCP presumption
- Innocent Party
 - Private plaintiff must establish costs are “necessary” and consistent with NCP

Contribution Actions

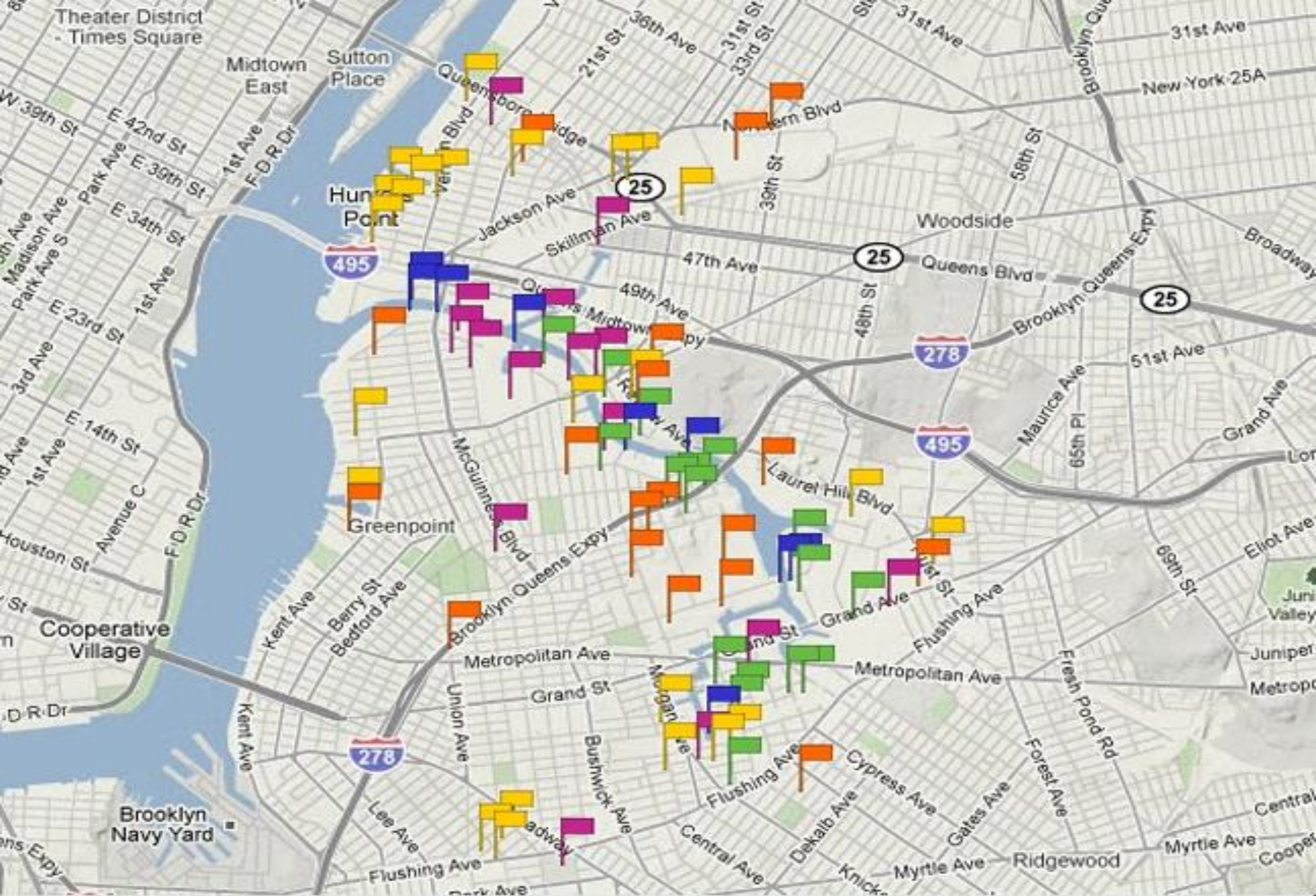
- 113(f)(1)- during or after civil action
- 113(f)(2)- contribution protection for “administrative or judicial settlements
- 113(f)(3)- “administrative” or judicial settlement
- Equitable Liability-Gore Factors

Contribution Allocation

- “Gore” Equitable Factors
 - Ability to distinguish contribution to the release or disposal
 - Toxicity
 - Volume
 - Degree of involvement
 - Due care
 - Cooperation

Other Factors Used By Courts

- Contractual provisions (e.g., indemnification clauses)
- Innocent landowner
- Years of ownership/operation
- Economic benefits from ownership/operation
- Knowledge of waste handling and disposal practices
- Degree of control over waste handling and disposal practices
- Public interest considerations
- Ability to pay
- Litigation risk
- Strength of evidence tracing wastes to the parties



State Superfund Sites

DEC Brownfield Sites

Waste Transfer Stations

Air Emissions Facilities

Creek Access Points

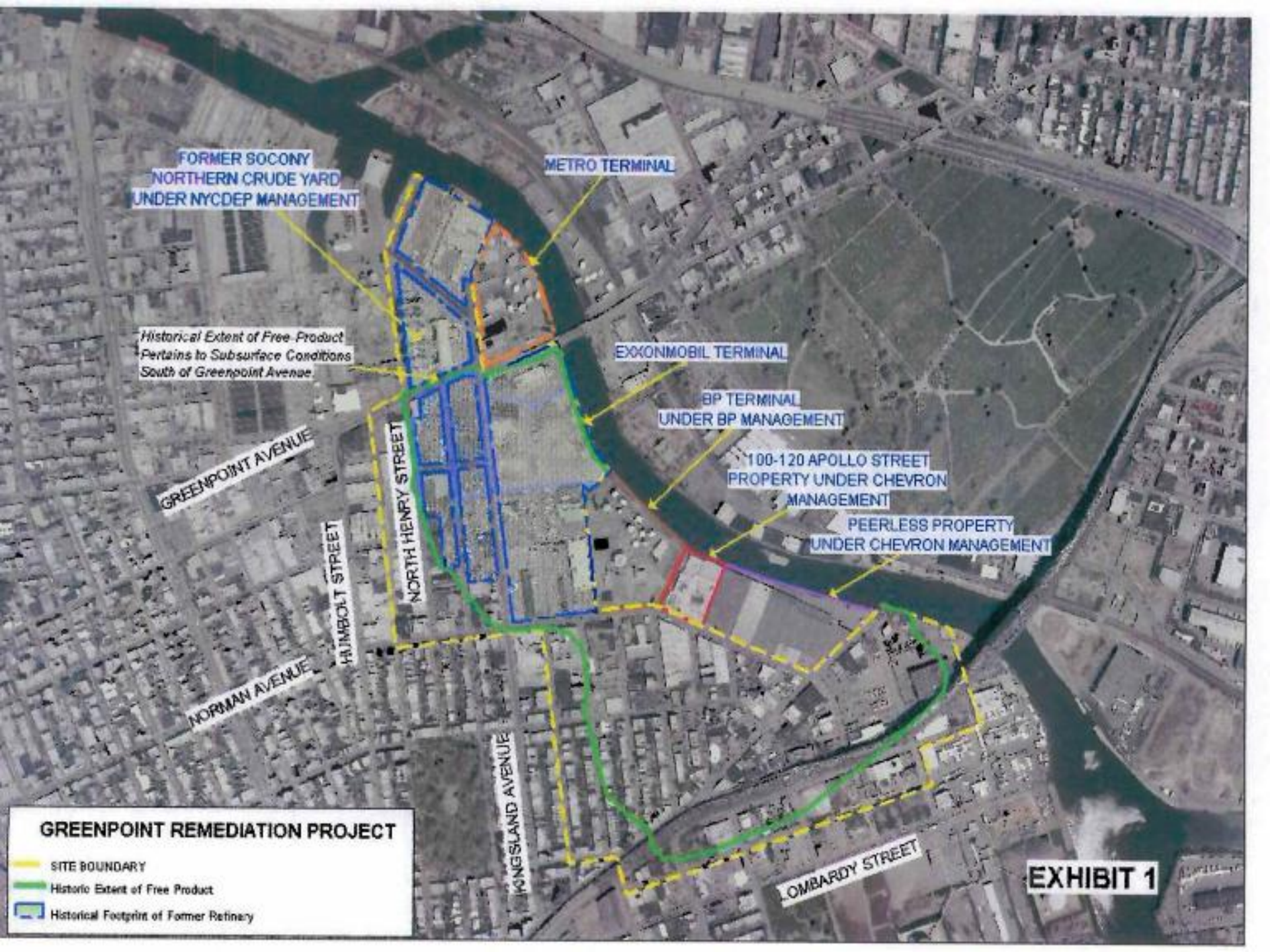
Toxic Area

New York State filed a notice of intent to sue Exxon Mobil for pollution from an oil spill 50 years ago. The state is also expected to sue BP, Chevron, Phelps Dodge and KeySpan for additional contamination.



Map & Sampling Locations





FORMER SOCONY
NORTHERN CRUDE YARD
UNDER NYCDEP MANAGEMENT

METRO TERMINAL

*Historical Extent of Free-Product
Pertains to Subsurface Conditions
South of Greenpoint Avenue.*

EXXONMOBIL TERMINAL

BP TERMINAL
UNDER BP MANAGEMENT

100-120 APOLLO STREET
PROPERTY UNDER CHEVRON
MANAGEMENT

PEERLESS PROPERTY
UNDER CHEVRON MANAGEMENT

GREENPOINT AVENUE

HUMBOLT STREET

NORTH HENRY STREET

NORMAN AVENUE

KINGSLAND AVENUE

LOMBARDY STREET

GREENPOINT REMEDIATION PROJECT




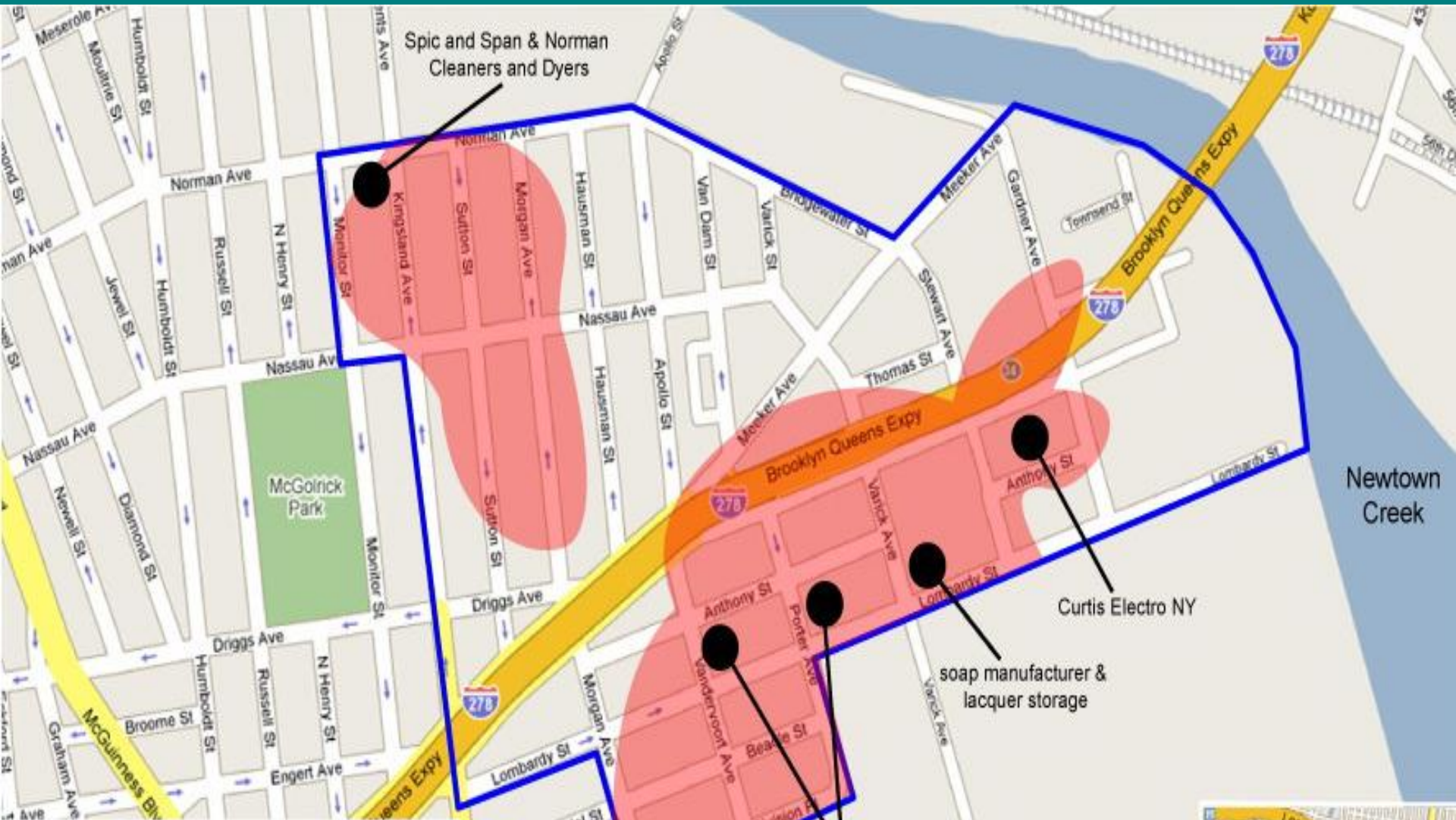
-  SITE BOUNDARY
-  Historic Extent of Free Product
-  Historical Footprint of Former Refinery

EXHIBIT 1



Meeker Ave. TCE/PCE Plumes

- NYSDEC Study AREA
- PCE/TCE in Soil Gas & Groundwater

Spic and Span & Norman
Cleaners and Dyers

Curtis Electro NY

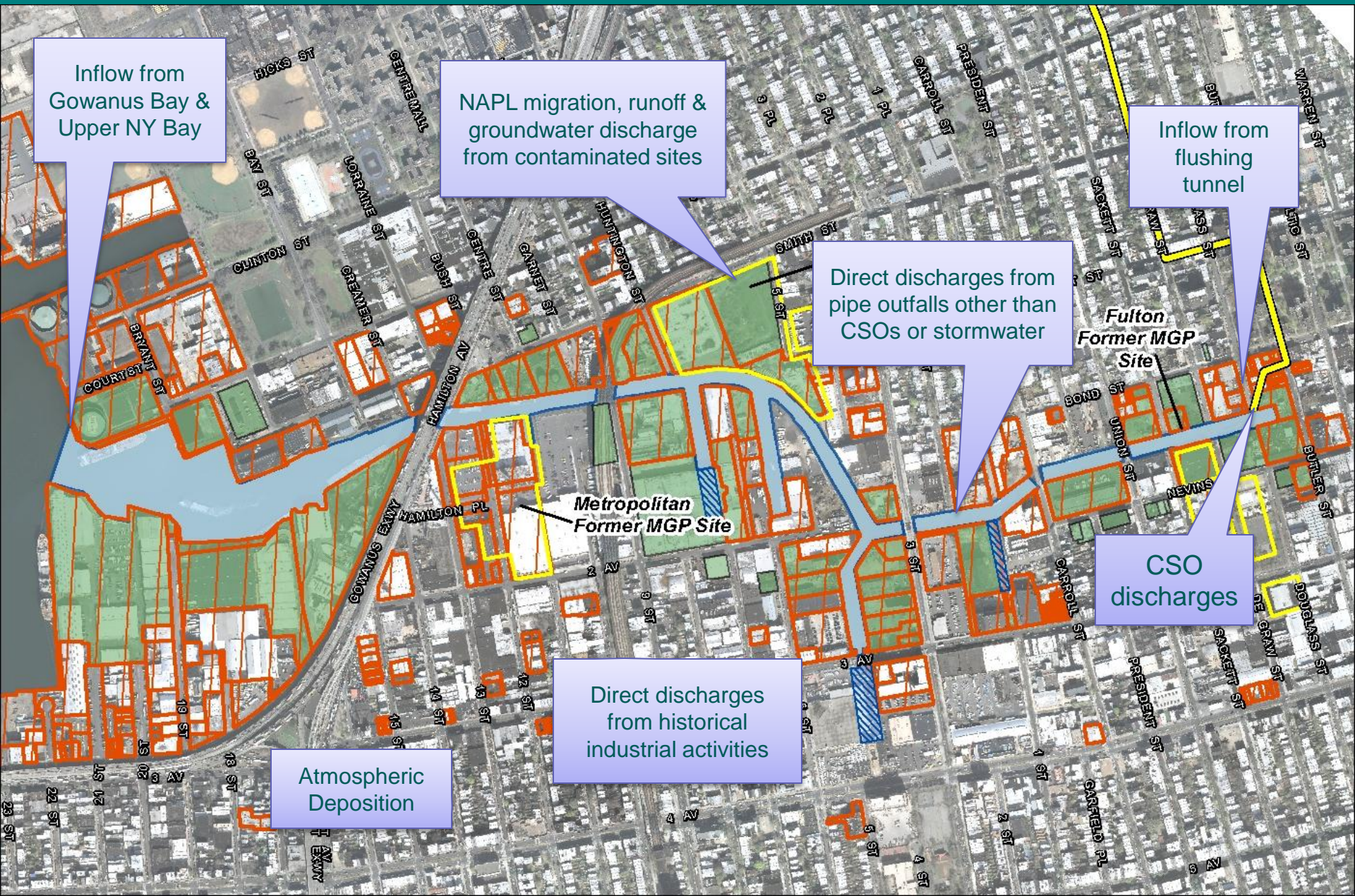
soap manufacturer &
lacquer storage

Acme Architectural
Products

Newtown
Creek



Overview of Contaminant Sources



How Get Involved in CERCLA Site

- 104(e) INFORMATION REQUEST
- PRP NOTICE LETTER
- SPECIAL NOTICE LETTER
- SECTION 106 ADMINISTRATIVE ORDER
- INVITATION LETTER FROM PRP STEERING COMMITTEE
- PRP CONTRIBUTION ACTION
- GOV'T COST RECOVERY ACTION

NPL Process

- Hazard Ranking System (“HRS”)
- State Designation
- Agency for Toxic Substances and Disease Registry (ATSDR)
- RCRA OR UST Deferral

SITE REMEDIAL PROCESS

- Preliminary Assessment/Site Inspection (PA/SI)
 - HRS scoring
 - challenging listing
 - operable units (OUs)
- Remedial Investigation/Feasibility Study (RI/FS)
- Record of Decision (ROD)
- Remedial Design/Remedial Action (RD/RA)

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Two Types of Response Actions

42 U.S.C. 9601(25)

- Removal Action -42 U.S.C. 9601(23)
 - Short-term actions
- Remedial Action- 42 U.S.C. 9601(24)
 - Long-term or permanent actions

Site Remediation-Removal Actions

- SHORT- TERM MEASURES
 - Fencing and other security measures
 - Drainage Controls
 - Stabilization of berms, dikes or closing of lagoons
 - capping
 - applying chemicals to mitigate effects of release
 - excavation and consolidation of contaminated materials
 - removal of drums, containers, etc
 - containment, excavation, treatment of hazardous materials
 - providing alternative water supplies
 - Temporary relocation of residents
- MAXIMUM 12 MONTHS
- \$2 MILLION LIMIT
- LIMITED COMMUNITY RELATIONS (EE/CA)

REMEDIAL DESIGN/REMEDIAL ACTION

- Design And Implementation OF Remedy
- Operations And Maintenance (“O & M”)
 - institutional controls
 - engineering controls
 - groundwater monitoring
- Five-Year Reviews

Inactive Hazardous Waste Disposal Site (SSF) ECL 27-1301, Part 375-2

- HW Site-“any area or structure used for the long term storage or final placement of [HW]”
 - Class 2 sites- equivalent to NPL
 - Class 3 Site: Cleanup Deferred
 - Class 4 Site: Cleanup Completed with O&M
 - Class 5 Site: Cleanup Completed without O&M
- Responsible Parties- CERCLA plus “Any other person who is responsible according to the applicable principles of statutory or common-law liability pursuant to ECL 27-1313(4) and/or CERCLA”

Liability and Defenses

ECL 27-1323

- Lenders
- Municipalities
- Third Party Defense
- Innocent Landowner Defense
- No BFP or Contiguous Owner Defense

Brownfield Cleanup Program

Eligible Sites

- Hazardous Waste Sites
- Petroleum Contaminated sites
- Excluded Sites
 - Class 1 or 2 (unless volunteer enrolls site by July 1, 2005)
 - Permitted TSDF
 - Enforcement Action, Cleanup Order or permit issued under RCRA, SWMA, PBS, Navigation Law
 - No VCP Sites
 - Stipulation Agreement ok

Types of Applicants

- **Volunteers-**
 - Non-PRPs (after discharge or disposal)
 - PRP solely on basis of ownership
- **Participants-**
 - Anyone who does not qualify as Volunteer

Cleanup Standards

- Track 1- Unrestricted Use
- Track 2- Restricted Use with Generic Soil Cleanup Standards
- Track 3- Restricted Use with Site-Specific Soil Cleanup Standards
- Track 4- Restricted Use with LUCs

Liability Release

- Certification of Completion (COC)
- Liability Release under statutory and common law for contamination at site as defined by BCA and subject of COC
- Notice must be filed within 30 days of COC or title, whichever is later
- Binds all state agencies

Liability Release Cont'd

- Runs with land so applies to Applicant successors and assigns
- Persons who develop and occupy site if exercise “due care” and “good faith”
- Does not apply to PRPs unless parties to BCA
- Participants not released for NRD

Liability Release Cont'd.

- Does not apply to costs, damages or activities not addressed by BCA
- Contribution protection for matters addressed by BCA
- Contribution Protection does not apply to third party claims for bodily injury or wrongful death due to acts or omissions of volunteer.

Reopeners

- Environmental Conditions no longer protective (not tied to new information or unknown conditions)
- Non-compliance with BCA or COC
- Fraud
- Change in standards renders remedy no longer protective
- Failure to make substantial progress within 3 years or unreasonable delay
- Change in Use (§27-1421)

Environmental Easements

- Record use restrictions or engineering controls
- Must follow form established by DEC
- Deed and other instruments must contain notice of environmental easement
- Held in perpetuity or until remedy changed
- Must be extinguished by amendment or new instrument

Tangible Property Tax

- Amount of Tax Credit
 - 12% for corporate taxpayer of non-BOA site
 - 10% for non-corporate taxpayer of non-BOA site
 - Add 2% if unrestricted use remedy
 - Add 8% if 50% of property in En-Zone
 - Add 2% if BOA

Tax Credits Cont'd

- Environmental Remediation Insurance Credit
 - \$30K or 50% of premium, whichever is less
 - After BCA is executed
 - One-time Use
 - May be claimed in year COC issued

NYC Local Brownfield Law

- NYC Adm. Code 24-901 et seq
- RCNY 43-1401
- RCNY 43-1413
- Excluded Sites
 - BCP Sites
 - Registry of Inactive Hazardous Waste Disposal Sites;
 - NPL Sites;
 - Permitted RCRA Facilities (ECL §27-0901);
 - Subject to Cleanup Order under Navigation Law or ECL; or
 - On-going State or Federal enforcement action.

Hazardous Materials “E” Program

- Notice of No Objection
 - minor renovation/upgrade (i.e., plumbing, electrical, no change actions, etc.)
 - project description, architectural plans, proof of no excavation/soil disturbance
- Notice To Proceed
 - Phase II testing completed, approved RAP/CHASP
- Notice of Satisfaction
 - P.E. Certified Remedial Closure Report proving that all DEP remedial requirements have been completed
- Final Notice of Satisfaction
 - Same as NOS but with no Engineering Controls and on-site/off-site contamination/potential impacts