

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)

Key SSF Remedial Guidance and Regulations

- 6 NYCRR 375-2 (SSF)
- 6 NYCRR 375-6 Soil Cleanup Objectives (SCOs)-
- DER- 10 Technical Guidance for Site Investigation and Remediation
- CP-51 Soil Cleanup Guidance
 - Replaces TAGM 4046 and STARS #1 Memo
 - Contains Table for Supplemental SCOs (SSCOs)
- DER-2: Making Changes to Selected Remedies
- DER-13: Strategy For Prioritizing Vapor Intrusion Evaluations at Remedial Sites in New York
- DER-33: Institutional Controls - A Guide to Drafting and Recording Institutional Controls

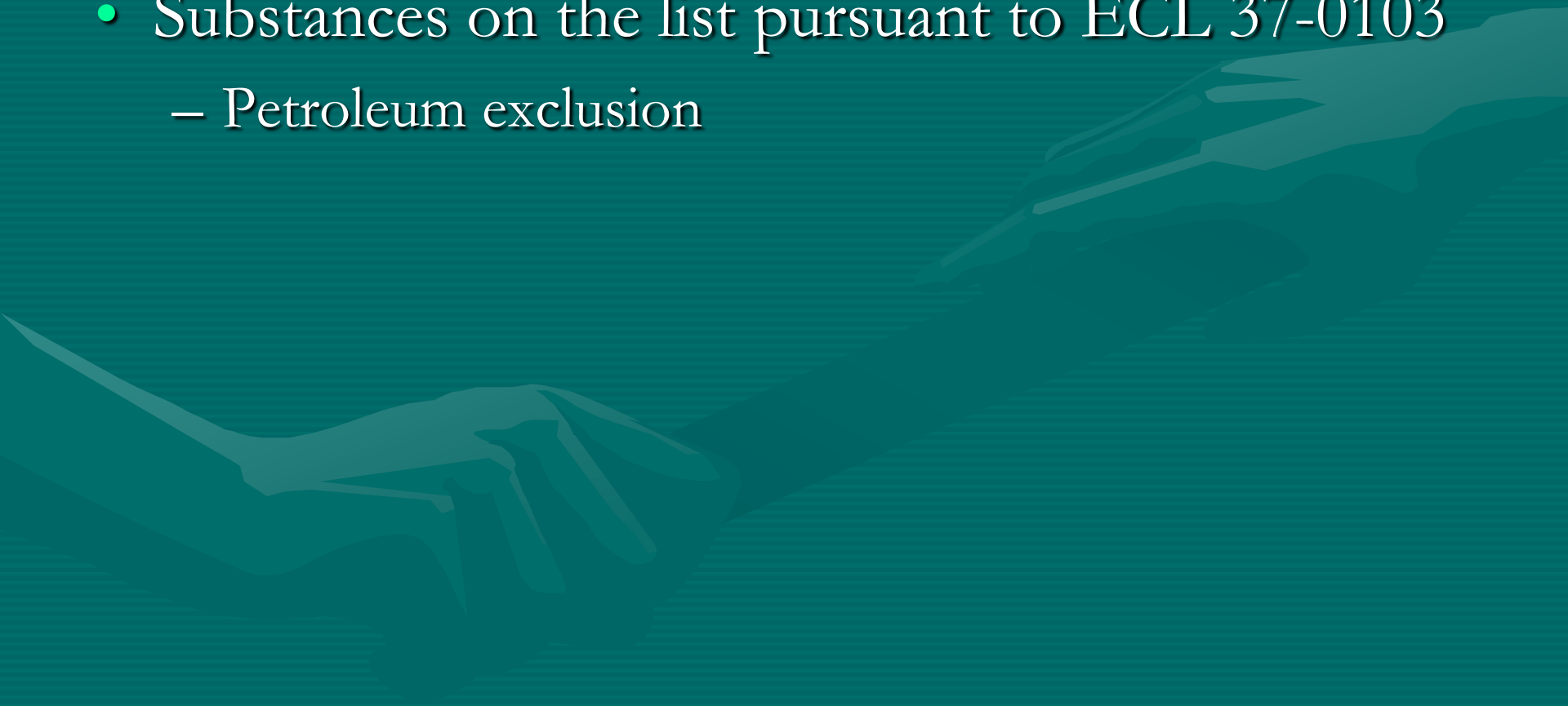
Inactive Hazardous Waste Disposal Site

ECL 27-1301; 6 NYCRR 375-2

- DEC authority:
 - to investigate sites
 - create registry of sites
 - perform cleanups or order responsible parties to perform cleanups
- Distinction from CERCLA
 - No cost recovery
 - No UAO Authority
 - Haz Waste different from Haz Substance
 - “Site” different from “Facility”
 - No reporting obligations

Hazardous Waste

- RCRA Waste pursuant to ECL 27-0903
- Substances on the list pursuant to ECL 37-0103
 - Petroleum exclusion



DEC Information Authority

§27-1309

- DEC access to all books, papers, documents and records related to current and past generation, transportation and disposal of hazardous waste
- Issue subpoenas and take testimony by deposition
- Enter property and collect samples
 - Make reasonable effort to identify owner
 - Provide ten days notice unless emergency (2 days)

DEC Remedial Authority

- NYDEC may develop and implement the remedial plan where party declines to perform cleanup w/i time frame and :
 - hazardous wastes constitute a “significant threat”;
 - imminent danger of causing irreversible or irreparable damage to the environment, and;
 - delay to allow a hearing on the order would be prejudicial to the public interest
- mere presence of hazardous waste not enough for “significant threat
- “Significant threat” defined at 6 NYCRR 375-2.7
 - Six specific factors at 6 NYCRR 375-2.7[a][1][i]-[vi]
 - 14 factors at 6 NYCRR 375-2.7[a][3][ii]-[xiv]

Remedial Program

6 NYCRR Part 375-2.8

- Remedial plan goal is to return site to pre-disposal conditions “*to extent feasible*”
 - must eliminate or minimize the significant threat
 - Shall consider URSCOs and remedial goals for other media
 - Usually weigh alternatives in F/S but may use IRM
- Factors for Remedy:
 - the ability to determine imminent danger may be achieved through limited actions;
 - ability of the NYDEC to identify responsible parties with sufficient financial resources to develop and implement the plan;
 - the nature of the danger, and;
 - Extent actions shall reduce the danger.

Certificate of Completion

- Liability protection under statutory and common law except for NRD
- Subject to reopeners
 - Remedy no longer protective
 - Non-compliance
 - Material change in cleanup standard
 - Fraud
 - Change in use causes remedy to no longer be protective
- Runs with land and to successors of parties on COC so long as comply with post-remedial OM&M

Responsible Parties

6 NYCRR Part 375-2.1

1. current owner or operator of site or any portion;
2. Past owner or operator at the time of disposal;
3. Any person who generated any contaminants disposed at a site;
4. Transporter who selected disposal site;
5. any person who disposed of any contaminants at a site;
6. Any person who arranged for the transportation of any contaminants; and
7. 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

Enforcement Process

- PRP Notice Letter
- Administrative Consent Order
- DEC Implements Remedial Action and refers to the AG for cost recovery and enforcement in federal court
- Access Letters to Owners of Contaminated Property
- Summary Abatement Orders (ECL 71-0303)

Cleanup Orders

- NYSDEC may issue orders to responsible parties to address significant threat (ECL 27-1313(3))
- However:
 - NYDEC cannot issue a cleanup order until responsible party provided with a hearing (ECL 27-1313(4)).
 - Ordered party who has been issued an order after an administrative hearing may seek judicial review of that decision.
 - Ordered party may assert statutory and common law defenses
- Inability to order a RP to do cleanup a site w/o administrative hearing substantially limited usefulness of SSF

Registry of Inactive Hazardous Waste Disposal Sites (Registry) ECL 27-1305

- Five Classes
 - Class 1: imminent danger of irreversible or irreparable damage to the public health and the environment
 - Class 2 : equivalent to NPL
 - Significant threat (ECL 27-1305[2][b][2])
 - Class 3 : Cleanup Deferred
 - Contamination not significant threat (ECL 27-1305[2][b][3])
 - Class 4: Site: Cleanup Completed with O&M
 - Class 5: Cleanup Completed w/o OM&M

Listing Process

§27-1305

- DEC to notify owners of sites that are proposed to be placed on the registry.
- Owners or operators of sites may petition the DEC to have the site de-listed or re-classified.
- DEC must convene adjudicatory hearing w/i 90 days
- The DEC is required to issue a ruling within 30 days after the hearing.

Non-Registry Codes

- Code A- active
- Code C- Cleanup completed (includes OM&M for non-registry sites)
- Code P-may be eligible for Registry
- Code N- no further action at this time
- Code PR- (Potential RCRA Corrective Action)

Cleanup Process

- Preliminary Site Assessment (PSA)
- Site Characterization Report (SCR)
- Significant Threat Determination (STD)
- Remedial Investigation/Feasibility Study (RI/FS)
- Remedial Design/Remedial Action (RD/RA)
- Final Engineering Report /Site Management Plan
- Preliminary Remedial Action Plan (PRAP)
- Record of Decision (ROD)
- Final Engineering
- Operation, Maintenance and Monitoring (OM&M)

Post-Remedial Use Restrictions

§27-1317

- 60 days notice before physical alteration or substantial change in use is to commence.
- Substantial changes includes but is not limited to the following:
 - constructing a building or other structure;
 - paving of the site (roadway, parking lot, etc);
 - creation of a park or other private or public recreational facility

Liability and Defenses

ECL 27-1323

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

Chemical Bulk Storage Act

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