

Attn:

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Division of Environmental Remediation-Bureau C
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Filed Via Electronic Mail**RE: Former Sunbelt Equipment Brownfield Cleanup Program Application and Draft Remedial Action Work Plan (Site ID #C224207)**

Mr. Willems:

The Sabin Center for Climate Change Law (“SCCCL”)¹ submits these comments to the New York State Department of Environmental Conservation (“DEC” or the “Department”) on the Brownfield Cleanup Program Application and Draft Remedial Action Work Plan for the Former Sunbelt Equipment site (the “Sunbelt Equipment Cleanup Plan”). SCCCL focuses on a critical issue – the need to take into account the effects of climate change when designing the remedial action plan. The Sunbelt Equipment site is located in a FEMA flood hazard zone and at an elevation of only 10 feet; thus, the Department should consider whether sea level rise, and an associated increase in flooding and storm surges, will compromise the controls anticipated by the Sunbelt Equipment Cleanup Plan and cause new releases of and exposure to contaminants present in sediments at the site.

As oceans absorb heat and as glaciers and ice sheets melt, global sea levels are rising at increasing rates.² In the next several decades, storm surges and high tides will combine with sea level rise and, in some locations, land subsidence to increase flooding in many regions, threatening the communities and industries along our coastlines.³ Contaminated sediment sites are uniquely vulnerable to the effects of climate change.⁴ Flooding, storms, and other major

¹ The Sabin Center for Climate Change Law at Columbia Law School develops legal techniques to fight climate change, trains law students and lawyers in their use, and provides the public with up-to-date resources on key topics in climate law and regulation. SCCCL works closely with the scientists at Columbia University’s Earth Institute and with governmental, nongovernmental, and academic organizations. See <http://web.law.columbia.edu/climate-change>. Please contact SCCCL for assistance locating any sources.

² Melillo, Jerry M., Terese (T.C.) Richmond, and Gary W. Yohe, Eds., 2014: Climate Change Impacts in the United States: The Third National Climate Assessment. U.S. Global Change Research Program, 841 pp. doi:10.7930/J0Z31WJ2 [hereinafter “National Climate Assessment”], at 44, available at <http://nca2014.globalchange.gov>.

³ National Climate Assessment, p. 45; Gordon, Kate, 2014: Risky Business: The Economic Risks of Climate Change in the United States. The Risky Business Project [hereinafter “Risky Business”], at 20, available at <http://riskybusiness.org/>.

⁴ Katrina Fischer Kuh, Climate Change and CERCLA Remedies: Adaptation Strategies for Contaminated Sediment Sites, 2 Seattle J. Envtl. L. 61, 63 (2012).

events can disrupt sediment beds, thereby reducing the effectiveness of certain control methods, such as monitored natural recovery and in-situ capping.⁵

State law supports consideration of future climate change related impacts in the design and implementation of the Sunbelt Equipment Cleanup Plan. In 2010, DEC adopted a policy on climate change adaptation, which direct agency staff to “incorporate climate change adaptation strategies” into DEC operations. Notably, Governor Cuomo recently signed the “Community Risk and Resiliency Act” (“CRRA”), a landmark adaptation bill that amends certain state statutes to reflect greater awareness of and preparedness for climate change-associated risks.⁶ The CRRA requires state agencies to consider future physical climate risks caused by storm surges, sea level rise, or flooding in certain permitting, funding, and regulatory decisions.⁷ Among other things, the CRRA amends the Smart Growth Public Infrastructure Policy Act (“Smart Growth Act”) to require state agencies to ensure that public infrastructure projects are consistent with the goal of “mitigat[ing] future physical climate risk due to sea level rise, and/or storm surges and/or flooding, based on available data predicting the likelihood of future extreme weather events, including hazard risk analysis data if applicable.”⁸

CRRA requires the Department to adopt official sea level rise projections by January 1, 2016.⁹ Meanwhile, many sources provide current and credible data regarding sea level rise and its potential consequences.¹⁰ Most recently, a 2014 Report released by the New York State Energy Research and Development Authority indicates that sea level rise in New York City is expected to increase by as much as 75 inches by 2100.¹¹ Using these and other sources, DEC should assess the projected range of sea level rise and storm surge throughout the life of the Sunbelt Equipment Cleanup Plan and determine whether the Plan adequately prevents exposure of contaminated sediments. To avoid underestimating these risks, DEC should base its determination on the high end of the projected sea level rise range. Moreover, DEC should exhibit a low tolerance for risk in light of the dangerous pollutants, including lead and benzene, potentially present at the site.

⁵ *Id.* at 65-66, 71.

⁶ 2014 Sess. Law News of N.Y. Ch. 355 (S. 6617-B).

⁷ *Id.*

⁸ *Id.*; N.Y. Envtl. Conserv. Law § 6-0107.

⁹ *Id.*; N.Y. Envtl. Conserv. Law § 3-0319.

¹⁰ See e.g., Intergovernmental Panel on Climate Change (“IPCC”), Chapter 2.2.3 Ocean, cryosphere and sea level. In Climate Change 2014 Synthesis Report, Fifth Assessment Report, at SYR-22 – SYR-23, *available at* http://www.ipcc.ch/pdf/assessment-report/ar5/syr/SYR_AR5_LONGERREPORT_Corr2.pdf; National Climate Assessment, at 44-45, 371-95; Climate Central, *Surging Seas: Sea Level Rise Analysis*, *available at* <http://sealevel.climatecentral.org>; Climate Central, *Sea level rise and coastal flood risk: Summary for Kings County, NY*, *available at* http://ssrf.climatecentral.org.s3-website-us-east-1.amazonaws.com/Buffer2/states/NY/downloads/pdf_reports/County/NY_Kings_County-report.pdf; Risky Business, *supra* note 3; Metropolitan East Coast Assessment, *Assessment Report: Coasts (2000)*, *available at* http://metroeast_climate.ciesin.columbia.edu/reports/coasts.pdf.

¹¹ Horton, R., D. Bader, C. Rosenzweig, A. DeGaetano, and W. Solecki. 2014. *Climate Change in New York State: Updating the 2011 ClimAID Climate Risk Information*. New York State Energy Research and Development Authority (NYSERDA), Albany, New York, at 10, *available at* <http://www.nysesda.ny.gov/-/media/Files/Publications/Research/Environmental/ClimAID/2014-ClimAid-Report.pdf> (high estimate (90th percentile) projection for New York City).

Further, DEC should consider the risks of more frequent and severe flooding. These risks are not fully reflected by static sea level rise data. Increasingly intense storm surges are a foreseeable risk in New York City, and should be considered in connection with the Plan. Particularly relevant is the 2014 National Climate Assessment's observation that a sea level rise of two feet, without any changes in storms, would more than triple the frequency of dangerous coastal flooding throughout most of the Northeast.¹² In sum, due to the site's coastal location, sea level rise, increased flooding, and rising groundwater are risks that should be considered in the design and implementation of the Sunbelt Equipment Cleanup Plan.

Thank you for the opportunity to submit comments on the Sunbelt Equipment Cleanup Plan. Please feel free to contact SCCCL with any questions.

Sincerely,

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Enclosures:

Climate Central, Sea level rise and coastal flood risk: Summary for Kings County, NY
NYSERDA, Updating the 2011 ClimAid Climate Risk Information: Sea Level Rise Projections

¹² *Id.*