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LITIGATION VICTORY FOR AURORA ENERGY SERVICES IN CLEAN WATER ACT CASE

Washington, D.C. – April 9, 2013: Crowell & Moring LLP is pleased to announce that client Aurora Energy Services has prevailed in a closely-watched Clean Water Act case involving its coal transportation terminal in Seward, Alaska. In a recent ruling, Judge Timothy Burgess of the Alaska District Court dismissed major claims of the case brought by the Sierra Club and another advocacy organization.

In *Alaska Community Action on Toxics et al., v. Aurora Energy Services LLC et al.,* No. 3:09-cv-00255-TMB (D. Alaska March 28, 2013), Judge Burgess rejected arguments broad by the advocacy organizations under the Clean Water Act and granted Aurora Energy Services and Alaska Railroad Corporation summary judgment on the principal claims of the case. The ruling allows both companies to continue their longstanding compliance with the stringent environmental standards applicable to the site.

John C. Martin, lead Crowell & Moring partner for Aurora said, "The decision could serve as an important precedent promoting companies' ability to rely on the permitting decisions of regulatory agencies. Judge Burgess's ruling turned on the application of the Clean Water Act's 'permit shield' and on the widely-accepted view that airborne dust falling on water does not ordinarily require a separate, Clean Water Act permit."

Plaintiffs had argued that the Multi-Sector General Permit could only authorize stormwater discharges and that the permit could not be used for discharges of coal from a loading dock and conveyor belt. The court rejected the argument. Judge Burgess grounded his decision on the "permit shield" defense provided by the Clean Water Act, (CWA §402(k), 33 U.S.C. § 1342(k)). Finding that this General Permit does not specifically prohibit the coal discharges, the Court concluded that these discharges were adequately disclosed and reasonably anticipated by the U.S. Environmental Protection Agency (EPA). The Court reasoned that the permit shield applies and protects these defendants from claims that their discharge violates the Act. Thus, Judge Burgess dismissed this count of the complaint.

The Court also rejected plaintiffs' claim that airborne dust falling on nearby waters requires a Clean Water Act permit. Resolution of this issue turned on the requirement that a discharge must come from a "point source" to fall within the Act's jurisdiction. *See* 33 U.S.C. §§ 1362(12),(14). The decision discusses a number of prior holdings and concludes that "coal carried to the bay by the wind as airborne dust cannot constitute a point source discharge."

Crowell & Moring LLP is an international law firm with approximately 500 lawyers representing clients in litigation and arbitration, regulatory, and transactional matters. The firm is internationally recognized for its representation of Fortune 500 companies in high-stakes litigation, as well as its ongoing commitment to *pro bono* service and diversity. The firm has offices in Washington, DC, New York, Los Angeles, San Francisco, Orange County, Anchorage, London, and Brussels. Visit Crowell & Moring online at http://www.crowell.com.

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