



ENVIRONMENTAL REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL New Primary National Ambient Air Quality Standard for Nitrogen Dioxide 40 CFR Part 50 75 Fed. Reg. 6474 (Feb. 9, 2010)</p>	<p>EPA adopted a new primary national ambient air quality standard (NAAQS) for nitrogen dioxide (NO₂) for the first time since 1971, when the standard was first set. The primary NAAQS limits the concentration of pollutants in the ambient air for purposes of protecting public health. According to EPA, recent studies link short-term NO₂ exposures, ranging from 30 minutes to 24 hours, with increased respiratory effects, particularly in people with asthma. To address this problem, EPA adopted new 1-hour NO₂ standard of 100 parts per billion (ppb), after considering standards as low as 80 ppb. Compliance with the standard will be determined based on a 3-year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations. EPA also is retaining the existing annual average NO₂ standard of 53 ppb.</p> <p>In addition to establishing a new short-term NO₂ NAAQS, EPA adopted new ambient air monitoring and reporting requirements for NO₂. The new rule requires NO₂ monitoring within 50 meters of major roads in cities with at least 500,000 residents, with possible additional monitors in areas where significant concentrations of people and traffic occur. In addition, EPA will continue to require community monitoring in cities with at least one million residents. Finally, EPA, working with the states, will locate several dozen additional monitors in communities that are susceptible to NO₂-related health effects.</p> <p>Information about the new NO₂ NAAQS can be found on EPA's web site at: www.epa.gov/air/nitrogenoxides.</p>	<p>Currently, there are no NO₂ nonattainment areas in the United States. Based on data from 2006-2008, EPA identified only one county nationwide as exceeding the 100 ppb NO₂ standard. Because the required NO₂ monitors are unlikely to be in place by January 2012 – EPA's deadline for making its nonattainment designations – most areas will likely be designated "unclassifiable." Redesignations will take place after the new monitors have been installed and at least three years of ambient air monitoring data have been collected.</p>	<p>The rule takes effect April 12, 2010.</p> <p>The rule addresses only the primary (i.e., health-based) NO₂ standard. EPA will address the secondary standard – designed to protect public welfare, including the environment – as part of a separate proposal in 2011 that will cover both NO₂ and sulfur dioxide (SO₂).</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE SPDES General Permit for Stormwater Discharges from Construction Activity GP-0-10-001</p>	<p>DEC finalized a new State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity to replace GP-0-08-001, which was scheduled to expire in 2010. Under the SPDES program, stormwater discharges associated with certain construction activities require a permit and must be managed in accordance with a site-specific stormwater pollution prevention plan (SWPPP). Major changes in the new general permit include:</p> <ul style="list-style-type: none"> • Adding the Oscawana Lake watershed in Putnam County to the list of watersheds that must include post-construction stormwater management practices in their SWPPPs to address enhanced phosphorus removal practices. • Clarifying that key submissions, including the Notice of Intent (NOI) form and SWPPP, are available to the public. • Specifying that the owner/operator of construction activities subject to a regulated traditional land use control municipal separate storm sewer system (MS4) must submit any planned amendments to post-construction stormwater management practices to the MS4 for review and approval. In addition, the revised permit requires MS4s to either certify the Notice of Termination submitted by the site owner/operator when construction is complete or accept the qualified inspector’s site inspection certification. • Requiring certain construction projects to be designed consistent with the updated <i>New York State Stormwater Management Design Manual</i>, which is being revised to address green infrastructure techniques (i.e., techniques for addressing stormwater and maintaining and restoring natural hydrology by infiltration, evapotranspiration, and stormwater capture and reuse). • Requiring mandatory site inspections to include all points of discharge to natural surface water bodies and requiring inspectors to take digital photographs showing the condition of all items identified as needing corrective action. <p>The permit and related documents can be found on DEC’s website at: www.dec.ny.gov/chemical/43133.html.</p>	<p>The general permit typically covers construction activities involving soil disturbances of one or more acres, although the threshold is lower for activities in certain areas. An owner or operator of a construction activity must obtain coverage under the general permit prior to commencing construction by submitting a NOI form to DEC.</p>	<p>The permit took effect January 29, 2010 and expires in five years. Construction activities authorized under the previous permit are automatically covered under the new permit.</p> <p>DEC made minor revisions to the draft permit in response to public comments and published a detailed Responsiveness Summary.</p>

Citation	Summary	Implications	Schedule/Notes
<p>NEW YORK STATE Revisions to Onsite Wastewater Treatment Standards 10 NYCRR Part 75, Appendix 75-A</p>	<p>The New York State Department of Health (DOH) adopted major revisions to its standards governing onsite wastewater treatment systems (OWTS), set forth at 10 NYCRR Part 75, Appendix 75-A. The changes were necessary to address innovations in OWTS technologies since 1990, the last time DOH updated Appendix 75-A. Major changes include:</p> <ul style="list-style-type: none"> • Adding gravelless absorption systems: Most OWTS provide primary treatment of household wastewater in a septic tank followed by dispersal of wastewater to a soil absorption area, typically comprised of perforated pipe in gravel or stone-filled trenches. Gravelless absorption technologies use materials that provide an increased infiltration surface area, allowing a corresponding reduction in trench lengths for absorption fields. • Adding enhanced treatment units. Enhanced treatment units (ETUs) typically incorporate additional electrical and mechanical components that provide advanced wastewater treatment prior to dispersal to an absorption area. Because these additional components require more inspection and maintenance than traditional OWTS, the rule allows ETUs to be installed only in areas supervised by a responsible management entity such as a watershed protection agency, local health department or municipal sewer district. DOH also is requiring ETU performance to be certified by a reputable third-party organization. • Allowing use of tire chip aggregate as a substitute for gravel and stone in absorption area trenches. • Revising the minimum design flow rate to 110 gallons per bedroom per day to reflect current water conservation standards for plumbing fixtures. • Making other technical corrections to codify long-standing procedures regarding the design of OWTS. <p>The rule can be found on the DOH website at: www.health.state.ny.us/regulations/recently_adopted.</p>	<p>The rule changes expand the options available for constructing OWTS and make other changes/corrections.</p>	<p>The revised standards took effect February 3, 2010. DOH made nonsubstantial revisions to the draft regulations based on comments received during the public comment period.</p> <p>Both the gravelless absorption system and ETU options allow for reductions in absorption trench lengths. However, these reductions do not apply in the New York City watershed.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL Revised National Ambient Air Quality Standards for Ozone 40 CFR Part 50 75 Fed. Reg. 2938 (Jan. 19, 2010)</p>	<p>EPA proposed stricter national ambient air quality standards for ozone, roughly two years after revising the 8-hour primary and secondary standards downward from 0.080 to 0.075 parts per million (ppm). Shortly after taking office, the Obama administration announced plans to reconsider the 2008 revisions to the 8-hour ozone NAAQS, which were adopted over the objections of the Clean Air Scientific Advisory Committee (CASAC), the expert panel charged with overseeing the NAAQS review process. After completing its review, EPA proposed to further reduce the 8-hour primary (i.e., health-based) standard from 0.075 ppm to between 0.060 and 0.070 ppm, a range consistent with the previous CASAC recommendation. According to EPA, the lower standard will provide increased protection for children and other at risk populations against an array of ozone-related health effects. EPA also proposed major changes to the secondary (i.e., welfare-based) standard. Currently, the secondary standard is identical to the primary standard, despite evidence that excessive ozone primarily affects vegetation over the long-term. In the recent rulemaking, EPA proposed to replace the 8-hour secondary standard with a new cumulative seasonal standard. Under the proposal, an area would be designated nonattainment for the secondary standard if cumulative weighted ozone concentrations collected during three consecutive months of the ozone season and then averaged over a three-year period exceed the ppm-hour secondary NAAQS eventually set by EPA.</p> <p>Information about the proposed new ozone standards can be found in the January 19, 2010 Federal Register at: www.gpoaccess.gov/fr/index.html</p>	<p>The eventual adoption of stricter ozone NAAQS will likely lead to the designation of additional ozone nonattainment areas. To meet the standards, states may be required to adopt stricter limits on emissions of volatile organic compounds and nitrogen oxides, the major contributors to ozone formation.</p>	<p>EPA is accepting comments on the proposed NAAQS until March 22, 2010.</p> <p>Because the revised ozone NAAQS, if adopted, would replace the 2008 standards, EPA extended by one year the deadline for issuing area designations under the 2008 standard. 74 Fed. Reg. 2936 (Jan. 19, 2010). To ensure that EPA's reconsideration of the ozone standard adopted in 2008 does not significantly delay implementation, EPA is proposing to accelerate the schedule for designating nonattainment areas under the new standard.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA issued its final *Integrated Science Assessment for Carbon Monoxide* following an extensive public review. The Integrated Science Assessment (ISA) (formerly known as the Air Quality Criteria Document) assesses the latest scientific information on the effects of carbon monoxide (CO) on public health and the environment and represents an important step in the five-year NAAQS review process required by the Clean Air Act. The CO NAAQS, which is currently set at 35 ppm 1-hour average and 9 ppm, 8-hour average, has not been revised since it was first adopted in 1971. Information about the CO ISA can be found in the January 29, 2010 Federal Register at: www.gpoaccess.gov/fr/index.html.

Implications: The review process may eventually lead to the adoption of stricter NAAQS for CO which may, in turn, lead to stricter controls on CO sources.

WATER

NEW YORK STATE: DEC issued the following **guidance documents to aid in interpreting and clarifying key terms contained in the state's tidal wetland land use regulations** found at 6 NYCRR Part 661:

- DFW-1, *Functionality*: Interpretation of the term “functionality” of structures, which is relevant to DEC jurisdiction under the Tidal Wetlands Act and to whether a project is deemed major under the Uniform Procedures Act regulations.
- DFW-2, *Calculation of Average Setback*: Guidance on the method of calculating average setback for purposes of determining the acceptable placement of certain structures.
- DFW-3, *Replacement of Hard Shoreline Stabilization Structures*: Guidance on the replacement of hard shoreline stabilization structures such as bulkheads, seawalls, and jetties.
- DFW-4, *Footprint/Perimeter of Existing Marina/Mooring Areas/Boat Basins*: Clarification of the terms “marina footprint” and “perimeter” for purposes of determining whether changes to a marina require a permit.
- DFW-5, *Maintenance Dredging Guidance*: Clarification of the term “maintenance dredging,” including specifying what evidence is necessary to demonstrate that a permit for maintenance dredging is appropriate.

DEC made minor revisions to the draft guidance documents in response to comments received during the public comment period and withdrew a draft procedure on handling requests for modification of Standard Activity Permit Process (SAPP) permits. The final guidance documents can be found on DEC's website at: www.dec.ny.gov/lands/4940.html.

Implications: The guidance is of interest to individuals engaged in projects affecting tidal wetlands; these wetlands are located in New York City, Long Island, and Westchester and Rockland counties.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA **withdrew a proposal to add two new fit testing protocols to its respiratory protection standard**, 40 CFR 1910.134. Appendix A of the respiratory protection standard currently includes three quantitative fit-testing protocols as well as a procedure for adding new fit testing protocols to the standard. OSHA proposed to amend Appendix A to include two variations on the standard PortaCount® QNFT protocol currently included in the standard. The proposed protocols use the same fit-testing requirements and instrumentation specified in the PortaCount® protocol but call for changes in the duration of the eight fit-testing exercises (revised protocol 1) and elimination of two of the eight fit testing exercises and other changes (revised protocol 2). After considering comments on the proposed new protocols, OSHA concluded that they were not sufficiently accurate or reliable and withdrew the proposed rule. The notice of withdrawal can be found in the January 27, 2010 Federal Register at: www.gpoaccess.gov/fr/index.html.

Implications: The notice is of potential interest to anyone required to provide respiratory protection under OSHA.

Other Recent Developments (Proposed)

WATER

NEW YORK STATE: DEC made available for comment its **draft list of impaired waters required by Section 303(d) of the federal Clean Water Act**. The list, which is updated every two years, includes waters that do not support appropriate uses and identifies those waters that require and are scheduled for total maximum daily load (TMDL) development. As in previous years, the list includes segments that are impaired for a wide range of contaminants. In conjunction with the 303(d) list, DEC also made available for comment draft revisions to its Consolidated Assessment and Listing Methodology (CALM), which outlines the state's process for monitoring and assessing water quality. The draft 303(d) list and related documents can be found on DEC's website at: www.dec.ny.gov/chemical/31290.html. DEC is accepting comments on the draft 303(d) list and revised CALM until **February 26, 2010**.

Implications: Adoption of a TMDL for impaired waters may lead eventually to stricter SPDES permit limits and other discharge restrictions targeted at eliminating the impairment.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA is proposing to **revise its Occupational Injury and Illness Recording and Reporting (recordkeeping) regulation to restore a column on the OSHA 300 Log for recording work-related musculoskeletal disorders (MSD)**. Prior to 2001, injury logs contained a column for repetitive trauma disorders that included noise and MSDs. In 2001, OSHA separated noise and MSDs into two separate columns; however, the MSD column was deleted in 2003 after OSHA concluded that the column was not

necessary. With this rulemaking, OSHA is proposing to restore the MSD column and is seeking comment on the definition of MSD, including identification of examples of common MSDs. OSHA is accepting comment on the proposed rule until **March 15, 2010**. The proposal can be found in the January 29, 2010 Federal Register at: www.gpoaccess.gov/fr/index.html.

Implications: The proposal is of potential interest to any employer required to record work-related injuries and illnesses.

OTHER

FEDERAL: The Department of Homeland Security (DHS) requested comment on issues arising **under the Chemical Facility Anti-Terrorism Standards (CFATS) relating to the regulation of gasoline in aboveground storage tanks**. Under the CFATS, facilities that possess a chemical of interest above the screening threshold quantity listed in the regulation must submit a “top-screen” analysis to DHS; DHS will review the top-screen to determine whether to require the facility to prepare a security vulnerability assessment and develop and implement a site security plan. Shortly after the CFATS rule was adopted, several trade associations representing gasoline terminals raised various procedural and substantive challenges to the rule as applied to terminals. Among other things, they argued that DHS had overestimated the potential consequences of a terrorist attack on gasoline terminals by relying on an inappropriate model. DHS is accepting comments until **March 16, 2010** on specific technical issues relating to the applicability of CFATS to gasoline terminals. The request for comment can be found in the January 15, 2010 Federal Register at: www.gpoaccess.gov/fr/index.html.

Implications: The notice is of potential interest to facilities that store gasoline in aboveground tanks in quantities large enough to trigger CFATS reporting obligations.

Upcoming Deadlines

NOTE: This calendar is limited to items of general interest.

February 15, 2010: Deadline for submitting information about existing DEC regulations that impose unduly burdensome requirements. See the December 16, 2009 Environmental Notice Bulletin at www.dec.ny.gov/enb/20091216_not0.html for details.

February 16, 2010: Deadline for submitting comments on EPA’s proposed revisions to the gasoline terminal and distribution facility NESHAP. See the December 15, 2009 Federal Register at www.gpoaccess.gov/fr/index.html for details.

February 16, 2010: Deadline for submitting comments on proposed changes to lead ambient air monitoring requirements. See the December 30, 2009 Federal Register at www.gpoaccess.gov/fr/index.html for details.

February 17, 2010: Deadline for submitting comments on the following proposed DEC regulations: (1) incorporate California GHG emission standards for motor vehicles as part of LEV program; (2) new RACT standards for hot mix asphalt production plants; (3) revised NOx RACT standards for Portland cement plants and new NOx RACT standards for glass furnaces at glass plants; (4) new VOC limits on commercial and industrial adhesives and sealants; (5) revised NOx RACT standards for stationary combustion installations; and (6) revised VOC RACT standards for graphic arts. NOTE: Public hearings were scheduled for early February. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

February 22, 2010: Deadline for responding to EPA's advance notice of proposed rulemaking seeking input on whether to increase the availability of information on inert ingredients in pesticide products. See the December 23, 2009 Federal Register at www.gpoaccess.gov/fr/index.html for details.

February 22, 2010: Deadline for submitting comments on DEC's draft *Hudson River Estuary Action Agenda 2010-2014* (extended from January 22, 2010). The draft agenda can be found on DEC's website at www.dec.ny.gov/lands/5104.html.

February 26, 2010: Deadline for submitting comments on EPA's draft recommended preliminary remediation goals for dioxin. See the January 7, 2010 Federal Register at www.gpoaccess.gov/fr/index.html for details.

February 26, 2010: Deadline for submitting comments on EPA's revised risk analysis supporting changes to regulations relating to solvent-contaminated wipes (extended from December 28, 2009). See the October 27, 2009 Federal Register at www.gpoaccess.gov/fr/index.html for details.

February 26, 2010: Deadline for submitting comments in response to EPA's notice concerning plans to initiate a national rulemaking to reduce stormwater discharges from new development and redevelopment. See the December 28, 2009 Federal Register at www.gpoaccess.gov/fr/index.html for details.

February 26, 2010: Deadline for submitting comments on DEC's draft 2010 Section 303(d) list of impaired waters and revised Consolidated Assessment and Listing Methodology. See DEC's web site at www.dec.ny.gov/chemical/31290.html for details.

March 15, 2010: Deadline for submitting comments on OSHA's proposal to add a musculoskeletal disorder column to its OSHA 300 Log. See the January 29, 2010 Federal Register at www.gpoaccess.gov/fr/index.html for details.

March 16, 2010: Deadline for submitting comments on issues relating to the DHS's Chemical Facility Anti-Terrorism Standards as applied to gasoline storage. See the January 15, 2010 Federal Register at www.gpoaccess.gov/fr/index.html for details.



March 22, 2010: Deadline for submitting comments on EPA’s proposed revisions to the ozone NAAQS. See the January 19, 2010 Federal Register at www.gpoaccess.gov/fr/index.html for details.

April 6, 2010: Deadline for submitting comments on EPA’s advance notice of proposed rulemaking concerning establishing financial responsibility requirements under CERCLA (extended from February 5, 2010). See the January 6, 2010 Federal Register at www.gpoaccess.gov/fr/index.html for details.