

EPA Finalizes 8-Hour Ozone Designations

EPA has announced the final nonattainment area designations under the 8-hour ozone standard imposed almost eight years ago. Almost 30 counties in New York State will be designated as ozone nonattainment under the new standard, with approximately half classified as “basic nonattainment”, the lowest such designation under the new standard. This group includes the seven-county Albany-Schenectady-Troy ozone nonattainment area. New York State will be required to revise its State Implementation Plan (SIP) by 2007 to include measures that will help the state attain the new 8-hour standard by 2009 for areas in basic nonattainment and 2010 for the State’s moderate nonattainment areas. In New York, most of the mandatory requirements for moderate nonattainment areas are already being implemented because the state is in the 13-state Ozone Transport Region.

Using ambient air quality data collected in 2001-2003, EPA has designated New York nonattainment areas as follows:

Basic Nonattainment (June 2009 attainment date)

- Albany-Schenectady-Troy, NY (including Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady and Schoharie Counties)
- Jamestown, NY (Chautauqua County)
- Buffalo, Niagara Falls, NY (Erie and Niagara Counties)
- Rochester, NY (Genesee, Livingston, Monroe, Ontario, Orleans, and Wayne Counties)
- Essex County, NY (Whiteface Mountain)

Moderate Nonattainment (June 2010 attainment date)

- Jefferson County, NY
- New York-N. New Jersey-Long Island, NY-NJ-CT (New York City and Nassau, Suffolk, Rockland and Westchester Counties)
- Poughkeepsie, NY (Dutchess, Putnam and Orange Counties)

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In this issue...

EPA Finalizes 8-Hour Ozone Designations	1
EPA Considers Various Hazardous Waste Initiatives2	
DEC Adopts EMS Policy	2
DEC Schedules Brownfield Meetings	3
Changes to Permitting Procedures Proposed	3
DEC Issues Draft	
Brownfield Guidance	4
Attorney General Issues	
Environmental Guide	5
CALENDAR OF EVENTS	5
QUIK-REPLY FORM	6

FEDERAL NEWS

Nonattainment Areas Designated (cont'd from Page 1)

In addition, EPA has designated the Syracuse area (including Cayuga, Madison, Onondaga, and Oswego Counties) as unclassifiable because the area cannot be classified based on available information. EPA intends to issue a decision on the attainment designation of this area by the end of 2004.

EPA will revoke the existing 1-hour ozone

standard one year after the effective date of the rule, which has not, as of this writing, been published in the Federal Register. To avoid backsliding, the rule will require the specific control measures imposed on areas designated as nonattainment under the 1-hour standard to remain in place until the area attains the 8-hour standard.

Information about the new ozone nonattainment designations can be found on EPA's web site at: www.epa.gov/ozonedesignations.

EPA Considers Various Hazardous Waste Initiatives

EPA recently published an Advance Notice of Proposed Rulemaking requesting information from the public on the effectiveness of the hazardous waste generator program and to identify areas for potential improvement.

According to EPA, the hazardous waste generator program has been criticized as complex and confusing, particularly for small businesses, and in some cases duplicative of requirements of other programs. To address these and other concerns, EPA is seeking information from the public concerning what aspects of the hazardous waste generator program are working and what aspects need improvement. To assist stakeholders in preparing their response, the rulemaking

includes questions about the program as well as a list of possible areas for improvement identified in the past. These areas include: (1) waste accumulation times; (2) waste generation quantity thresholds; (3) episodic generator requirements (i.e., requirements where hazardous waste generator quantities fluctuate between categories from month to month); (4) waste sampling and testing; (5) satellite accumulation; (6) generator accumulation and treatment in tanks; (7) cogenerator requirements (i.e., waste generation by contractors); and (8) waste consolidation where wastes are generated at different locations. DEC is accepting comments on the advance notice until July 21, 2004.

STATE NEWS

DEC Adopts EMS Policy

DEC recently adopted Commissioner Policy CP-34, entitled *Using EMSs and Other Environmental Performance Improvement Tools in Department Programs*. Among other things, the policy calls for DEC to implement a voluntary program to encourage organizations to adopt Environmental Management Systems (EMSs) and addresses the use of EMSs in enforcement matters and within DEC. An EMS is defined in the policy as "a set of management processes, procedures, and auditable performance objectives that allows a facility to analyze, control, and reduce the

environmental impact of activities, products, and services by using pollution prevention measures, performing beyond minimum compliance levels or integrating sustainable business practices."

To encourage the use of EMSs, DEC plans to implement an Environmental Leadership Program (ELP), a voluntary program open to organizations with a commitment to environmental compliance that have demonstrated success in improving their performance and preventing pollution.

With respect to enforcement, the policy calls on DEC's Division of Environmental Enforcement

to “develop options for use of tools such as EMSs, where appropriate to . . . help resolve violations [and] to potentially improve overall environmental performance.” Finally, DEC proposes to put in place a pilot program to assess the use of EMSs at

certain state-run facilities.

A copy of the policy can be found at www.dec.state.ny.us/website/ppu/ems/index.html, or use the QUIK-REPLY form.

DEC Schedules Brownfield Meetings

DEC has scheduled a series of public meetings concerning New York’s Brownfield Cleanup Program (BCP). The local meeting will be held in Albany on May 19, 2004 from 9:00 to 11:30 a.m. and from 12:30 to 4:30 p.m. at the Empire State Plaza, Concourse Level, Meeting Room 2. The morning session of the meeting will solicit input and discuss the formulation of soil cleanup objectives for the BCP. The afternoon session will

provide a general overview of the BCP program. Additional meetings have been scheduled across the state. Up-to-date information concerning the meetings can be obtained from DEC’s web site at: www.dec.state.ny.us/website/der/bfield/index.html. This web site also contains information about other meetings and resources relevant to brownfield cleanups.

Changes to Permitting Procedures Proposed

DEC recently made available for comment draft revisions to 6 NYCRR Part 621, New York’s regulations governing the processing of environmental permits. The proposed revisions update the regulations to reflect other recent rulemakings and contain numerous other clarifications and additions. DEC also is proposing to reorganize the rule to more closely track the permit approval process.

The major changes proposed include the following:

- *Definitions:* DEC is proposing to add definitions of the following terms, among others: administrative SPDES renewal (addressing regular SPDES permit renewals issued outside the Environmental Benefit Permit Strategy review process), applicant, facility, joint application for permit, legally responsible party, permittee, public authority or public benefit corporation, site, and sufficient application for renewal. DEC is also proposing to clarify the following existing definitions, among others: adjudicatory and legislative hearings, delegated permit, emergency, minor project, modification, and permit.
- *Public participation:* The draft regulations expand both the circumstances under which DEC may require public notice and comment

and the list of public participation options. The regulations also clarify: (1) that applicants may be required to prepare public participation plans; and (2) that expanded public participation documentation is required for new or significantly modified hazardous waste management units or major modifications of existing units.

- *Electronic submission:* DEC is proposing to require information necessary for a complete application to be submitted electronically.
- *Pending enforcement actions:* DEC is proposing that the provision allowing it to suspend permit application review if an enforcement action has been commenced be revised to clarify that the violations need not be related to the permit being sought.
- *Applications for specific permits:* The section of the regulation listing the requirements for specific permit applications is proposed to be revised to: (1) specify that DEC may request supplemental information at any time; (2) include the maximum permit term for each permit type; (3) reorganize and amend the requirements for air permit applications; (4) amend the list of minor freshwater wetland projects; and (5) add permit requirements for radiation control permits issued under 6 NYCRR Part 380.
- *Permit processing:* DEC is proposing to add

the following permit processing provisions to Part 621: (1) section specifying that applications will remain incomplete until all requested items are received by DEC; (2) section specifying that failure to respond in writing to a DEC notice of incomplete application within one year may result in an application being deemed withdrawn without prejudice provided DEC follows certain procedures; and (3) language clarifying that UPA timeframes are suspended as of the date DEC notifies the applicant of its decision to hold a public hearing. DEC also has clarified that the time frames and due dates under Part 621 must be calculated in accordance with certain provisions of the General Construction Law.

- *Permit renewals and modifications, including reissuances and transfers.* DEC is proposing to revise the regulations to: (1) clarify the rules governing SPDES permit renewals, including administrative renewals; (2) include more detailed rules governing permit transfer, specifying time frames for submission of transfer applications and listing permits which cannot be transferred; and (3) require DEC to notify applicants and provide details when the Department is modifying a permit in

conjunction with a permit renewal.

- *Permits for new construction:* DEC is proposing procedures for reissuing construction permits (i.e., permits for activities that are “not of a continuing nature”) provided certain conditions are met.
- *Permit relinquishment:* DEC has proposed procedures for permittees seeking to relinquish permits.
- *Emergency authorizations:* The proposed revisions to procedures governing emergency authorizations include: (1) to clarify that public agencies may commence emergency activities without DEC authorization if prior notice is not possible; (2) to specify the information required to be submitted in conjunction with any request for emergency authorization; and (3) to clarify the procedures and format for granting/denying a request for emergency authorization.

The draft regulations will be available on DEC’s website in the next several weeks. A formal proposal will be noticed in the State Register by the end of this summer. The availability of the draft regulations will be posted under NEWS, Regulatory Alert at www.youngsommer.com.

DEC Issues Draft Brownfield Guidance

DEC has issued draft guidance relative to the undertaking of a project in the newly established Brownfield Cleanup Program (BCP). The BCP was established by legislation passed last fall and is set forth in Title 14 of Article 27 of the New York State Environmental Conservation Law.

This document provides guidance to a party applying to the BCP and sets forth the administrative steps necessary to investigate, select a remedy, implement that remedy and provide the various submittals and reports required for

completion of the project. This guidance focuses on administrative procedures and requirements specific to the BCP, and is less technically oriented than the “DER Technical Guidance Document for Site Investigation and Remediation”. DEC is accepting comments on this draft through July 12, 2004.

The draft guidance is available on the DEC website at www.dec.state.ny.us/website/der/index.html or use the QUIK-REPLY form.

Attorney General Issues Environmental Guide

The Attorney General’s Office recently issued a new publication entitled *A Citizens’ Guide to Environmental Information in New York State*. The guide contains the name, address, telephone number, and web address of hundreds of federal, state and local environmental agencies and not-for-profit organizations that operate in New York, federal elected officials, a comprehensive list of county environmental organizations, including the regional DEC office, county Department of Health, and local non-governmental organizations. The guide can be obtained from the Attorney General’s website at: www.oag.state.ny.us.

CALENDAR OF EVENTS

May 19: Eastern NY Chapter, Air & Waste Management Association Monthly Meeting. Topic: Plant Vulnerability (New DOT Regulations, terrorism and other emergencies) 12:00 noon, Holiday Inn Turf, Wolf Rd. \$15 members; \$25 non-members (includes \$10 Chapter membership). For reservations contact Janis Falon, 518-487-7648 or email jef@woh.com

May 19: NYSDEC/NYSDOH Public Meeting on the Brownfields programs. Session 1: 9:00 - 11:30 will focus on the development of soil cleanup standards; Session 2: 12:30 - 4:40 will provide a general overview of the program. Empire State Plaza Meeting Room 2, Albany.

June 4: Capital District Environmental Breakfast Club 7:30 am, Holiday Inn Turf, Wolf Rd. Colonie. Topic: Meet Your Regulators from Region 4. Speakers: Richard Forgea (Solid Waste), Alan Geisendorfer (Brownfields/Voluntary Cleanup), Rick Leone (Air Programs), Ed Moore (Petroleum and Chemical Bulk Storage), Fred Sievers (Water Programs), Cliff Van Guilder (Hazardous Waste) \$12 pre-registered, \$14 day of event. 518/438-9907 ext. 240 or e-mail bpopolizio@youngsommer.com

June 9: Mohawk Valley Environmental Information Exchange Monthly Meeting. Topic: OSHA Update. Radisson Hotel Utica Center- 200 Genesee St. Utica (Across from the State Office - Building- Park in the garage free) Meeting Format: Buffet Breakfast 7:30 - 8:00AM - Program 8:00 - 9:30 AM \$10-12 includes breakfast. For reservations email davep@mvatc.net.

DEC Region 4 Regulators to Speak at June Environmental Breakfast Club!

Don't miss the opportunity to "meet the regulators" from DEC Region 4 at the June 4, 2004 meeting of the Capital District Environmental Breakfast Club. Six representatives from the various regulatory program will make presentations and answer your questions. For more information and to register, visit the Environmental Breakfast Club page at www.youngsommer.com.

Definitions for Today's Workplace:

BLAMESTORMING: Sitting around in a group, discussing why a deadline

QUIK-REPLY FORM

For more information on the topics in this issue, fax or mail this form to: Vicki Schlierer, Regulatory Affairs Paralegal, Young, Sommer...LLC, Five Palisades Drive, Albany, NY 12205. Fax: (518) 438-9914.

Name: _____

Title: _____

Company: _____

Address: _____

City, ST, Zip: _____

Phone: (____) ____ - _____ Fax: (____) ____ - _____

Please send the following:

DEC EMS Policy

Draft Brownfields Guidance

Reservations for the Capital District Environmental Breakfast Club, Holiday Inn Turf, Wolf Road, Colonie, NY **June 4, 2004:**

_____	Registration (includes full breakfast buffet)	\$12.00
_____	Binder update	\$5.00

Please make your reservation no later than **June 1, 2004**. Fax your reservation to 518/438-9914; call Betsy Popolizio at 518/438-9907 ext. 240; or email bpopolizio@youngsommer.com Cancellations will be accepted until June 1, 2004. No refunds or credits given after that time. To help us plan, please make a reservation. **The registration fee will be \$14.00 for walk-ins.**