

## **DEC Issues Draft Brownfield Cleanup Agreements**

*New Brownfield Program to Replace Current Voluntary Cleanup Program*

**D**EC has issued two draft Brownfield Cleanup Agreements, pursuant to the new Brownfield law signed by the Governor in October. These agreements will be used for all parties who enter into the Brownfield Cleanup Program set forth as Article 27, Title 14 of the ECL. One agreement will be used for “participants”, defined in the statute as a person who “was the owner of the site at the time of the disposal of hazardous waste or discharge of petroleum or is otherwise a person responsible according to applicable principles of statutory or common law liability, unless such person's liability arises solely as a result of such person's ownership or operation of or involvement with the site subsequent to the disposal of hazardous waste or discharge of petroleum.” The second agreement will be used for “volunteers”, defined as anyone who was not a participant, including persons who owned the site after the discharge of hazardous materials or petroleum.

DEC is planning to phase out the current Voluntary Cleanup Program (VCP) and replace it with the Brownfield Cleanup Program (BCP). New VCP applications will not be accepted after October 31, 2003. All volunteers with either VCP applications under review, approved applications without executed Voluntary Cleanup Agreements (VCAs) or an executed VCA will be given until March 31, 2004 to transition into the Brownfield Cleanup Program. Volunteers electing not to transition to the BCP, or failing to make an election, will be required to complete their projects under the current VCP. These parties will not be allowed to later elect into the BCP.

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DEC is accepting comments on the new agreements through December 12, 2003. For copies of the agreements, go the DEC's website at [www.dec.state.ny.us/website/der/bcp](http://www.dec.state.ny.us/website/der/bcp) or use the QUIK-REPLY form.

render legal or technical advice for specific applications and is not a substitute for the advice of legal counsel.

# FEDERAL NEWS

## EPA Issues Final RMRR Rule

On October 27, EPA published the final rule under which routine maintenance, repair and replacement (RMRR) operations may be excluded from New Source Review (NSR). Alternatively, facility owners or operators may choose to use the current case by case approach to determine whether an equipment replacement activity is excluded.

Under this rule, an equipment replacement activity automatically will be excluded from NSR requirements if:

- it involves replacement of any existing component(s) of a process unit with an identical or functionally equivalent component(s);
- the fixed capital cost of the replaced component, plus the costs of any repair and maintenance activities that are part of the replacement activity (such as labor, contract services, major equipment rental, etc.), does not exceed 20 percent of the replacement value of the entire process unit;
- the replacement(s) does not change the basic design parameters of the process unit; and
- the replacement(s) does not cause the unit to exceed any emissions limits.

The rule allows sources to use the one of several approaches to determine the replacement value of a new process unit, including replacement cost, invested cost (adjusted for inflation), the insurance value of the equipment (where the insurance value covers complete replacement of the process unit) or another accounting procedure, based on Generally Accepted Accounting Principles.

In addition, the final rule also defines a "process unit;" specifically delineates the boundary of a process unit for certain specified industries, defines a "functionally equivalent" component, and defines how an owner or operator establishes basic design parameters for electric utility steam generating units and for other types of process units.

For the complete text of the rule, go to <http://www.epa.gov/air/nsr-review/03-26320.pdf> The rule becomes effective Dec. 26, 2003.

## EPA Proposes Revisions to the Definition of Solid Waste

*Proposal would exempt materials generated and reclaimed in a continuous process and specifies criteria for legitimate recycling.*

On October 28, 2003, EPA proposed revisions to the definition of solid waste that would exclude hazardous waste from regulation under RCRA Subtitle C when it is generated and reclaimed in a continuous process within the same industry. Under these provisions, such recycled materials would not have to be managed as either a solid or hazardous waste when reclaimed in this manner. The proposed exclusion would not apply to recycled materials that are inherently waste-like, used in a manner constituting disposal, burned for energy recovery, or recycled by a commercial or third party recycler. EPA also proposed new language to be added to the definition of solid waste that specifies four general criteria that determine legitimate hazardous waste recycling.

These criteria are:

- The secondary material to be recycled must be managed as a valuable commodity.
- The secondary material must provide a useful contribution to the recycling process or to a product of the recycling process.
- The recycling process must yield a valuable product or intermediate that is sold or used under specific conditions.
- The product of the recycling process must not contain significant amounts of hazardous constituents that are not found in analogous products or elevated levels of hazardous constituents when compared to analogous products.

EPA is accepting comments on the proposed rule until January 26, 2004. A copy of the proposed

rule and a fact sheet are available on the Internet at the following URL: [www.epa.gov/epaoswer/hazwaste/dsw/abr.htm](http://www.epa.gov/epaoswer/hazwaste/dsw/abr.htm)

## STATE NEWS

### DEC Adopts VOC Limits for Architectural Coatings

DEC has adopted new regulations (6 NYCRR 205) that set limits on the VOC content of architectural coatings sold or applied in New York State. The new limits will apply to coatings manufactured on or after January 1, 2005. The new regulations do not apply to any architectural coating that is sold or manufactured for reformulation or repackaging, aerosol coatings, or any coating sold in containers of one quart or less. The limits, ranging from 100 - 730 grams VOC per liter, are set forth for 52 separate categories of coatings and apply to coating thinned to the manufacturer's maximum recommendation, excluding the volume of any water, exempt

compounds or colorant added to tint bases.

This rulemaking is a response to recommendations made by EPA in its February 2002 approval of New York's November 1998 1-hour Ozone attainment demonstration for the New York metropolitan area. The states of New Jersey, Massachusetts, Connecticut and Pennsylvania have entered into a memorandum of understanding indicating that they will adopt a similar coatings rule, providing regional consistency for manufacturers and users of architectural coatings.

For a summary of the new rule, use the QUIK-Reply form.

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## CALENDAR OF EVENTS

- November 19:** Eastern NY Chapter, Air & Waste Management Association monthly meeting. Topic: NSR Reforms; Speaker: Robert Sliwinski, NYSDEC Division of Air Resources. 12 noon, Holiday Inn Turf, Wolf Rd. Colonie. For information or reservations email Janis Fallon: [jef@woh.com](mailto:jef@woh.com).
- December 5:** Capital District Environmental Breakfast Club JOINT MEETING with the Air & Waste Management Association. 7:30 am, Holiday Inn Turf, Wolf Rd. Colonie. Topic: New Source Review Reform: Applying the Recent Changes. Speaker - Douglas Schultz, GE Power Systems. \$12 pre-registered, \$14 day of event. 518/438-9907 ext. 240 or e-mail [bpopolizio@youngsommer.com](mailto:bpopolizio@youngsommer.com)
- December 8:** Mohawk Valley Environmental Information Exchange Monthly Meeting. 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 and program info email [davep@mvatc.net](mailto:davep@mvatc.net).

# 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:

Draft Brownfield Agreements

Summary of Architectural Coating Rule

Reservations for the Capital District Environmental Breakfast Club, Holiday Inn Turf, Wolf Road, Colonie, NY **December 5, 2003**

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

Please make your reservation no later than **December 2, 2003**. Fax your reservation to 518/438-9914; call Betsy Popolizio at 518/438-9907 ext. 240; or email [bpopolizio@youngsommer.com](mailto:bpopolizio@youngsommer.com). Cancellations will be accepted until December 2, 2003. 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.**

**Happy Thanksgiving from all of us at  
Young, Sommer...LLC!**

