

EPA Issues C&D Manual

EPA recently issued a manual summarizing the rules governing management of construction and demolition (C&D) debris and offering suggestions on ways to reduce waste and prevent pollution. The manual, entitled *RCRA In Focus: Construction, Demolition and Renovation*, identifies the different types of C&D debris and possible RCRA waste codes. It also includes an overview of the RCRA program, together with a useful chart summarizing the different requirements applicable to large, small and conditionally exempt small quantity generators. Detailed discussions focus on special issues in C&D debris relating to mercury, lead-based paint debris, and asbestos. The manual concludes with a discussion of ways to reduce the amount of waste generated as well as an overview of contacts and resources. The manual can be obtained from EPA's website at: www.epa.gov/epaoswer/hazwaste/id/infocus/rif-c&d.pdf.

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DEC Proposes Policy on Use of On-Site Environmental Monitors

DEC has proposed a draft Commissioner Policy regarding the use of on-site environmental monitors as well as the procedures for placing a monitor at a facility. Under the policy, there are two types of monitors - on-site environmental monitors or "OEMs" (DEC employees) and independent environmental monitors or "IEMs" (independent individuals or firms operating under DEC supervision and oversight). The policy addresses the purpose and background of the environmental monitoring program and outlines the roles of various DEC staff in appointing/overseeing monitors. It also includes standard terms for appointing monitors by permit or consent order. The proposed policy would replace O&D Memo 92-10.

DEC is accepting comments on the draft policy until October 29, 2004. A copy of the policy can be obtained from DEC's web site at: www.dec.state.ny.us/website/about/osenvmondraft.pdf or use the QUICK-REPLY Form.

DEC Circulates Draft Air Penalty Policy

DEC recently circulated for comment a draft document DEE-23 entitled *Air Violations Penalty Policy for Short-Form Orders on Consent*. The policy applies only to minor air violations that may be resolved by DEC's short-form order on consent. The list of covered violations is contained in the table attached to the policy. The policy also includes a list of violations that are *not* covered. To be eligible for a short-form consent order and, thus, for consideration under the policy, the penalty amount assessed cannot exceed \$20,000 and the payable portion (i.e., the amount excluding suspended penalties) cannot exceed \$10,000. Further, the order cannot require corrective action that will take more than six months to complete.

Violations covered by the policy include:

- Failure to submit annual, semi-annual, quarterly or monthly compliance certification reports;
- Failure to submit an annual emission statement;
- Failure to satisfy recordkeeping requirements under 6 NYCRR 228.5(a) or 40 CFR 63.10;
- Failure to conduct certain initial performance tests;
- Failure to satisfy particulate emission standards under 6 NYCRR 227-1.2;

- Failure to satisfy certain NO_x RACT requirements under 6 NYCRR 227-2;
- Excess opacity under 6 NYCRR 227-1.4(c); and
- Failure to maintain emission control equipment.

Within 30 days of discovering a violation that may be resolved via a short-form consent order, the policy directs DEC staff to issue a Notice of Violation (NOV) and draft a short-form consent order by entering information specific to the facility/violations into DEC's standard form. Staff is directed not to deviate from the language of the model or accept any signed consent order to which respondents have made changes. The initial draft of the order to the respondent must also be sent by DEC to the chief executive officers of the municipality and county where the facility is located. The policy includes a model form letter for making the notification.

The comment period on the proposed policy closed on October 22, 2004. A copy of the policy can be obtained from DEC's web site at: www.dec.state.ny.us/website/ogc/dee/dee23.pdf or use the QUIK-Reply Form.

DEC Proposes Environmental Easement Form

DEC has published a draft environmental easement form to be used whenever an easement must be filed as part of the title records for a particular piece of property. The New York Legislature's 2003 Superfund reform legislation included a provision establishing standards for environmental easements. These easements provide DEC with a means of ensuring that engineering controls (including operation, maintenance and/or monitoring requirements) are implemented and that land use controls (such as prohibitions against residential development) are enforced. This easement would be will be completed by the Department whenever a proposed remedy calls for engineering or land use controls and would be filed with the county clerk.

Among the provisions of the draft

environmental easement are:

- A description of the required engineering controls and identification of acceptable property uses;
- Specific language to be included in the property deed and all subsequent instruments of conveyance indicating that the property is subject to an environmental easement;
- A provision requiring the owner to submit an annual certification by an expert that the controls employed at the site are unchanged from the previous certification (or that any changes were approved by DEC) and that nothing has occurred at the site that would affect the ability of the controls to protect public health or the environment;
- A provision authorizing the State to enter and

- inspect the property;
 - A reservation of rights relating to the subject property by the owner;
 - A provision specifying that the easement is enforceable in perpetuity and listing circumstances (such as adverse possession, laches, etc.) that will not defeat enforcement or serve as a defense to enforcement; and
 - A provision requiring the owner to notify the State of a breach or suspected breach of the easement and take steps to cure it.
- The public comment period closed on October 22, 2004. A copy of the form can be obtained from DEC's web site at: www.dec.state.ny.us/website/der or use the QUIK REPLY form.

Erin Crotty to Speak at Air & Waste Management Association/ Capital District Breakfast Club Joint Meeting

DEC Commissioner Erin Crotty will speak on DEC's focus and initiatives for 2005 at a joint meeting of the Capital District Environmental Breakfast Club and the Eastern New York Chapter of the Air & Waste Management Association on December 15, 2004. The meeting will be held at the Holiday Inn Turf on Wolf Road at 12 noon. Ms. Crotty will be presented with an environmental leadership award from the Air & Waste Management Association. Due to the large number of expected attendees, reservations and payment are needed by December 1, 2004. Walk-ins may not be accommodated. Make checks payable to AWMA and mail to: Dan Reilly C.T. Male Associates, P.C. P.O. Box 727 Latham, NY 12110. For more information call Dan at 518-786-7625.

CALENDAR OF EVENTS

- November 5:** Capital District Environmental Breakfast Club 7:30 am, Holiday Inn Turf, Wolf Rd. Colonie. Topic: Winds of Change: Renewable Energy in New York State. Speaker: Valerie Strauss, Young, Sommer...LLC. \$12 pre-registered, \$14 day of event. 518/438-9907 ext. 240 or e-mail bpopolizio@youngsommer.com
- November 10:** Mohawk Valley Environmental Information Exchange Monthly Meeting. Topic: DER 10 and the Brownfields Program. Speakers: Tom Johnson, Alpha Geoscience, and Kevin Young, Young, Sommer...LLC. 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.
- November 15:** Eastern NY Chapter, Air & Waste Management Association Monthly Meeting. Speaker: To be Announced. Topic: Air Pollution Control Update 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
- December 15:** Capital District Environmental Breakfast Club Joint Meeting with Eastern NY Chapter Air & Waste Management Association Topic: DEC's Focus and Initiatives for 2005. Speaker: Erin Crotty, Commissioner, NYSDEC. 12:00 noon, Holiday Inn Turf, Wolf Rd. \$20.00 Advance reservations and payment required.. Send payment no later than December 1, 2004. Checks should be made payable to AWMA. Mail Payment to:AWMA, c/o Dan Reilly C.T. Male Associates, P.C. P.O. Box 727 Latham, NY 12110. 518-786-7625

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 Environmental Monitor Policy

Draft Environmental Easement

Draft Air Violation Penalty Policy

Reservations for the Capital District Environmental Breakfast Club, Holiday Inn Turf, Wolf Road, Colonie, NY **November 5, 2004:**

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

Please make your reservation no later than **November 2, 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 November 2, 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.**