

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Prepared by:  
Elizabeth Morss  
Young/Sommer LLC  
5 Palisades Drive  
Albany, NY 12205  
(518) 438-9907, ext. 232  
emorss@youngsommer.com  
<http://www.youngsommer.com>

Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>ENVIRONMENTAL REVIEW</b>			
<p>NEW YORK STATE  <b>Final Scope for Generic Environmental Impact Statement on Proposed Amendments to State Environmental Quality Review Act Regulations</b>                      6 NYCRR Part 617</p>	<p>Following a public comment period, DEC issued its <b>final scope in conjunction with planned revisions to the State Environmental Quality Review Act (SEQRA) regulations</b>, set forth at 6 NYCRR Part 617. While DEC has not identified any significant adverse environmental impacts from the planned rulemaking, it intends to prepare a generic environmental impact statement (GEIS) to identify possible alternatives and maximize opportunities for public participation. DEC conducted the public scoping in advance of the GEIS to clarify the changes to the SEQRA regulations under consideration. These changes include:</p> <ul style="list-style-type: none"> <li>• <b>Revising the list of Type I actions</b> to reduce certain thresholds for residential subdivisions, add a new threshold for parking spaces in smaller communities, and establish less stringent criteria for projects involving unlisted actions within or contiguous to a historic resource.</li> <li>• <b>Expanding the list of Type II actions</b> to reflect experience with the SEQRA review process and encourage environmentally sound projects, including green infrastructure and solar energy development.</li> <li>• <b>Revising the scoping provisions</b> to: (1) require scoping for all EISs; (2) require the scope to explain why issues were not included in the final written scope, allowing better targeting of the EIS; (3) bar agencies from rejecting a draft EIS as inadequate based on information submitted following completion of the final scope and not included by the project sponsor in the draft EIS.</li> <li>• <b>Revising the rules addressing preparation of the EIS</b> to establish more realistic time frames and minimize the potential for multiple reviews. Specific changes include: (1) requiring determinations of adequacy of a resubmitted draft EIS to be based solely on the previous written list of deficiencies provided by the lead agency; (2) requiring preparation of a final EIS within 180 days of the lead agency’s acceptance of the draft EIS (rather than the later of 45 days after the close of any hearing or 60 days after acceptance of the draft EIS); and (3) providing that the EIS will be deemed complete if the final EIS is not prepared and filed within the 180-day period.</li> </ul> <p>The final scope can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/permits/83389.html">www.dec.ny.gov/permits/83389.html</a>.</p>	<p>The SEQRA process has been widely criticized for being too complicated and taking too long. Per DEC, the planned revisions to the SEQRA regulations are intended to streamline the review process “without sacrificing meaningful environmental review” by: (1) better targeting projects for environmental review by updating the list of Type I and Type II actions; (2) improving the focus of the SEQRA process by targeting those issues that, in fact, have the potential to result in a significant adverse environmental impact by requiring scoping for all EISs and improving the scoping process; and (3) improving the timeliness of SEQRA decisionmaking by providing more guidance on determining the adequacy of a draft EIS and establishing more meaningful timeframes for completing the final EIS.</p>	

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<b>WATER</b>			
<p>NEW YORK STATE  <b>Water Withdrawal Permits</b>                      6 NYCRR Part 601 and related provisions</p>	<p>DEC adopted regulations implementing a 2011 law establishing a comprehensive water withdrawal permit program. Consistent with the authorizing statute, the regulations, set forth at 6 NYCRR Part 601, require any person with the capacity to withdraw at least 100,000 gallons per day (gpd) from the state’s ground or surface waters to get a permit from DEC; it also applies to other water withdrawal-related activities, including taking, condemning, or acquiring land for development or protection of sources of water supply and interbasin diversions of water. Key requirements include:</p> <ul style="list-style-type: none"> <li>• <b>Initial permit application.</b> The initial permit application for non-public water systems must be submitted to DEC in accordance with a five-year schedule based on system capacity, with the first applications for the largest systems (100 million gpd or more) due June 1, 2013. Any facilities that failed to report water withdrawals as of February 15, 2012 also must submit a permit application by June 1, 2013. Numerous water withdrawal activities are exempt from the Part 601 permit requirement.</li> <li>• <b>Special registration requirements.</b> Individuals withdrawing water for agricultural purposes or who are engaging in interbasin transfers must comply with special registration requirements.</li> <li>• <b>Application requirements.</b> The regulations include detailed requirements for completing the application process, specifying what information and exhibits must be included with the application as well as the procedure for processing the application and issuing the requested permit. The regulations also specify the basic conditions applicable to all water withdrawal permits.</li> <li>• <b>Annual reports.</b> All facilities subject to permit or registration requirements (including those that have not yet received permits) must submit annual water withdrawal reports to DEC by March 31<sup>st</sup>. The reports contain basic information relating to water withdrawal activities, including water conservation and efficiency measures undertaken during the reporting period.</li> <li>• <b>Monitoring.</b> All water withdrawal sources must be equipped with totalizing flow meters.</li> </ul> <p>The regulations can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/propregulations.html">www.dec.ny.gov/regulations/propregulations.html</a>.</p>	<p>Previously, DEC required permits or registrations for all water withdrawals by public water supply systems and for certain water withdrawals on Long Island and in the Great Lakes basin. The revised regulations expand DEC’s authority, requiring permits for the withdrawal of water for commercial, industrial and other purposes provided the 100,000 gpd capacity threshold is met. Existing public water supply system permits will remain in effect until the new permit program is fully implemented. Once the implementation process is complete, water withdrawal permits will no longer be required for small public water supply systems (i.e., those below the 100,000 gpd threshold). Regardless, public water supply systems remain subject to New York State Department of Health regulations addressing drinking water safety. Special rules apply to water withdrawals for agricultural purposes or that involve interbasin diversions.</p>	<p>The rule takes effect April 1, 2013.</p> <p>In response to public comments, DEC revised the regulations to exempt temporary water withdrawals (no more than 3 million gallons over a 30-day period) from the permit requirement; however, this exemption is not available to water withdrawals for high-volume hydraulic fracturing operations.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>HYDRAULIC FRACTURING</b>			
<p>NEW YORK STATE  <b>Regulations Addressing High-Volume Hydraulic Fracturing</b>                      6 NYCRR Parts 52, 190, 550-560, and 750</p>	<p>Just before the rulemaking deadline under the State Administrative Procedure Act (SAPA), DEC published <b>additional revisions to its proposed 2011 high-volume hydraulic fracturing (HVHF) regulations</b>. The state’s oil, gas and solution mining regulations, contained in 6 NYCRR Parts 550-559, require permits, establish well spacing and setback standards, mandate drilling practices, establish well plugging and abandonment procedures, and mandate financial security. Changes to address HVHF include:</p> <ul style="list-style-type: none"> <li>• Eliminating a cap on financial security required to plug deep wells.</li> <li>• Extending the term of a permit to drill, deepen, plug back or convert a well from six months to two years.</li> <li>• Modernizing the regulations to make them consistent with statutory changes relating to well spacing.</li> <li>• Imposing additional reporting/recordkeeping requirements, including requiring a plan to address disposal of drill cuttings and requiring interim completion reports.</li> <li>• Increasing minimum requirements for plugging.</li> </ul> <p>DEC also proposed Part 560 to address HVHF – defined as well fracturing that involves more than 300,000 gallons of water per well completion. The rule codifies the mitigation measures contained in the 2011 draft supplemental GEIS, including: setbacks; the permit application process (disclosure of chemical additives, detailed mapping, etc.); well testing; recordkeeping/reporting, including a drilling and production waste tracking form; well construction and operation; and waste management and reclamation. As part of the same rulemaking, DEC also proposed changes to 6 NYCRR Part 750, including adding a new subpart 750-3 containing the wastewater permitting requirements applicable to HVHF operations. Finally, DEC proposed to revise state land regulations to incorporate prohibitions on HVHF operations on state lands.</p> <p>The repropoed regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/77353.html">www.dec.ny.gov/regulations/77353.html</a>.</p>	<p>Under SAPA, DEC was required to finalize the HVHF regulations or propose additional changes by November 29, 2012. DEC repropoed the regulations to allow a panel of outside experts convened by the New York State Department of Health time to complete a review of the health effects of HVHF.</p> <p>Changes to the proposed rules include: (1) requiring the fluid disposal plan to state that the well owner/operator will maximize the reuse/recycling of used drilling fluids; (2) requiring pre-fracturing chemical disclosure to identify each chemical constituent and its proposed concentration and establishing trade secret protections; (3) establishing a 15-day public comment period for evaluating HVHF drilling permit applications; (4) establishing a new 500-foot setback from inhabited dwellings and places of assembly; (5) allowing DEC to issue variances from certain setback requirements; and (6) requiring additional hydraulic fracturing fluid disclosure following well completion.</p>	<p>DEC is accepting comments on the repropoed HVHF regulations until <b>January 11, 2013</b>. No additional public hearings are scheduled.</p> <p>Environmental groups criticized DEC for repropoing the rules, arguing that it should have waited for the results of the public health study before propoing additional revisions.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p><b>NEW YORK STATE Regulations Addressing Concentrated Animal Feeding Operations and Related Activities</b> 6 NYCRR subparts 360-4, 360-5 and 750-1</p>	<p><b>DEC proposed to revise its State Pollutant Discharge Elimination System (SPDES) and solid waste regulations to reduce the requirements applicable to certain concentrated animal feeding operations (CAFOs)</b> and revise the rules governing land application, storage and composting of certain organic materials. Specific changes under consideration include:</p> <ul style="list-style-type: none"> <li>• Adding a definition of CAFO to 6 NYCRR subpart 750-1 and revising the list of facilities exempt from the SPDES permit requirement to include medium CAFOs that have 200-299 mature dairy cows and do not discharge wastewater.</li> <li>• Revising 6 NYCRR subpart 360-4, Land Application and Associated Storage Facilities, to: (1) clarify the scope of the exemption from permit requirements for land application facilities handling animal manure and associated bedding material; (2) exempt land application facilities managing waste from state-owned or licensed fish hatcheries; and (3) exempt land application or manure storage facilities at CAFOs with SPDES permits that accept food processing or other waste covered by a comprehensive nutrient management plan.</li> <li>• Revising 6 NYCRR subpart 360-5, Composting and Other Class A Organic Waste Processing Facilities, to: (1) clarify the exemptions from permitting requirements for composting facilities that accept crop residues, animal manure, and associated bedding materials and those that accept no more than 3,000 cubic yards of yard waste annually; (2) add exemptions for anaerobic digestion (AD) facilities and animal mortality composting facilities at farms or CAFOs; (3) allow registrations instead of permits for organics processing facilities for animal mortalities or parts, composting facilities for dewatered solids from AD, and non-exempt AD facilities; and (4) establish design criteria and operational requirements for AD facilities.</li> </ul> <p>The proposed regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/propregulations.html">www.dec.ny.gov/regulations/propregulations.html</a>.</p>	<p>According to DEC, the rulemaking was proposed in large part to promote the yogurt industry in New York. Relieving dairies with 200-299 cows that do not discharge their manure wastes from the requirement to obtain coverage under a SPDES permit will encourage farmers to increase their herds without adversely affecting the environment. The revisions to the solid waste regulations are intended to facilitate recycling of whey and similar food processing wastes by reducing certain composting requirements.</p>	<p>DEC is accepting comments on the proposed rule until <b>January 21, 2013</b>. A public hearing is scheduled for 2:00 p.m. on January 4, 2013 at DEC’s headquarters in Albany (with additional hearings scheduled on the same day in in Syracuse, Ray Brook and Avon).</p>

## Other Recent Developments (Final)

### AIR

NEW YORK STATE: DEC has **adopted California's new motor vehicle standards** to maintain consistency with the California program. Under the Clean Air Act, California is authorized to issue motor vehicle emission standards that are stricter than EPA's provided the state first obtains a waiver; other states may then adopt the California standards as their own. With the recent rulemaking, DEC revised 6 NYCRR Part 218 and related provisions to conform to recent changes to the California regulations. Specific standards covered by the rule include: (1) low emission vehicle (LEV) standards, which are targeted at reducing emissions of criteria pollutants such as nitrogen oxides and particulate matter; (2) greenhouse gas emission standards; (3) zero emission vehicle (ZEV) standards, which mandate that an increasing percentage of vehicles sold in the state emit no or very low emissions; (4) rule prohibiting sale of used catalytic converters and imposing stricter emission reduction performance and durability requirements on new aftermarket catalytic converters; (5) environmental performance label standards; and (6) warranty and recall regulations for California-certified vehicles delivered for sale and registered in New York. The final rule can be found on DEC's web site at: [www.dec.ny.gov/regulations/propregulations.html](http://www.dec.ny.gov/regulations/propregulations.html).

Implications: The rule is primarily of interest to motor vehicle owners and manufacturers.

### CLIMATE CHANGE

FEDERAL: EPA **rejected petitions from the governors of several states and other parties seeking a waiver of the renewable fuel standard (RFS)** because of corn shortages caused by the recent nationwide drought. Under the RFS program, fuel refiners/importers must use an increasing percentage of various types of renewable fuel in the transportation fuel they sell. However, EPA may waive the national volume requirements if it finds that implementation would severely harm the economy or environment of a state, region or the nation as a whole or if there is an inadequate domestic supply. The petitions contended that the recent drought significantly reduced corn crops, driving up prices, and adversely affecting food and animal feed supplies. EPA rejected the petition after concluding, among other things, that waiving the mandate would only reduce corn prices, by about one percent on average and would not impact household energy costs. Based on these and other results, EPA concluded that the RFS mandate would not "severely harm the economy or environment of a State, a region or the United States" and so did not meet the waiver standard. EPA's decision on the waiver petitions can be found in the November 27, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The waiver decision is potentially of interest to fuel suppliers and food producers.



## REMEDIATION

FEDERAL: EPA issued a memorandum **reinterpreting its position regarding the management of certain wastestreams containing polychlorinated biphenyls (PCBs) generated during building renovation projects**. Under the Toxic Substances Control Act PCB regulations set forth at 40 CFR Part 761, caulk and paint containing 50 ppm or greater PCBs is regulated as PCB bulk product waste when disposed while waste containing PCBs from spills, releases and other unauthorized disposal is regulated as PCB remediation waste, which is more difficult to manage. Previously, where PCBs from caulk or paint leached into other building materials those materials were required to be managed as PCB remediation waste. EPA recently reinterpreted the regulations to allow such materials to be managed as PCB bulk product waste. EPA's draft reinterpretation memorandum would have required PCB-contaminated building materials to be managed as remediation waste if they became separated at any time from the bulk product waste (e.g., caulk or paint). In response to public comments, EPA revised the reinterpretation to allow building wastes designated for disposal as PCB bulk product waste to remain bulk product waste even if the two wastestreams become separated during the removal process. EPA believes that the reinterpretation will facilitate cleanup of PCB-contaminated buildings by simplifying disposal of cleanup materials. The reinterpretation memorandum can be found on EPA's website at: [www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/reinterpret.htm](http://www.epa.gov/osw/hazard/tsd/pcbs/pubs/caulk/reinterpret.htm).

Implications: The reinterpretation is potentially of interest to individuals engaged in building renovation activities.

## ENVIRONMENTAL REVIEW

NEW YORK STATE: The Appellate Division, Second Department, **reversed a lower court decision annulling various agency determinations issued in support of a biomass gasification-to-energy facility** proposed to be constructed in the Town of Montgomery. The owner of land adjacent to the facility sued the town after it granted site plan approval for the first phase of construction of the facility and issued a special use permit. On appeal of a decision annulling the determinations, the appellate division concluded in *High View Estates of Orange County v. Town Board of the Town of Montgomery* that: (1) the Town Board took a hard look at the zoning changes and made a reasoned elaboration of the basis for its determination that the adverse impacts had been mitigated to the maximum extent practicable; (2) the fact that certain design details necessary for subsequent phases of siteplan review had not yet been finalized did not undermine the SEQRA review; and (3) the court erred in annulling the Part 360 solid waste permit issued by DEC.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued a **fact sheet addressing the risks associated with internal combustion engines as ignition sources**. The fact sheet notes that internal combustion engines pose an ignition risk when used in facilities processing flammable liquids and gases. The hazard arises when flammable vapors/gases enter the cylinders of the

engine and change the fuel-to-air ratio potentially leading to elevated engine operating temperatures, sparks, or overspeed and runaway engines. The fact sheet offers guidance on preventing engines from becoming ignition sources, addressing workplace evaluation, implementation of control measures (relating to material and equipment storage, worksite safety programs and safe work permit systems, and use of preventive measures), and training for workers and contractors. It also includes a list of standards and resources that may provide guidance on minimizing the risk. The fact sheet can be found on OSHA's website at: [www.osha.gov/Publications/osha3589.pdf](http://www.osha.gov/Publications/osha3589.pdf).

Implications: The fact sheet is potentially of interest to facilities operating internal combustion engines in the vicinity of flammable liquids/gases.

### Other Recent Developments (Proposed)

#### AIR

FEDERAL: In response to petitions for reconsideration, EPA proposed changes to the **National Emission Standards for Hazardous Air Pollutants (NESHAP)**, otherwise known as the Mercury and Air Toxics Standards (MATS), and **New Source Performance Standards (NSPS) for new coal and oil-fired electric utility steam generating units**. EPA adopted the utility NESHAP and revised the NSPS in February 2012 more than 12 years after first concluding that hazardous air pollutants from utility boilers should be regulated under the NESHAP program. Various industry representatives challenged the rules arguing, among other things, that EPA did not use all of the data in the record when it set the new source emission limits. After considering the petitions for reconsideration, EPA proposed the following changes to the MATS for new utility units: (1) raising the limits for sulfur dioxide (coal and solid oil-derived units), filterable particulate matter (PM) (various units), and lead, selenium and mercury (coal-fired units); (2) revising the rules governing PM monitoring, including requiring emissions testing after every exceedence of the operating limit for new sources and specifying the number of exceedences presumed to be a violation of the standard; and (3) revising key aspects of the rules governing startups and shutdowns, including expanding the list of "clean fuels" that can be burned during startup events. EPA also proposed revisions to key aspects of the utility NSPS. EPA is accepting comments on the proposed revisions until **December 31, 2012**; they can be found in the November 30, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed revisions are primarily of interest to owners/operators of power plants.

#### OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration is beginning a **regulatory review of its existing construction standards with the goal of removing or revising requirements that are confusing or outdated, or that duplicate, or are inconsistent with other standards**. This is the fourth phase of OSHA's Standards Improvement Project (SIP), which was initiated in 1995. With the recent notice, OSHA is asking the public to identify as part of SIP-IV the standards that are in need of revision or



removal and explain how the action will reduce the regulatory burden while maintaining necessary employee protection. Per OSHA, recommendations that require large-scale revisions to standards are not appropriate for this rulemaking; instead, OSHA is seeking suggestions on specific construction-related standards that require streamlining, clarification or deletion, although OSHA will consider recommendations for improvements to non-construction standards. The rule includes examples from prior SIP rulemakings as well as examples of current standards that are under review to provide a flavor for the types of changes to be addressed under SIP-IV. OSHA is accepting recommendations for its SIP-IV regulatory review until **February 4, 2013**; the request for information can be found in the December 6, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The request for information is potentially of interest to individuals/firms in the construction industry.

## Upcoming Deadlines

**NOTE**: This calendar contains items of general interest.

**December 20, 2012**: Public hearing on DEC's proposed revisions to the following regulations scheduled for 2:00 p.m. at DEC Headquarters, 625 Broadway, Albany: (1) sulfur-in-fuel limits; (2) surface coating regulations; and (3) uniform procedures as applied to state facility air permits. NOTE: Additional public hearings are scheduled during the same week in Avon and Long Island City.

**December 28, 2012**: Deadline for submitting comments on EPA's proposed revisions to the stationary combustion turbine NSPS (extended from October 29, 2012). See the August 29, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 28, 2012**: Deadline for submitting comments on revisions to the following DEC rules: (1) sulfur-in-fuel limits; (2) surface coating regulations; and (3) uniform procedures as applied to state facility air permits. See DEC's website at [www.dec.ny.gov/regulations/propregulations.html](http://www.dec.ny.gov/regulations/propregulations.html) for details.

**December 31, 2012**: Deadline for submitting comments on EPA's 610 review of the heavy-duty engine/fuel standards, reinforced plastic composites NESHAP, and CAFO standards/permitting requirements. See the October 31, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 31, 2012**: Deadline for submitting comments on EPA's proposed revisions to the utility boiler NESHAP and NSPS as applied to new sources. See the November 30, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 4, 2013**: Public hearing on DEC's proposed revisions to its SPDES and solid waste regulations to address CAFOs and related composting facilities scheduled for 2:00 p.m. at DEC Headquarters, 625 Broadway, Albany. NOTE: Additional public hearings are scheduled on the same day in Syracuse, Ray Brook and Avon.

**January 11, 2013:** Deadline for submitting comments on DEC's additional proposed revisions to its high-volume hydraulic fracturing regulations. See DEC's website at [www.dec.ny.gov/regulations/77353.html](http://www.dec.ny.gov/regulations/77353.html) for details.

**January 21, 2013:** Deadline for submitting comments on DEC's proposed revisions to various regulations addressing CAFOs and related composting facilities. See DEC's website at [www.dec.ny.gov/regulations/propregulations.html](http://www.dec.ny.gov/regulations/propregulations.html) for details.

**February 4, 2013:** Deadline for submitting comments on OSHA's request for information regarding possible improvements to the construction standards. See the December 6, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.