

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>NEW YORK STATE Economic and Technical Analysis for Reasonably Available Control Technology (RACT) DEC Program Policy DAR-20</p>	<p>DEC issued Program Policy DAR-20, Economic and Technical Analysis for Reasonably Available Control Technology (RACT). The policy includes procedures for conducting the economic and technical feasibility analysis used to determine RACT and evaluate requests for source-specific RACT determinations. RACT is defined as the “[l]owest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility.” Numerous common sources of nitrogen oxides (NOx) and volatile organic compounds (VOCs) must comply with RACT. The policy establishes the thresholds for determining economic feasibility for both NOx and VOCs. It also describes the procedure for requesting a source-specific RACT determination. The request must be submitted to DEC as part of an application for permit renewal or modification and must include various information, including the proposed control technology or strategy, price quotes from vendors, and an economic analysis of air pollution control equipment.</p> <p>DAR-20 can be found on DEC’s website at: www.dec.ny.gov/chemical/91851.html.</p>	<p>The Program Policy is primarily of interest to facilities/activities subject to DEC RACT standards. These include stationary combustion installations, surface coating, petroleum and volatile organic liquid storage and transfer, and graphic arts, among many others. Where a particular source cannot meet the standards set forth in the regulations, DEC will rely on DAR-20 to set source-specific RACT.</p>	<p>The policy takes effect October 18, 2013.</p>
ENVIRONMENTAL REVIEW			
<p>Revised EAFs Take Effect 6 NYCRR § 617.20, Appendices A and B</p>	<p>After a pair of extensions, DEC’s revised long and short environmental assessment forms take effect October 7, 2013. DEC issued the extensions to allow it time to finalize the workbooks and other resources needed to help project sponsors and agencies use the revised forms. The long and short EAFs were significantly revised to address subjects such as climate change and brownfields that are not covered by the existing forms and make other organizational and substantive changes. In conjunction with the rollout of the new EAFs, DEC recently published minor revisions to the forms, clarifying certain questions and correcting technical and typographical errors.</p> <p>Information about the revised EAFs can be found on DEC’s website at: www.dec.ny.gov/permits/70293.html. The rule containing recent corrections to the forms can be found in the September 25, 2013 State Register at: www.dos.ny.gov/info/register.htm.</p>	<p>EAFs are a key component of the State Environmental Quality Review Act process. They are used by local governments, state agencies and other government entities to assess the environmental significance of certain activities they conduct, authorize or fund to determine whether to require a full environmental impact statement.</p>	<p>DEC took comments on the workbooks developed to help complete the short and long EAFs. To date, however, the final workbooks have not been posted on DEC’s website.</p> <p>No comment was sought on the recent rulemaking containing minor corrections to the forms.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
BULK STORAGE			
<p>NEW YORK STATE Liquefied Natural Gas Facilities 6 NYCRR Part 570</p>	<p>DEC proposed regulations implementing a permitting program for the siting, construction and operation of liquefied natural gas (LNG) plants in New York. The regulations implement N.Y. Environmental Conservation Law (ECL) Article 23, Title 17, a statute establishing the parameters for LNG facilities in New York that was enacted in 1976 but never implemented. The proposed rule includes the following key provisions:</p> <ul style="list-style-type: none"> • Applicability. The rule requires all LNG facilities to obtain a DEC permit subject to certain exemptions. LNG facility is defined as any structure or facility used to store LNG in a tank system or other storage device or convert LNG into natural gas. • Permit application requirements. Applications for LNG facility permits must contain: basic information about the location/configuration of the facility, including reasonable alternative locations; a “statement of compliance” issued by a licensed professional engineer attesting that the facility meets various applicable codes; an independent report attesting to the preparedness of the local fire department to respond to emergencies at the facility and establishing a schedule for remedying any deficiencies; and information about the surrounding area. • Criteria for siting and operating facilities. The regulation spells out the standards the facility must meet. In addition, in deciding whether to issue a permit, DEC will consider the risks to persons and property in the area near the facility and the risks from transportation accidents. • Transportation of LNG. Intrastate transportation of LNG is prohibited under the regulation unless the route has been certified by the New York State Department of Transportation. <p>The proposed regulation also addresses permit application procedures, emergency response training, non-conforming facilities, financial assurance, reporting of LNG spills, and other subjects.</p> <p>The proposed regulation and a report summarizing issues associated with New York’s existing LNG moratorium can be accessed at: www.dec.ny.gov/regulations/93069.html.</p>	<p>LNG is a dense, low-pressure, cryogenic liquid phase of natural gas, consisting primarily of methane. Because LNG is significantly condensed, it was traditionally stored for use during peak demand periods. Recently, however, there is growing interest in using LNG as a heavy-duty vehicle fuel because it is comparatively inexpensive and clean burning.</p> <p>In New York State, an accident at an LNG facility on Staten Island in 1973 prompted the State legislature to adopt strict standards for approving LNG facilities. The law was followed by a 1999 ban on LNG facilities in New York City. The siting of new facilities elsewhere in the state is prohibited until DEC issues the regulations required under the ECL. Growing interest in LNG as a possible alternative to diesel fuel prompted the state to propose the regulation after decades of delay.</p>	<p>DEC is accepting comments on the proposed regulation until November 4, 2013. A public information meeting on the proposal will be held on October 30, 2013 at 10:00 a.m. at DEC Headquarters in Albany (with an additional meeting scheduled in Syracuse on October 16, 2013). A legislative hearing to receive comment on the proposed rule will be held on October 30, 2013 at 2:00 p.m. after the public information meeting.</p>

Citation	Summary	Implications	Schedule/Notes
OCCUPATIONAL SAFETY AND HEALTH			
<p>FEDERAL Occupational Exposure to Respirable Crystalline Silica 29 CFR Parts 1910, 1915, and 1926 78 Fed. Reg. 56274 (Sept. 12, 2013)</p>	<p>The Occupational Safety and Health Administration (OSHA) proposed major revisions to the standards for occupational exposure to respirable crystalline silica (RCS), which is generally produced when workers cut, grind, crush or drill silica-containing materials such as concrete, masonry, tile or rock. To minimize the health risks from RCS, OSHA has proposed the following changes to the standards:</p> <ul style="list-style-type: none"> • PEL. Workers' exposures would be limited to a new permissible exposure limit (PEL) of 50 micrograms of RCS per cubic meter of air ($\mu\text{g}/\text{m}^3$) for both construction and general industry. This limit means that over the course of any 8-hour work shift, the average exposure to RCS cannot exceed 50 $\mu\text{g}/\text{m}^3$. Respirable crystalline silica covers quartz, cristobalite, and tridymite. • Exposure assessment. With one notable exception, employers must assess the exposure of any employees who are exposed or may reasonably be expected to be exposed to RCS at or above an action level of 25 $\mu\text{g}/\text{m}^3$. If the action level is exceeded, the employer must conduct a periodic exposure assessment according to procedures spelled out in the regulations. Employers in the construction industry can avoid the exposure assessment process by fully implementing specific controls spelled out in the regulations. In addition, certain construction activities require employees to use respirators unless the employer conducts an exposure assessment. • Regulated areas and access control. Where an employee's exposure to RCS exceeds or can reasonably be expected to exceed the PEL, the employer must either establish regulated areas or implement a written access control plan. • Methods of compliance. The rule establishes a hierarchy of controls which employers must use to reduce and maintain exposures to RCS at or below the PEL, including substitution, isolation, ventilation, and/or dust suppression. Where these measures are insufficient to reduce exposure below the PEL, employers must implement respiratory protection. • Communication. The proposed rule including a section outlining the hazardous communication requirements applicable to RCS. <p>The proposed amendments to the RCS standards can be found in the September 12, 2013 Federal Register at: www.gpo.gov/fdsys.</p>	<p>Crystalline silica particles can cause serious diseases, including silicosis, lung cancer, chronic obstructive pulmonary disease, and kidney disease. According to OSHA, the existing PELs, which have not been updated for decades, do not adequately protect worker health and are difficult to understand and implement. Moreover, the PEL for construction and shipyard workers is more than twice that for general industry.</p> <p>OSHA estimates that about 2.2 million workers are exposed to RCS in the workplace; the majority of these workers (about 1.85 million) are in the construction industry. The standards are intended to provide equivalent protection for all workers while accounting for the different work activities, anticipated exposures, and other conditions in these sectors.</p>	<p>OSHA is accepting comments on the proposed revisions until December 11, 2013. In soliciting comment on the standards, OSHA has included a list of 86 questions to which it seeks answers from the public.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA **revised the New Source Performance Standards (NSPS) for the oil and natural gas sector**. EPA's original NSPS, set forth at 40 CFR Part 60, subparts KKK and LLL, addressed emissions of volatile organic compounds and sulfur dioxide from new, modified and reconstructed natural gas processing plants. Following a periodic review required under 42 USC § 7411(b), EPA adopted new standards, set forth at 40 CFR Part 60, subpart OOOO, that address emissions from processing plants as well as upstream production activities and transmission and storage facilities. Immediately after the standards were adopted, EPA determined that it had underestimated the number of tanks subject to the rule; as a result, industry complained that there would not be sufficient control equipment to meet the standard by the deadlines in the rule. Although EPA determined during the comment period that the shortage was not as serious a problem as initially thought, EPA nevertheless extended the deadlines for operators to comply with the emission standard requirements; the applicable deadline depends on when the storage vessel was installed. EPA also amended the regulations to: (1) clarify which tanks are subject to the rule; (2) establish an alternative emission limit for storage vessels that allows facilities to demonstrate compliance by showing that uncontrolled emissions from a vessel are less than 4 tons per year. (Previously, all regulated vessels were required to reduce VOC emissions by 95%); (3) revise the definitions of "storage vessel" and "storage vessel affected facility;" and (4) streamline the compliance monitoring requirements for storage vessels. The rulemaking took effect on September 23, 2013 and can be found in the Federal Register issued on that date at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to oil and natural gas processing facilities.

WATER

FEDERAL: The Coast Guard adopted regulations **requiring owners or operators of certain nontank vessels to prepare and submit oil spill response plans** similar to those required for tank vessels. The rule, which is set forth primarily at 33 CFR Part 155, subpart J, implements 2004 revisions to the Federal Water Pollution Control Act requiring nontank vessel owners and operators to prepare and submit oil and hazardous substance discharge response plans to the Coast Guard. Prior to the rulemaking, the requirements for nontank vessels were being implemented via Coast Guard guidance. The rule aligns with the existing tank vessel response plan requirements but has been tailored based on the ship's oil capacity (with fewer requirements for ships with relatively small quantities of oil on board). The final rule takes effect October 30, 2013. It can be found in the September 30, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule will primarily affect owners/operators of self-propelled nontank vessels of 400 gross tons or more that operate on the navigable waters of the United States (including the territorial seas) and carry oil for main propulsion purposes.

OTHER

FEDERAL: The Pipeline and Hazardous Materials Safety Administration (PHMSA) **published a revised statement of policy updating its baseline penalty assessment for violations of the hazardous materials regulations** and clarifying the additional factors affecting penalty amounts. The PHMSA's penalty assessment criteria are contained in 49 CFR Part 107, subpart D, Appendix A, which lists the baseline penalty amount for a wide variety of frequently cited hazardous material transportation violations and identifies the aggravating/mitigating factors considered by the PHMSA in determining a final penalty. As described by the PHMSA, the Appendix A baseline penalties are guidelines only and are subject to adjustment, as appropriate, for the specific facts of individual cases. The revised statement of policy took effect October 1, 2013; it can be found in the October 2, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: This notice is primarily of interest to companies that ship hazardous materials.

Other Recent Developments (Proposed)

AIR

FEDERAL/NEW YORK STATE: EPA **determined that New York County has attained the coarse particulate matter (PM₁₀) national ambient air quality standard (NAAQS)** based on ambient air monitoring data collected from 2010 through 2012. The determination relieves New York of the obligation to submit an attainment demonstration, reasonably available control measures, a reasonable further progress plan, and contingency measures relating to attainment of the PM₁₀ NAAQS. The determination does not constitute formal redesignation of the area to attainment, which requires EPA to approve a maintenance plan, among other measures. If the area later exceeds the standard, the state will be expected to address the applicable requirements for the PM₁₀ NAAQS. EPA is accepting comments on the proposed clean data determination until **October 15, 2013**; it can be found in the September 13, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The announcement is primarily of interest to companies located in New York City.

CLIMATE CHANGE

FEDERAL: EPA proposed **amendments to address confidentiality concerns under EPA's greenhouse gas (GHG) reporting program**, which requires certain industrial sources and fuel and chemical suppliers to submit annual reports quantifying their GHG emissions. In a July 2010 rulemaking on data confidentiality, the agency concluded that data elements that are inputs to emission equations are "emission data" under the GHG reporting rule and must therefore be available to the public pursuant to Clean Air Act § 114(c). Industry objected strongly to this conclusion, arguing that certain data inputs, such as product compositions and raw materials, are trade secrets and should remain confidential. In 2011, EPA deferred certain reporting deadlines to allow it time to gather

information and evaluate the potential impact of releasing various equation inputs. With the recent rulemaking, EPA proposed regulations based on the results of that review. Among other things, EPA is proposing to require certain source categories regulated under the GHG reporting program to use an EPA-provided input verification tool that calculates emissions, performs electronic verification of the information provided by the reporting company, and generates a verification summary without retaining the entered inputs. In addition, for certain reporters required to use the input verification tool, EPA added new data elements to be reported for verification purposes and proposed confidentiality determinations for the new data elements. Finally, EPA proposed changes to the reporting program's recordkeeping requirements. EPA is accepting comments on the proposed rule until **November 12, 2013**; it can be found in the September 11, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to companies required to report emissions under the GHG reporting rule.

WATER

NEW YORK STATE: DEC has issued a **draft *Hudson River Estuary Habitat Restoration Plan*** to guide restoration and protection actions that will sustain priority habitats in the Hudson River estuary from the federal dam at Troy to the Tappan Zee Bridge. The plan identifies four priority habitat types—intertidal areas, shallow water, shorelines, and tributary streams—each of which is important to maintaining the health of the estuary, has been degraded or destroyed by human activity, and presents opportunities for restoration/revitalization. The plan goes on to identify five types of activities intended to restore these four priority habitats: (1) preserve existing estuary habitat, including protection of adjacent shorelands; (2) restore side channels, including tidal wetlands, vegetated shallow waters, back waters and intertidal habitats; (3) promote and implement fish passage, dam removal and culvert right-sizing in tributaries to the Hudson; (4) promote and implement use of ecologically enhanced shoreline treatments where shoreline stabilization is required to protect property or other economic assets; and (5) implement programs to control invasive species. The plan is intended for use by community groups, government agencies, scientists and others to plan, prioritize, carry out and evaluate habitat restoration projects, advance knowledge about priority species, and guide habitat protection efforts, among other goals. DEC is accepting comments on the draft plan until **October 31, 2013**; the draft plan can be found on DEC's website at: www.dec.ny.gov/lands/4920.html.

Implications: The draft plan is primarily of interest to facilities/communities located near or discharging to the Hudson River from the Troy Dam to the Tappan Zee Bridge. A separate plan has been developed for the southern portion of the estuary.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

October 7, 2013: Deadline for submitting comments on EPA's preliminary 2012 Effluent Guidelines Program Plan. See the August 7, 2013 Federal Register at www.gpo.gov/fdsys for details.

October 9, 2013: Deadline for submitting comments on EPA's proposed rules implementing emission standards for formaldehyde from composite wood products (extended from August 9, 2013). See the June 10, 2013 Federal Register at www.gpo.gov/fdsys for details.

October 15, 2013: Deadline for submitting comments on the Lake George Park Commission's mandatory aquatic invasive species vessel inspection program. See the August 21, 2013 State Register at docs.dos.ny.gov/info/register/2013/aug21/toc.html for details.

October 15, 2013: Deadline for submitting comments on EPA's proposed clean data determination for the New York County PM₁₀ nonattainment area. See the September 13, 2013 Federal Register at www.gpo.gov/fdsys for details.

October 21, 2013: Deadline for submitting comments on the potential development of a new alternative dispute resolution program to be administered by the Occupational Safety and Health Review Commission. See the August 22, 2013 Federal Register at www.gpo.gov/fdsys for details.

October 28, 2013: Deadline for submitting comments on EPA's proposed NPDES electronic reporting rule. See the July 30, 2013 Federal Register at www.gpo.gov/fdsys for details.

October 30, 2013: Public information meeting and legislative public hearing on DEC's proposed LNG regulation scheduled for 10:00 a.m. and 2:00 p.m., respectively, at DEC Headquarters, 625 Broadway, Albany. An additional public information meeting is scheduled for October 16, 2013 in Syracuse.

October 31, 2013: Deadline for submitting comments on DEC's *Draft Hudson River Estuary Habitat Restoration Plan*. The Plan can be accessed on DEC's website at www.dec.ny.gov/lands/4920.html.

November 4, 2013: Deadline for submitting comments on EPA's proposed revisions to the reciprocating internal combustion engine NESHAP. See the September 5, 2013 Federal Register at www.gpo.gov/fdsys for details.

November 4, 2013: Deadline for submitting comments on DEC's proposed regulation for LNG facilities. See DEC's website at www.dec.ny.gov/regulations/93069.html for details.

November 12, 2013: Deadline for submitting comments on EPA's proposed revisions to reporting, recordkeeping and confidentiality provisions of GHG reporting rule. See the September 11, 2013 Federal Register at www.gpo.gov/fdsys for details.

December 3, 2013: Deadline for submitting comments on EPA's proposed revisions to the water quality standards regulations. See the September 4, 2013 Federal Register at www.gpo.gov/fdsys for details.

December 11, 2013: Deadline for submitting comments on OSHA's proposed amendments to the standards for occupational exposure to respirable crystalline silica. See the September 12, 2013 Federal Register at www.gpo.gov/fdsys for details.