

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

**April 4, 2014**

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
<b>CLIMATE CHANGE</b>			
<p>FEDERAL <b>Climate Action Plan: Strategy to Reduce Methane Emissions</b> (Mar. 2014)</p>	<p>As a follow-up to its June 2013 Climate Action Plan, the Obama administration recently issued a <i>Strategy to Reduce Methane Emissions</i>, outlining measures it plans to undertake to reduce emissions of methane, a powerful greenhouse gas. The strategy focuses on the four major sources of human-related methane: landfills, coal mining, agriculture, and oil and gas.</p> <ul style="list-style-type: none"> <li>• <b>Landfills.</b> To address methane emissions from landfills, the administration is proposing to: update its current standards for new municipal solid waste landfills; issue an advanced notice of proposed rulemaking (ANPR) seeking comments on reducing methane emissions from existing landfills; promote voluntary energy recovery projects at landfills through EPA’s existing Landfill Methane Outreach Program; and challenge stakeholders to reduce, recover or recycle food waste.</li> <li>• <b>Coal mining.</b> The strategy calls for the administration to release an ANPR seeking public input on a possible program to capture, sell or dispose of waste mine methane from federal coal leases and work with industry to encourage recovery and beneficial use of methane.</li> <li>• <b>Agriculture.</b> Agriculture is the largest source of human-related methane emissions. To address these emissions, the strategy identifies voluntary actions to encourage manure management with anaerobic digestion and biogas utilization, including developing a biogas roadmap outlining strategies to accelerate adoption of biogas systems and other cost-effective technologies and providing financial and other technical assistance through initiatives to support biogas system deployment.</li> <li>• <b>Oil and gas.</b> EPA’s recent standards reducing emissions of volatile organic compounds from wells and other oil and natural gas-related sources also incidentally reduce methane emissions. As part of its methane reduction strategy, the administration also is proposing to: continue providing technical assistance to the states, who are primarily responsible for regulating oil and gas production and distribution; issue white papers on potentially significant sources of methane in the oil and gas sector and assess whether to set emission standards or guidelines; enhance existing partnerships; develop regulations limiting venting and flaring on public lands; and other measures.</li> </ul> <p>The strategy document can be found at the following web site: <a href="http://www.whitehouse.gov/sites/default/files/strategy_to_reduce_methane_emissions_2014-03-28_final.pdf">www.whitehouse.gov/sites/default/files/strategy_to_reduce_methane_emissions_2014-03-28_final.pdf</a>.</p>	<p>The four sectors addressed in the strategy account for approximately 93% of human-related methane emission in the United States as follows: agriculture (36%); natural gas and petroleum systems (29%); landfills (18%); and coal mining (10%). For the most part, the administration’s methane emission reduction strategy emphasizes voluntary measures and direct implementation of programs on federal lands. The strategy only commits to adopting one new rule to address methane emissions (revised emissions standards for new municipal solid waste landfills). In addition, the strategy requires EPA to explore two possible additional rulemakings (standards for existing landfills and oil and natural gas production and distribution). EPA also is proposing actions to improve methane emissions measurement and monitoring.</p>	

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<b>WATER</b>			
<p>FEDERAL  <b>Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category</b>            40 CFR Part 450            79 Fed. Reg. 12661            (Mar. 6, 2014)</p>	<p><b>EPA revised its effluent limitations guidelines and standards for the construction and development point source category to delete the numeric discharge standard for turbidity and make other changes.</b>            In December 2009, EPA established minimum erosion and sediment control, soil stabilization, and pollution prevention measures to reduce turbidity and sediment discharges from construction sites. In addition, sites disturbing 10 acres or more were required to comply with a controversial turbidity limit of 280 nephelometric turbidity units (NTUs) and monitor compliance with that limit. In a lawsuit brought by the National Association of Home Builders challenging the NTU standard, EPA conceded on a motion for partial vacature of the final rule that it “improperly interpreted the data” and that the calculations in the record were therefore inadequate to support the 280 NTU limit. EPA stayed the numeric standard in 2010 and entered into a settlement in 2012 in which it agreed to withdraw the standard and make other changes to the Part 450 regulations. In fulfillment of that agreement, EPA withdrew the numeric turbidity effluent limitation and monitoring requirements. In addition, EPA revised 40 CFR Part 450 to: (1) add a definition of “infeasible” to clarify when permittees can elect not to install specific controls; (2) clarify that permit holders are responsible only for erosion in the immediate vicinity of discharge points, not channel and stream erosion; and (3) allow permit writers to potentially exempt sites from stabilization requirements where they conclude that the soil is likely to be disturbed as a result of purpose of the site, e.g., a motocross track.</p> <p>The rule can be found in the March 6, 2014 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rulemaking is primarily of interest to those engaged in construction activities. Although EPA abandoned the numeric turbidity limit, the agency reserved the paragraphs for potential revisions “should EPA decide to propose and promulgate additional effluent limitations guidelines and monitoring requirements in a future rulemaking.” 79 Fed. Reg. at 12665. EPA expressed some concern that imposing numeric limits could create a disincentive to pursue green infrastructure techniques for managing stormwater, noting that numeric limits could necessitate installation of a sediment basin or impoundment, discouraging installation of distributed stormwater controls.</p>	<p>The rule takes effect <b>May 5, 2014</b>.</p>

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<b>WATER</b>			
<p>NEW YORK STATE  <b>Revised New York State Design Standards for Intermediate Sized Wastewater Treatment Systems</b>                      (Mar. 5, 2014)</p>	<p>DEC issued <b>revised <i>New York State Design Standards for Intermediate Sized Wastewater Treatment Systems</i></b>, which are intended to provide licensed professional engineers and others with guidance on the design, operation and maintenance of intermediate-sized wastewater treatment facilities, a category that includes systems that discharge more than 1,000 gallons per day (gpd) of sanitary-only wastewater to ground water or any quantity to surface water. The manual is organized into nine sections:</p> <ul style="list-style-type: none"> <li>• <b>Facility planning and permitting.</b> Process for planning, locating and designing a wastewater treatment system under the State Pollutant Discharge Elimination System and State Environmental Quality Review Act processes.</li> <li>• <b>Project evaluation.</b> Site and soil evaluation criteria, flood protection, wastewater characterization, design flows and other criteria.</li> <li>• <b>Sewage systems and sewage pumping stations.</b> Addressing building sewers; conventional gravity sewers, manholes and pump stations; effluent sewers; conventional force mains; and other equipment.</li> <li>• <b>Preliminary and primary treatment, flow measurement and appurtenances.</b> Information on components that precede secondary treatment, e.g., septic tanks, effluent screens/filters, dosing stations, distribution boxes and flow splitters, and other equipment.</li> <li>• <b>Subsurface treatment and discharge.</b> Application of pretreated wastewater to soil.</li> <li>• <b>Secondary treatment.</b> Information on fixed film (e.g., sand filters, fabric, gravel, peat and other materials) and suspended growth systems (e.g., activated sludge and sequencing batch reactors).</li> <li>• <b>Tertiary treatment.</b> Information on granular media filtration, physical-chemical treatment, biological nutrient removal, and constructed wetlands.</li> <li>• <b>Innovative systems and variances.</b></li> <li>• <b>Disinfection and reoxygenation.</b></li> <li>• <b>Operation, maintenance and control.</b> Addresses need for certified plant operators, emergency repair and rehabilitation, instrumentation and alarms, and residuals hauling, among other subjects.</li> </ul> <p>The design standards can be found on DEC's website at:  <a href="http://www.dec.ny.gov/chemical/79072.html">www.dec.ny.gov/chemical/79072.html</a>.</p>	<p>The design standards apply to wastewater treatment systems serving residences, restaurants, businesses and other facilities that discharge more than 1,000 gpd of sanitary wastewater, without the admixture of industrial or other wastes to groundwater and any discharge of sanitary-only wastewater to surface water, regardless of quantity. Smaller residential systems (i.e., those discharging less than 1,000 gpd of sanitary wastewater onsite) are regulated by the New York State Department of Health under 10 NYCRR Appendix 75-A.</p>	

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA revised the **National Emission Standards for Hazardous Air Pollutants (NESHAP) for various chemical production-related categories following a residual risk and periodic technology review**. Under Clean Air Act § 112, 42 USC § 7412, EPA must assess whether any residual risk remains after imposing technology-based standards and revise them as necessary. EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. Following the residual risk review process, EPA concluded that the existing maximum achievable control technology (MACT) standards for sources in the following categories, set forth at 40 CFR Part 63, provide an ample margin of safety to protect public health and that no changes were necessary to address residual risk: (1) group IV polymers and resins (subpart JJJ); (2) pesticide active ingredient production (subpart MMM); and (3) polyether polyols production (subpart PPP). EPA also concluded for each standard that there were no advances in practices, processes and control technologies applicable to the emission sources and so proposed no revisions following the technology review. However, consistent with other recent NESHAP rulemakings, EPA required facilities to comply with MACT standards at all times, including during startup and shutdown, and established an affirmative defense to civil penalties for exceedances of emission standards caused by malfunctions. In addition, EPA required monitoring of pressure relief devices in organic HAP service that release to the atmosphere. Finally, the rule requires electronic reporting of performance test results to EPA. With respect to facilities in the Group IV polymers and resins category, EPA also established standards for control of previously unregulated HAP emissions from equipment leaks and process contact cooling towers for certain subcategories of sources. The rule took effect March 27, 2014; can be found in Federal Register issued on that date at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The revisions to the NESHAPs are primarily of interest to sources in the listed categories. EPA estimates that there are 31 facilities subject to the group IV polymers and resins standard, 18 facilities subject to the pesticide active ingredient production standard, and 23 facilities subject to the polyether polyols production standard.

### REMEDATION

FEDERAL: The Court of Appeals for the Second Circuit recently **declined to hold a responsible party liable under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) when a general contractor failed to pay a subcontractor for remediation services**. In *Price Trucking Corp. v. Norampac Industries, Inc.*, 2014 WL 1012835 (2d Cir. 2014), Norampac Industries, the owner of the remediation site, retained AAA Environmental to perform remedial work, including excavation and removal of contaminated soil. AAA Environmental, in turn, subcontracted with Price Trucking Corp. to transport and dispose of the soil. When AAA Environmental failed to pay Price in full for its services, Price sued the site owner alleging that the owner was liable under CERCLA § 107, 42 USC § 9607. After concluding that the text of CERCLA § 107 did not resolve the matter, the court examined the purpose of the liability provision and concluded that while Norampac was clearly responsible for the cleanup under

CERCLA, it had accepted that responsibility and borne the cost of its actions when it paid for the site cleanup. However, having paid for the cleanup, its liability under the CERCLA statute was discharged; CERCLA did not treat the site owner as a surety in disputes between or among contractors and subcontractors. The court went on to consider the role of state law, concluding that CERCLA was not meant to provide a substitute for the usual rules governing how contractors and subcontractors are paid.

Implications: The case clarifies that CERCLA does not affect the relationship between contractors and subcontractors at remedial sites.

## ENVIRONMENTAL REVIEW

NEW YORK STATE: The Appellate Division, Second Department, **concluded that a decision by a village board of trustees to adopt State Environmental Quality Review Act (SEQRA) findings in connection with various zoning approvals was not ripe for judicial review.** In *Patel v. Board of Trustees of Incorporated Village of Muttontown*, 2014 WL 1042817 (2d Dept. 2014), the applicant sought a special use permit and site plan approval in conjunction with a development project. After finding that the project would have a significant impact on the environment, the board of trustees required an environmental impact statement (EIS). The board reviewed the final EIS and issued positive SEQRA findings, which project opponents immediately challenged. The court agreed with petitioners that the issuance of the SEQRA findings was not a final agency action since it did not inflict injury in the absence of an actual determination on the underlying applications for a special use permit and site plan approval. As a result, the challenge was not ripe and must be dismissed.

Implications: The decision clarifies that SEQRA findings cannot be challenged until the local government takes action on the underlying applications they support.

## ZONING

NEW YORK STATE: The Appellate Division, Fourth Department, **affirmed a lower court decision upholding a town planning board's denial of an applicant's request for an extension of a special use permit in the face of changes to the project.** In *Allegany Wind LLC v. Planning Board of Town of Allegany*, 2014 WL 1099718 (4th Dept. 2014), a wind developer requested a second extension of a special use permit authorizing construction of a 29-turbine wind farm. The town planning board denied the application in the face of evidence that the project developer was considering new turbine models. The court agreed with the lower court that there had been a material change in circumstances since the special use permit was issued and that the board's decision denying the extension was not arbitrary and capricious. In support, the court noted, among other things, that there was evidence that the alternate turbines would result in noncompliance with the town's noise setback requirements. The court rejected the developer's suggestion that the expiration date of the special use permit was tolled during the pendency of a lawsuit filed by opponents of the project after finding that the petitioner's failure to proceed with the project was due to factors other than the litigation.

## Other Recent Developments (Proposed)

### AIR

FEDERAL/NEW YORK STATE: EPA **proposed to approve New York's plan for implementing and enforcing the emission guidelines for existing sewage sludge incineration (SSI) units.** In 2011, EPA adopted New Source Performance Standards and emission guidelines for SSIs located at wastewater treatment facilities designed to treat domestic sewage sludge. Under Clean Air Act § 129(b)(2), 42 USC § 7429(b)(2), states with existing sources covered by emission guidelines must submit a plan to EPA explaining how the state will implement the guidelines. In 2012, DEC amended its existing incinerator standards, set forth at 6 NYCRR Part 219, to incorporate the federal emission guidelines, including all relevant standards, compliance schedules and definitions. With the current rulemaking, EPA determined that New York's plan meets the applicable criteria for regulating existing SSIs and proposed to approve it. EPA is accepting comments on the proposed rulemaking until **April 24, 2014**; it can be found in the March 25, 2014 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: DEC has identified 12 known SSI facilities in the state with 21 SSI units.

### OTHER

NEW YORK STATE: DEC is **accepting applications for New York's Annual Environmental Excellence Awards**, which recognize businesses, educational institutions, governments, non-profit organizations, and individuals that have achieved environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Applicants must be in good standing with the Environmental Conservation Law and pertinent local laws; projects must go beyond standard techniques or regulatory requirements or demonstrate measurable environmental and economic benefits. Complete applications must include an application cover sheet and application checklist as well as project information, including a summary, general description, and information relating to: innovation, sustainability, and/or partnerships; superior practices; measurable environmental, economic and social benefits; commitment and leadership in pursuit of environmental excellence; transferability to other users; funding sources; and other details and supporting documentation. Projects that are eligible for the award include: green infrastructure projects; initiatives to reduce greenhouse gas emissions; cutting edge pollution prevention technologies; initiatives to "green" businesses; innovative solar, wind and biomass projects; energy efficiency improvements; and other projects. Applications must be postmarked by **May 9, 2014**. The application form and instructions can be found on DEC's website at: [www.dec.ny.gov/public/945.html](http://www.dec.ny.gov/public/945.html).

Implications: The award program provides a way for companies to obtain public recognition of their pollution prevention and reduction efforts.



## Upcoming Deadlines

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

**April 14, 2014:** Deadline for submitting comments on DEC's draft *Environmental Monitoring Services* program policy. This document can be accessed at [www.dec.ny.gov/docs/materials\\_minerals\\_pdf/draftmonitor.pdf](http://www.dec.ny.gov/docs/materials_minerals_pdf/draftmonitor.pdf).

**April 15, 2014:** Deadline for submitting comments on EPA's NODA and request for information on hazardous waste management in the retail sector. See the February 14, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**April 24, 2014:** Deadline for submitting comments on EPA's proposal to approve DEC's plan for implementing and enforcing the sewage sludge incineration unit emission guidelines. See the March 25, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 5, 2014:** Deadline for submitting comments on EPA's draft NSPS for new residential wood heaters, hydronic heaters, forced-air furnaces and masonry heaters. See the February 3, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 9, 2014:** Deadline for submitting comments on EPA's proposed NSPS for greenhouse gas emissions from utility electric generating units (extended from March 10, 2014). See the January 8, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 9, 2014:** Deadline for submitting application for New York's Environmental Excellence Awards. The application and related materials can be found on DEC's website at [www.dec.ny.gov/public/945.html](http://www.dec.ny.gov/public/945.html).