

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, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
REMEDICATION			
FEDERAL Groundwater Remedy Completion Strategy OSWER Directive 9200.2-144 May 2014	<p>EPA issued guidance entitled <i>Groundwater Remedy Completion Strategy</i> that outlines a course of action and decision-making process to achieve groundwater remedial action objectives (RAO) using an updated site model, performance metrics, and data derived from site-specific remedy evaluations. The EPA strategy is comprised of five elements:</p> <ul style="list-style-type: none"> • Understand site conditions. The first step involves obtaining a comprehensive understanding of site conditions and response actions. • Design site-specific remedy evaluations. This step contemplates developing criteria for evaluating the groundwater remedy during implementation based on remedy operations, progress toward achieving groundwater RAOs and associated cleanup levels, and other site factors. • Develop performance metrics and collect monitoring data. This step involves identifying the methods for measuring the performance of remedy operations (extraction rate, capture zone, effluent concentration, etc.), progress (rate of reduction of contaminant volume/mass, microbial populations, etc.) and attainment (individual well concentrations, individual well trends, etc.). This step also involves periodically evaluating the groundwater monitoring network to ensure adequate and accurate assessment of groundwater contaminant concentrations, trends and changes. • Conduct remedy evaluations. This step includes evaluating: (1) the engineering, operating and monitoring components of the remedy; (2) the remedy performance metrics and monitoring data; and (3) whether the well is attaining the RAOs and cleanup levels. • Make management decisions. If the evaluation outlined above shows that the remedial action will not achieve cleanup objectives, the remedy must be reviewed to determine whether other remedial alternatives should be implemented or whether a waiver of applicable or relevant and appropriate requirements is necessary. <p>The guidance can be found at the following website: http://www.epa.gov/superfund/health/conmedia/gwdocs/pdfs/EPA_Groundwater_Remedy_Completion.pdf.</p>	<p>The guidance is potentially of interest to anyone engaged in groundwater remediation activities under the federal Superfund program. The guidance is one of several documents EPA is releasing that are intended to serve as a “roadmap” for addressing groundwater cleanups.</p>	<p>EPA accepted comments on the draft strategy late last year.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
REMEDICATION			
<p>FEDERAL Framework for Identifying and Evaluating Lead-Based Paint Hazards from Renovation, Repair, and Painting Activities in Public and Commercial Buildings 40 CFR Part 745 79 Fed. Reg. 31072 (May 30, 2014)</p>	<p>EPA made available for review a document entitled <i>Framework for Identifying and Evaluating Lead-Based Paint Hazards from Renovation, Repair, and Painting Activities in Public and Commercial Buildings</i>. In 2008, EPA established accreditation, training, certification, work practice, and recordkeeping requirements for persons performing renovations for compensation on pre-1978 housing and child-occupied facilities. In 2010, EPA published an advance notice of proposed rulemaking (ANPR) announcing its intention to establish a lead renovation, repair and painting program for public and commercial buildings. The ANPR provided an overview of the health and environmental issues associated with lead renovation activities and sought comment on key issues, including: (1) the definition of public and commercial building; (2) the extent of lead paint hazards associated with these buildings (both interior and exterior); (3) typical renovation activities and building management practices for these buildings; (4) renovation waste; (5) the renovation workforce; and (6) exposure considerations. The Framework document recently made available for comment explains how EPA will define “lead-based paint hazard” for public and commercial buildings undergoing renovation as well as alternatives for assessing the expected extent of that hazard (i.e., hazard evaluation.) The Framework proposes to use a “scenario-specific approach” to assess risk that takes into account the variable amounts of time spent in such buildings, the age groups of the occupants, the broad heterogeneity in building sizes and configurations, and the short-term nature of the exposure resulting from renovation activities in public and commercial buildings. EPA plans to model exposure to lead from renovations in different types of scenarios, characterize the risk, and develop a program that applies only to those situations that most closely resemble those with predicted adverse health effects. By comparison, EPA’s housing and child-occupied facility renovation rule applies a uniform standard to all regulated entities.</p> <p>The notice announcing the Framework document can be found in the May 30, 2014 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The current rule regulates commercial renovation activities that involve disturbing lead-based paint in pre-1978 housing and child-occupied facilities such as day care centers. EPA is considering extending the renovation program to activities involving disturbance of lead paint at public and commercial buildings, including industrial facilities.</p>	<p>EPA is accepting comments on the Framework document until June 30, 2014.</p>

Other Recent Developments (Final)**AIR**

FEDERAL: The U.S. Supreme Court reversed a federal appeals court decision vacating EPA's controversial Cross-State Air Pollution Rule (CSAPR) after finding that the rule did not require more emission reductions than required by the Clean Air Act (CAA). The CSAPR is an emission cap-and-trade program adopted under the CAA's so-called "good neighbor provision" that addresses ozone and fine particulate matter nonattainment problems in the Northeast by reducing emissions of nitrogen oxides and sulfur dioxide from power plants. The program, which was scheduled to begin January 1, 2012, established state-specific emission budgets based on EPA's quantification of each state's contribution to nonattainment and/or interference with maintenance of the national ambient air quality standards (NAAQS) downwind. In a split decision, the Court of Appeals for the District of Columbia Circuit vacated the CSAPR after finding that it violated the CAA. In *EPA v. EME Homer City Generation, L.P.*, 2014 WL 1672044 (2014), the Supreme Court reversed after concluding, as an initial matter, that EPA did not err when it promulgated federal implementation plans (FIPs) implementing the CSAPR rather than allowing the states to first take steps to implement the rule. The Court found that the CAA requires EPA to adopt a FIP within two years of disapproving a state implementation plan (SIP). In this case, once EPA found that the CSAPR states had failed to satisfy the good neighbor provision, the states had two years to correct the problem or EPA was obliged to implement a FIP. As to the substance of the rule, the Court found that EPA's scheme for allocating emission reductions among upwind states was a permissible, equitable and workable interpretation of the good neighbor provision. The Court rejected the lower court's conclusion that the scheme improperly required certain states to reduce their emissions by more than their contribution to downwind nonattainment, finding instead that EPA's decision to allocate downwind reductions among states based on the relative cost of achieving the reductions was reasonable.

Implications: The decision is primarily of interest to power plants.

FEDERAL: EPA adopted regulations implementing the 1997 and 2006 fine particulate matter (PM_{2.5}) national ambient air quality standards under the particulate matter provisions in CAA Title I, Part D, subpart 4 rather than the more general NAAQS implementation provisions in subpart 1. In *Natural Resources Defense Council v. EPA*, 706 F.3d 428 (D.C. Cir. 2013), the Court of Appeals for the District of Columbia Circuit remanded EPA's PM_{2.5} implementation rule back to EPA after rejecting the agency's argument that the PM implementation standards found in subpart 4 apply only to coarse particulate matter (PM₁₀). EPA's recent rule implements the court decision by: (1) classifying all PM_{2.5} areas currently designated nonattainment for the 1997 and 2006 standards as "moderate;" (2) requiring states to submit by December 31, 2014 any additional state implementation plan elements needed to meet the requirements of subpart 4; and (3) announcing plans to propose a new PM_{2.5} implementation rule later this year and identifying existing rulemakings and guidance documents that states can use to develop their PM_{2.5} SIPs in the interim. The rule can be found in the June 2, 2014 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to states with PM_{2.5} nonattainment areas.

REMEDICATION

FEDERAL: The U.S. Supreme Court concluded that plaintiffs who suffer latent toxic harms in states with “statutes of repose” cannot pursue tort claims against the polluters after finding that such statutes are not preempted by the federal Superfund law’s “discovery rule.” Ordinarily, tort claims must be brought within a specified period after the wrongful act. Under the discovery rule, however, the limitations period for filing a claim begins only when the injury and its cause are known. The federal Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) includes a discovery provision that applies whenever a state statute of limitations lacks a discovery rule. In *CTS Corp. v. Waldburger*, 2014 WL 2560466 (2014), the plaintiff landowners brought a state nuisance action against a neighboring manufacturer for property contamination. The Supreme Court concluded that the claim was barred by North Carolina’s statute of repose, which prevents causes of action from accruing more than 10 years after the last act or omission of the defendant giving rise to the cause of action. In reaching its decision, the Supreme Court acknowledged that while statutes of limitations and statutes of repose are similar, the time periods specified are measured from different points and seek to attain different purposes and objectives. In finding that the Superfund statute’s discovery rule preempted state statutes of limitation but not statutes of repose, the Court noted that the CERCLA statute refers solely to statutes of limitation and includes an equitable tolling provision for minor or incompetent plaintiffs, something which is commonly associated with statutes of limitation. The dissent argued that statutes of repose run counter to the intent of CERCLA and provide an incentive for facilities to conceal pollution.

Implications: The decision is primarily of interest to potentially responsible parties at Superfund sites in states with statutes of repose.

NEW YORK STATE: A state appellate division court found that **owners of a site that formerly operated as a hazardous waste treatment, storage and disposal facility (TSDF) were not responsible for providing financial assurance** under New York’s hazardous waste corrective action program. In *Thompson Corners, LLC v. DEC*, 2014 WL 1924148 (3d Dept. 2014), DEC commenced an enforcement action against the current and former owners of a site with a TSDF alleging that they were liable for cleanup associated with past releases. A DEC administrative law judge found the present and former owners jointly and severally liable for providing financial assurance. In rejecting this finding as arbitrary and capricious, the appellate division court concluded that the corrective action provisions of the state’s hazardous waste program apply only to facilities seeking a permit from DEC. Because the subsequent owners of the site were not involved in the treatment, storage and disposal of hazardous waste and were not subject to the hazardous waste permitting requirements, they were not obliged to provide financial assurance. The court went on to find that the mere presence of a corrective action management unit on the site did not subject the subsequent owners to the financial assurance requirement. According to the court, if the Legislature or DEC had intended to impose strict liability to provide financial assurance on all subsequent owners of property on which a TSDF once operated they would have said so.

Implications: The decision is primarily of interest to owners of former TSDFs.

WATER

NEW YORK STATE: DEC **adopted regulations making certain basic aquatic invasive species preventative measures mandatory at DEC boat launches**. In an effort to minimize the spread of aquatic invasive species, DEC previously implemented an education program, posting signs at DEC boat launches and conducting other outreach to encourage boaters to follow “clean, drained and dry” protocols. With the recent rulemaking, DEC amended 6 NYCRR Parts 59 and 190 to prohibit the launching of watercraft from DEC boat launch, fishing access or other sites with any plants or animals visible to the human eye in, on or attached to the watercraft without a permit from DEC. The regulation also prohibits launching or leaving a site without draining the watercraft, including bilge areas, live wells, bait wells, and ballast tanks, without a permit from DEC. The regulation itself contains few details concerning the criteria governing the granting of permits authorizing the launching/removal of boats that do not meet the cleaned/drained standard. However, the materials accompanying the rulemaking specify that permits will be granted to allow boats to be removed from zebra or quagga mussel-infested waterbodies at the end of boating season for cleaning at the location where the boat will be stored. According to DEC, this alternative is necessary because the mussels are extremely difficult to remove from boat hulls. DEC adopted the proposed regulation without changes. The final rule can be found on DEC’s website at: www.dec.ny.gov/regulations/95111.html.

Implications: The rule applies only to DEC boat launches. Boat launches administered by other state agencies, municipalities or private entities, are not covered by the rule.

NEW YORK STATE: DEC announced the **availability of numerous best management practice (BMP) documents containing specific practices or activities to reduce or control impacts to waters from nonpoint sources**. These BMP documents include: (1) Agricultural Best Management Practice Systems Catalogue (draft); (2) Construction Management Practices Catalogue; (3) Hydrologic and Habitat Modification Management Practices Catalogue; (4) Leaks, Spills and Accidents Management Practice Catalogue; (5) Marina Operations for Existing Facilities; (6) Onsite Wastewater Treatment Systems Management Practices Catalogue; (7) Resource Extraction Management Practices Catalogue; (8) Roadway and Right-of-Way Maintenance Management Practices Catalogue; (9) Silviculture Management Practices Catalogue; and (10) Urban/Stormwater Runoff Management Practices Catalogue. These documents can be found at: www.dec.ny.gov/chemical/96777.html.

Implications: These documents are potentially of interest to facilities engaged in activities covered by the nonpoint source pollution management BMPs.

SAFETY AND HEALTH

FEDERAL: The **Working Group created to implement President Obama’s Executive Order (EO) 13650 relating to chemical safety and security, issued a report entitled *Actions to Improve Chemical Facility Safety and Security – A Shared Commitment***:

Report to the President that summarizes the Working Group's progress, focusing on actions to date, findings and lessons learned, challenges, and priority next steps. The EO directed the federal government to: improve operational coordination with state, local and tribal partners; enhance federal agency coordination and information sharing; modernize policies, regulations and standards; and work with stakeholders to identify best practices. Consistent with that mandate, the Report summarizes stakeholder input, actions taken, and future actions in the following areas: (1) strengthening community planning and preparedness; (2) enhancing federal operational coordination; (3) improving data management; (4) modernizing policies and regulations; and (5) incorporating stakeholder feedback and developing best practices. The Report also includes a Federal Action Plan containing a detailed list of short-term and medium-term action items to be implemented to achieve specific goals. The Report can be found on EPA's web site at: www.epa.gov/emergencies/eo_improving_chem_fac.htm.

Implications: The report is potentially of interest to state and local governments, emergency responders, and facilities that produce, manage or store significant quantities of hazardous chemicals.

OTHER

NEW YORK STATE: DEC issued its **Long Island Pesticide Pollution Prevention Strategy**, which seeks to protect Long Island's drinking water by minimizing pesticide use where possible. Most of Long Island's drinking water is provided by a sole source aquifer system that is overlain by sandy, permeable soils, making pesticide contamination a major concern. The strategy seeks to address this problem by requiring DEC to complete the following steps: (1) conduct an initial assessment of active ingredients (AI) to identify the AIs found most frequently in groundwater on Long Island and their associated risks and select the AIs for which pollution protection measures need to be taken; (2) convene and chair workgroups to study specific AIs and pollution prevention measures; (3) based on work group information, identify and prioritize pesticide pollution prevention measures appropriate for each AI, conduct research on alternative products and practices as well as outreach and education, encourage voluntary label revisions, and consider restricting products to use by certified applicators; (4) track results and assess need for additional modifications, including adoption of regulatory changes, if necessary; and (5) maximize department use of water quality monitoring for pesticides. The strategy can be found on DEC's website at: www.dec.ny.gov/chemical/87125.html.

Implications: The strategy is primarily of interest to pesticide applicators on Long Island.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA **proposed a framework for state agencies to provide data on current air quality in areas with large sources of sulfur dioxide (SO₂) emissions**. EPA established a new NAAQS for SO₂ in 2010 that focuses on short-term exposures. Because of this short-term focus, the NAAQS is considered a "source-oriented" standard rather than a regional one; as a result, strategies to

achieve the NAAQS are expected to focus on large point sources such as power plants and major industrial facilities. Because the current air monitoring network is not adequate to collect the required air quality information, EPA is proposing a strategy that would identify monitoring locations using both source emissions and population data. EPA's preferred option would require monitoring near sources with greater than 1,000 tons per year (tpy) of SO₂ emissions that are located in urban areas with a population of 1,000,000 or more (2,000 tpy for sources located outside these areas). The rule also contains a detailed schedule for implementing the new monitoring strategy. EPA is accepting comments on the proposed monitoring strategy until **July 14, 2014**; it can be found in the May 13, 2014 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to states. The focus on source-oriented monitors is likely to result in the designation of more nonattainment areas than an area-oriented approach.

NEW YORK STATE: DEC is accepting comments on a proposal to **remove the reference to the downstate fine particulate matter nonattainment area from the definition of nonattainment area**. The downstate PM_{2.5} nonattainment area covers New York City, Long Island, and Orange, Rockland and Westchester counties. EPA recently finalized the redesignation of this area from nonattainment to attainment for PM_{2.5}. With this rulemaking, DEC is proposing to revise the definition of "nonattainment area" in 6 NYCRR § 200.1(av)(2) to delete the reference to the PM_{2.5} nonattainment area. This change means that new and modified major PM_{2.5} sources in this area will be subject to the Prevention of Significant Deterioration program rather than the more stringent nonattainment New Source Review program with respect to PM_{2.5} emissions. A series of three public hearings on the proposed rule have been scheduled in Long Island City, Avon and Albany. DEC is accepting comment on the proposed rule until **July 9, 2014**; it can be found at the following website: <http://docs.dos.ny.gov/info/register/2014/may28/pdf/rulemaking.pdf>.

Implications: The proposed rule is primarily of interest to facilities in the New York City metropolitan area.

NEW YORK STATE: DEC is **accepting comments on a proposal to remove as obsolete New York's nitrogen oxide (NOx) budget rule and NOx budget trading program regulations**. 6 NYCRR Part 227-3 established the NOx Emissions Budget and Allowance Program for fossil fuel-fired boilers, certain power plants and other sources to implement a program required for states in the Northeast Ozone Transport Region. DEC followed up with 6 NYCRR Parts 237 and 238, which established the NOx Budget Trading Program, a cap-and-trade program that implemented EPA's "NOx SIP call" and required NOx emission reductions from power plants and large boilers. These programs have since been replaced by regulations set forth at 6 NYCRR Parts 243-245 that implement EPA's Clean Air Interstate Rule (CAIR), a NOx and SO₂ emission trading program that covers a larger area than the NOx Budget Trading Program it replaced. A series of three public hearings on the proposed rule have been scheduled in Long Island City, Avon and Albany. DEC is accepting comment on the proposed rule until **July 9, 2014**; it can be found on DEC's website at: <http://docs.dos.ny.gov/info/register/2014/may28/pdf/rulemaking.pdf>.

Implications: The rule is primarily of interest to power plants and other large combustion sources subject to the various programs.

NEW YORK STATE: DEC **made available for comment its proposed annual monitoring network plan**, which describes New York's air monitoring network. As required by the Clean Air Act, DEC maintains a network of air monitors throughout the state to collect ambient air quality monitoring data for various pollutants, including ozone, particulate matter, and nitrogen oxides, as well as key meteorological data. These data are used by DEC to determine whether an area is achieving national ambient air quality standards; they are also used to determine the impact of a project under the Prevention of Significant Deterioration and other programs. The proposed plan includes an overview of New York's air quality monitoring program, followed by a detailed description of each of the state's air monitoring locations. The only proposed change to the state's air monitoring plan is a reduction in monitoring frequency for a pair of coarse particulate (PM₁₀) monitors in Manhattan and Buffalo. DEC is accepting comments on the proposed plan until **June 20, 2013**; it can be found on DEC's website at: www.dec.ny.gov/chemical/33276.html.

Implications: The plan is primarily of interest to engineers performing air impact analyses.

WATER

FEDERAL: EPA made available for comment **draft updated national recommended water quality criteria for the protection of human health for 94 chemical pollutants**. The Clean Water Act requires EPA to develop and periodically revise criteria for protecting water quality and human health to ensure they accurately address the latest scientific knowledge. In the 2014 update, EPA revised 94 of the existing human health criteria to reflect current scientific information, including updated exposure assumptions (relating to body weight, drinking water, and fish consumption), bioaccumulation factors, updated health risk factors, and relative source contribution. States must consider these criteria when developing their own water quality standards, which consist of designated uses, water quality criteria to protect those uses, and an antidegradation policy. States must conduct a triennial review of water quality standards and are expected to consider updated EPA criteria as part of that process. EPA has developed a fact sheet and summary of the updated input parameters that were used to derive the updated criteria for each of the 94 chemicals under review. EPA is accepting comments on the draft water quality criteria until **July 14, 2014**; EPA's notice of availability can be found in the May 13, 2014 Federal Register at: www.gpo.gov/fdsys.

Implications: The revised water quality criteria may result in the establishment of stricter water quality standards, which, in turn, will result in stricter wastewater discharge permit limits.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

June 13, 2014: Deadline for submitting comments on EPA's proposal to add materials to the list of non-waste fuels allowed to be burned in boilers and industrial furnaces. See the April 14, 2014 Federal Register at www.gpo.gov/fdsys for details.

June 20, 2014: Deadline for submitting comments on DEC's annual air monitoring network plan. See DEC's website at www.dec.ny.gov/chemical/33276.html for details.

June 30, 2014: Deadline for submitting comments on EPA's *Framework for Identifying and Evaluating Lead-Based Paint Hazards from Renovation, Repair and Painting Activities in Public and Commercial Buildings*. See the May 30, 2014 Federal Register at www.gpo.gov/fdsys for details.

July 1, 2014: Public hearings scheduled in Albany on the following DEC rulemakings: (1) elimination of downstate PM_{2.5} nonattainment area based on EPA's recent redesignation of area to attainment; and (2) deletion of obsolete NO_x budget rules for various combustion large sources. Additional hearings are scheduled in Long Island City and Avon.

July 9, 2014: Deadline for submitting comments on the following DEC rulemakings: (1) elimination of downstate PM_{2.5} nonattainment area based on EPA's recent redesignation of area to attainment; and (2) deletion of obsolete NO_x budget rules for various large combustion sources. See <http://docs.dos.ny.gov/info/register/2014/may28/pdf/rulemaking.pdf> for details.

July 14, 2014: Deadline for submitting comments on EPA's draft updated water quality criteria for protection of human health. See the May 13, 2014 Federal Register at www.gpo.gov/fdsys for details.

July 14, 2014: Deadline for submitting comments on EPA's proposed SO₂ ambient air monitoring strategy. See the May 13, 2014 Federal Register at www.gpo.gov/fdsys for details.

October 20, 2014: Deadline for submitting comments on EPA's/Army Corps' proposed rule defining scope of waters protected under the Clean Water Act (extended from July 21, 2014). See the April 21, 2014 Federal Register at www.gpo.gov/fdsys for details.