

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

**August 12, 2014**

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**Proposed Statutes, Regulations and Guidance**

Citation	Summary	Implications	Schedule/Notes
<b>AIR/CLIMATE CHANGE</b>			
<p>FEDERAL  <b>Advance Notice of Proposed Rulemaking on Emission Guidelines for Existing Municipal Solid Waste Landfills</b>                      40 CFR Part 60, subpart Cc                      79 Fed. Reg. 41772                      (July 17, 2014)</p>	<p>EPA published an advance notice of proposed rulemaking (ANPR) seeking public input on proposed revisions to its emission guidelines for “landfill gas” from existing municipal solid waste (MSW) landfills, set forth at 40 CFR Part 60, subpart Cc. Although landfill gas contains methane, carbon dioxide (CO<sub>2</sub>) and nonmethane organic compounds (NMOCs), the current emission guidelines for existing MSW landfills focus on NMOCs. With the recent ANPR, EPA is seeking comment on ways to achieve additional reductions in both methane and NMOC emissions. After providing extensive background on landfill emissions, the ANPR requests input on ways to reduce landfill gas emissions, including methane. Key topics include: the extent to which methane should be addressed under the revised emission guidelines; potential changes to the regulatory framework for existing sources, including adjusting the thresholds that trigger the requirement for landfills to control emissions, adjusting the length of time control equipment must remain operational, and other changes; emission reduction techniques and gas collection and control system best management practices; and alternative monitoring, reporting and other requirements, among other subjects.</p> <p>The ANPR can be found in the July 17, 2014 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The ANPR is primarily of interest to owners/operators of existing MSW landfills.</p> <p>The ANPR was proposed as part of the Obama administration’s Strategy to Reduce Methane Emissions, which was published in March 2014. The strategy focuses on reducing methane emissions from the four major sources of human-related methane: landfills, coal mining, agriculture, and oil and gas.</p>	<p>EPA is accepting comments on the revised emission guidelines until <b>September 15, 2014</b>.</p>
<b>AIR/CLIMATE CHANGE</b>			
<p>FEDERAL  <b>Standards of Performance for Municipal Solid Waste Landfills</b>                      40 CFR Part 60, subpart XXX                      (July 17, 2014)</p>	<p>The same day EPA published its ANPR seeking comment on possible revisions to the emission guidelines for existing MSW landfills EPA also proposed changes to the New Source Performance Standards (NSPS) for new, modified, and reconstructed MSW landfills. The proposal calls for retaining the same design capacity threshold for triggering the NSPS but reduces the NMOC emission level at which MSW landfills must install controls from 50 to 40 megagrams per year. The new standards will be set forth at 40 CFR Part 60, subpart XXX. Although the new NSPS focuses on emissions of NMOC, measures to reduce NMOC emissions also will reduce methane emissions.</p> <p>The proposed rule can be found in the July 17, 2014 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The ANPR is primarily of interest to owners/operators of new, reconstructed and modified MSW landfills.</p> <p>The proposal fulfills EPA’s obligation to review NSPS every 8 years and addresses issues that have arisen over the years concerning implementation of the standard.</p>	<p>EPA is accepting comments on the revised NSPS until <b>September 15, 2014</b>.</p>

Citation	Summary	Implications	Schedule/Notes
<b>BULK STORAGE</b>			
<p>NEW YORK STATE <b>Revisions to Petroleum Bulk Storage Regulations</b> 6 NYCRR Part 613</p>	<p>DEC proposed <b>revisions to the petroleum bulk storage (PBS) regulations</b> to incorporate changes required by the 2005 Energy Policy Act (EPA) and 2008 revisions to New York’s PBS statute and minimize inconsistencies between state and federal requirements for underground storage tanks (USTs). Major changes include:</p> <ul style="list-style-type: none"> <li>• Deleting Parts 612 and 614, consolidating the PBS requirements into Part 613, and establishing separate subparts for UST systems regulated by both EPA and DEC, UST systems regulated only by DEC, and aboveground storage tanks (ASTs).</li> <li>• Conforming the definition of “facility” to the 2008 statute by adding certain USTs larger than 110 gallons and specifying that the term refers to the property on which the tanks are located not the actual tanks. DEC also revised the definition of facility to exclude operational and temporary tanks from regulation.</li> <li>• Conforming the definition of “petroleum” to the 2008 statute and adding the term “petroleum mixture” to clarify when petroleum mixtures are regulated and under what program.</li> <li>• Adopting the federal definition of UST such that partially-buried tanks with 10% or more volume beneath the surface are regulated as USTs not ASTs.</li> <li>• Clarifying that property owners are responsible for tank registration.</li> <li>• Introducing terminology to distinguish among tank systems by age.</li> <li>• Consolidating all PBS recordkeeping requirements in a single table.</li> <li>• Requiring owners of federally regulated USTs to comply with new operator training requirements that differ depending on the individual’s role in managing the tanks (general or day-to-day oversight versus emergency response only).</li> <li>• Implementing statutory provisions barring delivery of petroleum to certain leaking or otherwise inadequate tank systems and establishing a system for “red tagging” tanks.</li> <li>• Incorporating DEC’s existing de minimis oil spill reporting policy into the rules (no reporting required for spills of less than 5 gallons that are contained/controlled and cleaned up within 2 hours of discovery).</li> </ul> <p>The proposed revisions to the PBS regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/92526.html">www.dec.ny.gov/chemical/92526.html</a>.</p>	<p>The proposed revisions are primarily of interest to owners/operators of PBS tank systems and owners of property on which PBS tanks are located.</p> <p>The proposed revisions represent the first major overhaul of the PBS regulations in almost 30 years. Many of the changes—most notably the training and delivery prohibition requirements—are mandated by the 2005 EPA Act. Changes to the definition of facility and petroleum are required to implement the 2008 amendments to New York’s PBS statute. Other changes address long-standing problems with the regulations and/or are intended to improve consistency between the state and federal UST standards.</p>	<p>DEC is accepting comments on the proposed revisions until <b>November 4, 2014</b>. Public hearings are scheduled for <b>October 14, 2014</b> at 3:00 and 7:00 p.m. at Empire State Plaza, Meeting Room 6. A public information meeting is scheduled at 1:00 p.m. before the afternoon public hearing. Additional public hearings are scheduled in October in Rochester and New York City. Also, DEC has scheduled a webinar and several public information meetings in August and September, respectively.</p> <p>A second set of revisions will likely be necessary once EPA finalizes revisions to the federal UST regulations proposed in 2011.</p>

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<b>BULK STORAGE</b>			
<p>EW YORK STATE  <b>Revisions to Chemical Bulk Storage Regulations</b>                      6 NYCRR Parts 596-599</p>	<p>DEC proposed <b>revisions to the chemical bulk storage (CBS) regulations</b> to incorporate changes required by the 2005 Energy Policy Act and 2008 revisions to New York’s hazardous substance bulk storage statute and minimize inconsistencies between the state and federal requirements for USTs. Major changes include:</p> <ul style="list-style-type: none"> <li>• Deleting Part 595, Releases of Hazardous Substances, and relocating the spill reporting requirements to Parts 597 and 598.</li> <li>• Redefining “hazardous substance” to clarify how mixtures containing listed hazardous substances are regulated and better distinguish between petroleum and hazardous substance mixtures.</li> <li>• Adding/deleting substances to/from the list of regulated hazardous substances and clarifying that only listed hazardous substances are regulated under the CBS program.</li> <li>• Conforming the definition of “underground tank system” to the federal definition of UST.</li> <li>• Clarifying that property owners are responsible for tank registration.</li> <li>• Implementing new federal and New York State statutory provisions requiring individuals responsible for actual operation of UST systems to be properly trained. The type of training required depends on the individual’s role in managing the tanks (general oversight versus emergency response only).</li> <li>• Implementing statutory provisions barring delivery of chemicals to certain leaking or otherwise inadequate tank systems and establishing a system for “red tagging” tanks.</li> <li>• Specifying that reportable quantities for spill reporting purposes are measured over a 24-hour period, consistent with federal hazardous substance spill reporting rules. Currently, the regulations do not specify a timeframe for measuring releases.</li> <li>• Establishing a de minimis spill reporting exemption (no reporting of spills above RQ if they are contained and controlled, cleaned up within 2 hours of discovery, total volume of spill is recovered or accounted for, and spill does not result in certain conditions).</li> <li>• Clarifying the rules governing when spills of hazardous substance mixtures must be reported.</li> </ul> <p>The proposed revisions to the CBS regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/92526.html">www.dec.ny.gov/chemical/92526.html</a>.</p>	<p>The proposed revisions are primarily of interest to owners/operators of CBS tank systems. In addition, the changes to the spill reporting requirements potentially affect anyone who manages listed hazardous substances.</p> <p>The proposed revisions represent the first major overhaul of the CBS regulations in almost 20 years. Many of the changes—most notably the training and delivery prohibition requirements—are mandated by the 2005 EPAct. Other changes address long-standing problems with the regulations. For example, the current definition of “hazardous substance” specifically includes petroleum, creating conflicts with the PBS regulations. To eliminate the confusion, DEC clarified when materials containing petroleum are regulated as hazardous substances versus petroleum. DEC also has revised the spill reporting requirements to focus on more significant spills/releases.</p>	<p>See schedule for PBS regulations above.</p> <p>The preliminary draft revisions made available for comment last year defined hazardous substance to include, among other things, materials that met certain relatively broad criteria, such as “substances that cause physical injury or illness to humans when improperly treated, stored, transported, disposed of, or otherwise managed.” DEC dropped this controversial provision; as a result, the regulations apply only to substances specifically listed in the rule.</p>

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<b>BULK STORAGE</b>			
<p>NEW YORK STATE  <b>DEC Program Policy:            DER-40, Operator            Training</b></p>	<p>In conjunction with the proposed revisions to the PBS and CBS regulations, EPA made available for comment <b>a draft program policy, DER-40, Operator Training that summarizes the requirements for training UST operators</b> in fulfillment of the EPAct. Key provisions are summarized below:</p> <ul style="list-style-type: none"> <li>• Class A and B operators (i.e., those with primary and day-to-day responsibility, respectively, for UST systems) must be trained within 12 months of the effective date of the regulations. Once the transition period is over, Class A and B operators must be trained within 30 days of assuming their duties. If a Class A or B operator leaves or dies, the system owner must designate a new operator within 30 days.</li> <li>• DEC will not directly offer training or review/approve third-party training programs. However, DEC will prepare training materials and will develop and administer the required certification exam for Class A and B operators, which can be taken online or in person.</li> <li>• DEC will accept current and valid operating credentials issued by other states or by delegated local governments without requiring passage of the DEC exam.</li> <li>• If a facility is found to be in significant noncompliance, DEC may require the Class A or B operator to be reauthorized or replaced. The criteria for significant noncompliance are spelled out in the policy.</li> <li>• Class C operators (those responsible for responding in an emergency) will be trained and tested under the direction of an authorized Class A or B operator. DEC will provide an outline for Class A and B operators to ensure that Class C operators are properly trained.</li> </ul> <p>The policy includes detailed guidance on the exam administration process.</p> <p>The draft policy can be found on DEC's website at:  <a href="http://www.dec.ny.gov/regulations/2387.html">www.dec.ny.gov/regulations/2387.html</a>.</p>	<p>The draft policy is primarily of interest to owners/operators of underground tank systems that are regulated under both the federal and New York State UST regulations (i.e., petroleum USTs subject to 6 NYCRR subpart 613-2 and all CBS USTs). State-only petroleum USTs and ASTs are not subject to the training program.</p>	<p>DEC is accepting comments on the draft policy until <b>November 4, 2014</b>.</p>

Citation	Summary	Implications	Schedule/Notes
<b>SOLID WASTE</b>			
<p>NEW YORK STATE  <b>Revisions to Used Oil Management Regulations</b>                      6 NYCRR Parts 360-14 and 374-2</p>	<p>In conjunction with the proposed revisions to the PBS and CBS regulations, <b>DEC proposed changes to the used oil management rules</b>, set forth primarily in 6 NYCRR Parts 360-14 and 374-2. These changes are required to conform the used oil tank rules to the PBS changes and incorporate changes necessary to ensure consistency with the federal hazardous waste management program. Major changes include: (1) adding/revising defined terms, including aboveground used oil tank system, accessible underground area, lubricating oil, petroleum refining facility, release, spill, tank system, underground used oil tank, used oil processor/re-refiner, and used oil tank system; (2) clarifying that used oil that is subject to regulation under subpart 374-2 is a solid waste under Part 360; (3) clarifying the regulatory status of PCB-contaminated used oil under the Toxic Substances Control Act; (4) specifying that used oil collectors located at a service or retail establishment must provide alternative means of temporary storage if their used oil tank is “red-tagged” for noncompliance; (5) clarifying the types of shipment records required to be kept by used oil processors/re-refiners; and (6) correcting typographic errors and cross references and making other minor changes.</p> <p>The proposed revisions to the used oil management regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/92526.html">www.dec.ny.gov/chemical/92526.html</a>.</p>	<p>The proposed revisions are primarily of interest to companies that collect, transfer and process used oil and to used oil generators.</p>	<p>See schedule for PBS regulations above.</p>

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<b>WATER</b>			
<p>NEW YORK STATE  <b>SPDES General Permit for Stormwater Discharges from Construction Activity</b>                      GP-0-15-002</p>	<p>DEC proposed a <b>new State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Construction Activity</b> to replace GP-0-10-001, which is scheduled to expire in 2015. Under the SPDES program, stormwater discharges associated with certain construction activities require a permit and must be managed in accordance with a stormwater pollution prevention plan (SWPPP). Major changes in the new general permit include:</p> <ul style="list-style-type: none"> <li>• Incorporating changes required to implement EPA’s construction and development effluent guidelines, which address the selection, design and implementation of erosion and sediment controls; soil stabilization, dewatering, and pollution prevention; and post-construction stormwater management requirements, including sizing criteria for new development and redevelopment activities.</li> <li>• Adding sizing criteria from the <i>New York State Stormwater Management Design Manual</i> (Design Manual). In particular, the draft general permit clarifies when deviations from the Design Manual are allowed and specifies that post-construction stormwater management practices must meet specific sizing criteria contained in the Manual.</li> <li>• Adding definitions for equivalent, infeasible, minimize, performance criteria, and sizing criteria.</li> <li>• Authorizing coverage under the general permit within 5 business days of electronic submission of a notice of intent (NOI), while extending the authorization period for paper submission to 14 business days. The authorization period for projects that deviate from technical standards remains 60 business days.</li> <li>• Clarifying the review and documentation requirements applicable when construction activity has the potential to affect historic or archeological resources.</li> <li>• Expanding the information required to be submitted for permits that include post-construction stormwater management.</li> <li>• Adding Kinderhook Lake to the list of watersheds where enhanced phosphorus removal is required.</li> <li>• Specifying that daily inspections of erosion and sediment controls must be performed by “trained contractors.”</li> </ul> <p>The draft general permit and Design Manual can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/41392.html">www.dec.ny.gov/chemical/41392.html</a>.</p>	<p>The general permit typically covers construction activities involving soil disturbances of one or more acres, although the threshold is lower for activities in certain areas. An owner or operator of a construction activity must obtain coverage under the general permit prior to commencing construction by submitting a NOI form to DEC.</p> <p>In addition to changes to the general permit, DEC has proposed revisions to the Design Manual, relating to runoff reduction volume (RRv) sizing criteria, redevelopment applicability, redevelopment definition, minimum RRv calculation, precipitation data, and pond safety.</p>	<p>DEC is accepting comments on the revised General Permit and Design Manual until <b>September 2, 2014</b>.</p> <p>DEC must review and revise its stormwater general permits once every 5 years.</p>

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<b>OTHER</b>			
<p>FEDERAL  <b>Request for Information Relating to Risk Management Plan Regulations</b>            40 CFR Part 68            79 Fed. Reg. 44604            (July 31, 2014)</p>	<p>EPA is <b>requesting information to help it decide whether to revise the risk management plan (RMP) regulations</b> contained in 40 CFR Part 68. The RMP program requires facilities storing listed hazardous substances above threshold quantities to conduct a hazard assessment and prepare a risk management plan. Last winter, OSHA published a request for information (RFI) on possible changes to its process safety management (PSM) regulations, which implement similar planning requirements targeted at worker safety. EPA is now requesting feedback on the following comparable changes to the RMP program:</p> <ul style="list-style-type: none"> <li>• Updating the list of regulated substances, e.g., adding other toxic or flammable substances, high and/or low explosives, ammonium nitrate, reactive substances and reactivity hazards, and other categories of substances, removing certain substances from the list, and/or raising or lowering threshold quantities.</li> <li>• Adding/revising risk management program elements, e.g., stop work authority, ultimate work authority (requiring employers to identify who has ultimate authority for operational safety issues), role of contractors, and method for conducting process hazard analyses.</li> <li>• Evaluating updates to applicable recognized and generally accepted good engineering practices.</li> <li>• Extending mechanical integrity requirements to cover any safety critical equipment.</li> <li>• Requiring owners/operators to manage organizational change.</li> <li>• Requiring third-party compliance audits.</li> </ul> <p>In addition, EPA is seeking comment on the following items that were not previously raised in the OSHA request for information: (1) requiring substitution of safer technologies/substances, when feasible; (2) requiring emergency drills to test a source's emergency response program/plan; (3) implementing automated detection and monitoring for releases of regulated substances; (4) imposing stationary source siting requirements to minimize possible impacts of chemical accidents; (5) clarifying emergency response program requirements; and (6) requiring investigation of all incidents/accidents, including "near misses."</p> <p>The request for information can be found in the July 31, 2014 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The RMP standard, which was adopted in the early 1990s, applies to facilities with processes that involve certain toxic and flammable chemicals above threshold quantities. In the wake of several high profile chemical accidents, President Obama issued Executive Order 13650, entitled <i>Improving Chemical Facility Safety and Security</i>, that required OSHA to publish a request for information to identify issues relating to modernization of the PSM standards. Because the RMP and PSM standards share certain common requirements, EPA decided to request information on possible changes to the RMP rule.</p>	<p>EPA is accepting information and comments on possible changes to the RMP rule until <b>October 29, 2014</b>.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA **amended the Title V operating permit program regulations** to clarify that material information known to the facility owner/operator must be identified and addressed in Title V compliance certifications. In 2003, EPA mistakenly removed the following sentence from 40 CFR §70.6(c)(5)(iii)(B) and §71.6(c)(5)(iii)(B) in response to a court remand: “If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information.” With this rulemaking, EPA restored this sentence to the Title V air permitting regulations. The change clarifies that owners/operators of Title V facilities must consider all available information in assessing their compliance status, not just that generated by compliance methods specified in the permit. The rule takes effect August 27, 2014; it can be found in the July 28, 2014 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is potentially of interest to facilities with Title V operating permits.

### CLIMATE CHANGE

FEDERAL: EPA **revised the renewable fuel standards (RFS) program to minimize the potential for fraud and improve liquidity** in the renewable fuel credit market. Under the RFS program, each gallon of eligible renewable fuel is assigned a renewable identification number (RIN). Transportation fuel suppliers can meet their renewable fuel volume obligations either by acquiring the required volumes of renewable fuels together with their RINs or purchasing just the RINs without the associated fuel. In recent years, several companies sold RINs without actually producing any renewable fuel, leading to charges of criminal fraud and lawsuits for breach of contract. To address the fraud problem, EPA adopted a quality assurance program that calls for audits of renewable fuel production by independent third parties using quality assurance plans (QAPs) to assure that RINs are properly generated. The rulemaking addresses key elements of the audit program including: minimum requirements for QAPs; qualifications for independent auditors; requirements for audits of renewable fuel production facilities; conditions under which a regulated party could assert an affirmative defense to liability for transferring/using invalid RINs; and identifying the part(ies) responsible for replacing invalid RINs. EPA declined to finalize a second, more stringent QAP option that would have required the auditor to replace any credits that later proved to be fraudulent. Regulated entities have the option of complying with the voluntary audit provisions or continuing to proceed under the current “buyer beware” approach. The final rule takes effect September 16, 2014; it can be found in the July 18, 2014 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The RFS quality assurance rule is primarily of interest to renewable fuel and transportation fuel producers and fuel dealers.

## HAZARDOUS WASTE

FEDERAL: A federal appellate court **vacated the comparable fuels exclusion under the federal hazardous waste program** after finding that the exclusion was inconsistent with the Resource Conservation and Recovery Act (RCRA). After burning hazardous waste as fuel became a common practice, Congress amended the RCRA statute to require EPA to set standards governing the burning of hazardous waste for energy recovery. EPA then adopted the comparable fuels exclusion which exempted fuels that are produced from hazardous waste but are comparable to currently used fossil fuels. In *Natural Resources Defense Council v. EPA*, 2014 WL 2895943 (D.C. Cir. 2014), the Court of Appeals for the District of Columbia Circuit concluded that the comparable fuels exemption violates RCRA, which requires EPA to regulate all hazardous waste fuels, and that EPA therefore lacked discretion to create the comparable fuels exclusion. The court went on to reject EPA's argument that the exclusion itself constituted a "standard," noting that this theory was not part of EPA's rationale offered in support of the 1998 rulemaking and that it could not sustain the rule under this post hoc rationale.

Implications: The decision is primarily of interest to facilities that burn hazardous waste as fuel and their suppliers.

## REMEDIATION

FEDERAL: A federal appellate court **upheld EPA's decision to add a site to the National Priorities List (NPL)** under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) in the face of a challenge that EPA lacked a factual basis for its listing decision. The NPL identifies areas of known or threatened releases of hazardous substances that EPA believes are a priority for remedial action. In *CTS Corp. v. EPA*, 2014 WL 3056493 (D.C. Cir. 2014), EPA initially declined to add a site formerly owned by CTS to the NPL but reversed its decision after evidence showed contamination on neighboring properties. In upholding EPA's NPL listing decision, the court concluded that: (1) EPA performed sufficient testing to address whether alternative sources contaminated wells near the site; (2) substantial evidence supported EPA's determination that there was a hydraulic connection between the neighboring properties and the site; and (3) the court was foreclosed from considering additional studies that were not part of the administrative record.

Implications: The decision provides useful background about the NPL listing process.

## WATER

FEDERAL: A federal appellate court **upheld a lower court decision granting a motion for summary judgment brought by a citizen group for alleged SPDES permit violations involving the discharge of a pollutant that the defendant company allegedly failed to disclose** as part of its permit application. In *Southern Appalachian Mountain Stewards v. A&G Coal Corp.*, 2014 WL 3377687 (4th Cir. 2014), the company responded to allegations that it illegally discharged selenium with the argument that it disclosed pollutants that it knew or had reason to believe were present in its discharge and was therefore protected from enforcement under the

“permit shield.” The court disagreed, noting, among other things, that: (1) the defendant failed to comply with the permit application instructions which required a selenium analysis as part of the application; (2) the defendant failed to affirmatively note whether it believed selenium was present or absent in its discharge as required by the permit application; and (3) these omissions meant that the defendant could not avail itself of EPA guidance applying the permit shield to pollutants not identified as present but which are constituents of wastestreams, operations or processes that were clearly identified in writing during the permit application process and contained in the administrative record.

Implications: The decision reinforces the importance of submitting a complete SPDES permit application to obtain the protection of the permit shield.

## Other Recent Developments (Proposed)

### CLIMATE CHANGE

**FEDERAL: EPA proposed a pair of rules intended to encourage the transition from hydrofluorocarbons (HFCs) to substitutes with a lower global warming potential (GWP).** Title VI of the Clean Air Act requires EPA to phase out the manufacture and use of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs) – two categories of substances that deplete the stratospheric ozone layer and are also powerful greenhouse gases (GHGs). Over the years, users have substituted HFCs for CFCs and HCFCs as a refrigerant, aerosol propellant and foam blowing agent. However, HFCs also are powerful GHGs and EPA is concerned that increased use could aggravate the global climate change problem. As part of the Obama administration’s methane reduction strategy, discussed above, EPA is using its authority under the Significant New Alternatives Policy (SNAP) program to approve HFC substitutes with comparatively low GWPs. In the first of two recent rulemakings, EPA proposed to approve the use of specific flammable refrigerants in stationary equipment such as household refrigerators and freezers, retail food refrigeration, very low temperature refrigeration, vending machines, and other equipment, subject to specific use conditions designed to minimize the risk of fire and explosion. If finalized, the rule would expand the menu of available climate-friendly alternatives. In a related development, EPA proposed to modify the listing under the SNAP program from acceptable to unacceptable for certain HFC and HFC blends in aerosol, foam blowing and air conditioning and refrigerant end uses where other alternatives are available or potentially available. EPA is accepting comments on the two rulemakings until September 8, 2014 and October 6, 2014, respectively. The proposals can be found in the July 9, 2014 and August 6, 2014 Federal Registers at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposals are primarily of interest to companies that manufacture HFCs and those that use HFCs in refrigeration, air conditioning, and other similar equipment.

**FEDERAL: EPA proposed to add chemical-specific and default global warming potentials for various fluorinated greenhouse gases and fluorinated heat transfer fluids (HTFs) to the general provisions of the GHG reporting rule.** The GHG reporting rule, set forth at 40 CFR Part 98, requires sources in listed categories of GHG emitters and suppliers to report their emissions to EPA on a

carbon dioxide-equivalent (CO<sub>2</sub>e) basis. To assist in calculating CO<sub>2</sub>e, Part 98 includes a table listing chemical-specific GWPs for dozens of fluorinated GHGs. The facility calculates its emissions by determining the quantity of each listed GHG emitted, multiplying it by the applicable GWP and summing the results. With this rulemaking, EPA proposed to add fluorinated GHGs to the compendium of GWPs and amend the table to add default GWPs for fluorinated GHGs and HTFs for which peer-reviewed GWPs are not available. According to EPA, these changes will increase the completeness and accuracy of CO<sub>2</sub>e emissions calculated and reported by suppliers and emitters of fluorinated GHGs; however, EPA does not believe the change will significantly expand the number of sources subject to the reporting requirement. EPA is accepting comments on the proposed revisions until **September 2, 2014**; the proposal can be found in the July 31, 2014 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed rule is primarily of interest to facilities that manufacture or use fluorinated GHGs and HTFs.

## REMEDIATION

EPA made available for review various documents that describe a **possible methodology for estimating lead exposures and incremental health effects created by renovations of public and commercial buildings**. EPA currently regulates lead-based paint hazards created by renovation, repair and painting activities in pre-1978 housing and child-occupied facilities and is considering extending the program to public and commercial buildings (P&CB). In May 2014, EPA made available for comment a document entitled *Framework for Identifying and Evaluating Lead-Based Paint Hazards from Renovation, Repair, and Painting Activities in Public and Commercial Buildings* that explains how EPA plans to define “lead-based paint hazard” for P&CBs undergoing renovation as well as alternatives for assessing the expected extent of that hazard (i.e., hazard evaluation.). With the recent notice, EPA announced the availability of documents that describe how EPA is modeling the potential overall magnitude and distribution of renovation-related health effects due to lead exposure in a P&CB, taking into account background lead levels when no such renovation occurs. EPA is accepting comments on the documents until **September 22, 2014**; the notice announcing the documents can be found in the August 6, 2014 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The review process is potentially of interest to owners of older public and commercial buildings and to individuals/companies engaged in renovation, repair and painting of these buildings.

## OTHER

**FEDERAL**: The Department of Transportation’s Pipeline and Hazardous Material Safety Administration (PHMSA), in coordination with the Federal Railroad Administration, **proposed revisions to the hazardous material transportation regulations designed to improve the safety of rail transport of large quantities of Class 3 flammable liquids**. In the past several years, the quantity of crude oil and ethanol transported by rail has increased dramatically and several high-profile accidents/incidents have occurred involving trains carrying flammable liquids. With this rulemaking, EPA proposed new rules for “high-hazard flammable trains,” defined as trains comprised of 20 or more carloads of Class 3 flammable liquids. Key components of the proposed regulations include:

(1) improved classification and characterization of mined gases and liquids, including a requirement to develop a written sampling and testing program that addresses sampling frequency, position on the supply chain, sampling and testing methods, and other information; (2) rail routing risk assessment that calls for considering various safety and security factors; (3) notification of state emergency response commissions for all trains containing at least one million gallons of Bakken crude oil; (4) reduced operating speeds; (5) enhanced braking; and (6) enhanced standards for new and existing tank cars. The PHMSA is accepting comments on the proposed rule until **September 30, 2014**; the proposed rule can be found in the August 1, 2014 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed rule is potentially of interest to crude oil producers, shippers and distribution facilities. Albany has become a major transshipment point for Bakken crude oil. As a result, there is major local interest in the proposed rule.

## Upcoming Deadlines

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

**September 2, 2014**: Deadline for submitting comments on DEC's proposed revisions to the General SPDES permit for stormwater discharges from construction activity and the related Design Manual. See DEC's web site at [www.dec.ny.gov/chemical/41392](http://www.dec.ny.gov/chemical/41392) for details.

**September 2, 2014**: Deadline for submitting comments on EPA's proposal to add GWPs to the GHG reporting rule. See the July 31, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**September 8, 2014**: Deadline for submitting comments on EPA's proposal to identify certain flammable refrigerants as an acceptable substitute for HFCs under the SNAP program. See the July 9, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**September 15, 2014**: Deadline for submitting comments on the following rulemakings relating to air emissions from MSW landfills: (1) advanced notice of proposed rulemaking on emission guidelines for existing MSW landfills; and (2) proposed NSPS for new, reconstructed and modified MSW landfills. See the July 17, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**September 22, 2014**: Deadline for submitting comments on documents containing a possible methodology for estimating lead exposures and incremental health effects created by renovations of public and commercial buildings. See the August 6, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**September 30, 2014**: Deadline for submitting comments on the PHMSA's proposed rules addressing "high hazard flammable trains." See the August 1, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**October 6, 2014:** Deadline for submitting comments on EPA's proposal to reclassify certain HFCs from acceptable to unacceptable substitutes under the SNAP program. See the August 6, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**October 7, 2014:** Deadline for submitting comments on EPA's proposed revisions to grain elevator NSPS. See the July 9, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**October 14, 2014:** Public hearings scheduled in Albany on DEC's proposed revisions to the PBS, CBS and used oil regulations. Additional hearings are scheduled in Rochester and New York City. In addition, DEC is conducting a webinar and several public information meetings about the proposed rulemaking.

**October 16, 2014:** Deadline for submitting comments on EPA's proposed carbon pollution emission guidelines for existing power plants and emission standards for modified and reconstructed power plants. See the June 18, 2014 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.gpo.gov/fdsys) for details.

**October 29, 2014:** Deadline for submitting comments on EPA's request for information on possible revisions to its risk management plan regulations. See the July 31, 2014 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**November 4, 2014:** Deadline for submitting comments on DEC's proposed revisions to the PBS, CBS and used oil management regulations and DEC's Draft Program Policy, DER-40, *Operator Training*. The draft regulations can be found at [www.dec.ny.gov/chemical/92526.html](http://www.dec.ny.gov/chemical/92526.html). The draft program policy can be found at [www.dec.ny.gov/regulations/2387.html](http://www.dec.ny.gov/regulations/2387.html).