

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

March 17, 2015

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, Rulemakings, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL New Source Performance Standards for Residential Wood Heaters, Residential Hydronic Heaters, and Forced-Air Furnaces 40 CFR Part 60, subparts AAA and QQQQ 80 Fed. Reg. 13672 (March 16, 2015)</p>	<p>EPA updated standards for newly manufactured wood stoves, while establishing standards for other types of new wood heaters. EPA previously adopted New Source Performance Standards (NSPS) for adjustable burn rate wood stoves; these standards are set forth at 40 CFR Part 60, subpart AAA. With this rulemaking, EPA updated those standards to address technological improvements and expand coverage to include single burn rate wood heaters/stoves and pellet heaters/stoves. In addition, EPA adopted standards for new wood-fired residential hydronic heaters and forced air furnaces (subpart QQQQ). Like the existing standards, the new and revised standards primarily regulate equipment manufacturers rather than users. Manufacturers must test representative heaters/stoves from each model line using EPA-approved testing methods to determine whether they meet the particulate matter emissions standards set forth in the regulation and can be certified. Once the certification is issued, the following requirements apply:</p> <ul style="list-style-type: none"> • The manufacturer must affix a permanent label to each stove containing key identifying information as evidence that the stove was properly certified. • The manufacturer must provide an owner’s manual containing information relating to installation, operation and maintenance. • Operators must use only approved fuels (grades of wood pellets/chips identified in owner’s manual; no garbage, yard waste, rubber, plastic, etc.) and must operate the unit consistent with the instructions in the owner’s manual. <p>In addition, the manufacturer must conduct a quality assurance program to ensure that the appliances being produced, in fact, conform to the certified design and meet the applicable standards. The rule also includes provisions for EPA to conduct audits to ensure compliance.</p> <p>The rule can be found in the March 16, 2015 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule applies to manufacturers of new woodstoves, wood heaters (including indoor and outdoor wood-fired boilers), hydronic heaters, and forced air furnaces. The rule does not cover existing units. In addition, it does not cover outdoor fireplaces, pizza ovens, barbecues, cook stoves, camp stoves, manufactured or site-built masonry fireplaces, traditional Native American bake ovens, or heaters fueled solely by coal, gas or oil.</p> <p>EPA declined to finalize proposed standards for new residential masonry heaters to allow time for the trade association to develop revised test methods, an emission calculation program, and an alternative dimensioning standard.</p>	<p>The final rule takes effect May 15, 2014.</p> <p>The standards will be implemented in two phases. The first emission limit applies to stoves manufactured on or after May 15, 2015 (the effective date of the rule) or sold at retail on or after December 31, 2015 while the second, lower limit takes effect five years after the effective date of the final rule, i.e., May 15, 2020.</p>

Other Recent Developments (Final)

ZONING

NEW YORK STATE: The Appellate Division, Third Department, considered **whether a municipality may conduct additional environmental reviews outside the State Environmental Quality Review Act (SEQRA) process when implementing local zoning laws**. In *Troy Sand & Gravel Co. v. Town of Nassau*, 2015 WL 685968 (3d Dept. 2015), DEC issued SEQRA findings approving a mining proposal and granted the necessary mining permit. After the Town unsuccessfully challenged those findings, the plaintiff commenced an action seeking, among other things, a declaration that the Town was bound by DEC's SEQRA findings. After the Third Department rejected this effort, the Town rescinded a prior determination that the application for a special use permit was complete in order to consider whether the SEQRA record was adequate to review the project under the environmental standards of the Town's zoning law or whether additional environmental information was needed. In a challenge to that decision, the court found that while the Town could undertake an independent review of the project, it could not gather additional environmental impact information but must rely on the existing SEQRA record. According to the court, allowing the gathering of information outside the SEQRA record would vitiate the efficiency and coordination goals of SEQRA. The court noted that environmental impact statements (EIS) evaluate the potential environmental effects, assess mitigation measures, and consider alternatives to the proposed action. While towns maintain their jurisdiction over zoning and may issue different SEQRA findings, they must rely on the final EIS as the basis for their decision.

Implications: The decision clarifies the relationship between SEQRA and environmental assessments conducted to implement local zoning laws.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA **proposed revisions to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for coal and oil-fired electric utility steam generating units (EGUs)** to correct, clarify and update various provisions and delete an affirmative defense for malfunction events. The power plant NESHAP, also known as the Mercury and Air Toxics Standards (MATS), is set forth at 40 CFR Part 63, subpart UUUUU. The rule, which was adopted in 2012, establishes emission standards, monitoring, performance testing, reporting and recordkeeping requirements for coal and oil-fired EGUs. With the recent rulemaking, EPA proposed more than 80 technical corrections to the rule intended to resolve conflicts between the text and the preamble and clarify language in the regulatory text. Among other things, EPA proposed to clarify: that the MATS does not apply to either major or area source combustion turbines, except integrated gasification combined cycle units; that units that combust natural gas and more than 10% biomass are regulated as biomass-fired boilers under 40 CFR Part 63, subpart DDDDD; the rules for designating units as low emitting

EGUs; the schedule for completing initial boiler tuneups; and the procedures and schedule for completing performance tests, among many other changes and clarifications. In addition, consistent with a recent court decision, EPA proposed to delete an affirmative defense to civil penalties for excess emissions occurring during malfunctions. EPA is accepting comments on the proposed revisions until **April 3, 2015**; the rulemaking can be found in the February 17, 2015 Federal Register at: www.gpo.gov/fdsys.

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

FEDERAL: EPA announced the results of its review of the **NESHAP for aerospace manufacturing and rework facilities** following a residual risk/periodic technology review. Under Clean Air Act (CAA) § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary; EPA also must conduct a periodic review of the technology underlying the NESHAP to confirm that the standard remains current. The aerospace manufacturing and rework NESHAP applies to facilities that are major sources and are engaged, in part or in whole, in the manufacture or rework of commercial, civil, or military aerospace vehicles or components. After reviewing the existing standard, EPA concluded that the risks remaining after application of the NESHAP were acceptable and that the standards protect public health with an ample margin of safety; EPA also found that there were no cost-effective developments in practices, processes or control technologies and that no changes in the NESHAP were necessary to address technological improvements. However, EPA proposed to amend the NESHAP to establish standards for specialty coatings that are based on EPA's existing aerospace control techniques guidelines, which set VOC content limits, application equipment and other requirements for aerospace specialty coatings. EPA also is proposing to: (1) require submission of electronic copies of required performance test and other performance evaluation reports; (2) delete the existing exemption for excess emissions during startup, shutdown and malfunction events so that the standards in the rule apply at all times; and (3) make other changes and corrections. EPA is accepting comments on the proposed rulemaking until **April 3, 2015**; it can be found in the February 17, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: According to EPA, there are approximately 144 facilities that are subject to the aerospace NESHAP; however, approximately half are located in ozone nonattainment areas and so are already likely complying with the new standards for specialty coatings.

FEDERAL: EPA is **accepting comment on petitions to add n-Propyl Bromide (nPB) to the list of hazardous air pollutants (HAP)** regulated under CAA § 112, 42 USC § 7412. The petitions, if approved, would pave the way for EPA to consider nPB when setting maximum achievable control technology standards for major sources. CAA § 112(b)(3)(A) allows any person to petition EPA to add a pollutant to the list of HAPs. Once the petition is deemed complete, EPA must decide whether “emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects.” The initial petition was filed by the Halogenated Solvent Industry Alliance (HSIA), which argued that nPB was being marketed as a safe, unregulated alternative to chlorinated solvents despite studies showing that it may cause cancer in rats and mice. DEC followed up a year later with its own petition. Together, the petitioners allege that nPB is carcinogenic, has toxic reproductive effects, and is a neurotoxin. With the current rulemaking, EPA is inviting the public to

comment on the technical merit of the petitions. If EPA grants the petitions, it will publish a notice of proposed rulemaking seeking comment on its decision to list nPB as a HAP; otherwise, it will publish a notice of denial, ending the review process. EPA is accepting comment on the complete nPB petitions until **May 7, 2015** (extended from March 9, 2015); the announcement can be found in the February 6, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: nPB is an increasing popular solvent used in vapor degreasing, adhesive spray applications, dry cleaning and industrial solvent sprays.

BULK STORAGE

NEW YORK STATE: DEC is seeking **volunteers to take a pilot examination for Class A and B underground storage tank (UST) operators**. As part of its pending revisions to New York's petroleum and chemical bulk storage (PBS/CBS) regulations, DEC is requiring operators of federally regulated USTs to be properly trained and tested consistent with federal mandates. The regulations distinguish among three classes of operators: Class A (those with overall responsibility for operation and maintenance of UST systems); Class B (those with day-to-day responsibility for operating and maintaining UST systems); and Class C (cashiers and others whose responsibilities are limited to spill response). Class A and B operators must meet operator training requirements and pass a written examination. With the recent notice, DEC is seeking volunteers to take its pilot examination for Class A/B UST operators to help ensure that the questions are clear and accurate. Individuals who take and pass the pilot examination will not have to take the examination again after the revised PBS/CBS regulations are adopted unless the facility is found to be in significant noncompliance through an inspection. The exam will be held at various locations throughout the state on April 1st and 2nd and DEC will provide a link to training materials before the exam. The exam will take eight hours and can be completed in two four-hour sessions over the two days it is offered. Details about the pilot exam can be found at: <http://www.eventbrite.com/o/nys-department-of-environmental-conservation-7922545311>.

Implications: The notice is potentially of interest to owners/operators of gasoline stations and other facilities with federally-regulated USTs. Testing is not required for operators of USTs regulated only by DEC, such as USTs used to store home heating oil for on-site use.

WATER

NEW YORK STATE: DEC has **proposed guidance clarifying the circumstances under which those seeking coverage under the new stormwater construction general permit (CGP) can continue to use a stormwater pollution prevention plan (SWPPP) developed in conformance with the 2010 version of DEC's New York State Stormwater Management Design Manual** (hereinafter "Design Manual"). DEC recently issued a new General Permit for Stormwater Discharges Associated with Construction Activity and revised and updated the Design Manual. Shortly thereafter, however, DEC concluded that a transition period was needed in light of the economic impact to certain construction activities that had already started the planning, design and review process

before the new CGP and Design Manual were issued. Under the guidance, entitled *New York State Stormwater Management Design Manual 2015 Update Transition Policy*, construction activities by owners that applied to a governmental entity prior to January 29, 2015 for review and approval of an application, including a SWPPP developed using the 2010 Design Manual, may obtain CGP coverage with a SWPPP that conforms to the 2010 Design Manual. DEC is accepting comments on the draft transition guidance document until **April 10, 2015**; the guidance can be found on DEC's website at: www.dec.ny.gov/chemical/41392.html.

Implications: The draft guidance is potentially of interest to owners/operators of ongoing construction projects that are subject to the CGP.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) proposed to **update its general industry, shipyard employment, marine terminals, longshoring and construction eye and face protection standards** to incorporate the most recent versions of key consensus standards. The rule is part of a broader OSHA initiative to incorporate the latest versions of national consensus and industry standards into its regulations. The 2010 American National Standards Institute (ANSI) standards proposed to be incorporated by reference focus on a hazard, such as droplet and splash, impact, optical radiation, etc. and specify the type of equipment needed to protect from the hazard. By comparison, earlier versions of the ANSI standards focused on the protector type, i.e., spectacles, goggles, faceshields, etc. The proposed rule incorporates the recent consensus standards and changes the language in the construction eye and face protection standards to make it consistent with the general industry standard. OSHA is accepting comments on the proposed regulation until **April 13, 2015**; the proposed rule can be found in the March 13, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposal is potentially of interest to employers/employees subject to OSHA eye and face protection standards.

OTHER

FEDERAL: EPA is seeking **public input on its periodic retrospective review of its regulations** with the goal of identifying rules that are outmoded, ineffective, insufficient or excessively burdensome and modifying, streamlining, expanding or repealing them based on what has been learned. For the last several years, EPA has conducted extensive public outreach seeking suggestions in public meetings, town halls, and webinars on ways to streamline its regulations. With the current notice, EPA is seeking comment on specific questions, most of which focus on ways to promote regulatory modernization through business process streamlining facilitated by improved technology. Key questions include: which regulations could be transitioned from paper to electronic reporting; how EPA can reduce duplicative reporting requirements; how EPA can streamline or consolidate reporting requirements; whether EPA should create a joint registry of regulated facilities with states/tribes to streamline electronic reporting; which regulations could be improved by advanced monitoring techniques or the development of mobile applications; which regulations could be revised to reduce the

frequency of reporting; and whether the same information is being collected in multiple places, either across different regulations or different levels of government. EPA is accepting public input on the retrospective review until **April 8, 2015**; the notice can be found in the March 9, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The notice is potentially of interest to anyone regulated by EPA but is particularly relevant to those subject to regulations with extensive reporting requirements.

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 **April 10, 2015**. The application form and instructions can be found on DEC's website at: 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.

NEW YORK STATE: DEC **announced the availability of a new permit application for invasive species** regulated under 6 NYCRR Part 575. The Part 575 regulations, which were adopted last year, establish lists of prohibited and regulated invasive species. Individuals seeking permission to possess with intent to sell, import, purchase, transport or introduce a prohibited invasive species for research, education or other approved activity or introduce a regulated invasive species into a free-living state in New York must submit an application to DEC and obtain a license. The application, instructions and standard conditions can be found on DEC's website at: www.dec.ny.gov/permits/100696.html.

Implications: The permit is potentially of interest to individuals seeking to acquire prohibited invasive species or to introduce regulated species into a free-living state.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

March 25, 2015: Deadline for submitting comments on the CEQ's revised draft guidance on addressing climate change under NEPA (extended from February 23, 2015). See the December 24, 2014 Federal Register at www.gpo.gov/fdsys for details.

April 1 and/or 2, 2015: Date of voluntary pilot examination for Class A/B UST operators. See the following website for details: <http://www.eventbrite.com/o/nys-department-of-environmental-conservation-7922545311>.

April 3, 2015: Deadline for submitting comments on proposed revisions to the NESHAP and NSPS for coal and oil-fired electric utility steam generating units. See the February 17, 2015 Federal Register at www.gpo.gov/fdsys for details.

April 3, 2015: Deadline for submitting comments on results of residual risk/periodic technology review of aerospace manufacturing and rework NESHAP. See the February 17, 2015 Federal Register at www.gpo.gov/fdsys for details.

April 6, 2015: Deadline for submitting comments on EPA's proposal to retain the existing NAAQS for lead without revision. See the January 5, 2015 Federal Register at www.gpo.gov/fdsys for details.

April 6, 2015: Deadline for submitting comments on DEC's preliminary draft revisions to the hazardous waste regulations to incorporate changes to the federal regulations and make various state-initiated changes. The preliminary rulemaking and related information and documents can be found on DEC's website at www.dec.ny.gov/regulations/100424.html.

April 8, 2015: Deadline for submitting input on EPA's periodic retrospective review of its regulations to identify rules that are outmoded, ineffective, insufficient or excessively burdensome. The announcement can be found in the March 9, 2015 Federal Register at www.gpo.gov/fdsys.

April 8, 2015: Deadline for submitting information in response to OSHA's RFI on alternative approaches to workplace chemical management, including possible updating of permissible exposure limits. See the October 10, 2014 Federal Register at www.gpo.gov/fdsys for details.

April 10, 2015: Deadline for submitting application for DEC's Environmental Excellence Award. The application can be found on DEC's website at: www.dec.ny.gov/public/945.html.

April 10, 2015: Deadline for submitting comments on DEC's proposed guidance clarifying the criteria that construction activities seeking coverage under the new CGP must meet to continue to use a SWPPP designed in conformance with the 2010 version of DEC's Design Manual. The draft guidance can be found on DEC's website at www.dec.ny.gov/chemical/41392.html.

April 13, 2015: Deadline for submitting comments on OSHA's proposal to update its eye and face protection standards based on national consensus standards. See the March 13, 2015 Federal Register at www.gpo.gov/fdsys for details.

April 22, 2015: Deadline for submitting comments on EPA's proposed revisions to the rules governing the use of dispersants and other substances when responding to oil spills. See the January 22, 2015 Federal Register at www.gpo.gov/fdsys for details.

May 7, 2015: Deadline for submitting comment on petition to add n-propyl bromide to list of hazardous air pollutants under CAA § 112 (extended from March 9, 2015). See the February 6, 2015 Federal Register at www.gpo.gov/fdsys for details.