

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Rulemakings, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
SOLID WASTE			
<p>FEDERAL Hazardous and Solid Waste Management Requirements for Disposal of Coal Combustion Residuals from Electric Utilities 40 CFR Parts 257 and 261 80 Fed. Reg. 21302 (Apr. 17, 2015)</p>	<p>EPA published a rule regulating the disposal of coal combustion residuals (CCR) (i.e., coal ash) from utilities as solid waste in the wake of the catastrophic failure of several coal ash impoundments as well as more general concerns about environmental contamination relating to CCR storage and disposal in surface impoundments and landfills. Key elements of the rule include:</p> <ul style="list-style-type: none"> • Structural integrity. The rule establishes structural integrity design criteria and requires owners/operators to conduct periodic structural stability assessments, hazard potential classification, and safety factor assessments as well as weekly inspections of CCR units and monthly monitoring of instrumentation. • Groundwater protection. The rule requires owners/operators of CCR units to install monitoring wells, sample groundwater, and implement corrective action when necessary. The rule also restricts placement of CCR landfills and impoundments above the uppermost aquifer and in wetlands, fault areas, seismic impact zones, and unstable areas. Finally, new landfills and impoundments and lateral expansions must have a composite liner. • Operating criteria. The rule establishes operating criteria designed to limit contamination associated with day-to-day operation of CCR units, including requiring fugitive dust control plans and establishing run-on/run-off controls (for landfills) and hydrologic and hydraulic capacity requirements (for surface impoundments). • Recordkeeping. The owner/operator must record compliance with the applicable requirements and make certain compliance documents, including monitoring results, corrective action reports, and fugitive dust control plans, available online. • Inactive units/closure. The rule requires the closure of CCR units that cannot meet the location criteria or show that they can otherwise operate safely; unlined CCR impoundments must close if they are contaminating groundwater and all impoundments must close if they cannot meet the structural integrity requirements. The rule also establishes procedures for closing units when they stop accepting CCR. <p>The CCR rule can be found in the April 17, 2015 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule is primarily of interest to owners/operators of coal-fired utilities. According to EPA, approximately 40% of CCR is beneficially used in various ways, including as an ingredient in concrete and wallboard. The remaining CCR is disposed in hundreds of large on-site landfills and surface impoundments. Over the years, several CCR impoundments have failed, causing extensive damage; more generally, CCR storage and disposal has been linked to ground and surface water contamination and complaints about fugitive dust.</p> <p>The rule was adopted under subtitle D of the Resource Conservation and Recovery Act, which regulates solid waste. Under subtitle D, EPA establishes minimum nationwide standards that are implemented individually by the states. EPA is recommending that states revise their solid waste management plans to incorporate the federal requirements.</p>	<p>The final rule will take effect October 14, 2015. The requirements will be phased in 6 to 42 months after the effective date of the rule.</p> <p>In adopting the rule, EPA rejected a proposal to list CCR as a special waste subject to regulation under the hazardous waste program.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE General Permit for Groundwater Discharges of Treated Sanitary Waste GP-0-15-001</p>	<p>DEC revised its general permit for private/commercial/institutional (PCI) discharges to groundwater of between 1,000 and 10,000 gallons per day (gpd) of treated sanitary waste per outfall under the State Pollutant Discharge Elimination System (SPDES) permit program. This permit authorizes the discharge of sanitary waste, without the admixture of industrial wastes, from on-site wastewater systems that discharge to groundwater. The new General Permit, identified as GP-0-15-001, is available only to PCI facilities using standard or alternative technologies referenced in specific DEC design standard documents. Facilities seeking coverage under the General Permit must submit the following documents: an application for SPDES General Permit GP-0-15-001; an engineering report and site plan signed and stamped by a licensed professional engineer (PE); and a design certification signed and stamped by a licensed PE that the system meets state design standards. If DEC concludes that the project can be authorized under the General Permit, it will return a validated permit to the applicant that authorizes the specific outfall described in the application. Wastewater discharge from the system is allowed when the local health agency approves on-site system plans, design and construction and the applicant submits an affirmation of local approval to DEC; where local health department approval is not required, the applicant must submit a PE certification of on-site treatment works construction to DEC. The General Permit includes provisions addressing maximum flow, strength and character; septic tank inspections; facility maintenance; recordkeeping; annual regulatory fees; permit transfers; and facility operations. It also includes general conditions applicable to all authorized permits.</p> <p>The revised General Permit can be found on DEC's website at: www.dec.ny.gov/permits/101152.html.</p>	<p>The revised General Permit is primarily of interest to facilities such as apartment complexes, restaurants, and schools that discharge sanitary-only waste to groundwater in quantities between 1,000 and 10,000 gpd. In a change from the existing permit, DEC also is allowing use of the General Permit at facilities with multiple outfalls from 1,000 to 10,000 gpd where the combined design flow is less than 30,000 gpd.</p> <p>The revised permit contains several significant changes from the existing PCI General Permit, including: (1) adding the cumulative discharge limit of 30,000 gpd; (2) requiring submission of the signed/stamped engineering report and design certification with the permit application; (3) reorganizing the permit; and (4) adding provisions relating to permit transfers.</p>	<p>The permit takes effect May 11, 2015 and expires May 10, 2025.</p> <p>Facilities with prior coverage under the existing general permit are authorized to discharge under the new one unless otherwise notified by DEC. A facility that has been constructed and is operating in accordance with an individual SPDES permit may apply for conversion to the new general permit.</p>

Proposed Statutes, Rulemakings, and Guidance

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>FEDERAL Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category 40 CFR Part 435 80 Fed. Reg. 18557 (Apr. 7, 2015)</p>	<p>EPA proposed pretreatment standards to prevent the discharge of hydraulic fracturing wastewater to publicly owned treatment works (POTWs). According to EPA, wastewater generated during “unconventional oil and gas” (UOG) extraction activities contains harmful constituents, including “fracking” chemicals and radioactive, organic and inorganic material picked up during the fracturing process. Most POTWs are not designed to treat these constituents and EPA is concerned that the constituents will disrupt POTW operations, accumulate in wastewater treatment sludge, and/or pass through the POTW untreated. With this rulemaking, EPA is proposing to prohibit the discharge of wastewater from UOG extraction activities to POTWs. Direct discharges of these wastewaters are already prohibited.</p> <p>The proposed rule can be found in the April 7, 2015 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The proposed rule is primarily of interest to POTWs and to companies engaged in UOG extraction activities.</p> <p>Although several POTWs have accepted UOG wastewater in the past, EPA did not identify any existing onshore UOG extraction facilities that currently discharge wastewater to POTWs. Most UOG wastewater is disposed of via underground injection.</p>	<p>EPA is accepting comments on the proposed rule until June 8, 2015.</p>
CHEMICAL			
<p>FEDERAL TSCA Reporting and Recordkeeping Requirements for Nanoscale Materials 40 CFR Part 704 80 Fed. Reg. 18330 (Apr. 6, 2015)</p>	<p>EPA proposed to require manufacturers/processors of nanoscale materials to report certain information under the Toxic Substances Control Act (TSCA). TSCA § 8(a), 42 USC § 2607(a), authorizes EPA to adopt rules requiring each person who manufactures, processes or proposes to manufacture or process a particular chemical to maintain such records and submit such reports as EPA may require. According to EPA, evidence suggests that there are differences between chemical substances and the same substances in nanoscale form and that certain nanoscale materials may pose a health hazard. With this notice, EPA is proposing to require current and future manufacturers/processors of nanoscale materials (with certain exceptions) to submit information to EPA on chemical identity, production volume, methods of manufacture and processing, exposure and release information, and available health and safety data. The data will be submitted electronically using EPA’s Central Data Exchange (CDX) electronic reporting portal.</p> <p>The proposed rule can be found in the April 6, 2015 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The proposed rule is primarily of interest to companies that manufacture and process nanoscale materials. It includes detailed criteria for identifying what chemicals are required to be reported. Separate reports will be required for each discrete form of the reportable chemical substance based on factors in addition to size. EPA emphasized that the proposal was not intended to conclude that nanoscale materials will cause harm but rather to enable EPA to collect the information necessary to determine if further action under TSCA is needed.</p>	<p>EPA is accepting comments on the proposed rule until July 6, 2015.</p>

Other Recent Developments (Final)

HAZARDOUS WASTE

FEDERAL: EPA published a **rule implementing a 2014 federal appellate court decision that vacated the comparable fuels and gasification exclusions under the federal hazardous waste program**. 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 from regulation as hazardous waste fuels that are produced from hazardous waste but are comparable to currently used fossil fuels. In *Natural Resources Defense Council v. EPA*, 755 F.3d 1010 (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. EPA's recent rule revises the hazardous waste regulations to delete the comparable fuel exclusion. EPA also deleted a similar exemption for hazardous wastes inserted into a gasification unit located at a petroleum refinery to produce synthesis gas, also in response to a court decision vacating the rule on the ground that it violates the plain language of RCRA. The rule took effect on April 8, 2015 and can be found in the Federal Register at: www.gpo.gov/fdsys issued on that date.

Implications: EPA has identified 31 facilities that appear to be managing previously excluded comparable fuels and so will be affected by the rule; according to EPA, there are currently no facilities operating under the gasification rule.

ZONING

NEW YORK STATE: In a split decision, the Appellate Division, Third Department, **addressed the issuance of a variance to expand a nonconforming use**. In *Nemeth v. Village of Hancock Zoning Board of Appeals*, 2015 WL 1565749 (3d Dept. 2015), the respondents expanded a nonconforming industrial use by constructing an addition to their manufacturing facility after the Village had rezoned the area residential. The trial court dismissed a petition challenging the Zoning Board of Appeals' (ZBA) decision to grant the property owners a use variance and the appellate division reversed after finding that the property owners failed to demonstrate that the property could not yield a reasonable return if used for any of the purposes for which it was zoned. According to the court, the inability to yield a reasonable return must be established through the submissions of "dollars and cents" proof with respect to each permitted use—in this case, when used as a manufacturing plant without the addition or for any residential use. The dissent challenged the majority's conclusion regarding the level of proof required, suggesting that the proof provided by the property owners on the cost of converting the addition to a residential use, relocating the facility, and/or shutting down manufacturing in the addition demonstrated that respondents could not realize a reasonable return on the property without the use variance.

Other Recent Developments (Proposed)

CHEMICAL

FEDERAL: EPA is **proposing to add 1-bromopropane to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program**. Under Section 313 of the Emergency Planning and Community-Right-to-Know Act (EPCRA), certain facilities that manufacture, process or otherwise use listed hazardous chemicals in amounts above specified thresholds must report the amount of the chemical released to air or water or disposed of on land on an annual basis. The interagency National Toxicology Program recently classified 1-bromopropane as a substance “reasonably anticipated to be a human carcinogen” following an extensive review process. EPA concluded that this evidence is sufficient for including 1-bromopropane on the TRI list of chemicals. EPA is accepting comment on the proposed rule until **June 15, 2015**; it can be found in the April 15, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is potentially of interest to facilities that manufacture, process or otherwise use significant quantities of 1-bromopropane.

OTHER

FEDERAL: EPA is accepting comment on its *Draft EJ 2020 Action Agenda Framework*, a strategic plan for advancing environmental justice (EJ) throughout the agency. EJ 2020 will build on the foundation established by EPA’s Plan EJ 2014, which sought to integrate EJ into EPA’s programs, including rulewriting, permitting, enforcement, science and law. The EJ 2020 plan identifies three broad EJ goals and breaks them out into narrower goals and more specific tasks. The three general goals are: (1) deepen EJ practice within EPA programs to improve the health and environment of overburdened communities (including incorporating EJ into rulemaking, considering it in EPA permitting, advancing EJ through compliance and enforcement, and enhancing science tools for considering EJ in decisionmaking); (2) collaborate with partners to expand EPA’s impact in overburdened communities (e.g., work with state, local and other governments and federal agencies and support community efforts); and (3) demonstrate progress on outcomes that matter to overburdened communities. The draft document summarizes the status of Plan EJ 2014 commitments and accomplishments and the agency’s priorities for 2015. EPA is accepting comments on the draft EJ 2020 plan until **June 15, 2015**; it can be found on EPA’s web site at: www.epa.gov/environmentaljustice/ej2020.

Implications: The policy will primarily affect state and federal environmental regulators as well as facilities located in areas with high concentration of poor and minority families.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

May 4, 2015: Deadline for submitting comments on DOH's proposed revisions to the standards for individual onsite water and wastewater treatment systems. See the March 18, 2015 State Register at docs.dos.ny.gov/info/register/2015/march18/toc.html for details.

May 7, 2015: Deadline for submitting comments 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.

May 15, 2015: Deadline for submitting comments on DEC's *Draft Hudson River Estuary Action Agenda 2015-2020*. The agenda can be found on DEC's website at www.dec.ny.gov/lands/5104.html.

May 22, 2015: Deadline for submitting comments on EPA's proposed regulation containing the SIP requirements for the PM_{2.5} NAAQS. See the March 23, 2015 Federal Register at www.gpo.gov/fdsys for details.

June 8, 2015: Deadline for submitting comments on EPA's proposed effluent limitations guidelines prohibiting the discharge of hydraulic fracturing wastewater to POTWs. See the April 7, 2015 Federal Register at www.gpo.gov/fdsys for details.

June 15, 2015: Deadline for submitting comments on EPA's proposal to add 1-bromopropane to the list chemicals subject to reporting under the TRI program. See the April 15, 2015 Federal Register at www.gpo.gov/fdsys for details.

June 15, 2015: Deadline for submitting comments on EPA's *Draft EJ 2020 Action Agenda Framework*. The document can be found on EPA's website at www.epa.gov/environmentaljustice/ej2020.

July 6, 2015: Deadline for submitting comments on EPA's proposal to require TSCA reporting/recordkeeping for nanoscale materials. See the April 6, 2015 Federal Register at www.gpo.gov/fdsys for details.

October 9, 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 (extended from April 8, 2015). See the October 10, 2014 Federal Register at www.gpo.gov/fdsys for details.