

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR NEW YORK STATE Distributed Generation Sources 6 NYCRR Part 222</p>	<p>DEC proposed an air emission rule for distributed generation (DG) sources—stationary reciprocating or rotary internal combustion engines that feed the distribution grid or produce electricity for use at host facilities or both. The rule, to be set forth at 6 NYCRR Part 222, applies to owners/operators of DG sources at non-major facilities that have maximum mechanical output ratings of 200 horsepower (hp) or more in the New York City metropolitan area or 400 hp or more elsewhere. It distinguishes between emergency generators and so-called “economic dispatch sources,” i.e., DG sources used to reduce energy costs or ensure a reliable energy supply. Economic dispatch sources covered by the rule must meet specific nitrogen oxide (NOx) emission standards that differ based on the type of source (combined or simple cycle combustion turbines or reciprocating engines) and type of fuel (natural gas or oil). Diesel-fired economic dispatch sources also must meet particulate matter emission requirements. Sources that cannot meet the proposed NOx emission limits have five alternative compliance options: (1) variance; (2) shutdown; (3) conversion from diesel to natural gas; (4) alternative NOx emission limit for facilities with renewable generation systems; and (5) extension for certain DG sources enrolled in demand response programs during 2014 and 2015. Owners/operators of emergency generators must comply with maintenance (i.e., tune-up) and recordkeeping requirements.</p> <p>Under the proposed rule, owners/operators of economic dispatch sources must: notify DEC no later than April 1, 2016 whether they plan to continue operating as a DG source; test the source by April 30, 2016 (if the source elects to comply with the emission limits rather than pursuing an alternative compliance option); meet the applicable NOx emission standards by May 1, 2016; tune the unit every 12 months; and retest the unit every 10 years. DG sources pursuing one of the alternative compliance options are subject to other deadlines.</p> <p>The proposed regulation can be found on DEC’s website at: www.dec.ny.gov/regulations/104487.html.</p>	<p>The proposed rule is primarily of interest to owners/operators of DG sources that: (1) are not located at major NOx sources (and thus are not regulated under 6 NYCRR Part 227-2); (2) are not subject to a federal New Source Performance Standard that is at least as stringent as Part 222; and (3) meet the specified size criteria (200 hp downstate and 400 hp upstate). Economic dispatch sources that meet these criteria are subject to the emission limits, testing and other requirements of the proposed rule while emergency generators are subject to more limited maintenance and recordkeeping requirements.</p> <p>According to DEC, the emission standards are necessary to help the downstate area meet the 2008 ozone national ambient air quality standard. Many economic dispatch sources participate in demand response programs and are called upon to operate on high electricity demand days in the summer when ozone levels are typically highest.</p>	<p>DEC is accepting comments on the proposed DG standards until February 18, 2016. A public hearing on the proposed rule is scheduled for February 11, 2016 at 9:00 a.m. at DEC Headquarters, 625 Broadway, Public Assembly Room 129, Albany. Additional public hearings are scheduled in Long Island City and Avon.</p> <p>Given the timing of the rulemaking, it is questionable whether the compliance deadlines in the rulemaking are realistic. The comment deadline for the rule is February 18, 2016 while economic dispatch sources subject to the proposed standards must notify DEC in writing concerning their plans by April 1, 2016, test the source by April 30, 2016 and meet the applicable NOx emission standards by May 1, 2016. It will be difficult, if not impossible, for DEC to finalize the rule before these deadlines.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Aquatic Invasive Species Spread Prevention 6 NYCRR Part 576</p>	<p>DEC proposed regulations requiring owners/operators of boats or floating docks to take “reasonable precautions” prior to placing them into public waters to prevent the spread of aquatic invasive species (AIS). The proposed rule, to be set forth at 6 NYCRR Part 576, applies to all sites from which watercraft or floating docks can be launched into public waterbodies. It prohibits persons from launching or attempting to launch a watercraft or floating dock into a public water body unless the following reasonable precautions are taken:</p> <ul style="list-style-type: none"> • Cleaning. Inspect the watercraft/floating dock, remove any plants/animals visible to the human eye, and dispose of them in a manner that avoids contact of the material with the waterbody; and • Draining. Drain water from the watercraft, watercraft’s motor or other components so as to avoid contact of drainage with public waterbody (with special rules for draining the cooling systems of personal watercraft); and • Treating. Treat the watercraft/floating dock using at least one of the following methods: drying (via sunlight or heated building for a minimum of 5 days or in subfreezing temperatures for a minimum of 3 days or via towel drying if the other drying or rinsing methods are unavailable prior to launch); rinsing (via high pressure hot water at a location that does not drain into a waterbody; if hot water is not available at or near the launch site, the owner/operator is expected to use the warmest water available); or painting (applicable prior to launching into marine and coastal district waters only). <p>The rule contains certain limited exemptions as well as a provision specifying that treatment is not required for a watercraft or floating dock that is “re-launched from a launch site into a public water body within the bounds of any permanent barriers impassible to watercraft which was, prior to launching, removed from the same launch site without having been launched into any other waterbody from any other launch site.”</p> <p>The proposed rule can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.</p>	<p>The proposed rule is primarily of interest to owners/operators of boats/floating docks that are launched into public waters. The regulation is part of a larger effort by DEC to address invasive species. Recent measures include issuance of an aquatic species management plan and the adoption of rules that restrict the commercial importation and sale of invasive plant and animal species, require boaters to take precautions to ensure AIS are not introduced at state-operated boat launch facilities, and require third-party inspections and other measures prior to launching boats into Lake George.</p> <p>The proposed regulation will apply in addition to other State and local rules regulating aquatic invasive species.</p>	<p>DEC is accepting comments on the proposed rule until January 30, 2016.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE ECL SPDES General Permit for Concentrated Animal Feeding Operations Permit No. GP-0-16-001 CWA SPDES General Permit for Concentrated Animal Feeding Operations Permit No. GP-0-16-002</p>	<p>DEC proposed a pair of general permits under the State Pollutant Discharge Elimination System (SPDES) program to address wastewater associated with concentrated animal feeding operations (CAFOs). Both permits replace the existing CAFO general permit, which expires on June 30, 2016. The first permit, GP-0-16-001, covers CAFOs that do not discharge from their production areas to surface waters and so are not regulated by the federal Clean Water Act (CWA). The second permit, GP-0-16-002, covers CAFOs that discharge wastewater to surface waters. Both permits require preparation and implementation of nutrient management plans as well as ongoing monitoring, reporting and recordkeeping. Owners/operators of CAFOs must prepare plans, submit a notice of intent (NOI) to DEC seeking coverage under the applicable general permit, and comply with their plans and with the terms and conditions of the general permit. As with other general permits, DEC retains the option of requiring CAFOs to obtain an individual SPDES permit. Major changes to the CAFO permitting process since the previous permit was issued include:</p> <ul style="list-style-type: none"> • Establishing two permits, one addressing federally regulated CAFOs (i.e., those that discharge waste to surface waters) and state-only regulated CAFOs (i.e., those that do not discharge wastewater). • Requiring public notice and comment on the NOI and farm-specific annual nutrient management plan for federally-regulated CAFOs. • Requiring advance notice to DEC whenever significant operational changes are made at the facility. • Adding conditions regulating manure spreading during winter months to prevent water quality violations when soils are saturated. • Clarifying how the “no discharge” standard applies and requiring permittees to develop and implement wet weather standard operating procedures. • Regulating discharges of non-contact cooling water from pre-coolers (cooling systems that typically use groundwater as a coolant to lower milk temperature prior to refrigeration). <p>The draft CAFO general permits and related materials can be found on DEC’s website at: www.dec.ny.gov/permits/6285.html.</p>	<p>Coverage under the general permits is required for large, medium and small CAFOs as defined in the permits. The classification depends largely on the number and type of animal. For example, a large veal calf CAFO houses 1,000 or more veal calves while a medium CAFO houses 300 to 999 veal calves. Small CAFOs require coverage under the general permits only if specifically designated by the Department using criteria spelled out in the permits.</p>	<p>DEC is accepting comments on the proposed general permits until February 7, 2016.</p> <p>Owners/operators of existing CAFOs eligible for coverage under GP-0-16-001 (state-only CAFOs) must submit a NOI and comprehensive nutrient management plan certification to DEC within 150 days of the effective date of the final permit. Owners/operators of existing CAFOs eligible for coverage under GP-0-16-002 (federal CAFOs) must submit a NOI and annual nutrient management plan within 120 days of the effective date of the final permit for public notice and comment prior to issuance.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA **finalized the results of its review of the National Emission Standards for Hazardous Air Pollutants (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, set forth at 40 CFR Part 63, subpart GG, 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 amended the NESHAP to establish standards for specialty coatings based on EPA's existing aerospace control techniques guidelines, which set volatile organic compound content limits, application equipment and other requirements for aerospace specialty coatings. EPA also: (1) required submission of electronic copies of required performance test and other performance evaluation reports; (2) deleted the exemption for excess emissions during startup, shutdown and malfunction events so that the applicable emission standards apply at all times; and (3) made other changes and corrections. The final rule, which took effect December 7, 2015, can be found in the Federal Register issued on that date 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.

CLIMATE CHANGE

FEDERAL: Following extensive delays, EPA **set the renewable fuel standards (RFS) for gasoline and diesel transportation fuel produced or imported during calendar years 2014, 2015, and 2016**. Under the RFS program, gasoline and diesel producers and importers must use an increasing percentage of four types of renewable fuel: cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuel. To implement the RFS, EPA established a credit program under which every gallon of renewable fuel is assigned a unique number that is transferred along with the fuel. Refiners, blenders and importers subject to the RFS program must have sufficient RFS credits to meet their obligations under the program. With the current rulemaking, EPA established volume standards for the four types of fuel subject to the RFS program for the years 2014, 2015, and 2016 at levels below those mandated by the CAA. According to EPA, constraints in the fuel market make it impossible to accommodate the increasing volumes of renewable fuel mandated by the Act. These constraints include a significant reduction in gasoline sales as well as a reluctance by distributors to

sell E15 gasoline (i.e., gasoline containing up to 15% ethanol). EPA therefore exercised its waiver authority to set standards below those specified in the CAA. Because the deadline for complying with the standards for 2014 has passed, EPA set the 2014 RFS at the levels actually produced and used as transportation fuel, heating oil or jet fuel. According to EPA, the standards for 2015 and 2016 are below those set by the CAA but sufficiently stringent to encourage increases in renewable fuel production, particularly advanced biofuels. The rule takes effect February 12, 2016; it can be found in the December 14, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The RFS rule is primarily of interest to motor vehicle fuel producers, blenders, importers and distributors.

ENFORCEMENT

FEDERAL: EPA launched its eDisclosure portal to receive and automatically process certain self-disclosed civil violations of environmental law under its existing self-disclosure policy. In 2000, EPA issued a policy entitled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* (Audit Policy) under which facilities that identify and self-disclose violations within a specified time period can avoid or minimize gravity-based penalties provided they comply with the terms of the policy. EPA also issued policy documents for new owners and small businesses. The Audit Policy proved extremely popular, taxing EPA's ability to promptly resolve pending disclosures and inspiring EPA to develop the eDisclosure portal. The portal distinguishes between two types of disclosures. Category 1 disclosures include Emergency Planning and Community Right-to-Know (EPCRA) violations that meet all Audit Policy and/or Small Business Compliance Policy conditions (excluding release reporting violations or violations with significant economic benefits). Disclosures that qualify for Category 1 treatment will automatically be issued an electronic Notice of Determination confirming that the violations are resolved with no assessment of civil penalties, conditioned on the accuracy and completeness of the submitter's disclosure. Category 2 disclosures include non-EPCRA violations, EPCRA violations that were not discovered via a systematic investigation (such as a compliance audit), and EPCRA violations excluded from Category 1. EPA will acknowledge receipt of the submission and then notify the facility after it decides whether to take enforcement action. The notice announcing the eDisclosure portal was published in the December 9, 2015 Federal Register, which can be found at: www.gpo.gov/fdsys. The eDisclosure portal itself can be found at: <http://www2.epa.gov/compliance/epas-edisclosure>.

Implications: The eDisclosure portal should simplify submissions under EPA's Audit Policy, particularly for simple EPCRA reporting violations, which currently constitute approximately half of all disclosures received under the policy.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed to revise the public notice provisions for permits issued under the Title V and New Source Review (NSR) permit programs, replacing newspaper publication with electronic notice requirements. According to EPA, the change will increase public awareness of draft permits in the face of reduced newspaper readership and increased access to the internet. The

proposed action will remove the mandatory requirement that draft permits for sources subject to major NSR, Title V or other permit programs be noticed in a newspaper of general circulation. Instead, notice of draft permits issued by EPA or other agencies implementing federal air permitting regulations will be published electronically. Under the proposed rule, notice will be provided either on the permitting agency's website or on another public web site identified by the permitting agency. The e-notice platform must be easily accessible to the public and "user friendly." In addition, the agency must post the draft permit online for the duration of the public comment period. State agencies with delegated authority can either implement an e-notice program or retain traditional newspaper notice requirements. However, they must select one method and use it for all permits to ensure the public knows how notice is provided. EPA and the states will continue to provide direct notice to individuals who ask to be included on a mailing list. EPA is accepting comments on the proposed rule until **February 29, 2016**; it can be found in the December 29, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to entities seeking Title V, major NSR or other permits and to members of the public interested in air permitting.

REMEDICATION

FEDERAL: EPA is seeking comment on lead test kits, which can be used as a means to avoid EPA's lead renovation, repair and painting rule. Under the 2008 rule, contractors must use lead-safe work practices during renovation, repair and painting activities that disturb lead-based paint in target housing and child-occupied facilities built before 1978 unless a determination can be made that no lead-based paint will be disturbed during the activities. The determination whether the paint to be disturbed is lead-based can be made by a trained professional using a lead test kit. Although the regulation established both negative and positive response criteria for lead test kits, kits recognized before September 1, 2010 must meet only the negative response criterion. Currently, no lead test kit is available that meets both the negative and positive response criteria. A recent federal law directed EPA to either identify solutions that will meet the standards or revisit the test kit criteria in the 2008 rule. After further study, EPA failed to identify any lead test kits that meet both the positive and negative response criteria. With the recent notice, EPA is soliciting further public comment on lead test kits and other field testing options, including eliminating, modifying or retaining the positive response criterion or exploring lead-based paint field testing technologies. EPA is accepting comments on the lead test kit issue until **February 19, 2016**; the notice can be found in the December 21, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed notice is primarily of interest to individuals/companies engaged in lead renovation, repair and painting activities.

WATER

FEDERAL: EPA proposed criteria for certain public water systems (PWS) to monitor new contaminants under the Safe Drinking Water Act for purposes of assembling the data needed to decide whether to regulate these contaminants. Every five years,

EPA must publish a list of no more than 30 unregulated contaminants to be monitored by PWS. EPA's recent Unregulated Contaminant Monitoring Rule (UCMR) proposal identifies the contaminants to be monitored, the monitoring methods to be used, and the schedule for completing the monitoring. All large community and non-transient noncommunity water systems serving more than 10,000 people are required to monitor; a nationally representative sample of smaller PWS also must monitor, with the costs paid for by EPA. The monitoring obligations differ depending on the size of the PWS. The contaminants covered by the UCMR include ten cyanotoxins/groups, two metals, eight pesticides and one pesticide manufacturing byproduct, three brominated haloacetic acid groups of disinfection byproducts, three alcohols, and three semivolatile organic chemicals. As part of the rulemaking, EPA also proposed changes to provisions relating to analytical methods, monitoring time frames, and sampling location. EPA is accepting comments on the proposed UCMR until **February 9, 2016**; the proposal can be found in the December 11, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed UCMR is primarily of interest to owners/operators of public water systems.

OTHER

NEW YORK STATE: DEC proposed regulations establishing standards and procedures for DEC to follow when modifying or extinguishing conservation easements. Conservation easements are easements, covenants, restrictions or other real property interests owned by the State of New York under DEC jurisdiction that limit or restrict development, management or use of property to protect environmental, recreational or other similar interests. According to DEC, the increase in acreage subject to DEC conservation easements, coupled with the ongoing need to address changing conditions, natural disasters and other developments, are likely to increase the number of requests to modify easements in the future and justify the adoption of standards/procedures for that purpose. The proposed rule, to be set forth at 6 NYCRR Part 592, distinguishes between easement modifications and modifications to the purposes of easements or extinguishment. Easement modifications are comparatively minor changes that can be implemented after publishing notice in the Environmental Notice Bulletin (ENB) and providing a 30-day public notice and comment period. Modifying the purpose of or extinguishing an easement would require publication of a notice in the State Register, ENB and the local newspaper, a 30-day public notice and comment period, and a non-adjudicatory public hearing. DEC must then prepare a written notice explaining how its final decision meets specified criteria for modifying the purpose of or extinguishing an easement and publish notice of that determination in the ENB. DEC is accepting comments on the proposed rule until **February 13, 2016**; it can be found on DEC's website at: www.dec.ny.gov/regulations/propregulations.html.

Implications: The proposed rule is primarily of interest to owners of land subject to DEC conservation easements and to members of the public with an interest in such lands.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

January 15, 2016: Deadline for submitting comments on EPA's proposed supplemental finding that consideration of cost does not alter its previous conclusion that it is appropriate and necessary to regulate HAP emissions from coal and oil-fired power plants. See the December 1, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 19, 2016: Deadline for submitting comments on EPA's proposed revisions to its exceptional events rule relating to the exclusion of event-affected air quality monitoring data. See the November 20, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 20, 2016: Deadline for submitting comments on DEC's draft TOGS 1.3.12, *Incorporation of Flow-Related Conditions in Water Withdrawal Permits* (extended from December 21, 2015). The document can be found on DEC's website at www.dec.ny.gov/lands/104057.html.

January 21, 2016: Deadline for submitting comments on EPA's proposed FIP, to be implemented in states that do not submit an approvable plan to implement the Clean Power Plan program. See the October 23, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 25, 2016: Deadline for submitting comments on EPA's proposed update to the CAA refrigerant management requirements (extended from January 8, 2016). See the November 9, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 30, 2016: Deadline for submitting comments on DEC's proposed aquatic invasive species spread prevention regulations. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

February 1, 2016: Deadline for submitting comments on EPA's proposed rule updating the Cross-State Air Pollution Rule to address interstate emission transport with respect to the 2008 ozone NAAQS (extended from January 19, 2016). See the December 3, 2015 Federal Register at www.gpo.gov/fdsys for details.

February 7, 2016: Deadline for submitting comments on DEC's proposed updates to its SPDES General Permits for Concentrated Animal Feeding Operations. Copies of the draft permits can be found on DEC's website at www.dec.ny.gov/permits/6385.html.

February 9, 2016: Deadline for submitting comments on EPA's proposed UCMR rule for public water systems. See the December 11, 2015 Federal Register at www.gpo.gov/fdsys for details.

February 11, 2016: Public hearing on DEC's proposed air emission standards for distributed generation sources to be held 9:00 a.m. at DEC Headquarters, 625 Broadway, Public Assembly Room 129, Albany. Additional public hearings are scheduled in Long Island City and Avon.

February 13, 2016: Deadline for submitting comments on DEC's proposed standards/procedures for the Department to modify or extinguish conservation easements. The proposed rule can be found on DEC's website at www.dec.ny.gov/regulations/proregulations.html.

February 15, 2016: Deadline for submitting comments on the draft *OSHA Safety and Health Program Management Guidelines*. The document can be found on OSHA's website at www.osha.gov/shpmguidelines/index.html.

February 18, 2016: Deadline for submitting comments on DEC's draft distributed generation air emission regulations. See DEC's website at www.dec.ny.gov/regulations/104487.html for details.

February 19, 2016: Deadline for submitting comments on EPA's notice relating to possible changes to lead test kits under the lead renovation, repair and painting rule. See the December 21, 2015 Federal Register at www.gpo.gov/fdsys for details.

February 29, 2016: Deadline for submitting comments on EPA's proposed revisions to the rules governing public notice for Title V and major NSR permits. See the December 29, 2015 Federal Register at www.gpo.gov/fdsys for details.