

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>CLIMATE CHANGE</b>			
<p>FEDERAL Greenhouse Gas Reporting Rule Revisions 40 CFR Part 98 81 Fed. Reg. 2536 (Jan. 15, 2016)</p>	<p><b>EPA proposed revisions to the greenhouse gas (GHG) reporting rule to streamline and improve implementation and clarify and update certain provisions.</b> The GHG reporting rule, which is set forth at 40 CFR Part 98, requires mandatory annual reporting of GHG emissions from specific categories of sources as well as from certain suppliers of fossil fuels and industrial GHGs. The annual emission report must include total facility carbon dioxide (CO<sub>2</sub>) equivalent emissions, emissions from each source category, and additional data depending on the specific source category. Proposed changes include:</p> <ul style="list-style-type: none"> <li>• Streamlining Part 98 by clarifying/removing reporting requirements for facilities that may report little or no emissions; removing data elements that are no longer necessary; and revising certain elements of the reporting and verification process.</li> <li>• Enhancing the quality and accuracy of the data collected under the program by revising certain category definitions, calculation methodologies and monitoring methods and revising or adding to reporting requirements to ensure the collection of accurate data.</li> <li>• Clarifying the data that are currently being reported and/or improving verification of reported data.</li> <li>• Ensuring data collected by the program support the U.S. Greenhouse Gas Inventory, an annual report which tracks total annual U.S. GHG emissions and removals by source, economic sector, and greenhouse gas.</li> <li>• Making other minor changes and corrections.</li> </ul> <p>In addition to these changes, EPA is proposing confidentiality determinations for the reporting of certain data elements to the agency.</p> <p>The proposed rule can be found in the January 15, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The proposed rule is primarily of interest to sources required to report under the Part 98 GHG reporting rule. These include: (1) facilities that contain sources in specifically listed source categories; (2) facilities that emit 25,000 metric tons of CO<sub>2</sub> equivalent or more per year and fall into specific source categories; (3) facilities with stationary fuel combustion units with an aggregate maximum rated heat input capacity of 30 million British thermal units per hour or greater that emit 25,000 metric tons of CO<sub>2</sub> equivalent per year from all stationary fuel combustion sources; and (4) suppliers of certain fossil fuels and industrial GHGs if specific criteria are met.</p>	<p>EPA is accepting comments on the proposed revisions until <b>February 29, 2016</b>.</p> <p>EPA plans to phase in elements of the revisions over three years beginning in 2016 to give the agency time to update key software and to provide newly-regulated sources with time to meet the program requirements.</p>

## Other Recent Developments (Final)

### AIR

NEW YORK STATE: DEC **accepted delegation of new and updated federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPs)**, giving the Department authority to implement and enforce these regulations on behalf of EPA. The list of standards for which DEC obtained delegation includes: seven new NSPS; 27 revised NSPS; eight new NSPS test methods and performance specifications; nine new NESHAPs; and 19 revised NESHAPs. The rulemaking, which involves revising the list of regulations incorporated by reference in 6 NYCRR Part 200, for the first time includes the NSPS general provisions contained in 40 CFR Part 60, subpart A. DEC decided not to accept delegation of 40 CFR Part 63, subpart ZZZZ, the NESHAP for reciprocating internal combustion engines. According to the Department, the standard requires regulation of all types of engines regardless of size and the Department lacks the resources to successfully implement the program. DEC also declined to accept delegation of the following standards for the same reason: 40 CFR Part 60, subpart IIII (standards of performance for stationary compression ignition internal combustion engines) and subpart JJJJ (standards of performance for stationary spark ignition internal combustion engines) and 40 CFR Part 63, subpart JJJJJ (NESHAP for industrial, commercial and institutional boiler area sources). DEC received no public comment on the rule, which can be found at: [www.dec.ny.gov/regulations/102207.html](http://www.dec.ny.gov/regulations/102207.html).

Implications: The rule makes DEC primarily responsible for enforcing most NSPS and NESHAPs.

### WATER

FEDERAL: EPA announced its final decision not to issue **national primary drinking water regulations (NPDWR) for four contaminants on its Third Contaminant Candidate List (CCL 3)** under the Safe Drinking Water Act (SDWA). EPA must publish a CCL every five years containing contaminants that are not subject to any existing NPDWRs, are known or anticipated to be in public water systems, and may require regulation under the SDWA. EPA published CCL 3 in 2009, accepting comment on whether to set standards for one or more of 116 possible drinking water contaminants. After completing this review process, EPA identified five contaminants for possible regulation. With the recent notice, EPA announced its decision not to set standards for four of the contaminants evaluated in the final stage of the CCL 3 review—dimethoate, 1,3-dinitrobenzene, terbufos, and terbufos sulfone. At the same time, EPA delayed a final determination on whether to regulate strontium in order to consider additional data. The notice can be found in the January 4, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The determination is primarily of interest to owners/operators of public drinking water systems.

NEW YORK STATE: DEC **modified its State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems (MS4s)** to address litigation-related changes. Under the MS4 general permit, operators of small MS4s in urbanized areas must develop and implement a stormwater management program (SWMP) and obtain coverage under the general permit. The SWMP must fulfill six required program components relating to public education and outreach, public involvement and participation, illicit discharge detection and elimination, construction site stormwater runoff control, post-construction stormwater management, and pollution prevention/good housekeeping for municipal operations. After accepting public comment, DEC revised the permit to establish a schedule for entities in watersheds covered by specific Total Maximum Daily Loads to develop and implement certain best management practices (BMPs). The changes were needed to implement the Westchester County Supreme Court's decision in *Natural Resources Defense Council v. DEC*. Although New York's highest court ultimately upheld the MS4 general permit against various challenges, DEC never appealed the portion of the trial court decision which held that the Department failed to specify compliance schedules with respect to effluent limitations and water quality standards. To implement the trial court's decision, the revised MS4 permit contains compliance schedules as well as a progress report form seeking information on the municipalities' progress in implementing required BMPs. DEC made minor changes to the draft permit in response to public comments. The revised MS4 general permit and related documents can be found at: [www.dec.ny.gov/chemical/43150.html](http://www.dec.ny.gov/chemical/43150.html).

Implications: The revisions to the general permit are primarily of interest to municipalities that discharge to certain impaired watersheds, including, but not limited to, the New York City reservoirs located east of the Hudson River, Greenwood Lake in Orange County, Onondaga Lake, and Long Island.

### **Other Recent Developments (Proposed)**

### **REMEDATION**

FEDERAL: EPA **proposed revisions to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)** to align it with the Department of Homeland Security's (DHS) National Response Framework (NRF) and National Incident Management System (NIMS). The NRF establishes a comprehensive, national, all-hazards approach to domestic incident management that is built on the NIMS—a framework for government agencies to work together to prepare for, respond to and recover from domestic incidents. With the current rulemaking, EPA proposed to revise the NCP, set forth at 40 CFR Part 300, to align it with the NRF and NIMS, update descriptions of federal department and agency organizations and capabilities and how they operate, and recognize the establishment of the DHS. In addition, EPA proposed to revise the list of information required to be reported to the National Response Center to include the cause as well as the source of a release. EPA is accepting comments on the proposed revisions until **March 25, 2016**; the rulemaking can be found in the January 25, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The revisions are primarily of interest to individuals engaged in incident response activities.

**WATER**

**FEDERAL:** EPA **proposed changes to the regulations governing small municipal separate storm sewer systems** to implement a federal court decision which found that the existing regulations did not provide for adequate public notice and comment and failed to ensure that small MS4 permittees reduce pollutants to the maximum extent practicable as required by the Clean Water Act. Although the small MS4 permit is similar to other stormwater general permits in many respects, the court concluded that the details of compliance are found in the Notice of Intent (NOI) submission and not in the permit itself and that the NOI is therefore the “functional equivalent” of a permit application and must be subject to public notice and comment. With the recent rulemaking, EPA proposed three approaches for addressing the court’s decision: (1) Traditional General Permit Approach (including all requirements for MS4s in the general permit itself); (2) Procedural Approach (establishing public notice and comment requirements for best management practices prior to granting coverage under the general permit); and (3) State Choice Approach (allowing each state to choose between (1) or (2) above). Over the years, the states have adopted different approaches to addressing the issues raised by the court’s decision. States that are not currently implementing the strategy ultimately adopted by EPA will be expected to modify their procedures to conform to the final rule. EPA is accepting comments on the proposed rule until **March 21, 2016**; it can be found in the January 6, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed rule is primarily of interest to owners/operators of small MS4s.

**NEW YORK STATE:** DEC made available for comment its **draft list of impaired waters required by Section 303(d) of the federal Clean Water Act**. The list, which is updated every two years, includes waters that do not support appropriate uses and identifies those waters that require and are scheduled for development of a total maximum daily load (TMDL) or other more appropriate strategy to reduce the input of specific pollutant(s) that restrict water body use. As in previous years, the list includes segments that are impaired for a wide range of contaminants. In conjunction with the 303(d) list, DEC also made available for comment its Consolidated Assessment and Listing Methodology (CALM), which outlines the state’s process for monitoring and assessing water quality. DEC is accepting comments on the draft 303(d) list and CALM until **March 4, 2016**; they can be found on DEC’s website at: [www.dec.ny.gov/chemical/31290.html](http://www.dec.ny.gov/chemical/31290.html).

Implications: Adoption of a TMDL for impaired waters may lead eventually to stricter SPDES permit limits and other discharge restrictions targeted at eliminating the impairment.

**NEW YORK STATE:** DEC **sought comment on a revised general permit authorizing certain activities undertaken for habitat management purposes** in DEC-controlled freshwater wetlands. Draft General Permit GP-0-16-003, *Habitat Management by NYSDEC*, which replaces GP-0-15-004, applies to activities in freshwater wetlands in DEC wildlife management areas, cooperative areas, multiple use areas and unique areas. The permit authorizes a host of activities under the broad categories of: reconstruction and in-kind replacement of existing structures; management of constructed impoundments; new docks, piers, observation/hunting blinds and platforms, boardwalks or similar access structures; vegetation management (including application of certain herbicides); and

dredging to maintain existing channels for habitat or water management. Entities seeking to take advantage of the permit must submit an application to DEC using the Joint Application Form. DEC will review the application to determine if the project can be authorized under the general permit. Assuming the permittee receives written authorization, it may proceed with the project provided it complies with the conditions spelled out in the general permit. The revised permit adds a new category of work relating to the installation of certain parking lots up to 0.1 acre and sets limits on the application of herbicides covered by the permit to 25 acres per management area. The deadline for submitting comments on the draft general permit has closed; the draft can be found on DEC's website at: [www.dec.ny.gov/permits/6061.html](http://www.dec.ny.gov/permits/6061.html).

Implications: The rule is primarily of interest to entities planning certain types of work in DEC-controlled freshwater wetlands.

## OTHER

FEDERAL: EPA **made available for comment its draft *Guidelines for Human Exposure Assessment***, which is used to assess people's exposure to chemicals and other stressors. The document updates EPA's 1992 risk exposure guidelines to reflect updated methods and approaches to risk assessment. Like the current risk assessment document, the revised draft addresses planning and scoping for an assessment, data acquisition and use, modeling, and considerations of uncertainty in risk assessment. However, the document also includes extensive new material, including: a new chapter on environmental justice issues that addresses unique population characteristics and sociodemographic factors that could increase exposure or predispose any group to greater risk; expanded recommendations on planning, scoping and problem formulation; and an expanded list of factors risk assessors should consider in addressing uncertainty and variability. EPA is accepting comments on the draft guidelines until **February 22, 2016**; notice of the draft guidelines can be found in the January 7, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: Once finalized, the guidelines will be used by agency risk assessors, consultants and contractors performing assessments for EPA. They also may be used by state agencies and others conducting assessments in accordance with EPA's policies and procedures.

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. Competitive applications must include clear, measurable and documented metrics demonstrating success and adhere to specific content and format requirements. Complete applications must include an application cover sheet and application checklist as well as specific 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. Examples of eligible projects include: green infrastructure projects; initiatives to reduce greenhouse gas emissions; climate change adaptations; manufacturing process

improvements and/or “green tech” solutions; initiatives to “green” businesses; clean energy projects; energy efficiency improvements; and other projects. Applications must be postmarked by **April 8, 2016**. The application form and instructions can be found on DEC’s website at: [www.dec.ny.gov/public/945.html](http://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.

## Regulatory Agenda

DEC published its **regulatory agenda for 2016**. The agenda identifies the regulatory changes DEC may pursue in the upcoming year. Key items on the agenda include:

- **6 NYCRR Part 205, Architectural and Industrial Maintenance Coatings**: Include additional and more restrictive limits on volatile organic compound (VOC) content.
- **6 NYCRR Part 222, Distributed Generation**: Adopt a new regulation establishing standards for distributed generation sources—stationary internal combustion engines that produce electricity for use at the facility at which they are located, including emergency generators.
- **6 NYCRR Subpart 225-2, Fuel Composition and Use**: Remove out-of-date regulatory references and work practices; update waste oil constituent limits; and expand the number of facilities allowed to burn waste oil.
- **6 NYCRR Subpart 227-1, Stationary Combustion Installations**: Remove out-of-date regulatory references and update permissible emission rates for particulate matter.
- **6 NYCRR Subpart 228-3, Mobile Equipment Repair and Refinishing**: Adopt new rule establishing VOC content limits for coatings used in motor vehicle repair and refinishing.
- **6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles**: Update and clarify testing requirements for gas stations; conform various provisions to new federal requirements and guidance; require prior notification to DEC for each test; require new vapor leak detection equipment; and delete Stage II VOC control equipment requirements currently applicable downstate.
- **6 NYCRR Part 232, Perchloroethylene Dry Cleaning**: Update rule to streamline administrative requirements and conform to federal requirements.
- **6 NYCRR Part 235, Consumer Products**: Implement additional VOC product content limits.
- **6 NYCRR Part 247, Outdoor Wood Boilers**: Update rule to conform to federal emission standards and certification requirements of NSPS.
- **6 NYCRR Parts 360, 364, and 369, Solid Waste Management Facilities**: Reorganize the rule to better reflect solid waste topics; address subjects not currently covered by the regulations, such as automobile dismantlers, pharmaceutical waste, dredge materials, biohazard incident waste, and yellow grease; and enhance the rules relating to large commercial mulching operations and construction and demolition debris disposal.

- **6 NYCRR Part 368, Product Stewardship and Labeling:** Rename regulation; conform recycling emblem regulations with national labeling guidelines; and develop regulations implementing recent laws addressing mercury-added consumer products and product stewardship requirements for electronic waste, cell phones and rechargeable batteries.
- **6 NYCRR Parts 370-374, 376, Hazardous Waste Management:** Incorporate changes to the federal hazardous waste regulations adopted since January 2002 and make various state-initiated changes and corrections. In a separate rulemaking, DEC also is considering adopting four recently adopted federal rules relating to solvent-contaminated wipes, carbon dioxide sequestration, electronic manifests, and the management of certain secondary materials.
- **6 NYCRR Part 375, Environmental Remediation Programs:** Provide additional direction on issues encountered since the rule was adopted; implement changes to the program enacted by the Legislature in 2015; incorporate soil cleanup objective changes; consider possible changes to the definition of “significant threat” under the Superfund program; consider opportunities to incorporate sustainable remediation and development techniques into cleanup projects; and make other changes and corrections.
- **6 NYCRR Part 384, Cleanup Criteria for Remediation of Sites Contaminated with Radioactive Material:** Adopt new rule to implement applicable sections of the federal Nuclear Regulatory Commission’s License Termination Rule, which establishes cleanup criteria for radiologically contaminated sites.
- **6 NYCRR Parts 595-599, Chemical Bulk Storage (CBS); Parts 610-611, Major Oil Storage Facilities (MOSF); Part 613, Petroleum Bulk Storage (PBS):** As part of phase 2 of its bulk storage rulemaking, DEC plans to: incorporate changes to the federal underground storage tank regulations to ensure federal/state consistency; ensure consistency between PBS and CBS regulations, where appropriate; incorporate MOSF requirements currently found in New York Department of Transportation regulations; incorporate procedures currently contained in DEC guidance relating to MOSF licensing; enhance MOSF monitoring, maintenance, procedures and equipment to prevent leaks and spills; and incorporate Navigation Law requirements into the MOSF petroleum remediation regulations.
- **6 NYCRR Part 617, State Environmental Quality Review Act (SEQRA):** Modify lists of Type I and Type II actions and make other changes to streamline the SEQRA process.
- **6 NYCRR TBD, Waste Water Reuse:** New rule to address statutes relating to water efficiencies and promotion of the reuse of reclaimed wastewater.
- **6 NYCRR TBD, Water Well Registration and Reporting:** New rule to establish registration, reporting, certification and enforcement provisions for water wells.

The 2016 Regulatory Agenda can be found on DEC’s website at: <http://docs.dos.ny.gov/info/register/2015/jan7/toc.html>.



## Upcoming Deadlines

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

**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](http://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 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.

**February 12, 2016:** Deadline for submitting comments on DEC's proposed updates to its SPDES General Permits for Concentrated Animal Feeding Operations (extended from February 7, 2016). Copies of the draft permits can be found on DEC's website at [www.dec.ny.gov/permits/6285.html](http://www.dec.ny.gov/permits/6285.html).

**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/proprotections.html](http://www.dec.ny.gov/regulations/proprotections.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](http://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](http://www.gpo.gov/fdsys) for details.

**February 22, 2016:** Deadline for submitting comments on EPA's draft *Guidelines for Human Exposure Assessment*. See the January 7, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 22, 2016:** Deadline for submitting comments on the draft *OSHA Safety and Health Program Management Guidelines* (extended from February 15, 2016). The document can be found on OSHA's website at [www.osha.gov/shpmguidelines/index.html](http://www.osha.gov/shpmguidelines/index.html).

**February 29, 2016:** Deadline for submitting comments on EPA's proposal to streamline and improve the greenhouse gas reporting rule. See the January 15, 2016 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.gpo.gov/fdsys) for details.

**March 4, 2016:** Deadline for submitting comments on DEC's draft 2016 Section 303(d) impaired/TMDL waters list and Consolidated Assessment and Listing Methodologies guidance. These documents can be found on DEC's website at [www.dec.ny.gov/chemical/31290.html](http://www.dec.ny.gov/chemical/31290.html).

**March 11, 2016:** Deadline for submitting comments on EPA's request for information relating to hazardous air pollutant emissions from sources in the oil and natural gas production and natural gas transmission and storage segments of the oil and natural gas sector. (extended from January 26, 2016). See the November 27, 2015 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**March 21, 2016:** Deadline for submitting comments on EPA's proposed revisions to the regulations addressing stormwater discharges from small MS4s. See the January 6, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**March 25, 2016:** Deadline for submitting comments on EPA's proposed revisions to the National Contingency Plan regulations to align them with DHS procedures and terminology. See the January 25, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**April 8, 2016:** Deadline for submitting application for DEC's Environmental Excellence Awards. See DEC's website at [www.dec.ny.gov/public/945.html](http://www.dec.ny.gov/public/945.html) for details and a copy of the application. A webinar on the application process is scheduled for **February 24, 2016** from 10:00 a.m. to 11:30 a.m.