

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>NEW YORK STATE Emergency Legionella Control and Cooling Tower Regulation 10 NYCRR Part 4</p>	<p>The New York State Department of Health (DOH) adopted a third emergency rulemaking, set forth at 10 NYCRR Part 4, requiring the registration, inspection and maintenance of cooling towers—a term which includes not only cooling towers but evaporative condensers and fluid coolers that are part of recirculated water systems. The rule required cooling tower owners to: register the tower online with DOH, sample for legionella, and complete an inspection by September 16, 2015, with periodic testing/inspections thereafter; complete an annual compliance certification by November 1, 2016; and develop and implement a maintenance plan and program by March 1, 2016 that includes routine legionella sampling.</p> <p>The emergency rule can be found in the March 2, 2016 State Register at: http://docs.dos.ny.gov/info/register/2016/march3/toc.html. General information about legionella and the emergency rule can be found at: www.health.ny.gov/diseases/communicable/legionellosis.</p>	<p>Given the breadth of the definition of cooling tower and the absence of a de minimis exemption, the regulation affects a wide range of facilities across New York State. The rule also imposes general legionella planning and testing requirements on hospital and residential health care facilities.</p>	<p>The new emergency rule took effect February 11, 2016 and will expire May 10, 2016. According to the notice, the DOH intends to adopt the emergency rule as a permanent rule and will publish a notice of proposed rulemaking “at some future date”. DOH allowed the first and second emergency rules to expire without proposing a permanent rule.</p>
BULK STORAGE/REMEDICATION			
<p>NEW YORK STATE Emergency Rule Adding PFOA to Hazardous Substance List 6 NYCRR Part 597</p>	<p>In response to the discovery of perfluorooctanoic acid (PFOA) in drinking water wells in Hoosick Falls and elsewhere, DEC adopted an emergency rule adding PFOA to the list of hazardous substances regulated under the chemical bulk storage (CBS) program. Amending 6 NYCRR Part 597 to include PFOA allows DEC to regulate the bulk storage of PFOA under the CBS program and require reporting of PFOA releases. More important, adding PFOA to the Part 597 list allows DEC to expend State funds to address PFOA-contaminated sites under the State Superfund program, which defines “hazardous waste” to include both traditional hazardous wastes and any hazardous substance listed in Part 597.</p> <p>The emergency rule and supporting materials can be found in the February 17, 2016 and February 24, 2016 State Registers at: www.dos.ny.gov/info/register/2016.html. Additional information about the PFOA rulemaking can also be found on DEC’s website at: www.dec.ny.gov/regulations/104968.html.</p>	<p>Although the rule addresses PFOA generally, it is clearly targeted at providing DEC with the regulatory authority needed to address PFOA contamination in Hoosick Falls and neighboring communities. PFOA has been identified as a persistent chemical by EPA and others, and production of the chemical is currently being phased out under the Toxic Substances Control Act. As a result, few companies will likely be required to comply with the CBS requirements for this chemical.</p>	<p>The emergency rule took effect January 27, 2016 and will expire three months later unless DEC extends it an additional two months. Under New York’s emergency rulemaking procedures, DEC must adopt a permanent rule by the time the emergency rule expires. However, agencies can obtain additional time by proposing a new emergency rule (rather than seeking an extension). Companies that store PFOA have two years from the effective date of the regulation to comply with the handling and storage requirements of the CBS program.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
SOLID WASTE			
<p>NEW YORK STATE Solid Waste Management Revisions: Overview and General Provisions 6 NYCRR Part 360</p>	<p>DEC has proposed its long-awaited overhaul of New York’s solid waste regulations, which includes a wholesale reorganization of the rule, together with updates to address technological developments and new types of waste management facilities and concerns. In reorganizing the rule, DEC repealed the existing regulations (which were concentrated in Part 360) and replaced them with Parts organized by broad subject (material recovery facilities, landfills, etc.). As part of this reorganization, DEC has eliminated certain provisions, most notably 6 NYCRR Parts 362 and 363, which address state aid programs. Part 360, General Requirements, now contains provisions relevant to solid waste management facilities generally. Key changes include:</p> <ul style="list-style-type: none"> • Definitions: DEC has relocated all definitions to Part 360 and updated the rule to add terms needed to implement new programs, delete unnecessary terms and clarify others. • Beneficial use determinations (BUDs): DEC has revised the BUD provision to add new predetermined BUDs, specifically exclude other uses from BUDs, and update the criteria and procedures for obtaining a BUD. The revised rule also includes detailed BUD provisions for navigational dredge materials and gas storage and production brine. • Historic fill: A new section has been added to address historic fill, including criteria for onsite use, off-site use and disposal. • Exempt facilities: DEC has revised and clarified the list of exempt facilities, relocating exemptions relating to disposal to Part 363 (Landfills) and adding new exemptions for solid waste activities that have been found to be of minimal environmental concern. • Registrations: DEC has proposed to limit registrations to five years and allow the consideration of an applicant’s compliance history when reviewing whether registration is appropriate. • Financial assurance: The financial assurance requirements have been consolidated in Part 360 and strengthened/clarified. <p>The proposed Part 360 rule can be found on DEC’s website at: www.dec.ny.gov/regulations/81768.html.</p>	<p>The proposed rulemaking represents the first major overhaul of the solid waste regulations in more than 20 years and is potentially of interest to anyone engaged in solid waste management activities in New York.</p> <p>The rule includes extensive transition provisions, set forth at 6 NYCRR § 360.4. Exempt facilities that now require a registration/permit or registered facilities that now require a permit must make appropriate submissions (typically within 90 or 180 days from the final rule). Facilities also are expected to comply with new design and/or operational requirements within a specified time period.</p> <p>With respect to BUDs, all case-specific BUDs must now be renewed every five years. Previously approved BUDs that are more than five years old will expire unless a renewal petition is submitted to DEC with 180 days of the effective date of the rule. BUDs granted within five years of the effective date of the rule remain in effect for five years and must then be renewed.</p>	<p>DEC is accepting comments on the proposed revisions to the solid waste regulations until July 15, 2016. A public hearing on the proposed rules is scheduled for June 6, 2016 at 1:00 p.m. at DEC Headquarters, 625 Broadway, Public Assembly Room 129, Albany. Additional public hearings are scheduled in Hauppauge and Rochester.</p>

Citation	Summary	Implications	Schedule/Notes
SOLID WASTE			
<p>NEW YORK STATE Material Recovery Facilities 6 NYCRR Part 361</p>	<p>As part of its overhaul of New York’s solid waste regulations, DEC has proposed to establish 6 NYCRR Part 361, Material Recovery Facilities, containing the rules governing recycling facilities.</p> <ul style="list-style-type: none"> • Subpart 361-1, Recyclables Handling and Recovery Facilities: This section covers facilities that handle traditional recyclables, such as glass, paper, and metal. DEC is proposing to require a permit for facilities handling 250 tons per day (tpd) or more of recyclables; currently, the regulations only require registration. • Subpart 361-2, Land Application and Associated Storage Facilities; Subpart 361-3, Composting and Other Organics Processing Facilities: DEC is proposing to revise the regulations to exempt certain small-scale food scrap composting operations. • Subpart 361-4, Wood Debris and Yard Trimmings Processing Facilities: DEC has concluded that large-scale mulch processing/storage facilities pose an environmental concern and should be regulated. The level of regulation depends on the size of the site; small sites will continue to be exempt from regulation. • Subpart 361-5, Construction and Demolition (C&D) Debris Processing Facilities: Key changes include: (1) requiring facilities receiving less than 250 tpd of specific types of C&D debris to register; (2) requiring facilities accepting mixed C&D debris to receive, store and process the materials inside; (3) expanding C&D debris tracking requirements; (4) limiting the allowable time period and volume of C&D storage; and (5) requiring a BUD to process woodwaste into mulch at C&D facilities. • Subpart 361-6, Waste Tire Handling and Recovery Facilities: This new provision requires facilities that process tires into products/feedstocks to obtain a permit. • Subpart 361-7, Metal Processing and Vehicle Dismantling Facilities: This new subpart requires larger scrap metal processors and vehicle dismantling facilities to register with DEC and incorporates/clarifies the 2006 Vehicle Dismantler Law. • Subpart 361-8, Used Cooking Oil and Yellow Grease Processing Facilities. This provision requires facilities processing used cooking oil and grease into biodiesel in quantities greater than 1000 gallons annually to register or obtain a permit based on size. <p>The proposed Part 361 rule can be found on DEC’s website at: www.dec.ny.gov/regulations/81768.html.</p>	<p>The proposed rule is potentially of interest to any company engaged in one of the eight material recovery activities subject to the standards spelled out in Part 361. Although most of these activities are already regulated under New York’s solid waste regulations, the standards for wood debris and yard trimmings processing, metal processing and vehicle dismantling, and used cooking oil and yellow grease processing are new. Also, DEC is proposing for the first time to require permits rather than registrations for waste tire handling facilities and to require registrations for certain types of C&D processing facilities that were formerly exempt.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

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SOLID WASTE			
<p>NEW YORK STATE Combustion, Thermal Treatment, Transfer and Collection Facilities 6 NYCRR Part 362</p>	<p>The overhauled solid waste regulations include a new Part 362, which addresses combustion, thermal treatment, transfer and collection facilities:</p> <ul style="list-style-type: none"> • Subpart 362-1, Combustion Facilities and Thermal Treatment Facilities: This section has been revised to cover emerging thermal treatment technologies and address combustion of specific waste types, including waste tires, unadulterated wood, and used cooking oil and yellow grease, including requiring registration rather than permits for smaller facilities managing these waste streams. • Subpart 362-2, Municipal Solid Waste Processing Facilities: DEC proposed this new section to address MSW processing facilities regardless of how the waste is ultimately disposed (combustion vs. other uses). MSW processing facilities perform post-collection processing/separation of MSW to recover recyclables or produce a waste-derived fuel. • Subpart 362-3, Transfer Facilities: DEC has revised the transfer facility provisions to expand exemptions for several transfer facility types (vehicle-to-vehicle transfer, small municipally-owned transfer facilities, small source-separated organic waste transfer facilities, and retail or wholesale takeback programs). • Subpart 362-4, Household Hazardous Waste Collection Facilities and Events: DEC has proposed to repeal the current household hazardous waste regulations in 6 NYCRR subpart 373-4 and consolidate the relevant requirements in subpart 362-4. In addition, the current individual collection event approval process has been replaced by a more streamlined registration program. In addition to the subpart-specific requirements, DEC has revised subparts 362-1, 362-2 and 362-3 to require all MSW combustors, MSW processing facilities, and permitted transfer facilities that transport waste out-of-state to install and utilize fixed radiation detectors. Also, combustors and MSW processing facilities are prohibited from processing materials that were previously diverted from the MSW waste stream for reuse or recovery. <p>The proposed Part 362 rule can be found on DEC’s website at: www.dec.ny.gov/regulations/81768.html.</p>	<p>The proposed rule is primarily of interest to owners/operators of facilities that combust and/or thermally treat solid waste, MSW processing facilities and transfer facilities. In addition, the proposed rule is potentially of interest to local governments that operate household hazardous waste collection facilities and/or conduct household hazardous waste collection events. Note that event registrations are only valid for one year.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

Citation	Summary	Implications	Schedule/Notes
SOLID WASTE			
<p>NEW YORK STATE Landfills 6 NYCRR Part 363</p>	<p>DEC has proposed the following changes to the standards governing landfills as part of its overhaul of the solid waste regulations:</p> <ul style="list-style-type: none"> • Landfill gas collection: Active collection and destruction of landfill gas will be required for all new MSW landfills and subsequent development of existing MSW landfills. • Post-closure/custodial care: The regulations clarify the responsibilities of landfill owners after closure, distinguishing between post-closure and custodial care activities. Post-closure care activities (leachate collection and treatment, landfill cover maintenance and repair, monitoring, and inspections) must be conducted until the owner/operator can demonstrate to DEC that the potential threat has been reduced to a level that justifies reductions in monitoring/maintenance. Thereafter, the operator must undertake custodial care activities as long as waste remains on-site. Landfills will require permits (rather than registrations) for post-closure care operation and maintenance. • Land clearing debris: The proposed regulation limits the current exemption for land clearing debris to one acre or less of the facility accepting the debris. No exemption is available on Long Island. • C&D debris landfills: The proposed regulation requires a single composite liner with leachate collection for all C&D debris landfills, regardless of size. • Exempt disposal activities: The current regulation exempts disposal of materials such as uncontaminated concrete, asphalt pavement, brick, glass, soil and rock. DEC has proposed to replace this exemption with one that limits exempt disposal to 5,000 cubic yards and prohibits disposal of processing residues with these exempt materials. The exemption is not available on Long Island. • Monitoring/technology changes: DEC has proposed numerous changes to the groundwater monitoring, operation, siting, and design requirements for landfills, including the standards for liners, covers, and leachate collection and removal. <p>The proposed revisions to Part 363 can be found on DEC's website at: www.dec.ny.gov/regulations/81768.html.</p>	<p>The proposed regulation is primarily of interest to owners/operators of solid waste landfills. By its terms, the rule applies to new landfills, active and inactive existing landfills, vertical expansions of existing landfills, and landfills undergoing subsequent development.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

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SOLID WASTE			
<p>NEW YORK STATE Miscellaneous Solid Waste Rule Changes, Including Waste Transporters and Biohazard Waste Management Facilities 6 NYCRR Parts 364, 365, 366, and 369</p>	<p>DEC has proposed changes to the solid waste regulations in addition to those applicable to material recovery facilities, thermal treatment, transfer and collection facilities, and landfills discussed above.</p> <ul style="list-style-type: none"> • Part 364, Waste Transporters: Subpart 364 has been revised to conform to the changes in the other Parts and focus on waste streams that pose a problem or concern. Key changes include: (1) relocating all non-transportation-related medical waste provisions to the new Part 365; (2) add exemptions for electronics destined for recovery; elemental mercury and dental amalgam from dental facilities destined for mercury recovery; and regulated medical waste (RMW) transported by emergency rescue vehicles; (3) increase the exemption for small loads of most waste from 500 to 2000 pounds; (4) establish registration requirements for the self-transport of small quantities of certain waste streams (RMW, source-separated household hazardous waste, commercial solid waste, commercially-generated C&D debris or historic fill, and sharps from household medical waste collection facilities); and (5) require waste tracking forms for C&D debris, drilling and production waste, and historic fill. • Part 365, Biohazard Waste Management Facilities: The proposed regulation consolidates all of the requirements for RMW into new subpart 365-2 and establishes new subparts addressing general biohazard waste requirements (subpart 365-1), household medical waste sharps collection facilities (subpart 365-3), and other biohazard waste management facilities (subpart 365-4). • Part 366, Local Solid Waste Management Planning: DEC has proposed to replace the biennial compliance reporting requirement with an annual planning unit report, accompanied every other year by a biennial update of the local solid waste management plan. • Part 369, State Assistance Projects: DEC has consolidated the State's solid waste management assistance programs into Part 369. • Subpart 374-2, Used Oil: DEC has consolidated all of the requirements relating to used oil into 6 NYCRR subpart 374-2 and added a new section 374-2.10 containing the permitting and registration provisions for these facilities. <p>The proposed revisions to the above-referenced regulations can be found on DEC's website at: www.dec.ny.gov/regulations/81768.html.</p>	<p>The proposed changes to the Part 364 waste transporter rules establish exemptions for certain waste streams going for reclamation and increase the threshold for exempting loads of most common wastes from 500 to 2000 pounds. With respect to biohazard wastes, DEC has expanded the regulations to encompass all types of biohazard wastes, not just RMW.</p> <p>The proposed regulations do not address recent product stewardship laws addressing electronic waste, rechargeable batteries, and cell phones. Per DEC's 2016 Regulatory Agenda, the Department plans to revise 6 NYCRR Part 368, which will be renamed Product Stewardship and Labeling, to conform the State's recycling emblem regulations with national labeling guidelines and implement the above-referenced laws as well as the State's mercury-added consumer products law.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

Citation	Summary	Implications	Schedule/Notes
REMEDICATION			
<p>FEDERAL Addition of Subsurface Intrusion Component to Hazard Ranking System 40 CFR Part 300 81 Fed. Reg. 10372 (Feb. 29, 2016)</p>	<p>EPA proposed to add a subsurface intrusion (SsI) component to the Hazard Ranking System (HRS), the principal mechanism used to evaluate sites for placement on the National Priority List (NPL) and inclusion in the federal Superfund program. SsI covers both the intrusion of volatile chemicals from contaminated groundwater or soil into overlying structures (i.e., vapor intrusion) and direct intrusion by contaminated groundwater. According to EPA, although SsI threats are being addressed at sites already on the NPL, the agency lacks the ability to list sites because of the threat posed by SsI. As part of the rulemaking, EPA also is proposing to revise 40 CFR Part 300, Appendix A, to reflect changes in terminology.</p> <p>The proposed rule can be found in the February 29, 2016 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The HRS is used by EPA to evaluate the risk or potential risk of hazardous substance sites for purposes of inclusion/ranking on the NPL. According to EPA, the addition of SsI to the HRS ranking system will not affect the status of sites currently on, or proposed to be added to, the NPL. If the change is adopted, EPA will consider SsI, together with the other HRS criteria, in ranking NPL sites.</p>	<p>EPA is accepting comments on the proposed change until April 29, 2016.</p>
<p>NEW YORK STATE Reproposed Brownfield Cleanup Program Regulations Implementing Recent Statutory Changes 6 NYCRR Part 375</p>	<p>After an earlier proposal met with objections, DEC recently reproposed revisions to New York’s Brownfield Cleanup Program (BCP) regulations, set forth at 6 NYCRR Part 375, to implement the 2015 amendments to the BCP statute limiting eligibility for tangible property tax credits for projects in New York City. The statute specifies that sites in New York City must meet one or more of several criteria to qualify for tangible property tax credits under the BCP program, including that the site will be used for “affordable housing” or is “underutilized”. In the face of strong opposition to an earlier proposal, DEC has proposed a new definition of underutilized that allows for greater flexibility. Like the earlier proposal, the current draft considers various factors, including the extent of recent usage (based on permissible floor area), future use, the need for substantial government assistance, and other factors. However, DEC has revised the definition to: allow mixed use development, including some residential; drop the requirement that the project need substantial government assistance for largely industrial uses; reduce from five to three years the time that a property has to be underutilized relative to applicable zoning; and expand eligibility to vacant sites. DEC also reproposed the definition of “affordable housing project” with minor changes.</p> <p>The reproposed regulation can be found on DEC’s website at: www.dec.ny.gov/regulations/101908.html.</p>	<p>The rule is primarily of interest to those engaged in brownfield redevelopment efforts in New York City.</p> <p>As required by the 2015 BCP amendments, DEC also proposed to revise the definition of “brownfield site” from sites that are “complicated by the presence or potential presence” of contamination to sites that are contaminated at levels exceeding DEC soil cleanup objectives or other health or environmental standards adopted by the Department. This statewide change means applicants must conduct sampling before submitting applications.</p>	<p>DEC is accepting comments on the reproposed revisions to the BCP regulations until April 8, 2016.</p> <p>DEC plans to propose additional regulatory changes later to address other aspects of the BCP legislation, including the possible establishment of a fast track program known as BCP-EZ.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Standards and Specifications for Erosion and Sediment Control</p>	<p>DEC is accepting comment on draft revisions to the <i>New York State Standards and Specifications for Erosion and Sediment Control</i>, which contains the standard practices for controlling stormwater discharges from construction activities. Construction activity disturbing one acre or more (less in certain areas) must be covered by New York’s State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges Associated with Construction Activity. Individuals seeking coverage under the permit must prepare an erosion and sediment control plan; the measures in the Standards and Specifications document are presumed to comply with the permit. The revised draft document updates recommended procedures and technologies to reflect recent developments and implement EPA’s effluent limitation guidelines (ELG), set forth 40 CFR Part 450, which were adopted in 2009. Key changes include:</p> <ul style="list-style-type: none"> • Reorganizing the standard to reflect recommended design/planning considerations for developing an erosion and sediment control plan. • Identifying the important design considerations for specific types of construction projects (e.g., linear highway, linear utility, large residential, and small residential, among others). • Including standards/specifications for implementing EPA’s ELG, e.g., concrete truck washout, site pollution prevention, soil restoration, buffer filter strips, and dewatering devices. • Adding new standards and specifications to address changes in technology, such as compost filter socks, drop inlet protection, dewatering devices, geotextile filter bags, sediment dikes, anchored stabilization matting, loose stabilization blankets and flow diffusers. • Deleting outdated practices/standards. • Clarifying the design criteria for key measures based on current studies and field testing (e.g., silt fences, sediment basins, and sediment traps, among others). • Deleting references to use of invasive species as protective cover. <p>The draft Standards and Specifications document can be found on DEC’s website at: www.dec.ny.gov/chemical/41392.html.</p>	<p>The Standards and Specifications document is used by planners, design engineers, developers, contractors, landscape architects, property owners, resource managers and others to develop or evaluate erosion and sediment control plans for construction projects. As previously noted, compliance with the standards and specifications is presumed to comply with the SPDES general permit for construction activities. Alternative methods may be explored on a case-by-case basis with DEC regional staff.</p>	<p>DEC is accepting comments on the draft Standards and Specifications document until March 25, 2016.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA **added several additional materials to the list of categorical non-waste fuels that can be burned in boilers rather than commercial and industrial solid waste incineration (CISWI) units.** In 2011, EPA finalized a definition of non-hazardous solid waste to be used to identify whether non-hazardous secondary materials burned as fuels or used as ingredients in combustion units are solid waste and thus whether the units are regulated as CISWIs under Clean Air Act (CAA) § 129 or as boilers under CAA § 112. As part of that rulemaking, EPA adopted a procedure for adding materials to the list of non-waste fuels categorically excluded from regulation as solid waste under CAA § 129. With the recent rule, EPA added the following materials to the list of non-waste fuels that can be burned in boilers: (1) construction and demolition (C&D) wood processed from C&D debris according to best management practices; (2) paper recycling residuals, including old corrugated cardboard rejects, generated from the recycling of recovered paper and paperboard products and burned on-site by paper recycling mills whose boilers are designed to burn solid waste; and (3) creosote treated railroad ties that are processed and combusted in certain units designed to burn both biomass and fuel oil. The final rule, which took effect March 9, 2016, can be found in the February 8, 2016 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to facilities hoping to burn the listed waste streams in boilers or industrial furnaces.

CLIMATE CHANGE

FEDERAL: In an unprecedented move, the U.S. Supreme Court **stayed implementation of EPA's controversial Clean Power Plan (CPP) program** pending disposition of petitions challenging the rule in the courts. The CPP, which was adopted under CAA § 111(d), 42 USC § 7411(d), requires states to develop plans to reduce greenhouse gas (GHG) emissions from existing coal and oil-fired power plants and natural gas-fired combined cycle generating units by applying one or more of three “building blocks”—improved power plant efficiency, fuel substitution and/or increased reliance on renewables. Numerous states and industry groups have filed suit challenging the CPP, arguing, among other things, that EPA exceeded its authority under the CAA by adopting a rule that calls for emission reductions from sources other than the affected power plants. In a five-to-four vote, the Supreme Court stayed the CPP without explanation pending a final judicial decision on the merits of the CPP. Although the Obama administration has expressed its continuing support for the CPP in the face of the stay, many experts have suggested that the stay reflects judicial skepticism concerning the legal foundation of the rule. Information about the CPP can be found on EPA's website at: www.epa.gov/cleanpowerplan.

Implications: The stay is of immediate interest to states, many of whom had begun the process of implementing the CPP.

SOLID WASTE

NEW YORK STATE: DEC issued a report to the Governor and Legislature **summarizing the results of the first two years of New York's 2010 Electronic Equipment Recycling and Reuse Act**. The Act requires manufacturers who sell or offer for sale certain covered electronic equipment (CEE) such as televisions and computers to register their brands with DEC and establish a program for collecting, handling and recycling or reusing e-waste. Under the program, each manufacturer must meet a goal for e-waste collection and recycling based on their share of the CEE market in New York. The Act also established a phased ban on disposal of covered e-waste. The recent report, entitled *NYS E-Waste Recycling and Reuse Act: Implementation & Results for 2011 and 2012*, analyzed the results of the program from April 2011 through December 2012, finding that while DEC exceeded its e-waste collection goal in 2011 it fell short in 2012. The report identified several program strengths as well as a number of challenges, including: the absence of an effective database management system for tracking e-waste both generally and when shipped out-of-state; delays associated with establishing annual acceptance standards for manufacturers of CEE; and logistical obstacles to successfully implementing the program in New York City. DEC also discussed the difficulties associated with recycling cathode ray tubes (CRTs), a common component of older televisions and monitors. In recent years, the number of CRTs disposed has increased while the market for recycling them has collapsed, making recycling CRTs uneconomic and complicating the e-waste recycling program for these units. A copy of the report can be found on DEC's website at: www.dec.ny.gov/docs/materials_minerals_pdf/ewaste.pdf. In another e-waste development, EPA published the results of a study assessing the implementation of the two third-party certification programs for e-waste recyclers in the United States—the e-Stewards and R2 certification programs. The report can be found at: www.epa.gov/smm-electronics/implementation-study-electronics-recycling-standards-r2-and-e-stewards.

Implications: The reports are primarily of interest to electronics manufacturers and companies engaged in the collection, management and recycling of e-waste.

REMEDIATION

FEDERAL: EPA **revised the training requirements of the lead-based paint (LBP) program**. The existing LBP program requires individuals engaged in lead-based paint activities such as abatement, renovation, repair and painting in target housing and child-occupied facilities to receive proper training. Previously, the regulations required renovators to complete an eight-hour initial course as well as refresher training every five years. Both courses include a hand-on component. With the current rulemaking, EPA dropped the hands-on training component of refresher training. In addition, EPA eliminated the need for separate certifications for each EPA-administered state jurisdiction. The final rule can be found in the February 17, 2016 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is potentially of interest to individuals/companies engaged in renovating older houses and child-occupied facilities.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued **guidance explaining the process of classifying chemicals under the revised Hazard Communication Standard (HCS)**. The HCS was developed to inform workers about the hazards posed by chemicals in the workplace, requiring manufacturers/importers to evaluate the chemicals they produce/import and develop safety data sheets (SDS) and labels and requiring employers to prepare written hazardous communication programs and provide information and training on chemical hazards to their employees. In 2012, OSHA revised the HCS to align it with the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS), which provided more specific direction on classifying hazardous chemicals for purposes of preparing SDS and labels. OSHA's new document, entitled *Hazard Classification Guidance for Manufacturers, Importers, and Employers*, provides guidance on the processes and considerations underlying the hazard classification process, addressing: the identification of chemicals for classification; data collection; data analysis; and the types of information that should be included when explaining the rationale behind the classification. Following this general overview, the document includes detailed guidance on classifying each of the three broad categories of hazard—health hazards, physical hazards, and hazards not otherwise classified—organized by class. For example, in the case of health hazards, the guidance includes separate subsections on classifying chemicals based on acute toxicity, skin corrosion/irritation, serious eye damage/eye irritation, carcinogenicity, etc. The document can be found on OSHA's website at: www.osha.gov/Publications/OSHA3844.pdf.

Implications: The guidance is potentially of interest to chemical manufacturers/importers as well as employers that use hazardous chemicals.

OTHER

FEDERAL: EPA issued its **national enforcement initiatives (NEI) for fiscal years 2017-2019**, identifying the issues on which it plans to focus its enforcement resources during the next three years. After seeking comments on proposed alternative initiatives, EPA adopted a final list that included the following four existing initiatives: (1) reducing air pollution from the largest sources (addressing emissions relating to large new/modified sources, including coal-fired power plants and acid, glass and cement manufacturing facilities); (2) ensuring energy extraction and production activities comply with environmental laws; (3) keeping raw sewage and contaminated stormwater out of the nation's waters; and (4) preventing animal waste from contaminating surface and groundwater supplies. In addition, EPA added new initiatives relating to keeping industrial pollutants out of the nation's waters (focusing on sectors like chemical and metal manufacturing, mining and food processing that are responsible for nutrient and metal pollution) and reducing risks of accidental releases from industrial and chemical facilities. EPA also proposed to expand its existing initiative to reduce emissions of hazardous air pollutants by including facilities that generate, treat, store or dispose of hazardous waste. The final NEI can be found on EPA's website at: www.epa.gov/enforcement/national-enforcement-initiatives.

Implications: Although the NEI tends to focus on larger facilities/polluters, it is generally of interest to anyone regulated by EPA either directly or through a state-delegated program such as the Clean Air or Clean Water Acts.

Other Recent Developments (Proposed)

WATER

NEW YORK STATE: The Lake George Park Commission proposed permanent rules requiring **mandatory inspections of trailered vessels prior to launch into Lake George to limit the spread of aquatic invasive species** (AIS) following a two-year trial period. Under the regulation, which is set forth at 6 NYCRR subpart 646-9, all trailered boats must be inspected by a trained “vessel inspection technician” to confirm that they are clean, drained and dry before launching into Lake George. Boats that do not pass inspection must be washed and decontaminated at the inspection station with high pressure hot water. Inspected vessels are then outfitted with “vessel inspection control seals” (VICS) that connect the boat to the trailer. Boats leaving Lake George must be cleaned and drained before leaving the launch site, at which point they will receive a new VICS. These boats can relaunch into the lake without a new inspection provided the VICS is intact. All launch sites must be registered with the Commission and launch operators must keep records documenting each launch. In addition, launch operators must maintain their launch areas so as to prevent trailered vessels not equipped with intact VICS from launching into the lake. The Commission implemented virtually identical regulations on a two-year trial basis in 2014 and 2015 and has concluded that the inconvenience and costs of the regulation are more than offset by the benefits to the waters of Lake George Park. A public hearing on the proposed rule is scheduled March 28, 2016 at 4:00 p.m. at Bolton Town Hall in Bolton Landing; the Lake George Park Commission is accepting comments on the proposed rule until **April 2, 2016**. The proposed rule can be found in the February 20, 2016 State Register at: <http://docs.dos.ny.gov/info/register/2016/feb10/toc.html>.

Implications: The rule is primarily of interest to owners/operators of boat launches on Lake George and boaters using the lake.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA is **accepting comments on guidance for determining the potential health hazards of chemicals** using weight of evidence (WoE) criteria in conjunction with implementation of the updated Hazard Communication Standard. The draft document, entitled *Guidance on Data Evaluation for Weight of Evidence Determination: Application to the 2012 Hazard Communication Standard*, is intended to assist manufacturers, importers and employers in evaluating scientific studies under a WoE approach for hazard communication purposes. The GHS is intended to improve the quality and consistency of the information provided to employees under the HCS. The WoE guidance assists with this goal by outlining the types of information manufacturers/importers should consider in classifying a substance for health hazards, how to evaluate the strength of the available evidence, the scope and use of WoE, and detailed considerations in the use of WoE. The guidance also includes examples of classifications of different substances for each of the more complex health-based endpoints (carcinogens, germ cell mutagens and reproductive hazards). OSHA is taking

comment on the draft guidance until **May 2, 2016** (extended from March 31, 2016); it can be found on OSHA's website at: www.osha.gov/weightofevidence/woe_guidance.pdf.

Implications: The draft guidance is primarily of interest to chemical manufacturers and importers, who are required to classify chemical hazards and prepare SDSs and labels.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

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 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 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 for details.

March 25, 2016: Deadline for submitting comments on DEC's proposed revisions to the *New York State Standards and Specifications for Erosion and Sediment Control*. See DEC's website at www.dec.ny.gov/chemical/41392.html for a copy of the draft document.

April 2, 2016: Deadline for submitting comments on the Lake George Park Commission's permanent rule requiring inspections of trailered vessels for aquatic invasive species prior to launching. See the February 10, 2016 State Register at <http://docs.dos.ny.gov/info/register/2016/feb10/toc.html> 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 for details and a copy of the application.

April 8, 2016: Deadline for submitting comments on DEC's repropoed revisions to the BCP regulations to incorporate certain recent changes to the brownfield statute. See DEC's website at www.dec.ny.gov/regulations/101908.html for details.

April 29, 2016: Deadline for submitting comments on EPA's proposal to add subsurface intrusion to the CERCLA hazard ranking system. See the February 29, 2016 Federal Register at www.gpo.gov/fdsys for details.

May 2, 2016: Deadline for submitting comments on OSHA's draft guidance on data evaluation for weight of evidence determinations under the Hazard Communication Standard (extended from March 31, 2016). See OSHA's website at www.osha.gov/weightofevidence/woe_guidance.pdf for a copy of the draft guidance.

June 6, 2016: Public hearing on DEC's proposed overhaul of the solid waste management regulations to be held 1:00 p.m. at DEC Headquarters, 625 Broadway, Public Assembly Room 129, Albany. Additional public hearings are scheduled in Hauppauge and Rochester.

July 15, 2016: Deadline for submitting comments on DEC's proposed overhaul of the solid waste management regulations. See DEC's website at www.dec.ny.gov/regulations/81768.html for details.