

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>NEW YORK STATE  <b>Standards for Individual Onsite Water Supply and Individual Onsite Wastewater Treatment Systems</b>                      10 NYCRR Part 75</p>	<p>The New York State Department of Health (DOH) revised <b>New York’s regulations governing individual drinking water supplies and septic systems</b> to update the terminology in the regulations and clarify and expand the standards applicable to these systems. Major changes to 10 NYCRR Part 75 include:</p> <ul style="list-style-type: none"> <li>• Replacing the term “individual sewage treatment system” with “individual onsite wastewater treatment system,” adding the word “onsite” to the term “individual water supply system” and revising the regulation to specify that these systems serve only one property.</li> <li>• Specifying that onsite wastewater treatment systems (OWTS) must be designed by a licensed professional (engineer or architect).</li> <li>• Clarifying that designs for OWTS that utilize an alternative system as described in the regulation must be approved by the appropriate State or county health department official prior to construction and certified by the design professional after construction.</li> <li>• Deleting subdivision (e) of Appendix 75-A.9 relating to evaporation-transpiration and evapo-transpiration absorption systems because these systems require very dry climates and so are not suitable for use in New York.</li> <li>• Deleting subdivision (c) of Appendix 75-A.10 concerning engineered systems as unnecessary. Note that these systems can still be approved by obtaining a waiver from design standards under appropriate conditions.</li> <li>• Establishing statewide minimum standards for individual water system water quality. The rule contains not-to-exceed standards for coliform bacteria, lead, nitrates, nitrites, turbidity, and arsenic and standards for iron, manganese, iron plus manganese, hardness, alkalinity, pH and sodium that, if exceeded, might necessitate water treatment devices or limits on daily consumption of water by certain persons. The regulations do not require that water be tested for compliance with the standards; however, counties may choose to require compliance through their county sanitary codes.</li> </ul> <p>The regulations can be found in the March 16, 2016 State Register at: <a href="http://docs.dos.ny.gov/info/register/2016/march16/toc.html">http://docs.dos.ny.gov/info/register/2016/march16/toc.html</a>.</p>	<p>The revisions are potentially of interest to design professionals, state and county health department officials, developers and others involved in designing and constructing individual onsite water systems (i.e., individual drinking water wells) and individual onsite wastewater treatment systems (i.e., individual septic systems).</p>	<p>The revisions took effect March 16, 2016.</p>

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<b>OCCUPATIONAL SAFETY AND HEALTH</b>			
<p>FEDERAL  <b>Occupational Exposure to Respirable Crystalline Silica</b>                      29 CFR Parts 1910, 1915, and 1926                      81 Fed. Reg. 16286 (Mar. 25, 2016)</p>	<p>The Occupational Safety and Health Administration (OSHA) <b>adopted major revisions to the standards for occupational exposure to respirable crystalline silica (RCS)</b>, which is generally produced when workers cut, grind, crush or drill silica-containing materials such as concrete, masonry, tile or rock. To minimize the health risks from RCS, OSHA established a new permissible exposure limit (PEL) of 50 micrograms of RCS per cubic meter of air (<math>\mu\text{g}/\text{m}^3</math>) for both construction and general industry. This limit means that over the course of any 8-hour work shift, the average exposure to RCS cannot exceed 50 <math>\mu\text{g}/\text{m}^3</math>. The specific requirements differ for construction and general industry/maritime.</p> <ul style="list-style-type: none"> <li>• <b>Construction.</b> The rule contains Table 1 which matches common construction tasks/equipment (saws, drills, jackhammers, grinders/milling machines and crushers) with specific dust control methods. Employers that decline to follow Table 1 must develop a tailored program that measures silica levels in the air, protects worker exposure above the PEL, and provides respirators when dust will exceed the PEL. In addition, all construction employers subject to the standard must develop a written exposure control plan, designate a competent person to implement the plan, restrict housekeeping practices that expose workers to silica where feasible alternatives are available, train workers, offer medical exams to certain exposed employees, and keep records.</li> <li>• <b>General industry/maritime.</b> These employers must: measure silica if levels could exceed 25 <math>\mu\text{g}/\text{m}^3</math> and protect workers from silica exceeding the PEL; with respect to areas with silica levels above the PEL, limit employee access, implement dust controls, and require respirators where dust controls cannot limit exposures to the PEL; restrict housekeeping practices that expose workers to silica where feasible alternatives are available; develop and implement a written exposure control plan; train workers; offer medical exams to certain exposed employees; and keep records.</li> </ul> <p>The revised RCS standards can be found in the March 25, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>. Additional information about the RCS standard can be found at: <a href="http://www.osha.gov/silica/index.html">www.osha.gov/silica/index.html</a>.</p>	<p>Crystalline silica particles can cause serious diseases, including silicosis, lung cancer, chronic obstructive pulmonary disease, and kidney disease. According to OSHA, the prior PELs, which have not been updated for decades, do not adequately protect worker health and are difficult to understand and implement. Moreover, the PEL for construction and shipyard workers is more than twice that for general industry.</p> <p>OSHA estimates that about 2.3 million workers are exposed to RCS in the workplace; the majority of these workers (about 2 million) are in the construction industry. The standards are intended to provide equivalent protection for all workers while accounting for the different work activities, anticipated exposures, and other conditions in these sectors.</p>	<p>The final rule takes effect June 23, 2016. Construction employers must comply with all of the requirements of the standards by June 23, 2017, except for requirements for laboratory evaluation of exposure samples, which begin on June 23, 2018. The general industry/maritime standards must be implemented by June 23, 2018, with extended deadlines for certain medical surveillance requirements and hydraulic fracturing operations.</p> <p>OSHA made significant revisions to the rule following input from the public. Of perhaps greatest note, with respect to the construction industry, OSHA allowed employers to satisfy their RCS obligations by complying with Table 1 rather than requiring separate compliance with the PEL. Other changes include dropping protective clothing requirements and allowing use of dry dust collection techniques in certain circumstances. With respect to both construction and industry, OSHA is requiring all employers to prepare a written exposure control plan.</p>

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<b>TRANSPORTATION</b>			
<p>FEDERAL  <b>Hazardous Materials Reverse Logistics</b>                      49 CFR Parts 171 and 173                      81 Fed. Reg. 18527 (Mar. 31, 2016)</p>	<p>The Pipeline and Hazardous Materials Safety Administration (PHMSA) <b>established an exception to the hazardous material transportation (Hazmat) regulations to address “reverse logistics,”</b> defined as “the process of offering for transport or transporting by motor vehicle goods from a retail store for return to its manufacturer, supplier or distribution facility for the purpose of capturing value (e.g., to receive manufacturer’s credit), recall, replacement, recycling, or similar reason.” Previously, hazardous materials shipped from a retailer back to a distribution facility were subject to the same Hazmat requirements as the original shipment; however, the retail employees responsible for packaging and shipping the materials often are not properly trained. With this rulemaking, the PHMSA adopted a reverse logistics exception to the Hazmat requirements as follows:</p> <ul style="list-style-type: none"> <li>• <b>Applicability and hazard classes.</b> The exception applies only to shipments made by highway of consumer products in specific hazard classes that are commonly found in the reverse logistics supply chain and can be easily managed.</li> <li>• <b>Training/documentation.</b> Retail employees shipping under the exception must be familiar with the reverse logistics requirements and document that returned shipments authorized under the rule are managed consistent with instructions provided by the manufacturer, supplier or distribution facility.</li> <li>• <b>Packaging/marketing.</b> Materials handled under the reverse logistics exception are subject to reduced packaging requirements. In particular, returned materials must be placed in their original (or equivalent) packaging. Inner packaging must be leakproof for liquids and siftproof for solids. For liquids, the outer packaging must hold enough absorbent to contain a spill from the inner packaging. Packages must be marked “REVERSE LOGISTICS—HIGHWAY TRANSPORT ONLY—UNDER 49 CFR 173.157.”</li> </ul> <p>The PHMSA also modified an existing exception for the shipment of lead acid batteries to allow for the pickup of batteries from multiple retail entities for the purpose of recycling.</p> <p>The final regulations can be found in the March 31, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rule is primarily of interest to retailers and others responsible for managing hazardous materials returned by consumers and others. The PHMSA hopes that the exception will ensure the safe handling of such materials through a simplified program tailored to the unique issues associated with reverse logistics. The rule is part of a larger effort by the federal government to examine the problems associated with the management of hazardous materials by retailers. <i>See also</i> 79 Fed. Reg. 8926 (Feb. 14, 2014) (EPA advance notice of proposed rulemaking seeking comment on hazardous waste management issues faced by retailers).</p>	<p>The rule took effect March 31, 2016.</p> <p>The PHMSA revised the rule in response to public comment, including: revising the definition of reverse logistics; revising the list of consumer products subject to the reduced requirements of the reverse logistics exception; replacing the proposal to require marking using the common name or proper shipping name with specific “reverse logistics” language; simplifying the training requirements; and aligning the material segregation requirements with those applicable to materials subject to the existing limited quantities section of the Hazmat rule.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>OTHER</b>			
<p>FEDERAL  <b>Risk Management Plan Programs under Clean Air Act</b>                      40 CFR Part 68                      81 Fed. Reg. 13638 (Mar. 14, 2016)</p>	<p><b>EPA proposed revisions to the risk management plan (RMP) regulations</b> contained in 40 CFR Part 68. The RMP program requires facilities storing listed hazardous substances above threshold quantities to conduct a hazard assessment and prepare a RMP. The rule distinguishes between three levels of programs with Program 2 and 3 processes subject to more rigorous planning requirements because they pose the greatest risk. Key changes include:</p> <ul style="list-style-type: none"> <li>• <b>Accident Prevention Program Revisions.</b> EPA proposed changes to the rules for preventing accidental releases. First, the proposal requires all facilities with Program 2 or 3 processes to conduct a root cause analysis after any incident that resulted or could have resulted in a catastrophic release and submit a report to EPA. Second, any Program 2 or 3 facility that has a RMP reportable incident must use an independent third party that meets certain regulatory criteria to conduct its next scheduled audit. Finally, Program 3 facilities in specified SIC codes (paper manufacturing, petroleum and coal products manufacturing, and chemical manufacturing) must evaluate safer production alternatives as part of their hazard assessment, although implementation of the changes identified is not required.</li> <li>• <b>Emergency Response Enhancements.</b> EPA proposed changes to the rule’s emergency response requirements, including requiring facilities with Program 2 or 3 processes to coordinate with local emergency agencies at least once a year to clarify response needs, emergency plans, roles and responsibilities. In addition, EPA proposed to require these facilities to conduct emergency notification exercises annually, field exercises every five years, and tabletop exercises during years between field exercises.</li> <li>• <b>Enhanced Availability of Information.</b> The proposed rule would require all RMP facilities to provide certain information to the public. In addition, a subset of facilities must provide local emergency response authorities with summaries of certain key program components (e.g., compliance audits, emergency response exercises, accident history and investigation reports) upon request.</li> </ul> <p>The proposed rule can be found in the March 14, 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 facilities required to prepare RMPs. In the wake of several high profile chemical accidents, President Obama issued Executive Order 13650, entitled <i>Improving Chemical Facility Safety and Security</i>, which required OSHA to publish a request for information to identify issues relating to modernization of its process safety management (PSM) standards. Because the RMP and PSM standards share certain common requirements, EPA published a request for information (RFI) in July 2014 seeking feedback from the public on possible changes to the RMP rule. The recent rulemaking reflects information/comments received following the RFI. EPA is seeking comments on a wide range of alternatives to its proposed changes as part of the proposed rulemaking.</p>	<p>EPA is accepting comments on the proposed revisions to the RMP rule until <b>May 13, 2016</b>.</p> <p>EPA may consider additional changes to the RMP rule as part of a future rulemaking relating to: the list of RMP-regulated substances; location of stationary sources relative to public receptors; and emergency shutdown system requirements.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA established a **revised schedule for implementing EPA's Cross-State Air Pollution Rule (CSAPR)**. The CSAPR addresses ozone and fine particulate matter nonattainment problems in the Northeast by reducing nitrogen oxide and sulfur dioxide emissions from power plants through a multi-state emission cap-and-trade program. In 2011, a federal appeals court stayed the CSAPR pending resolution of a judicial challenge. The Supreme Court upheld the rule in *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). Shortly thereafter, the appellate court lifted the stay and tolled for three years all of the CSAPR's compliance deadlines. The recent rulemaking amends the deadlines in the CSAPR to conform to the court's decision. Specific changes include: (1) extending by three years the deadlines for facilities to comply with the rule's emissions limitations and assurance provisions and amending the years in which the emission budgets, set asides and variability limits apply; (2) adopting comparable amendments to the deadlines for meeting monitoring system certification requirements and submitting quarterly emissions reports; (3) amending the deadlines by which EPA must allocate and record emission allowances; and (4) amending the deadlines associated with the sunset of the Clean Air Interstate Rule, which remained in place pending resolution of the CSAPR litigation. EPA implemented the revised schedule via an interim rule published in December 2014. After accepting comments on the interim rule, EPA adopted the interim rule as a permanent rule without change. The final rule can be found in the March 14, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to power plants subject to the CSAPR.

FEDERAL: EPA **updated the rule governing ambient air monitoring for criteria pollutants** set forth at 40 CFR Part 58, which contains the procedures and standards for establishing and maintaining the air monitoring network used to collect the data needed to set national ambient air quality standards (NAAQS) and demonstrate compliance. With the recent rulemaking, EPA revised and updated Part 58 to clarify existing requirements and reduce the compliance burdens on agencies operating monitoring networks. Major changes include: adding definitions (certifying agency, chemical speciation network, implementation plan, network plan, primary monitor, and PSD monitoring organization/network/reviewing authority), deleting definitions (plan, population-oriented monitoring (or sites), and state speciation site), and revising/clarifying other defined terms; updating the procedures for developing/implementing annual monitoring network plans, including clarifying that the state/local agency must make the plan available for public notice and comment; revising the operating schedule requirements pertaining to minimum sampling frequency; revising the requirements for making changes to the state and local air monitoring stations (SLAMS) network; revising and updating the data certification requirements used to show that ambient air quality data has been properly validated; revising Appendix A (Quality Assurance Requirements for Monitors Used in Evaluations of NAAQS); and adding a new Appendix B (Quality Assurance Requirements for Prevention of Significant Deterioration (PSD) Air Monitoring). The final rule, which takes effect April 27, 2016, can be found in the March 28, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).



Implications: The rule is primarily of interest to state/local agencies responsible for conducting ambient air monitoring. The rule also is potentially of interest to owners/operators of newly constructed/modified major facilities required to analyze their ambient air quality impact under the PSD program.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA **updated its general industry, shipyard employment, marine terminals, longshoring and construction eye and face protection standards** to incorporate the most recent versions of key consensus standards. The rule is part of a broader OSHA initiative to incorporate the latest versions of national consensus and industry standards into its regulations. The 2010 American National Standards Institute (ANSI) standards incorporated by reference focus on a hazard, such as droplet and splash, impact, optical radiation, etc. and specify the type of equipment needed to protect from the hazard. By comparison, earlier versions of the ANSI standards focused on the protector type, i.e., spectacles, goggles, faceshields, etc. The rule incorporates the recent consensus standards and changes the language in the construction eye and face protection standards to make it consistent with the general industry standard. The final rule, which takes effect April 25, 2016, can be found in the March 25, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

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

### Other Recent Developments (Proposed)

#### AIR

NEW YORK STATE: DEC announced that it was **delaying certain compliance dates under its proposed air emission rule for distributed generation (DG) sources** pending completion of its DG rulemaking. In December 2015, DEC proposed regulations setting emission standards and other requirements for DG sources—stationary reciprocating or rotary internal combustion engines that feed the distribution grid or produce electricity for use at host facilities. The proposed rule would establish emission limits, notification, performance testing and other requirements for “economic dispatch sources,” (i.e., DG sources used to reduce energy costs or ensure a reliable energy supply) and less stringent requirements on emergency generators. However, the rule required economic dispatch sources subject to the proposed standards to notify DEC in writing concerning their plans by April 1, 2016, test the source by April 30, 2016 and meet applicable emission standards by May 1, 2016. With the recent notice, DEC announced that affected parties participating in demand response programs may anticipate that the regulation will not apply until after the summer 2016 capability period. The proposed regulation can be found on DEC’s website at: [www.dec.ny.gov/regulations/104487.html](http://www.dec.ny.gov/regulations/104487.html). The announcement can be found in the March 16, 2016 Environmental Notice Bulletin at: [www.dec.ny.gov/enb/20160316\\_not0.html](http://www.dec.ny.gov/enb/20160316_not0.html).

Implications: The announcement is primarily of interest to owners/operators of DG sources potentially subject to the proposed rule.

## Upcoming Deadlines

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

**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](http://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](http://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](http://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](http://www.osha.gov/weightofevidence/woe_guidance.pdf) for the draft guidance.

**May 13, 2016:** Deadline for submitting comments on EPA's draft revisions to the RMP regulations. See the March 14, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**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](http://www.dec.ny.gov/regulations/81768.html) for details.