

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedules/Notes
AIR/CLIMATE CHANGE			
<p>FEDERAL New Source Performance Standards for Oil and Natural Gas Sector and Related Rules 40 CFR Parts 50, 51, 60 et al. 81 Fed. Reg. 35824 (oil and natural gas sector NSPS); 81 Fed. Reg. 35622 (source determination) (June 3, 2016)</p>	<p>EPA adopted rules limiting emissions of volatile organic compounds (VOCs) and methane from certain oil and natural gas production, transmission and distribution sources. The rules establish standards for new, modified and reconstructed oil and natural gas sources and define “source” for the oil and natural gas sector.</p> <ul style="list-style-type: none"> • New Source Performance Standards (NSPS). EPA revised 40 CFR Part 60, subpart OOOO and adopted a new rule at subpart OOOOa establishing standards for VOCs and methane based on the “best system of emission reduction” (BSER) for certain new, modified and reconstructed equipment, processes and activities in the oil and natural gas source category. Sources covered by the rule includes compressors, pneumatic controllers, pneumatic pumps, hydraulically fractured well completions, and fugitive emissions from well sites and compressor stations. Of particular note, the regulations establish standards for well completions at the initial flowback and separation flowback stages as well as requiring use of a completion combustion device. To address fugitive emissions from well sites, the regulations require semiannual monitoring of fugitive emission components using optical gas imaging, with Method 21 as an alternative. Any leaks must be repaired. For compressor stations, a monitoring plan must be developed and implemented that calls for quarterly monitoring. Any leaks identified must be repaired within 30 days. • Source Determination. In the wake of a court of appeals decision rejecting EPA’s conclusion that it may consider factors other than proximity in deciding whether sources are part of a single facility for Title V and New Source Review purposes, EPA adopted a rule specifying when wells are considered a single source. Under the rule, oil and natural gas production processing segments located on a single onshore surface site will be considered adjacent and thus part of a single stationary source. In addition, sources on separate segments will be considered a single source if they are located no more than a quarter of a mile apart and meet a common-sense notion of plant. <p>The final rules can be found in the June 3, 2016 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rules are primarily of interest to entities engaged in oil and natural gas production, transmission and distribution.</p> <p>EPA issued a revised NSPS in 2012 that updated the VOC standards for equipment leaks at onshore natural gas processing plants and established standards for oil and gas activities/ equipment not previously covered by the standard. The rule was the subject of significant controversy, much of it focused on EPA’s failure to regulate methane emissions, which contribute to climate change.</p> <p>The new NSPS was adopted as part of the Obama administration’s 2014 Strategy to Reduce Methane Emissions. The strategy focuses on reducing methane emissions from the four major sources of human-related methane: landfills, coal mining, agriculture, and oil and gas. On the same day it adopted the new NSPS, EPA published request for information on methane emissions from existing wells, including the types of technologies that could be used to reduce emissions.</p>	<p>The final NSPS and source determination take effect August 2, 2016.</p>

Citation	Summary	Implications	Schedule/Notes
BULK STORAGE/REMEDATION			
<p>NEW YORK STATE Emergency Rule Adding PFOA and PFOS to Hazardous Substance List 6 NYCRR Part 597</p>	<p>DEC adopted a second emergency rule and proposed a permanent rule to provide it with the tools to address the discovery of perfluorooctanoic acid (PFOA) and related substances in drinking water wells in Hoosick Falls and elsewhere. In February 2016 DEC adopted an emergency rule adding PFOA-acid 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 the chemical under the CBS program and require reporting of PFOA releases. More important, adding PFOA to the Part 597 list allows DEC 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. In the recent emergency rule and proposed permanent rule, DEC added perfluorooctane sulfonic acid (PFOS-acid) and PFOA and PFOS salts to the list of hazardous substances to further expand its remedial authority. DEC also set a deadline of April 25, 2017 for facilities to dispose of fire-fighting foam containing these substances</p> <p>The emergency rule/proposed rulemaking can be found on DEC’s website at: www.dec.ny.gov/regulations/104968.html.</p>	<p>PFOA and PFOS have been widely used in fire-fighting foam, stain-resistant carpeting, and semi-conductor coatings, among other uses.</p> <p>Although the rule addresses PFOA and PFOS generally, it is clearly targeted at providing DEC with the regulatory authority needed to address PFOA contamination in Hoosick Falls and neighboring communities. PFOA and PFOS have been identified as persistent chemicals by EPA and others, and production 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>DEC is accepting comment on the proposed rule until July 8, 2016. A public hearing has been scheduled for June 27, 2016, 2:00 p.m. at Empire State Plaza, Meeting Room 6, Albany. Additional public hearings are scheduled in Henrietta and Garden City.</p> <p>The emergency rule took effect April 25, 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).</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Aquatic Invasive Species Spread Prevention 6 NYCRR Part 576</p>	<p>DEC adopted regulations requiring owners/operators of boats or floating docks to take “reasonable precautions” prior to placing them into public waters to prevent the spread of aquatic invasive species (AIS). The rule, which is set forth at 6 NYCRR Part 576, applies to all sites from which watercraft or floating docks can be launched into public waterbodies. It prohibits persons from launching or attempting to launch a watercraft or floating dock into a public water body unless the following reasonable precautions are taken:</p> <ul style="list-style-type: none"> • Cleaning. Inspect the watercraft/floating dock, remove any plants/animals visible to the human eye, and dispose of them in a manner that avoids contact of the material with the waterbody; and • Draining. Drain water from the watercraft, watercraft’s motor or other components so as to avoid contact of drainage with public waterbody (with special rules for draining the cooling systems of personal watercraft); and • Treating. Treat the watercraft/floating dock using at least one of the following methods: drying (via sunlight or heated building for a minimum of 5 days or in subfreezing temperatures for a minimum of 3 days or via towel drying if the other drying or rinsing methods are unavailable prior to launch); rinsing (via high pressure hot water at a location that does not drain into a waterbody; if hot water is not available at or near the launch site, the owner/operator is expected to use the warmest water available); or painting (applicable prior to launching into marine and coastal district waters only). <p>The rule contains certain limited exemptions as well as a provision specifying that treatment is not required for a watercraft or floating dock that is “re-launched from a launch site into a public water body within the bounds of any permanent barriers impassible to watercraft which was, prior to launching, removed from the same launch site without having been launched into any other waterbody from any other launch site.”</p> <p>The rule can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.</p>	<p>The rule is primarily of interest to owners/operators of boats/floating docks that are launched into public waters and is part of a larger effort by DEC to address invasive species. Recent measures include issuance of an aquatic species management plan and the adoption of rules that restrict the commercial importation and sale of invasive plant and animal species, require boaters to take precautions to ensure AIS are not introduced at state-operated boat launch facilities, and require third-party inspections and other measures prior to launching boats into Lake George. The regulation applies in addition to these other State and local rules regulating aquatic invasive species.</p>	<p>The final rule took effect May 25, 2016.</p>

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OCCUPATIONAL SAFETY AND HEALTH			
FEDERAL Tracking Workplace Injuries and Illnesses 29 CFR Parts 1904 and 1902 81 Fed. Reg. 29624 (May 12, 2016)	<p>OSHA adopted major changes to the rules governing tracking of injuries and illnesses to improve access to the information. The existing rule, set forth at 29 CFR Part 1904, requires certain employers to record work-related injuries and illnesses that result in death, loss of consciousness, days away from work, restriction of work, transfer to another job, medical treatment other than first aid, or diagnosis of a significant injury or illness by a physician or other licensed health care professional. Covered employers must complete Form 301 (Injury and Illness Incident Report) for each reportable injury/illness and record the incident on Form 300 (Log of Work-Related Injuries and Illnesses). Each year, employers use the information from these forms to complete Form 300A (Summary of Work-Related Injuries and Illnesses). With this rulemaking, OSHA is requiring establishments that must keep injury/illness records under Part 1904 with 250 or more employees and establishments with between 20 and 250 employees in certain industrial sectors to electronically submit data from these records to OSHA on an annual basis. In addition, all employers specifically notified by OSHA must electronically submit injury/illness information as specified in the notification. OSHA intends to post the establishment-specific injury and illness data it collects under the rule on its public web site at www.osha.gov, with certain fields restricted to preserve privacy. The rule also revises the OSHA recordkeeping regulations to require employers to inform employees of their right to report workplace-related injuries and illnesses, clarify that the employer's reporting procedures must be reasonable and must not deter or discourage employees from reporting, and incorporate the existing statutory prohibition on retaliating against employees for reporting injuries.</p> <p>Detailed information about the final rule can be found at: www.osha.gov/recordkeeping/finalrule/index.html.</p>	<p>According to OSHA, the existing workplace injury/illness recordkeeping rule covers approximately 600,000 employers with 1,300,000 establishments.</p>	<p>The reporting requirements phase in beginning July 1, 2017.</p>

Proposed Statutes, Regulations, and Guidance

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>FEDERAL National Pollutant Discharge Elimination System Applications and Program Updates 40 CFR Parts 122, 123, 124, et al. 81 Fed. Reg. 31344 (May 18, 2016)</p>	<p>EPA proposed revisions to its National Pollutant Discharge Elimination System (NPDES) regulations to: eliminate regulatory and application form inconsistencies; improve permit documentation, transparency and oversight; clarify existing regulations; and remove outdated provisions. Major changes include:</p> <ul style="list-style-type: none"> • Definitions. Adding/revising definitions for pesticide applications to waters of the United States, proposed permit, and whole effluent toxicity. • Vessels exclusion. Modifying vessel exclusion to reflect legislative and judicial developments relating to the scope of the exclusion. • Application requirements. Revising application requirements to include EPA’s current data standards and the NPDES Electronic Reporting Rule and make numerous other changes/updates. • Antidegradation. Adding a reference to 40 CFR § 131.12 as a reminder that states must consider state antidegradation policies when developing water quality-based effluent limits. • Dilution allowances. Specifying that any allowance for dilution must comply with applicable dilution and mixing zone requirements and be supported by data or analyses quantifying or accounting for the presence of each assessed pollutant in the receiving water. • Reasonable potential determination. Clarifying the types and quantities of data/information that must be considered when analyzing whether discharges of a pollutant have a “reasonable potential” to cause an excursion above water quality standards. • Objection to administratively continued permits. Giving EPA the authority to designate certain administratively continued permits as “proposed permits” and thus ensure that permits reflect statutory and regulatory updates and contain appropriate effluent limits. • Public notice. Proposing to allow permitting authorities to provide public notice of NPDES permits online in lieu of newspaper publication and specifying in greater detail the information that must be included in SPDES permit fact sheets. <p>The proposed rule can be found in the May 18, 2016 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The proposed regulations will update key federal NPDES implementing regulations, which have not been significantly revised/updated in several decades. If EPA adopts the changes, DEC will be required to revise its own State Pollutant Discharge Elimination System regulations/procedures to conform to the federal changes.</p>	<p>EPA is accepting comments on the proposed regulations until July 18, 2016.</p>

Other Recent Developments (Final)

AIR

NEW YORK STATE: The New York State Department of Health (DOH) adopted a **fourth emergency rulemaking, set forth at 10 NYCRR Part 4, requiring the registration, inspection and maintenance of cooling towers**. 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; develop and implement a maintenance plan and program by March 1, 2016; and complete an annual compliance certification by November 1, 2016. DOH proposed a permanent legionella control regulation in April 2016. The current emergency rule will expire on August 8, 2016 and must be adopted again unless the proposed rule is adopted by that date. The proposed rule differs from the emergency rule in numerous respects, including a narrower definition of cooling tower. The emergency rule can be found in the June 1, 2016 State Register at: <http://docs.dos.ny.gov/info/register/2016/june1/toc.html>. General information about legionella and the emergency rule can be found at: www.health.ny.gov/diseases/communicable/legionellosis.

Implications: The rule is primarily of interest to owners/operators of cooling towers.

WATER

NEW YORK STATE: DEC made its **revised Environmental Benefit Permit Strategy (EBPS) rankings available for review**. The EBPS rankings prioritize SPDES permits for full technical review based on criteria outlined in DEC guidance. The review under the EBPS program occurs independent of routine SPDES permit renewals. Each year, DEC publishes the priority list for central office, which handles most major industrial SPDES permits, and for each DEC regional office. SPDES permits on the top 10 percent of the lists are scheduled for full technical review in the coming year. Any interested party may submit a request to change a facility's ranking. The 2016 rankings can be found on DEC's website at: www.dec.ny.gov/permits/6054.html.

Implications: The notice is potentially of interest to anyone with an individual SPDES permit.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA **proposed to streamline, strengthen and clarify key aspects of the regional haze rule**, which requires states to implement planning and other measures to reduce emissions of pollutants that impair visibility and track progress toward achieving natural background conditions. Major changes to the regional haze rule include: (1) reorganizing the requirements for comprehensive periodic revisions to regional haze SIPs to more closely track the planning process (calculation of baseline and natural visibility conditions; evaluation of sources that impact visibility; calculation of reasonable progress goals; and monitoring to determine whether

goals are being achieved); (2) specifying that all progress toward achieving goals under the regional haze program must be measured from 2000-2004 baseline visibility conditions; (3) clarifying how to measure progress when evidence indicates that a SIP will not achieve natural visibility conditions by the 2064 Clean Air Act deadline; (4) specifying that when assessing progress states should focus on anthropogenic (manmade) visibility impairment and omit days dominated by uncontrollable visibility impacts due to phenomena such as wildfires; (5) significantly revising/updating the provisions relating to reasonably attributable visibility impairment (i.e., “plume blight”), including expanding the requirements to all states and territories with certain limited exceptions; and (6) expanding the requirements for consultation with federal land managers. EPA is accepting comments on the proposed revisions until **July 5, 2016**; the proposed rule can be found in the May 4, 2016 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to DEC, which is responsible for regional haze planning.

FEDERAL: EPA proposed to amend the **National Emission Standards for Hazardous Air Pollutants (NESHAP) for site remediation** to remove exemptions for site remediation activities performed under the authority of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA) corrective action program. The NESHAP, which is set forth at 40 CFR Part 63, subpart GGGGG, limits emissions of hazardous air pollutants (HAPs) from site remediation activities. EPA exempted CERCLA site remediation and RCRA corrective actions on the theory that these remedial activities were already subject to provisions to protect public health and safety. Litigation challenging the exemption was placed on hold and EPA issued a letter granting reconsideration of specific issues. With the recent rulemaking, EPA proposed to delete the exemption from the site remediation NESHAP for CERCLA and RCRA corrective action sites. EPA also is proposing to remove the provision limiting the NESHAP to site remediations that are co-located with at least one other stationary source regulated by another NESHAP. However, EPA is not accepting comment on the outstanding question whether it has a duty to set standards for heavy metal HAP emissions from site remediation activities. EPA is accepting comment on the proposed rule until **June 27, 2016**; it can be found in the May 13, 2016 Federal Register at www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to facilities undertaking site remediation activities that may result in significant HAP emissions.

NEW YORK STATE: DEC **made available for comment its proposed annual monitoring network plan**, which describes New York’s air monitoring network. As required by the Clean Air Act, DEC maintains a network of air monitors throughout the state to collect ambient air quality monitoring data for various pollutants, including ozone, particulate matter, and nitrogen oxides, as well as key meteorological data. The data are used by DEC to determine whether an area is achieving national ambient air quality standards; they are also used to determine the impact of a project under the Prevention of Significant Deterioration and other programs. The proposed monitoring plan includes an overview of New York’s air quality monitoring program, followed by a detailed description of each of the state’s air monitoring locations. DEC plans to add a permanent monitoring station in Niagara Falls; in addition, sulfur dioxide monitors will be installed in St. Lawrence and Tompkins counties to measure emissions from major sulfur dioxide sources.

The deadline for submitting comments on the monitoring plan has closed; the plan can be found on DEC's website at: www.dec.ny.gov/chemical/33276.html.

Implications: The plan is primarily of interest to engineers performing air impact analyses.

CLIMATE CHANGE

FEDERAL: EPA proposed **renewable fuel standards (RFS) for gasoline and diesel transportation fuel produced or imported for 2017**. Under the RFS program, gasoline and diesel producers and importers must use an increasing percentage of four types of renewable fuel: cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuel. To implement the RFS, EPA established a credit program under which every gallon of renewable fuel is assigned a unique number that is transferred along with the fuel. Refiners, blenders and importers subject to the RFS program must have sufficient RFS credits to meet their obligations under the program. With the current rulemaking, EPA proposed to establish the volume standards for the four types of fuel subject to the RFS program for the year 2017 (2018 for biomass-based diesel) at levels below those mandated by the Clean Air Act (CAA). According to EPA, constraints in the fuel market make it impossible to accommodate the increasing volumes of renewable fuel mandated by the Act. These constraints include lower than expected cellulosic biofuel production, a significant reduction in gasoline sales as well as a reluctance by distributors to sell E15 gasoline (i.e., gasoline containing up to 15% ethanol). EPA therefore exercised its waiver authority to set standards below those specified in the CAA. EPA is accepting comments on the proposed rule until **July 11, 2016**; it can be found in the May 31, 2016 Federal Register at: www.gpo.gov/fdsys.

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

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

June 16, 2016: Deadline for submitting comments on EPA's proposed changes to the SNAP list of CFC/HCFC substitutes under the Title VI stratospheric ozone protection program (extended from June 2, 2016). See the April 18, 2016 Federal Register at www.gpo.gov/fdsys for details.

June 27, 2016: Public hearing on DEC's proposal to add PFOA-acid and related chemicals to the list of hazardous substances under Part 597 to be held 2:00 p.m. at Empire State Plaza, Meeting Room 6, Albany. Additional public hearings are scheduled in Henrietta and Garden City.

June 27, 2016: Deadline for submitting comments on EPA's proposed revisions to the site remediation NESHAP to eliminate exemptions for CERCLA and RCRA corrective action sites. See the May 13, 2016 Federal Register at www.gpo.gov/fdsys for details.

July 5, 2016: Deadline for submitting comments on EPA's proposed revisions to the regional haze rule. See the May 4, 2016 Federal Register at www.epa.gov/fdsys for details.

July 8, 2016: Deadline for submitting comments on DEC's proposal to adding PFOA-acid and related chemicals to list of hazardous substances under 6 NYCRR Part 597. See DEC's website at: www.dec.ny.gov/regulations/104968.html.

July 11, 2016: Deadline for submitting comment's on EPA's proposed renewable fuel standards for 2017. See the May 31, 2016 Federal Register at www.gpo.gov/fdsys for details.

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.

July 18, 2016: Deadline for submitting comments on EPA's proposed revisions/updates to the National Pollutant Discharge Elimination System (NPDES) regulations. See the May 18, 2016 Federal Register at www.gpo.gov/fdsys for details.