

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Prepared by:  
Elizabeth Morss  
Young/Sommer LLC  
5 Palisades Drive  
Albany, NY 12205  
(518) 438-9907, ext. 232  
emorss@youngsommer.com  
<http://www.youngsommer.com>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>NEW YORK STATE Protection Against Legionella: Cooling Towers</b> 10 NYCRR Subpart 4-1</p>	<p>After three emergency rulemakings, the New York State Department of Health (DOH) <b>proposed a rule, set forth at 10 NYCRR subpart 4-1, requiring the registration, inspection and maintenance of cooling towers.</b> Among other things, the proposed regulation requires owners of cooling towers to:</p> <ul style="list-style-type: none"> <li>• Register the tower online and report information relating to bacteriological and legionella sampling, inspections, certifications and equipment removal/shutdown to DOH at 90-day intervals.</li> <li>• Prepare and implement a maintenance program and plan by September 1, 2016 in accordance with Section 7.2 of the ASHRAE standard <i>Legionellosis: Risk Management for Building Water Systems</i>. The plan must also include a schedule for routine bacteriological sampling (at least every 30 days and after process changes) and legionella sampling (at least every 90 days and within two weeks after startup following maintenance or seasonal shutdown), procedures for corrective action in response to culture analyses, shutdown and disinfection procedures, maintenance procedures during idle conditions, and other components.</li> <li>• Notify the local health department within 24 hours of receipt of a legionella sample that exceeds a specified threshold, with direct notice to the public either by the facility or DOH.</li> <li>• Require cleaning/disinfection activities to be performed by certified pesticide applicators or technicians or supervised apprentices.</li> <li>• Require inspections by a licensed professional engineer, certified industrial hygienist, certified water technologist, or environmental consultant or water treatment professional with specified training and experience every 90 days and prior to seasonal startups or startups following maintenance.</li> <li>• Require professionals identified above to provide annual certification on November 1, 2016 and annually thereafter that the cooling tower has a maintenance program and plan in place and is complying with other requirements.</li> </ul> <p>Notice of the rule can be found in the April 20, 2016 State Register at: <a href="http://docs.dos.ny.gov/info/register/2016/april20/toc.html">http://docs.dos.ny.gov/info/register/2016/april20/toc.html</a>. General information about legionella can be found at: <a href="http://www.health.ny.gov/diseases/communicable/legionellosis">www.health.ny.gov/diseases/communicable/legionellosis</a>.</p>	<p>The proposed regulation applies to owners of “cooling towers,” defined as “a cooling tower, evaporative condenser, fluid cooler or other wet cooling device that is capable of aerosolizing water, and that is part of, or contains, a recirculated water system and is incorporated into a building’s cooling process, an industrial process, a refrigeration system, or an energy production system.” This definition includes only units that are capable of aerosolizing water and so is narrower than that in the emergency rulemaking.</p> <p>Key changes from the emergency rule include: establishing a schedule for routine bacteriological and legionella sampling; requiring legionella culture analyses to be performed by a state-certified laboratory; specifying actions during idling; requiring cleaning and disinfection of towers shut down without treatment for more than 5 days; requiring tower owner to notify the local health department of legionella results above a specified threshold; and requiring inspections prior to startup.</p>	<p>DOH is accepting comments on the proposed rule until <b>June 6, 2016</b>. No public hearings are scheduled.</p> <p>The most recent emergency rule took effect February 11, 2016 and will expire May 10, 2016. Because the emergency rule will expire before the final rule can be adopted, DEC must either extend the emergency rulemaking for an additional two months or adopt a fourth emergency rule, which will expire three months after adoption.</p>

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>NEW YORK STATE Protection Against Legionella: Health Care Facilities</b> 10 NYCRR Subpart 4-2</p>	<p>As part of the cooling tower rulemaking above, DOH proposed to divide the new legionella protection regulation into two subparts and <b>significantly expand the provisions governing legionella control at health care facilities</b>. Under 10 NYCRR subpart 4-2, DOH is proposing to require “covered facilities”—defined as “all general hospitals and residential health care facilities as defined in Article 28 of the Public Health Law”—to implement environmental assessment and sampling plan programs. In particular, by September 1, 2016, all covered facilities must perform an environmental assessment of the facility using DOH forms unless an assessment was performed on or after September 1, 2015. Additional assessments must be performed annually thereafter and whenever certain events occur, including diagnosis of legionellosis potentially associated with the facility and changes that could affect the facility’s potable water system, among other events. In addition, by December 1, 2016, all covered facilities must adopt and implement a legionella culture sampling plan for their potable water systems. The plan must include a sampling schedule (every 90 days for the first year and annually thereafter, with certain exceptions) and provisions for responding to legionella culture results. The plan must be reviewed annually and in response to certain events.</p> <p>Notice of the rule can be found in the April 20, 2016 State Register at: <a href="http://docs.dos.ny.gov/info/register/2016/april20/toc.html">http://docs.dos.ny.gov/info/register/2016/april20/toc.html</a>. General information about legionella can be found at: <a href="http://www.health.ny.gov/diseases/communicable/legionellosis">www.health.ny.gov/diseases/communicable/legionellosis</a>.</p>	<p>The proposed rule is primarily of interest to general hospitals and residential health care facilities as defined in Public Health Law Article 28.</p> <p>The proposed regulation is far more comprehensive than the emergency rule, which declared only that covered health care facilities would be required to adopt a sampling plan, report the results, and take necessary response actions “as the department may determine appropriate.”</p>	<p>See Schedule/Notes above for details.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>NEW YORK STATE  <b>SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications</b>                      Permit No. GP-0-16-005</p>	<p>DEC is taking comment on its revised <b>SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications</b>. This State Pollutant Discharge Elimination System (SPDES) general permit is required for “operators” planning to apply pesticides labeled for aquatic uses to, in or over the surface waters of the state. To obtain coverage under the permit, the applicant must submit a notice of intent (NOI) to DEC and comply with the terms of the general permit, which include: minimizing discharges; preparing a pesticide discharge management plan (PDMP); conducting visual monitoring and assessments; implementing corrective measures and incident reporting requirements; maintaining key records; and complying with standard permit conditions.</p> <p>The revised permit contains various changes from the current version, including: incorporating changes necessary to address revisions to the federal pesticide general permit; clarifying that the operator must control discharges to meet water quality standards; incorporating the most recent list of impaired waters; authorizing submission of NOIs electronically and setting separate coverage dates for electronic versus paper submissions of 5 and 20 days from receipt, respectively; and revising the content requirements for PDMPs, including eliminating a provision exempting operators with Article 15 permits from the requirement to have a PDMP.</p> <p>The draft permit and related materials can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/70489.html">www.dec.ny.gov/chemical/70489.html</a>.</p>	<p>The general permit is primarily of interest to pesticide applicators and entities, such as towns, that retain third parties to conduct aquatic pesticide applications. The permit excludes from the permitting requirement aquatic pesticide applications to ponds of one acre or less in size that have no outlet to surface water and lie wholly within privately-owned lands.</p> <p>DEC already requires permits for aquatic pesticide applications under ECL Article 15 and/or Article 24. The general permit is required to satisfy court decisions which found that the federal Clean Water Act requires permits for discharges to waters of the United States of chemical pesticides that leave a residue and biological pesticides.</p>	<p>DEC is accepting comment on the revised general permit until <b>May 20, 2016</b>. Once the new general permit is finalized, operators covered by the existing general permit must submit a new NOI to continue coverage.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA issued a **supplemental finding that consideration of cost does not alter its previous conclusion that it is appropriate and necessary to regulate coal and oil-fired power plants under the National Emission Standards for Hazardous Air Pollutant (NESHAP) program** in the wake of a Supreme Court decision which held that EPA erred when it made the finding without considering cost. After reviewing the environmental and health impacts of hazardous air pollutant (HAP) emissions from power plants, EPA concluded in 2000 that it was “appropriate and necessary” to regulate these emissions under the NESHAP program. EPA reiterated that finding in 2011 and issued the Mercury and Air Toxics Standards (MATS) for power plants in 2012. However, the Supreme Court concluded that EPA improperly failed to take cost into account when it made its appropriate and necessary finding. To address the Supreme Court’s decision, EPA issued the recent supplemental finding which analyzed the various costs associated with regulating HAPs from power plants (e.g., predicted compliance costs, annual compliance costs as a percentage of power sector sales, and impact on retail price of electricity) and concluded that they did not alter its determination that regulation of HAP emissions from power plants is appropriate. In reaching this conclusion, EPA weighed the cost of compliance against other relevant considerations, most notably, the significant hazards to public health and the environment from HAP emissions from power plants. EPA also concluded based on a formal cost-benefit analysis that the costs of the MATS were outweighed by the benefits. The supplemental finding took effect April 25, 2016, the same day it was published in the Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The supplemental finding is primarily of interest to owners/operators of coal and oil-fired power plants subject to the MATS rule.

FEDERAL: EPA issued **three separate determinations related to the 36 areas classified as marginal nonattainment under the 2008 ozone national ambient air quality standard (NAAQS)**. EPA reduced the ozone NAAQS from 0.80 ppm to 0.75 ppm in 2008, which led to the designation of 46 areas throughout the country as nonattainment for ozone, 36 of which were classified as marginal nonattainment, the lowest classification. With this rulemaking, EPA issued the following determinations for these areas based on monitoring data collected for the years 2012-2014: (1) 17 marginal areas attained the 2008 ozone NAAQS by the July 20, 2015 deadline; (2) eight marginal areas qualify for a one-year extension of the attainment deadline; and (3) 11 marginal areas failed to attain the 2008 ozone NAAQS by the applicable deadline. Areas in the last category were reclassified as moderate nonattainment and must implement additional emission reduction measures required by the Clean Air Act for such areas and achieve the 2008 ozone NAAQS by July 20, 2018. SIP revisions identifying the measures states will implement to achieve the NAAQS must be submitted by January 1, 2017. The rule takes effect June 3, 2016; it can be found in the May 4, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The Jamestown area (Chautauqua County) is currently attaining the NAAQS and so was redesignated to attainment. The New York City metropolitan area (which includes New York City, Long Island and Westchester and Rockland counties) did not attain the ozone NAAQS and so was redesignated moderate nonattainment.

NEW YORK STATE: EPA published a rule **updating the list of materials that are incorporated by reference into New York's State Implementation Plan (SIP)**. The rule lists the New York State air regulations that have been approved for inclusion in the New York SIP and are therefore federally enforceable. It also includes a list of source-specific requirements, such as consent orders and source-specific reasonably available control technology and best available retrofit technology determinations, that have been approved by EPA and incorporated into the SIP. The rule can be found in the April 20, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule provides an up-to-date-list of the regulations and source-specific requirements that have been incorporated into New York's SIP and are therefore federally enforceable.

## WATER

NEW YORK STATE: The Lake George Park Commission adopted 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. The final rule, which took effect May 1, 2016, can be found in the April 27, 2016 State Register at: <http://docs.dos.ny.gov/info/register/2016/april27/toc.html>.

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

NEW YORK STATE: DEC provided **guidance to staff on implementing EPA's new Vision for CWA 303(d)**. Under Section 303(d) of the Clean Water Act (CWA), states must develop and update a list of waters that do not support appropriate uses and identify those waters that require and are scheduled for development of a total maximum daily load (TMDL) or other strategy to reduce the input of the pollutant(s) that restrict waterbody use. DEC's *Vision Approach to Implement the Clean Water Act 303(d) Program and Clean Water Planning* document contains DEC's strategy for implementing EPA's six goals for improving implementation of the Section 303(d) program. Under DEC's plan, the Department has identified as priority concerns impairments

caused by nutrients (nitrogen and phosphorus), low dissolved oxygen, and pathogens that affect public health (i.e., waterbodies with active public water supply, public bathing beaches, or where contact recreation is the primary use). Waterbodies are ranked by priority within each classification group (Class A or B ponded waters, saline waters, and rivers and streams) based on a variety of criteria (number of related pollutants and uses impaired, whether waterbody serves as active public water supply and population served, ecological importance, biological impairment, etc.) to determine their level of impairment. Those waterbodies identified as priorities are then assessed to determine the feasibility of implementing a TMDL or alternate plan to reduce inputs and the possible recovery potential. DEC also plans to track the recovery of waterbodies within the “vision” strategy. The planning document can be found on DEC’s website at: [www.dec.ny.gov/docs/water\\_pdf/dowvision.pdf](http://www.dec.ny.gov/docs/water_pdf/dowvision.pdf).

Implications: The document reflects a major change in DEC’s approach to prioritizing impaired surface waters for TMDL development.

### Other Recent Developments (Proposed)

#### CLIMATE CHANGE

**FEDERAL:** EPA **proposed a rule intended to encourage the transition from hydrofluorocarbons (HFCs) to substitutes with a lower global warming potential (GWP)**. Title VI of the Clean Air Act requires EPA to phase out the manufacture and use of chlorofluorocarbons (CFCs) and hydrochlorofluorocarbons (HCFCs)—two categories of substances that deplete the stratospheric ozone layer and are also powerful greenhouse gases. Over the years, users have substituted HFCs and other substances for CFCs and HCFCs as a refrigerant, aerosol propellant and foam blowing agent. However, HFCs also are powerful GHGs and EPA is concerned that increased use could aggravate the global climate change problem. As part of the Obama administration’s Climate Action Plan, EPA is using its authority under the Significant New Alternatives Policy (SNAP) to approve substitutes with comparatively low GWPs. In the recent rulemaking, EPA proposed to modify the SNAP list to: identify propane and certain other substances as acceptable substitutes in certain refrigeration, air conditioning, and fire suppression and explosion protection uses subject to specific conditions; list as unacceptable certain hydrocarbons and hydrocarbon blends in retrofitted residential and light-commercial refrigeration and air conditioning equipment; modify the listing status of certain high GWP alternatives for specific end uses in the refrigeration and air conditioning, foam blowing and fire suppression and explosion protection sectors; and exempt propane from the prohibition on venting, release or disposal of refrigerants. EPA is accepting comments on the proposed rule until **June 2, 2016**; it can be found in the April 18, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to companies that manufacture and use CFC and HCFC substitutes in refrigeration, air conditioning, and other equipment/uses.



**OTHER**

NEW YORK STATE: DEC revised its **guidelines for conducting bird and bat studies at commercial wind energy projects**. The guidelines contain DEC's recommendations on characterizing bird and bat resources at wind energy sites and estimating bird and bat mortality resulting from collisions with turbines. The guidelines also contain recommendations on assessing the actual post-construction impacts of turbines on bird and bat populations. The goal of the guidelines is to establish a standard framework for assessing impacts on birds/bats and provide comparability of data collection among sites and between years to facilitate analysis of statewide impacts of wind generation. The guidelines contain two tracks for pre- and post-construction studies: standard and expanded. Where site-specific conditions suggest substantial risk to birds and/or bats, developers generally are required to utilize expanded study protocols or complete additional years of study. DEC recently revised the guidelines to: (1) expand the discussion of habitat fragmentation impacts; (2) include studies of recently state-listed species; (3) expand discussion of avoidance, minimization, and mitigation; and (4) make editorial changes to improve the flow of the document. DEC is accepting comments on the revised guidance until **May 20, 2016**; it can be found on DEC's website at: [www.dec.ny.gov/energy/40966.html](http://www.dec.ny.gov/energy/40966.html).

Implications: The guidelines are of interest primarily to wind energy developers/advocates and opponents.

NEW YORK STATE: DEC is seeking comment on **guidance establishing a framework for responding to the discovery of a new invasive species**. The goal of the Department's *Rapid Response for Invasive Species: Framework for Response* Program Policy is to promote timely decision-making and communication in the event of a new invasive species infestation, while minimizing authority conflicts and duplication of effort. The Program Policy identifies the following eight steps in the rapid response process: (1) early detection and reporting (i.e., discovery of a possible new invasive species by volunteers or trained professionals either passively or through planned surveillance programs); (2) verification (authentication of suspected samples by a recognized expert or accredited laboratory); (3) notification (informing relevant resource managers of the discovery); (4) rapid assessment (determining the physical extent of the invasion, assessing the resources needed to address it, and establishing a lead agency); (5) planning (addressing roles and responsibilities, coordination, internal and external communications, marshalling of resources, spread prevention, decision-making and implementation). In most cases, a written plan should be prepared; (6) rapid response (taking actions to contain and, if possible, eradicate newly discovered invaders); (7) monitoring and evaluation (determining if the management actions were effective); and (8) restoration (implementing measures needed, if any, to restore the disturbed areas to their natural ecological function). The Program Policy includes an overview of the rapid response process, followed by a detailed discussion of the measures associated with Steps 2 through 7, organized by who (responsible parties), why (objectives of step), and how (specific measures to be implemented). DEC is accepting comments on the Program Policy until **May 27, 2016**; it can be found on DEC's website at: [www.dec.ny.gov/animals/265.html](http://www.dec.ny.gov/animals/265.html).

Implications: The Program Policy is potentially of interest to individuals engaged in management of land and wildlife resources.



## Upcoming Deadlines

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

**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.

**May 20, 2016:** Deadline for submitting comments on DEC's revised draft *General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications*. See DEC's website at [www.dec.ny.gov/chemical/70489.html](http://www.dec.ny.gov/chemical/70489.html) for details.

**May 20, 2016:** Deadline for submitting comments on DEC's revised draft *Guidelines for Conducting Bird and Bat Studies at Commercial Wind Energy Projects*. See DEC's website at [www.dec.ny.gov/energy/40966.html](http://www.dec.ny.gov/energy/40966.html) for a copy of the guidelines.

**May 27, 2016:** Deadline for submitting comments on DEC's draft Program Policy entitled *Rapid Response for Invasive Species Framework for Response*. See DEC's website at [www.dec.ny.gov/animals/265.html](http://www.dec.ny.gov/animals/265.html) for a copy of the policy.

**June 2, 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. See the April 18, 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.

**June 6, 2016:** Deadline for submitting comments on DOH's proposed legionella control regulations containing registration and management of requirements for cooling towers and separate planning requirements for potable water systems at hospitals and general health care facilities. See the April 20, 2016 State Register at <http://docs.dos.ny.gov/info/register/2016/april20/toc.html> 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](http://www.dec.ny.gov/regulations/81768.html) for details.