

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

| Citation  | Summary   | Implications   | Schedules/Notes  |
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| <b>AIR</b>  |   |  |  |
| <p>FEDERAL<br/> <b>New Source Performance Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units</b><br/>                     40 CFR Part 60, subparts CCCC and DDDD<br/>                     81 Fed. Reg. 40956<br/>                     (June 23, 2016)</p> | <p>EPA revised the <b>New Source Performance Standards (NSPS) and emission guidelines for commercial and industrial solid waste incinerators (CISWI)</b>, set forth at 40 CFR Part 60, subparts CCCC and DDDD, in response to petitions for reconsideration. EPA adopted the CISWI standards in 2011 and revised them in 2013. In response to various petitions for reconsideration, EPA made the following changes to the regulations:</p> <ul style="list-style-type: none"> <li>• <b>Startup and shutdown.</b> EPA revised the definition of “continuous emission monitoring system data during startup and shutdown” to be subcategory-specific, with definitions for energy recovery units and waste-burning kilns that correspond to those for their non-waste counterparts under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program (boilers and cement kilns, respectively).</li> <li>• <b>PM limit for waste-burning kilns.</b> EPA established particulate matter (PM) emission limits for the waste-burning kiln subcategory based on test averages.</li> <li>• <b>Fuel variability factor (FVF).</b> EPA established a FVF for the coal-burning energy recovery unit subcategory and adopted as final the emission limits discussed in the proposed rule for cadmium, hydrogen chloride, mercury, lead, filterable PM, and nitrogen oxides. EPA also used a FVF to calculate the final emission standard for sulfur dioxide.</li> <li>• <b>Definition of kiln.</b> EPA finalized a definition of kiln that is consistent with that in the portland cement NESHAP.</li> <li>• <b>Malfunction affirmative defense.</b> EPA deleted the affirmative defense to civil penalties for violations caused by malfunctions in light of recent court decisions.</li> </ul> <p>EPA also adopted numerous technical corrections and clarifications.</p> <p>The rule can be found in the June 23, 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 owners/operators of CISWIs subject to regulation under 40 CFR Part 60, subparts CCCC and DDDD.</p> | <p>The amendments to the subpart CCCC standards for new, reconstructed and modified CISWIs take effect December 23, 2016. The amendments to the subpart DDDD emission guidelines for existing sources took effect June 23, 2016.</p> |

| Citation  | Summary   | Implications   | Schedule/Notes                            |
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| <b>AIR</b>  |   |  |   |
| <p>NEW YORK STATE<br/> <b>Protection Against Legionella: Cooling Towers</b><br/>                     10 NYCRR Subpart 4-1</p> | <p>After several emergency rulemakings, the New York State Department of Health (DOH) <b>adopted a permanent rule, set forth at 10 NYCRR Subpart 4-1 requiring the registration, inspection and maintenance of cooling towers.</b> Among other things, the 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 certification by 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 July 6, 2016 State Register at: <a href="http://docs.dos.ny.gov/info/register/2016/july6/toc.html">http://docs.dos.ny.gov/info/register/2016/july6/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 regulation applies to owners of “cooling towers,” defined as “a cooling tower, evaporative condenser, fluid cooler or other wet cooling device that is a 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 rulemakings.</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>The rule took effect July 6, 2016.</p> |

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| AIR   |   |  |   |
| <p>NEW YORK STATE<br/> <b>Protection Against Legionella: Health Care Facilities</b><br/>                     10 NYCRR Subpart 4-2</p> | <p>As part of the cooling tower rulemaking above, DOH divided the new legionella protection regulation into two subparts and <b>significantly expanded the provisions governing legionella control at health care facilities</b>. Under 10 NYCRR Subpart 4-2, DOH is requiring “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 July 6, 2016 State Register at: <a href="http://docs.dos.ny.gov/info/register/2016/july6/toc.html">http://docs.dos.ny.gov/info/register/2016/july6/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 rule is primarily of interest to general hospitals and residential health care facilities as defined in Public Health Law Article 28.</p> <p>The 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>The rule took effect July 6, 2016.</p> |

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| <b>WATER</b>  |   |   |   |
| <p>FEDERAL<br/> <b>Effluent Limitations<br/>           Guidelines and<br/>           Standards for the Oil<br/>           and Gas Extraction<br/>           Point Source Category</b><br/>           40 CFR Part 435<br/>           81 Fed. Reg. 41845 (June<br/>           28, 2016)</p> | <p><b>EPA adopted pretreatment standards to prevent the discharge of hydraulic fracturing wastewater to publicly owned treatment works (POTWs).</b> According to EPA, wastewater generated during “unconventional oil and gas” (UOG) extraction activities contains harmful constituents, including “fracking” chemicals and radioactive, organic and inorganic material picked up during the fracturing process. Most POTWs are not designed to treat these constituents and EPA is concerned that the constituents will disrupt POTW operations, accumulate in wastewater treatment sludge, and/or pass through the POTW untreated. With this rulemaking, EPA prohibited the discharge of wastewater from UOG extraction activities to POTWs. Direct discharges of these wastewaters are already prohibited.</p> <p>The rule can be found in the June 28, 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 POTWs and to companies engaged in UOG extraction activities.</p> <p>Although several POTWs have accepted UOG wastewater in the past, during the proposed rulemaking EPA did not identify any existing onshore UOG extraction facilities that currently discharge wastewater to POTWs. Most UOG wastewater is disposed of via underground injection.</p> | <p>The final rule takes effect <b>August 29, 2016.</b></p> <p>The final rule does not include pretreatment standards for pollutants from conventional or coalbed methane extraction facilities.</p> |

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| <b>CHEMICAL</b>   |  |  |  |
| <p>FEDERAL<br/> <b>Toxic Substances Control Act Reform Legislation</b><br/>                     15 USC § 2601 et seq.</p> | <p>President Obama recently signed the Frank R. Lautenberg Chemical Safety for the 21<sup>st</sup> Century Act, which implements <b>significant changes to EPA’s Toxic Substances Control Act (TSCA)</b>, 15 USC § 2601 et seq. Among other things, TSCA requires: premanufacture notification for new chemicals; testing of chemicals where risks or exposures of concern are found; reporting and recordkeeping by chemical manufacturers, importers, processors and/or distributors; and immediate notification to EPA upon learning that a chemical presents a substantial risk to public health or the environment. The TSCA statute, which had not been revised for decades, was widely criticized as ineffective. Under the new law, EPA must:</p> <ul style="list-style-type: none"> <li>• Establish a risk-based process for prioritizing chemicals as high or low priority for risk assessment purposes. High priority chemicals must be assessed in accordance with a specified schedule.</li> <li>• Have 10 ongoing risk evaluations within 180 days of the effective date of the statute and 20 within three and a half years.</li> <li>• Take final risk management action within two years (with a possible two-year extension) when unreasonable risks are identified and take final action (including bans and phaseouts) within five years after the final regulation, taking costs and availability of alternatives into account.</li> <li>• Make a finding on the safety of new chemicals or significant new uses before allowing the chemical into the marketplace.</li> </ul> <p>To expedite the review of chemicals, manufacturers can request assessments and pay all or part of the assessment cost, depending on whether the chemical is in EPA’s TSCA work plan. The law also expands EPA’s authority to obtain testing information for prioritizing or conducting risk evaluations on a chemical. To help finance the TSCA program, the law allows EPA to collect up to \$25 million in user fees from chemical manufacturers and processors when they submit data to EPA for review, submit a premanufacture or significant new use notice, manufacture or process a chemical that is the subject of a risk evaluation, or ask EPA to conduct a risk evaluation.</p> <p>Information about the TSCA reform statute can be found on EPA’s website at: <a href="http://www.epa.gov/laws-regulations/summary-toxic-substances-control-act">www.epa.gov/laws-regulations/summary-toxic-substances-control-act</a>.</p> | <p>The TSCA reform statute will directly affect chemical manufacturers, importers, processors and distributors.</p> <p>A major issue during TSCA reform negotiations was the preemptive effect of the statute on state chemical safety laws. Under the final statute: (1) states can continue to act on any chemical, or particular uses or risks from chemicals, that EPA has not yet addressed; (2) state requirements in place prior to April 22, 2016 are grandfathered; (3) existing and new state requirements under state laws in effect on August 31, 2003 are preserved; and (4) state environmental authorities relating to air, water, waste disposal and treatment are preserved. Going forward, state action is preempted when EPA completes a risk assessment and concludes that the chemical is safe or takes final action to address the chemical’s risks. State action on a chemical is temporarily “paused” when EPA’s risk evaluation is underway. States can apply for waivers from both general and “pause” preemption.</p> | <p>The law was signed by President Obama on June 22, 2016. The statute includes a detailed schedule for adopting regulations and taking other steps needed to implement the new law.</p> |

Proposed Statutes, Regulations, and Guidance

| Citation   | Summary  | Implications   | Schedule/Notes   |
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| <b>AIR</b>   |  |  |  |
| <p>NEW YORK STATE<br/><i>Guidelines for the Evaluation and Control of Ambient Air Contaminants under Part 212</i><br/>DEC Program Policy<br/>DAR-1</p> | <p>DEC made available for comment <b>Program Policy DAR-1</b>, which been revised in the wake of DEC’s recent overhaul of 6 NYCRR Part 212, which sets emission standards for “process operations,” i.e., sources or emissions that are not covered by source category-specific rules. DEC’s <i>Guidelines for the Evaluation and Control of Ambient Air Contaminants under Part 212</i> provides guidance on complying with Part 212. Topics addressed include:</p> <ul style="list-style-type: none"> <li>• <b>Permit application submittal requirements.</b> This section summarizes the information that must be submitted for Part 212 reviews, including: yearly actual emissions for high toxicity air contaminants (HTACs); emission rate potential for non-HTACs emitted above 100 pounds per year; description of non-exempt process emission sources, processes, and emission points; and any analyses needed to support the application.</li> <li>• <b>Part 212 DAR-1 initial review.</b> This step identifies which pollutants/operations are subject to Part 212 and the means for demonstrating compliance with the standard (i.e., complying with a federal standard such as a NSPS or NESHAP or conducting a toxic impact assessment).</li> <li>• <b>Assign an environmental rating (ER).</b> For emissions that must be evaluated on an individual contaminant basis, DEC must assign an ER, which entails: determining the initial ER of each contaminant; assessing air quality impacts; identifying/modeling sensitive receptors; and assigning the final ER.</li> <li>• <b>Compliance options.</b> Once the ER has been assigned, the facility owner has the option of accepting state-enforceable permit conditions to avoid triggering Part 212 or complying with specific emission limits set forth in Part 212.</li> <li>• <b>Implementation of Tables 3 and 4 of Part 212-2.3.</b> This section explains how control levels are assigned to contaminants.</li> <li>• <b>Determining applicable emission standards for process operations—T-BACT.</b> This section explains when a toxic best available control technology (T-BACT) demonstration is required and the procedures for completing one.</li> </ul> <p>The proposed revisions to DAR-1 can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/106667.html">www.dec.ny.gov/chemical/106667.html</a>.</p> | <p>The Part 212 regulations apply to all regulated air emission sources that are not subject solely to more specific emission standards. The rule, which had been in place for over 40 years, had not been significantly revised since 1985. The new rule was intended to provide consistency with the federal NESHAP program and ensure proper regulation of the most toxic contaminants, establishing special rules for HTACs and persistent, bioaccumulative and toxic pollutants. Non-exempt sources emitting contaminants that are not regulated under a NSPS or NESHAP and/or HTACs emitted above a specified threshold will be expected to conduct modeling to show that emissions from the facility do not cause exceedances of the national ambient air quality standards or guideline concentrations. The revisions to DAR-1 are needed to implement the recently adopted changes to Part 212.</p> | <p>DEC is accepting comments on the revised DAR-1 until <b>July 29, 2016</b>. This policy, once finalized, will replace the version of DAR-1 previously issued on November 12, 1997.</p> <p>The new rule will be phased in over time with the revised Part 212 applying (1) when a regulated entity applies for a new or modified permit or registration or (2) upon issuance of a renewal for an existing permit or registration.</p> |

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| <b>WATER</b>   |  |  |   |
| <p>FEDERAL<br/> <b>Reissuance and Modification of Nationwide Permits</b><br/>                     81 Fed. Reg. 35186<br/>                     (June 1, 2016)</p> | <p>The U.S. Army Corps of Engineers (ACOE) is seeking comments on proposed reissuance of <b>nationwide permits (NWP)s, general conditions, and definitions</b>, with some modifications; it also has <b>proposed two new nationwide permits</b>. Individuals planning to undertake activities that will disturb wetlands or waterways frequently must obtain a permit from the ACOE. To streamline the permit approval process, the ACOE has issued NWPs for project categories that typically result in minimal disturbances. Certain NWPs require the submission of a pre-construction notification (PCN) prior to proceeding under the NWP. Major changes to the NWPs recently proposed by the ACOE include:</p> <ul style="list-style-type: none"> <li>• Adding NWPs for removal of low-head dams and construction and maintenance of living shorelines for erosion control.</li> <li>• Revising NWPs for maintenance, utility line activities, bank stabilization, linear transportation projects, minor dredging, surface coal mining activities, completed enforcement actions, temporary construction, access and dewatering, maintenance dredging of existing basins, commercial and institutional developments, reshaping existing drainage ditches, stormwater management facilities, mining activities, repair of uplands damaged by discrete events, existing commercial shellfish aquaculture activities, and land-based renewable energy facilities. Several other NWPs were revised solely to clarify that any losses of stream bed are applied to the ½ acre applicability limit under the NWP.</li> <li>• Changing the NWP general conditions to: require a PCN for any NWP activity that will occur in a National Wild and Scenic River or designated study river; clarify the rules governing projects that may affect endangered species, critical habitat, or historic properties; clarify that permittees are responsible for ensuring compliance with the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act; and clarify the circumstance under which mitigation can be required. The ACOE also is proposing changes to key definitions.</li> </ul> <p>The notice can be found in the June 1, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p> | <p>The proposed new/reissued nationwide permits apply to specific activities that could potentially disturb wetlands or waterways. Applicants for certain NWPs must submit PCNs and/or satisfy ACOE regional conditions and conditions imposed by the state to preserve coastal zone consistency or protect water quality (via the water quality certification process).</p> | <p>The ACOE is accepting comments on the proposed rule until <b>August 1, 2016</b>.</p> <p>The New York Districts (New York and Buffalo) also have proposed regional conditions designed to ensure that the NWPs will not have adverse environmental impacts. The Districts are accepting comment on the regional conditions until <b>August 1, 2016</b>. The regional conditions can be found on the District’s website at: <a href="http://www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/">www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/</a></p> |



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| <b>WATER</b>  |  |   |   |
| <p>NEW YORK STATE<br/> <b>Sewage Pollution Right-to-Know Law</b><br/>                     6 NYCRR Parts 750 and 621</p> | <p>DEC proposed to revise its State Pollutant Discharge Elimination System (SPDES) regulations to <b>implement New York’s Sewage Pollution Right-to-Know (SPRTK) Act</b>, which took effect in 2013. The SPRTK Act requires publicly owned treatment works (POTWs) and publicly owned sewer systems (POSS) to notify DEC and local or State health officials of discharges of untreated or partially treated sewage within 2 hours of discovery and alert local government officials and the public within 2 hours thereafter. After working over the past two years to develop the necessary reporting infrastructure, DEC is revising the SPDES regulations to formalize SPRTK implementation. Major changes include:</p> <ul style="list-style-type: none"> <li>• Adding or amending definitions of combined sewer overflow (CSO), combined sewer system, partially treated sewage, publicly owned sewer system, and untreated sewage.</li> <li>• Requiring registration of POSSs, including maintenance of key records. POSS is defined as “a sewer system owned by a municipality and which discharges to a POTW owned by another municipality.”</li> <li>• Requiring POTWs and POSSs to report discharges of untreated or partially treated sewage, including CSOs, within 2 hours of discovery to DEC and the local or State health department and within 4 hours to the municipality in which the discharge is occurring, adjoining municipalities that may be affected by the discharge, and the general public. All reports must be made using the NY-Alert system, which is used by the New York State Division of Homeland Security and Emergency Services for public safety messaging. The POTW/POSS owner/operator must submit a daily report until the discharge ends, at which point a termination report may be submitted instead.</li> <li>• Where a municipality lacks real-time telemetered discharge monitoring and detection for CSOs, requiring owners/operators of POTWs and POSSs to issue advisories when, based on actual rainfall data or predictive models, enough rain has fallen that CSOs may discharge.</li> </ul> <p>The proposed regulations can be found on DEC’s web site at: <a href="http://www.dec.ny.gov/regulations/101977.html">www.dec.ny.gov/regulations/101977.html</a>.</p> | <p>The proposed regulations are primarily of interest to municipalities that own/operate POTWs and POSSs. The rulemaking formalizes reporting requirements that have been in place since shortly after the SPRTK law was enacted. In addition, municipalities that own POSSs will be required to register those systems with DEC for the first time. DEC estimates that there are approximately 620 permitted POTWs and 300 identified POSSs statewide.</p> <p>Following an earlier public comment period, DEC revised the proposed regulations to: (1) require use of a single electronic reporting system (NY-Alert); (2) clarify that CSOs are considered untreated sewage and are subject to the 2 and 4-hour reporting requirements; (3) clarify the timeframes for reporting; and (4) revise the follow-up reporting requirements for CSO events.</p> | <p>DEC is accepting comments on the proposed rule until <b>August 15, 2016</b>.</p> |

## Other Recent Developments (Final)

### AIR

NEW YORK STATE: DEC has set the 2016 **fees for Title V facilities** consistent with revisions to the fee statute. Under the law, all facilities must pay a base fee of \$2,500.00 plus additional per ton fees levied as follows (up to 7,000 tons annually per pollutant): \$60.00 per ton for facilities with total annual emissions of less than 1,000 tons; \$70.00 per ton for facilities with total annual emissions of 1,000 tons or more but less than 2,000 tons; \$80.00 per ton for facilities with total annual emissions of 2,000 tons or more but less than 5,000 tons; and \$90.00 per ton for facilities with total annual emissions of 5,000 tons or more. The Clean Air Act requires states to impose fees on Title V facilities sufficient to cover the costs of the Title V program. Applying this principle, DEC calculated Title V fees at \$352.02 per ton for 2016; however, actual Title V fees are capped in accordance with the schedule outlined above. Notice concerning the 2016 Title V fees can be found in the June 29, 2016 Environmental Notice Bulletin at: [www.dec.ny.gov/enb/20160629\\_not0.html](http://www.dec.ny.gov/enb/20160629_not0.html).

Implications: The notice is primarily of interest to facilities with Title V air permits.

### OTHER

FEDERAL: EPA issued **guidance establishing a framework to help analysts evaluate potential environmental justice (EJ) concerns associated with EPA regulatory actions**. The guidance—entitled *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis*—follows up on earlier guidance issued in May 2015 which provided direction on *when* EPA should consider EJ during rulemaking. The current guidance provides technical direction on *how* to analyze potential EJ concerns for regulatory actions. Among other things, the guidance addresses the process of conducting a screening analysis to determine whether EJ needs further analysis and what level of analysis is feasible and appropriate and identifies the analytical methods that can be applied based on available data, resources and time. The guidance is comprised of the following seven sections: (1) Introduction; (2) Key Definitions; (3) Key Analytical Considerations (including EPA’s three key questions when conducting an EJ analysis and four main recommendations to guide these assessments); (4) Contributors to Environmental Justice Concerns; (5) Considering Environmental Justice when Planning a Human Health Risk Assessment; (6) Conducting Regulatory Analyses to Assess Potential Environmental Justice Concerns; and (7) Research Priorities to Fill Key Data and Methodological Gaps. The technical guidance can be found on EPA’s website at: [www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis](http://www.epa.gov/environmentaljustice/technical-guidance-assessing-environmental-justice-regulatory-analysis).

Implications: The guidance is primarily of interest to EPA analysts required to assess the EJ concerns of EPA rulemakings.

## Other Recent Developments (Proposed)

### AIR

FEDERAL: EPA proposed to **revise its Title V operating permit regulations to eliminate the affirmative defense provision for emergencies**. The provisions, which are set forth at 40 CFR § 70.6(g) (state Title V programs) and § 71.6(g) (federal operating permit program), allow stationary sources to assert an affirmative defense against penalties for excess emissions that occur as a result of an “emergency” provided certain conditions are met. In 2014, the Court of Appeals for the District of Columbia Circuit rejected similar affirmative defense provisions under the NESHAP program for excess emissions during startup, shutdown and malfunction (SSM) events after concluding that the decision whether to impose penalties in civil enforcement proceedings rests with the courts not EPA. In the wake of that decision, EPA has taken steps to remove SSM affirmative defense provisions from NESHAP and NSPS regulations whenever the regulations are under review; EPA also issued a State Implementation Plan (SIP) call compelling states to eliminate comparable provisions from their SIPs. With the current rulemaking, EPA is proposing to eliminate similar affirmative defense provisions applicable to “emergencies” from its Title V regulations. If the rule is adopted, DEC will likely be required either to repeal the emergency defense provision contained in its air permitting regulations at 6 NYCRR § 201-1.5 or remove the provision from its SIP, making it state enforceable only. EPA is accepting comments on the proposed rule until **August 15, 2016**; it can be found in the June 14, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed rule is primarily of interest to facilities with Title V air permits.

NEW YORK STATE: DEC proposed to **amend its regulations to incorporate California’s latest low emission vehicle (LEV) and zero emission vehicle (ZEV) standards** into 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. California adopted its so-called LEV III emission standards in 2012 for 2017 to 2025 model year vehicles up to 14,000 pounds gross vehicle weight rating. These standards largely align with EPA’s Tier 3 criteria pollutant emission standards, which were adopted in 2014. In a related development, DEC conformed its ZEV requirements to the California program. The ZEV program requires manufacturers to sell an increasing percentage of ZEV vehicles (or equivalents) in the State. The proposed revisions focus on the requirements for intermediate vehicle manufacturers (i.e., manufacturers with California sales between 4,501 and 20,000 new light and medium-duty vehicles). A public hearing on the proposed rule is scheduled for August 8, 2016 at 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129A/B, Albany. DEC is accepting comments on the proposed rule until **August 15, 2016**; it can be found on DEC’s website at: [www.dec.ny.gov/regulations/106554.html](http://www.dec.ny.gov/regulations/106554.html).

Implications: The revisions are primarily of interest to motor vehicle manufacturers and dealers.

## CLIMATE CHANGE

FEDERAL: EPA proposed **design details for the Clean Energy Incentive Program (CEIP)**, a voluntary program under the Clean Power Plan (CPP) that is intended to incentivize early emission reductions from certain renewable power and energy efficiency projects. Under the CPP, states must adopt programs to reduce emissions of carbon dioxide from existing power plants through a combination of measures including fuel switching, improved efficiency and increased reliance on renewable energy. The CPP includes the CEIP, which makes matching allowances available to states that undertake certain early emission reduction programs. With the recent rulemaking, EPA proposed the details for implementing the CEIP. Among other things, EPA will make matching allowances available for demand-side energy efficiency and solar projects serving low income communities and zero-emitting renewable energy projects (wind, solar, geothermal, or hydropower). The proposal defines key terms (most notably, low income community), specifies project eligibility deadlines, and clarifies how the pool of available matching allowances/emission reduction credits will be assembled and allocated among states and projects. Because implementation of the CPP has been stayed by the Supreme Court pending appeal, the specific deadlines in the CEIP will eventually need to be adjusted. EPA is accepting comments on the proposed CEIP regulation until **August 29, 2016**; it can be found in the June 30, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed guidance is primarily of interest to states required to prepare plans under the CPP program and companies/agencies engaged in renewable energy and energy efficiency programs/projects.

## WATER

FEDERAL: EPA proposed its **Preliminary 2016 Effluent Guidelines Program Plan identifying new or existing industrial wastewater dischargers that have been selected for development or review of effluent guidelines and/or pretreatment standards**. The guidelines establish a framework for developing technology-based effluent limits for specific categories of direct and/or indirect wastewater dischargers. These effluent limits are then incorporated into National/State Pollutant Discharge Elimination System permits or pretreatment permits unless superseded by stricter water quality-based limits. With the recent notice, EPA announced the results of its preliminary review of source categories, announcing plans to continue reviewing the standards for iron and steel manufacturing; organic chemicals, plastics and synthetic fibers; and pulp, paper and paperboard. EPA also announced the results of its preliminary review of point source categories identified as potential concerns based on public comments, declaring its intention to continue reviewing the standards for battery manufacturing and electrical and electronic components while declining further review of the tire manufacturing standard. Finally, EPA plans to continue studying the standards for petroleum refining, centralized waste treatment (with a focus on oil and gas extraction) and metal finishing. The announcement concerning the preliminary plan can be found in the June 27, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The notice is primarily of interest to facilities in the named source categories that discharge wastewater.

NEW YORK STATE: The New York State Environmental Facilities Corporation (EFC) is accepting comment on a **draft guidance document specifying what information must be included in engineering reports submitted to support requests for financial assistance** for the planning, design and construction of water-quality infrastructure projects through the Clean Water State Revolving Fund (CWSRF). The draft CWSRF Engineering Report Outline, which will replace the EFC's existing Engineering Report Template, requires engineering reports for projects seeking CWSRF funding to include the following sections: (1) Executive Summary; (2) Project Background and History (site information, ownership and service area, existing facilities and present condition, definition of the problem, and financial status); (3) Alternatives Analysis, including no-action alternative and green infrastructure for stormwater projects (description, cost estimate and non-monetary factors); (4) Summary and Comparison of Alternatives; and (5) Recommended Alternative. EFC is accepting comments on the draft guidance until **July 22, 2016**; the document can be found on the EFC's website at: [www.efc.ny.gov/cwplanninggrants](http://www.efc.ny.gov/cwplanninggrants).

Implications: The draft guidance is primarily of interest to municipalities seeking CWSRF funding from the EFC.

## OTHER

FEDERAL: EPA accepted comment on its *Draft EJ 2020 Action Agenda Framework*, a strategic plan for advancing environmental justice throughout the agency. EJ 2020 will build on the foundation established by EPA's Plan EJ 2014, which sought to integrate EJ into EPA's programs, including rulewriting, permitting, enforcement, science and law. The EJ 2020 plan identifies three broad EJ goals for 2016-2020 and breaks them out into narrower areas and more specific tasks. The three general goals are: (1) deepen EJ practice within EPA programs to improve the health and environment of overburdened communities (including institutionalizing EJ into rulemaking, establishing a framework and tools for considering EJ in EPA-issued permits; directing enforcement resources to address pollution in overburdened communities; and routinely assessing EJ in all appropriate EPA rulemaking, permitting and enforcement actions); (2) work with partners to expand EPA's positive impact within overburdened communities (e.g., work with state, local and other governments and federal agencies and support community efforts); and (3) demonstrate progress on significant EJ challenges, including lead disparities, drinking water, air quality (in particular, fine particle pollution), and hazardous waste sites. The deadline for submitting comments on the draft EJ 2020 plan has closed; it can be found on EPA's web site at: [www.epa.gov/environmentaljustice/ej-2020-action-agenda](http://www.epa.gov/environmentaljustice/ej-2020-action-agenda). The recent draft was revised following a public comment period that closed in July 2015.

Implications: The policy will primarily affect state and federal environmental regulators.

## Upcoming Deadlines

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

**July 22, 2016:** Deadline for submitting comments on EFC's *Draft Engineering Report Outline* for the CWSRF Program. See the EFC website at [www.efc.ny.gov/cwplanninggrants](http://www.efc.ny.gov/cwplanninggrants) for details.

**July 27, 2016:** Deadline for submitting comments on EPA's *Preliminary 2016 Effluent Guidelines Program Plan*. See the June 27, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**July 29, 2016:** Deadline for submitting comments on DEC's proposed new DAR-1, *Guidelines for the Evaluation and Control of Ambient Air Contaminants under 6 NYCRR Part 212 Process Operations (Part 212)*. The draft document can be found on DEC's website at [www.dec.ny.gov/chemical/106667.html](http://www.dec.ny.gov/chemical/106667.html).

**August 1, 2016:** Deadline for submitting comments on ACOE's nationwide permit reissuance and New York District regional permit conditions. See the June 1, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**August 2, 2016:** Deadline for submitting comments on EPA's proposed revisions/updates to the National Pollutant Discharge Elimination System regulations (extended from July 18, 2016). See the May 18, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**August 8, 2016:** Public hearing on DEC's proposal to update its motor vehicle emission standards to incorporate California's amendments to the LEV and ZEV programs to be held 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129A/B, Albany.

**August 10, 2016:** Deadline for submitting comments on EPA's proposed revisions to the regional haze rule (extended from July 5, 2016). See the May 4, 2016 Federal Register at [www.epa.gov/fdsys](http://www.epa.gov/fdsys) for details.

**August 15, 2016:** Deadline for submitting comments on EPA's proposal to delete from the Title V regulations the provisions creating an affirmative defense from penalties for excess emissions during emergencies. See the June 14, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**August 15, 2016:** Deadline for submitting comments on DEC's proposed regulations implementing the Sewage Pollution Right-to-Know Act. See DEC's website at [www.dec.ny.gov/regulations/101977.html](http://www.dec.ny.gov/regulations/101977.html) for details.

**August 15, 2016:** Deadline for submitting comments on DEC's proposed update to its motor vehicle emission standards to incorporate California's amendments to the LEV/ZEV programs. See DEC's website at [www.dec.ny.gov/regulations/106554.html](http://www.dec.ny.gov/regulations/106554.html) for details.

**August 29, 2016:** Deadline for submitting comments on EPA's Clean Energy Incentive Program for incentivizing certain early emission reductions under the Clean Power Plan. See the June 30, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**September 13, 2016:** Deadline for submitting comments on DEC's proposed overhaul of the solid waste management regulations (extended from July 15, 2016). See DEC's website at [www.dec.ny.gov/regulations/81768.html](http://www.dec.ny.gov/regulations/81768.html) for details.

**December 7, 2016:** Deadline for submitting comments on EPA's proposed rejection of a petition seeking to expand the definition of corrosive waste under the hazardous waste regulations (extended from June 10, 2016). See the April 11, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.