

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p>FEDERAL  <b>Update to Refrigerant Management Requirements of Stratospheric Ozone Protection Program</b>            40 CFR Part 82            81 Fed. Reg. 82272 (Nov. 18, 2016)</p>	<p>EPA adopted <b>major revisions to the rules governing air conditioning and refrigeration equipment under Section 608 of the Clean Air Act (CAA)</b>, which were adopted to minimize emissions of ozone-depleting substances (ODS) and their substitutes during equipment operation, maintenance and repair. EPA’s existing regulations, which are set forth at 40 CFR Part 82, subpart F, establish a comprehensive program for managing ODS, addressing such issues as technician and equipment certification, leak detection and repair, equipment disposal, and recordkeeping and reporting, among other subjects. With this rulemaking, EPA updated the existing requirements and extended them, as appropriate, to substitute refrigerants, most notably those with a high global warming potential. Specific changes include:</p> <ul style="list-style-type: none"> <li>• Revising the regulations to cover substitute refrigerants that have not been exempted from the venting prohibition.</li> <li>• Lowering the leak rate threshold above which owners/operators of refrigeration and air conditioning equipment normally containing 50 or more pounds of refrigerant must repair leaks.</li> <li>• Requiring leak inspections or continuous monitoring devices for refrigeration and air conditioning equipment that has exceeded the applicable leak rate (annual inspections for systems containing 50 pounds or more of refrigerant and quarterly for commercial refrigeration and industrial process refrigeration systems normally containing 500 pounds or more of refrigerant).</li> <li>• Requiring owners of appliances that leak 125% or more of their full charge in a calendar year to submit a report to EPA on their repair efforts.</li> <li>• Extending to substitute refrigerants the provision prohibiting sales to non-certified individuals, while allowing purchases of small cans (2 pounds or less) of non-ODS refrigerant for motor vehicle air conditioner servicing provided the cans are equipped with self-sealing valves.</li> <li>• Requiring technicians to keep records of refrigerant recovered during disposal of systems with a charge from 5-50 pounds (larger and small units are already subject to recordkeeping requirements).</li> <li>• Clarifying key provisions relating to the safe disposal of appliances.</li> </ul> <p>The rule can be found in the November 18, 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 comfort cooling, commercial refrigeration, and industrial process refrigeration and air conditioning equipment and to those engaged in the repair and disposal of such equipment.</p> <p>EPA proposed major changes to the leak repair requirements in December 2010, which were never finalized. Since then, EPA’s attention has shifted to the management of substitute refrigerants, many of which are potent greenhouse gases. With this rulemaking, EPA revised the regulations to more clearly address these substitutes. In addition, consistent with its so-called “Next Generation Compliance” initiative, EPA adopted changes, such as new inspection requirements, that are designed to improve day-to-day compliance. EPA also revised and reorganized the rule to make it more user-friendly.</p>	<p>The final rule takes effect <b>January 1, 2017</b>.</p>

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<b>AIR</b>			
<p>NEW YORK STATE  <b>Distributed Generation Sources</b>                      6 NYCRR Part 222</p>	<p><b>DEC adopted an air emission rule for distributed generation (DG) sources—stationary reciprocating or rotary internal combustion engines that feed the distribution grid or produce electricity for use at host facilities</b> or both. The rule, set forth at 6 NYCRR Part 222, applies to owners/operators of DG sources at non-major facilities that have maximum mechanical output ratings of 200 horsepower (hp) or more in the New York City metropolitan area or 400 hp or more elsewhere. It distinguishes between emergency generators and so-called “economic dispatch sources,” i.e., DG sources used to reduce energy costs or ensure a reliable energy supply. Economic dispatch sources covered by the rule must meet specific nitrogen oxide (NOx) emission standards that differ based on the type of source (combined or simple cycle combustion turbines or reciprocating engines) and type of fuel (natural gas or oil). Diesel-fired economic dispatch sources also must meet particulate matter emission requirements. Sources that cannot meet the proposed NOx emission limits have five alternative compliance options: variance; shutdown; conversion from diesel to natural gas; alternative NOx emission limit for facilities with renewable generation systems; and compliance extension until May 1, 2018 for certain DG sources enrolled in demand response programs during 2014 and 2015.</p> <p>Owners/operators of emergency generators must comply with maintenance (i.e., annual tune-up) and recordkeeping requirements.</p> <p>Under the rule, owners/operators of economic dispatch sources must obtain a registration or permit if they do not already have one. In addition, they must notify DEC in writing no later than January 2, 2017 whether they plan to operate only as an emergency power generating stationary internal combustion engine or as an economic dispatch source and whether they plan to permanently shut down or convert from diesel to natural gas. Failing to designate means the unit will be classified as an economic dispatch source by default. They must also: conduct an emission test by April 30, 2017; comply with applicable NOx emission limits by May 1, 2017; tune the unit every 12 months; and retest the unit every 10 years. DG sources pursuing one of the alternative compliance options are subject to other deadlines.</p> <p>The regulation can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/104487.html">www.dec.ny.gov/regulations/104487.html</a>.</p>	<p>The rule is primarily of interest to owners/operators of DG sources that are not located at major NOx sources (and thus are not regulated under 6 NYCRR Part 227-2) and meet the specified size criteria (200 hp downstate and 400 hp upstate). Economic dispatch sources that meet these criteria are subject to the emission limits, testing and other requirements of the proposed rule while emergency generators are subject to more limited maintenance and recordkeeping requirements. Special rules apply to certain municipally owned units.</p> <p>According to DEC, the emission standards are necessary to help the downstate area meet the 2008 ozone national ambient air quality standard. Many economic dispatch sources participate in demand response programs and are called upon to operate on high electricity demand days in the summer when ozone levels are typically highest.</p>	<p>The rule took effect <b>December 1, 2016</b>. As indicated in the summary, the deadlines for complying with the new distributed generation standards are extremely short, with the initial notification concerning the designation of economic dispatch sources under the rule due by <b>January 2, 2017</b>.</p>

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<b>BULK STORAGE/REMEDICATION</b>			
<p>NEW YORK STATE  <b>Fourth Emergency Rule Adding PFOA and PFOS to Hazardous Substance List</b>            6 NYCRR Part 597</p>	<p>DEC adopted a fourth emergency rule to provide it with the tools to <b>address the discovery of perfluorooctanoic acid (PFOA) and related substances in drinking water wells</b> in Hoosick Falls and elsewhere. In January 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 April 2016, DEC adopted a new emergency rule, that expanded the list of substances to include perfluorooctane sulfonic acid (PFOS-acid) and PFOA and PFOS salts to the list of hazardous substances and set a deadline of April 25, 2017 for facilities to dispose of fire-fighting foam containing these substances. At the same time, DEC proposed a permanent rule for comment. The recent rulemaking is the third emergency rule addressing PFOA and PFOS acids and salts.</p> <p>The recent emergency rule can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/104968.html">www.dec.ny.gov/regulations/104968.html</a>.</p>	<p>PFOA and PFOS have been widely used in fire-fighting foam, Teflon, stain-resistant carpeting, and semi-conductor coatings, among other uses.</p> <p>Although the rule addresses PFOA and PFOS generally, it is targeted at providing DEC with the regulatory authority needed to address 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.</p>	<p>The deadline for commenting on the proposed permanent rule has closed.</p> <p>The recent emergency rule took effect November 14, 2016 and will expire January 12, 2017. Under New York’s emergency rulemaking procedures, DEC must adopt a permanent rule by the time the emergency rule expires. However, DEC can obtain additional time by adopting a new emergency rule.</p>

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<b>HAZARDOUS WASTE</b>			
<p>FEDERAL <b>Hazardous Waste Generator Improvements</b> 40 CFR Parts 260, 261, 262, et al. 81 Fed. Reg. 85732 (Nov. 28, 2016)</p>	<p>EPA adopted <b>major revisions to the hazardous waste generator and related regulations</b> to simplify and improve compliance and address regulatory gaps. These changes include revising key definitions, reorganizing the rule to make it more user friendly, providing greater flexibility in relation to certain hazardous waste management activities, and making corrections and conforming changes. Key revisions include:</p> <ul style="list-style-type: none"> <li>• Relocating most generator requirements to 40 CFR Part 262.</li> <li>• Replacing the term “conditionally exempt small quantity generator” (CESQG) with “very small quantity generator” (VSQG), revising the definition of small quantity generator (SQG), and adding definitions of large quantity generator (LQG), central accumulation area, acute hazardous waste and non-acute hazardous waste.</li> <li>• Clarifying how mixtures of non-hazardous and hazardous waste affect the generator status of SQGs and VSQGs.</li> <li>• Improving flexibility by: allowing VSQGs to send hazardous waste to LQG facilities under their control; addressing “episodic generation” by allowing facilities to exceed their generator threshold once per year and; allowing facilities to apply for a waiver from the local fire department if they cannot meet the requirement that ignitable/reactive waste be stored at least 50 feet from the site’s boundary.</li> <li>• Requiring biennial reporting for owners/operators of facilities that recycle hazardous waste but do not store it before recycling.</li> <li>• Revising the hazardous waste determination provisions to specify that waste determinations must occur before dilution or mixing and clarify the criteria for characterizing waste using generator knowledge and applicable recordkeeping requirements.</li> <li>• Requiring SQGs and LQGs to renotify EPA every four years to ensure the information on file is current.</li> <li>• Clarifying the distinction between independent requirements (requirements that apply regardless of generator status) and conditions for exemption (requirements that satisfy a particular exemption).</li> <li>• Revising waste accumulation labeling/marketing rules.</li> <li>• Updating preparedness/prevention for SQGs and LQGs including requiring LQGs to add “quick reference guide” to contingency plans.</li> </ul> <p>The revisions can be found in the November 28, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The revisions are potentially of interest to any facility that generates hazardous waste, including VSQGs. The rule represents the first major overhaul of the hazardous waste generator requirements in several decades. Many of these issues were identified in a 2004 evaluation of the hazardous waste program conducted by EPA as well as during a 2013 evaluation of hazardous waste determinations and a notice of data availability relating to the management of hazardous waste in the retail sector.</p> <p>Authorized states such as New York will be required to adopt those provisions of the regulations that are more stringent than the equivalent state regulations or broader in scope. Other requirements can be adopted at the discretion of the state. The rules will not take effect in New York until they are adopted by the State.</p>	<p>The rule takes effect May 30, 2017.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>NEW YORK STATE <b>Sewage Pollution Right-to-Know Law</b> 6 NYCRR Parts 750 and 621</p>	<p>DEC revised its State Pollutant Discharge Elimination System (SPDES) regulations to <b>implement New York’s Sewage Pollution Right-to-Know (SPR TK) Act</b>, which took effect in 2013. The SPR TK 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 three years to develop the necessary reporting infrastructure, DEC revised the SPDES regulations to formalize SPR TK 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 Department-approved electronic media (currently 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 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 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 SPR TK 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 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; and (3) revise the follow-up reporting requirements for CSO events.</p>	<p>The final rule took effect November 9, 2016.</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 revised the <b>SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications</b>. This 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 business 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 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 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>The new permit is effective from November 9, 2016 until October 31, 2021.</p>

Citation	Summary	Implications	Schedule/Notes
<b>OCCUPATIONAL SAFETY AND HEALTH</b>			
<p>FEDERAL  <b>Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)</b>            29 CFR Part 1910, subparts D and I            81 Fed. Reg. 82494 (Nov. 18, 2016)</p>	<p>The Occupational Safety and Health Administration (OSHA) <b>overhauled the standards for walking-working surfaces and fall protection equipment</b>. The current standards were adopted in 1971 and had not been revised significantly since then. With this 513-page rulemaking, OSHA revised 29 CFR Part 1910, subpart D, Walking-Working Surfaces, to: (1) reflect current industry practices and national consensus standards; (2) harmonize provisions with other OSHA safety standards, including existing construction standards; (3) use performance-oriented language when possible rather than specification-oriented language; (4) ensure workers who use personal fall protection and work in other specified high hazard situations are properly trained; and (5) simplify the rule by reorganizing/consolidating provisions, using plain language and adding informational tables, illustrations and appendices. Subjects covered by the walking-working surfaces standard include floors, ladders, stairways, runways, dockboards (bridge plates), roofs, scaffolds and elevated work surfaces and walkways. Under the final rule, employers may choose from the following fall protection options: guardrail system, safety net system, personal fall arrest system, positioning system, travel restraint system or ladder safety system. As part of the same rulemaking, OSHA revised its existing personal protective equipment (PPE) standards, set forth at 29 CFR Part 1910, subpart I, to add specific performance and use requirements for personal fall protection systems. These standards apply whenever another standard requires or allows the use of fall protection PPE.</p> <p>The rule can be found in the November 18, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rule applies to all general industry workplaces, requiring employers to protect workers from fall hazards along unprotected sides or edges that are at least 4 feet above a lower level. Certain sections do not apply to specific operations or activities identified in the regulations.</p>	<p>The rule takes effect January 17, 2017, although certain requirements will be phased in between 6 months and 20 years after that date.</p>



Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<p>FEDERAL  <b>2015 Ozone NAAQS Implementation Regulations</b>                      40 CFR Parts 50 and 51                      81 Fed. Reg. 81276                      (Nov. 17, 2016)</p>	<p>EPA proposed a comprehensive rule <b>establishing nonattainment area classification thresholds and implementation requirements for the 2015 ozone national ambient air quality standards (NAAQS)</b>. EPA lowered the primary and secondary ozone NAAQS from 0.075 to 0.070 parts per million in 2015 following a contentious review process. The proposed rule sets thresholds for classifying nonattainment areas as marginal, moderate, serious, severe or extreme under the new NAAQS, using the “percent-above-the-standard” method, which uses the percentage difference between the original 1-hour ozone NAAQS and the limit assigned in the CAA to each nonattainment classification to set new thresholds. Consistent with past practices, the compliance schedule for each category of attainment area is measured from the effective date of designation, using the timeframes in the CAA (three years for marginal areas, six years for moderate, etc.). With respect to development of state programs to implement the new NAAQS, EPA is proposing to retain without significant revision most of the requirements applicable to the 2008 ozone NAAQS. State implementation plan (SIP) requirements addressed by the proposed rule include attainment demonstrations and extensions, reasonable further progress and associated milestone demonstrations, reasonably available control technology and reasonably available control measures, major nonattainment new source review, emission inventories, the timing of required SIP submissions, and compliance with emission control measures in the SIP. Finally, the rule contains two options for revoking the 2008 ozone NAAQS and implementing anti-backsliding requirements for areas that are designated nonattainment at the time the 2008 NAAQS is revoked.</p> <p>The proposed regulation can be found in the November 17, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The proposed regulations are primarily of interest to states and other entities that are responsible for implementing the new ozone NAAQS. Owners and operators of sources of nitrogen oxides and volatile organic compounds (i.e., ozone precursors) also may be affected by the proposed rule to the extent states adopt measures restricting emissions of these pollutants in order to help attain the NAAQS.</p>	<p>EPA is accepting comments on the proposed regulations until <b>January 17, 2017</b>.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>NEW YORK STATE  <b>SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s)</b>                      Permit No. GP-0-17-002</p>	<p>DEC proposed a <b>new SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s)</b> to replace general permit GP-0-15-003, which is scheduled to expire on April 30, 2017. The MS4 permit covers new and existing discharges of stormwater from small MS4s as defined in 40 CFR 122.26(b)(16). In response to litigation, DEC has significantly revised the general permit to make it more prescriptive. Key elements of the permit are summarized below:</p> <ul style="list-style-type: none"> <li>• All covered traditional and non-traditional MS4s must seek coverage under the general permit, prepare and implement a written stormwater management program (SWMP), and designate a SWMP coordinator to oversee the program. The MS4 operator also must develop and maintain a system map and written enforcement response plan and ensure the MS4 has the legal authority needed to implement and enforce the SWMP. In addition, MS4s must maintain certain records and submit an annual compliance evaluation and annual report and comply with other permit conditions.</li> <li>• The SWMP must implement six minimum control measures (MCMs): (1) public education and outreach program; (2) public involvement/participation program; (3) illicit discharge detection and elimination (IDDE) program (including MS4 system mapping, identification of priority areas, illegal discharge reporting hotline, outfall inspections, field screening and action levels for certain dry weather discharges, and IDDE source identification and elimination); (4) construction site stormwater runoff control program (review and approval of stormwater pollution prevention plans for construction activities disturbing one acre or more and construction site inventory and inspection requirements); (5) post construction site management plans (SMPs) (including ensuring compliance with the State Stormwater Design Manual and post construction SMP inventory and inspection requirements); and (6) pollution prevention and good housekeeping for municipal operations and facilities.</li> <li>• Permittees that discharge to impaired waters must comply with additional requirements, depending on whether the waterbody is subject to an approved total maximum daily load. The precise measures required depend on the nature of the impairment.</li> </ul> <p>The permit and related documents can be found on DEC's website at: <a href="http://www.dec.ny.gov/chemical/41392.html">www.dec.ny.gov/chemical/41392.html</a>.</p>	<p>The general permit covers governments operating traditional and non-traditional small MS4s (with the latter category including state, federal, county and other publicly owned properties such as university campuses, prisons, and military installations).</p> <p>The new, more prescriptive MS4 permit is, in part, a response to a federal court decision which found that the existing federal MS4 regulations did not provide for adequate public notice and comment and failed to ensure that small MS4 permittees reduce pollutants to the maximum extent practicable as required by the Clean Water Act. Earlier this year, EPA proposed to revise the federal MS4 regulations to address the court's decision, identifying several options for addressing the public notice problem identified by the court. 81 Fed. Reg. 415 (Jan. 6, 2016). DEC's draft MS4 permit adopts the "traditional" approach, including all requirements for MS4s in the general permit itself.</p>	<p>DEC is accepting comment on the draft permit until <b>February 3, 2017</b> (extended from December 2, 2016).</p> <p>Existing MS4 permit holders will be expected to submit a Notice of Intent to Continue Coverage 30 days after the effective date of the new permit, while newly designated operators must submit a Notice of Intent to Obtain Coverage within 180 days of written DEC notification. In light of the new, more prescriptive MS4 requirements both newly covered and existing MS4 permit holders will be expected to implement numerous measures in accordance with a detailed compliance schedule contained in Appendix C of the draft permit.</p>

## Other Recent Developments (Final)

### HAZARDOUS WASTE

FEDERAL: EPA **amended the hazardous waste regulations relating to the import and export of hazardous waste from and into the United States** to improve consistency among procedures and facilitate electronic documentation. Specific changes include: (1) requiring all exports and imports of hazardous waste to comply with the Organization for Economic Cooperation and Development (OECD)-based requirements set forth in 40 CFR Part 262, subpart H, rather than having separate schemes for OECD and non-OECD countries; (2) requiring electronic reporting of hazardous waste import and export documents, including export notices, annual reports, exception reports, import confirmations of receipt, and other similar documents. However, implementation of the new electronic reporting requirements will be phased in to give EPA more time to complete and test the reporting system; (3) requiring the management (i.e., treatment and disposal, recovery) of each shipment of waste be completed within one year of delivery to minimize speculative accumulation; (4) requiring all imports/exports of hazardous waste, including universal waste, materials being shipped for precious metal recovery, and spent lead acid batteries going for reclamation, be subject to the same shipping requirements; (5) requiring all traders to obtain an EPA ID number prior to arranging for export; and (6) integrating the hazardous waste export program with the International Trade Data System. The rule, which takes effect December 31, 2016, can be found in the November 28, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to companies engaged in the import/export of hazardous waste. Under the revised regulations, shipments remain subject to any consents issued prior to the effective date of the rule until those consents expire.

### WATER

FEDERAL: EPA published a final **list of contaminants that are not currently subject to national primary drinking water standards but may require regulation under the Safe Drinking Water Act (SDWA)**. The SDWA requires EPA to publish a Contaminant Candidate List (CCL) every five years that includes contaminants that are known or anticipated to be found in public water systems and may require regulation under the SDWA because they pose a potential public health concern. The final CCL announced by EPA includes 97 chemicals or chemical groups and 12 microbial contaminants. Over the next few years, EPA will evaluate the CCL contaminants further to determine if there is sufficient data to meet the regulatory determination criteria set forth in the SDWA; if yes, EPA will decide whether to add the contaminant to the list of pollutants potentially subject to SDWA standards. EPA must make regulatory determinations on at least five CCL contaminants every five years. The final CCL can be found in the November 17, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The CCL process could eventually lead to the establishment of primary drinking water standards for one or more CCL substances. The recent list includes PFOA and PFOS, which have been found in drinking water in Hoosick Falls and neighboring communities.

FEDERAL: EPA issued a **plan identifying ways to improve the safety and reliability of the nation's drinking water system**, in the wake of problems in Flint, Michigan, Hoosick Falls and elsewhere. The *Drinking Water Action Plan* identifies six "Priority Areas," together with proposed action items for each area. The six priority areas, together with selected action items, are: (1) promote equity and building capacity for drinking water infrastructure financing and management in disadvantaged, small and environmental justice communities (e.g., promote regional partnerships, update operator certification guidelines, identify and promote best practices for successful funding and capacity building, and establish new State Revolving Fund metrics and practices to help communities identify funding sources); (2) advance next generation oversight for the SDWA (e.g., implement measures to facilitate electronic reporting of SDWA compliance data, develop indicators for troubled water systems, and collaborate with the Centers for Disease Control and Prevention and other agencies to integrate public health surveillance and community drinking water quality data); (3) strengthen source water protection and resilience of drinking water sources; (4) take action to address unregulated contaminants (e.g., identify risk-based framework for prioritizing new contaminants for regulation, strengthen drinking water advisories, develop guidance to assist utilities and others with assessing and managing risks from unregulated contaminants, and develop technologies to remove a broad spectrum of contaminants); (5) improve transparency, public education and risk communication on drinking water safety; and (6) reduce lead risks through lead and copper rule (e.g., provide information and best practices for lead service line replacement, enhance training and technical assistance, and develop regulatory changes). The plan can be found on EPA's website at: [www.epa.gov/ground-water-and-drinking-water/drinking-water-action-plan](http://www.epa.gov/ground-water-and-drinking-water/drinking-water-action-plan).

Implications: The plan is of general interest to communities served by the nation's 152,000 public drinking water systems. According to EPA, although America's drinking water system remains one of the safest in the world, it faces numerous challenges, including aging infrastructure, limited funding and management capacity, emerging contaminants (such as PFOA), pollution of source water, and impacts from drought and other climate events.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA issued a *Small Entity Compliance Guide for the Respirable Crystalline Silica Standard for Construction*, to help small construction businesses understand and comply with the new respirable crystalline silica (RCS) standard adopted earlier this year. RCS is generally produced when workers cut, grind, crush or drill silica-containing materials such as concrete, masonry, tile or rock. To minimize the health risks from RCS, OSHA established a new permissible exposure limit (PEL) of 50 micrograms of RCS per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) for both construction and general industry, meaning that over the course of any 8-hour work shift, the average exposure to RCS cannot exceed 50  $\mu\text{g}/\text{m}^3$ . With respect to construction, the rule contains a table that matches common construction tasks/equipment (saws, drills, jackhammers, grinders/milling machines and crushers) with specific dust control methods.

Employers that decline to follow Table 1 must develop a tailored program that measures silica levels in the air, protects worker exposure above the PEL, and provides respirators when dust will exceed the PEL. The guide is divided into sections that correspond to the major provisions of the silica standard for construction. Each section describes the provision and gives additional details to help employers better understand the requirements of the standard. The small business guide and other information about the RCS rule can be found on the OSHA website at: [www.osha.gov/silica](http://www.osha.gov/silica).

Implications: The Guide is potentially of interest to anyone engaged in construction activities that may generate RCS.

## Other Recent Developments (Proposed)

### CLIMATE CHANGE

FEDERAL: EPA proposed changes to the **renewable fuel standards (RFS) regulations for gasoline and diesel transportation fuel** to address changes in the marketplace and promote growth in the renewable fuel market. 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 renewable identification number (RIN) 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, among other things, to: (1) specify requirements for “biointermediates”—circumstances when renewable fuel is produced through sequential operations at more than one facility; (2) revise the requirements for ethanol flex fuel to cover all fuels containing between 16 and 83 percent ethanol, which can only be used in so-called flex fuel vehicles (FFVs) (vehicles designed to operate on any gasoline ethanol blend between pure gasoline and E85). Currently, E16-50 blends are regulated as gasoline even though they can only be used in FFVs; (3) establishing registration, recordkeeping and reporting requirements that would apply if EPA allows carbon capture and storage as a lifecycle GHG emission reduction technology under the RFS program; (4) proposing new pathways for the production of cellulosic biofuels using short-rotation hybrid poplar and willow trees as feedstock; and (5) seeking approaches for generation of RINs for electricity that is produced from biogas and used as a transportation fuel. EPA is accepting comments on the proposed RFS rule changes until **January 17, 2017**. The notice can be found in the November 16, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed revisions are primarily of interest to the manufacturers, blenders and marketers of transportation fuels.

NEW YORK STATE: DEC **proposed additional revisions to its regulations containing projections of sea level rise** proposed in fulfillment of the 2014 Community Risk and Resiliency Act (CRRA), which was enacted to ensure that decisions regarding certain State permits and expenditures consider climate risk, including sea level rise. The proposed regulations, set forth at 6 NYCRR Part 490, contain a range of five sea level rise projections (low, low-medium, medium, high-medium and high) for three regions of the

State (Mid-Hudson, New York City/Lower Hudson Region, and Long Island Region), which were developed using the ClimAID model. In response to public comments, DEC substantially revised the definitions of “high projection” and “low projection.” In addition, DEC made changes to expand on the purpose and applicability of Part 490. DEC, working with the New York Department of State, is currently developing guidance regarding implementation of the CRRRA. Applicants for permits or funding will not be required to consider Part 490 sea level rise projections until the guidance is issued. DEC is accepting comments on the re-proposed regulations until **December 30, 2016**; the proposed rule can be found on DEC’s web site at: [www.dec.ny.gov/regulations/103870.html](http://www.dec.ny.gov/regulations/103870.html).

Implications: For the short term, the proposed rule is primarily of interest to climate scientists.

## CHEMICALS

**FEDERAL: EPA proposed to add a nonylphenol ethoxylates (NPE) category to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program.** Under Section 313 of the Emergency Planning and Community-Right-to-Know Act, certain facilities that manufacture, process or otherwise use listed hazardous chemicals in amounts above specified thresholds must report the amount of the chemical released to air or water or disposed of on land on an annual basis. EPA proposed the listing after concluding that longer chain NPEs can break down in the environment into short chain NPEs and nonylphenol, both of which are highly toxic to aquatic organisms. EPA is accepting comments on the proposed rule until **January 17, 2017**; it can be found in the November 16, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is potentially of interest to facilities that manufacture, process or otherwise use significant quantities of NPEs. NPEs have surfactant properties and are commonly used in adhesives, wetting agents, emulsifiers, stabilizers, dispersants, cleaners, paints and coatings.

## Upcoming Deadlines

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

**December 16, 2016:** Deadline for submitting comments on EPA’s proposed revisions to the PSD and Title V regulations to implement Supreme Court-mandated changes to the 2010 GHG tailoring rule (extended from December 2, 2016). See the October 3, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 30, 2016:** Deadline for submitting comments on DEC’s revisions to its sea level rise projection regulations proposed under the Community Risk and Resiliency Act. See DEC’s website at [www.dec.ny.gov/regulations/103870.html](http://www.dec.ny.gov/regulations/103870.html) for details.

**January 3, 2017:** Deadline for submitting comments on EPA's proposal to add additional treated railroad ties to the list of materials that can be burned in boilers and industrial furnaces rather than CISWIs. See the November 1, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 4, 2017:** Deadline for submitting comments on OSHA's Standards Improvement Project rulemaking eliminating/revising outdated and/or unnecessary OSHA standards (extended from December 5, 2016). See the October 4, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 17, 2017:** Deadline for submitting comments on EPA's proposed rule implementing the 2015 ozone NAAQS. See the November 17, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 17, 2017:** Deadline for submitting comments on EPA's proposed revisions to the Renewable Fuel Standards regulation. See the November 16, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 17, 2017:** Deadline for submitting comments on EPA's proposal to add a nonylphenol ethoxylates category to the list of chemicals subject to TRI reporting. See the November 16, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 3, 2017:** Deadline for submitting comments on DEC's draft SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (extended from December 2, 2016). See DEC's website at [www.dec.ny.gov/chemical/41392.html](http://www.dec.ny.gov/chemical/41392.html) for copies of the permit and related documents.