

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

January 4, 2017

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**Final Statutes, Regulations, Guidance and Cases**

Citation	Summary	Implications	Schedule/Notes
<b>AIR/CHEMICAL</b>			
<p>FEDERAL  <b>Formaldehyde Emissions from Composite Wood Products</b>                      40 CFR Part 770                      81 Fed. Reg. 89674 (Dec. 12, 2016)</p>	<p>EPA adopted a rule <b>implementing the 2010 Formaldehyde Standards for Composite Wood Products Act</b>, which established formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard (collectively, composite wood products) and required EPA to develop regulations to implement the standards. Many of the resins used to produce composite wood products contain formaldehyde, a colorless, strong-smelling gas that is both an irritant and a probable human carcinogen. The rule, which was issued under the Toxic Substances Control Act (TSCA):</p> <ul style="list-style-type: none"> <li>• Identifies the wood products subject to regulation, including a temporary exemption for certain laminated products as well as a long list of exempt products.</li> <li>• Establishes formaldehyde emission standards, together with emission testing and quality assurance/quality control requirements to demonstrate compliance with the standards.</li> <li>• Requires certification by an EPA-accredited third party that the product meets the emission standards and sets rules for accrediting the third parties issuing the certifications. Under the regulation, panel producers must have their products tested by the third-party certifier (TPC) and conduct their own periodic quality control tests. In addition, the TPC must establish quality control limits for formaldehyde emissions, determine a process to ensure the producers meet these limits, inspect the panel producers' products and records, and verify quality control test results.</li> <li>• Establishes chain-of-custody and recordkeeping requirements.</li> <li>• Requires manufacturers to sell their remaining stocks of noncompliant products within one year of the effective date of the rule; thereafter, all composite wood products in the marketplace must meet the formaldehyde standards and be labeled TSCA compliant.</li> <li>• Establishes reduced testing and other requirements for composite wood products made with no-added formaldehyde and ultra-low emitting formaldehyde resins.</li> </ul> <p>The rule can be found in the December 12, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rule is potentially of interest to composite wood product manufacturers and importers and companies that manufacture the formaldehyde-based chemicals used in the manufacture of composite wood products. Composite wood products include hardwood plywood, medium-density fiberboard and particleboard. The rule is also of interest to industries that use composite wood, such as manufacturers and distributors of manufactured and prefabricated homes, recreational vehicles, and furniture.</p>	<p>The final rule takes effect February 10, 2017. Most of the requirements of the rule must be met by December 12, 2017.</p>

Citation	Summary	Implications	Schedule/Notes
<b>CLIMATE CHANGE</b>			
<p>FEDERAL  <b>Greenhouse Gas Reporting Rule Revisions</b>            40 CFR Part 98            81 Fed. Reg. 89188 (Dec. 9, 2016)</p>	<p><b>EPA revised the greenhouse gas (GHG) reporting rule to streamline and improve implementation and clarify and update certain provisions.</b> The GHG reporting rule, which is set forth at 40 CFR Part 98, requires mandatory annual reporting of GHG emissions from specific categories of sources as well as from certain suppliers of fossil fuels and industrial GHGs. The annual emission report must include total facility carbon dioxide (CO<sub>2</sub>) equivalent emissions, emissions from each source category, and additional data depending on the specific source category. Key changes include:</p> <ul style="list-style-type: none"> <li>• Streamlining Part 98 by clarifying/removing reporting requirements for facilities that may report little or no emissions; removing data elements that are no longer necessary; and revising certain elements of the reporting and verification process.</li> <li>• Enhancing the quality and accuracy of the data collected under the program by revising certain category definitions, calculation methodologies and monitoring methods and revising or adding to reporting requirements to ensure the collection of accurate data.</li> <li>• Clarifying the data that are currently being reported and/or improving verification of reported data.</li> <li>• Ensuring data collected by the program support the U.S. Greenhouse Gas Inventory, an annual report that tracks total annual U.S. GHG emissions and removals by source, economic sector, and greenhouse gas.</li> <li>• Making other minor changes and corrections.</li> </ul> <p>In addition to these changes, EPA issued confidentiality determinations for the reporting of certain data elements to the agency.</p> <p>The rule can be found in the December 9, 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 sources required to report under the Part 98 GHG reporting rule. These include: (1) facilities that contain sources in specifically listed source categories; (2) facilities that emit 25,000 metric tons of CO<sub>2</sub> equivalent or more per year and fall into specific source categories; (3) facilities with stationary fuel combustion units with an aggregate maximum rated heat input capacity of 30 million British thermal units per hour or greater that emit 25,000 metric tons of CO<sub>2</sub> equivalent per year from all stationary fuel combustion sources; and (4) suppliers of certain fossil fuels and industrial GHGs if specific criteria are met.</p>	<p>The rule took effect January 1, 2017, although certain provisions will be phased in over two years to give the agency time to update key software and provide newly regulated sources with time to meet the program requirements.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>NEW YORK STATE  <b>Emergency Lead Testing in School Drinking Water</b>            10 NYCRR subpart 67-4</p>	<p>The New York State Department of Health (DOH) adopted a second <b>emergency rule continuing lead testing requirements for school drinking water</b>. The rule requires all school districts, including those already classified as public water systems, to test potable water outlets for lead and develop and implement a lead remediation plan, where necessary. For buildings serving elementary school age children (prekindergarten through fifth grade), the first samples were required to be collected by September 30, 2016, with an October 31, 2016 deadline for all other schools. If the results exceed 15 parts per billion, the school must: prohibit use of the outlet until the problem is remediated; supply the building with adequate potable water; immediately report the test results to the local health department; and notify staff and parents in writing and via the school’s website. Schools also must post a list of buildings found to be lead-free and report the sample results to DOH and others by November 11, 2016 through DOH’s electronic reporting system. Additional samples must be taken in 2020 and at least every five years thereafter.</p> <p>The emergency rule and related information can be found at:  <a href="http://www.health.ny.gov/environmental/water/drinking">www.health.ny.gov/environmental/water/drinking</a>.</p>	<p>The regulation implements A.10740, which was signed by Governor Cuomo on September 6, 2016. The emergency rule is primarily of interest to school districts and board of cooperative education service facilities (collectively public schools) and to the students, teachers and staffs in those schools. The rule does not apply to private schools.</p>	<p>The emergency rule took effect December 5, 2016 and will expire on March 4, 2017 unless DOH extends it or adopts a replacement emergency rule. DOH will publish a notice of proposed rulemaking to adopt a permanent rule at some future date.</p> <p>The recent notice includes a response to comments received following publication of the first emergency rule.</p>

Citation	Summary	Implications	Schedule/Notes
<b>OCCUPATIONAL SAFETY AND HEALTH</b>			
FEDERAL <i>Recommended Practices for Safety and Health Programs in Construction</i> (Oct. 2016)	<p>OSHA issued a <b>new guidance document</b>—<i>Recommended Practices for Safety and Health Programs in Construction</i>—to help employers establish a methodical approach for improving safety and health at construction job sites. The document identifies proactive measures employers can implement to find and fix hazards before they cause injury or illness. It lists seven core program elements followed by action items, which are broken down into specific tasks for accomplishing the particular action item. The core elements and their associated action items are:</p> <ul style="list-style-type: none"> <li>• <b>Management leadership.</b> Communicate commitment to safety and health program; define program goals; allocate resources; and expect performance.</li> <li>• <b>Worker participation.</b> Encourage worker participation; encourage workers to report safety and health concerns; give workers access to safety and health information; involve workers in all aspects of program; and remove barriers to participation.</li> <li>• <b>Hazard identification and assessment.</b> Collect existing information about job site hazards; inspect the job site for safety hazards; identify health hazards; conduct incident investigations; identify hazards associated with emergency and nonroutine situations; and characterize the nature of identified hazards, identify interim control measures, and prioritize the hazards for control.</li> <li>• <b>Hazard prevention and control.</b> Identify control options; select controls; develop and update a hazard control plan; select controls to protect workers during nonroutine tasks and emergencies; implement selected controls on the job site; and follow up to confirm controls are effective.</li> <li>• <b>Education and training.</b> Provide program awareness training; train employers, managers and supervisors on their roles in the program; train workers on their specific roles; and train workers on hazard identification and controls.</li> <li>• <b>Program evaluation and improvement.</b> Monitor performance and progress; verify that the program is implemented and operating; and correct program shortcomings and identify opportunities to improve.</li> <li>• <b>Communication and coordination for employers on multiemployer worksites.</b> Establish effective communication and coordination.</li> </ul> <p>The recommended practices guidelines can be found on the OSHA website at: <a href="http://www.osha.gov/shpguidelines/index.html">www.osha.gov/shpguidelines/index.html</a>.</p>	<p>The guidelines are intended to help employers develop a proactive approach to “finding and fixing” job site hazards before they cause injury or illness through collaboration between employers and employees. Although potentially useful to any construction employer, they should be particularly helpful to small and medium-sized businesses. The guidelines reflect changes in the construction industry, including: new construction techniques, materials and equipment; greater workforce diversity; and increased temporary and contract employment.</p>	<p>The website containing the guidelines provides access to numerous resources and tools to support implementation of the recommended practices, including downloadable templates, worksheets, reference materials, and relevant articles and information sources.</p> <p>A similar recommended practices document was recently issued for general industry.</p>

Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>CHEMICAL</b>			
<p>FEDERAL  <b>Toxic Substances Control Act Reform Rulemakings</b>                      40 CFR Part 751                      81 Fed. Reg. 91592 (Dec. 16, 2016)                      (regulation of certain TCE uses); 81 Fed. Reg. 91927 (Dec. 19, 2016) (identification of first 10 chemicals for review)</p>	<p><b>EPA proposed its first major rules following Congress’ 2016 law reforming the Toxic Substances Control Act</b>, 15 USC § 2601 et seq. 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>In fulfillment of the statute, EPA recently identified the following 10 chemicals for the first risk evaluations under the new statute: 1,4-dioxane, 1-bromopropane, asbestos, carbon tetrachloride, cyclic aliphatic bromide cluster, methylene chloride, n-methylpyrrolidone, pigment violet 29, tetrachloroethylene (i.e., perchlorethylene), and trichloroethylene (TCE).</p> <p>In a related development, EPA is proposing to prohibit the manufacture, processing, distribution in commerce and use of TCE in aerosol degreasing and in spot cleaning in dry cleaning facilities after concluding that these activities present an unreasonable risk to human health. Manufacturers, processors and distributors (other than retailers) must provide downstream notification of these prohibitions throughout the supply chain.</p> <p>Information about TSCA reform implementation 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 notices are potentially of interest to companies that manufacture, import, process, distribute, use or dispose of the listed substances, many of which are already regulated under existing EPA programs. Under the amended TSCA statute, EPA has three years to complete its risk evaluation of the listed substances to determine whether the chemicals present an unreasonable risk to humans and/or the environment. If EPA determines that a particular substance poses an unreasonable risk, EPA must mitigate that risk within two years. Additional chemicals will be designated for evaluation under TSCA, which requires EPA to have at least 20 chemical risk evaluations ongoing at any given time by the end of 2019.</p> <p>With respect to TCE, preliminary research indicates that the use of TCE in vapor degreasing also presents an unreasonable risk of injury to health. EPA intends to issue a separate proposal addressing this use and to publish a final rule covering both proposals.</p>	<p>EPA is accepting comments on the proposed regulation of TCE uses until <b>February 14, 2017</b>.</p> <p>EPA must prepare a scoping document for each of the 10 listed chemicals by June 19, 2017 that includes information about the hazards, exposures, conditions of use and potentially exposed or susceptible subpopulations associated with the chemical.</p>

## Other Recent Developments (Final)

### CLIMATE CHANGE

FEDERAL: EPA adopted **renewable fuel standards (RFS) for gasoline and diesel transportation fuel produced or imported for 2017**. Under the RFS program, gasoline and diesel producers and importers must use an increasing percentage of four types of renewable fuel: cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuel. To implement the RFS, EPA established a credit program under which every gallon of renewable fuel is assigned a unique number that is transferred along with the fuel. Refiners, blenders and importers subject to the RFS program must have sufficient RFS credits to meet their obligations under the program. With the current rulemaking, EPA established the volume standards for the four types of fuel subject to the RFS program for the year 2017 (2018 for biomass-based diesel) at levels that are generally below those mandated by the Clean Air Act (CAA) but higher than in past years. According to EPA, constraints in the fuel market make it impossible to accommodate the increasing volumes of renewable fuel mandated by the Act. These constraints include lower than expected cellulosic biofuel production, a significant reduction in gasoline sales as well as a reluctance by distributors to sell E15 gasoline (i.e., gasoline containing up to 15% ethanol). The rule, which takes effect February 10, 2017, can be found in the December 12, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

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

### WATER

FEDERAL: EPA **revised the regulations governing small municipal separate storm sewer systems (MS4s)** to implement a federal court decision which found that the existing program 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. Although the small MS4 permit is similar to other stormwater general permits in many respects, the court concluded that the details of compliance are found in the Notice of Intent (NOI) submission and not in the permit itself and that the NOI is therefore the “functional equivalent” of a permit application and must be subject to public notice and comment. With the recent rulemaking, EPA gave states two options for addressing the court’s decision. Under the first, more traditional option, all requirements for MS4s must be included in the general permit itself, eliminating the need for additional public notice. Under the second option, the permitting authority includes basic requirements applicable to all MS4 permittees in the general permit. Additional requirements tailored to the facility are included in the NOI submission. The permitting agency will review the NOI submission for adequacy to determine whether additional requirements are needed. This second step will be subject to public notice and comment, including an opportunity for the public to request a hearing. The final rule takes effect January 9, 2017 and can be found in the December 9, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to towns, villages, small cities and other government entities that own/operate small MS4s.

FEDERAL: EPA issued a report entitled *Hydraulic Fracturing for Oil and Gas: Impacts from the Hydraulic Fracturing Water Cycle on Drinking Water Resources in the United States* to provide states and others with a scientific foundation to better protect drinking water resources in areas where hydraulic fracturing is occurring or may occur. The report is organized around five stages of the hydraulic fracturing process: water acquisition; mixing of water with chemical additives; injection of the fluid into the well to create fractures; collecting the water that returns through the well after injection; and managing and disposing of the wastewater. The report—which was based on a review of over 1200 scientific sources, peer review by the EPA Science Advisory Board, stakeholder input, and new research—identified the following conditions under which the impacts from hydraulic fracturing can be more frequent or severe: water withdrawals for hydraulic fracturing in times or areas of low water availability; large/high concentration spills of hydraulic fracturing fluids and/or chemicals that reach groundwater; injection of hydraulic fracturing fluids into wells that lack mechanical integrity or direct injection into groundwater; discharge of inadequately treated fracking water to surface water bodies; and disposal or storage of fracking wastewater in unlined pits. EPA noted, however, that there were significant data gaps and uncertainties that prevented the agency from estimating the national frequency of impacts to drinking water from hydraulic fracturing activities or assessing their severity. The report can be found on EPA’s website at: [www.epa.gov/hfstudy](http://www.epa.gov/hfstudy).

Implications: The report is potentially of interest to anyone concerned about hydraulic fracturing.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: In the wake of a court decision, OSHA **amended its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation**. As a general rule, employers with more than 10 employees must keep records of occupational injuries and illnesses at their establishments under 29 CFR Part 1904. These records include a log of workplace injuries/illnesses, supplementary injury/illness incident reports, and an annual summary of work-related injuries and illnesses that must be posted in the workplace. Traditionally, OSHA has concluded that the failure to record injuries/illnesses is a continuing one and that the agency can cite employers for such recordkeeping violations for up to six months after the five-year record retention period mandated under Part 1904. However, a federal court concluded that OSHA must cite an employer for failing to record an injury or illness under the current regulations within six months of the first day on which the regulation requires the record. With this rulemaking, OSHA revised the Part 1904 regulations to clarify that the duty to make and maintain an accurate record of a work-related injury or illness is an ongoing obligation that continues until the required record is made or the five-year record retention period ends. The rule takes effect January 18, 2017; it can be found in the December 19, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The revision is potentially of interest to any facility with more than 10 employees that is subject to the OSHA injury/illness recordkeeping requirements.



## OTHER

**NEW YORK STATE: DEC adopted regulations establishing standards and procedures for DEC to follow when modifying or extinguishing conservation easements.** Conservation easements are easements, covenants, restrictions or other real property interests owned by the State of New York under DEC jurisdiction that limit or restrict development, management or use of property to protect scenic, open, historic or other similar interests. According to DEC, the increase in acreage subject to DEC conservation easements, coupled with the ongoing need to address changing conditions, natural disasters and other developments, are likely to increase the number of requests to modify easements in the future, necessitating the adoption of standards/procedures for that purpose. The rule, which is set forth at 6 NYCRR Part 592, distinguishes between easement modifications and modifications to the purposes of easements or extinguishment. Easement modifications are comparatively minor changes that can be implemented after publishing notice in the Environmental Notice Bulletin (ENB) and providing a 30-day public notice and comment period. Modifying the purpose of or extinguishing an easement requires publication of a notice in the State Register, ENB and local newspaper, a 30-day public notice and comment period, and a non-adjudicatory public hearing. DEC must then prepare a written notice explaining how its final decision meets specified criteria for modifying the purpose of or extinguishing an easement and publish notice of that determination in the ENB. The final rule, which took effect December 21, 2016, can be found on DEC's website at: [www.dec.ny.gov/regulations/2359.html](http://www.dec.ny.gov/regulations/2359.html).

Implications: The rule is primarily of interest to owners of land subject to DEC conservation easements and to members of the public with an interest in such lands.

## Other Recent Developments (Proposed)

### AIR

**FEDERAL: EPA proposed the results of its review of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for nutritional yeast manufacturing facilities** following a residual risk/periodic technology review. Under CAA § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary. EPA also must conduct a periodic review of the technology underlying the NESHAP to confirm that the standard remains current. The nutritional yeast manufacturing NESHAP, set forth at 40 CFR Part 63, subpart CCCC, applies to major sources that manufacture yeast used in foods intended for human consumption, a process that generates acetaldehyde, a probable carcinogen. After reviewing the existing standard, EPA concluded that the risks remaining after application of the NESHAP were acceptable and that the standards protect public health with an ample margin of safety. EPA also found that there were no cost-effective developments in practices, processes or control technologies and that no changes in the NESHAP were necessary to address technological improvements. EPA also: (1) revised the form of the volatile organic compound (VOC) emission limits to address the statutory requirement that emission standards apply at all times by adding a "batch option" that allows facilities to average concentration data from all batches within a fermentation stage to demonstrate compliance with a discounted VOC emission limit; (2) revised the rule's testing, monitoring, recordkeeping and reporting

requirements, including mandating submission of electronic copies of compliance reports, including performance test and performance evaluation results; (3) deleted the exemption for excess emissions during malfunction events; and (4) made other changes and corrections. EPA is accepting comments on the proposed rule until **February 13, 2017**; it can be found in the December 28, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: According to EPA, there are four facilities in the country subject to the nutritional yeast NESHAP.

**FEDERAL: EPA proposed the results of its review of the NESHAP for publicly owned treatment works (POTWs)** following a residual risk/periodic technology review. The POTW NESHAP, set forth at 40 CFR Part 63, subpart VVV, applies to two types of larger POTWs that treat industrial wastewater: POTWs that are themselves major sources of hazardous air pollutants (HAPs) and POTWs that are used by industrial sources to satisfy their emission control obligations under another NESHAP. With this rulemaking, EPA announced the results of its residual risk/periodic technology reviews and proposed changes to the applicability, recordkeeping and other requirements of the rule. In particular, EPA proposed to: (1) revise the applicability provisions to clarify the original intent of the rule, which was to cover all POTWs that provide the treatment necessary to ensure that an industrial source complies with any applicable NESHAPs as well as POTWs that are themselves a major source of HAPs; (2) revise the names and definitions of the two subcategories identified in the NESHAP, replacing the terms “industrial” and “nonindustrial” POTW treatment plants with “Group 1” and “Group 2” plants; (3) find that the risks remaining after application of the NESHAP are acceptable and that the standards protect public health with an ample margin of safety; (4) make changes following the periodic technology review, including requiring all new or reconstructed POTWs subject to the NESHAP to develop and implement a pretreatment program and requiring Group 1 (i.e., industrial) POTWs to meet the requirements of both the other applicable NESHAP and the POTW NESHAP. EPA also is seeking comment on possible changes to the standards for Group 2 (non-industrial) POTWs; (5) mandate submission of electronic copies of required performance test and other performance evaluation reports; (6) delete the exemption for excess emissions during startup, shutdown and malfunction events; and (7) make other changes and corrections. EPA is accepting comments on the proposed rule until **February 27, 2017**; it can be found in the December 27, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: According to EPA, there are currently six POTWs out of approximately 16,000 nationwide that are subject to the POTW NESHAP. Most POTWs serve small municipalities and/or do not treat wastewater from industrial users. As a result, they are not potentially subject to the regulation. Those that do treat industrial waste require pretreatment prior to authorizing discharge to the POTW, which reduces potential emissions from the POTW below major source thresholds.

**FEDERAL: EPA proposed the results of its review of the NESHAP for chemical recovery combustion sources at kraft, soda, sulfite and stand-alone semichemical pulp mills** following a residual risk/periodic technology review. The NESHAP, which is set forth at 40 CFR Part 63, subpart MM, is one of two NESHAPs adopted for the pulp and paper industry and applies to major sources of HAP emissions from chemical recovery combustion sources such as recovery furnaces, lime kilns and kraft black liquor oxidation units. After reviewing the existing NESHAP, EPA concluded that the risks remaining after application of the NESHAP were acceptable and that the standards protect public health with an ample margin of safety. With respect to the periodic technology review, EPA is proposing

to retain most of the existing emission standards, while making the following changes: strengthening the opacity standard and/or monitoring allowance for kraft and soda recovery furnaces and kraft and soda electrostatic precipitator (ESP)-controlled lime kilns; adding an ESP parameter monitoring requirement for recovery furnaces and lime kilns equipped with ESPs; requiring periodic air emission performance testing once every five years; and making other changes to monitoring requirements. EPA also is proposing to require facilities to meet the NESHAP at all times, including during periods of startup, shutdown and malfunction and provide alternative monitoring parameters for wet scrubbers and ESPs during these periods. EPA also is proposing to require mills to submit electronic copies of required compliance reports, including performance test reports. EPA is accepting comments on the proposed rule until **February 28, 2017**; it can be found in the December 30, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: According to EPA, there are currently 108 major source paper manufacturing facilities in the United States that conduct chemical recovery combustion operations, the vast majority of which are kraft pulp mills.

## WATER

NEW YORK STATE: DEC is accepting comments on **new guidance for handling direct disposal of snow to surface waters**, with the goal of minimizing the quantity of contamination and debris in waterways associated with snow removal activities. TOGS 5.1.11, *Snow Disposal*, encourages the use of upland disposal sites as well as the identification of areas in the community that are likely to contain heavily contaminated snow that should be managed away from surface waters. To minimize potential impacts, the guidance also includes best management practices for upland snow disposal, including installation of down gradient sediment barriers and berms, establishment and maintenance of vegetation during the growing season, removal of debris from accumulated snow before the growing season, maintenance of a buffer between the disposal area and surface waters, and other measures. If snow must be directly disposed in waterbodies, the TOGS contains specific guidance for selecting surface waters to minimize potential adverse impacts, including identifying areas to avoid (wetlands, eelgrass beds, drinking water reservoirs, areas upstream of drinking water intakes, etc.). The TOGS also includes guidance on the use of industrial snow melters. DEC is accepting comments on the draft TOGS until **January 31, 2017**; it can be found on DEC's website at: [www.dec.ny.gov/regulations/2652.html](http://www.dec.ny.gov/regulations/2652.html).

Implications: The TOGS is potentially of interest to anyone involved in large-scale snow removal activities, including local and county governments and owners/operators of large industrial or commercial facilities.

NEW YORK STATE: DEC is accepting comments on a **guidance document outlining the standards and procedures for issuing permits for so-called "living shoreline" techniques** in the Marine and Coastal District Waters of New York, an area that encompasses the Hudson River south of the Tappan Zee Bridge to the tip of Long Island. Living shoreline techniques are erosion control techniques that incorporate living features alone or in combination with structural components such as rocks, fiber rolls, bagged shell and concrete shellfish substrate. DEC's *Tidal Wetlands Guidance Document: Living Shoreline Techniques in the Marine District of New York State*, addresses: the types of living shoreline techniques, the permitting requirements and standards, the impacts of sea level rise and climate change, criteria for proper siting (including assessment of erosive forces and project and adjacent site conditions), ongoing maintenance

and monitoring obligations, and other considerations (e.g., short-term construction impacts, additional regulations, use of clean fill, and contiguous property owners). DEC is accepting comments on the draft guidance until **February 8, 2017**; it can be found on DEC's website at: [www.dec.ny.gov/lands/4940.html](http://www.dec.ny.gov/lands/4940.html).

Implications: The draft guidance is primarily of interest to individuals engaged in projects in the Marine District of New York (i.e., the coastline along the southern Hudson River to the tip of Long Island).

## Upcoming Deadlines

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

**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.

**January 31, 2017:** Deadline for submitting comments on DEC's draft TOGS 5.1.11, *Snow Disposal*. The TOGS can be found on DEC's website at [www.dec.ny.gov/regulations/2652.html](http://www.dec.ny.gov/regulations/2652.html).

**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.

**February 8, 2017:** Deadline for submitting comments on DEC's draft *Tidal Wetlands Guidance Document: Living Shoreline Techniques in the Marine District of New York State*. See DEC's website at [www.dec.ny.gov/lands/4940.html](http://www.dec.ny.gov/lands/4940.html) for details.

**February 13, 2017:** Deadline for submitting comments on EPA's proposed rule implementing the 2015 ozone NAAQS (extended from January 17, 2017). See the November 17, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 13, 2017:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the nutritional yeast NESHAP. See the December 28, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 14, 2017:** Deadline for submitting comments on EPA's proposed regulation of certain TCE uses under TSCA. See the December 16, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

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

**February 27, 2017:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the POTW NESHAP. See the December 27, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 28, 2017:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review for the NESHAP governing chemical recovery combustion sources at kraft, soda, sulfite and stand-alone semichemical pulp mills. See the December 30, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.