

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

March 3, 2017

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

Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Rule Adding PFOA and PFOS to Hazardous Substance List 6 NYCRR Part 597</p>	<p>After four emergency rulemakings, DEC adopted a permanent rule adding perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS) and PFOA and PFOS salts to the list of hazardous substances under the chemical bulk storage (CBS) program. This change will allow DEC to regulate the bulk storage of these chemicals under the CBS program and require reporting of PFOA and PFOS releases. More important, adding these substances to the Part 597 list allows DEC to address PFOA- and PFOS-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. The rule also sets a deadline of April 25, 2017 for facilities to dispose of fire-fighting foam containing these substances. CBS facilities that store PFOA and PFOS acids and salts must comply with the CBS handling and storage requirements by April 25, 2018.</p> <p>The rule can be found on DEC’s website at: www.dec.ny.gov/regulations/104968.html.</p>	<p>PFOA and PFOS have been widely used in fire-fighting foam, 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 other 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 final rule takes effect March 3, 2017.</p>
POLLUTION PREVENTION			
<p>NEW YORK STATE New York’s Annual Environmental Excellence Awards Application</p>	<p>DEC is accepting applications for New York’s Annual Environmental Excellence Awards, which recognize public, private and non-profit entities that have achieved environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Applicants must be in good standing with the Environmental Conservation Law and pertinent local laws. Competitive applications must include clear, measurable and documented metrics demonstrating success and adhere to specific content and format requirements. Complete applications must include an application cover sheet and application checklist as well as specific project information, including a summary, general description, and information relating to: innovation, sustainability, and/or partnerships; superior practices; measurable environmental, economic and social benefits; commitment and leadership in pursuit of environmental excellence; transferability to other users; funding sources; and other details and supporting documentation.</p> <p>The application form and instructions can be found on DEC’s website at: www.dec.ny.gov/public/945.html.</p>	<p>The award program provides a way for businesses, educational institutions, governments, non-profit organizations and individuals to obtain public recognition of their pollution prevention and reduction efforts. Examples of eligible projects include: green infrastructure projects; initiatives to reduce greenhouse gas emissions; manufacturing process improvements and/or “green tech” solutions; initiatives to “green” businesses; clean energy and energy efficiency improvements; and other projects.</p>	<p>Applications must be postmarked by April 14, 2017.</p>

Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
ENVIRONMENTAL REVIEW			
<p>NEW YORK STATE Proposed Revisions to State Environmental Quality Review Act Regulations 6 NYCRR Part 617</p>	<p>DEC proposed revisions to the State Environmental Quality Review Act (SEQRA) regulations, set forth at 6 NYCRR Part 617, with the goal of updating and streamlining the SEQRA review process. Key changes to the SEQRA regulations include:</p> <ul style="list-style-type: none"> • Adding definitions of green infrastructure, municipal center, and previously disturbed and revising the definitions of critical environmental area, positive declaration and scoping. • Revising the list of Type I actions to reduce certain thresholds for residential subdivisions, add a new threshold for parking spaces in smaller communities, and establish less stringent criteria for projects involving unlisted actions within or substantially contiguous to a historic resource. • Expanding the list of Type II actions to reflect experience with the SEQRA review process and encourage environmentally sound projects, including green infrastructure retrofits, certain solar energy projects, redevelopment of previously disturbed sites in urban areas, renovation and reuse of existing structures, and small-scale residential development, among others. • Revising the scoping provisions to: require scoping for all EISs; require an explanation of why issues were not included in the final written scope; and clarify that issues raised after completion of the final scope cannot be the basis for rejecting a draft EIS as inadequate. • Revising the rules addressing preparation of the EIS to: require determinations of adequacy of a resubmitted draft EIS to be based solely on the previous written list of deficiencies provided by the lead agency; facilitate electronic posting of EISs; and authorize the applicant to request copies of invoices or statements for work prepared by a consultant and submitted to the lead agency in connection with any services rendered in preparing or reviewing an EIS. <p>The draft regulations can be found on DEC’s website at: www.dec.ny.gov/permits/83389.html.</p>	<p>The SEQRA process has been widely criticized for being too complicated and taking too long. The planned revisions to the SEQRA regulations are intended to streamline the review process by updating the list of Type I and Type II actions to better target projects for environmental review and focusing the review on those issues that have the potential to result in a significant adverse environmental impact through mandatory scoping for all EISs and improvements in the scoping process.</p> <p>The proposed revisions follow several other important SEQRA developments, including updated Environmental Assessment Forms (with workbooks) and a spatial data platform known as the EAF mapper.</p>	<p>DEC is accepting comments on the draft regulations until May 19, 2017. A public hearing on the proposed regulations has been scheduled for March 31, 2017 at 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany.</p> <p>The proposed regulation does not include earlier proposals to require preparation of a final EIS within 180 days of the lead agency’s acceptance of the draft EIS as well as a provision deeming draft EISs complete if the final EIS is not prepared and filed within the 180-day period.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Amendments to Public Water System Regulations 10 NYCRR Subpart 5-1</p>	<p>The New York State Department of Health (DOH) proposed changes to the State’s public water system (PWS) regulations, set forth at 10 NYCRR Subpart 5-1, to conform to federal regulations and incorporate certain State statutory changes. Key federal conforming changes include:</p> <ul style="list-style-type: none"> • Minor and Short-Term Revisions to Lead and Copper Rule. Revising the existing rules governing the management of lead and copper pipes in drinking water systems to incorporate changes to the federal rule that eliminated unnecessary requirements, reduced reporting burdens, and promoted consistent implementation of the federal lead and copper rule. DOH also is proposing to incorporate federal changes relating to monitoring, treatment, customer awareness, lead service line replacement, and public education. The revisions do not affect the lead and copper maximum contaminant level goals, action levels, or other basic regulatory requirements. • Stage 2 Disinfectant and Disinfection Byproduct Rule. Incorporating changes to federal rules designed to reduce the potential risk of adverse health effects associated with two common disinfection byproducts (DBPs)—total trihalomethanes and haloacetic acids. The rule requires certain public water systems to complete an initial distribution system evaluation to characterize DBPs and identify monitoring locations. The revisions also expand the rule to cover all community water systems and non-transient non-community water systems that either add a primary or residual chemical disinfectant or deliver water treated with such chemicals. • Long Term 2 Enhanced Surface Water Treatment Rule. Implementing changes to reduce exposure to cryptosporidium and other microorganisms associated with high-risk drinking water systems, such as those using surface water or groundwater directly influenced by surface water or that hold finished water in uncovered water storage facilities. • Variations and Exceptions Rule. Providing options for achieving compliance with the regulations through the issuance of variances. <p>In addition, DOH is proposing to revise Subpart 5-1 to conform to the New York Public Health Law by amending the cross-connection control rules relating to backflow tester certification and requiring operators of public water systems serving a population of more than 3,300 to submit water supply emergency plans.</p> <p>The proposed regulations can be found on the DOH website at: https://regs.health.ny.gov/regulations/proposed-rule-making.</p>	<p>The proposed revisions are primarily of interest to municipalities and other entities that own/operate public water systems regulated by DOH. Most of the changes are necessary to conform the State PWS regulations to federal program requirements, enabling the State to maintain full primacy for delivery, oversight and management of New York’s PWS program. The remaining amendments update the regulations to incorporate changes to the New York Public Health Law into the State’s implementing regulations.</p>	<p>DOH is accepting comments on the draft revisions until April 3, 2017.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Processing Water Withdrawal Permit Applications TOGS 3.2.1</p>	<p>DEC is accepting comments on draft guidance entitled <i>Processing Water Withdrawal Permit Applications</i>. The guidance is intended to help DEC staff implement 6 NYCRR Part 601, which requires a permit or registration for water withdrawal systems capable of withdrawing at least 100,000 gallons of water per day (gpd). Draft Technical Operational Guidance Series (TOGS) 3.2.1, which replaces an existing guidance document, provides an overview of the water withdrawal permitting program and specifies who within the Department is responsible for key aspects of the permit review and issuance process. The guidance goes on to specify the procedures for: receiving and reviewing the permit application and determining completeness; conducting a technical review of the application, including assessing source capacity, evaluating alternatives, and reviewing water demand calculations, groundwater pumping tests, and surface water yield analyses, among other technical reviews; and drafting and issuing the permit using DEC’s DART system, including describing the authorized activity, assigning an expiration date (up to 10 years), and establishing general and special conditions depending on the type water withdrawal system (public vs. non-public). The guidance includes appendices addressing: new permitting procedures for public water supply systems; coordination agreements with the Susquehanna River Basin Commission (SRBC) and Delaware River Basin Commission (DRBC), both of which regulate certain water withdrawals within the basin; a water withdrawal permitting checklist for administrative completeness; and a list of required and typical permit conditions that distinguishes between public and non-public systems.</p> <p>The draft guidance can be found on DEC’s website at: www.dec.ny.gov/lands/55509.html.</p>	<p>The draft guidance is primarily of interest to owners/operators of systems with the capacity to withdraw at least 100,000 gpd of ground or surface water. Public water systems with the capacity to withdraw less than that amount are no longer required to obtain a permit from DEC, although they remain subject to DOH’s public water system regulations set forth at 10 NYCRR Subpart 5-1. Special registration requirements apply to water withdrawals for agricultural purposes and interbasin diversions. Long Island wells remain subject to special rules set forth at 6 NYCRR Part 602. Withdrawals that receive approval from the SRBC or DRBC are exempt from DEC’s permitting requirements.</p> <p>The implementing statute phased in the water withdrawal permitting program over a five-year period based on withdrawal capacity, with the largest systems permitted first. The last group of permit applications, which cover sources with a capacity of less than 500,000 gpd but at least 100,000 gpd, were due February 15, 2017.</p>	<p>DEC is accepting comments on the draft guidance until March 31, 2017.</p>

Other Recent Developments (Final)

CLIMATE CHANGE

NEW YORK STATE: DEC issued **projections of sea level rise** 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 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 CRRA. Applicants for permits or funding will not be required to consider Part 490 sea level rise projections until the guidance is issued. The rule, which took effect February 22, 2017, can be found on DEC’s web site at: www.dec.ny.gov/regulations/103870.html.

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

HAZARDOUS WASTE

NEW YORK STATE: DEC announced a **pair of initiatives to help retail pharmacies ensure compliance with the hazardous waste regulations and discourage improper disposal of waste pharmaceuticals**. First, DEC is inviting pharmacies to participate in an environmental audit incentive program that requires pharmacies to take specific compliance measures in exchange for inspection deferrals and penalty forgiveness. Participating pharmacies must sign the Environmental Audit Agreement by **May 1, 2017** and thereby consent to implement best management practices in accordance with a specified schedule as follows: (1) identify deficiencies and develop a compliance plan (within 6 months), i.e., identify compliance requirements, develop a compliance plan to address deficiencies, identify qualified personnel/consultants to conduct an environmental audit, and establish a schedule for completion; (2) implement the compliance plan and begin the audit (within one year); (3) complete the audit and disclose deficiencies (within one year and two months); and (4) implement corrective measures (within one year and six months). The agreement allows participating pharmacies to comply with EPA’s new proposed rules, to be set forth at 40 CFR Part 266, subpart P, for managing pharmaceuticals in lieu of traditional hazardous waste regulations. As an incentive for participation in the audit program DEC will defer inspections of participating pharmacies for 18 months and decline to levy penalties for most violations identified during the audit. In a related development, DEC will fund the cost of consumer drug collection boxes plus two years of drug disposal costs for at least 200 retail pharmacies statewide. Pharmacies can apply online and will be selected based on the availability of existing disposal options, proximity to environmental justice areas and other criteria. If selected, the pharmacy must agree to change its Drug Enforcement Administration registration, install and manage the box, including replacing the inner liners when they are full, and maintain certain records and signage. Information about DEC’s retail pharmacy initiatives can be found at: www.dec.ny.gov/chemical/99555.html.

Implications: The initiatives are primarily of interest to retail pharmacies. They are part of larger effort by DEC and EPA to address the unique issues associated with the management and disposal of waste pharmaceuticals.

CHEMICAL

FEDERAL: EPA **denied a petition asking the agency to prohibit the addition of fluoride to water supplies** after finding that petitioners failed to set forth a scientifically defensible basis for their conclusion that fluoride had caused neurotoxic harm. The petition was filed under Section 21 of the Toxic Substances Control Act (TSCA), which allows the public to petition EPA to initiate a rulemaking or take other actions authorized by TSCA. In this case, fluoridation opponents petitioned EPA under TSCA § 6(a)(2) to prohibit the purposeful addition of fluoridation chemicals to U.S. water supplies based on evidence purportedly showing that the addition of fluoridation to drinking water presents an unreasonable risk to human health from neurotoxicity and that a ban is therefore necessary. EPA reviewed the petitioners' evidence and denied the petition after finding that they had not set forth a scientifically defensible basis to conclude that any persons have, in fact, suffered neurotoxic harm from fluoridated drinking water. EPA also denied the petition on the grounds that petitioners had improperly sought action based on a single condition of use rather than comprehensively addressing all of the categories of use that apply to the substance consistent with recent changes to the chemical review process under the 2016 TSCA amendments. EPA's decision on the petition can be found in the February 27, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: The announcement is of interest to public water suppliers and their customers.

OTHER

NEW YORK STATE: DEC **issued guidance establishing a framework for responding to the discovery of new invasive species**. The goal of the Department's *Rapid Response for Invasive Species: Framework for Response*, Program Policy DLF-16-1, is to promote timely decision-making and communication in the event of a new invasive species infestation, while minimizing authority conflicts and duplication of effort. The Program Policy identifies the following eight tasks in the rapid response process: (1) early detection and reporting (i.e., discovery of a possible new invasive species by volunteers or trained professionals either passively or through planned surveillance programs); (2) verification (authentication of suspected samples by a recognized expert or accredited laboratory); (3) notification (informing relevant resource managers of the discovery); (4) rapid assessment (determining the physical extent of the invasion, assessing the resources needed to address it, and establishing a lead agency); (5) planning (addressing roles and responsibilities, coordination, internal and external communications, marshalling of resources, spread prevention, decision-making and implementation). In most cases, a written plan should be prepared; (6) rapid response (taking actions to quickly contain and, if possible, eradicate newly discovered invaders); (7) monitoring and evaluation (determining if the management actions were effective); and (8) restoration (implementing measures needed, if any, to restore the disturbed areas to their natural ecological function). The Program Policy includes an overview of the rapid response process, followed by a detailed discussion of the measures associated with Tasks 2 through 7,

organized by interim steps, with each step comprised of who (responsible parties), why (objectives of step), and how (specific measures to be implemented). The guidance can be found on DEC's website at: www.dec.ny.gov/animals/265.html.

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

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC made available for comment draft **DAR-17, *Federal Enforceability of Air Pollution Control Permits***, which describes the procedures and requirements for developing federally enforceable permit conditions in conjunction with State air operating permits. The Program Policy, which replaces Air Guide 10, defines the term “federally enforceable” and identifies examples of limitations and conditions in State air operating permits that should be federally enforceable. According to the guidance, permits typically contain three general types of limitations—emission limits, production or raw material usage limits and operational limits. To be enforceable, each limit must be included in the permit as a separate condition that can be enforced independently from other conditions in the permit. In addition, limits must include an appropriate averaging time and monitoring frequency (e.g., pound per hour limit for monitoring conditions associated with continuous emission monitoring systems v. long-term limits for facility-wide emission caps). To be enforceable, limits also must be accompanied by: recordkeeping requirements; appropriate reporting frequency; for facilities with air pollution controls, monitoring conditions for the operating parameters under which the control efficiency was achieved; stack testing for air pollution control devices controlling the main sources of pollution at the facility; and an opportunity for public notice and comment. The program policy concludes with several examples of federal enforceability. DEC is accepting comments on the draft program policy until **March 10, 2017**; it can be found on DEC's website at: www.dec.ny.gov/chemical/109133.html.

Implications: The draft program policy is potentially of interest to anyone with a Title V or State facility air permit.

WATER

FEDERAL/NEW YORK STATE: DEC issued a **Section 401 water quality certification in conjunction with nationwide permits (NWP)s recently reissued by the U.S Army Corps of Engineers (ACOE)**. 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 NWP)s for project categories that typically result in minimal disturbances. In conjunction with the five-year review of the NWP)s, states must review each NWP to determine whether regional conditions are necessary to ensure water quality. DEC's recent Section 401 Water Quality Certification Letter divides the reissued NWP)s into four categories: (1) NWP)s requiring no water quality certification because they are authorized only under Section 10 of the Rivers and Harbors Appropriation Act of 1899; (2) NWP)s granted a blanket water quality certification provided the project meets certain State-specific general conditions relating to non-contamination of waters, installation and replacement of culverts, and discharges and disturbances, among many other conditions; (3) NWP)s granted a blanket

water quality certification provided the project meets the general conditions under item 2 above as well as conditions specific to the particular NWP; and (4) NWPs that have been denied blanket certification and therefore require an individual water quality certification. The Section 401 water quality certification letter can be found on DEC's website at: www.dec.ny.gov/permits/6061.html. The deadline for submitting comments has closed.

Implications: The letter is potentially of interest to anyone engaged in activities involving the disturbance of wetlands and waterways that may require an ACOE permit.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

March 7, 2017: Deadline for submitting comments on EPA's proposal to add natural gas processing facilities to the list of industrial sectors subject to TRI reporting. See the January 6, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 10, 2017: Deadline for submitting comments on EPA's proposal to add n-propyl-bromide to the list of hazardous air pollutants regulated under the NESHAP program. See the January 9, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 10, 2017: Deadline for submitting comments on DEC's draft DAR-17 Program Policy, *Federal Enforceability of Air Pollution Control Permits*. See DEC's website at www.dec.ny.gov/chemical/109133.html for details.

March 13, 2017: Deadline for submitting comments on the results of EPA's review of the National Primary Drinking Water Rules and identification of standards for review and possible revision. See the January 11, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 14, 2017: Deadline for submitting comments on EPA's proposed regulations for identifying active/inactive chemicals under TSCA. See the January 13, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 14, 2017: Deadline for submitting comments on EPA's proposed rule implementing public notification requirements for CSOs discharging to the Great Lakes Basin. See the January 13, 2017 Federal Register at www.gpo.gov/fdsys for details.

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

March 20, 2017: Deadline for submitting comments on EPA's proposed TSCA reform regulations for prioritizing chemicals for risk evaluation and conducting the review. See the January 17 and January 19, 2017 Federal Registers at www.gpo.gov/fdsys for details.

March 29, 2017: Deadline for submitting comments on EPA's proposed revisions to the NESHAP for publicly owned treatment works (extended from February 27, 2017). See the December 27, 2016 Federal Register at www.gpo.gov/fdsys for details.

March 31, 2017: Public hearing on DEC's proposed revisions to the SEQRA regulations scheduled for 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. See DEC's website at www.dec.ny.gov/permits/83389.html for details.

March 31, 2017: Deadline for submitting comments on draft TOGS 3.2.1, *Processing Water Withdrawal Permit Applications*. See DEC's website at www.dec.ny.gov/lands/55509.html for details

April 3, 2017: Deadline for submitting comments on DOH's proposed revisions to the public water system standards to incorporate federal rules and State statutory changes. See the DOH website at regs.health.ny.gov/regulations/proposed-rule-making for details.

April 13, 2017: Deadline for submitting comments on EPA's proposed denial of petition to add eight states to the Northeast Ozone Transport Region (extended from February 21, 2017). See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

April 14, 2017: Deadline for submitting application for DEC's 2017 NYS Environmental Excellence Awards. See DEC's website at www.dec.ny.gov/public/945.html for details.

April 17, 2017: Deadline for submitting comments on EPA's proposed standards for lead in plumbing fixtures. See the January 17, 2017 Federal Register at www.gpo.gov/fdsys for details.

April 19, 2017: Deadline for submitting comments on EPA's proposed prohibition on the use of methylene chloride and NMP for paint stripping. See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

April 19, 2017: Deadline for submitting comments on EPA's proposed prohibition on the use of TCE in vapor degreasing (extended from March 20, 2017). See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

May 19, 2017: Deadline for submitting comments on DEC's proposed revisions to the SEQRA regulations. See DEC's website at www.dec.ny.gov/permits/83389.html for details.

July 11, 2017: Deadline for submitting comments on EPA's proposed Superfund financial responsibility regulations, including specific requirements for hardrock mining facilities (extended from March 13, 2017). See the January 11, 2017 Federal Register at www.gpo.gov/fdsys for details.