

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
TRANSITION DEVELOPMENTS: GENERAL			
<p>FEDERAL Trump Administration EPA Transition Developments</p>	<p>In the past month, the Trump administration has taken steps relating to key environmental regulatory programs:</p> <ul style="list-style-type: none"> • EPA announced that it is seeking input from the public on environmental regulations that may be appropriate for repeal, replacement or modification. 82 Fed. Reg. 17793 (Apr. 13, 2017). The notice follows Executive Order (EO) 13777, “Enforcing the Regulatory Reform Agenda,” which establishes a federal policy to alleviate unnecessary regulatory burdens. Under the EO, each agency must establish a Regulatory Reform Task Force to evaluate existing regulations and identify those that: eliminate jobs or inhibit job creation; are outdated, unnecessary or ineffective; impose costs that exceed benefits; or meet other criteria. As part of that review, the agency must reach out to the public to obtain their feedback on possible rules for reform/elimination. • EPA announced that it is postponing the effective dates of its 2015 amendments to the effluent limitations and guidelines for wastewater discharges from steam electric generating units under 40 CFR Part 423 pending judicial review. 82 Fed. Reg. 19005 (Apr. 25, 2017). The original standards, which were adopted in 1982, focused on settling out particulates rather than treating dissolved pollutants. Since then, numerous power plants have implemented air pollution controls, such as scrubbers, that have resulted in new wastewater streams. The revisions to 40 CFR Part 423 were intended to address the toxic pollutants contained in these new wastewater streams and otherwise update the standards. After industry challenged the standards in court, the Trump administration submitted petitions for reconsideration to EPA. EPA plans to publish a rulemaking soliciting comments on the stay of the compliance deadlines; EPA will also file a motion asking the court to hold the rule in abeyance while the agency reconsiders it. • EPA announced plans to reconsider the methane emission standards for new, reconstructed and modified oil and natural gas sources adopted in June 2016. The letter notes that one objection to the fugitive emission monitoring requirements included in the final rule arose after the comment period, justifying reconsideration. While the reconsideration is focused on that issue, EPA indicated that it will consider other matters it believes would benefit from additional comment. 	<p>Executive Order 13777 is one of several orders issued by the Trump administration that are focused on making government more efficient. Another EO issued March 13, 2017 requires the Director of the Office of Management and Budget to develop a plan to reorganize government functions and eliminate unnecessary agencies.</p> <p>In addition to these initiatives, the Trump administration has taken numerous measures targeted at easing burdens on the fossil fuel industry and dismantling Obama administration climate change programs. In addition to reconsideration of the power plant effluent guidelines and methane emission standards for oil and natural gas sources, the administration recently took down EPA’s climate change webpage, announcing plans to update the website “to reflect EPA’s priorities under the leadership of President Trump and Administrator Pruitt.” See www.epa.gov/climatechange.</p>	<p>EPA is accepting recommendations on environmental regulations for repeal, replacement or modification until May 15, 2017.</p>

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REMEDICATION			
<p>NEW YORK STATE Budget Bill: Programs to Address Drinking Water Contamination and Mitigation of Certain Solid Waste Sites</p>	<p>The New York State Legislature recently passed the Fiscal Year 2017-2018 Budget Bill, which includes a new program targeted at addressing drinking water contamination and mitigation of certain solid waste sites (S.2007B/A.3007B). New ECL Article 27, Title 12, Mitigation and Remediation of Certain Solid Waste Sites and Drinking Water Contamination, is comprised of two basic programs. First, the law establishes a program for mitigating and remediating “solid waste sites” that are causing or substantially contributing to drinking water impairments that may adversely affect public health. The law requires DEC to develop a system for prioritizing sites for mitigation and remediation and, beginning in 2019, to prepare an annual plan. Toward that end, the law authorizes DEC to conduct preliminary investigations to determine if a site is causing or substantially contributing to imminent or documented drinking water source contamination, including conducting field investigations, making subsurface borings or taking other samples, and conducting a document review. If the investigation shows that the site poses a significant threat due to hazardous waste, it will be referred to the inactive hazardous waste site remedial program. If it shows that a solid waste site is causing or substantially contributing to contamination of a public drinking water supply, the owner/operator must cooperate with DEC in efforts to mitigate the problem.</p> <p>The second part of the new program focuses on mitigating so-called “emerging contaminants” identified by the New York State Department of Health (DOH) under the new program discussed below. Where DOH requires a public water system to take action to reduce exposure to emerging contaminants, DEC has authority to directly implement mitigation and remediation measures or order the owner and/or operator of the drinking water contamination site and/or any person responsible for the contamination, after notice and an opportunity for a hearing, to implement mitigation and remediation measures. The law includes provisions allowing DEC to use public funds to take immediate action where delay poses a risk. In addition, where DOH has ordered a public water system to take action to address emerging contaminants based on the presence of an actual or potential threat, DEC can then use public funds allotted to implement the mitigation measures. DEC must then make “all reasonable efforts” to recover mitigation costs from the owner/operator of the drinking water contamination site.</p> <p>The bill can be found on the Assembly website at: http://assembly.state.ny.us.</p>	<p>The bill is potentially of interest to owners/operators of public drinking water systems as well as those with drinking water contaminated by neighboring solid waste disposal sites.</p> <p>In another groundwater protection-related development, the Legislature enacted ECL Article 15, Title 33, Source Water Protection Projects, which provides funding to municipalities, not-for-profit corporations and soil and water conservation districts to acquire land from willing buyers for purposes of source water protection. The money cannot be used to acquire property by eminent domain unless the process is undertaken with a willing seller.</p>	<p>The law, which was based on the Governor’s Budget Bill, was significantly revised before enactment. Among other things, the Legislature required public notice and a hearing prior to ordering owners/operators of drinking water contamination sites and/or persons responsible for contamination to mitigate the contamination and clarified that “contamination” means the presence of contaminants at levels that cause or substantially contribute to exceedance of various standards.</p>

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WATER			
<p>NEW YORK STATE Budget Bill: Water Infrastructure Funding, Emerging Contaminant Monitoring, and Drinking Water Quality Council</p>	<p>The New York State Legislature recently passed the Fiscal Year 2017-2018 Budget Bill, which includes numerous provisions addressing water quality-related concerns (S.2007B/A.3007B).</p> <ul style="list-style-type: none"> • Water infrastructure funding. The bill allocates \$3.0 billion in water infrastructure funding, including at least \$1.0 billion for upgrading municipal drinking and wastewater infrastructure; \$350 million for projects after 2021; \$245 million for water quality improvement projects (road salts, green infrastructure, etc.); \$200 million for improvements in the New York City watershed; \$130 million for drinking water remediation and mitigation of contaminated drinking water; \$75 million for upgrades and replacements of septic systems and cesspools; and other water quality-related funding. • Emerging contaminant monitoring. The law added Public Health Law § 1112, which requires DOH to adopt regulations identifying emerging contaminants for monitoring. These contaminants include substances that are not subject to drinking water regulations, are known or anticipated to occur in public water systems, and may cause physical injury or illness or otherwise pose a potential threat to public health when present in drinking water. In identifying contaminants, DOH must consider various categories of substances spelled out in the statute, including those recommended by the newly created Drinking Water Quality Council discussed below. DOH also must establish a notification level representing the concentration of concern. Every covered public water system must test drinking water for emerging contaminants at least once every three years and report to DOH within 24 hours if any test results exceed the notification level with follow-up notifications to those served by the system. DOH may then require the public water system to take action to reduce exposure to the contaminant. • Drinking Water Quality Council. The bill calls for the creation of a twelve-member Drinking Water Quality Council comprised of four agency representatives from DEC and DOH, and eight members appointed by the governor, two of each based on recommendations by the Assembly and Senate. The Council is charged with identifying emerging contaminants for monitoring and recommending notification levels and testing timeframes and frequencies. The first contaminant list is due one year after the first meeting of the Council and annually thereafter. The Council also is responsible for providing recommendations on establishing maximum contaminant levels, form and content of public notifications, educational materials, and other duties. <p>The bill can be found on the Assembly website at: http://assembly.state.ny.us.</p>	<p>The funding portion of the bill is primarily of interest to municipalities and other government entities seeking funds to upgrade their wastewater treatment plants and/or implement measures to protect drinking water quality.</p> <p>The monitoring-related changes in the bill are primarily of interest to owners/operators of public water systems, who will be expected to test for emerging contaminants and report any results that exceed notification levels set by DOH. DOH may require the owners/operators of systems that contain emerging contaminants in excess of notification levels to take steps to address the contamination.</p>	

Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
<p>NEW YORK STATE Household Cleansing Product Disclosure Program Guidance Document 6 NYCRR Part 659</p>	<p>DEC made available for comment a draft <i>Household Cleansing Product Ingredient Disclosure Program Guidance Document</i> and form implementing a long-standing regulation requiring manufacturers of “household cleansing products” distributed in the State to provide DEC with “such information regarding such products as the commissioner may require.” 6 NYCRR § 659.6(a). Part 659 contains the State’s prohibition against phosphorus in household cleansing products as well as rules governing phosphate labeling. It also includes a more general provision that allows DEC to require household cleansing product manufacturers to provide information regarding product ingredients and make such information publicly available. Pursuant to the draft guidance, the information to be disclosed falls into the following categories:</p> <ul style="list-style-type: none"> • Product and manufacturer information, including universal product code, product category and description, whether the product contains fragrance ingredients, the name of the manufacturer, and the name, title, email address, phone number and mailing address of the manufacturer contact. • Level of disclosure, specifying what ingredients must be disclosed and rules governing disclosure of “trace quantities,” ingredients present only as an unintentional consequence of manufacturing, and fragrance ingredients. • Ingredients and content by weight, including Chemical Abstracts index name and Chemical Abstracts Service Registry number, percentage of content by weight, “GreenScreen® benchmark, whether ingredient is a nanoscale material, and role of ingredient (e.g., surfactant, colorant, fragrance, etc.). • Presence on a list of chemicals of concern, i.e., whether the chemicals are on one or more of 16 lists of potentially hazardous chemicals. • Research on human health and the environment, addressing the nature and extent of investigations and research performed by or for the manufacturer regarding the effects on human health and the environment of the covered product or its components. <p>The draft document includes extensive guidance on addressing confidential information and is accompanied by a proposed certification form to be submitted by the manufacturer.</p> <p>The draft guidance can be found on DEC’s website at: www.dec.ny.gov/chemical/109021.html.</p>	<p>The guidance applies to “household cleansing products” which is defined in the regulation as “any product, including but not limited to, soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes.” The statute/regulations specifically excludes personal care products, products regulated as pesticides, and products used primarily in industrial processes.</p> <p>With this guidance, DEC is proposing to require manufacturers to post the required information on the manufacturer’s main website or a separate website that is located no more than “one click” away from the main home page. The guidance goes on to clarify how the information should be presented and made accessible to the public. It also establishes a timeframe for initial posting together with requirements for updating information and conducting periodic reviews.</p>	<p>DEC is accepting comments on the draft guidance until June 14, 2017.</p>

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REMEDATION			
<p>NEW YORK STATE Brownfield Cleanup Program Applications and Agreements DEC Program Policy DER-32</p>	<p>DEC is taking comments on draft revisions to DER-32, Brownfield Cleanup Program Applications and Agreements, which summarizes the procedure for applying for, and obtaining approval of, a Brownfield Cleanup Agreement (BCA) under DEC’s Brownfield Cleanup Program (BCP). DEC is revising DER-32 to implement recent changes to the BCP statute, including the definition of brownfield site and the formula for awarding tax credits.</p> <p>Key steps in the BCP application process addressed in the guidance include:</p> <ul style="list-style-type: none"> • Application submission, including preapplication meeting, preapplication studies, application completion, submission of multiple applications, application submittal, land use, tangible property credit limitations, and contact list and document repository. • Determination of complete application, including the preliminary review process, outreach to the State’s Oil Spill Fund to identify outstanding claims, notice to the requestor, procedures for responding to incomplete applications, and issuance of a letter of completeness. • Submission of reports and draft work plans with the application, outlining procedures for conducting simultaneous review of reports or work plans with the application. • Application approval/disapproval, including timing of decision, possible criteria for denial, response to public comments, and mailing of approval/denial letter. • BCA overview, containing information about issuance of certificates of completion (COCs), the model BCA, and deadlines for executing BCAs. • Amendments to the BCA, distinguishing between major and minor modifications of the BCA and BCA corrections that do not require amendments and establishing procedures for reviewing and approving each type of modification/correction. • Termination of the BCA, establishing procedures for terminating the BCA by either the applicant or DEC. <p>Draft Program Policy DER-32 can be found on DEC’s website at: www.dec.ny.gov/regulations/2393.html.</p>	<p>DER-32 is potentially of interest to individuals/companies that own or are considering acquiring contaminated property that is eligible for the BCP.</p> <p>The recent revisions to DER-32 were made primarily to conform the guidance to recent amendments to the BCP statute. Key changes include: requiring preapplication studies to show that contamination exceeds applicable cleanup objectives and so qualifies as a brownfield site; simplifying the provisions relating to existing and future land use; adding guidance summarizing the limitations on eligibility for tangible property tax credits; revising the criteria for denying a BCP application; clarifying that no partial or early COCs will be issued; deleting the model BCA from the guidance as an attachment and dropping a provision incorporating DER-32 into the BCA; and significantly revising the provisions for modifying a BCA, including clarifying the difference between major and minor modifications and specifying that major modifications are subject to the new BCP requirements.</p>	<p>DEC is accepting comments on the revised draft DER-32 until May 19, 2017.</p>

Other Recent Developments (Final)

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) **adopted a rule rescinding recent changes to its recordkeeping regulations that were voided by Congress under the Congressional Review Act (CRA)**. 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. OSHA traditionally interpreted this rule to impose a continuing duty to record injuries/illnesses, allowing the agency to 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. OSHA adopted a rule in December 2016 that 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. Invoking the CRA, the House and Senate enacted resolutions repealing the rule, which President Trump signed. This action nullifies the revisions to the rule and prevents OSHA from promulgating a rule “in substantially the same form” as the disapproved rule. With the recent rulemaking, OSHA officially rescinded the provisions invalidated by Congress. The revisions can be found in the May 3, 2017 Federal Register at: www.gpo.gov/fdsys.

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

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC is accepting **applications for its Community Air Screen Program**, which enlists community groups and individuals to conduct air quality surveillance for air toxics at the community level using equipment provided by DEC. The program utilizes equipment that collects air over a one-hour period. Depending on the types of sources in the community, the same location may be sampled several times or multiple samplers may be used over the community. Once the samples are collected, the equipment is returned to DEC for analysis. If air toxics are detected at levels of concern, DEC conducts additional testing; if that testing confirms air toxics concerns, DEC will attempt to identify sources of the pollutant in the community. The results are not, however, to be used for enforcement or compliance purposes. The focus of the program is on gaseous air toxics such as benzene (a component of gasoline), perchloroethylene (a common dry cleaning fluid), and formaldehyde. DEC considers the following information in deciding whether to grant an application: the applicant’s air quality concern and details about the applicant’s sampling plan; the health risk associated with the pollutants identified or suspected; and whether the community of concern is an environmental justice area. Community Air Screen

program applications will be accepted until **May 19, 2017**. Information about the sampling program can be found on DEC's website at: www.dec.ny.gov/public/81629.html.

Implications: The program is of interest to both community groups and industry. Confirmed results showing air toxics at levels of concern will result in additional DEC scrutiny of possible sources of pollutants in the area.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

May 15, 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.

May 15, 2017: Deadline for submitting recommendations to EPA of federal environmental regulations for possible repeal, replacement or modification. See the April 13, 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.

May 19, 2017: Deadline for submitting comments on DEC's proposed revisions to DER-32, *Brownfield Cleanup Program Applications and Agreements*. See DEC's website at www.dec.ny.gov/regulations/2393.html for details.

May 19, 2017: Deadline for submitting applications to participate in DEC's Community Air Screen program. See DEC's website at www.dec.ny.gov/public/81629.html for details.

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

May 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 25, 2017: Public hearing on DEC's proposed revisions to the regulations concerning disposal and release of radioactive materials scheduled for 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. See DEC's website at www.dec.ny.gov/regulations/106149.html for details.

June 5, 2017: Deadline for submitting comments on DEC's proposed revisions to its rules relating to disposal and release of radioactive materials. See DEC's website at www.dec.ny.gov/regulations/106149.html for details.

June 8, 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 (extended from March 10, 2017). See the January 9, 2017 Federal Register at www.gpo.gov/fdsys for details.

June 14, 2017: Deadline for submitting comments on DEC's draft *Household Cleansing Product Information Disclosure Program*. See DEC's website at www.dec.ny.gov/chemical/109021.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.