

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			
<p>FEDERAL Trump Administration EPA Transition Developments</p>	<p>In the past month, the Trump administration has taken the following steps relating to implementation of key environmental regulatory programs:</p> <ul style="list-style-type: none"> • Paris Agreement. President Trump announced that the United States will withdraw from the 2015 Paris Agreement on climate change. The Agreement requires participating nations to pledge to reduce greenhouse gas (GHG) emissions, monitor their progress and report the results. Developed nations also are expected to contribute to a fund to help developing countries adapt to climate change. Because the United States had already signed the Agreement under President Obama, the withdrawal process will take several years to complete. • EPA budget. The Trump administration’s 2018 budget calls for slashing EPA’s current funding by approximately 31%, the largest cuts of any federal agency. Among other things, the budget would: eliminate regional programs, including those targeting the Great Lakes, Lake Champlain and the Chesapeake Bay; eliminate grants for radon detection, lead risk reduction, nonpoint source and other programs; eliminate programs relating to environmental justice, critical infrastructure protection, radon, marine pollution, and estuaries, among many others; significantly reduce grants to the states; slash research on climate and energy; and reduce funding for basic air, water, enforcement and other program administration responsibilities. Funding was generally maintained for “high priority” infrastructure projects targeted at drinking water and wastewater treatment as well as the recently revised Toxic Substances Control Act program. • Landfill standards. EPA stayed New Source Performance Standards and Emission Guidelines for municipal solid waste landfills adopted in August 2016 and set forth at 40 CFR Part 60, subparts Cf and XXX. 82 Fed. Reg. 24878 (May 31, 2017). The rules reduce emissions of non-methane organic compounds and, by extension, methane, a powerful GHG. The rule stays the standards for 90 days while the Trump administration EPA considers possible changes. EPA plans to prepare a proposed rule for public comment. • Formaldehyde emissions standards for composite wood products. EPA published a direct final rule extending the compliance dates in 40 CFR Part 770, EPA’s December 2016 rule setting formaldehyde emission standards for various types of composite wood products. EPA also published a proposed rule seeking comment on the extension. 82 Fed. Reg. 23735, 23769 (May 24, 2017). <p>The Federal Register can be accessed at: www.gpo.gov/fdsys.</p>	<p>The decision to withdraw from the Paris Agreement has been widely condemned both nationally and internationally; only Syria and Nicaragua are not participating in the Agreement. Unlike the Kyoto Protocol, the Paris Agreement does not impose binding targets on participating countries. As a result, the decision to withdraw is largely symbolic. Various business leaders have expressed concern that the decision may lead to trade disputes while depriving the nation of clean energy and other opportunities.</p> <p>With respect to the budget, many of the programs targeted for elimination (most notably those with a geographic focus) are popular in Congress; moreover, the cuts in funding to the states will likely prompt considerable congressional opposition. Although the budget document repeatedly declares that it is intended to return EPA to its “core responsibilities” of preserving air and water quality, the reductions would impair EPA’s ability to fulfill its basic duties, forcing additional obligations on the states.</p>	<p>EPA is accepting comments on the proposed extension of the compliance deadlines for the formaldehyde emissions standards for composite wood products until June 8, 2017.</p>

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CLIMATE CHANGE			
<p>NEW YORK STATE Methane Reduction Plan (May 2017)</p>	<p>Governor Andrew Cuomo announced his Methane Reduction Plan establishing a framework for state agencies to implement measures to reduce methane emissions from three key sectors—oil and gas, landfills and agriculture. The Governor directed five agencies, including DEC, to inventory emissions and identify strategies for methane capture and elimination. The resulting plan identifies 25 measures in the three sectors:</p> <ul style="list-style-type: none"> • Oil and gas. Leak detection; reduce methane emissions from existing transmission infrastructure, gathering lines; and oil and gas storage, abandoned wells, and other infrastructure not regulated as emission sources; prioritize leak repairs in the distribution system; revise regulations and policy to improve accounting; revise regulations to support new monitoring technologies; develop and implement residential methane detection and educational outreach; establish interagency memorandum of understanding to share knowledge across agencies; update and approve State Environmental Quality Review Act (SEQRA) guidance on assessing GHG emissions, including methane; formalize and standardize DEC’s process for mitigating methane emissions from new transmission infrastructure projects. • Landfills. Develop and conduct outreach and other programs and policies to encourage large food waste generators to donate edible food and compost or otherwise recycle food waste; continue funding to support diversion of organics; develop strategies for aligning future funding to support organic diversion goals and other methane reduction objectives; finalize rule requiring installation of horizontal gas well collection systems; pursue outreach and education efforts to encourage best management practices for enhancing methane capture; identify methods to reduce methane emissions and capture odors; review EPA GHG reporting criteria and assumptions and see if improvements are necessary; update SEQRA guidance to address projected effects of climate change on landfills. • Agriculture. Incorporate methane reduction into New York State programs relating to manure management; develop strategies to reduce methane emissions from enteric fermentation; improve GHG accounting and climate change impact considerations in the Agricultural Environmental Management framework; address data gaps and prioritize research needs; convene working group to assess potential for net GHG reductions through agricultural soil carbon storage; develop communication and funding strategies to identify and promote benefits of soil carbon sequestration. <p>The plan can be found at: www.dec.ny.gov/energy/99223.html.</p>	<p>In support of the policy, the governor noted that methane is second only to carbon dioxide in its contribution to climate change. The plan enlists five agencies, working alone or in tandem, to implement the measures identified: DEC, the Department of Public Service, the Department of Agriculture and Markets, the Soil and Water Conservation Committee and the New York State Energy Research and Development Authority. In support of the plan, the governor noted that EPA had take steps to abandon measures addressing methane pollution. Since the Governor announced his plan, EPA has taken steps to reconsider other methane reduction measures implemented by the Obama administration EPA.</p>	<p>The plan calls for the agencies to implement the suite of actions by 2020. These measures will help the State meet its commitment to reduce GHG emissions 40% from 1990 levels by 2030.</p>

Proposed Laws, Regulations and Guidance

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<p>AIR</p> <p>NEW YORK STATE Dry Cleaning Facilities 6 NYCRR Part 232</p>	<p>DEC has proposed to repeal and replace the air emission standards for dry cleaning facilities set forth at 6 NYCRR Part 232. The dry cleaning industry has changed significantly since the current version of the regulations was adopted in 1997, making many of the existing provisions outdated. DEC also is revising the regulations to incorporate key requirements from the federal dry cleaning rules. Key changes include:</p> <ul style="list-style-type: none"> • Requiring the removal of all perchloroethylene (perc) dry cleaning machines from residential buildings by December 21, 2020 and requiring the phase-out of third generation machines (i.e., those without integral secondary control systems) by December 31, 2021. • Replacing DEC’s existing machine certification program with a requirement that machine manufacturers supply a Statement of Compliance affirming their compliance with the State perc machine performance standards. • Imposing additional standards on fourth generation perc machines, including monthly operator machine testing at co-located residential and commercial facilities. • Establishing an approval process for alternative dry cleaning solvents and new emission standards, equipment standards and specification for installation and operation of alternative solvent dry cleaning machines. • Requiring the phaseout of alternative solvent transfer machines by December 31, 2031. • Imposing operator leak inspection, self-monitoring, operation and maintenance, recordkeeping and other requirements on alternate solvent dry cleaning machines. <p>The proposed rule can be found on DEC’s website at: www.dec.ny.gov/regulations/110006.html.</p>	<p>The proposed changes will: make the state’s requirements for perc and alternative solvent dry cleaning equipment consistent with applicable federal standards; phase out the few remaining third generation perc machines; improve compliance with the emission standards in the existing regulations; and establish an approval process and equipment and related standards for alternative solvents. Current alternative solvent dry cleaning machines are regulated under 6 NYCRR Part 212.</p> <p>According to DEC, 1,690 dry cleaning facilities will be affected by the rulemaking; 1,160 of these facilities operates at least one perc dry cleaning machine while 530 operate exclusively alternative solvent machines.</p>	<p>DEC is accepting comments on the draft regulation until July 7, 2017. A public hearing on the proposed regulation has been scheduled for June 27, 2017 at 6:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. Additional public hearings will be held in Depew, Stony Brook and Long Island City.</p>

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WATER			
<p>NEW YORK STATE Lead Testing in School Drinking Water 10 NYCRR subpart 67-4</p>	<p>The New York State Department of Health (DOH) proposed permanent regulations imposing lead testing requirements for school drinking water following a pair of emergency rules. The proposed 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 proposed rule can be found at: https://regs.health.ny.gov/regulations/proposed-rule-making.</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>DOH is accepting comments on the proposed regulation until June 26, 2017.</p>

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC **made available for comment its proposed annual monitoring network plan**, which describes New York's air monitoring network. As required by the Clean Air Act, DEC maintains a network of air monitors throughout the state to collect ambient air quality data for various pollutants, including ozone, particulate matter, and nitrogen oxides, as well as key meteorological data. The data are used by DEC to determine whether an area is achieving national ambient air quality standards; they are also used to determine the impact of a project under the Prevention of Significant Deterioration and other programs. The proposed monitoring plan includes an overview of New York's air quality monitoring program, followed by a detailed description of each of the state's air monitoring locations. Planned changes include locating two required photochemical assessment monitoring stations (PAMS) sites in the Bronx and one on the north shore of Long Island and collocating a fine particulate matter (PM_{2.5}) instrument in Amherst. In addition, DEC is seeking to close the lead-total suspended particulate monitoring site at Ballard Road, and move the collocated sampler to the Wakefern Food Site at the end of 2017. DEC is accepting comments on the proposed monitoring plan until **June 17, 2017**; the plan can be found on DEC's website at: www.dec.ny.gov/chemical/33276.html.

Implications: The plan is primarily of interest to engineers performing air impact analyses.

CHEMICAL

FEDERAL: EPA is accepting comments on **draft guidance supporting EPA's recently adopted rule requiring manufacturers/processors of nanoscale materials to report certain information** under the Toxic Substances Control Act (TSCA). The rule requires current and future manufacturers/processors of nanoscale materials (with certain exceptions) to submit information to EPA on chemical identity, production volume, methods of manufacture and processing, exposure and release information, and available health and safety data. The data will be submitted electronically using EPA's Central Data Exchange (CDX) electronic reporting portal. The draft Guidance, which is presented in question and answer format, clarifies key issues under the rule, including what chemicals are reportable, who is required to report, what information is to be reported, when reporting is required, and various other issues. EPA is accepting comment on the draft guidance until **June 15, 2017**. In a related development, EPA extended the effective date of the nanoscale materials reporting rule from May 12, 2017 to August 14, 2017. The extension and draft guidance can be found in the May 12, 2017 and May 16, 2017 Federal Register, respectively, at: www.gpo.gov/fdsys.

Implications: The notices are primarily of interest to manufacturers/processors of nanoscale materials.

WATER

NEW YORK STATE: DEC is **compiling data to assist it in developing a list of impaired surface waters as required under Section 303(d) of the Clean Water Act**. DEC assesses waters in two or three of the state's 17 drainage basins each year, ensuring the reassessment of water quality for the entire state every five years. This information is used to identify waters that do not support their designated uses and so require possible development of a total maximum daily load plan. With this notice, DEC is requesting data from the public on all drainage basins to assist it in conducting its water quality assessment. Submissions should be accompanied by a completed Waterbody Inventory/Priority Waterbodies List (WI/PWL) Assessment Worksheet. DEC also is accepting comment on the New York State Consolidated Assessment and Listing Methodology, which provides guidance on the use of water quality data to make listing decisions. The deadline for submitting data and comments on the listing methodology is **September 29, 2017**. Information about the assessment process, including the WI/PWL worksheet, can found on DEC's website at: www.dec.ny.gov/chemical/31290.html.

Implications: The collected data will be used to identify waters that require TMDLs. The establishment of a TMDL frequently leads to the imposition of stricter discharge limits on facilities.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

June 8, 2017: Deadline for submitting comments on EPA's proposed extension of the compliance dates for the formaldehyde emission standards for composite wood products. See the May 24, 2017 Federal Register at www.gpo.gov/fdsys 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.

June 15, 2017: Deadline for submitting comments on EPA's draft *Guidance on EPA's Section 8(a) Information Gathering Rule on Nanomaterials in Commerce*. See the May 16, 2017 Federal Register at www.gpo.gov/fdsys for details.

June 17, 2017: Deadline for submitting comments on proposed ambient air monitoring network plan. See DEC's website at www.dec.ny.gov/chemical/33276.html for details.

June 26, 2017: Deadline for submitting comments on DOH's proposed school drinking water lead testing regulation. See the DOH website at <https://regs.health.ny.gov/regulations/proposed-rule-making> for details.

June 27, 2017: Public hearing on DEC's proposed revisions to the dry cleaning regulations scheduled for 6:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. See DEC's website at www.dec.ny.gov/regulations/110006.html for details. Additional public hearings will be held in Depew, Stony Brook and Long Island City.

July 7, 2017: Deadline for submitting comments on DEC's proposed revisions to the dry cleaning air emission standards. See DEC's website at www.dec.ny.gov/regulations/110006.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.

September 29, 2017: Deadline for submitting data to assist DEC in identifying impaired waters that do not meet water quality standards. See DEC's website at www.dec.ny.gov/chemical/31290.html for details.