

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
<b>TRANSITION DEVELOPMENTS</b>			
<p>FEDERAL <b>Trump Administration EPA and OSHA Transition Developments</b></p>	<p>In the past month, the Trump administration has taken the following steps relating to <b>key environmental and health and safety rules</b>:</p> <ul style="list-style-type: none"> <li>• <b>Oil and natural gas production emission standards.</b> EPA stayed certain requirements of its standards for new, reconstructed and modified oil and natural gas production sources for three months pending reconsideration of the rule. However, a federal court of appeals vacated the temporary stay after concluding that EPA lacked authority to issue it. EPA also sought comment on a proposed two-year stay of certain requirements of the rule. 81 Fed. Reg. 25730 (June 5, 2017); 82 Fed. Reg. 27645 (June 16, 2017).</li> <li>• <b>Risk management plan (RMP) rule changes.</b> EPA extended the effective date of recent changes to the RMP regulations until February 19, 2019. The rule, which imposed new emergency preparedness and other requirements on certain facilities under Clean Air Act § 112(r), was the subject of several petitions for reconsideration. EPA has extended the effective date to provide time to respond. 82 Fed. Reg. 27133 (June 14, 2017).</li> <li>• <b>Effluent limitations guidelines and standards for steam electric power generating sources.</b> EPA proposed to postpone pending reconsideration the dates for complying with certain requirements of the effluent limitations guidelines and standards for certain wastewater streams from facilities in the steam electric point source category. 82 Fed. Reg. 26017 (June 6, 2017).</li> <li>• <b>Formaldehyde emission standards for composite wood products.</b> After receiving adverse comments, EPA withdrew a direct final rule extending the compliance dates in 40 CFR Part 770, EPA’s December 2016 rule setting formaldehyde emission standards for composite wood products. EPA will proceed with issuing a final rule based on the earlier proposed rulemaking seeking comment on the extension. 82 Fed. Reg. 31267 (July 6, 2017).</li> <li>• <b>OSHA electronic injury and illness reporting.</b> The Occupational Safety and Health Administration (OSHA) proposed to extend from July 1, 2017 to December 1, 2017 the effective date of its May 12, 2016 rule requiring certain employers to submit information from OSHA Form 300A—Summary of Work-Related Injuries and Illnesses—to the agency electronically. OSHA noted that the electronic reporting system would not be available until August 1, 2017 and that it was seeking additional time to review and potentially revise the rule. 82 Fed. Reg. 29261 (June 28, 2017).</li> </ul> <p>The Federal Register can be accessed at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>Since taking office, the Trump administration has stayed or otherwise delayed the effective date of numerous regulations with the purported goal of providing the agencies with time to review the rules (often in response to requests for reconsideration) and decide whether to keep, revise or rescind them. Environmental groups have challenged many of these efforts on the ground that the agency lacks the statutory authority to stay and/or rescind the rules.</p>	<p>The deadlines for submitting comments on the proposals relating to the oil and gas standards, power plant effluent guidelines, and OSHA injury and illness reporting requirements have closed.</p> <p>In another formaldehyde-related development, EPA issued a direct final rule allowing companies that manufacture/use composite wood that meets the formaldehyde emissions standards before the December 12, 2017 labeling deadline to voluntarily label their product Toxic Substances Control Act (TSCA) compliant. The deadline for objecting to the direct final rule is <b>July 26, 2017</b>. The rule will take effect August 25, 2017 unless EPA receives adverse comment. 82 Fed. Reg. 31922 (July 11, 2017) (direct final rule); 82 Fed. Reg. 31932 (July 11, 2017) (proposed rule).</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>FEDERAL  <b>Effluent Limitations Guidelines and Standards for Discharges to POTWs from Dental Practices</b>            40 CFR Parts 403 and 441            82 Fed. Reg. 27154            (June 14, 2017)</p>	<p>EPA adopted <b>effluent limitations guidelines to limit discharges of mercury and other metals from dental practices to publicly owned treatment works (POTWs)</b>. According to a recent study, approximately half of all mercury discharged to POTWs can be attributed to dental amalgam, which is used by dentists to fill cavities. To address this problem, EPA is requiring dentists to install amalgam collection devices and take other measures. Specific requirements include:</p> <ul style="list-style-type: none"> <li>• Installing and properly operating and maintaining an amalgam separator or other amalgam removal device that meets specified performance standards. Facilities with existing separators that do not satisfy the rule can keep their equipment for 10 years or until it is replaced, whichever occurs first.</li> <li>• Compliance with two additional best management practices (BMPs)—not flushing scrap amalgam down the drain and cleaning chair-side traps with non-bleach, non-chlorine cleaners. These BMPs are intended to prevent mercury discharges that bypass the separator.</li> </ul> <p>Dentists that typically do not handle amalgam except in emergencies can submit a certification to EPA that exempts them from the rule.</p> <p>Ordinarily, sources subject to categorical standards must comply with detailed recordkeeping and reporting requirements found in the general pretreatment regulations. In recognition of the large number (and relatively small size) of the sources subject to the dental office point source category, EPA is requiring dental dischargers to submit a one-time compliance report including information on the facility and a certification statement that the discharger meets the applicable performance standard. In addition, the office must document certain operation and maintenance requirements and maintain compliance records.</p> <p>The effluent guidelines can be found in the June 14, 2017 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rule is primarily of interest to dental practices that use dental amalgam. EPA excluded from regulation wastewater discharges from facilities where the practice consists exclusively of oral pathology, oral and maxillofacial radiology, oral and maxillofacial surgery, orthodontics, periodontics or prosthodontics. The final rule also does not apply to wastewater discharges from mobile units. Dental dischargers that do not place or remove dental amalgam except in emergency/unplanned circumstances also are exempt provided they certify as such in their one-time compliance report.</p> <p>Various states, including New York, already have implemented programs to reduce dental mercury discharges. Like the federal program, New York’s dental mercury regulation, set forth in the state’s hazardous waste regulation at 6 NYCRR subpart 374-4, contemplates the use of amalgam separators to reduce mercury discharges from dental practices. Dentists in New York will have to comply with both the federal and State regulations.</p>	<p>The rule took effect July 14, 2017. Existing dental practices will be expected to comply with the guidelines three years after the effective date of the final rule (i.e., by July 14, 2020).</p>

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<b>WATER</b>			
<p>NEW YORK STATE  <b>Lead Testing of School Drinking Water</b>            10 NYCRR subpart 67-4</p>	<p>The New York State Department of Health (DOH) adopted a third emergency rule imposing <b>lead testing requirements for school drinking water</b> to extend the program while it finalizes a permanent rule. 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 can be found at:  <a href="https://regs.health.ny.gov/regulations/proposed-rule-making">https://regs.health.ny.gov/regulations/proposed-rule-making</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>DOH proposed a permanent regulation to replace the emergency rule and accepted comment through June 26, 2017. The current emergency rule expires July 30, 2017.</p>

Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>SOLID WASTE</b>			
<p>NEW YORK STATE  <b>Solid Waste Management Revisions: Overview and General Provisions</b>                      6 NYCRR Part 360</p>	<p>After receiving extensive comments, DEC has further revised its draft <b>solid waste regulations</b>, which include a wholesale reorganization of the rule, together with updates to address technological developments and new types of waste management facilities and concerns. DEC is proposing to repeal the existing regulations (which were concentrated in Part 360) and replace them with Parts organized by broad subject. Part 360, General Requirements, now contains provisions relevant to solid waste management facilities generally. In response to public comments, DEC made numerous changes to the revised Part 360 rule:</p> <ul style="list-style-type: none"> <li>• <b>Definitions:</b> DEC relocated all definitions to Part 360 and added terms needed to implement new programs, deleted unnecessary terms and clarified others. Many of these definitions were significantly revised in response to public comment.</li> <li>• <b>Beneficial use determinations (BUDs):</b> DEC revised the BUD provision to add new predetermined BUDs, specifically exclude other uses from BUDs, and update the criteria and procedures for obtaining a BUD. The revised draft regulations clarify that BUDs are potentially subject to the State Environmental Quality Review Act.</li> <li>• <b>Fill material:</b> The original proposal added a new provision addressing “historic fill,” including criteria for onsite use, off-site use and disposal. In response to comment, DEC replaced the term “historic fill” with “fill material” which encompasses all types of soil and similar materials excavated during construction and maintenance. The regulation classifies fill based on level of contamination and specifies how it can be used/reused. Of particular note, the new regulation allows use of non-hazardous materials within areas of similar characteristics on the same property without specific DEC approval.</li> <li>• <b>Exempt facilities:</b> DEC revised the list of exempt facilities and added new exemptions for solid waste activities that have been found to be of minimal environmental concern.</li> <li>• <b>Registrations:</b> DEC proposed to limit registrations to five years and allow consideration of an applicant’s compliance history. The draft regulations were further revised to require registration applications to include information relating to storage volume and throughput as well as a site plan.</li> </ul> <p>The general provisions also address variances, financial assurance, general permit application and operation standards, and on-site environmental monitors.</p> <p>The proposed Part 360 rule can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/81768.html">www.dec.ny.gov/regulations/81768.html</a>.</p>	<p>The proposed rulemaking represents the first major overhaul of the solid waste regulations in more than 20 years and is potentially of interest to anyone engaged in solid waste management activities in New York.</p> <p>The rule includes extensive transition provisions, set forth at 6 NYCRR § 360.4. In response to public comments, DEC extended the timeframe to transition existing facilities to the new exemption, registration and permitting requirements.</p> <p>With respect to BUDs, under the revised regulations, all case-specific BUDs must now be renewed every five years. Previously approved BUDs that are more than five years old will expire unless a renewal petition is submitted to DEC. BUDs granted within five years of the effective date of the rule remain in effect for five years and must then be renewed.</p>	<p>DEC is accepting comments on the latest draft revisions to the solid waste regulations until <b>July 21, 2017</b>. DEC is expected to finalize the rule quickly to avoid expiration of the rulemaking under the State Administrative Procedure Act.</p>

Citation	Summary	Implications	Schedule/Notes
<b>SOLID WASTE</b>			
<p>NEW YORK STATE  <b>Material Recovery Facilities</b>                      6 NYCRR Part 361</p>	<p>As part of its overhaul of New York’s solid waste regulations, DEC has proposed to establish 6 NYCRR Part 361, <b>Material Recovery Facilities</b>, containing the rules governing recycling, including: recyclables handling and recovery (subpart 361-1); land application and associated storage (subpart 361-2); composting and other organics processing (subpart 361-3); wood debris and yard trimmings processing (subpart 361-4); construction and demolition (C&amp;D) debris processing (subpart 361-5); waste tire handling and recovery (subpart 361-6); metal processing and vehicle dismantling (subpart 361-7); used cooking oil and yellow grease processing (subpart 361-8); and navigational dredge material handling and recovery (subpart 361-9). DEC made a number of changes to the draft material recovery facilities regulation following the public comment period, including:</p> <ul style="list-style-type: none"> <li>• Significantly revising and reorganizing subpart 361-3 (composting) to separate requirements for different types of organics recycling and add additional criteria for managing digestate from anaerobic digestion facilities.</li> <li>• With respect to subpart 361-4 (wood debris), DEC proposed to increase the allowable pile size of unprocessed material and reduce the allowable minimum distance between piles from 25 to 10 feet except on Long Island. According to DEC, these requirements better reflect operations at facilities that have not experienced problems.</li> <li>• In response to public comments, DEC increased the quantity of C&amp;D debris a handling and recovery facility can receive and still qualify for a registration from 250 to 500 tons per day under subpart 361-5. DEC also modified the criteria for pile size, distance between piles and property setback requirements, allowing larger piles located closer together.</li> </ul> <p>In addition, the revised proposal includes a new subpart 361-9 addressing navigational dredge material handling and recovery facilities. The new provision requires a registration for facilities that store and process navigational dredged material and establishes basic operating requirements for these facilities.</p> <p>The proposed Part 361 rule can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/81768.html">www.dec.ny.gov/regulations/81768.html</a>.</p>	<p>The re-proposed rule is potentially of interest to any company engaged in one of the nine material recovery activities subject to the standards spelled out in Part 361. Although many of these activities are already regulated under New York’s solid waste regulations, the standards for wood debris and yard trimmings processing, metal processing and vehicle dismantling, used cooking oil and yellow grease processing, and navigational dredge material handling and recovery are new. Also, DEC is proposing for the first time to require permits rather than registrations for waste tire handling facilities and large recyclable handling and recovery facilities and to require registrations for certain types of C&amp;D processing facilities that were formerly exempt.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

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<b>SOLID WASTE</b>			
<p>NEW YORK STATE <b>Waste Transporters</b> 6 NYCRR Part 364</p>	<p>Subpart 364, Waste Transporters, has been revised to conform to the changes in the other Parts and focus on waste streams that pose a problem or concern. Key changes include: (1) relocating all non-transportation-related medical waste provisions to the new Part 365; (2) add exemptions for electronics destined for recovery; elemental mercury and dental amalgam from dental facilities destined for mercury recovery; and regulated medical waste (RMW) transported by emergency rescue vehicles and clarify other exemptions; (3) increase the exemption for small loads of most waste from 500 to 2000 pounds; (4) establish registration requirements for the self-transport of small quantities of certain waste streams (RMW, source-separated household hazardous waste, commercial solid waste, commercially-generated C&amp;D debris or fill material, and sharps from household medical waste collection facilities); and (5) require waste tracking documentation for certain C&amp;D debris, drilling and production waste, and fill material. In response to public comments, DEC added an exemption for transportation of regulated wastes by public utilities, public railroad services, and public transportation agencies and their contractors. DEC also significantly revised the proposed rules regarding waste tracking.</p> <p>The proposed Part 364 rule can be found on DEC's website at: <a href="http://www.dec.ny.gov/regulations/81768.html">www.dec.ny.gov/regulations/81768.html</a>.</p>	<p>The proposed changes to the Part 364 waste transporter rules establish exemptions for certain waste streams going for reclamation, increase the threshold for exempting loads of most common wastes from 500 to 2000 pounds, and establish registration and waste tracking requirements for certain transportation activities.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

Citation	Summary	Implications	Schedule/Notes
<b>SOLID WASTE</b>			
<p>NEW YORK STATE <b>Landfills</b> 6 NYCRR Part 363</p>	<p>DEC proposed various changes to the standards governing <b>landfills</b> as part of its overhaul of the solid waste regulations. These changes address virtually every aspect of landfill operation, including landfill gas collection, postclosure/custodial care, land clearing debris, C&amp;D debris landfills, exempt disposal activities and monitoring/technology changes. Several provisions of the draft regulations were significantly revised following the public comment period:</p> <ul style="list-style-type: none"> <li>• <b>Landfill gas collection:</b> DEC revised a proposal to require active collection and destruction of landfill gas for all new municipal solid waste (MSW) landfills and subsequent development of existing MSW landfills to address concerns that landfills voluntarily implementing such measures would be deprived of their opportunity to market carbon offset credits. The revised proposal requires installation of horizontal gas collection pathways in place of active gas collection, together with submission of greenhouse gas reduction plans.</li> <li>• <b>Exempt disposal activities:</b> DEC proposed to replace the current exemption for disposal of materials such as uncontaminated concrete, asphalt pavement, brick, glass, soil and rock, with one that limits exempt disposal to 5,000 cubic yards and prohibits disposal of processing residues with these exempt materials. In response to public comment, DEC added an additional exemption for disposal of recognizable, uncontaminated concrete, asphalt pavement, brick, general fill, limited use fill, glass and rock generated by state or municipal highway projects or projects on highway rights-of-way or other municipally-owned properties.</li> <li>• <b>Monitoring/technology changes:</b> DEC proposed numerous changes to the groundwater monitoring, operation, siting, and design requirements for landfills, including the standards for liners, covers, and leachate collection and removal. Public comment resulted in minor changes to these proposals.</li> </ul> <p>The proposed revisions to Part 363 can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/81768.html">www.dec.ny.gov/regulations/81768.html</a>.</p>	<p>The proposed regulation is primarily of interest to owners/operators of solid waste landfills. By its terms, the rule applies to new landfills, active and inactive existing landfills, vertical expansions of existing landfills, and landfills undergoing subsequent development.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>



Citation	Summary	Implications	Schedule/Notes
<b>SOLID WASTE</b>			
<p>NEW YORK STATE  <b>Miscellaneous Solid Waste Rule Changes, Including: Combustion, Thermal Treatment, Transfer and Collection Facilities; Biohazard Waste Management Facilities; Local Solid Waste Management Planning; State Assistance Projects; and Used Oil</b>                      6 NYCRR Parts 362, 365, 366, 369, 374-2</p>	<p>DEC has proposed changes to the solid waste regulations in addition to those applicable to material recovery facilities, landfills and waste transportation discussed above.</p> <ul style="list-style-type: none"> <li>• <b>Part 362, Combustion, Thermal Treatment, Transfer and Collection Facilities.</b> Subpart 362 contains standards for the following waste management facilities: combustion and thermal treatment facilities (subpart 362-1), MSW processing facilities (e.g., post-collection MSW processing/separation) (subpart 362-2); transfer facilities (subpart 362-3); and household hazardous waste collection facilities and events (subpart 362-4). DEC did not significantly revise this rule following the public comment period.</li> <li>• <b>Part 365, Biohazard Waste Management Facilities:</b> The proposed regulation consolidates all of the requirements for RMW into new subpart 365-2 and establishes new subparts addressing general biohazard waste requirements (subpart 365-1), household medical waste sharps collection facilities (subpart 365-3), and other biohazard waste management facilities (subpart 365-4). In response to public comments, DEC significantly modified provisions relating to contaminated food to limit the focus to waste associated with infectious organisms of unique concern that require special handling and treatment.</li> <li>• <b>Part 366, Local Solid Waste Management Planning:</b> DEC proposed to replace the biennial compliance reporting requirement with an annual planning unit report, accompanied every other year by a biennial update of the local solid waste management plan.</li> <li>• <b>Part 369, State Assistance Projects:</b> DEC consolidated the State’s solid waste management assistance programs into Part 369.</li> <li>• <b>Subpart 374-2, Used Oil:</b> DEC consolidated all of the requirements relating to used oil into 6 NYCRR subpart 374-2 and added a new section 374-2.10 containing the permitting and registration provisions for these facilities.</li> </ul> <p>The proposed revisions to the above-referenced regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/81768.html">www.dec.ny.gov/regulations/81768.html</a>.</p>	<p>Consistent with the discussion above, the proposed revisions focus on revising and updating the existing Part 360 solid waste management regulations. They do not cover recent product stewardship laws. Per DEC’s 2017 Regulatory Agenda, the Department plans to revise 6 NYCRR Part 368, which will be renamed Product Stewardship and Labeling, to conform the State’s recycling emblem regulations with national labeling guidelines and implement the State’s electronic waste recycling law as well as the State’s mercury-added consumer products law.</p>	<p>See discussion of 6 NYCRR Part 360 above for the schedule.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>NEW YORK STATE  <b>SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity</b>                      GP-0-17-004</p>	<p>DEC is seeking comment on additional revisions in conjunction with its ongoing renewal of the State Pollutant Discharge Elimination System (SPDES) <b>Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity</b>, which expires September 30, 2017. The MSGP covers discharges of stormwater from facilities in certain industrial categories. Potentially regulated facilities must notify DEC that they intend to be covered by the MSGP and prepare a stormwater pollution prevention plan (SWPPP). Assuming coverage is granted, the facility must implement the SWPPP and comply with the general and sector-specific conditions in the MSGP.</p> <p>DEC accepted comment on the draft renewal permit in March 2017, at which time it proposed to: update non-numeric effluent limits (i.e., work practices) to more closely align to EPA’s 2015 MSGP; increase the frequency of benchmark and numeric effluent limit monitoring/reporting from annual to semi-annual while eliminating requirements to submit corrective action forms and non-compliance event forms; change sector-specific requirements relating to Sector N (scrap recycling and waste recycling facilities) and Sector S (air transportation) and eliminate Sector AD (non-classified stormwater discharge designated by Department as requiring permit coverage) and Sector AE (department of public works and highway maintenance facilities); and eliminate monitoring waiver provision allowing dischargers to avoid benchmark monitoring by obtaining waivers on an outfall-by-outfall or pollutant-by-pollutant basis.</p> <p>With the recent announcement, DEC requested comment on additional revisions to the MSGP, including: further reorganizing/reformatting the permit to improve coherence and eliminate redundancy; requiring that discharge monitoring reports (DMRs) be submitted electronically through EPA’s electronic reporting system, NetDMR; using electronic filing of the Notice of Intent and other reports while continuing to allow paper submission until December 21, 2020; incorporating annual dry weather flow monitoring into the comprehensive site compliance inspection; and eliminating the 30-day waiting period to gain coverage under the permit when ownership of the facility changes.</p> <p>The draft MSGP and related materials can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/41392.html">www.dec.ny.gov/chemical/41392.html</a>.</p>	<p>The permit affects industrial facilities in specific source categories that discharge stormwater through a point source and are not covered by an individual SPDES permit. The list of covered sectors includes most major manufacturing activities as well as activities such as: automobile salvage yards; scrap recycling and waste recycling facilities; land transportation and/or warehousing; water transportation; ship and boat building or repair yards; air transportation; and treatment works.</p>	<p>DEC is accepting comments on the draft permit until <b>August 4, 2017</b>.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA announced its intent to **extend the deadline for states to designate nonattainment areas under the 2015 ozone national ambient air quality standard (NAAQS)** one year until October 1, 2018. In 2015, EPA lowered the primary 8-hour ozone NAAQS from 0.075 to 0.070 part per million after concluding that the lower standard was necessary to protect public health with an adequate margin of safety; EPA also adopted an identical secondary (welfare-based) standard. Under the Clean Air Act (CAA), EPA must designate nonattainment areas under a new NAAQS within two years of the effective date of the standard. However EPA can extend the date for one year if the agency concludes that it lacks sufficient information to promulgate the designations. With the recent rulemaking, EPA is invoking its authority under this provision to extend the deadline for issuing designations under the 2015 ozone standard until October 1, 2018. The announcement can be found in the June 28, 2017 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule provides both EPA and the states with additional time to designate ozone nonattainment areas. During that time, EPA's newly convened Ozone Cooperative Compliance Task Force will consider development of "additional flexibilities" for states to comply with the standard; in addition, EPA staff are reviewing the basis for the standard itself.

NEW YORK STATE: DEC has set the 2017 **fees for Title V facilities**. Under State law, all facilities must pay a base fee of \$2,500 plus additional per ton fees levied as follows (up to 7,000 tons annually per pollutant): \$60.00 per ton for facilities with total annual emissions of less than 1,000 tons; \$70.00 per ton for facilities with total annual emissions of 1,000 tons or more but less than 2,000 tons; \$80.00 per ton for facilities with total annual emissions of 2,000 tons or more but less than 5,000 tons; and \$90.00 per ton for facilities with total annual emissions of 5,000 tons or more. The CAA requires states to impose fees on Title V facilities sufficient to cover the costs of the Title V program. Applying this principle, DEC calculated Title V fees at \$464.84 per ton for 2017, an amount that reflects ongoing deficits in the Title V program. Actual Title V fees are capped in accordance with the schedule outlined above. Notice concerning the 2017 Title V fees can be found in the June 28, 2017 Environmental Notice Bulletin at: [www.dec.ny.gov/enb/110532.html](http://www.dec.ny.gov/enb/110532.html).

Implications: The notice is primarily of interest to facilities with Title V air permits.

### CHEMICAL

FEDERAL: EPA announced the availability of risk evaluation scoping documents for the first 10 chemicals identified by EPA for review under the **amended Toxic Substances Control Act**, 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 2016 revisions to the TSCA statute require EPA to establish a risk-based process for prioritizing chemicals as high or low priority for risk assessment purposes, including singling out 10 chemicals for immediate review. The 10

chemicals previously identified are 1,4-dioxane, 1-bromopropane, asbestos, carbon tetrachloride, cyclic aliphatic bromide cluster, methylene chloride, n-methylpyrrolidone, pigment violet 29, tetrachloroethylene (i.e., perchloroethylene), and trichloroethylene. With the recent notice, EPA announced the availability of scoping documents for the risk evaluations associated with each chemical. These risk evaluations include information about the hazards, exposures, conditions of use, and potentially exposed or susceptible populations associated with the chemical. EPA also announced that it is reopening the dockets for these chemicals to allow the public to provide additional data. The announcement can be found in the July 7, 2017 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The announcement is primarily of interest to manufacturers/users of the 10 listed chemicals.

## **WATER**

NEW YORK STATE: DEC made its **revised Environmental Benefit Permit Strategy (EBPS) rankings** available for review. The EBPS rankings prioritize SPDES permits for full technical review based on criteria outlined in DEC guidance. The review under the EBPS program occurs independent of routine SPDES permit renewals. Each year, DEC publishes the priority list for central office, which handles most major industrial SPDES permits, and for each DEC regional office. SPDES permits on the top 10 percent of the lists are scheduled for full technical review in the coming year. Any interested party may submit a request to change a facility's ranking. The 2017 rankings can be found on DEC's website at: [www.dec.ny.gov/permits/6054.html](http://www.dec.ny.gov/permits/6054.html).

Implications: The notice is potentially of interest to anyone with an individual SPDES permit.

## **Other Recent Developments (Proposed)**

### **AIR**

NEW YORK STATE: DEC is seeking input from the public on **clean air projects to be funded by the nationwide settlement with Volkswagen** concerning alleged CAA violations. VW recently settled claims by EPA that the company installed software in certain diesel-powered vehicles that allowed the vehicles to meet emission standards under test conditions but not during actual operation. As part of the multi-billion dollar settlement of EPA's CAA suit, VW has agreed to pay \$2.7 billion into an environmental trust fund to be distributed among the states to pay for mitigation projects designed to offset excess emissions associated with the noncompliant vehicles. New York State is scheduled to receive approximately \$128 million from the settlement and is seeking comment from the public on developing a mitigation plan for nitrogen oxide reduction projects. In general, the settlement contemplates that the money will be spent on replacing or repowering heavy-duty trucks, buses, and other large-scale mobile vehicles/equipment. DEC has scheduled a series of public information meetings, including a pair of meetings in Albany on **July 20, 2017**. Information about the settlement can be found on DEC's website at: [www.dec.ny.gov/chemical/109784.html](http://www.dec.ny.gov/chemical/109784.html).

Implications: The announcement is primarily of interest to owners/operators of large diesel vehicles/equipment who could potentially benefit from the mitigation program.

## REMEDIATION

FEDERAL: EPA **amended its all appropriate inquiries rule** to reference ASTM International's Standard E2247-16, *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process for Forestland or Rural Property*. In 2005, EPA issued a rule setting standards for conducting "all appropriate inquiries" into prior ownership and use of property for purposes of allowing site owners/purchasers to qualify for liability protections under the federal Superfund program. The rule established a procedure for demonstrating all appropriate inquiries and allowed use of certain ASTM standards in lieu of following the requirements in the final rule. In the years since, EPA has revised the regulation on several occasions to incorporate the most recent relevant ASTM standards. With the recent rulemaking, EPA is incorporating the most recent ASTM standard for assessing relatively large tracts of rural property or forestlands. EPA adopted a direct final rule which will take effect September 18, 2017 unless EPA receives adverse comments by **July 20, 2017**. The direct final rule and proposed rulemaking can be found in the June 20, 2017 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is of interest to anyone involved in purchasing potential brownfield sites in rural areas.

## WATER

NEW YORK STATE: DEC is proposing various **minor changes to repeal outdated regulations and update references to the SPDES program** using its consensus rulemaking procedures. In particular, DEC is proposing to repeal 6 NYCRR Part 500—Floodplain Management Regulations Development Permits—because the underlying statute has not been in effect since 1992 when it was repealed by the legislature. DEC also is proposing to change references to the SPDES program from 6 NYCRR Part 750-758 to 6 NYCRR Part 750. The SPDES regulations were consolidated into Part 750 in 2003 when the program was overhauled and many of the references to this program in DEC's regulations were never updated to reflect the change. DEC is accepting comments on the proposed changes until **August 19, 2017**. Information about the proposed revisions can be found on DEC's website at: [www.dec.ny.gov/regulations/110588.html](http://www.dec.ny.gov/regulations/110588.html).

Implications: The proposed revisions are intended to eliminate confusion caused by the outdated regulations/references.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA proposed to revoke the ancillary provisions of the January 2017 **beryllium standards** as applied to the construction and shipyard sectors, while retaining the new lower permissible exposure limits (PEL) for beryllium; the proposal does not affect the general industry beryllium standard, which was also revised in January. The beryllium PEL was adopted in 1971 and had not been updated despite increasing evidence of the cancer and other health risks associated with beryllium. With the January 2017 rulemaking, OSHA reduced the time-weighted PEL for beryllium to 0.2  $\mu\text{g}/\text{m}^3$  and required compliance with ancillary requirements relating to exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas

or access controls. With the recent rulemaking, OSHA is proposing to revoke the ancillary beryllium requirements for the shipyard and construction industries based on evidence that exposure is limited in these industries and that the new requirements may overlap with other standards. OSHA is accepting comment on the proposed revisions until **August 28, 2017**; the rulemaking can be found in the June 27, 2017 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed rule is primarily of interest to employers subject to the shipyard and construction OSHA standards. As part of the rulemaking, OSHA announced that it would not be enforcing the shipyard and construction standards currently under review without further notice.

## Upcoming Deadlines

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

**July 20, 2017:** Presentation on possible clean air projects to be funded by EPA settlement with VW scheduled for 4:00 and 6:00 p.m. at DEC's Central Office, 625 Broadway, Albany. Information about the settlement can be found at [www.dec.ny.gov/chemical/109784.html](http://www.dec.ny.gov/chemical/109784.html).

**July 20, 2017:** Deadline for objecting to EPA's direct final rule revising the Standards and Practices for All Appropriate Inquiries to add a reference to ASTM International's E2247-16 standard. See the June 20, 2017 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**July 21, 2017:** Deadline for submitting comments regarding DEC's additional revisions to the solid waste regulations. See DEC's website at [www.dec.ny.gov/regulations/81768.html](http://www.dec.ny.gov/regulations/81768.html) for details.

**July 26, 2017:** Deadline for submitting objections to EPA's direct final rule authorizing voluntary labeling of composite wood products as TSCA compliant under the recent formaldehyde emission standards. See the July 11, 2017 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**August 4, 2017:** Deadline for submitting comments on DEC's renewed Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. See DEC's website at [www.dec.ny.gov/chemical/41392.html](http://www.dec.ny.gov/chemical/41392.html) for details.

**August 19, 2017:** Deadline for submitting comments on DEC's proposal to repeal an outdated floodplain regulation and update references to the SPDES program using its consensus rulemaking procedures. See DEC's website at [www.dec.ny.gov/regulations/110588.html](http://www.dec.ny.gov/regulations/110588.html) for details.

**August 28, 2017:** Deadline for submitting comments on OSHA's proposal to revoke the ancillary provisions of the recently adopted beryllium standards as applied to employers in the construction and shipyard sectors. See the June 27, 2017 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.dec.ny.gov/chemical/31290.html) for details.