

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
ENFORCEMENT			
<p>FEDERAL Transition from National Enforcement Initiatives to National Compliance Initiatives (Aug. 21, 2018)</p>	<p>EPA published a memorandum announcing a shift in its enforcement strategy from enforcement to compliance, including plans to enhance reliance on compliance assurance tools, focus enforcement away from specific industrial sectors, and shift enforcement authority toward the states. Over the years, EPA has issued a series of documents announcing its enforcement priorities for the next three years. The current National Enforcement Initiatives (NEI) document—which was issued by the Obama administration EPA and covers fiscal years 2017 to 2019—emphasizes traditional enforcement approaches and focuses on specific industrial sectors/environmental concerns (animal waste, combined sewer overflows, large air emission sources, etc.). The recent memorandum—entitled <i>Transition from National Enforcement Initiatives to National Compliance Initiatives</i>—announces changes to the agency’s enforcement program with the goal of increasing compliance. In the transition to the National Compliance Initiative (NCI), EPA announced the following adjustments: (1) modifying the selection criteria to better align with EPA’s strategic plan; (2) engaging more fully with states and tribes in selecting initiatives; (3) enhancing the use of the full range of compliance assurance tools; and (4) extending the NCI cycle from three to four years to better align with EPA’s National Program Guide cycle. During the 2019 transition year, the memorandum announces plans to phase out compliance initiatives targeted at preventing animal waste contamination of surface and ground water; reducing discharges of raw sewage and contaminated stormwater to surface waters; reducing air pollution from the largest sources; and reducing pollution from energy extraction. Areas that will remain a priority for EPA include: reducing risks of accidental releases at industrial and chemical facilities; addressing significant sources of hazardous air pollutants (particularly those impacting vulnerable populations); and reducing toxic emissions at hazardous waste facilities. The memorandum also announces plans to examine and potentially expand the role of states in compliance monitoring and enforcement consistent with the Trump administration’s broader emphasis on “cooperative federalism.”</p> <p>The memorandum can be found on EPA’s website at: www.epa.gov/enforcement/transition-national-enforcement-initiatives-national-compliance-initiatives.</p>	<p>The guidance reflects a general shift in EPA priorities away from enforcement and toward compliance assistance. It also reflects EPA’s previously expressed intent to cede primary authority for enforcement of delegated programs such as the Clean Air and Clean Water Acts to the states.</p>	

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Reviews: Surface Coating of Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Surface Coating of Metal Furniture 40 CFR Part 63 83 Fed. Reg. 46262 (Sept. 12, 2018)</p>	<p>EPA proposed the results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for the following surface coating-related source categories: surface coating of large appliances (40 CFR Part 63, subpart NNNN); printing, coating, and dyeing of fabrics and other textiles (subpart OOOO); and surface coating of metal furniture (subpart RRRR). Under Clean Air Act (CAA) § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary. EPA also must conduct a periodic review of the technology underlying the NESHAP to confirm that the standard remains current. After reviewing the existing standards, EPA concluded that the risks remaining after application of the three NESHAPs were acceptable and that the standards protect public health with an ample margin of safety. For the textile NESHAP, EPA declared that there were no cost-effective developments in practices, processes or control technologies and that no changes in the NESHAP were necessary to address technological improvements. For the large appliance and metal furniture NESHAPs, EPA proposed to require the use of high efficiency spray application equipment for sources that are not using the emission rate with add-on control equipment option. However, in a change from past reviews, EPA also is seeking comment on the broader question whether to require implementation of technological improvements where the residual risk analysis shows that the standards already provide an ample margin of safety to protect public health and prevent any adverse environmental effect.</p> <p>Consistent with other recent residual risk/period technology reviews, EPA also proposed to: require electronic submittal of notifications, performance test reports, and other documents; eliminate the exemption from compliance with emission limits during periods of startup, shutdown and malfunction; and make other technical corrections.</p> <p>The proposed rule can be found in the September 12, 2018 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule is primarily of interest to facilities in the listed source categories. EPA estimates the number of major facilities in each category as follows: large appliance surface coating, 10 facilities; printing, coating and dyeing of fabrics and other textiles, 43 facilities; and metal furniture surface coating, 16 facilities.</p> <p>EPA traditionally has conducted its residual risk and periodic technology reviews separately—requiring an assessment of developments in technologies, practices and processes regardless of whether the residual risk analysis showed that the source category posed a risk to public health or the environment. With the recent rulemaking, EPA is soliciting comment on whether revisions to the NESHAP are “necessary” under CAA § 112(d)(6) where EPA has determined pursuant to CAA § 112(f) that the standard provides an ample margin of safety to protect public health and prevent an adverse environmental effect.</p>	<p>EPA is accepting comments on the proposed rule until October 29, 2018.</p>

Citation	Summary	Implications	Schedule/Notes
AIR/CLIMATE CHANGE			
<p>FEDERAL Revisions to Refrigerant Management Program’s Extension of Appliance Maintenance and Leak Repair Requirements to Substitute Refrigerants 40 CFR Part 82 83 Fed. Reg. 49332 (Oct. 1, 2018)</p>	<p>EPA proposed to revise its refrigerant management rule to rescind provisions applying appliance maintenance and leak repair provisions to equipment containing substitute refrigerants. CAA § 608(a), 42 USC § 7671g(a), requires EPA to establish standards and requirements regarding the use and disposal of ozone-depleting substances (ODS) while § 608(c) bans the venting of both ODS and non-exempt ODS substitutes in the course of maintaining, servicing, repairing or disposing of refrigerant-containing appliances. Until 2016, EPA’s regulations governing the use, management and disposal of appliances applied solely to those containing ODS (although the venting of all non-exempt refrigerants in the course of maintenance, service, repair and disposal was banned). In 2016, EPA updated its appliance maintenance requirements and extended them, as appropriate, to substitute refrigerants. Of particular relevance, the revised rule required owners/operators of appliances containing non-exempt ODS substitutes to conduct leak inspections or install continuous monitoring devices on appliances that exceed certain leak rates, repair leaks above specified rates, and comply with reporting and recordkeeping requirements. As part of the rulemaking, EPA also revised and updated other aspects of the refrigerant rule relating to refrigerant sales and appliance disposal, among other subjects.</p> <p>With the recent rulemaking, EPA is proposing to rescind the portion of the 2016 rule extending the leak detection and repair requirements to non-exempt ODS substitutes. According to EPA, the 2016 rule was based on an incorrect interpretation of its authority under CAA § 608. In particular, EPA has now concluded that its statutory authority with respect to substitutes does not extend as far under CAA § 608(a) as it does under § 608(c), which specifically addresses ODS substitutes. Applying this new interpretation, EPA is proposing to rescind the provisions extending the leak detection and repair requirements to appliances containing non-exempt ODS substitutes while continuing to apply other aspects of the rules relating to training/certification of technicians, refrigerant sales, equipment disposal, and refrigerant reclamation to appliances containing both exempt and non-exempt refrigerants. EPA also is taking comment on an alternative legal interpretation under which the refrigerant management requirements adopted under CAA § 608(a) would apply only to ODS refrigerants, not substitutes.</p> <p>The proposed rule can be found in the October 1, 2018 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The proposed rule is primarily of interest to owners/operators of comfort cooling, commercial refrigeration, and industrial process refrigeration and air conditioning equipment and to those engaged in the repair and disposal of such equipment.</p> <p>The proposal reflects a broader effort by the Trump administration EPA to roll back Obama administration efforts to use the CAA Title VI program regulating ODS to address ODS substitutes—such as hydrofluorocarbons—that are powerful greenhouse gases that contribute to climate change.</p>	<p>EPA is accepting comments on the proposed rule until November 15, 2018.</p> <p>As part of the rulemaking, EPA is considering whether the January 1, 2019 compliance date for the appliance maintenance and leak repair provision for non-exempt substitutes remains viable or whether the date should be extended.</p>

Other Recent Developments (Final)

SOLID/HAZARDOUS WASTE

FEDERAL: EPA issued a memorandum offering **guidance to law enforcement on implementing drug take-back programs**. Although pharmaceutical wastes generated by consumers, like other household hazardous waste, are exempt from regulation as hazardous waste, a portion of household pharmaceuticals are controlled substances regulated by the Drug Enforcement Administration (DEA). Under a 2010 law, the DEA established a basic framework to allow the public (i.e., the ultimate users) to dispose of their unwanted or expired pharmaceuticals. In addition to delivering pharmaceuticals directly to a law enforcement official for ultimate disposal in an incinerator, the law authorizes additional options, including collection receptacles at retail and hospital pharmacies as well as mailback envelopes. The EPA memorandum—entitled *Management of Household Pharmaceuticals Collected by Law Enforcement During Take-Back Events and Programs*: (1) clarifies the options for destroying pharmaceuticals from take-back events or programs (hazardous waste incinerators regulated under CAA § 112 or various solid waste incinerators regulated under CAA § 129); (2) identifies options available to law enforcement for transporting pharmaceuticals from take-back events and programs to DEA-registered reverse distributors (use of liners plus outer packaging shipped via commercial carrier such as UPS, FedEx or the U.S. Postal Service; use of mailback envelopes by individuals; or direct transportation of pharmaceuticals to an incinerator); and (3) strongly discourages the open burning of pharmaceuticals, including use of burn barrels (i.e., barrels with fans). The memorandum can be found on EPA’s website at: www.epa.gov/hwgenerators/management-household-pharmaceuticals-collected-law-enforcement-during-take-back-events.

Implications: The memorandum is primarily of interest to law enforcement and environmental agencies responsible for implementing pharmaceutical takeback programs and managing disposal of waste pharmaceuticals generated by consumers.

NEW YORK STATE: New York State has enacted a law requiring the **establishment of a manufacturer-run drug takeback program**. Under the law—which is codified at Public Health Law Article 2-B—manufacturers of “covered drugs” must submit to the New York State Department of Health (DOH) a proposed drug takeback program by July 5, 2019 that “provide[s] convenient, ongoing collection services to all persons seeking to dispose of covered drugs.” The program must describe collection methods, explain how covered drugs will be tracked and handled from collection through final disposal, describe public education efforts, and comply with other requirements. Under the law, all pharmacies with 10 or more outlets must offer on-site collection, mail-back collection by prepaid envelope, or other federal DEA-approved methods for pharmaceutical collection. The costs of these services must be reimbursed by the manufacturer as part of the takeback program. Manufacturers can either implement their own program or cooperate with other manufacturers to create a joint program. The term “covered drug” includes prescription and non-prescription drugs, drugs in medical devices and combination products, brand and generic drugs, and drugs for veterinary use but excludes other products, including but not limited to, homeopathic products, cosmetics, and cleaning products. The law contemplates that DOH will issue regulations/guidance

covering key aspects of the new law. The law (S.9100/A.9576-B) can be found on the New York Assembly website at: <http://assembly.state.ny.us>.

Implications: The law is primarily of interest to drug manufacturers and pharmacies, each of whom has been assigned a role in implementing the new drug takeback program.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA sought comment on a draft memorandum addressing **when “adjacent” facilities are considered a single facility under the CAA Title V and new source review (NSR) programs**. Both the Title V and NSR laws apply to “stationary sources,” which encompass pollutant-emitting activities that belong to the same industrial grouping (i.e., two digit Standard Industrial Classification code), are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Over the years, significant questions have arisen about the precise meaning of the term “contiguous or adjacent.” These questions culminated in a court decision in 2012, which concluded that the term adjacent referred solely to physical proximity and that EPA could not take functional relatedness into account in making an “adjacency” determination. With the recent draft memo, EPA reviewed the history of the concept of adjacency and concluded that it was appropriate to focus exclusively on physical proximity when considering whether operations are adjacent for purposes of deciding whether two facilities should be considered a single stationary source. In support, EPA cited: the dictionary definition of adjacent, which focuses on physical proximity; the difference between “contiguous” and “adjacent;” and the practical difficulties associated with incorporating functional relatedness into the concept of adjacency. EPA declined to establish a fixed threshold for determining whether two operations are “adjacent,” emphasizing that permitting authorities will remain responsible for making case-specific determinations that comport with the “common sense notion of a plant.” Although states are not required to follow the guidance, EPA emphasized that applying this interpretation would provide greater uniformity in permitting decisions. EPA is accepting comments on the draft guidance until **October 5, 2018**; it can be found on EPA’s website at: www.epa.gov/nsr/draft-guidance-interpreting-adjacent-new-source-review-and-title-v-source-determinations-all.

Implications: The guidance is potentially of interest to entities that own/operate air emissions sources that are located in close proximity to one another or that are contemplating the acquisition of nearby sources or expansion to nearby locations.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

October 5, 2018: Deadline for submitting comments on EPA’s draft memorandum interpreting “adjacent” for NSR and Title V source determinations. See EPA’s website at www.epa.gov/nsr/draft-guidance-interpreting-adjacent-new-source-review-and-title-v-source-determinations-all for details.

October 5, 2018: Deadline for submitting comments on DEC’s proposed new General Permit GP-0-19-001 covering nutrient discharges from federally-regulated CAFOs. See DEC’s website at www.dec.ny.gov/permits/55373.html for details.

October 9, 2018: Deadline for submitting recommendations on possible changes to Occupational Safety and Health Review Commission rules of procedure. See the September 7, 2018 Federal Register at www.gpo.gov/fdsys for details.

October 24, 2018: Deadline for submitting comments on EPA’s request for information to facilitate the CASAC’s consideration of non-environmental adverse impacts that may result from strategies for attaining/maintaining the NAAQS. See the June 26, 2018 Federal Register at www.gpo.gov/fdsys for details.

October 26, 2018: Deadline for submitting comments on EPA’s proposed revisions to the federal fuel economy and GHG emission standards for model year 2021-2026 passenger cars and light-duty trucks (extended from October 23, 2018). See the August 24, 2018 Federal Register at www.gpo.gov/fdsys for details.

October 29, 2018: Deadline for submitting comments on EPA’s proposed residual risk/periodic technology review findings for the large appliance and metal furniture surface coating and fabric printing, coating and dyeing NESHAPs. See the September 12, 2018 Federal Register at: www.gpo.gov/fdsys for details.

October 31, 2018: Deadline for submitting comments on EPA’s proposed ACE rule establishing GHG emission guidelines to replace the Clean Power Plan and a new option for assessing NSR applicability for electric generating units (extended from October 30, 2018). See the August 30, 2018 Federal Register at www.gpo.gov/fdsys for details.

November 15, 2018: Deadline for submitting comments on EPA’s proposal to rescind portion of 2016 refrigerant management rule applying leak detection and repair requirements to substitute refrigerants. See the October 1, 2018 Federal Register at www.gpo.gov/fdsys for details.