

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
HAZARDOUS WASTE			
<p>FEDERAL Management Standards for Hazardous Waste Pharmaceuticals and Amendment to P075 Listing for Nicotine 40 CFR Parts 261, 262, 264, et al. 84 Fed. Reg. 5816 (Feb. 22, 2019)</p>	<p>EPA adopted a new program to handle hazardous waste pharmaceuticals that is designed to simplify the management and disposal of drugs by healthcare facilities, including the use of reverse distributors—entities that accept unused pharmaceuticals from healthcare facilities and arrange for the facilities to receive credit for them from the manufacturer. The new requirements, which are set forth primarily at 40 CFR Part 266, subpart P, apply in lieu of the existing hazardous waste generator regulations. Under the new rule, because unsold prescriptions shipped from healthcare facilities to reverse distributors are almost always discarded, they are considered waste. However, the rule establishes streamlined, practical standards for healthcare facilities managing these wastes that align with existing retail practices. These standards cover training, waste characterization, containers, labeling, maximum accumulation time, and shipping, among other subjects.</p> <p>By comparison, according to EPA, non-prescription pharmaceuticals are more likely to be used or donated than prescription pharmaceuticals. In addition, retailers handle numerous other products—such as paints and pesticides—that are potentially hazardous waste when disposed. These products also are likely to be sold, donated or otherwise used after they have been returned to a reverse logistics facility for handling. As a result, these products are not solid waste until they reach the reverse logistics facility and a decision has been made to dispose of them. However, where the item has no value and/or poses a risk (e.g., is broken or leaking), it must be managed at the store in accordance with applicable hazardous waste regulations.</p> <p>Other provisions of the rule include:</p> <ul style="list-style-type: none"> • Definitions of key terms, including pharmaceutical, healthcare facility, and reverse distributor, among others. EPA also clarified when containers that held hazardous waste pharmaceuticals are considered “RCRA empty.” • Ban on disposing of pharmaceuticals in the sewer (i.e., by flushing). • A conditional exemption for hazardous waste pharmaceuticals that are also regulated as controlled substances by the Drug Enforcement Administration to eliminate the dual regulation of these substances under the two programs. <p>The rule can be found in the February 22, 2019 Federal Register at: www.govinfo.gov.</p>	<p>The regulation applies to healthcare facilities, a term that includes hospitals, doctor’s offices, ambulatory surgical centers, clinics, long-term care facilities, ambulance services, pharmacies and other similar facilities.</p> <p>According to EPA, the new rules are necessary to address several unique problems associated with managing pharmaceutical waste, including that: (1) such wastes often are generated unpredictably, in small quantities, by different employees across a facility; (2) the workers generating the wastes lack expertise in making waste determinations; (3) the facility may have thousands of items in its formulary, complicating waste determination and management; and (4) several waste pharmaceuticals are acute hazardous wastes when disposed.</p> <p>The discussion of retailers’ use of reverse logistics facilities to manage unwanted goods clarifies EPA existing policy.</p>	<p>The rule takes effect August 21, 2019.</p> <p>In addition to the provisions addressing reverse distribution (prescription pharmaceuticals) and reverse logistics (non-prescription pharmaceuticals and other products), the new rule excludes nicotine replacement therapies (e.g., patches and gum) from regulation as hazardous waste. (Previously, these products were classified as P075 listed waste.)</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>NEW YORK STATE Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines 6 NYCRR subpart 227-3</p>	<p>DEC has proposed to set strict nitrogen oxide (NOx) emission limits for simple cycle and regenerative combustion turbines (SCCTs), otherwise known as “peaking units.” These units are typically run during periods of peak electricity demand in the summer when ozone levels are highest. Data gathered by DEC show that the older SCCTs produce only 36% of the electricity from these units but generate 96% of their NOx emissions. The proposed regulations—which will be set forth at 6 NYCRR subpart 227-3—call for phasing in strict ozone season (i.e., summertime) NOx emission standards for these units over a period of approximately five years beginning with submission of a plan identifying the compliance option selected by the owner to meet the emission standards. These options include: installing NOx emission controls; averaging emissions with other SCCTs at the facility during the ozone season; averaging emissions with approved energy storage or renewable energy sources during the ozone season; or committing in their operating permit not to operate the units during the ozone season. Because the units are not easy to retrofit with emission controls, DEC anticipates that most owners will choose to replace or shut down their non-compliant older SCCTs. Sources subject to the new rule will continue to be regulated under 6 NYCRR Subpart 227-2 outside the ozone season.</p> <p>The proposed regulations can be found on DEC’s website at: www.dec.ny.gov/regulations/116131.html.</p>	<p>The regulations will apply to SCCTs with a nameplate capacity of 15 megawatts or greater that feed into the New York Independent System Operator wholesale market. The proposed regulations are primarily of interest to downstate utilities, many of which operation SCCTs to provide power during times of peak energy demand. According to DEC, the emission reductions called for by the regulations are necessary to help New York State attain the 2008 and 2015 ozone national ambient air quality standards (NAAQS).</p>	<p>DEC is accepting comments on the draft regulations until May 20, 2019. A public hearing on the proposed rule is scheduled for May 6, 2019 at 11:00 a.m. at DEC’s Central Office, 625 Broadway, Room 129A/B, Albany. Additional public hearings are scheduled in mid May 2019 in Stony Brook and Long Island City.</p>

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>NEW YORK STATE Volatile Organic Compound Content Limits for Architectural and Industrial Maintenance Coatings 6 NYCRR Part 205</p>	<p>DEC is proposing to amend its standards governing the volatile organic compound (VOC) content of architectural and industrial maintenance (AIM) coatings to add new coatings, lower the VOC content of other coatings and make other changes to the rule. AIM coatings are coatings, such as paints, that are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. Under 6 NYCRR Part 205, manufacturers of AIM coatings must comply with the VOC content limits for their particular coating as well as with container labeling, recordkeeping, reporting and other requirements. With the recent rulemaking, DEC is proposing to revise Part 205 as follows:</p> <ul style="list-style-type: none"> • Add 12 new coating categories to the rule, lower the VOC content limits for 12 coating categories, and eliminate 15 categories from the rule by consolidating them under other coating categories. The 12 new categories are aluminum roof, basement specialty coatings, concrete/masonry sealer, conjugated oil varnish, driveway sealer, reactive penetrating sealer, reactive penetrating carbonate stone sealer, stone consolidants, tub and tile refinish, waterproofing membranes, wood coatings, and zinc-rich primers. • Update definitions to reflect new/revised coating categories and make other changes. • Eliminate the existing exemption for coatings sold in containers of one quart or less. • Update the labeling requirement to reflect the new and removed coating categories. • Clarify the rules for calculating VOC content, which differ based on whether the label instructions call for/prohibit thinning and contain special instructions for multi-component products, and coatings containing silanes, siloxanes, or other ingredients that generate VOCs during curing. • Broaden the scope of DEC’s data collection authority while giving manufacturers additional time to respond. Under the new rule, DEC is authorized to ask for data on coatings manufactured for use outside the State. <p>The new standards will take effect January 1, 2021. Paints manufactured before that date can be sold through December 31, 2022.</p> <p>The proposed regulations can be found on DEC’s website at: www.dec.ny.gov/regulations/116139.html.</p>	<p>The proposed rule applies to manufacturers of AIM coatings. Coating users are affected to the extent the regulation limits the types of AIM coatings available for sale. According to DEC, the stricter VOC content limits are needed to help New York State meet the 2008 and 2015 ozone NAAQS.</p>	<p>DEC is accepting comments on the draft regulations until May 20, 2019. A public hearing on the proposed rule is scheduled for May 6, 2019 at 11:00 a.m. at DEC’s Central Office, 625 Broadway, Room 129A/B, Albany. Additional public hearings are scheduled in mid May 2019 in Stony Brook and Long Island City.</p>

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>NEW YORK STATE New Source Review for New and Modified Major Stationary Sources 6 NYCRR Part 231</p>	<p>DEC is conducting public outreach in advance of plans to revise its New Source Review (NSR) regulations to align with EPA’s NSR program and make other changes. The NSR regulations—which are set forth at 6 NYCRR Part 231—require newly constructed or significantly modified major sources of criteria pollutants to comply with strict emission control and other requirements. Sources that exceed the thresholds are subject to either the Prevention of Significant Deterioration (PSD) or nonattainment NSR program depending on whether the area in which the source is located is in attainment for the particular pollutant. DEC last updated the NSR regulations in 2009. Since then, various developments have occurred at the federal level that necessitate changes to the State program.</p> <ul style="list-style-type: none"> • Under the existing State regulations, a source can be classified as “major” based solely on whether its emissions of greenhouse gases (GHGs) exceed specified thresholds. However, after the State regulations were revised, the Supreme Court struck down the federal provision on which this requirement was based. DEC is proposing to delete this provision (and the comparable provision for major modifications) to conform to the federal program. • DEC is proposing to remove provisions establishing interpollutant trading ratios, which allow sources to rely on specified reductions in NOx and/or sulfur dioxide to achieve reductions in direct fine particulate matter emissions (i.e., PM_{2.5}). According to DEC, since New York State is currently in attainment with the PM_{2.5} NAAQS, there is no longer a need for nonattainment NSR offsets (and thus no need for interpollutant trading ratios). • DEC is proposing to remove provisions allowing sources to avoid NSR by showing that their project impacts are below specified “significant impact levels.” DEC also is proposing to remove provisions allowing sources to avoid one-year preconstruction air quality monitoring by showing that emissions are below “significant monitoring concentrations.” The comparable federal provisions were successfully challenged in court. • DEC is proposing to remove a table containing global warming potentials in 6 NYCRR 231-13 and replace the reference to the table in the definition of carbon dioxide equivalent in Part 200 with a reference to 40 CFR Part 98 Table A-1. • DEC is proposing to remove references to its “Guidelines on Dispersion Modeling Procedures of Air Quality Impact Analysis” to address EPA concerns regarding the propriety of incorporating guidance documents into regulations. <p>Information about the planned Part 231 revisions can be obtained from Steve Yarrington at DEC at: air.regs@dec.ny.gov.</p>	<p>The planned revisions are primarily of interest to owners/operators of major sources of criteria pollutants or their precursors, such as VOCs (a precursor to ozone formation), particulate matter, and sulfur dioxide. The NSR regulations—which have always been controversial—have been the subject of extensive litigation. Most of the rule changes currently under consideration by DEC are being undertaken to conform the State regulations to their federal counterpart following court decisions rejecting key aspects of EPA’s NSR regulations.</p>	<p>DEC has scheduled a webinar on March 27, 2019 at 11:00 a.m. to discuss the planned rule changes. EPA is accepting stakeholder comments for a period of 30 days following the webinar (i.e., until April 26, 2019).</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA issued **the results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for wet-formed fiberglass mat production facilities and surface coating of wood building products**. Under 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. The wet-formed fiberglass NESHAP, set forth at 40 CFR Part 63, subpart HHHH, applies to wet-formed fiberglass mat drying and curing ovens at major facilities, with EPA setting emission limits on formaldehyde that also serve as a surrogate for other hazardous air pollutants. The wood building products NESHAP, set forth at 40 CFR Part 63, subpart QQQQ, applies to facilities engaged in surface coating of wood building products, i.e., the application of coatings in the finishing or laminating of any wood building product that contains more than 50 percent by weight wood or wood fiber and is used in building construction. After reviewing the existing standards, EPA concluded that the risks remaining after application of the NESHAPs were acceptable and that the standards protect public health with an ample margin of safety. EPA also found that there were no cost-effective developments in practices, processes or control technologies and that no changes in the NESHAPs were necessary to address technological improvements. As a result, EPA adopted no revisions to the NESHAPs numerical limits. However, EPA revised the rules to require submission of electronic copies of compliance reports, update the provisions relating to startup, shutdown and malfunction consistent with judicial rulings, and make other technical corrections and clarifications. The fiberglass and wood building products NESHAPs, which took effect February 28, 2019 and March 4, 2019, respectively, can be found in the Federal Register issued on those dates at: www.govinfo.gov.

Implications: The rules are primarily of interest to wet-formed fiberglass mat production facilities and wood building products surface coating operations.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA **proposed the results of its residual risk/periodic technology review of the hydrochloric acid production NESHAP**. After reviewing the existing standard for hydrochloric acid production—set forth at 40 CFR Part 63, subpart NNNNN—EPA concluded that the risks remaining after application of the NESHAP were acceptable and that the standard protects public health with an ample margin of safety. EPA also found 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. As a result, EPA made no revisions to the NESHAP’s numerical limits. However, EPA revised the rule to require submission of electronic copies of compliance reports, update the provisions relating to startup, shutdown and malfunction consistent with judicial rulings, and make other technical

corrections and clarifications. EPA is accepting comments on the proposed rule until **March 21, 2019**; the proposal can be found in the February 4, 2019 Federal Register at: www.govinfo.gov.

Implications: The standard applies to major sources of HAPs that produce HCl, including fume silica production facilities. These operations are typically co-located at plant sites that include other chemical manufacturing processes such as pesticide or organic chemical manufacturing.

WATER

NEW YORK STATE: DEC **proposed further revisions to its water quality standards and regulations to implement the federal BEACH Act of 2000** which is intended to protect coastal waters for recreation. The proposed regulations—to be set forth at 6 NYCRR Parts 700, 703 and 890—apply to coastal recreation waters, a term that includes the Great Lakes and coastal waters that are designated by the State for swimming, bathing, surfing or similar water contact activities. The regulations set special enterococci and e-coli standards that must be met during the “primary contact recreation season,” which extends from May 1st to October 31st or as determined by DEC on a case-specific basis to protect the best usages of the waters. These standards are consistent with EPA’s 2012 Recreational Water Quality Criteria—recommendations for protecting human health in waters designated for primary contact recreation use. As part of the rulemaking, DEC upgraded the classifications of certain surface waters in New York Harbor. DEC originally proposed the revised water quality standards in March 2018 and revised aspects of the rule in response to public comment. DEC is accepting comment on the revised proposed regulations until **April 15, 2019**. The revised proposed rule can be found on DEC’s website at: www.dec.ny.gov/regulations/112962.html.

Implications: According to DEC, there are 41 municipal wastewater treatment plants discharging to coastal recreational waters, 16 of which discharge to the Great Lakes and 25 to marine coastal recreation waters. An additional four private, commercial and institutional facilities discharge sanitary waste to coastal marine waters. DEC estimates that the 16 plants discharging to the Great Lakes are expected to meet the standard without significant adjustments while the remaining plants may require upgrades to their disinfection systems.

GENERAL

NEW YORK STATE: DEC is **accepting applications for New York’s Annual Environmental Excellence Awards**, which recognize public, private and non-profit entities that have achieved environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Applicants must be in good standing with the Environmental Conservation Law and pertinent local laws. Competitive applications must include clear, measurable and documented metrics demonstrating success and adhere to specific content and format requirements. Complete applications must include an application cover sheet and application checklist as well as specific project information, including a summary, general description, and information relating to: innovation, sustainability, and/or partnerships; superior practices; measurable environmental, economic and social benefits; commitment and leadership in pursuit of

environmental excellence; transferability to other users; funding sources; and other details and supporting documentation. The deadline for submitting applications is **April 17, 2019**; the application form and instructions can be found on DEC's website at: www.dec.ny.gov/public/945.html.

Implications: The award program provides a way for businesses, educational institutions, governments, non-profit organizations and individuals to obtain public recognition of their pollution prevention and reduction efforts.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

March 27, 2019: Webinar scheduled to discuss DEC's planned changes to its NSR regulations to conform to the federal program and make other revisions.

April 15, 2019: Deadline for submitting comments on EPA's proposed definition of "waters of the United States" under the CWA. See the February 14, 2019 Federal Register at www.govinfo.gov for details.

April 15, 2019: Deadline for submitting comments on DEC's revised proposed regulations implementing the BEACH Act of 2000 establishing pathogen standards for coastal recreation waters. See DEC's website at www.dec.ny.gov/regulations/112962.html for details.

April 17, 2019: Deadline for submitting comments on EPA's MATS rule cost finding relating to regulation of hazardous air pollutant emissions from coal and oil-fired power plants (extended from April 8, 2019). See the February 7, 2019 Federal Register at www.govinfo.gov for details.

April 17, 2019: Deadline for submitting applications for DEC's Environmental Excellence Awards. The application and related information can be found on DEC's website at: www.dec.ny.gov/public/945.html.

April 26, 2019: Deadline for submitting comments on EPA's proposed HCl production NESHAP residual risk/periodic technology review findings (extended from March 21, 2019). See the February 4, 2019 Federal Register at www.govinfo.gov for details.

April 26, 2019: Deadline for stakeholders to submitting comments relating to DEC's planned changes to the NSR regulations. Contact air.regs@dec.ny.gov for details.

May 6, 2019: Public hearing on DEC's proposed NOx emission standards for simple cycle and regenerative combustion turbines and VOC content limits for AIM coatings scheduled for 11:00 a.m. at DEC's Central Office, 625 Broadway, Room 129A/B in Albany. Additional hearings are scheduled in Stony Brook and Long Island City.

May 10, 2019: Deadline for submitting comments on EPA's ANPR seeking comment on possible revisions to the criteria for disposing of liquids in landfills (extended from March 26, 2019). See the December 26, 2018 Federal Register at www.govinfo.gov for details.

May 20, 2019: Deadline for submitting comments on DEC's proposed NOx emission standards for simple cycle and regenerative combustion turbines and VOC content limits for AIM coatings. See DEC's website at www.dec.ny.gov/regulations/116131.html and www.dec.ny.gov/regulations/116139.html, respectively, for details.