

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>CLIMATE CHANGE</b>			
<p>FEDERAL  <b>Repeal of Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations</b>                      40 CFR Part 60                      84 Fed. Reg. 32520 (July 8, 2019)</p>	<p>EPA issued <b>guidelines to limit greenhouse gas (GHG) emissions from existing coal-fired power plants</b> to replace the Obama Administration’s controversial Clean Power Plan (CPP). EPA adopted the CPP under the Clean Air Act’s (CAA) § 111(d), 42 USC § 7411(d), New Source Performance Standards (NSPS) program, which requires EPA to set emission guidelines for existing sources based on the “best system of emission reduction” (BSER) and implement them via state plans. The CPP established overall GHG reduction goals and allowed states to implement programs to meet statewide goals that relied on GHG reduction measures, such as renewable energy initiatives, implemented at sources other than regulated power plants. With the recent rulemaking, the Trump administration EPA repealed the CPP based on its conclusion that these types of measures were not, in fact, authorized under CAA § 111(d). In its place, EPA adopted the Affordable Clean Energy (ACE) rule based on its determination that BSER for GHG emissions from existing coal-fired power plants is heat rate (i.e., efficiency) improvements that can be applied at the source. The regulation, which is set forth at 40 CFR Part 60, subpart UUUU, identifies various “candidate technologies” for making heat rate improvements (e.g., boiler feed pumps, air heater and duct leakage control, variable frequency drives, etc.) as well as operation and maintenance practices. States will then evaluate each facility regulated under the program and establish unit-specific standards of performance that reflect the emission reductions achievable through application of BSER technologies. In deciding what technologies to require, the state may consider various factors, including the remaining useful life of the unit. These standards together constitute the state’s plan, which EPA will review to determine whether it constitutes BSER.</p> <p>As part of this rulemaking, EPA also revised the CAA § 111(d) regulations to extend the deadlines for submitting and processing state plans and make other procedural changes. Under the revised regulations, set forth at 40 CFR Part 60, subpart Ba, states must submit a plan within three years of promulgation of final emission guidelines. EPA must determine completeness within 6 months and approve/disapprove the submission within one year after finding it complete. As part of the rulemaking, EPA also revised certain definitions and changed the criteria and process of determining completeness.</p> <p>The CPP repeal and ACE rule can be found in the July 8, 2019 Federal Register at: <a href="http://www.govinfo.gov">www.govinfo.gov</a>.</p>	<p>The CPP repeal and replacement ACE rule are directly of interest to owners/operators of existing coal-fired power plants.</p> <p>As part of its ACE rule proposal, EPA considered revising the method used to determine whether a modification to an existing power plant triggers new source review (NSR). EPA intends to take final action on the proposed NSR changes in a separate rulemaking. The change would enable facilities to avoid triggering NSR if they can show that the proposed change would not increase the hourly emission rate of the particular electric generating unit under review. Currently, whether a source triggers NSR depends solely on whether the change will increase annual emissions.</p>	<p>The rule takes effect September 6, 2019.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>FEDERAL National Primary Drinking Water Regulations for Perchlorate 40 CFR Parts 141 and 142 84 Fed. Reg. 30524 (June 26, 2019)</p>	<p>EPA has proposed a <b>drinking water regulation and a health-based maximum contaminant level goal (MCLG) for perchlorate</b> following an extensive review process. Under the Safe Drinking Water Act, EPA must publish a Contaminant Candidate List (CCL) every five years containing contaminants that are known or anticipated to occur in public water systems and are not currently subject to EPA’s drinking water regulations. EPA then collects data on the listed chemicals and issues a determination whether or not to regulate at least five of the chemicals on the CCL. EPA also issues a separate list every five years of unregulated chemicals to be monitored by public water systems. In 2011, EPA published a determination to regulate perchlorate in drinking water after concluding that it may have an adverse effect on human health and is known to occur in drinking water systems with a frequency and at levels that present a public health concern. After delays in developing the standard, a federal court ordered EPA to propose a drinking water rule by May 28, 2019.</p> <p>With the recent rulemaking, EPA is proposing to set both the enforceable maximum contaminant level (MCL) and the MCLG for perchlorate at 56 micrograms/liter (µ/l). EPA also is taking comment on alternative MCL/MCLG values of 18 µ/l and 90 µ/l. In addition, the proposed rule establishes requirements for public water systems to monitor and report perchlorate levels and provide information about the chemical to their consumers through public notifications and consumer confidence reports. The proposal also includes a list of treatment technologies that will enable public water systems to comply with the MCL. After noting that the occurrence of perchlorate at the proposed levels was comparatively low, EPA specifically requested comment on whether to withdraw the 2011 determination to regulate perchlorate based on a new finding that the chemical does not occur in public water systems with a frequency and at levels of public health concern.</p> <p>The proposed rule can be found in the June 26, 2019 Federal Register at: <a href="http://www.govinfo.gov">www.govinfo.gov</a>.</p>	<p>Perchlorate is a chemical commonly used as an oxidizer in solid fuels to power rockets, missiles and fireworks; it enters the environment from both natural and manmade sources and is naturally occurring in some fertilizers.</p> <p>The rule is primarily of interest to owners/operators of public water systems who will be required to monitor their water systems for perchlorate, report the results to the public and take measures to reduce perchlorate levels if they exceed the MCL.</p>	<p>EPA is accepting comment on the proposed rule until <b>August 26, 2019</b>.</p>

## Other Recent Developments (Final)

### AIR

NEW YORK STATE: DEC has set the 2019 **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 \$734.93 per ton for 2019, 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 2019 Title V fees can be found in the June 19, 2019 Environmental Notice Bulletin at: [www.dec.ny.gov/enb/20190619\\_not0.html](http://www.dec.ny.gov/enb/20190619_not0.html).

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

### REMEDIATION

FEDERAL: EPA adopted **significantly lower dust-lead hazard standards (DLHS) for lead in dust on floors and windowsills** while retaining the existing definition of lead-based paint (LBP) under the Toxic Substances Control Act (TSCA). As part of its larger program to control the risks created by the past use of lead in paint, EPA adopted the DLHS, which identify whether LBP paint hazards are present and is used to help the federal government decide where to require lead paint abatement. The DLHS also serves as the clearance standard for certain hazard reduction activities under the Department of Housing and Urban Development's Lead Safe Housing Rule, which applies to federally owned and assisted target housing. After EPA failed timely to act on a 2009 petition requesting that it reexamine the DLHS, a federal court directed EPA to take action. With the recent rulemaking, EPA lowered the DLHS for floors from 40 micrograms per square foot ( $\mu\text{g}/\text{ft}^2$ ) to 10  $\mu\text{g}/\text{ft}^2$  and the standard for window sills from 250  $\mu\text{g}/\text{ft}^2$  to 100  $\mu\text{g}/\text{ft}^2$ . According to EPA, new data available since the 2001 rule adopting the DLHS indicate that health risks exist at lower blood lead levels than previously recognized. The standards are more protective of public health while still being technically achievable. As part of the same petition, EPA was also asked to consider revising the definition of LBP from 1  $\text{mg}/\text{cm}^2$  and 0.5 percent by weight, to 0.06 percent by weight with a corresponding reduction in the  $\text{mg}/\text{cm}^2$  standard. EPA declined to revise the LBP definition after concluding that it lacks sufficient information to justify a change. The final rule, which takes effect January 6, 2020, can be found in the July 9, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

Implications: The rule is primarily of interest to owners of target housing generally and owners of publicly owned or assisted target housing, in particular. Note that revising the DLHS does not trigger new requirements under the existing renovation, repair and painting rule, which imposes work practice requirements for LBP removal that are not predicated on dust-lead loadings.

## WATER

NEW YORK STATE: DEC **revised its water quality standards and regulations to implement the federal BEACH Act of 2000**, which is intended to protect coastal waters for recreation. The regulations—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 1<sup>st</sup> to October 31<sup>st</sup> 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. The final rule can be found on DEC’s website at: [www.dec.ny.gov/regulations/112962.html](http://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.

## Other Recent Developments (Proposed)

## AIR

FEDERAL: EPA proposed **the results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for solvent extraction for vegetable oil production**. The vegetable oil production NESHAP, set forth at 40 CFR Part 63, subpart GGGG, applies to the process of removing oil from oil seeds through direct contact with an organic solvent. 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. After reviewing the existing standard, 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 proposed no revisions to the NESHAP’s numerical limits. However, EPA updated the provisions relating to startup, shutdown and malfunction consistent with judicial rulings. In addition, EPA proposed to require submission of electronic copies of required performance test results and semiannual compliance reports, together with other

changes/corrections to the rule. EPA is accepting comment on the proposed rule until **August 12, 2019**; it can be found in the June 27, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

Implications: EPA estimates that there are 89 vegetable oil production facilities in operation that are subject to the solvent extraction for vegetable oil production NESHAP.

## CLIMATE CHANGE

FEDERAL: The Council on Environmental Quality (CEQ) published draft **guidance on GHG emissions under the National Environmental Policy Act (NEPA)** following the 2017 withdrawal of Obama administration guidance on the subject. NEPA—found at 42 USC §§ 4321 to 4370h—requires federal agencies to incorporate environmental considerations into planning, decisionmaking, and permitting. Specifically, it requires federal agencies to prepare detailed statements assessing the environmental impact of, and alternatives to, major federal actions that significantly affect the environment. In 2016, the Obama administration CEQ issued guidance establishing standards for assessing the impact of proposed federal actions on global climate change under NEPA. 81 Fed. Reg. 51866 (Aug. 5, 2016). The guidance included fairly specific instructions on various issues including: how to assess GHG emissions, including requiring quantification of both direct and indirect emissions associated with agency actions; inclusion of “connected actions” subject to reasonable limits based on feasibility and practicality; consideration of reasonable alternatives, including alternatives that mitigate GHG emissions, as well as the short and long-term/direct and indirect effects of the various alternatives; and consideration of reasonable options for avoiding, minimizing, rectifying or compensating for impacts (*i.e.*, mitigation). As part of a broader executive order rolling back various Obama administrative climate initiatives, President Donald Trump rescinded the 2016 NEPA climate change guidance. The recently proposed replacement guidance is intended to assist federal agencies when evaluating GHG emissions for major federal actions under NEPA. Among other things, the guidance emphasizes that the NEPA review process is governed by the “rule of reason” and that the law does not require that the potential effects of GHG emissions be monetized or quantified. CEQ is accepting comments on the draft guidance until **July 26, 2019**; it can be found in the June 26, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

Implications: The draft guidance is of interest to persons undertaking major projects that require federal financing or permits/approvals and are subject to NEPA.

## GENERAL

NEW YORK STATE: DEC and the New York State Office of General Services (OGS) are accepting comment on four **draft specifications for procurement of green products by the State government**. Governor David Patterson issued an executive order in 2008 creating the State Green Procurement and Agency Sustainability program, which established a committee charged with several tasks, including development of green product specifications for priority categories of commodities purchased by the State. The specifications identify product criteria that will reduce or eliminate the use or release of toxic substances; minimize the discharge of pollutants into the environment; minimize the volume and toxicity of packaging; maximize the use of recycled content and sustainably

managed renewable resources; and provide other environmental and health benefits. Pursuant to the order—which was continued by Governor Cuomo—the Committee is seeking comments on three new specifications covering adhesives, lubricants, and computers and displays. In addition, the Committee is seeking comment on amendments to the existing specification for floor coverings. OGS is accepting comments on the draft specifications until **October 8, 2019**. If no suggested edits are received by that date, the specifications will take effect as drafted. If suggested edits or negative comments are received, the Committee will consider the comments and make any appropriate edits. Copies of the draft specifications can be found at: <https://ogs.ny.gov/greenny/executive-order-4-tentatively-approved-specifications>.

**Implications:** The draft procurement specifications are potentially of interest to companies that seek to supply products to the State government in the listed product categories.

## Upcoming Deadlines

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

**July 19, 2019:** Deadline for submitting comments on EPA’s proposed residual risk/periodic technology review findings for the metal can/metal coil surface coating NESHAPs. See the June 4, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**July 26, 2019:** Deadline for submitting comments on the CEQ’s Draft *National Environmental Policy Act Guidance on Consideration of Greenhouse Gas Emissions*. See the June 26, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**August 6, 2019:** Webinar concerning proposed amendments to hazardous waste regulations to be held at 1:00 p.m. Details about registering for the webinar can be found at: [www.dec.ny.gov/regulations/100424.html](http://www.dec.ny.gov/regulations/100424.html).

**August 12, 2019:** Deadline for submitting comments on EPA’s proposed residual risk/periodic technology review findings for the solvent extraction for vegetable oil production NESHAP. See the June 27, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**August 19, 2019:** Deadline for submitting information in response to OSHA’s RFI concerning possible changes to the lockout/tagout standard. See the May 20, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**August 19, 2019:** Public hearing on proposed amendments to hazardous waste regulations to be held at 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany.

**August 26, 2019:** Deadline for submitting comments on EPA’s proposed drinking water regulation and maximum contaminant level goal for perchlorate. See the June 26, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**August 26, 2019:** Deadline for submitting comments on DEC's proposed amendments to the hazardous waste regulations. See DEC's website at [www.dec.ny.gov/regulations/100424.html](http://www.dec.ny.gov/regulations/100424.html) for details.

**September 27, 2019:** Deadline for submitting data in support of DEC's compilation of list of impaired waters under CWA § 303(d). See DEC's website at [www.dec.ny.gov/chemical/31290.html](http://www.dec.ny.gov/chemical/31290.html) for details.

**October 8, 2019:** Deadline for submitting comments on OGS's green procurement specifications for adhesives, lubricants, computers and displays, and floor coverings. See <https://ogs.ny.gov/greenny/executive-order-4-tentatively-approved-specifications> for details.