

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>FEDERAL Clean Water Act Hazardous Substance Spill Prevention 40 CFR Part 151 84 Fed. Reg. 46100 (Sept. 3, 2019)</p>	<p>Following public outreach, EPA decided <b>not to establish new hazardous substance spill prevention requirements</b> under Clean Water Act (CWA) § 311(j)(1)(C), 33 USC § 1321(j)(1)(C). This section directs EPA to issue regulations to prevent the discharge of oil and hazardous substances from onshore and offshore facilities and contain such discharges when they occur. Although EPA proposed to establish hazardous substance requirements under the spill prevention, control and countermeasures (SPCC) program almost four decades ago, the rule was never finalized. In a 2015 lawsuit alleging EPA failed to fulfill this requirement, a federal court established a rulemaking schedule. In fulfillment of that mandate, EPA announced that no new requirements were necessary under CWA § 311 given the frequency and impact of hazardous substance discharges and the extent of existing regulations. EPA made the decision after the following review:</p> <ul style="list-style-type: none"> <li>• EPA analyzed National Response Center data over a 10-year period and identified hazardous substance discharges to waterways, as well as the subset of discharges with non-transportation impacts (evacuations, injuries, hospitalizations, fatalities, waterway closures and water supply contamination). EPA also surveyed State and Tribal Emergency Response Coordinators to obtain information on hazardous substance discharges.</li> <li>• EPA identified the elements of existing regulatory programs, broken down by spill prevention (safety information, hazard review, mechanical integrity, personnel training, incident investigations, compliance audits), containment provisions (secondary containment), and mitigation (emergency response plan, coordination with state and local responders).</li> <li>• EPA reviewed existing federal programs and corresponding regulations to identify whether they include the program elements identified above.</li> </ul> <p>Based on its analysis of the frequency and impacts of reported CWA hazardous substance discharges and the existing regulatory framework, EPA decided not to implement additional regulatory requirements at this time.</p> <p>The decision can be found in the September 3, 2019 Federal Register at: <a href="http://www.govinfo.gov">www.govinfo.gov</a>.</p>	<p>The action is primarily of interest to facilities that store hazardous substances in bulk which, if released, could potentially impact surface waters. The lawsuit prompting the rulemaking was commenced in the wake of a major hazardous substance release from tanks in West Virginia that disrupted potable water supplies to over 300,000 people for nine days. The subsequent investigation revealed that the chemicals had leaked from aboveground storage tanks. Federal law (in particular, the underground storage tank and SPCC programs) does not currently regulate the storage of hazardous substances in aboveground tanks.</p> <p>Critics of EPA’s decision not to establish new hazardous substance spill prevention requirements contend, among other things, that CWA § 311 specifically requires EPA to adopt hazardous substance spill prevention regulations and that the agency cannot ignore this mandate. They also contend that EPA failed to show how the existing programs/regulations provide the statutorily mandated protections.</p>	<p>The final action takes effect October 3, 2019.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p>NEW YORK STATE  <b>Fuel Composition and Use—Waste Oil as a Fuel</b>                      6 NYCRR Subpart 225-2</p>	<p>DEC <b>proposed to replace its existing rules governing the burning of waste fuel for energy recovery with new rules</b> that update key definitions and constituent requirements, remove outdated work practices, expand the number of facilities eligible to burn waste fuel onsite, update the monitoring, reporting, and recordkeeping requirements, and make other updates/corrections. The proposed new rule, which is set forth at 6 NYCRR Subpart 225-2, includes the following provisions:</p> <ul style="list-style-type: none"> <li>• <b>Definitions.</b> DEC proposed to revise the definition of “waste oil” to clarify that it may not contain chemical waste. Consistent with this change, DEC is also dropping the distinction between Waste A and Waste B fuels. As a result of this change, facilities that burn used oil containing chemical waste and off-spec waste oils that do not meet the limitations in Subpart 225-2 will be regulated under 6 NYCRR Part 212 (process operations) or the hazardous waste regulations. DEC also is relocating the definition of residual oil to Part 200.</li> <li>• <b>Constituent limits.</b> Waste fuel must currently meet constituent limits for PCBs, total halogens, sulfur, gross heat content, and lead in order to be burned. With this rulemaking, DEC proposed to lower the limits for PCBs and lead, remove a 99% combustion efficiency requirement, and add limitations for arsenic, cadmium and chromium.</li> <li>• <b>Applicability.</b> The regulation authorizes stationary combustion installations or process sources with a heat input of 20 million Btu per hour or more to burn waste oil provided they possess the required permit/registration and meet other requirements.</li> <li>• <b>Space heaters.</b> DEC is expanding the permitting exemption for space heaters to cover “automotive maintenance/service facilities or marine service facilities” where the maximum operating heat input of the space heater is less than 500,000 Btus per hour.</li> <li>• <b>Prohibitions.</b> The proposed rule prohibits the sale/use of waste oil or blends of waste/virgin oil for residential heating. It also prohibits all burning of waste oil in New York County (i.e., Manhattan).</li> </ul> <p>DEC also proposed new recordkeeping requirements.</p> <p>The proposed rule can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/117857.html">www.dec.ny.gov/regulations/117857.html</a>.</p>	<p>The proposed rule is primarily of interest to facilities that burn waste oils in combustion, incineration and process sources, including automotive maintenance/service facilities and marine service facilities that burn their own waste oil in space heaters. The proposed changes to the rule will expand the number of facilities allowed to burn their own waste oil as fuel while shifting the regulation of facilities burning waste oil combined with chemical waste to 6 NYCRR Part 212. The proposed rule also imposes stricter limits on the allowable constituents of the waste oil proposed to be burned.</p> <p>DEC proposed revisions to 6 NYCRR Subpart 225-2 in 2016; however, this rulemaking was never finalized. Comments received on the 2016 proposal were taken into account in drafting the current proposal.</p>	<p>DEC is accepting comments on the replacement version of Subpart 225-2 until <b>November 13, 2019</b>. A public hearing on the proposed rule is scheduled for <b>November 8, 2019</b> at 11:00 a.m. at DEC Headquarters, 625 Broadway, Albany, Room 129A/B.</p>

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<p>NEW YORK STATE  <b>Stationary Combustion Installations</b>                      6 NYCRR Subpart 227-1</p>	<p>DEC proposed to <b>replace and update its existing regulations limiting particulate matter (PM) emissions from oil and solid fuel-fired stationary combustion installations.</b> The regulations—which are set forth at 6 NYCRR Subpart 227-1—impose PM emission limits and opacity standards on boilers and other stationary combustion installations. With the recent rulemaking, DEC proposed to revise the applicability criteria, lower the PM emission standards, update the testing, monitoring, and recordkeeping requirements, and eliminate outdated provisions. Key requirements include:</p> <ul style="list-style-type: none"> <li>• <b>Applicability.</b> The revised subpart will apply to existing or new stationary combustion installations that either predate or are not otherwise subject to a federal National Emissions Standard for Hazardous Air Pollutants (NESHAP) or New Source Performance Standard (NSPS) for stationary combustion installations.</li> <li>• <b>PM emission limits.</b> The following combustion installations must comply with a PM emission limit of 0.10 pound per million Btu heat input: solid fuel-fired combustion installations with a maximum heat input capacity of 1 million Btu per hour or more; and combustion installations firing oil or oil in combination with other liquid or gaseous fuels with a maximum heat input capacity of 50 million Btu per hour or more. The limit for solid fuels will take effect two years after promulgation of the regulation.</li> <li>• <b>Tuneup.</b> All units subject to Subpart 227-1 must be tuned annually.</li> <li>• <b>Opacity.</b> Consistent with the existing regulations, opacity may not exceed 20 percent (six-minute average) except for one six minute period per hour of not more than 27 percent opacity.</li> <li>• <b>Performance testing and compliance monitoring.</b> The proposed regulations impose new initial and periodic performance testing requirements on all solid fuel-fired units subject to Subpart 227-1 to assess compliance with the PM limit. In addition, consistent with the existing regulations, combustion installations with a total maximum heat input of 250 million Btu per hour or more must be equipped with continuous opacity monitors. Owners of oil-fired boilers that individually or together exceed 50 million Btu per hour heat input must keep vendor certified fuel receipts specifying the sulfur content of the fuel burned. DEC also proposed new recordkeeping requirements.</li> </ul> <p>The proposed regulations can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/117847.html">www.dec.ny.gov/regulations/117847.html</a>.</p>	<p>The updated rule is primarily of interest to owners and operators of liquid and solid fuel-fired stationary combustion installations that are not subject to PM standards established under an applicable NSPS or NESHAP. According to DEC, the sulfur-in-fuel limits adopted by the Department in 2013 at 6 NYCRR Subpart 225-1 will likely ensure that most liquid fuel-fired boilers meet the proposed PM standard (since most PM emissions from oil-fired boilers are attributable to the sulfur in the fuel). However, solid fuel-fired boilers will likely have to install controls to meet the new, stricter standards. According to DEC, approximately 180 of the 210 affected facilities contain oil-fired combustion installations and so are expected to incur minimal costs to comply with the proposed rule.</p>	<p>See schedule for waste fuel rule above.</p>

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>NEW YORK STATE Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines</b> 6 NYCRR Subpart 227-3</p>	<p>DEC has repropose strict <b>nitrogen oxide (NOx) emission limits for simple cycle and regenerative combustion turbines (SCCTs)</b> following an earlier public comment period. These so-called “peaking 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 regulation—which will be set forth at 6 NYCRR Subpart 227-3—calls 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 standards. All SCCTs must meet a NOx emission limit of 100 parts per million on a dry volume basis (ppmvd) as of May 1, 2023; the limit drops to 25 ppmvd for gaseous fuels and 42 ppmvd for distillates or other liquid fuel as of May 1, 2025. Options for complying with the limits include: installing NOx emission controls and averaging emissions with other SCCTs at the facility during the ozone season to achieve the emission limits; 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 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: <a href="http://www.dec.ny.gov/regulations/116131.html">www.dec.ny.gov/regulations/116131.html</a>.</p>	<p>The regulations will apply to SCCTs with a nameplate capacity of 15 megawatts or greater that inject power into the grid. The proposed regulations are primarily of interest to downstate utilities, many of which operate 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 revised draft regulation until <b>October 7, 2019</b>.</p> <p>In response to public comment, DEC revised the regulation to: specify that it applies to sources that inject power into the grid instead of bid into the New York Independent System Operator Wholesale Market; add a definition of “black start resource” and clarify that the provisions of Subpart 227-3 do not apply to such sources; and clarify that the emission standards apply on a weighted average basis.</p>

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<p><b>AIR</b></p> <p>NEW YORK STATE  <b>Distributed Generation Sources Located in New York City, Long Island, Westchester and Rockland Counties</b>            6 NYCRR Part 222</p>	<p>DEC proposed a new rule for distributed generation (DG) sources—stationary reciprocating or rotary internal combustion engines that feed the distribution grid or produce electricity for use at host facilities or both. EPA adopted the current distributed generation rule in 2016; however, the rule was challenged in court, and DEC ultimately agreed to propose a replacement rule. The rule, to be set forth at 6 NYCRR Part 222, will apply to owners/operators of DG sources with maximum mechanical output ratings of 200 horsepower (hp) that: (1) are classified as economic dispatch sources; (2) are located in the New York City metropolitan area; and (3) have the potential to emit less than 25 tpy of NOx (i.e., are minor facilities not regulated under 6 NYCRR Subpart 227-2). Economic dispatch sources are DG sources that provide electricity for general use to a building, structure or collection of structures in place of electricity supplied by utilities; the term does not include emergency generators. Key requirements include:</p> <ul style="list-style-type: none"> <li>• <b>Definitions.</b> The regulation includes numerous new defined terms, including demand response program, demand response source, demand response event, distribution utility, distributed generation source, economic dispatch source, and price-responsive generation source, among many others.</li> <li>• <b>Notification.</b> Owners/operators of DG sources must obtain a registration/permit prior to operating as an economic dispatch source. If already covered by a registration or permit, the owner/operator must notify DEC in writing by March 15, 2020 whether the source will operate as an economic dispatch source.</li> <li>• <b>Control requirements.</b> Effective May 1, 2020, owners/operators of economic dispatch sources must comply with the following requirements: combustion turbines firing natural gas or oil, compression ignition engines or lean-burn engines must be of model year 2000 or newer or have a NOx emission rate of no more than 2.96 pounds per megawatt-hour as certified in writing by a professional engineer; rich burn engines must be equipped with three-way catalyst emission controls. Effective May 1, 2025, owners/operators of economic dispatch sources must comply with stricter category-specific NOx emission limits. Compliance with these limits must be demonstrated via emission testing in accordance with the regulations. DEC also proposed new recordkeeping requirements.</li> </ul> <p>The proposed regulation can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/117975.html">www.dec.ny.gov/regulations/117975.html</a>.</p>	<p>The rule is primarily of interest to owners/operators of DG sources in the New York City metropolitan area that are not located at major NOx sources (and thus are not regulated under 6 NYCRR Part 227-2) and meet the specified size criteria (200 hp). Economic dispatch sources that meet these criteria are subject to the emission limits, testing and other requirements of the proposed rule. DEC estimates that there are more than 160 facilities enrolled in demand responses programs that may be subject to the new rule. Participants include industrial, commercial and institutional facilities. According to DEC, the emission standards are necessary to help the downstate area meet the 2008 ozone NAAQS. Economic dispatch sources that participate in demand response programs typically are called upon to operate on high electricity demand days in the summer when ozone levels are typically highest, making the imposition of emission limits necessary.</p>	<p>DEC is accepting comments on the distributed generation regulation until <b>November 25, 2019</b>. A public hearing on the proposed rule is scheduled for <b>November 12, 2019</b> at 11:00 a.m. at DEC Headquarters, 625 Broadway, Albany, Room 129A/B. An additional public hearing will be held at the New York State Department of Transportation’s offices in Long Island City on November 20, 2019.</p>

Citation	Summary	Implications	Schedule/Notes
<b>CHEMICAL</b>			
<p>FEDERAL  <b>Identification of High and Low Priority Substances under TSCA for Purposes of Risk Evaluation</b>            84 Fed. Reg. 41712 (Aug. 15, 2019) (low priority substances); 84 Fed. Reg. 44300 (Aug. 23, 2019) (high priority substances)</p>	<p>EPA is seeking comment on its <b>lists of chemicals proposed to be designated as either high or low priority candidates for risk assessment</b> under the 2016 revisions to the Toxic Substances Control Act (TSCA). While the original TSCA statute focused on assessing chemicals before they entered the marketplace, the 2016 reforms require EPA to systematically prioritize and assess existing chemicals. In July 2017, EPA adopted regulations establishing a basic process and schedule for conducting the review. EPA followed up the regulations with a guidance document—entitled <i>A Working Approach for Identifying Potential Candidate Chemicals for Prioritization</i>—that explained how EPA will fulfill its obligation to identify the 20 high priority chemical substances required to undergo risk evaluation. EPA then published a notice identifying the first 40 chemical substances as candidates for designation as high or low priority substances for risk evaluation. With the recent notices, EPA formally proposed to designate 20 chemical substances as high priority and 20 chemical substances as low priority. The notices summarize the approach used by EPA to support the proposed designations and provide instructions for accessing the chemical-specific information underlying the proposed designation for each chemical. The chemicals were screened based on various criteria, including their hazard and exposure potential, persistence and bioaccumulation, potentially exposed or susceptible subpopulations, storage near significant sources of drinking water, conditions of use, and volume of substance manufactured or processed. The list of 20 high priority substances includes phthalate esters, chlorinated solvents, halogenated flame retardants and other chemicals, including formaldehyde. The 20 low priority candidate chemicals were selected from EPA and international safe chemical lists, and include chemicals that have been evaluated and determined to meet EPA’s safer choice criteria. In conjunction with publication of the list of low priority chemical substances, EPA published a document entitled <i>Approach Document for Screening Hazard Information for Low-Priority Substances Under TSCA</i>, which outlines EPA’s approach for identifying, screening, evaluating, and integrating the relevant reasonably available health and environmental hazard and fate information to support low-priority substance designations as well as general literature search strategies, inclusion/exclusion criteria, and the criteria for assessing the quality of information.</p> <p>The notices announcing the low and high priority substance lists can be found in the August 15, 2019 and August 23, 2019 Federal Register, respectively, at: <a href="http://www.govinfo.gov">www.govinfo.gov</a>.</p>	<p>The notices are potentially of interest to companies that manufacture, import, process, distribute, use or dispose of the particular chemicals identified as high and low priorities. Under the amended TSCA statute, after classifying a substance as “high priority,” EPA has approximately one year to decide whether to conduct a risk evaluation and three years to complete the evaluation and decide whether the chemical presents an unreasonable risk to humans and/or the environment. If EPA determines that a particular substance poses an unreasonable risk, it must mitigate that risk within two years. Designation of a chemical as low priority means further risk evaluation is not warranted at this time.</p>	<p>EPA is accepting comments on its proposed list of low and high-priority substances until <b>November 13, 2019</b> and <b>November 21, 2019</b>, respectively.</p>

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<b>WATER</b>			
<p>FEDERAL  <b>Updating Regulations on Water Quality Certification</b>                      40 CFR Part 121                      84 Fed. Reg. 44080 (Aug. 22, 2019)</p>	<p>EPA proposed to update and clarify its existing <b>requirements and procedures relating to state/tribal water quality certifications (WQC)</b>. Under CWA § 401, a federal agency may not issue a permit or license to conduct any activity that may result in a discharge to waters of the United States unless the state or tribe where the discharge originates either certifies that the discharge complies with water quality requirements or waives the certification requirement. The applicable WQC regulations—set forth at 40 CFR Part 121—have not been updated in decades. According to EPA, the proposed revisions are intended to “increase the predictability and timeliness of section 401 certification by clarifying timeframes for certification, the scope of certification review and conditions, and related certification requirements and procedures.” Key changes include:</p> <ul style="list-style-type: none"> <li>• <b>Statutory and regulatory timelines for review and action on Section 401 certifications.</b> Under the CWA, states/tribes must issue WQCs within a reasonable time not exceeding one year, although certain agencies have adopted shorter deadlines. The rulemaking clarifies that the time begins to run upon receipt of a certification request and not upon a determination that the application is “complete.” If the agency fails to act by the deadline, the WQC requirement is waived. There is no tolling provision authorizing agencies to stop the clock.</li> <li>• <b>Scope of information required for certification request.</b> The regulations specify that certification requests must be in writing and must include specific information relating to the permit/approval sought and nature of the discharge.</li> <li>• <b>Appropriate scope of Section 401 review and conditions.</b> EPA emphasized that the scope of WQC review is limited to considerations of water quality. In particular, the certifying authority’s review extends only to assessing whether potential discharges from a point source to a water of the United States will comply with water quality requirements.</li> <li>• <b>Certification actions.</b> The regulations identify four potential actions in response to a certification request—grant, grant with conditions, denial or waiver. If the certification is denied, the agency must explain why the proposed project will not comply with water quality requirements and identify the data/project changes needed to comply. If the certification is imposed with conditions, the certifying state must explain why the condition is necessary to ensure that the discharge complies with water quality requirements, cite to the applicable law, and specify whether a less stringent condition could satisfy applicable water quality requirements. EPA may reject a decision to deny a WQC or impose conditions if it concludes that the agency has exceeded its authority or failed adequately to explain its decision.</li> </ul> <p>The proposed regulation can be found in the August 22, 2019 Federal Register at: <a href="http://www.govinfo.gov">www.govinfo.gov</a>.</p>	<p>The revised regulations are potentially of interest to anyone required to obtain a U.S. Army Corps of Engineers permit, Federal Energy Regulatory Commission license or any other federal approval for an activity that involves discharge to waters of the United States. In recent years, New York and other states have stopped controversial projects, such as natural gas pipelines, by denying them the required WQCs. The regulations will limit state/tribal authority under the WQC program by confining state/tribal review under Section 401 to whether point source discharges from a federally approved project comply with applicable CWA standards rather than allowing consideration of the water quality or other impacts from the project as a whole. EPA issued a guidance document in June 2019 implementing many of the measures set forth in the proposed regulations.</p>	<p>EPA is accepting comments on the proposed regulations until <b>October 21, 2019</b>.</p>



**Other Recent Developments (Final)****AIR**

**FEDERAL: EPA finalized actions for 11 areas classified as moderate nonattainment under the 2008 ozone NAAQS.** These areas were required to achieve attainment under the 2008 standard of 0.075 ppm by July 20, 2018 or be reclassified upward. Based on ambient air quality data for ozone collected from 2015-2017, EPA: reclassified two moderate ozone nonattainment areas as attainment; granted a one-year extension to two other moderate ozone nonattainment areas; and reclassified the remaining seven nonattainment areas as serious, setting a new attainment deadline of July 20, 2021. Of particular note, EPA found that the New York City metropolitan area had failed to attain the 2008 NAAQS by the moderate nonattainment deadline. As a result of that finding, EPA reclassified the area as serious nonattainment, meaning DEC must submit a revised state implementation plan (SIP) to EPA within one year of publication of the final reclassification notice. The rule—which takes effect September 23, 2019—can be found in the August, 23, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

**Implications:** The proposed rule is directly of interest to DEC, which is required to submit a revised SIP. The rule is indirectly relevant to affected sources of ozone precursors (volatile organic compounds and NOx) in the New York City moderate ozone nonattainment area, which includes New York City, Long Island and Rockland and Westchester counties.

**FEDERAL: EPA amended the 2016 emission guidelines and compliance times (EG) for municipal solid waste (MSW) landfills** to reflect recent proposed changes to the rules governing implementation of EGs generally under the Clean Air Act's (CAA) § 111 new source performance standards (NSPS) program. Under CAA § 111(d), when EPA adopts a NSPS for new, reconstructed or modified sources in a particular source category that regulates both criteria and non-criteria air pollutants it must also adopt EGs governing existing sources in the same source category. States must then adopt plans explaining how they will implement the EGs; if no plan is adopted within specified time frames, EPA will adopt and implement a federal plan. The existing regulations implementing the EG program—set forth at 40 CFR Part 60, subpart B—were adopted many years ago and contain comparatively short time frames for review and approval of the necessary state/federal plans. As part of its Affordable Clean Energy (ACE) rule, EPA made major changes to these rules that significantly extend plan review and approval periods. With the recent rulemaking, EPA amended the 2016 EGs for MSW landfills to harmonize with the changes under the ACE rule. The rule took effect September 6, 2019 and can be found in the August 26, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

**Implications:** The rule is potentially of interest to owners/operators of landfills regulated under the 2016 MSW EGs.

**NEW YORK STATE: DEC incorporated new federal guidelines for existing municipal solid waste (MSW) landfills into the State's existing regulations.** The guidelines, set forth at 40 CFR Part 60, subpart Cf, reduce landfill gas (LFG) emissions from existing MSW landfills to address methane and other greenhouse gases. Consistent with the prior rules, landfills are subject to the guidelines if they have a design capacity of 2.5 million metric tons and 2.5 million cubic meters of waste. However, EPA revised the emission threshold

that triggers the requirement to comply. Under the new guidelines, active landfills that meet the applicability thresholds must install LFG collection and control systems if annual nonmethane organic compound (NMOC) emissions are 34 metric tons or more (down from 50 metric tons under the prior rule). Landfills have 30 months to install any required controls. No controls are necessary if the landfill can demonstrate, based on surface emissions monitoring, that emissions of NMOC are below 500 ppm for four consecutive quarters. With the recent rulemaking, DEC repealed its existing LFG regulation, set forth at 6 NYCRR Part 208, and replaced it with a new rule that incorporates the federal emission guidelines by reference. The final rule can be found at: [www.dec.ny.gov/regulations/116338.html](http://www.dec.ny.gov/regulations/116338.html).

**Implications:** The rule is primarily of interest to owners and operators of existing MSW landfills that have accepted waste after November 8, 1987 and began construction, reconstruction or modification before July 17, 2014. Landfills that began construction, reconstruction or modification after that date are subject to the NSPS for MSW landfills found at 40 CFR Part 60, subpart XXX, which is similar to the emission guidelines for existing landfills in most key respects.

## CHEMICAL

FEDERAL: EPA revised its **formaldehyde emission standards for composite wood products** to address technical issues and better align the standards with an existing California program. In late 2016, EPA adopted a rule under TSCA implementing the 2010 Formaldehyde Standards for Composite Wood Products Act, which regulates formaldehyde emissions from hardwood plywood, particleboard, and medium-density fiberboard (collectively, composite wood products). The rule establishes formaldehyde emission standards, together with emission testing and quality assurance/quality control requirements and product certification by an EPA-accredited third party. Thereafter, EPA adopted various changes to the rule, including extending certain compliance deadlines. With the recent rulemaking, EPA revised various testing and certification provisions of the rule to address stakeholder concerns and better align the federal standard with its California counterpart. Key changes include: eliminating the annual requirement to demonstrate a correlation between certain testing methods; allowing averaging of emission test results during quarterly and non-complying lot testing; revising the provisions for third party certifiers to demonstrate equivalence; amending the testing requirements for no-added formaldehyde and ultra-low emitting formaldehyde products; updating the list of voluntary consensus standards; and clarifying the rules governing non-complying lots (i.e., products that have been found to be non-compliant after they have been distributed and fabricated into finished goods). The final rule took effect on August 21, 2019 and can be found in the Federal Register issued on that date at: [www.govinfo.gov](http://www.govinfo.gov).

**Implications:** The revisions are of interest to composite wood product manufacturers and importers and companies that produce the formaldehyde-based chemicals used in the manufacture of such products. The revisions also are potentially of interest to industries that use composite wood, such as manufacturers of manufactured and prefabricated homes, recreational vehicles, and furniture.

## Other Recent Developments (Proposed)

### AIR

FEDERAL: EPA proposed **the results of its residual risk/periodic technology review of the NESHAP for integrated iron and steel manufacturing facilities**. The iron and steel NESHAP, set forth at 40 CFR Part 63, subpart FFFFF, regulates HAP emissions from major sources that produce steel from iron ore pellets, coke, metal scrap or other raw materials using furnaces or other processes. 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. However, EPA is specifically seeking comment on whether to incorporate work practices for certain unmeasured fugitive and intermittent particulate sources and whether opacity standards should be established for certain other sources. With respect to the technology review, EPA 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. Again, however, EPA is seeking comment on whether to require implementation of certain work practices. EPA also proposed emission standards for mercury based on limiting the amount of mercury in the metal scrap used by these facilities. In addition, EPA proposed to revise the provisions relating to startup, shutdown and malfunction (SSM) consistent with judicial rulings and require electronic submission of required performance test results and other reports. EPA is accepting comments on the proposed rule until **September 30, 2019**; it can be found in the August 16, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

Implications: EPA estimates that there are currently 10 operating facilities and one idle facility in the source category.

FEDERAL: EPA proposed **the results of its residual risk/periodic technology review of the NESHAP for the site remediation source category**. The site remediation NESHAP, set forth at 40 CFR Part 63, subpart GGGGG, regulates HAP emissions from active remediation operations at sites that are major HAP sources and have affected facilities that are subject to another maximum achievable control technology (MACT) standard under the NESHAP program. Affected sources covered by the NESHAP include process vents (for in-situ and ex-situ remediation processes), material management units (tanks, surface impoundments, containers etc.), and equipment leaks. 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. With respect to the technology review, EPA proposed to amend the requirements for leak detection and repair (LDAR) to impose stricter valve and pump leak thresholds found in 40 CFR Part 63, subpart UU (equipment leaks—control level II). In addition, EPA proposed to revise the SSM provisions to add requirements addressing pressure relief devices and make other changes consistent with judicial rulings requiring compliance with emission limits during SSM. EPA also proposed to require electronic submission of required performance test results and other reports as well as other minor changes/additions. EPA is accepting comments on the proposed rule until **October 18, 2019**; it can be found in the September 3, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

Implications: The proposed rule is primarily of interest to major HAPs sources that are subject to one or more NESHAPs and are currently undergoing site remediation activities.

FEDERAL: EPA proposed **the results of its residual risk/periodic technology review of the NESHAP for the miscellaneous coating manufacturing (MCM) source category**. The MCM NESHAP, set forth at 40 CFR Part 63, subpart HHHHH, regulates HAP emissions from major HAP sources with equipment used to manufacture coatings and covers both manufacturing and cleaning operations. Regulated equipment includes process vessels, storage tanks, equipment leak components (pumps, compressors agitators, etc.), wastewater treatment tanks, heat exchangers, and transfer racks. 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. With respect to the technology review, EPA 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. However, EPA proposed to revise the SSM provisions addressing vent control bypasses and make other changes consistent with judicial rulings requiring compliance with emission limits during SSM. EPA also proposed to require electronic submission of required performance test results and other reports as well as other minor changes/additions. EPA is accepting comments on the proposed rule until **October 21, 2019**; it can be found in the September 4, 2019 Federal Register at: [www.govinfo.gov](http://www.govinfo.gov).

Implications: The proposed is primarily of interest to major HAP sources subject to the MCM NESHAP.

NEW YORK STATE: DEC proposed to **prohibit the sale of federal aftermarket catalytic converters (AMCC)** and update existing AMCC recordkeeping and reporting requirements for automobiles, light-duty trucks and medium-duty passenger vehicles. New York State traditionally has implemented the stricter California vehicle emission standards in place of the federal requirements. With the recent rulemaking, DEC is proposing to revise 6 NYCRR Subpart 218-7 to incorporate revisions to the standards for new California certified AMCCs. The regulation will prohibit the sale of federal certified AMCCs for use on any vehicle in New York; legal replacement options will be limited to California AMCCs or original equipment manufacturer parts unless a waiver is granted by DEC. The prohibition will take effect January 1, 2021. In addition, the proposed rule requires AMCC installers to verify that the equipment complies with the applicable standards and maintain certain records. AMCC manufacturers, distributors and retailers also must comply with recordkeeping requirements and, in the case of manufacturers, reporting requirements. DEC is accepting comments on the proposed changes until **November 13, 2019**. A public hearing on the proposal is scheduled for **November 8, 2019** at 11:00 a.m. at DEC Headquarters, 625 Broadway, Albany, Room 129A/B. The proposed rule can be found on DEC's website at: [www.dec.ny.gov/regulations/117852.html](http://www.dec.ny.gov/regulations/117852.html).

Implications: The proposed rule is potentially of interest to owners of automobiles, light-duty trucks and medium-duty passenger vehicles regulated under 6 NYCRR Part 218, as well as AMCC manufacturers, installers and retailers.

## OCCUPATIONAL SAFETY AND HEALTH

**FEDERAL:** The Occupational Safety and Health Administration (OSHA) is requesting **information on the effectiveness of engineering, work practice, tasks and equipment that are not currently included on the list of approved methods** contained in Table 1 of the respirable crystalline silica (RCS) standard for construction. RCS is produced when workers cut, grind, crush or drill silica-containing materials such as concrete, masonry, tile or rock. In 2016, OSHA established a new permissible exposure limit (PEL) of 50 micrograms of RCS per cubic meter of air ( $\mu\text{g}/\text{m}^3$ ) for both construction and general industry/maritime. With respect to the construction standard, employers have the option of implementing presumptive standards for specific types of equipment or developing a tailored program that measures silica levels in the air, protects worker exposure above the PEL, and provides respirators when dust will exceed the PEL. With respect to the first option, the presumptive standards are contained in Table 1 of the rule, which includes control methods for equipment or tasks that satisfy the RCS standard. With the recent request for information, OSHA is seeking feedback on additional exposure control measures for equipment or tasks already listed on Table 1 as well as for possible additional equipment or tasks that could be added to the list. OSHA also is seeking feedback on whether there are circumstances (in addition to those already in the rule) where the construction standards can be applied to similar activities under the general industry rule. OSHA is accepting responses to its request for information until **October 15, 2019**; it can be found in the August 15, 2019 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The request for information is potentially of interest to business subject to the construction or general industry RCS standard.

### Upcoming Deadlines

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

**September 12, 2019:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the municipal solid waste landfill NESHAP. See the July 29, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**September 16, 2019:** Public hearing on proposed amendments to DEC's ambient air quality standards and RACT requirements for stationary combustion installations at major NO<sub>x</sub> sources to be held at 11:00 a.m. at DEC Headquarters, 625 Broadway, Room 129, Albany.

**September 23, 2019:** Deadline for submitting comments on DEC's proposed amendments to the State's ambient air quality standards and RACT requirements for stationary combustion installations at major NO<sub>x</sub> sources. See DEC's website at [www.dec.ny.gov/regulations/117415.html](http://www.dec.ny.gov/regulations/117415.html) and [www.dec.ny.gov/regulations/117420.html](http://www.dec.ny.gov/regulations/117420.html) for details.

**September 24, 2019:** Deadline for submitting comments on EPA's proposed rule addressing the reclassification of major sources as area sources under the NESHAP program. See the July 26, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**September 27, 2019:** Deadline for submitting comments on EPA's decision not to impose financial responsibility requirements on the electric power generation, transmission and distribution industry under CERCLA § 108(b). See the July 29, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**September 27, 2019:** Deadline for submitting comments on EPA's proposed standards for certain PBT chemicals under TSCA. See the July 29, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) 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.

**September 30, 2019:** Deadline for submitting comments on EPA's proposed revisions to the rules governing the manufacture and consumption of certain HCFCs and other ozone-depleting substances. See the August 14, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**September 30, 2019:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the integrated iron and steel manufacturing facilities NESHAP. See the August 16, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 7, 2019:** Deadline for submitting comments on DEC's revised draft regulations establishing NOx emission standards and compliance requirements for simple cycle and regenerative combustion turbines. See DEC's website at [www.dec.ny.gov/regulations/116131.html](http://www.dec.ny.gov/regulations/116131.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.

**October 8, 2019:** Deadline for submitting comments on EPA's proposed revisions to the rules governing NSR applicability. See the August 9, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 15, 2019:** Deadline for submitting comments on the PHMSA's proposed revisions to the hazardous material transportation rule in response to various petitions for rulemaking. See the August 14, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 15, 2019:** Deadline for submitting comments on EPA's proposed revisions to the rules governing management of coal combustion residuals. See the August 14, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 15, 2019:** Deadline for responding to OSHA's request for information on the effectiveness of engineering, work practice, tasks and equipment that are not currently included on the list of approved methods for addressing respirable crystalline silica under OSHA's construction standard. See the August 15, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 18, 2019:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the site remediation source category NESHAP. See the September 3, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 21, 2019:** Deadline for submitting comments on EPA's proposed revisions to the rules governing issuance of water quality certifications. See the August 22, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**October 21, 2019:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the miscellaneous coating manufacturing NESHAP. See the September 4, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**November 8, 2019:** Public hearing on the following DEC regulations to be held at 11:00 a.m. at DEC Headquarters, 625 Broadway, Room 129, Albany: 6 NYCRR Subpart 218-7 (Emission Standards for Motor Vehicles and Motor Vehicle Engines relating to aftermarket catalytic converters); 6 NYCRR Subpart 225-2 (Fuel Composition and Use—Waste Oil as a Fuel); 6 NYCRR Subpart 227-1 (Stationary Combustion Installations).

**November 12, 2019:** Public hearing on proposed rule addressing emissions from distributed generation sources to be held at 11:00 a.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. An additional public hearing will be held on November 20, 2019 at DOT's offices in Long Island City.

**November 13, 2019:** Deadline for submitting comments on EPA's list of low-priority chemicals for purposes of risk evaluation under TSCA. See the August 15, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**November 13, 2019:** Deadline for submitting comments on DEC's proposed revisions to the following regulations: 6 NYCRR Subpart 218-7 (Emission Standards for Motor Vehicles and Motor Vehicle Engines relating to aftermarket catalytic converters); 6 NYCRR Subpart 225-2 (Fuel Composition and Use—Waste Oil as a Fuel); 6 NYCRR Subpart 227-1 (Stationary Combustion Installations). See DEC's website at [www.dec.ny.gov/regulations/propregulations.html](http://www.dec.ny.gov/regulations/propregulations.html) for details.

**November 21, 2019:** Deadline for submitting comments on EPA's list of high-priority substances for purposes of risk evaluation under TSCA. See the August 23, 2019 Federal Register at [www.govinfo.gov](http://www.govinfo.gov) for details.

**November 25, 2019:** Deadline for submitting comments on DEC's proposed rule addressing emissions from distributed generation sources. See DEC's website at [www.dec.ny.gov/regulations/117975.html](http://www.dec.ny.gov/regulations/117975.html) for details.