

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

October 18, 2019

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>FEDERAL The Safer Affordable Fuel-Efficient (SAFE) Vehicle Rule Part One: One National Program 40 CFR Parts 85 and 86; 49 CFR Parts 531 and 533 84 Fed. Reg. 51310 (Sept. 27, 2019)</p>	<p>EPA and the National Highway Traffic Safety Administration (NHTSA) adopted a rule clarifying the scope of federal preemption of state motor vehicle greenhouse gas (GHG) emission standards and announcing the withdrawal of a waiver granted to California allowing it to implement stricter state standards. In 2012, EPA and the NHTSA adopted GHG and corporate average fuel economy (CAFÉ) standards applicable to light-duty vehicles that imposed increasingly stringent emission standards covering model years 2017-2025. After reviewing the standards, EPA proposed the SAFE rule in 2018, under which the CAFÉ and GHG emission standards would increase through model year 2020 and remain fixed from 2021 on. As part of the proposal, the agencies considered various issues relating to federal preemption of state standards under both the Energy Policy and Conservation Act (EPCA)—which addresses fuel economy—and the Clean Air Act (CAA). With the recent rulemaking, EPA announced the following clarifications:</p> <ul style="list-style-type: none"> • The EPCA preempts state and local governments from adopting standards relating to fuel economy. Because carbon dioxide (CO₂) emissions are an inevitable byproduct of operating motor vehicles, state and local laws limiting tailpipe CO₂ emissions from vehicles have the direct and substantial effect of regulating fuel consumption and thus are “related to” fuel economy standards. Accordingly, state and local regulations limiting GHG emissions—such as California’s motor vehicle GHG emission standards—are preempted by the EPCA. • Although the CAA generally prohibits states from adopting their own motor vehicle emission standards, EPA may grant a waiver to California provided certain criteria are met. As part of the recent rule, EPA confirmed that a CAA waiver does not waive EPCA preemption. EPA also declared that state and local laws limiting or prohibiting CO₂ emissions conflict with the objectives of the EPCA and are therefore impliedly preempted. The preemption covers both CO₂ emission standards and zero emission vehicle (ZEV) mandates, i.e., laws requiring that a certain number or percentage of vehicles meet ZEV requirements. • Based on these and other arguments, EPA specifically withdrew its January 2013 waiver authorizing California’s GHG and ZEV programs. <p>The final rule can be found in the September 27, 2019 Federal Register at: www.govinfo.gov.</p>	<p>The rule is of interest to manufacturers of passenger cars and light-duty trucks and potential purchasers of those vehicles. The clarifications and withdrawal of the previous waiver will effectively bar California from implementing GHG emission standards that are stricter than their federal counterparts since CO₂ emission reductions are generally achieved by improving fuel efficiency and are therefore preempted by the EPCA. States can, however, continue to mandate GHG emission reductions that are unrelated to CO₂/fuel efficiency, such as requiring improvements to vehicle air conditioning.</p> <p>California previously announced its desire to retain its existing, stricter GHG emission standards and has already filed a lawsuit challenging the EPA rulemaking. New York and other states that have adopted the California standards have joined that challenge.</p>	<p>The rule will take effect November 26, 2019. EPA plans to adopt a second rule finalizing new CO₂ emission standards for motor vehicles in the near future.</p>

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CLIMATE CHANGE			
<p>NEW YORK STATE Climate Leadership and Community Protection Act A.8429/S.6599 NY ECL Art. 75, Climate Change</p>	<p>Governor Andrew Cuomo signed the Climate Leadership and Community Protection Act, a law that has the potential to affect virtually every aspect of New York’s economy. The law requires reductions in statewide GHG emissions to 60% of 1990 levels by 2030 and 15% of 1990 levels by 2050. Key components include:</p> <ul style="list-style-type: none"> • Climate Action Council. The Act calls for establishing a Climate Action Council, which will be responsible for preparing a scoping plan containing recommendations on regulations and other state measures to achieve necessary GHG reductions. At minimum, the plan must consider 12 general categories of measures (performance standards for all types of GHG emitters, land use and transportation planning measures, carbon sequestration, renewable energy goals for solar energy, energy storage and offshore wind, and transportation electrification, among other measures). • Implementing regulations. By the law’s fourth anniversary, DEC must adopt regulations to ensure compliance with the statewide emission reduction limits and assist other state agencies in developing their own regulations, as necessary. The regulations may include offset projects—alternative measures for achieving up to 15% of statewide GHG emission reductions. However, offsets are available to sources only if they can show that compliance with applicable GHG emission limits is not technologically feasible and that the offset project is located in the same county and within 25 miles of the regulated source to the extent practicable. • Renewable energy program. The Public Service Commission must establish a statewide renewable energy program by 2021 that requires 70% of electricity to be generated from renewable sources by 2030 and 100% by 2040. • GHG inventory. DEC must prepare an annual inventory of GHG emissions expressed in tons of carbon dioxide equivalent. The inventory must include GHG emissions generated within the state from manmade sources as well as those from outside the state associated with the generation of electricity imported into the state or the extraction and transmission of fossil fuels imported into the state. • Disadvantaged communities. The law includes various provisions targeted at protecting disadvantaged communities, including a mandate that state agencies may not disproportionately burden such communities when considering permitting, licensing and other decisions. <p>The law can be found on the Assembly website at: https://nyassembly.gov.</p>	<p>The law, if fully implemented, will affect every aspect of New York’s economy. Although it includes specific provisions targeted at electricity generation, the scoping plan is expected to include measures encompassing transportation, industry, land use and other areas. If fully implemented, the regulations adopted by DEC could affect not only businesses but individuals, influencing the cars people drive and the way they heat their homes. The key question is whether the State has the political will to adopt regulations that limit personal behavior and/or impose significant costs on individuals and businesses in the State, particularly in the absence of similar laws in other, competing states.</p>	<p>The key provisions of the law took effect upon signature. The Climate Action Council is required to issue its Scoping Plan within two years of the effective date, while DEC is required to issue the implementing regulations four years after the effective date.</p> <p>Although the focus of the law is on climate change, the law also includes provisions targeted at other pollutants in disadvantaged communities. In particular, the law requires DEC to develop a program to monitor air quality in disadvantaged communities with potentially high exposure burdens for toxic and criteria contaminants, together with a strategy to reduce these emissions, including development of community-specific emission reduction programs.</p>

Citation	Summary	Implications	Schedule/Notes
GENERAL			
<p>FEDERAL Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents; Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication</p>	<p>President Donald Trump issued a pair of executive orders intended to limit regulators’ use of informal guidance in both the administrative and enforcement context with the goal of preventing federal regulators from enforcing policies that have not been sufficiently vetted. The first order—entitled <i>Executive Order on Promoting the Rule of Law Through Improved Agency Guidance Documents</i>—establishes new procedures for issuing agency guidance. Among other things, the order requires each agency to: (1) maintain on its website a single, searchable, indexed database that contains or links to all guidance documents currently in effect; (2) review its guidance documents and rescind those it determines should no longer be in effect; (3) prepare a report explaining why any existing guidance documents should be maintained; and (4) amend existing regulations or adopt new ones establishing procedures for issuing guidance documents in accordance with criteria spelled out in the executive order, with special rules for guidance classified as “significant,” including requiring a minimum 30-day public notice and comment period. Significant guidance includes, among other things, guidance that raises “novel legal or policy issues arising out of legal mandates,” an extremely expansive concept.</p> <p>The second order—entitled <i>Executive Order on Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication</i>—focuses on the agency’s use of guidance in an enforcement context. Among other things, the order declares that agencies cannot use guidance documents to impose new standards of conduct unless expressly authorized by law or incorporated into a contract. Also, guidance relied on to assert a new or expanded claim of jurisdiction may be cited as a basis for an enforcement action only if it was made available to the public in advance through publication or via a single, searchable, indexed database (see above). With certain exceptions, the agency must afford individuals an opportunity to be heard before issuing a notice of noncompliance or other similar notice. Also, each agency must publish a rule or procedure governing administrative inspections. The order also contains provisions relating to information collection, cooperative information sharing and enforcement, and compliance with the Small Business Regulatory Enforcement Fairness Act (SBREFA).</p> <p>The orders can be found at: www.whitehouse.gov/presidential-actions.</p>	<p>The orders impact all aspects of environmental compliance and enforcement and thus are of broad interest to the regulated community. Although industry has long complained about EPA’s reliance on guidance in both the compliance and enforcement context, the more formalized approach to issuing guidance contemplated by the orders will make it difficult for the agency to provide informal advice on compliance issues. Moreover, the increased reliance on formal public notice and comment procedures will likely result in additional litigation since guidance issued following the new procedures will likely be considered a “final agency action” that can be challenged in court.</p>	

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>NEW YORK STATE Incinerator Standards, including Requirements for Crematories and Nitrogen Oxide (NOx) Standards for Municipal Solid Waste (MSW) Incinerators 6 NYCRR Part 219</p>	<p>DEC proposed revisions to its incinerator standards, including updating its standards for crematories and adding a new subpart to limit NOx emissions from MSW combustion units. With respect to crematories, DEC is proposing to repeal and replace 6 NYCRR Subpart 219-4, Incinerators, Crematories, while sunsetting Subparts 219-5 and 219-6, a change that will require existing units regulated under these subparts to comply with more stringent standards. Key changes include:</p> <ul style="list-style-type: none"> • Emission and temperature limits. New crematories will be required to meet a particulate matter (PM) emission limit of 0.05 grains per dry standard cubic foot of exhaust gas (gr/dscf) while existing units must meet a limit of 0.08 gr/dscf, which is lower than the current PM limit. DEC also proposed to eliminate the temperature limits in the first chamber of the crematorium and lower the limit in the second chamber from 1800° F to 1600° F after concluding that the first chamber cannot safely be loaded under the current rule and that the current limit in the second chamber results in excess PM emissions. • Prohibited materials. The draft rule limits materials that can be burned in a crematorium to human/animal remains, the container, and small amounts of animal bedding. Because state law prohibits operators from opening the container holding the remains, the draft rule requires the funeral director or other authorized person to certify that there are no prohibited materials present with the remains. • Performance testing. Crematory operators can demonstrate compliance with the PM emission limit by conducting their own performance test or providing representative stack test results of identical units from the manufacturer. • Ambient air analysis. DEC proposed to eliminate a requirement that all crematories provide an ambient air impact analysis. Instead, such analyses are required only if requested by DEC. • Operator training. All crematory operators must be trained and certified. • Recordkeeping. The proposed rule contains detailed recordkeeping requirements. As part of the same rulemaking, DEC is proposing a new Subpart 219-10, which imposes 24-hour and annual NOx emission limits for MSW incinerators that differ based on the type of incinerator, as well as performance testing, continuous emission monitoring and other requirements. As part of the rulemaking, DEC also proposed revisions to certain definitions in 6 NYCRR Part 200. <p>The proposed rule can be found on DEC’s website at: www.dec.ny.gov/regulations/118193.html.</p>	<p>The proposed revisions will primarily affect owners and operators of crematories and MSW incinerators. With respect to crematories, DEC conducted emission tests of crematories manufactured by several different companies and concluded that they are capable of meeting more stringent PM emissions limits than currently required by subpart 219-4. DEC also concluded that most existing crematories were reaching the end of their useful lives and that requiring stricter limits would not pose a financial burden since the units would need to be replaced regardless. Existing facilities have five years from the date of adoption to meet the new emission limits.</p> <p>Existing MSW incinerators are expected to incur costs to comply with the new NOx emission limits. Existing facilities that cannot meet the limits can seek a facility-specific reasonably available control technology (RACT) determination.</p>	<p>DEC is accepting comments on the proposed regulations until December 11, 2019. A public hearing on the proposed rule is scheduled for December 6, 2019 at 11:00 a.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. Additional public hearings are scheduled in Hauppauge and Avon.</p>

Citation	Summary	Implications	Schedule/Notes
AIR/CLIMATE CHANGE			
<p>FEDERAL Emission Standards for New, Reconstructed and Modified Sources in the Oil and Natural Gas Sector 40 CFR Part 60, subpart OOOO and OOOOa 84 Fed. Reg. 50244 (Sept. 24, 2019)</p>	<p>EPA proposed to revise the New Source Performance Standard (NSPS) for sources in the oil and gas sector following reconsideration of its 2012 and 2016 amendments to the rule. In 2012, EPA amended the existing oil and natural gas NSPS to update the emission limits for sulfur dioxide and volatile organic compounds (VOCs) and expand the rule to cover sources not subject to the existing regulations. In 2016, EPA further expanded the list of covered sources and adopted new standards addressing emissions of GHGs (specifically methane). These rulemakings were targeted for review by the Trump administration to determine whether they “unduly burden the development of domestic energy resources beyond the degree necessary to protect the public interest.” With the recent notice, EPA proposed the following changes/alternatives:</p> <ul style="list-style-type: none"> • EPA proposed to rescind the provisions of the 2012 and 2016 rules extending the NSPS to transmission and storage. Upon reconsideration, EPA concluded that transmission and storage constitutes a separate source category from production and processing. According to EPA, it never made a specific finding that emissions from the transmission/storage segment make a significant contribution to air pollution; as a result, EPA lacked authority to extend the rule to cover these activities, and the standards must therefore be rescinded. • As a second step, EPA proposed to rescind the methane requirements of the NSPS applicable in the production and processing segments after concluding that they are entirely redundant with the existing NSPS for VOCs and therefore unnecessary. As an alternative, EPA is considering rescinding the methane requirements for all sources in the oil and natural gas source category without undoing the 2012 rule expanding the source category to include sources in the transmission/storage segment. • More generally, EPA is taking comment on its approach to determining when standards must be adopted for a particular pollutant. Under CAA § 111(b)(1)(A), EPA must make a finding that a source category “causes or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare” when it lists the source category. By comparison, the decision whether to regulate pollutants from that source category must simply have a “rational basis,” a less stringent standard. With this rulemaking, EPA is taking comment on: whether it should require a significant contribution finding each time it regulates a pollutant from the source category; whether its decision relating to methane met this standard; and possible criteria for informing the significant contribution finding. <p>The proposed rule can be found in the September 24, 2019 Federal Register at: www.govinfo.gov.</p>	<p>The proposed rule is of greatest interest to new, reconstructed and modified sources in the oil and gas production, distribution and storage source category as defined in the NSPS. If adopted, it will eliminate provisions applicable to oil and natural gas transmission and storage sources as well as methane standards for all sources in the oil and natural gas category. Elimination of the methane standards will, in turn, eliminate the legal basis for EPA to establish emission guidelines for existing sources under the NSPS program since such guidelines are required under CAA § 111(d) only for pollutants other than criteria and hazardous air pollutants.</p> <p>More generally, a decision by EPA to require a “significant contribution” finding each time it considers regulating a pollutant under an NSPS will make regulating new pollutants under the NSPS more difficult.</p>	<p>EPA is accepting comments on the proposed revisions until November 25, 2019.</p>

Other Recent Developments (Final)

AIR

FEDERAL/NEW YORK STATE: EPA **rejected the pollutant transport petition filed by New York State** asking it to find that emissions from over 350 sources in nine upwind states significantly contribute to nonattainment and interfere with maintenance of the 2008 and 2015 ozone national ambient air quality standards (NAAQS) in New York State. CAA § 126(b) authorizes states to petition EPA to find that a major source or group of stationary sources in an upwind state is emitting pollutants that contribute to nonattainment or interfere with maintenance of attainment in the petitioning state. If the petition is granted, EPA must establish emission limitations and compliance schedules designed to address the transport issue as expeditiously as practicable, but not later than three years from the date of the finding. EPA denied New York's petition with respect to the 2008 ozone NAAQS after concluding that the sources identified do not emit pollution in violation of the good neighbor provision. EPA went on to find that New York failed to meet its burden of showing that the sources at issue will significantly contribute to nonattainment in New York's ozone nonattainment areas. EPA declined to reach a decision on whether to deny the petition on the ground that a large, undifferentiated number of sources located in multiple upwind states does not qualify as a "group of stationary sources" under CAA § 126. The final action took effect on October 18, 2019 and can be found in the Federal Register issued on that date at: www.govinfo.gov.

Implications: The rejection of the petition means DEC may be required to implement measures to reduce emissions of ozone precursors to compensate for emissions from the upwind states.

Other Recent Developments (Proposed)

AIR

EPA proposed the **results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants (NESHAP)** for the following source categories set forth at 40 CFR Part 63:

- **Plywood and Composite Wood Products** (subpart DDDD): Applies to facilities engaged in manufacturing plywood and composite wood products by bonding wood material or agricultural fiber, generally with resin under heat and pressure, to form a structural panel or engineered wood product. EPA estimates that there are approximately 230 facilities currently subject to this NESHAP. 84 Fed. Reg. 47074 (Sept. 6, 2019). (The deadline for submitting comments on the proposed standard has closed.)
- **Cellulose Products Manufacturing** (subpart UUUU): Applies to facilities engaged in the production of cellulose food casings, rayon, cellophane or cellulosic sponges. EPA estimates that there are approximately 8 facilities currently subject to this NESHAP. 84 Fed. Reg. 47346 (Sept. 9, 2019) (comments due October 24, 2019).

- **Lime Manufacturing Plants** (subpart AAAAA): Applies to lime manufacturing plants at major sources except those located at pulp and paper mills or beet sugar factories. EPA estimates that there are approximately 35 facilities currently subject to this NESHAP. 84 Fed. Reg. 48708 (Sept. 16, 2019) (comments due October 31, 2019).
- **Paper and Other Web Coating** (subpart JJJJ): Applies to facilities that coat paper and other web substrates and are major sources of HAP emissions (excluding those covered by other NESHAPs). EPA estimates that there are approximately 168 facilities currently subject to this NESHAP. 84 Fed. Reg. 49382 (Sept. 19, 2019) (comments due November 4, 2019).
- **Taconite Iron Ore Processing** (subpart RRRRR): Applies to major HAP sources that separate and concentrate iron ore from taconite. EPA estimates that there are approximately 8 facilities currently subject to this NESHAP. 84 Fed. Reg. 50660 (Sept. 25, 2019) (comments due November 12, 2019).
- **Iron and Steel Foundries** (subpart EEEEE, major source; subpart ZZZZZ, area source). Applies to major and area sources engaged in manufacturing metal castings by melting iron and/or steel in a furnace, pouring the molten metal into a mold, removing the solidified casting, and finishing the final cast product. EPA estimates that there are approximately 45 major source iron and steel foundries and 390 area source foundries affected by the proposal. 84 Fed. Reg. 54394 (Oct. 9, 2019) (comments due November 25, 2019).
- **Generic Maximum Achievable Control Technology (MACT) for Ethylene Production** (subpart YY). Applies to emissions from ethylene oxide production units located at major facilities. EPA estimates that there are approximately 26 facilities that are currently subject to this NESHAP. 84 Fed. Reg. 54278 (Oct. 9, 2019) (comments due November 25, 2019).

In each case, after reviewing each existing major source standard, EPA concluded under Clean Air Act (CAA) § 112(f) 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 the exception of the ethylene production standard, EPA found under CAA § 112(d)(6) 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. However, EPA proposed to revise the rules relating to startup, shutdown and malfunction consistent with judicial rulings. In addition, EPA proposed to require facilities covered by these NESHAPs to submit electronic copies of required performance test results and other reports and make other updates and corrections. The proposed rules can be accessed at: www.govinfo.gov.

WATER

FEDERAL: EPA requested public comment in conjunction with development of an agency **policy for determining if a harmful algal bloom (HAB) or hypoxia event in freshwater is an “event of national significance”** for purposes of mobilizing federal resources to assess and mitigate its detrimental effects, subject to the availability of appropriations. Certain algal blooms produce harmful cyanotoxins that, if ingested, can kill fish and other organisms and adversely affect human health. More generally, significant algal blooms can reduce dissolved oxygen levels in the water, which can impact fisheries and disrupt sensitive ecosystems. In 1998, Congress

enacted the Harmful Algal Bloom and Hypoxia Research and Control Act to study these events. The law was amended several times, most recently in 2017, when Congress provided EPA and the National Oceanic and Atmospheric Administration with the authority to determine whether a HAB or hypoxia event is of “national significance.” This determination allows federal officials to make funds available to affected state or local governments for purposes of assessing and mitigating the event, subject to the availability of appropriations. With the recent notice, EPA is seeking comment on the criteria to be used to assess whether an event is of “national significance,” including: toxicity of HAB and/or severity of hypoxia; potential to spread; economic impact; relative size of event in relation to past five occurrences of HABs or hypoxia events that occur on a recurrent or annual basis; and geographic scope, including potential to affect several municipalities or more than one state, or cross an international boundary. EPA is accepting comments in response to the notice until **October 31, 2019**; the notice can be found in the September 16, 2019 Federal Register at: www.govinfo.gov.

Implications: The notice is potentially of interest to state and local governments and others that may be called upon to address a HAB or hypoxia event.

FEDERAL: EPA requested comment on its **draft *National Water Reuse Action Plan***, which identifies proposed actions designed to facilitate the reuse (i.e., recycling) of water from municipal, agricultural and other sources to supplement existing freshwater supplies. According to EPA, 80 percent of states anticipate water shortages in the next decade. The draft policy seeks to encourage consideration of water reuse as part of integrated water management efforts at the watershed or basin scale. The policy identifies the sources of water and potential applications for reuse as well as the guiding principles for the water reuse action plan (e.g., protect public health and the environment/ecosystems, identify most impactful actions, recognize challenges posed by water reuse, etc.). Based on that review, the plan identifies 46 proposed actions organized around the following 10 strategic objectives: (1) enable consideration of water reuse with integrated and collaborative action at the watershed scale; (2) coordinate and integrate federal, state, tribal and local water reuse programs and policies; (3) compile and refine fit-for-purpose specifications (i.e., criteria for determining whether water from a particular source can be reused for a particular purpose); (4) promote technology development, deployment and validation; (5) improve availability of water information; (6) facilitate financial support for water reuse; (7) integrate and coordinate research on water reuse; (8) improve outreach and communication on water reuse; (9) support a talented and dynamic work force; and (10) develop water reuse metrics that support goals and measure progress. EPA is accepting comments on the draft action plan until **December 16, 2019**; it can be found on EPA’s website at: www.epa.gov/waterreuse/water-reuse-action-plan.

Implications: The draft plan establishes a framework to encourage broader consideration of water reuse to supplement existing freshwater supplies.

FEDERAL: EPA is requesting comment on policy options for addressing **baseline issues relating to water quality trading** under the National Pollutant Discharge Elimination System (NPDES) program. Under the Clean Water Act, states with impaired waterbodies must implement total maximum daily loads (TMDLs) that identify the pollutant reductions necessary to achieve specific water quality standards and allocate the reduction between point source and nonpoint source discharges. Although EPA has issued guidance encouraging water quality trading among pollutant sources to help achieve TMDLs, significant obstacles remain. In February 2019,

EPA issued guidance outlining the process for facilities with water quality-based effluent limitations (WQBELs) in their NPDES permits to meet their compliance obligations through water quality trading. With the recent notice, EPA is seeking comment on approaches for addressing so-called “baseline issues.” As currently interpreted by EPA, individual nonpoint sources must achieve their portion of the reductions identified in the TMDL as the “load allocation” (i.e., baseline) before nonpoint source pollution reduction activities can generate credits or offsets for trading purposes. EPA’s recent memorandum proposes various policy options regarding nonpoint source baselines designed to encourage trading, including: (1) recommending that nonpoint sources be allowed to generate credits for any pollutant reductions a nonpoint source makes that are not included in the assumptions that support the TMDL load allocation; (2) allowing a permitting authority to include a schedule of compliance in a NPDES permit that accounts for the time needed for a nonpoint source partner to generate sufficient credits or offsets to achieve compliance with the WQBELs in the NPDES permit; (3) authorizing issuance of water quality standard variances; and (4) allowing establishment of an in-lieu fee program under which NPDES permitted facilities pay into a fund which is used to finance projects designed to reduce nonpoint source loads. EPA is accepting responses to its request for comment until **November 18, 2019**; it can be found in the September 19, 2019 Federal Register at: www.govinfo.gov.

Implications: The policy is directly of interest to NPDES permittees and state and local entities responsible for implementing NPDES permits.

NEW YORK STATE: DEC proposed **modifications to its State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity** to address changes required by a March 2019 court decision, which held that Class AA-Special waters qualify for protections from stormwater associated with industrial activities under the MSGP. Among other things, DEC proposed to add “discharges of industrial waste to surface waters of the State that are classified as AA-Special fresh surface waters” to the list of activities that are ineligible for MSGP coverage. In addition, DEC proposed to require such facilities to submit a no exposure certification; otherwise, coverage for such discharges under the MSGP will cease on July 23, 2020. DEC also proposed to delete or modify several definitions. DEC is accepting comments on the proposed modifications until **November 1, 2019**; the draft permit and fact sheet can be found on DEC’s website at: www.dec.ny.gov/chemical/9009.html.

Implications: The proposed modifications to the MSGP are primarily of interest to facilities that are currently covered under the permit and are discharging industrial wastes to Class AA-Special waters.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) **extended the compliance deadlines for nearly all the provisions of the beryllium standards for construction and shipyards while proposing a separate rule seeking comment on possible changes to the standards.** In January 2017, OSHA reduced the permissible exposure limit (PEL) and short-term exposure limit (STEL) for beryllium while requiring compliance with ancillary requirements relating to exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access controls. Six months later, OSHA

proposed to revoke the ancillary beryllium requirements for the shipyard and construction industries based on evidence that exposure is limited in these industries and that the new requirements may overlap with other standards. In late September 2019, OSHA delayed the compliance deadlines for all ancillary provisions of the construction and shipyard beryllium standards until September 30, 2020 while retaining the revised PEL and STEL. Shortly thereafter, OSHA proposed changes to the ancillary beryllium standards that fall into three categories: (1) elimination/modification of provisions which, while appropriate in the general industry context, are unnecessary or require changes to appropriately protect construction and shipyard workers; (2) changes to avoid inconsistencies with proposed changes to the general industry standard; and (3) clarification of provisions for materials containing trace quantities of beryllium. OSHA is accepting comments on the proposed changes to the beryllium standards until **November 7, 2019**; the final rule extending the compliance deadlines can be found in the September 30, 2019 Federal Register while the proposed changes can be found in the October 8, 2019 Federal Register, both of which are available at: www.govinfo.gov.

Implications: The rules are primarily of interest to employers/employees that are subject to the construction and shipyard standards and work with materials containing beryllium.

FEDERAL: OSHA published a request for information (RFI) seeking **information, comments and documents to assist it in determining whether to adopt a new online delivery model for its Outreach Training Program**. OSHA's Outreach Training Program offers 10- and 30-hour courses in the construction, general and maritime industries on the recognition, abatement and prevention of job-related hazards. Although the training is not required by OSHA for compliance purposes, some states and local jurisdictions, as well as certain employers and unions require training, which is available both in person and online. Over the years, questions have arisen concerning the online training program relating to inconsistent training quality, difficulties associated with agency monitoring and oversight, and other course administration problems. With the recent RFI, OSHA is seeking comment on an alternative online monitoring model under which training would be implemented by authorized consortiums, each of which would be comprised of OSHA, an OTI Education Center (responsible for oversight and card processing), an online provider (course content developer/training provider and technical support advisor), and potentially a stakeholder. The RFI seeks comment on the basic framework as well as answers to specific questions relating to training content and program administration. OSHA is accepting information in response to the RFI until **December 9, 2019**; it can be found in the October 8, 2019 Federal Register at: www.govinfo.gov.

Implications: The RFI is of potential interest to entities that provide OSHA 10-hour and 30-hour training as well as those employers that require the training.

OTHER

NEW YORK STATE: DEC has proposed **changes to its endangered and threatened species regulations** to codify situations where DEC has not required permits under its existing regulations set forth at 6 NYCRR Part 182. Specific changes include: (1) reducing the scope of what can be identified as occupied habitat by providing exemptions for most manmade structures on the theory that there is no true habitat for listed species in such structures; (2) extending the time frame for the agricultural exemption to five years since an

agricultural use occurred (i.e., exempting takings associated with existing, routine and ongoing agricultural activities if they occurred on the property within the previous five years); and (3) creating an exemption for incidental take of experimental populations designated under newly proposed 6 NYCRR § 182.17, which establishes a procedure for designating experimental populations and specifies that listed species identified as an experimental population are protected from intentional take but cannot be used to identify occupied habitat for regulatory purposes. DEC is accepting comments on the proposed rule until **November 10, 2019**; it can be found on DEC's website at: www.dec.ny.gov/regulations/propregulations.html.

Implications: The proposed rule is primarily of interest to companies engaged in land development activities that could impact endangered or threatened species.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

October 24, 2019: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the cellulose products manufacturing NESHAP. See the September 9, 2019 Federal Register at www.govinfo.gov for details.

October 31, 2019: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the lime manufacturing plants NESHAP. See the September 16, 2019 Federal Register at www.govinfo.gov for details.

October 31, 2019: Deadline for submitting comments on EPA's proposed criteria for determining if a harmful algal bloom or hypoxia event in freshwater is an "event of national significance" for resource mobilization purposes. See the September 16, 2019 Federal Register at www.govinfo.gov for details.

November 1, 2019: Deadline for submitting comments on EPA's proposed rule addressing the reclassification of major sources as area sources under the NESHAP program (reopened from September 24, 2019). See the July 26, 2019 Federal Register at www.govinfo.gov for details.

November 1, 2019: Deadline for submitting comments on DEC's proposed revisions to the SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity. See DEC's website at www.dec.ny.gov/chemical/9009.html for details.

November 4, 2019: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the paper and other web coating NESHAP. See the September 19, 2019 Federal Register at www.govinfo.gov for details.

November 7, 2019: Deadline for submitting comments on OSHA’s proposed revisions to the beryllium standards for the construction and shipbuilding industries. See the October 8, 2019 Federal Register at www.govinfo.gov for details.

November 7, 2019: Deadline for submitting comments on EPA’s proposed residual risk/periodic technology review findings for the integrated iron and steel manufacturing facilities NESHAP (reopened from September 30, 2019). See the August 16, 2019 Federal Register at 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 10, 2019: Deadline for submitting comments on DEC’s proposed revisions to the endangered and threatened species regulations. See DEC’s website at: www.dec.ny.gov/regulations/propregulations.html for details.

November 12, 2019: Deadline for submitting comments on EPA’s proposed residual risk/periodic technology review findings for the taconite iron ore processing NESHAP. See the September 25, 2019 Federal Register at www.govinfo.gov for details.

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 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 for details.

November 18, 2019: Deadline for submitting comments on EPA’s policy approaches for addressing “baseline issues” relating to water quality trading under the NPDES program. See the September 19, 2019 Federal Register at www.govinfo.gov 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 for details.

November 25, 2019: Deadline for submitting comments on EPA's proposed revisions to the NSPS for sources in the oil and natural gas sector. See the September 24, 2019 Federal Register at www.govinfo.gov for details.

November 25, 2019: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the major and area source iron and steel foundry NESHAPs and the major source generic MACT for ethylene production. See the October 9, 2019 Federal Register at 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 for details.

December 6, 2019: Public hearing on DEC's proposed revisions to incinerator regulations, including requirements for crematories and MSW incinerators, to be held at 11:00 a.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. Additional public hearings are scheduled in early December in Hauppauge and Avon.

December 9, 2019: Deadline for submitting information in response to OSHA RFI relating to development of a new online delivery model for OSHA's Outreach Training Program. See the October 8, 2019 Federal Register at www.govinfo.gov for details.

December 11, 2019: Deadline for submitting comments on DEC's proposed revisions to its incinerator regulations, including the requirements for crematories and MSW incinerators. See DEC's website at www.dec.ny.gov/regulations/118193.html for details.

December 16, 2019: Deadline for submitting comments on EPA's draft *National Water Reuse Action Plan*. See EPA's website at www.epa.gov/waterreuse/water-reuse-action-plan for a copy of the plan.