

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

May 8, 2020

Prepared by:
Elizabeth Morss
Young/Sommer LLC
5 Palisades Drive
Albany, NY 12205
(518) 438-9907, ext. 232
emorss@youngsommer.com
www.youngsommer.com

Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>FEDERAL Safer Affordable Fuel-Efficient (SAFE) Vehicle Rule for Model Year 2021-2026 Passenger Cars and Light Trucks 40 CFR Parts 86 and 600; 49 CFR Parts 523, 531, 533, 536, and 537 85 Fed. Reg. 24174 (Apr. 30, 2020)</p>	<p>EPA and the National Highway Traffic Safety Administration rolled back federal fuel economy and greenhouse gas (GHG) emission standards for model year (MY) 2021-2026 passenger cars and light-duty trucks. In 2012, the agencies adopted GHG and corporate average fuel economy (CAFÉ) standards applicable to MY 2017-2025 light-duty vehicles. In January 2017, EPA completed a mid-term evaluation and concluded that the GHG standards for 2022-2025 MY vehicles were feasible at reasonable cost using existing and emerging technologies. The Trump administration revisited the matter and found that the standards were too stringent, leading the agencies to propose new CAFÉ and GHG emission standards for passenger cars and light-duty trucks. In 2019, EPA issued the first part of its SAFE Vehicle Rule, clarifying the scope of federal preemption of state motor vehicle GHG emission standards and announcing the withdrawal of a waiver granted to California allowing it to implement stricter state standards. Under Part 2 of the SAFE rule:</p> <ul style="list-style-type: none"> • The agencies will increase the stringency of the GHG emission and CAFÉ standards by 1.5% each year from MY 2020 levels over MY 2021-2026. Although this option was not among those included in the 2018 proposal, it was within the range of alternatives offered. • EPA will continue to allow manufacturers to credit improvements relating to air conditioning refrigerants and leakage toward CO₂ compliance. In addition, EPA is retaining the existing ammonia and nitrous oxide standards, extending an existing electric vehicle incentive, and establishing a credit multiplier for natural gas vehicles. <p>The agencies estimate that the new standards will result in an average, industrywide GHG emission standard of 201 grams per mile (gpm) of carbon dioxide (CO₂) and fleetwide fuel efficiency of 40.4 miles per gallon (mpg) in MY 2026 (as compared with 164 gpm and 54.5 mpg under the rule it is replacing).</p> <p>The rule can be found in the April 30, 2020 Federal Register at: www.govinfo.gov.</p>	<p>The rule is of interest to manufacturers of passenger cars and light-duty trucks as well as to potential purchasers of those vehicles. In support of its decision to roll back the Obama administration’s CAFÉ/GHG standards, the agencies argued that technologies have not evolved as expected. As a result, the costs of achieving the required fuel economy gains are more expensive than anticipated. Moreover, lower than expected gasoline prices have led to a shift in consumer preferences away from passenger cars, reducing overall average fuel economy and increasing the overall fleet GHG emission rate. According to the agencies, the rule will reduce vehicle costs and provide safety benefits (resulting in fewer deaths from vehicle accidents) while at the same time having a negligible impact on air quality and climate change. Numerous states located primarily in the Northeast and West that implement the stricter California standards have joined California in challenging the first part of the SAFE rule withdrawing the waiver previously issued to California and are expected to bring a lawsuit challenging the standards themselves.</p>	<p>The rule take effect June 29, 2020.</p>

Citation	Summary	Implications	Schedule/Notes
ENVIRONMENTAL QUALITY REVIEW			
<p>NEW YORK STATE The SEQR Handbook (Fourth Edition 2020)</p>	<p>DEC recently issued the fourth edition of <i>The SEQR Handbook</i>. The SEQR Handbook is a reference document that provides agency staff, project sponsors, and the general public with a practical reference guide to the State Environmental Quality Review Act (SEQR), addressing common questions that arise during the process of applying SEQR. The updated Handbook reflects changes to the SEQR regulations adopted in 2018 as well as clarifying existing sections to address questions or suggestions received since the third edition of the Handbook was released in 2010.</p> <p>After a brief introduction to the SEQR process, the SEQR Handbook includes the following nine chapters:</p> <ol style="list-style-type: none"> 1. <i>Agencies and Decisions Subject to SEQR</i>, including when to begin SEQR. 2. <i>Review Required Under SEQR</i>, including Type I and Type II actions, critical environmental areas and segmentation. 3. <i>Participation in the SEQR Process</i>, including coordinated and uncoordinated review, establishment of a lead agency, lead and involved agency responsibilities, role of project sponsor/applicant, interested agency and public involvement, and lead agency disputes. 4. <i>Determining Significance</i>, including environmental assessments, determining significance, and positive and negative declarations. 5. <i>Environmental Impact Statements (EIS)</i>, including general concepts, scoping, contents and review of draft EIS, SEQR hearings, final, supplemental and generic EISs, findings, and fees for EIS preparation or review. 6. <i>SEQR Housekeeping</i>, including time frames, required notices and filings, recordkeeping and disclosure, challenges, and making SEQR more efficient. 7. <i>SEQR and Local Government Development Decisions</i>, including general applicability of SEQR to local governments and SEQR and land use decisions, capital improvements, municipal annexations, municipal development incentives, and parkland. 8. <i>SEQR and Related Federal and State Review</i>, including National Environmental Policy Act, archaeological and historic resources, coastal and inland waterways management programs, and agricultural districts. 9. <i>Notable Court Decisions on SEQR</i>. <p>The Handbook can be found on DEC’s website at: www.dec.ny.gov/permits/83389.html.</p>	<p>The SEQR Handbook is a valuable resource for anyone involved in the SEQR process. It provides detailed information on each step in the process and includes numerous explanations and examples to help illustrate how SEQR works in practice.</p> <p>Major changes in the fourth edition of the Handbook include: clarifying that lead agencies can no longer waive the environmental assessment form requirement if the proposal is accompanied by a draft EIS (since the law now requires mandatory scoping); updating the list of Type I and Type II actions to reflect recent changes in the law; clarifying the circumstances under which an agency may want to use a full EAF or conduct a coordinated review for an unlisted action; including specific discussion of the EAF workbooks; clarifying that an EAF is always required to make a significance determination; clarifying whether negative declarations expire if there is a long delay following issuance and no final decision approving the action is made; and incorporating new mandatory scoping requirements and other recent changes relating to EIS content and procedures.</p>	

Citation	Summary	Implications	Schedule/Notes
COVID-19/REMEDATION			
<p>FEDERAL Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19 (Apr. 10, 2020)</p>	<p>EPA issued <i>Interim Guidance on Site Field Work Decisions Due to Impacts of COVID-19</i>, which outlines the agency’s policy on implementing its various remedial programs (Superfund, Resource Conservation and Recovery Act [RCRA] corrective action, etc.) during the COVID-19 pandemic. The guidance instructs EPA regions to evaluate the status of ongoing response work at sites and the possible impact of COVID-19 on sites, surrounding communities, EPA personnel, and response/cleanup partners. Especially in areas where public health declarations have been issued, regions are asked to consider whether to continue operations or secure the site until the public health threat has been resolved. In areas where no declarations have been issued, other factors should be considered in deciding whether to start or continue work (safety/availability of work crews and others, critical nature of work, logistical issues, etc.). Parties who believe COVID-19 may delay performance of their obligations are directed to consult the applicable enforcement instrument for directions on how to proceed (notice, etc.). Modifications to a party’s performance obligations will be made on a case-by-case basis in accordance with the applicable enforcement instrument. Parties are encouraged to communicate regularly with EPA project managers about the status of their sites.</p> <p>The guidance includes a list of factors to consider in deciding whether to continue with field work, including, but not limited to: whether health officials have asked that particular site operations be suspended; whether site workers have tested positive or exhibit symptoms of COVID-19; sites where field personnel cannot work due to government travel restrictions or medical quarantine or where social distancing is not possible; whether failure to continue response action poses an imminent and substantial endangerment to human health or the environment; whether it is practical to continue response action; and whether maintaining the response action would lead to a reduction in human health risk/exposure within the next six months. Non-field site work (i.e., work performed away from sites) should continue—e.g., modeling, negotiations, preparation of decision documents, work plans, progress reports, etc. Regions are tasked with monitoring activities and planning for resuming work when appropriate.</p> <p>The guidance can be found on EPA’s website at: www.epa.gov/superfund/interim-guidance-site-field-work-decisions-due-impacts-covid-19. It includes as an attachment an earlier guidance document issued entitled <i>Office of Land and Emergency Management Considerations and Posture for COVID-19 Pandemic</i> (Mar. 19, 2020), which addresses logistical details relating to managing COVID-19 issues in conjunction with EPA emergency response activities.</p>	<p>The policy covers response field activities that are underway under the Superfund program, RCRA corrective action, Toxic Substances Control Act (TSCA) PCB cleanup provisions, the Oil Pollution Act, and the federal underground storage tank program as well as other emergency response programs. It applies specifically to emergency response sites where EPA is the lead agency or has direct oversight of or responsibility for the work being performed.</p>	

Citation	Summary	Implications	Schedule/Notes
COVID-19			
<p>FEDERAL Miscellaneous Environmental and Health and Safety Guidance Documents Relating to COVID-19 Issues</p>	<p>EPA and OSHA have issued guidance addressing compliance and other issues arising because of the COVID-19 pandemic. Key documents are identified below:</p> <ul style="list-style-type: none"> • EPA main web page revised to specify that written submissions should be made electronically not in hard copy for the duration of the pandemic. www.epa.gov. • EPA has established a main web page containing links to information relating to COVID-19. www.epa.gov/coronavirus. • EPA, List of Frequently Asked Questions Relating to the Coronavirus: Contains answers to COVID-19 questions in six areas: disinfectants, drinking water, grants, indoor air, wastewater and septic systems, and waste. www.epa.gov/coronavirus/frequent-questions-related-coronavirus-covid-19. • EPA, Continuous Emission Monitoring Quality-Assurance Requirements During the COVID-19 National Emergency, 85 Fed. Reg. 22362 (Apr. 22, 2020): Interim final rule and request for comments establishing special emission reporting regulations under acid rain program, Cross-State Air Pollution Rule, and/or nitrogen oxide (NOx) State Implementation Plan (SIP) call program: www.govinfo.gov. • OSHA, Discretion in Enforcement When Considering an Employer’s Good Faith Efforts During the Coronavirus Disease (COVID-19) Pandemic (Apr. 16, 2020): Addresses how OSHA will exercise enforcement discretion relating to ability to conduct training, auditing, equipment inspections, testing, and other essential safety and industrial hygiene services during pandemic. www.osha.gov/memos/2020-04-16/discretion-enforcement-when-considering-employers-good-faith-efforts-during. • OSHA, Interim Enforcement Response Plan for Coronavirus Disease 2019 (COVID-19) (Apr. 13, 2020): Provides instructions and guidance to OSHA area offices and compliance safety and health officers for handling COVID-19-related complaints, referrals, and severe illness reports. www.osha.gov/memos/2020-04-13/interim-enforcement-response-plan-coronavirus-disease-2019-covid-19. • OSHA, Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19) (Apr. 10, 2020): Provides guidance for enforcing the requirements of 29 CFR Part 1904 with respect to the recording of occupational illnesses, specifically cases of COVID-19. www.osha.gov/memos/2020-04-10/enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19. 	<p>EPA, OSHA and other federal agencies have issued extensive guidance designed to help navigate the logistical and other problems caused by the COVID-19 pandemic. These documents fall into three general categories: logistical (how to communicate with the agency, make submissions, renew permits, etc. during the pandemic); compliance (special rules for fulfilling specific compliance obligations during the pandemic); and enforcement (whether/how the agency will address noncompliance during the pandemic).</p>	<p>The interim rule relating to continuous emission monitoring took effect April 22, 2020. EPA is accepting comments on rule until May 22, 2020.</p>

Citation	Summary	Implications	Schedule/Notes
COVID-19			
<p>NEW YORK STATE Miscellaneous Environmental Guidance Documents Relating to COVID-19 Issues</p>	<p>DEC issued guidance addressing compliance and other issues arising because of the COVID-19 pandemic. Key documents are identified below.</p> <ul style="list-style-type: none"> • Environmental Cleanup and Brownfields COVID-19 Update (Undated): Guidance identifying what remediation-related activities are considered essential. www.dec.ny.gov/chemical/brownfields.html • Enforcement Discretion on Signature Procedures for Hazardous Waste and Low-Level Radioactive Waste Manifests and Non-Hazardous Waste Shipment Papers During COVID-19 Emergency (Mar. 27, 2020). www.dec.ny.gov/docs/materials_minerals_pdf/tempsigproccovid2.pdf. • Guidance on Commissioner’s Policy 29 During the COVID-19 Public Health Crisis (Apr. 24, 2020): Guidance on conducting public outreach to environmental justice communities under CP-29 during the COVID-19 outbreak. www.dec.ny.gov/docs/permits_ej_operations_pdf/cp29guidance.pdf. More generally, various public hearing requirements, including those relating to DEC rulemakings, have been suspended for the duration of the pandemic emergency. • Enforcement Discretion for Extension of Pesticide Applicator Recertification and Business and Agency Registration during the COVID-19 Emergency (Apr. 7, 2020): Establishing alternative procedures for the requirements for recertification of private and commercial pesticide applicators and renewals of registrations of pesticide businesses and agencies. www.dec.ny.gov/docs/materials_minerals_pdf/enfdiscretion.pdf. 	<p>See discussion above.</p>	

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>FEDERAL Navigable Waters Protection Rule: Definition of “Waters of the United States” 33 CFR Part 328; 40 CFR Parts 110, 112, 116, 117, 120, 122, 230, 232, 300, 302 and 401 85 Fed. Reg. 22250 (Apr. 21, 2020)</p>	<p>EPA and the U.S. Army Corps of Engineers (ACOE) adopted a new definition of “waters of the United States”—a term that establishes the scope of waters federally regulated under the Clean Water Act (CWA). The CWA prohibits the discharge of pollutants into “navigable waters” except in compliance with specific CWA requirements. Navigable waters, in turn, is defined as “waters of the United States” (WOTUS). Over the years, many questions have arisen about the scope of CWA jurisdiction in light of this definition. These developments culminated in a controversial 2015 rulemaking defining the term “waters of the United States” to include specific categories of jurisdictional waters and allowing other waters to be included on a case-by-case basis based on criteria spelled out in the rule.</p> <p>With the new Navigable Waters Protection Rule, EPA and the ACOE have adopted a new definition of WOTUS which they contend will increase CWA program predictability and consistency. The regulation specifies what waters are (and are not) considered WOTUS. Under the new rule, the following four categories of water bodies are WOTUS: (1) territorial seas and traditional navigable waters; (2) tributaries, including perennial and intermittent rivers and streams that contribute surface flow to traditional navigable waters in a typical year either directly or through other WOTUS; (3) lakes, ponds and impoundments of jurisdictional waters; and (4) adjacent wetlands, i.e., wetlands that physically touch other jurisdictional waters, are separated from a WOTUS only by a natural berm, bank or dune, are inundated by flooding from a WOTUS, or are separated by a manmade barrier or road but still have a surface hydrologic connection. Waters that are not included in one of the above four categories are not WOTUS. In addition, the regulation includes a list of specific types of water bodies that are <i>not</i> WOTUS, including features that contain water only during or in response to rainfall (i.e., ephemeral features), groundwater, many ditches (including most roadside or farm ditches), prior converted cropland, stormwater control features, and waste treatment systems, among others. According to EPA/ACOE, the Navigable Waters Protection Rule clearly delineates where federal regulations apply and gives state and local authorities more flexibility to determine how best to manage waters within their borders. Critics charge that the new rule greatly reduces the protections afforded to surface waters and wetlands and will lead to increased pollution and destruction of wetlands and waterways.</p> <p>Notice of the WOTUS rule can be found in the April 21, 2020 Federal Register at: www.govinfo.gov.</p>	<p>The definition of “waters of the United States” implicates virtually all CWA programs, including ACOE § 404 permits, wastewater discharge permits, and CWA § 401 water quality certifications. Although the 2015 rule was intended to clarify the scope of the CWA, representatives of various industries, including agriculture, oil and gas, and residential development, strongly objected to the changes, arguing that the new rule significantly expanded the agencies’ jurisdiction. In February 2017, President Trump issued an executive order directing the agencies to review the 2015 rule for consistency with certain policies and propose rescission, if appropriate. In October 2019, EPA rescinded the 2015 joint rule redefining the term “waters of the United States” and recodified the pre-2015 rule pending adoption of the replacement Navigable Waters Protection Rule.</p>	<p>The rule takes effect June 22, 2020.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL Review of National Ambient Air Quality Standards for Particulate Matter 40 CFR Part 50 85 Fed. Reg. 24094 (Apr. 30, 2020)</p>	<p>EPA is proposing to retain the existing particulate matter (PM) national ambient air quality standards (NAAQS) without revision following a comprehensive review. Under the Clean Air Act (CAA), EPA establishes NAAQS defining what is considered acceptable ambient air quality for certain commonly emitted contaminants. The CAA distinguishes between primary (health-based) and secondary (welfare-based) standards, the latter of which addresses visibility, ecological and other non-health impacts. Once the standards are set, EPA classifies areas of the country based on whether they meet (i.e., attain) the standards. States must then develop implementation plans (known as “SIPs”) identifying the measures they plan to take to ensure they attain/maintain the NAAQS. The CAA requires EPA to review each NAAQS every five years to ensure it reflects advances in scientific knowledge on the effects of the pollutant on public health and welfare.</p> <p>EPA has adopted standards for both fine PM (PM_{2.5}) and coarse PM (PM₁₀), which were last reviewed in 2012, at which time EPA: lowered the primary annual PM_{2.5} standard from 15 to 12 micrograms per cubic meter (µg/m³); retained the 24-hour PM_{2.5} standard of 35 µg/m³; retained the 24-hour primary standard for PM₁₀ of 150 µg/m³; and retained the secondary standards for PM (with minor changes) to protect against welfare impacts. With the recent rulemaking, EPA proposed to retain all of the 2012 standards. For the primary PM_{2.5} standards, EPA concluded that the available evidence and information do not call into question the adequacy of the current standards and that no revisions to the annual and 24-hour standards are necessary. For the primary PM₁₀ standard, EPA found that while the available health-effects information has expanded, recent studies are subject to the same uncertainties as those underlying the 2012 revisions and so do not justify revising the standard. For the secondary standards, EPA found that the expanded evidence for non-ecological welfare effects was consistent with the last review and that no revisions are necessary. With one exception, these conclusions are consistent with those reached by the Clean Air Scientific Advisory Committee, the independent committee charged with overseeing the NAAQS review process. The CASAC did not reach consensus on the primary annual PM_{2.5} standard, with some committee members recommending revising the standard to increase public health protections.</p> <p>The proposed rule can be found in the April 30, 2020 Federal Register at: www.govinfo.gov.</p>	<p>The proposed decision is primarily of interest to facilities that emit PM and PM precursors (including sulfur dioxide [SO₂] and nitrogen oxides [NO_x]). The decision to retain the existing NAAQS means states will not be required to adopt stricter measures to reduce emissions of PM and its precursors. States must continue to implement existing measures designed to achieve/maintain attainment of the current NAAQS.</p>	<p>EPA is accepting comments on its proposal to retain the existing PM NAAQS until June 29, 2020.</p>

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>NEW YORK STATE Air Permit Rule Revisions 6 NYCRR Part 201 and related provisions</p>	<p>DEC has proposed changes to improve the clarity and consistency of its air permit regulations. DEC overhauled 6 NYCRR Part 201 in 2013 and is now proposing the following additional changes/clarifications:</p> <ul style="list-style-type: none"> • Adding a new section addressing research and development activities that includes expanded criteria governing whether these activities are exempt from permitting, specifying recordkeeping requirements, and clarifying that a registration or permit may be required if the criteria cannot be met. • Revising key definitions, including emergency, laboratory operations, malfunction, portable emission source, and temporary emission source. • Revising exempt/trivial activities, including: reducing the threshold for exempt asphalt storage tanks from 300,000 barrels to 10,000 gallons; adding an exemption for biodiesel tanks with a capacity less than 300,000 barrels; adding exemptions for lumber drying kilns (untreated lumber only), coffee roasting, microbreweries, wineries, and small craft distilleries below specific production-related thresholds; and deleting tub grinders and construction and demolition waste crushers from the list of trivial activities. • Rewriting the modification provisions for state facility permits to make them more consistent with the Title V procedures. Under the revised regulation, significant modifications to state facility permits will require 30 days’ public notice, while no public notice is required for minor modifications. Certain changes may be made with advance notification to DEC if specified criteria are met. • Clarifying that renewals of state facility permits that contain enforceable caps accepted to avoid the requirement to obtain a Title V permit require public notice and comment. • Rewriting the operational flexibility provisions for Title V facilities to more clearly address alternative operating scenarios and establishment of operational flexibility protocols—procedures for evaluating future changes and avoiding formal permit modification procedures if the protocol criteria are met. • Revising the cap-by-rule provisions to clarify that facilities that cannot cap by rule to avoid reasonably available control technology requirements because there is no applicability threshold or because the applicability threshold is based on the facility’s actual rather than potential emissions are still eligible to register. • Making other changes to streamline and clarify the rule. <p>As part of the rulemaking, DEC is also proposing to relabel persistent, bioaccumulative and toxic contaminants “high toxicity air contaminants (HTAC) consistent with 6 NYCRR Part 212, make changes to the HTAC list, and revise Part 212 to correct errors and clarify certain provisions.</p> <p>The proposed rule can be found on DEC’s website at: www.dec.ny.gov/regulations/120051.html.</p>	<p>The changes are potentially of interest to any facility with an air registration, state facility permit, or Title V permit under 6 NYCRR Part 201. The revisions are intended to address issues that have arisen since the rules were last revised in 2013 and provide regulatory relief for certain activities, such as biodiesel storage, coffee roasting, and breweries, wineries, and distilleries that might otherwise be required to obtain registrations. The reduction in the storage capacity threshold for exempt asphalt storage tanks is expected to affect approximately 180 asphalt plants and 40 bulk terminals currently operating statewide. However, many of these facilities already have air registrations or permits.</p>	<p>DEC is accepting comments on the proposed rule until June 29, 2020. No public hearing is scheduled due to the COVID-19 pandemic.</p>

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>NEW YORK STATE Carbon Dioxide Budget Trading Program 6 NYCRR Part 242</p>	<p>DEC proposed changes to its CO₂ budget trading program regulations to implement updates required under the Regional Greenhouse Gas Initiative (RGGI). The RGGI states established a multi-state CO₂ cap-and-trade program for power plants in the Northeast. Following a rigorous review process, the ten RGGI states made changes to the program, which are scheduled to take effect January 1, 2021. With the recent rulemaking, DEC is proposing to revise its RGGI implementing regulations at 6 NYCRR Part 242 to conform to the updated RGGI model rule as follows:</p> <ul style="list-style-type: none"> • Emission cap. The rule reduces the CO₂ budget by nearly 30% for the period 2020 to 2030. The bank of allowances held by market participants will be adjusted over a 5-year period from 2021 through 2025 based on the size of the bank at the end of 2020. • Cost containment reserve (CCR). The CCR is a fixed additional supply of allowances that is available for sale to stabilize the market if allowance prices exceed specified thresholds. Up to 10% of the regional cap of additional CCR allowances will be available for purchase at auction if the CCR trigger price is reached. The trigger price will be \$13.00 in 2021 and will rise 7% each year through 2030. • Emissions containment reserve (ECR). The rule establishes a new ECR—a quantity of allowances that will be withheld from circulation to secure additional emission reductions if prices fall below established trigger prices. The ECR is intended to prevent the potential collapse of the allowance market if emissions are trending significantly below the cap. The ECR trigger price will start at \$6.00 in 2021 and will increase 7% each year thereafter. • Offsets. In general, RGGI participants have not significantly relied on offsets—the generation of CO₂ credits through projects that reduce emissions outside the electricity generation sector. The proposed rule retains only the offset provisions for avoided methane emissions from agricultural manure management operations although states may choose to retain all three currently eligible offset categories. <p>In addition, in response to public outreach, DEC is proposing to expand the program to include certain units that serve an electricity generation nameplate capacity of 15 megawatts (MW) or more (down from 25 MW in the current rule) to address concerns that the costs of complying with RGGI might result in increased operation of smaller units not currently subject to the program.</p> <p>The proposed regulation can be found on DEC’s website at: www.dec.ny.gov/regulations/120061.html.</p>	<p>The RGGI program applies only to power plants. During its early years, the program did not result in significant reductions in CO₂ emissions because actual emissions from participating sources were well below the RGGI cap owing to various factors, including a weak economy and the decision by many utilities to switch from petroleum and coal to natural gas. In 2013, the participating states modified the model rule to lower the emission cap and make other changes designed to improve the efficiency of the allowance market. The recent changes continue that trend and are intended to help the participating states achieve ambitious CO₂ reduction goals. Over the years, the sale of CO₂ allowances has generated several billion dollars for the participating states, much of which has been used to fund energy efficiency and renewable energy programs.</p>	<p>DEC is accepting comments on the proposed rule until June 29, 2020. No public hearing is scheduled due to the COVID-19 pandemic. The revisions must take effect by January 1, 2021.</p>

Other Recent Developments (Final)

REMEDIATION

NEW YORK STATE: DEC issued *Guidelines for Sampling and Analysis of PFAS under NYSDEC's Part 375 Remedial Programs*, which summarizes the procedures for sampling per- and polyfluoroalkyl substances (PFAS), such as perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS), with the goal of ensuring consistency in sampling, analysis and reporting of PFAS. Under the guidelines, whenever samples of potentially affected media are collected and analyzed for the standard Target Analyte List/Target Compound List, PFAS analysis should also be performed. Potentially affected media include soil, groundwater, surface water, and sediment. Biota sampling may also be required under certain circumstances. The document includes basic field sampling guidelines, as well as detailed appendices, including Appendix A—Quality Assurance Project Plan (QAPP) Guidelines for PFAS, and Appendices B-F, containing media-specific protocols for sampling PFAS in soils, sediments and other solids (Appendix B), non-potable groundwater (Appendix C), surface water (Appendix D), public or private water supply wells (Appendix E), and fish tissue (Appendix F). The document includes thresholds for determining whether PFAS should be further assessed and considered a potential contaminant of concern in ground and surface water (10 parts per trillion [ppt]); it also specifies that soil with synthetic precipitation leaching procedure test results above 70 ppt in the leachate for PFOA and/or PFOS should be evaluated during the cleanup phase. Testing standards for imported soil are also included. The guidelines specify procedures for analyzing and reporting given the existing gaps in testing methodologies for these substances. The document can be found on DEC's website at: www.dec.ny.gov/docs/remediation_hudson_pdf/pfassampanaly.pdf.

Implications: PFAS chemicals have been the subject of significant attention in recent years, including much publicized remedial actions in Hoosick Falls, Newburgh and elsewhere. The Guidelines attempt to clarify the procedures/standards for assessing PFAS impacts given the difficulties associated with sampling and analyzing these chemicals.

GENERAL

NEW YORK STATE: DEC issued **Program Policy OGC-2, Procedure for Handing Small Claims** filed against DEC. The policy covers two types of small claims: (1) claims filed by the public against DEC not exceeding \$5,000 for personal injuries or property damage resulting from the tortious conduct of DEC or its employees pursuant to State Finance Law § 8(12-a); and (2) claims submitted by Department employees not exceeding \$350 for personal property damaged or destroyed in performance of official duties without the fault or negligence of the employee pursuant to applicable union contracts and State Finance Law § 8. For each type of claim, the Program Policy identifies the information that must be provided and the forms that must be completed to file a claim and the standards/procedures for reviewing and approving/denying claims. The policy, which replaces a document issued in 1997, takes effect May 29, 2020. A copy of the final policy can be obtained from Drew Wellette at drew.wellette@dec.ny.gov.

Implications: The policy is potentially of interest to DEC employees and to individuals using DEC facilities or interacting with DEC employees.

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC proposed to **revise its annual air emission statement regulations to require electronic submission** and make other minor changes. The regulations—set forth at 6 NYCRR Subpart 202-2—require major air emission sources to submit reports annually quantifying their actual emissions of specified pollutants for the previous year. Beginning in 2011, sources were given the option of reporting electronically through DEC’s Air Compliance and Emissions (ACE) Electronic Reporting Tool; in 2019, approximately 62% of facilities submitted their reports electronically. The new electronic reporting requirement will apply to facilities issued new or renewed Title V permits on or after January 1, 2021. Under the schedule, a facility issued a new or renewed permit during calendar year 2021 must submit its report electronically in 2022 and so forth through 2026 (for calendar year 2025 emissions), at which point all facilities must submit their reports electronically with certain limited exceptions. Currently, all annual reports are due April 15th for the previous year’s emissions. With the recent rulemaking, DEC is proposing to stagger annual emission statement due dates from March 15th through April 30th based on the number of processes at the facility. Finally, DEC proposed to revise the rule to provide facilities with the option of reporting only fuel throughput for combustion processes rather than calculating emissions associated with those processes. DEC is accepting comments on the proposed rule until **June 29, 2020**; it can be found on DEC’s website at: dec.ny.gov/regulations/120056.html. No public hearings are scheduled because of the COVID-19 pandemic.

Implications: The proposed rule is primarily of interest to Title V air emission sources required to submit annual air emission statements under Subpart 202-2.

NEW YORK STATE: DEC **made available for comment its proposed annual monitoring network plan**, which describes New York’s air monitoring network. As required by the CAA, DEC maintains a network of air monitors throughout the state to collect ambient air quality data for various pollutants, including ozone, particulate matter, and nitrogen oxides, as well as key meteorological data. The data are used by DEC to determine whether an area is achieving the NAAQS; they are also used to determine the impact of a project under the Prevention of Significant Deterioration and other programs. The proposed monitoring plan includes an overview of New York’s air quality monitoring program, followed by a detailed description of each of the state’s air monitoring locations. Planned changes include discontinuing SO₂ monitoring at Brookside Terrace and Holtsville and carbon monoxide monitoring at Loudonville after concluding that the data are low and that the concentration gradients between sites have decreased. In addition, DEC is proposing to reduce lead monitoring around a lead recycling facility in Wallkill because the facility’s emissions are well below the minimum required by federal law. Finally, DEC is proposing changes to various PM_{2.5} monitoring locations. DEC is accepting comments on the proposed monitoring plan until **May 31, 2020**; the plan can be found on DEC’s website at: www.dec.ny.gov/chemical/33276.html.

Implications: The plan is primarily of interest to engineers performing air impact analyses.

CHEMICAL

FEDERAL: EPA is seeking comments on various **risk evaluation documents for existing chemicals being reviewed under the Toxic Substances Control Act**. 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. As part of that process, EPA identified 20 “high-priority” chemicals from existing lists for risk evaluation and recently made draft scope documents available for 7 of those 20 chemicals. The chemical substances are butyl benzyl phthalate, dibutyl phthalate, dicyclohexyl phthalate, di-ethylhexyl phthalate, di-isobutyl phthalate, formaldehyde, and phthalic anhydride. The scope documents include for each chemical the conditions of use, hazards, exposures, and the potentially exposed or susceptible subpopulations. The notice seeks additional data or documents on these chemicals that may be useful in preparing the final scopes for the risk evaluations. In a related development, EPA solicited comment on the draft TSCA risk evaluation for perchloroethylene, a solvent commonly used in dry cleaning and vapor degreasing. Perchloroethylene was one of 10 chemicals identified for risk evaluation outside the new prioritization process discussed above. The risk assessment includes a comprehensive list of conditions of use relating to manufacturing, processing, distribution, industrial/commercial uses, and consumer uses that present an unreasonable risk. EPA is accepting comments on the scope documents and risk assessment until June 8, 2020 and July 6, 2020, respectively. The notices can be found in the April 23, 2020 and May 4, 2020 Federal Registers at www.govinfo.gov

Implications: The planned risk evaluations are potentially of interest to individuals and facilities that manufacture/use products containing the listed chemical substances.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

May 15, 2020: Deadline for submitting comments on the following DEC rulemakings: (1) proposed revisions to ultra low sulfur diesel fuel and BART for heavy duty vehicles owned/operated by or on behalf of a State agency; and (2) sulfur-in-fuel limitations (extended from April 15, 2020). See DEC’s website at www.dec.ny.gov/regulations/propregulations.html#public for details.

May 15, 2020: Deadline for submitting applications for DEC’s Annual Environmental Excellence Awards (extended from April 17, 2020). The application and related materials can be found on DEC’s website at www.dec.ny.gov/public/945.html.

May 18, 2020: Deadline for submitting comments on EPA’s changes to its proposed Transparency in Regulatory Decisionmaking rule to strengthen transparency in regulatory science (extended from April 17, 2020). See the March 18, 2020 Federal Register at www.govinfo.gov for details.

May 20, 2020: Deadline for submitting comments on EPA's proposed federal permit program for the regulation of coal combustion residuals in nonparticipating states and Indian country (extended from April 20, 2020). See the February 20, 2020 Federal Register at www.govinfo.gov for details.

May 21, 2020: Deadline for submitting comments on the following DEC rulemakings: (1) repeal and replacement of standards for gasoline dispensing facilities and transport vehicles; (2) revisions to NSR regulations; and (3) new and revised VOC content limits for consumer products (extended from April 21, 2020). See DEC's website at www.dec.ny.gov/regulations/propregulations.html#public for details.

May 22, 2020: Deadline for submitting comments on EPA's interim final rule relating to continuous emission monitoring during the COVID-19 national emergency. See the April 22, 2020 Federal Register at www.govinfo.gov for details.

May 31, 2020: Deadline for submitting comments on DEC's annual monitoring network plan describing specifics/changes to New York's ambient air monitoring network. The network plan document can be accessed at www.dec.ny.gov/chemical/33276.html.

June 8, 2020: Deadline for submitting comments on EPA's draft scopes for seven high-priority chemical substances identified for risk evaluation under TSCA. See the April 23, 2020 Federal Register at www.govinfo.gov for details.

June 10, 2020: Deadline for submitting comments on EPA's preliminary determination to establish drinking water standards for PFOA and PFOS under the SDWA (extended from May 11, 2020). See the March 10, 2020 Federal Register at www.govinfo.gov for details.

June 29, 2020: Deadline for submitting comments on EPA's decision to retain the current PM_{2.5} and PM₁₀ NAAQS. See the April 30, 2020 Federal Register at www.govinfo.gov for details.

June 29, 2020: Deadline for submitting comments on the following DEC rulemakings: (1) revisions to operating permit program regulations to clarify key provisions and streamline the air permitting process; (2) revisions to the emission statement regulations to require electronic submittal; and (3) revisions to the CO₂ emission trading program to implement updates to the Regional Greenhouse Gas Initiative. See DEC's website at www.dec.ny.gov/regulations/propregulations.html#public for details. Note: No public hearings are scheduled because of the COVID-19 pandemic.

July 8, 2020: Deadline for submitting comments on EPA's draft TSCA risk evaluation for perchloroethylene. See the May 4, 2020 Federal Register at www.govinfo.gov for details.