

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

October 14, 2020

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Final Statutes, Regulations and Guidance

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 85 Fed. Reg. 57018 (Sept. 14, 2020) (amendments); 85 Fed. Reg. 57398 (Sept. 15, 2020) (response to reconsideration)</p>	<p>EPA revised the New Source Performance Standards (NSPS) for sources in the oil and gas sector following review 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 greenhouse gases (GHGs), specifically methane. With the recent rulemaking, EPA made the following changes:</p> <ul style="list-style-type: none"> • EPA rescinded the provisions of the 2012 and 2016 rules extending the NSPS to transmission and storage. Upon reconsideration, EPA concluded that transmission and storage constitute 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EPA claims it lacked authority to extend the rule to cover these activities, and the standards must therefore be rescinded. • EPA also rescinded the methane requirements of the NSPS applicable in the production and processing segments after concluding that they are redundant with the existing NSPS for VOCs and therefore unnecessary. • More generally, EPA revised its approach to determining when standards must be adopted for a particular pollutant. Under Clean Air Act (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 once listed must simply have a “rational basis,” a less stringent standard. With this rulemaking, EPA will now require a significant contribution finding each time it regulates a new pollutant from a source category. <p>In a separate rulemaking issued in response to reconsideration petitions, EPA adopted changes to the NSPS relating to fugitive emissions, well site pneumatic pump standards, requirements for certification of closed vent system by a certified professional engineer, and the provisions governing the use of an alternative means of emission limitation.</p> <p>The rules can be found in the September 14 and September 15, 2020 Federal Registers at: www.govinfo.gov.</p>	<p>The rules are 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. Of particular note, elimination of the methane standards will eliminate the legal basis for EPA to establish emission guidelines for existing sources under the NSPS program since such guidelines are required only if the NSPS for new sources regulates non-criteria pollutants.</p> <p>More generally, the decision by EPA to require a “significant contribution” finding each time it considers regulating a new pollutant under an NSPS will make establishing standards for new pollutants under existing NSPS more difficult.</p>	<p>The amendments to the NSPS standard dropping the regulation of transmission and distribution sources and making other changes took effect September 14, 2020; the changes made in response to the reconsideration petitions will take effect November 16, 2020.</p>

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CLIMATE CHANGE			
<p>NEW YORK STATE Hydrofluorocarbon Standards and Reporting 6 NYCRR Part 494</p>	<p>DEC adopted regulations barring certain uses of hydrofluorocarbons (HFCs) in refrigerants, aerosol propellants, and foam-blowing agents in the wake of an EPA decision to roll back a comparable federal prohibition under the Significant New Alternatives Policy (SNAP) program. The SNAP program was adopted under Title VI of the CAA, which regulates the manufacture and use of substances that deplete the ozone layer. Under SNAP, EPA reviews and approves substitutes for hydrochlorofluorocarbons (HCFCs) and other ozone-depleting substances before they are introduced into commerce. Prompted by concerns about the global warming impact of HFCs that had previously been approved as substitutes for HCFCs, EPA conducted a new review and concluded that the HFCs were no longer acceptable substitutes for certain products because of their high global warming potential. In a challenge to that rule, a federal court held that EPA did not have the authority under the SNAP program to require manufacturers to replace HFCs with a substitute because HFCs are not ozone-depleting substances. Thereafter, EPA announced that it would not apply the HFC listings in the 2015 rule pending a rulemaking to address the court’s remand. DEC’s new regulation, set forth at 6 NYCRR Part 494, prohibits the use of specific substances in new or retrofitted equipment and new consumer products consistent with the original EPA SNAP rulemaking. The rule incorporates key definitions from the SNAP rule, the list of prohibited HFC end uses, a list of exemptions from the ban, and disclosure and recordkeeping requirements for manufacturers/users of products that could potentially contain the banned substances.</p> <p>The regulation can be found on DEC’s website at: www.dec.ny.gov/regulations/119026.html.</p>	<p>The rule is primarily of interest to manufacturers and users of refrigerants, refrigeration and air conditioning equipment, aerosol propellants, and foam-blowing agents that contain HFCs or could potentially contain HFCs. According to DEC, the majority of affected businesses are in retail food operations. However, the impact on these businesses is expected to be minimal because they are already in the process of replacing equipment due to the phase-down of ozone-depleting substances. Most of the costs of the new regulation will be incurred by manufacturers of stationary air conditioning equipment and polystyrene foam products.</p>	<p>The rule takes effect October 24, 2020.</p> <p>DEC made several non-substantive changes to the proposed regulations following the public comment period.</p>

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CHEMICAL			
<p>FEDERAL Final Toxic Substances Control Act Risk Evaluation for Cyclic Aliphatic Bromide Cluster, Including Hexabromocyclododecane (HBCD)</p>	<p>EPA issued its final risk evaluation for cyclic aliphatic bromide cluster, in particular, hexabromocyclododecane (HBCD) under the Toxic Substances Control Act (TSCA) for purposes of determining whether the chemical poses health or environmental risks during the normal course of use that must be mitigated. While the original TSCA statute focused on assessing chemicals before they enter the marketplace, the 2016 reforms require EPA to systematically assess existing chemicals. EPA must identify and prioritize chemicals for evaluation and conduct risk evaluations of high priority chemicals to determine if they present an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation. As part of this effort, EPA identified 10 chemicals for risk evaluation outside the 2016 TSCA prioritization process, including HBCD.</p> <p>HBCD has been used as a flame retardant in building materials and, to a lesser extent, as a component of solder paste, recycled plastics, and in automobile replacement parts. After identifying and assessing 12 conditions of use of HBCD, EPA identified risks to the environment for six: import; processing the chemical as a formulation, mixture, or reaction product; processing the chemical into articles; recycling; commercial installation of building/construction materials; and disposal (demolition). For workers and occupational non-users, EPA identified an unreasonable risk to health for two conditions of use: commercial installation of building/construction materials and disposal (demolition). EPA found no unreasonable risks to the general population or consumers. Having determined that the substance poses an unreasonable risk to health and the environment, EPA has one year to propose and take comment on a program to address those risks through risk management measures that may include regulations to prohibit or limit the manufacture, processing, distribution in the marketplace, use or disposal of the substance, as appropriate.</p> <p>The risk assessment can be found on EPA’s website at: www.epa.gov/assessing-and-managing-chemicals-under-tsca/risk-evaluation-cyclic-aliphatic-bromide-cluster-hbcd.</p>	<p>The risk evaluation is potentially of interest to companies that manufacture, import, process, distribute, use or dispose of HBCD. Having found that HBCD poses an environmental and health risk in certain settings, EPA must now develop a program to address the unreasonable risk identified. Note that production and use of HBCD is being phased out, and the chemical is not currently being manufactured domestically.</p>	<p>EPA must propose a mitigation strategy to address the risks posed by HBCD within one year and finalize that strategy within one year thereafter. EPA plans to complete risk evaluations by the end of 2020 for each of the 10 chemicals identified for review outside the formal TSCA risk evaluation prioritization process.</p>

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WATER			
<p>FEDERAL Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category 40 CFR Part 423 85 Fed. Reg. 64650 (Oct. 13, 2020)</p>	<p>EPA made major changes to its technology-based guidelines and standards for wastewater discharges from steam electric generating units (EGUs), which were revised in 2015 but never fully implemented. These so-called “categorical standards,” set forth at 40 CFR Part 423, contain effluent limits applicable to steam electric generating point sources that discharge both directly and to publicly owned treatment works (POTWs). The rule sets standards for specific wastewater streams from fossil fuel and nuclear-fired power plants as follows: best available technology economically achievable (BAT) applicable to direct discharges from existing facilities; pretreatment standards for existing sources (PSES) that discharge to a POTW; and new source performance standards (NSPS)/pretreatment standards for new sources (PSNS) applicable to new generating units that discharge directly to surface waters or to a POTW, respectively. For each type of standard—BAT, PSES, NSPS, and PSNS—EPA divided dischargers into subcategories based on the type of process generating the wastewater, setting separate standards for discharges from flue gas desulfurization (FGD) wastewater, fly ash transport water, bottom ash transport water, flue gasification wastewater, combustion residual leachate, and non-chemical metal cleaning wastes. In a controversial decision, the 2015 regulations included zero discharge limits for certain wastewater streams discharged from fossil fuel-fired power plants. The 2015 rule was challenged by both industry and environmental groups and the Trump administration adopted a rule postponing the earliest compliance date in the rule pending further review. With the recent rulemaking, EPA:</p> <ul style="list-style-type: none"> • Revised the technology-based effluent limitations guidelines and standards applicable to FGD wastewater and bottom ash (BA) transport water to reflect recent technological developments and provide greater flexibility in the operation and maintenance of these systems; • Established new subcategories for high FGD flow plants, low utilization EGUs, and EGUs retiring by 2028, together with requirements tailored to those categories; • Revised the voluntary incentives program for FGD discharges to provide additional time for plants to adopt process changes and controls to address FGD wastewater; and • Issued two-year extension of compliance deadlines for meeting FGD and BA transport water limitations. <p>The regulation can be found in the October 13, 2020 Federal Register at: www.govinfo.gov.</p>	<p>In adopting the 2015 rule, EPA estimated that were approximately 1,100 facilities potentially covered by the standards and concluded that steam electric power plants contribute significant quantities of toxic pollutants to surface waters relative to other industries regulated under the Clean Water Act. According to EPA, since the 2015 rule was adopted, several less costly wastewater technologies have emerged that are capable of removing similar quantities of pollutants. These technological developments are reflected in the rule.</p>	<p>The final rule takes effect December 14, 2020.</p>

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ENFORCEMENT			
<p>FEDERAL Memorandum Implementing Section 6 of Executive Order 13924 Relating to Enforcement</p>	<p>The Trump administration issued an executive memorandum advancing Section 6 of Executive Order 13924, <i>Executive Order on Regulatory Relief to Support Economic Recovery</i>, which directs the heads of agencies to “consider the principles of fairness in administrative enforcement and adjudication” and revise their procedures and practices in light of those principles. The memorandum directs agencies to provide greater due process and calls for other changes to ease the burdens on those subject to civil and administrative enforcement. Among other things, the memorandum:</p> <ul style="list-style-type: none"> • Requires agencies to prove alleged noncompliance rather than requiring the subject of the enforcement action to prove compliance (i.e., prohibits agencies from effectively requiring the regulated public to “prove a negative” unless otherwise required by statute). • Recommends that agencies apply the “rule of lenity” in administrative investigations, enforcement actions and adjudications by reading ambiguous statutes and regulations in favor of the party targeted for enforcement. • Specifies that administrative enforcement should be “prompt and fair.” In particular, the memorandum provides that agencies should: seek approval of an Officer of the U.S. or a designee before entering into a tolling agreement extending the statute of limitations; require investigation staff to either recommend enforcement or cease investigation within a defined time period absent unusual circumstances; specifically inform the target when an investigation is closed and when a finding of no violation has been made; and avoid multiple enforcement actions for a single body of facts. • Recommends that administrative adjudicators operate independently of enforcement staff on matters within their areas of adjudication, including avoiding ex parte communications with agency investigators and enforcement staff. • Consistent with agency confidentiality interests, specifies that the government should provide the subjects of administrative enforcement actions with favorable evidence in its possession. • Specifies that all rules of evidence and procedure should be public, clear and effective. Specific recommendations include: adopting or amending agency evidentiary rules to eliminate unfair prejudice, reduce undue delay, and promote efficiency; reducing reliance on hearsay evidence; possibly incorporating rules of evidence by reference; and making rules of evidence and procedure easily accessible on agency websites. <p>The policy also specifies that: penalties should be proportionate, transparent and imposed in adherence to consistent standards and only as authorized by law; administrative enforcement should be free of improper government coercion; liability should be imposed only after notice and an opportunity to respond; administrative enforcement should be free of unfair surprise; and agencies must be accountable for their administrative enforcement decisions.</p> <p>The memorandum can be found at: www.whitehouse.gov/wp-content/uploads/2020/08/M-20-31.pdf.</p>	<p>The memorandum, if fully implemented, has the potential to significantly impact administrative and civil enforcement proceedings at federal agencies, including EPA. Of particular note, the memorandum calls for agencies to take steps to ensure that investigations and enforcement actions are not allowed to drag on indefinitely and that the subjects of these investigations/actions are notified when those investigations/actions are terminated by the agency. More generally, the memorandum contemplates changes designed to even the playing field between agencies and the regulated community by requiring agencies to implement measures designed to clarify the rules governing agency investigations and adjudications and establish standards and procedures to ensure that the regulated community is treated fairly during investigation and adjudication.</p>	<p>The memorandum was issued on August 31, 2020.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>FEDERAL Reissuance and Modification of Nationwide Permits 33 CFR Chapter II 85 Fed. Reg. 57298 (Sept. 15, 2020)</p>	<p>The U.S. Army Corps of Engineers (ACOE) proposed to reissue nationwide permits (NWP)s, general conditions, and definitions, with some modifications, and adopt several new nationwide permits. Individuals planning to undertake activities that will disturb wetlands or waterways frequently must obtain a permit from the ACOE. To streamline the permit approval process, the ACOE has issued NWPs for project categories that typically result in minimal disturbances. Certain NWPs require the submission of a pre-construction notification (PCN) prior to proceeding under the NWP. Major proposed changes to the NWPs include:</p> <ul style="list-style-type: none"> • Adding new NWPs A and B authorizing seaweed and finfish mariculture activities in navigable waters of the United States, including federal waters on the outer continental shelf. The existing mariculture NWP applies only to shellfish farming. • Limiting the PCN requirement to non-federal permittees. • Modifying NWP 12 to limit it to oil and natural gas pipeline activities while issuing two new NWPs authorizing electric utility line and telecommunications activities (NWP C) and activities for types of utility lines not covered by the other utility line permits (e.g., potable water, sewage, wastewater, stormwater, brine, industrial products) (NWP D). The ACOE is specifically inviting comment on best management practices that could be added as terms to these NWPs to ensure a particular type of utility line results in no more than minimal individual or cumulative adverse environmental impacts. • Revising the following NWPs to remove the 300 linear foot limit for losses of stream beds and rely on the ½ acre limit and PCN requirements to limit environmental impacts: 21 (surface coal mining activities), 29 (residential developments), 39 (commercial and institutional developments), 40 (agricultural activities), 42 (recreational facilities), 43 (stormwater management facilities), 44 (mining activities), 50 (underground coal mining activities), 51 (land-based renewable energy generation facilities), and 52 (water-based renewable energy generation pilot projects). Other changes are proposed for several of these NWPs. • Modifying other NWPs, including NWP 3 (maintenance), 13 (bank stabilization activities), 14 (linear transportation projects), 17 (hydropower projects), 19 (minor dredging), 21 (surface coal mining activities), 27 (aquatic habitat restoration, enhancement, and establishment activities), 41 (reshaping of existing drainage and irrigation ditches), 48 (commercial shellfish mariculture activities), and 49 (coal remining activities). <p>The notice can be found in the September 15, 2020 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The new/reissued nationwide permits apply to specific activities that could potentially disturb wetlands or waterways. Applicants for certain NWPs must submit PCNs and/or satisfy ACOE regional conditions and conditions imposed by states to preserve coastal zone consistency or protect water quality via the water quality certification process.</p>	<p>The ACOE is accepting comments on the draft rulemaking until November 16, 2020.</p> <p>The New York Districts (New York and Buffalo) will issue regional conditions designed to ensure that the NWPs will not have adverse environmental impacts. In addition, DEC will issue its own conditions intended to ensure that projects authorized under the NWPs satisfy the state’s water quality certification and coastal zone consistency requirements.</p>

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ENERGY			
<p>NEW YORK STATE Renewable Energy Siting Draft Regulations and Uniform Standards and Conditions 19 NYCRR Part 900</p>	<p>The newly created Office of Renewable Energy Siting (ORES) proposed regulations implementing the Accelerated Renewable Energy Growth and Community Benefit Act, enacted as part of the Governor’s budget bill earlier this year. The Act—which is codified in Executive Law § 94-c—is intended to assist New York in achieving its greenhouse gas and renewable energy goals by, among other things, establishing an expedited process for reviewing renewable energy projects in place of New York Public Service Law (PSL) Article 10 and developing uniform standards and conditions (USCs) applicable to categories of renewable energy projects. The proposed regulations—to be set forth at 19 NYCRR Part 900—expand upon the review and approval standards and procedures in the Act. Key provisions include:</p> <ul style="list-style-type: none"> • Preapplication procedures, addressing consultation with local agencies, meetings with community members, publication of notices of intent to file an application, wetland and stream delineation to identify regulated areas, and wildlife site characterization and archaeological resources consultation; • General requirements for applications, including content and format, requests for site-specific conditions in place of USCs, establishment of project website, identification of confidential information, plans for obtaining water quality certifications, and filing and service rules; • Application exhibits, describing in detail the information required to be included with each of the 25 exhibits proposed to be included with each application for an ORES permit; • Application transfers from Article 10 or alternative permitting proceedings, setting forth the procedures and standards for processing permits for certain small facilities that opt into the Section 94-c program or transfer from Article 10; • Processing of applications, addressing completeness determinations; • Local agency account, addressing the procedures for distributing funds established to assist local agencies and community intervenors with review of a project; • Application amendment, addressing procedures/standards for amending pending applications; • Hearing process and final determination on applications, addressing publication of draft siting permit, notice of hearing, public comment hearings and issues determination (including standard for identifying adjudicable issues), hearing participation, general rules of practice, disclosure, conduct of adjudicatory hearings, and related issues; • Compliance filings, i.e., submissions required to demonstrate that applicant is adhering to the conditions of the permit; and • Modifying, transferring or relinquishing permits. <p>ORES published a separate rulemaking containing USCs, which will be found at 19 NYCRR § 900-6. The rule establishes conditions to be included in each permit issued by ORES, with certain requirements tailored specifically to wind or solar projects.</p> <p>See the September 16, 2020 State Register at: www.dos.ny.gov/info/register/2020/091620.pdf.</p>	<p>The rules are primarily of interest to renewable energy developers and to those with an interest in such projects (local communities potentially hosting such projects, environmental groups and others). Until recently, the siting of large-scale energy projects (25 megawatts or greater capacity) has been governed by the PSL Article 10 process, which has been widely criticized for being too complicated and taking too long. With the enactment of the 2019 Climate Leadership and Community Protection Act, pressure mounted to develop a new review process for renewable energy projects designed to expedite approval and construction. Section 94-c established the framework for the new review process, and the proposed regulations are intended to implement the statute.</p>	<p>ORES is accepting comments on the proposed procedures and standards for implementing the new renewable energy siting program until November 16, 2020 and on the USCs until December 7, 2020.</p> <p>Public hearings on the USCs will be held on November 20, 2020 at 5:00 p.m. at the McDonough Sports Complex, Hudson Valley Community College, North Drive, Troy. Additional public hearings are scheduled in Buffalo, Rochester, Clayton, and Smithtown. A pair of virtual public statement hearings are scheduled for November 24, 2020 and November 30, 2020.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA issued the **results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants (NESHAP)** for iron and steel foundries. Under CAA § 112, EPA must assess whether any residual risk remains for major sources after imposing technology-based NESHAPs and revise the standard as necessary. EPA also must conduct a periodic review of the technology underlying the NESHAPs to confirm that the standards remain current. The iron and steel foundry standard—which is set forth at 40 CFR Part 63, subpart ZZZZZ—applies to both major and area sources that manufacture metal castings by melting iron and/or steel in a furnace, pouring it into a mold, allowing the casting to cool, removing the casting from the mold, and finishing (grinding and cleaning) the final cast product. With respect to major sources, EPA concluded under CAA § 112(f) that the risks remaining after application of the NESHAP were acceptable and that the standards protect public health with an ample margin of safety. Also, EPA found under CAA § 112(d)(6) that there have been no cost-effective developments in practices, processes or control technologies and that no changes to the major or area source NESHAP are necessary to address technological improvements. Consistent with other recent NESHAP rulemakings, EPA required submission of electronic copies of compliance reports, including performance test and performance evaluation results, and deleted the exemption for excess emissions during startup, shutdown and malfunction. The rule can be found in the September 10, 2020 Federal Register at: www.govinfo.gov.

Implications: There are approximately 45 major source iron and steel foundries in the United States and an additional 390 area source foundries potentially subject to the standards.

ENVIRONMENTAL REVIEW

FEDERAL: The Council on Environmental Quality (CEQ) issued a **guidance memorandum addressing environmental review of emergency response actions under the National Environmental Policy Act (NEPA)**. NEPA—found at 42 USC §§ 4321 to 4370h—requires federal agencies to incorporate environmental considerations into planning, decisionmaking, and permitting. Federal agencies must prepare detailed statements assessing the environmental impact of, and alternatives to, major federal actions that significantly affect the environment. The NEPA implementing regulations provide for alternative arrangements for NEPA compliance during emergencies. The recent guidance memorandum, which replaces earlier guidance on this issue, sets forth basic standards and procedures for emergency situations that have the potential for a significant environmental impact that would ordinarily require an environmental impact statement and actions with less significant impacts that would ordinarily require an environmental assessment (EA). The guidance memorandum is accompanied by a pair of attachments consisting of step-by-step instructions for determining the appropriate path forward for NEPA environmental review of all actions proposed in response to an emergency situation (Attachment 1) and guidance on preparing an EA for emergency actions (Attachment 2). The memorandum can be found in the September 24, 2020 Federal Register at: www.govinfo.gov.

Implications: The guidance is potentially of interest to individuals undertaking emergency response activities with potential NEPA implications.

GENERAL

NEW YORK STATE: DEC replaced its existing **procedures for conducting enforcement hearings** to reflect current practice, incorporate procedural and legal developments, ensure consistency with the Civil Practice Law and Rules, where appropriate, and make other changes and updates. The regulations, which are set forth at 6 NYCRR Part 622, cover DEC enforcement hearings as well as summary abatement and other similar emergency proceedings, and address such matters as commencement of a proceeding, preparing an answer, general rules of practice, disclosure, the conduct of a hearing, and other procedural matters. Part 622 had not been revised since 1993 and so was somewhat out of date. Changes made as part of the rulemaking include: adding or revising numerous definitions; revising the procedures for commencing a proceeding, including establishing procedures for challenging petroleum delivery prohibitions; codifying the practice of granting a default if the respondent fails to appear at the prehearing conference and the time to answer the complaint has expired; clarifying certain motion procedures; revising the default procedures to reflect current Department practice; and adding a new section describing the mediation process. The rule took effect September 16, 2020; it can be found at: www.dec.ny.gov/regulations/118492.html.

Implications: The changes are potentially of interest to anyone who may be subject to a DEC enforcement action.

Other Recent Developments (Proposed)

SOLID WASTE

FEDERAL: EPA is seeking comment on its draft *National Recycling Strategy*, which identifies strategic objectives and actions needed to create a stronger, more resilient U.S. municipal solid waste recycling system. In recent years, solid waste recycling has faced numerous challenges, including the collapse of the market for recyclables attributable in large part to China's decision to significantly limit the amount of recyclable material accepted from the United States. After summarizing the strategy development goals and framework, the document provides an overview of the recycling process and the drivers, opportunities and challenges facing the U.S. recycling system. The document then identifies three basic objectives of the Strategy, together with proposed actions for achieving those objectives. The three objectives and main action items are: (1) Reduce Contamination in the Recycling Stream (enhance education and outreach to consumers on the value of recycling and how to recycle properly; and increase coordination, availability and accessibility of information on recycling programs and policies at all levels); (2) Increase Processing Efficiency (improve understanding of available recycling infrastructure and needs; increase awareness of available public and private funding and incentives; increase consideration of the sorting process in the design of new products; and develop and implement national recycling system definitions, measures, targets and performance indicators, among other action items); and (3) Improve Markets (conduct market development workshops and dialogues;

analyze different types of end markets considering resilience, environmental benefits and other relevant factors; and increase data availability and transparency about recyclable materials, among other action items). EPA is accepting comments on the draft Strategy until **December 4, 2020**; it can be found on EPA's website at: www.epa.gov/americarecycles/national-recycling-strategy-and-framework-advancing-us-recycling-system.

Implications: The strategy is of general interest municipalities, businesses and others involved in solid waste recycling.

OTHER

NEW YORK STATE: DEC has proposed additional **changes to its endangered and threatened species regulations** to codify situations where DEC has not required permits under its existing regulations at 6 NYCRR Part 182. Last year, DEC proposed changes to Part 182, including: (1) reducing the scope of what can be identified as occupied habitat by exempting 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. Following public comment, DEC proposed to modify 6 NYCRR § 182.9(c) to specify that a determination that a proposed activity is not subject to regulation under Part 182 is valid for one year from the date of issuance as long as there are no changes to the activities or locations proposed in the jurisdictional request and no federally listed species are confirmed within the project footprint prior to expiration of the one year period. DEC is accepting comments on the repropoed rule until **November 16, 2019**; it can be found on DEC's website at: www.dec.ny.gov/regulations/34113.html#Part_182.

Implications: The repropoed 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 19, 2020: Deadline for submitting comments on EPA's proposed GHG emission standards for certain civil jet airplanes. See the August 20, 2020 Federal Register at www.govinfo.gov for details.

October 20, 2020: Public comment hearing for the proposed statewide GHG emission limits under the CLCPA to be held at 2:00 and 6:00 p.m. via electronic webinar. Instructions on how to join the hearing and provide oral statements are available at: www.dec.ny.gov/regulations/121052.html.

October 23, 2020: Deadline for submitting comments on EPA's proposed revisions to the NESHAP for industrial, commercial and institutional boilers and process heaters. See the August 24, 2020 Federal Register at www.govinfo.gov for details.

October 27, 2020: Deadline for submitting comments on DEC's proposed statewide GHG emission limits under the CLCPA. See DEC's website at www.dec.ny.gov/regulations/121052.html for details.

November 16, 2020: Deadline for submitting comments on ACOE's proposal to reissue and modify nationwide permits. See the September 15, 2020 Federal Register at www.govinfo.gov for details.

November 16, 2020: Deadline for submitting comments on ORES' proposed regulations establishing procedures and standards for implementing the new renewable energy siting program. See the September 15, 2020 State Register at www.dos.ny.gov/info/register/2020/091620.pdf for details.

November 16, 2020: Deadline for submitting comments on DEC's repropoed revisions to the rules governing endangered and threatened species. See DEC's website at www.dec.ny.gov/regulations/34113.html#Part_182 for details.

November 20, 2020: Public hearing on ORES' proposed uniform standards and conditions for siting, design, construction and operation of major renewable energy facilities under new siting program to be held at 5:00 p.m. at the McDonough Sports Complex, Hudson Valley Community College, North Drive, Troy. Additional public hearings are scheduled in Buffalo, Rochester, Clayton, and Smithtown. Also, a pair of virtual public statement hearings are scheduled for November 24, 2020 and November 30, 2020.

December 4, 2020: Deadline for submitting comments on EPA's draft *National Recycling Strategy*. See EPA's website at www.epa.gov/americarecycles/national-recycling-strategy-and-framework-advancing-us-recycling-system for details.

December 7, 2020: Deadline for submitting comments on ORES' proposed uniform standards and conditions for siting, design, construction and operation of major renewable energy facilities under new siting program. See the September 15, 2020 State Register at www.dos.ny.gov/info/register/2020/091620.pdf for details.