

Practical Solutions

Environmental Advantage, Inc.
& Hazard Evaluations, Inc.

Fall 2021
Quarterly Newsletter

Important Compliance Dates & Deadlines for 2021:

Q3 TP-550 HW Assessment & Fees
October 20

Q3 Stormwater DMR
October 28

Cooling Tower Annual Certification
November 1

Stormwater Annual CSCIER
December 31

Quarter 4 / 2nd Period Stormwater Annual Sampling
December 31

Quarter 4 Stormwater Visual Monitoring
December 31

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NY HERO Act - Workplace Safety Plans Must be Implemented



On May 5, 2021, former Gov. Andrew Cuomo signed the New York Health and Essential Rights (HERO) Act into law. The HERO Act applies to all private employers in New York State, regardless of size. The Act applies to any viral, bacterial, or fungal disease that is spread through the air and is designated by the New York State Department of Health (NYSDOH) as a highly contagious disease. On September 6, 2021, Gov. Kathy Hochul and the NYSDOH announced the designation of COVID-19 as an airborne infectious disease. The designation requires all employers to implement workplace safety plans.

Employers can either create a plan that meets or exceeds the NYS Departments of Labor (NYS DOL) and Health (NYSDOH) standard, or use the recently published NYS Model Safety Plan. If an employer already developed their exposure prevention plan, they are now required to immediately review and update the plan, if necessary, to include current information, guidance, and mandatory requirements. The plan must be promptly finalized and activated in the workplace by providing a verbal review with employees. Each employee must also be provided with a copy of the plan in their primary language within 30 days of adoption of the plan and upon hiring a new employee. The plan must also be posted in an area accessible to employees during all work shifts.

Additionally, the law requires employers with 10 or more employees to establish and administer a joint labor-management workplace safety committee to ensure workers play an integral role in workplace safety and allow employees to voice safety and health concerns. This requirement goes into effect on November 1, 2021. The NYS DOL will issue regulations regarding the workplace safety committee requirements in the future. Be sure to check Practical Solutions' next issue for updates.

Expanded Polystyrene Foam Container & Loose Fill Packaging Ban



Beginning January 1, 2022, the New York State Department of Environmental Conservation (NYSDEC) will begin enforcing the Expanded Polystyrene Foam Container and Polystyrene Loose Fill Packaging Ban. This ban states that no covered food service provider may sell or distribute disposable food service containers that contain expanded polystyrene foam in the state. The ban also states that no manufacturer or store may sell or distribute polystyrene loose fill packaging in the state. One exemption to this rule includes raw meat, pork, seafood, poultry or fish sold for the purpose of cooking or preparing off-site by the customer. Additionally, there is a financial hardship waiver that can be submitted if the provider has an annual gross income under \$5,000, does not operate more than 10 locations in the state, and is not operated pursuant to a franchise agreement. The waiver may be granted if it is determined that an alternative product to expanded polystyrene foam would create an undue financial hardship. The ban does not include specific reporting or recordkeeping, unless a facility is granted a financial hardship waiver.

NYSDEC Emissions Standards & Large Entity Reporting



The New York State Department of Environmental Conservation (NYSDEC) has proposed the amendment of Parts 200 (General Provisions) and 218 (Emissions Standards for Motor Vehicles) of Title 6 NYCRR. The purpose is to further reduce air pollution from motor vehicles and is consistent with the requirements of the Climate Leadership and Community Protection Act to reduce greenhouse gas emissions in New York. The proposed amendments establish annual zero emission vehicle (ZEV) sales requirements for truck manufacturers, and a one-time large entity fleet reporting requirement for subject entities. The ZEV annual sales requirements will vary among vehicle weight class, beginning with model year 2025 and increasing through 2035. The one-time large entity fleet reporting will be submitted to the NYSDEC and will help identify strategies to accelerate the adoption of zero emission medium- and heavy-duty vehicles by identifying the vehicle ownership and operation and how the vehicles are used to perform various services. Reporting applies to, but is not limited to, retailers, manufacturers, refiners, drayage terminal operators, utility providers, refuse companies, and government entities. The amendments to Parts 200 and 218 are only proposed, and Environmental Advantage will continue to update when finalized.

Special Requirements for Predetermined Beneficial Use of Fill Material



Department of
Environmental
Conservation

The New York State Department of Environmental Conservation (NYSDEC) has recently focused their attention on the proper reuse of fill material. The general requirements for solid waste management (6 NYCRR Parts 360-366, and 369) were revised and effective on November 4, 2017, with further clarification issued in the follow-up Enforcement Discretion Letter in September 2019. As part of the revisions, the NYSDEC added special requirements for reuse of fill materials under a pre-determined beneficial use determination (BUD). Fill material is defined as “soil and similar material” excavated for the purpose of construction or maintenance. “Similar material” can include particles of sand, gravel, rock, ceramic tile, asphalt pavement, brick, glass, crushed concrete, or other durable human-made material that contributes to the function of the material as fill. This does not include plastic, gypsum wallboard, wood, paper, and other material that may readily degrade or produce odors.

A BUD is a designation by the NYSDEC which applies to waste material that is to be beneficially used. When a material is classified for beneficial use, the material ceases to be a waste, provided that the material is used in accordance with the new regulations. There are 28 predetermined BUDs, one of which allows the reuse of fill material with no evidence of historical impacts, or visual / olfactory evidence of physical / chemical contamination, if generated outside of NYC. Also known as Exempt Fill, this material may only contain soil, sand, gravel or rock. Non-soil constituents (i.e. concrete, brick, etc.) cannot be present. Fill materials suspected of being contaminated (generated outside of NYC) are outlined in Part 360.13 and would include any of the following:

1. There is historical evidence of site impacts, such as reported spills, or visual / olfactory evidence of chemical or physical contamination observed;
2. The fill originates from a site with historical industrial land use (including filling and service stations); or
3. If during excavation or grading, there are visual / olfactory indications of chemical or physical contamination.

It is the responsibility of the contractor to understand the history of the project site and if contamination is present. If one of the above indications of contamination are met / encountered, this regulation requires the fill to be sampled and analyzed under the direction of a Qualified Environmental Professional (QEP) per 360.13. Analytical parameters include metals, PCBs, pesticides, volatile organic compounds, and semi-volatile organic compounds. Additional parameters such as asbestos may also be included based on past events and uses at the site.

The analytical results obtained will then determine what types of restrictions, if any, will be placed on the use of the fill. The department requires retention of all records of fill material quantities and analytical data for a minimum of three years. For fill material which is then characterized as restricted-use or limited-use, the NYSDEC requires notification at least 5 days before delivery of the fill material greater than 10 cubic yards to an off-site location. The notification must be made on a form found on the Department’s website, and must also include any analytical data required by the regulation. For assistance making a BUD determination, contact Environmental Advantage.

OSHA’s New Heat Stress Initiative

 On September 20, 2021, the White House announced enhanced and expanded efforts that the U.S. Department of Labor is taking to reduce heat-related illnesses. The Occupational Safety and Health Administration (OSHA) is implementing an enforcement initiative on heat-related hazards, developing a National Emphasis Program on heat inspections, and is launching a rulemaking process to develop a workplace heat standard. The initiative prioritizes heat-related interventions and inspections of work activities on days when the heat index exceeds 80 degrees Fahrenheit, and applies to indoor and outdoor worksites in general industry, construction, agriculture, and maritime. OSHA Area Directors will institute the following:

1. Prioritize inspections of heat-related complaints, referrals, and employer-related illnesses and initiate on-site investigation;
2. Instruct compliance safety and health officers to conduct an intervention or opening an investigation when they observe employees performing strenuous work in hot conditions; and
3. Expand the scope of other inspections to address heat-related hazards where worksite conditions or other evidence indicates these hazards may be present.

In October 2021, OSHA will issue an Advanced Notice of Proposed Rulemaking on heat injury and illness prevention in outdoor and indoor work settings. The notice will initiate a comment period, allowing OSHA to gather perspectives and technical expertise on heat-related illness topics, and develop strategies to protect workers.

Navigable Waters Protection Rule Update

On August 30, 2021, a Federal judge vacated and remanded the 2020 Navigable Waters Protection Rule (NWPR), stating that it failed to adequately protect the nation’s waters and that the definition of ‘Waters of the United States’ must be revised or replaced. The U.S. Environmental Protection Agency (USEPA) will now enforce pre-2015 Clean Water Act protections. The decision to vacate and remand the 2020 regulation will affect permit requirements for discharging pollutants to water and permits to dredge and/or fill waters under the Clean Water Act.