

**Important Compliance Dates & Deadlines for 2024:**

Q4 TP-550 HW Assessment & Fees  
**January 20**

Annual Stormwater Compliance Report  
**January 28**

Annual & Semi-Annual Air Compliance Report  
**January 30**

EPCRA 312 (Tier II)  
**March 1**

Annual Hazardous Waste Report  
**March 1**

Annual Part 360 / BUD Reports  
**March 1**

Water Withdrawal Reports  
**March 31**

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## NYSDEC Management of Radioactive Materials: *Effective October 27, 2023*

NYSDEC introduced a Program Policy on October 27, 2023 entitled “Management of Soils Contaminated with Technologically Enhanced Naturally Occurring Radioactive Materials (TENORM)” under 6 NYCRR 380-3.5. TENORM is a solid material created as a result of an unnatural concentration of naturally occurring radioactive materials, generally from manufacturing activities. In New York State, such activities are often mining or industrial processes, including primary metals operations (e.g., metallurgy, smelting, forming, and foundry), and also energy production. In Buffalo and the surrounding area, TENORM is most often encountered in the form of slag, which is waste material from the refining or smelting ore and recycled metals. Slag in Western New York exists in myriad colors, with the most common ranging from grey to light blue. Slag will generally be found as a dense, porous material that can have oxidized iron within it. As a result of its predominant use, TENORM material will commonly be found close to the natural soil surface or a modified grade and often directly under structures.

This new policy outlines both the processes and criteria to be followed when evaluating TENORM, and how to properly manage TENORM when it is encountered during excavation or other earthwork projects that may disturb the soil/fill at any site, including remedial projects. This policy addresses projects that may disturb either identified or suspect TENORM, as proper characterization is required if concerns exist when material is encountered. Niagara County and northern Erie County have a history of radioactive slag material being produced via manufacturing in and around Niagara Falls in the early to mid-1900s. This slag, some of which is now being determined to be TENORM, was commonly used for base material in driveways, park-

ing areas and under structural pads. Due to the substantial quantities of slag produced over many years of such manufacturing operations, its distribution for use has been determined to be across Western New York, as well as several areas in Central New York.

TENORM is identified through analytical testing for radioactive material, specifically for its concentration of radium-225. Once it is identified, it is considered to be radioactive material and will in all likelihood be subject to the NYSDEC’s regulatory authority. To reiterate, this regulatory applicability includes material or fill that is **suspected or known to have potential or definitive TENORM characteristics**, as defined in the NYSDEC Program Policy DMM-5 / Management of Soils Contaminated with TENORM.

Once suspected or identified, the proper management of TENORM materials begins with the preparation of a Radiation Screening Survey Plan which must be submitted to the NYSDEC for approval. If TENORM is verified, a TENORM Management Plan must also be submitted to the NYSDEC for approval. Since there are currently no approved disposal facilities for newly generated TENORM in New York State, the waste will need to be properly shipped and disposed of at an out-of-state authorized facility.

EA strongly suggests that during the planning stages of any facility renovation, site remediation, or other earthwork project, your facility plans for a potential encounter with slag material which could represent TENORM. If you have any questions regarding the DMM-5 TENORM Management, require a screening or management plan, or TENORM disposal arrangements, please call Environmental Advantage, Inc. for assistance.

## Additional Emissions Control and Record Keeping Requirements Proposed for Asphalt Pavement Manufacturing Plants

The NYSDEC proposed a new set of regulations under NYCRR 6 Subpart 220-3, which introduces more stringent emissions control and recordkeeping mandates for Asphalt Pavement Manufacturing Plants (APMPs). This new rule, if adopted, would replace the current Subpart 212-4 regulation which limits Nitrogen Oxide (NOx) emissions from Hot Mix Asphalt production plants. The proposed Subpart 220-3 applies to facilities producing at least 75,000 tons of asphalt paving material per year. In addition to limiting NOx emissions, the proposed regulation will require specific controls for volatile organic compounds (VOCs), particulate matter (PM), blue smoke (organic aerosols), and fugitive dust from existing and new APMPs. The compli-

ance deadlines for subject facilities vary based on the annual capacity thresholds. The rule requires use of control devices such as carbon filters to reduce emissions of VOCs and other pollutants, daily record keeping of production and equipment operating data, annual tune-ups, moisture reduction plans, and emissions testing for NOx and PM once per permit term. Potentially-affected facilities should become familiar with the proposed rule and its requirements and begin developing a plan for how they will comply.

Written comments on the proposed rule may be submitted until 5 p.m. on **January 22, 2024**. Additional information regarding the proposed Subpart 220-3 can be found on the [NYSDEC’s website](#).

## TRI Update: How PFAS Will Be Reported

The USEPA published a final rule in October 2023 to change the reporting requirements of per- and polyfluoroalkyl substances (PFAS). These compounds will be added to the list of Chemicals of Special Concern under the Toxic Release Inventory (TRI) and as such will be subject to lower reporting thresholds. PFAS will be subject to the same reporting requirements of chemicals of special concern and therefore will not be eligible for use of the *de minimis* exemption. USEPA's objective with this rulemaking is to ensure chemical mixtures and products containing PFAS are accurately reported. This will affect the calendar year 2024 TRI reporting period and beyond. If your facility manufactures, imports, processes, or otherwise uses PFAS (listed in 40 CFR 372.28), your facility will be subject to these changes. EA specializes in assisting clients with chemical management, reporting, and compliance deadlines, and remains up to date with changing regulations. We are available to assist with your TRI (Form R) data and other chemical database reporting including, but not limited to, SARA 302 / 311 / 312 Tier II reporting.

### SARA Reporting Reminders 2024

Review New or Remove Chemicals in Inventory

Complete EA Chemical Inventory Sheet

Submit Inventory Sheet/Information to EA by **FEBRUARY 1ST, 2024** at the latest

EA Completes SARA Calculations and Summary

EA Submits to NY E-Plan/State Specific Portal

## Amendments to the Uniform Procedures Act: Effective December 26, 2023



The New York State Department of Environmental Conservation (NYSDEC) adopted amendments to the Uniform Procedures Act (UPA) 6 NYCRR Part 621. Conforming changes were also made to 6 NYCRR Part 421, Mined Land Reclamation Permits, and 6 NYCRR Part 601, Water Withdrawal Permitting. Many NYSDEC permitting programs are directed by the UPA including permits in air pollution control, water withdrawal, State Pollution Discharge Elimination System (SPDES), and some solid waste permits. The major changes to Parts 621, 421, and 601 include:

- Expansion of the list of "minor projects" to better match with NYSDEC classifications, minor projects do not require public notice and have a shorter decisional time frame;
- Recognition of the exchange of electronic documents and e-business;
- Incorporation of requirements for consideration of climate change effects and environmental justice;
- Conformation of the stated periods for submission of applications to renew mining permits and water withdrawal permits.

These changes are primarily procedural and do not change standards for permit allocations. **However, several of the additions to the UPA address climate change and environmental impacts, which may require permit applications to address these issues, where applicable.** These adopted amendments will go into effect starting December 26, 2023.

## PFAS Historical Data Reporting



On October 11, 2023, the USEPA published a final rule under the Toxic Substances Control Act (TSCA) which requires facilities who have manufactured or imported per- and/or polyfluoroalkylated substances (PFAS) since January 1, 2011 to submit a one-time usage report by **May 8, 2025**. This applies to manufacturers and importers of PFAS for commercial purposes, and manufacturers and importers of substances containing PFAS or PFAS as byproducts. USEPA recognizes that this could be a laborious task as up until recently, PFAS were not required to be addressed to safety datasheets (SDS) and other technical information produced by manufacturers. However, similar to TSCA CDR requirements, facilities are required to review and gather information for this report that is readily available and ascertainable. **There is a substantial list of data that manufacturers will be required to report.** EA strongly recommends that manufacturers begin to gather data for submittal. We are available if assistance is needed.

### USEPA to Ban Manufacture, Process, and Distribution Trichloroethylene (TCE) Due to Adverse Health Effects

The U.S. Environmental Protection Agency (USEPA) has determined that TCE presents an unreasonable risk of injury to health based on the significant health effects of TCE exposure. These can include cancerous and non-cancerous effects from various exposure pathways including long-term inhalation and dermal exposure. TCE is often utilized in degreasing, adhesives, and a variety of other applications. In October 2023, the USEPA proposed a complete ban on all manufacture, processing, and distribution of TCE in both industrial and commercial use. They also proposed to prohibit the disposal of TCE at specific treatment and pre-treatment facilities, and may require recordkeeping and notifications associated with the disposal of TCE. **Facilities that currently utilize TCE will require a phaseout plan.** The compliance timeframes and workplace control deadlines differ based on the use of TCE.

