



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL Air Toxics Standards for Major Source Boilers and Commercial and Industrial Solid Waste Incinerators Stayed 40 CFR Part 60, subparts CCCC and DDDD; 40 CFR Part 63, subpart DDDDD 76 Fed. Reg. 28662 (May 18, 2011)</p>	<p>EPA stayed the effective date of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for industrial, commercial and institutional boilers and process heaters at major sources and the final standards for commercial and industrial solid waste incineration (CISWI) units after finding that “justice requires postponing the effectiveness of these rules.” These controversial standards were adopted earlier this year as part of a larger rulemaking that also included rules addressing boilers at area (i.e., minor) sources and sewage sludge incinerators. At the time it adopted the major source boiler and CISWI rules, EPA announced plans to reconsider key elements of the rules. Thereafter, EPA received numerous petitions asking it to reconsider the rules as well as petitions seeking judicial review. In the wake of receipt of the judicial review petitions, EPA decided to exercise its authority to postpone the effective date of the rules under the Administrative Procedure Act after finding that the public did not have sufficient time to comment on certain revisions made to the proposed rules. The postponement will continue until judicial review of the rules is no longer pending or EPA completes its reconsideration of the rules, whichever is earlier.</p> <p>The announcement can be found in the May 18, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The announcement is primarily of interest to owners/operators of boilers and process heaters at major sources and CISWIs. EPA did not extend the effective date of the area source boiler or sewage sludge incinerator rules.</p>	

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>FEDERAL Confidentiality Determinations for Data Required under the Mandatory Greenhouse Gas Reporting Rule 40 CFR Part 2 76 Fed. Reg. 30782 (May 26, 2011)</p>	<p>EPA finalized its confidentiality determinations for certain data elements required to be reported under the mandatory greenhouse gas (GHG) reporting rule (40 CFR Part 98), which requires facilities/operations in certain source categories to provide information on GHGs emitted or supplied. Under Section 114(c) of the Clean Air Act, “emission data” cannot be excluded from disclosure as confidential business information (CBI) under 40 CFR Part 2. With this rulemaking, EPA reviewed the data required by the mandatory GHG reporting rule for both direct emitters and suppliers and issued final confidentiality determinations for specific categories of information. The rule distinguishes among emission data (which is never entitled to confidential treatment), data that are not emission data and are not CBI, and data that are not emission data but are CBI. With respect to certain categories of data, EPA made CBI determinations for individual data elements after finding that certain data elements in the category are CBI and certain data elements are not.</p> <p>The final rule does not cover data elements addressed in a series of rulemakings in December 2010 that deferred the requirement to submit information on inputs to emission equations pending further study. In response to the original CBI proposal, industry rejected EPA’s conclusion that inputs to emission equations are “emission data” under the GHG reporting rule, arguing that certain data inputs such as product composition and raw materials are trade secrets and should remain confidential. In response, EPA deferred the requirement that facilities report data elements that are inputs to emission equations for several years and sought information and comment to assist in evaluating issues relating to reporting and public availability of inputs to emission equations.</p> <p>The confidentiality determinations can be found in the May 26, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule affects facilities/suppliers required to submit mandatory GHG reports, except in source categories added to the mandatory reporting list after July 2010. EPA plans to undertake a separate action to determine the confidentiality status for data elements reported under 40 CFR Part 98, subparts I (electronics manufacturing), L (fluorinated gas production), W (petroleum and natural gas systems), DD (sulfur hexafluoride and perfluorocarbons from electrical equipment at electric power systems), QQ (importers and exporters of fluorinated GHGs contained in pre-charged equipment or closed cell foams), RR (geologic sequestration of carbon dioxide), SS (sulfur hexafluoride and perfluorocarbons from electrical equipment manufacture or refurbishment), and UU (injection of carbon dioxide).</p>	<p>The final rule takes effect July 25, 2011.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA repealed the grandfathering provisions for fine particulate matter (PM_{2.5}) under the Prevention of Significant Deterioration (PSD) program. Shortly after EPA adopted national ambient air quality standards (NAAQS) for PM_{2.5} in 1997, it issued a policy authorizing states to use particulate matter smaller than 10 micrometers (PM₁₀) as a surrogate for PM_{2.5} pending implementation of the new PM_{2.5} standard. In 2008, EPA adopted a final rule on implementing the preconstruction review provisions of the PM_{2.5} NAAQS which, among other things, excluded projects that had applied for but had not received final PSD permits before the effective date of the rule from the requirement to comply with the new PM_{2.5} provisions, allowing them to continue to use PM₁₀ as a surrogate. With the recent rulemaking, EPA deleted this “grandfathering” provision and withdrew the 1997 surrogate policy with respect to permits issued directly by EPA. According to EPA, permitting authorities now have the information and tools necessary to conduct meaningful permit-related PM_{2.5} analyses, eliminating the need to use PM₁₀ as a surrogate. With respect to state-issued PSD permits, EPA declared that the use of the PM₁₀ surrogate policy under state PSD programs ended May 16, 2011. The final rule can be found in the May 18, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule affects projects with pending federal PSD applications that used PM₁₀ a surrogate for PM_{2.5}.

FEDERAL: EPA granted requests by both industry and environmental groups to reconsider key parts of the National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards (NSPS) for Portland cement plants adopted last year. The cement plant NESHAP established strict mercury emission limits and other requirements designed to significantly reduce emissions of hazardous air pollutants from new and existing cement plants; the NSPS targets emissions of criteria pollutants from new and modified facilities. Elements of the rules subject to reconsideration include, among others: (1) standards for clinker storage piles under the NESHAP; (2) establishment of an affirmative defense to civil penalties for exceedances of applicable standards during malfunctions under the NESHAP; (3) proper approach to regulating coal mills under the NSPS and NESHAP; and (4) standard for PM emissions applicable to modified sources under the NSPS. With respect to these and other aspects of the rules, EPA concluded that it did not provide a proper opportunity for comment on the proposal and/or identified technical or other grounds justifying reconsideration. EPA rejected other issues for reconsideration and denied a request by industry to stay the final rule. EPA’s decision can be found in the May 17, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The notice is primarily of interest to owners of Portland cement plants.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) announced that it has launched a **nationwide survey of private sector employers seeking basic information about their health and safety management practices**. The survey, which will be sent to as many as 19,000 employers of all sizes, contains approximately 50 questions on topics such as: how health and safety

issues are managed; the types of hazards found in the workplace; sources of health and safety information; overall approach to managing safety and health (e.g., whether employer has a system or program for managing safety, elements of the program, safety inspection procedures, and other health and safety practices); and special issues associated with multi-employer workplaces. Participation in the survey is voluntary; the results will be compiled by an outside contractor and are confidential. Information about the survey can be found on the OSHA website at: www.osha.gov/national-survey.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed **National Emission Standards for Hazardous Air Pollutants for polyvinyl chloride (PVC) and copolymers production** to replace the 2002 standards for major sources that were vacated by a federal court after it concluded that EPA failed adequately to explain the basis for its decision to set emission standards for vinyl chloride as a surrogate for other hazardous air pollutants. The proposed rule, which will be set forth at 40 CFR Part 63, subpart HHHHHHHH, sets emission limits and work practice standards for total organic toxics and for three specific air toxics: vinyl chloride, chlorinated di-benzo dioxins and furans, and hydrogen chloride. The rule applies to both major and area sources, replacing the existing air toxics rule for area sources adopted in 2007 and set forth at 40 CFR Part 63, subpart DDDDDD. Consistent with other recent rulemakings, these standards will apply at all times, including during periods of startup and shutdown; however, an affirmative defense to penalties is proposed for exceedances of emission limits caused by malfunctions. EPA is accepting comments on the rulemaking until **July 19, 2011**. The proposal can be found in the May 20, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule will affect 17 PVC production facilities nationwide; none are located in New York.

FEDERAL: EPA proposed major changes to the **National Emission Standards for Hazardous Air Pollutants for secondary lead smelting following a residual risk and periodic technology review**. Under Clean Air Act § 112, 42 USC § 7412, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. With this rulemaking, EPA proposed amendments to the secondary lead smelting NESHAP based on the results of the residual risk/periodic technology review as well as on an assessment of unregulated emission sources. Major changes include: (1) adding emission limits and work practice standards for dioxins/furans; (2) adding work practices (continuous operation of baghouse leak detection system) for mercury; (3) expanding the types of furnaces subject to an emission limit for total hydrocarbon emissions; (4) lowering the emission limit for lead; (5) requiring each facility to totally enclose certain emission sources and operate the total enclosure under negative pressure; and (6) requiring implementation of fugitive control work practices, including specific cleaning, maintenance and inspection activities. Consistent with changes to other NESHAPs, EPA revised the secondary lead smelting standard to eliminate the exemption for excess emissions associated with startup, shutdown and malfunction. The revised rules require compliance with emission limits during startup and shutdown and establish an affirmative defense to penalties for exceedances of emission limits caused by malfunctions. EPA is

accepting comments on the proposed rule until **July 5, 2011**; it can be found in the May 19, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to secondary lead smelters; there is at least one such facility in New York.

NEW YORK STATE: DEC announced that it has **submitted a clean data petition to EPA** indicating that the downstate area has attained the 2006 national ambient air quality standards (NAAQS) for fine particulate matter (PM_{2.5}). That area includes New York City, Long Island, and Orange, Rockland and Westchester counties. If the petition is approved, DEC will be relieved of the requirement to submit a state implementation plan revision to EPA for these areas demonstrating how the PM_{2.5} NAAQS will be met. Note, however, that SIP revisions will be required if the area subsequently experiences a violation of the NAAQS. DEC is accepting comments on the clean data petition until **June 17, 2011**. Information on the petition can be found in the May 18, 2011 Environmental Notice Bulletin at: www.dec.ny.gov/enb/20110518_not0.html.

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 Clean Air Act, DEC maintains a network of air monitors throughout the state to collect ambient air quality monitoring data for various pollutants, including ozone, particulate matter, and nitrogen oxides, as well as key meteorological data. These data are used by DEC to determine whether an area is achieving national ambient air quality standards; they are also used to determine the impact of a project under the Prevention of Significant Deterioration and other programs. The proposed 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. In conjunction with the recent plan, DEC announced that it was shutting down three monitoring sites (Schenectady, Mamaroneck and Hempstead) and making changes at several other sites. DEC is accepting comments on the proposed plan until **June 24, 2011**; it 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.

WATER

NEW YORK STATE: DEC is **compiling data to assist it in developing a list of impaired surface waters as required under Section 303(d) of the Clean Water Act**. DEC assesses waters in two or three of the state's 17 drainage basins each year, ensuring the reassessment of water quality for the entire state every five years. This information is used to identify waters that do not support their designated uses and so require possible development of a total maximum daily load plan. With this notice, DEC is requesting data from the public to assist it in conducting its water quality assessment. Submissions should be accompanied by a completed Waterbody Inventory/Priority Waterbodies List Assessment Worksheet. The deadline for submitting data is **September 30, 2011**. Information about the assessment process can found on DEC's website at: www.dec.ny.gov/chemical/23852.html

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA is reopening its proposal to **revise its Occupational Injury and Illness Recording and Reporting regulation to restore a column on the OSHA 300 Log for recording work-related musculoskeletal disorders (MSD)**. Prior to 2001, injury logs contained a column for repetitive trauma disorders that included noise and MSDs. In 2001, OSHA separated noise and MSDs into two separate columns; however, the MSD column was deleted in 2003 after OSHA concluded that the column was not necessary. In January 2010, EPA proposed to restore the MSD column; employers would have to check the column if an incident they had already recorded under existing rules is an MSD. As part of the rulemaking, OSHA sought comment on the definition of MSD and provided examples of common MSDs. According to OSHA, the proposed rule would not change the existing recordkeeping requirements about when and under what circumstances employers must record work-related injuries and illnesses; instead, it would merely require an employer to mark the new MSD column on the OSHA 300 Log if a case the employer already has recorded meets the definition of an MSD. OSHA previously sought information from small businesses about how they would be affected by the proposed rule and is now accepting final comments on this issue until **June 16, 2011**; the notice can be found in the May 17, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The recent rulemaking is specifically targeted at obtaining feedback on the potential impact of the proposed change to the OSHA 300 recordkeeping requirements for MSDs on small businesses.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

June 10, 2011: Deadline for submitting comments on DEC's proposed revisions to its NSR regulations to incorporate federal rules relating to fine particulate matter and greenhouse gases. The proposal can be found on DEC's website at www.dec.ny.gov/regulations/propregulations.html.

June 14, 2011: Deadline for submitting comments on EPA's proposed revisions to the method for determining whether storage of solid chemicals in solution exceed the TPQ under EPCRA § 302. See the April 15, 2011 Federal Register at www.gpo.gov/fdsys for details.

June 16, 2011: Deadline for submitting comments on OSHA's proposed revisions to the OSHA 300 Log relating to musculoskeletal disorders. See the May 17, 2011 Federal Register at www.gpo.gov/fdsys for details.

June 17, 2011: Deadline for submitting comments on DEC's clean data petition for the 2006 fine particulate matter NAAQS. See the May 18, 2011 Environmental Notice Bulletin at www.dec.ny.gov/enb/20110518_not0.html for details.

June 24, 2011: Deadline for submitting comments on EPA’s draft general NPDES permit for stormwater discharges from construction activities. See the April 25, 2011 Federal Register at www.gpo.gov/fdsys for details.

June 24, 2011: Deadline for submitting comments on DEC’s proposed ambient air monitoring plan. See DEC’s website at www.dec.ny.gov/chemical/33276.html for details.

July 1, 2011: Deadline for submitting comments on EPA and ACOE guidance on identifying “waters of the United States” for purposes of regulation under the CWA. See the May 2, 2011 Federal Register at www.gpo.gov/fdsys for details.

July 5, 2011: Deadline for submitting comments on EPA’s proposed NESHAP for coal and oil-fired EGUs. See the May 3, 2011 Federal Register at www.gpo.gov/fdsys for details.

July 5, 2011: Deadline for submitting comments on EPA’s proposed revisions to the NESHAP for secondary lead smelting. See the May 19, 2011 Federal Register at www.gpo.gov/fdsys for details.

July 19, 2011: Deadline for submitting comments on EPA’s proposed standards under CWA § 316(b) for existing manufacturing and power generating facilities that withdraw cooling water. See the April 20, 2011 Federal Register at www.gpo.gov/fdsys for details.

September 30, 2011: Deadline for submitting data in conjunction with DEC’s development of its list of impaired waters under CWA § 303(d). Information about the assessment process can be found on DEC’s website at www.dec.ny.gov/chemical/23852.html.