



## **ENVIRONMENTAL BREAKFAST CLUB ENVIRONMENTAL REGULATORY SUMMARY**

**November 5, 2010**

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

## Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p>NEW YORK STATE  <b>Annual and Short-Term Guideline Concentration Tables</b>            DEC Policy Guidance Document DAR-1</p>	<p>DEC revised <b>Appendix C of Policy Guidance Document DAR-1, commonly known as Air Guide 1</b>. 6 NYCRR Part 212 (general process sources) requires DEC to rate contaminants based on their toxicity. DEC uses the rating and the source's emission rate potential to establish the required level of emission control. Air Guide 1 contains the basic procedure for setting environmental ratings; Appendix C lists acceptable ambient air concentrations for both annual and hourly emission rates referred to as Annual Guideline Concentrations (AGCs) and Short-term Guideline Concentrations (SGCs), respectively. DEC recently revised Appendix C to:</p> <ul style="list-style-type: none"> <li>• Update certain air contaminants to reflect American Conference of Governmental Industrial Hygiene Association 2010 Threshold Limit Values.</li> <li>• Refer users to DAR-10, <i>NYSDEC Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis</i> when assessing compliance with state and federal ambient air quality standards that are not based on one-hour or annual averaging periods.</li> <li>• Establish one-hour SGCs for nitrogen dioxide and sulfur dioxide to implement EPA's new one-hour national ambient air quality standards (NAAQS) for these pollutants.</li> <li>• Establish an equivalent standard using DAR-10 for EPA's recently revised lead NAAQS.</li> <li>• Establish an AGC for petroleum distillates used as solvents.</li> </ul> <p>Additional information about the recent changes to DAR-1, Appendix C can be found in the October 27, 2010 Environmental Notice Bulletin at: <a href="http://www.dec.ny.gov/enb/20101027_not0.html">www.dec.ny.gov/enb/20101027_not0.html</a>. The recently-revised AGC/SGC Table can be found at: <a href="http://www.dec.ny.gov/chemical/30560.html">www.dec.ny.gov/chemical/30560.html</a>.</p>	<p>The revisions to DAR-1, Appendix C may affect facilities required to conduct Air Guide 1 analyses for purposes of establishing limits under 6 NYCRR Part 212.</p>	

Citation	Summary	Implications	Schedule/Notes
<p><b>NEW YORK STATE Asphalt Pavement and Asphalt-Based Surface Coatings</b>            6 NYCRR Parts 200, 205 and 241</p>	<p><b>DEC adopted standards limiting the volatile organic compound content of asphalt pavement and asphalt-based surface coatings.</b> Currently, 6 NYCRR Part 211 limits the VOC content of asphalt paving materials and restricts the use of cutback (thinned) asphalt; asphalt-based surface coatings are regulated as flat coatings under the architectural and industrial maintenance (AIM) coating provisions of 6 NYCRR Part 205. With this rulemaking, DEC consolidated the VOC content standards for asphalt materials in new Part 241 and adopted changes to reduce VOC emissions associated with these materials. Specific changes include:</p> <ul style="list-style-type: none"> <li>• Adding asphalt pavement and asphalt-based surface coatings to the list of products excluded from the AIM rule;</li> <li>• Deleting the asphalt-related provisions from 6 NYCRR Part 211;</li> <li>• Prohibiting the application, sale, offering for sale, or manufacturing of asphalt that contains oil distillate in amounts exceeding specified thresholds (measured in milliliters of oil distillate per 200 gram sample). The thresholds are based on classifications assigned by the American Society of Testing and Materials; and</li> <li>• Establishing a VOC content limit for asphalt-based surface coatings of 100 grams of VOC per liter and imposing labeling requirements (for small containers, i.e., 10 gallons or less) and recordkeeping requirements (for coatings sold in quantities larger than 10 gallons).</li> </ul> <p>As part of the rulemaking, DEC also amended the definition of hazardous air pollutant to exclude methyl ethyl ketone and amended the definition of VOC to exclude six compounds. These changes conform the state definitions to their federal counterparts.</p> <p>The rule can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/proregulations.html">www.dec.ny.gov/regulations/proregulations.html</a>.</p>	<p>The rule is primarily of interest to companies that manufacture, distribute, or apply asphalt pavement and asphalt-based surface coatings. Among other things, the rule contains lower VOC content limits for various grades of asphalt pavement. According to DEC, formulations already exist that meet the limits. As a result, DEC does not anticipate that the change will have a significant impact on consumers.</p>	<p>The rule takes effect January 1, 2011.</p> <p>DEC received comments on the draft regulation from EPA, who recommended, among other things, that DEC achieve regional consistency by adopting the stricter limits for asphalt in place in other states in the Ozone Transport Region. DEC rejected this suggestion after concluding based on input from the New York State Department of Transportation that requiring further VOC reductions would hamper development of emerging technologies.</p>

Citation	Summary	Implications	Schedule/Notes
<b>OIL</b>			
<b>FEDERAL Spill Prevention, Control and Countermeasures Plans</b> 40 CFR Part 112 75 Fed. Reg. 63093 (Oct. 14, 2010)	<p>EPA <b>extended the deadline for most facilities to amend and implement changes to their spill prevention, control and countermeasures (SPCC) plans</b> one year from November 10, 2010 to November 10, 2011 to provide the regulated community with additional time to address revisions to the SPCC rule finalized in December 2008 and November 2009. EPA revised the regulations in 2002 and has extended the deadline for complying with the new requirements numerous times since then. In December 2008, EPA amended the SPCC rule to increase clarity, tailor requirements to particular industry sectors (including farms), and streamline certain requirements; it made modest additional changes to the rule in November 2009. To allow itself time to review the 2008 rule and make any necessary revisions, the Obama administration delayed the effective date of the revised rule until January 14, 2010 and extended the deadline for plan submission to November 10, 2010. With the recent rule, EPA extended until November 10, 2011 the deadline for existing facilities to amend and implement their SPCC plans, as necessary, based on the final SPCC regulations. Facilities that became operational after August 16, 2002 but before November 10, 2011 must prepare and implement a plan pursuant to the new regulations by November 10, 2011. Facilities that become operational after that date must prepare and implement a plan before beginning operations.</p> <p>The extension can be found in the October 14, 2010 Federal Register at: <a href="http://www.gpoaccess.gov/fr/index.html">www.gpoaccess.gov/fr/index.html</a>.</p>	<p>The extension is available to any facilities that have not amended their SPCC plans to address the 2002 revisions to the SPCC regulations and to facilities that became operational after August 15, 2002 that have not prepared SPCC plans. A longer extension was granted to facilities with certain milk containers to allow EPA time to take action on a possible exemption. EPA did not extend the compliance deadline for offshore drilling, production and workover facilities or onshore facilities that must submit facility response plans.</p>	<p>The rule took effect October 14, 2010.</p>
<b>REMEDIATION</b>			
<b>NEW YORK STATE Soil Cleanup Guidance</b> Commissioner Policy CP-51	<p>DEC <b>issued Commissioner Policy CP-51, <i>Soil Cleanup Guidance</i></b>, which establishes a framework for selecting the appropriate soil cleanup levels under DEC's remediation programs. The policy applies to soil after all sources of soil contamination have been addressed and after contaminated groundwater and other environmental impacts have been evaluated. The policy identifies four approaches to selecting soil cleanup levels: (1) implement unrestricted use soil cleanup objectives (SCOs); (2) implement restricted use SCOs; (3) make limited site-specific modifications to SCOs; or (4) establish site-specific SCOs. It goes on to identify the proper approach for establishing soil cleanup levels under each of New York's remedial programs and provide guidance on other aspects of the soil cleanup process.</p> <p>The policy can be found on DEC's website at: <a href="http://www.dec.ny.gov/regulations/2393.html">www.dec.ny.gov/regulations/2393.html</a>.</p>	<p>The soil cleanup guidance replaces DEC's Technical Administrative Guidance Memorandum (TAGM) 4046, <i>Determination of Soil Cleanup Objectives and Cleanup Levels</i>, the <i>Petroleum Site Inactivation and Closure Memorandum</i> and Sections III and IV of <i>Spill Technology and Remediation Series (STARS) #1</i>.</p>	<p>The policy takes effect December 3, 2010. DEC made the draft policy available for comment and made minor changes following the public comment period.</p>

Citation	Summary	Implications	Schedule/Notes
<p><b>WATER</b></p> <p>NEW YORK STATE  <b>Mercury Guidance under State Pollutant Discharge Elimination System Permit Program</b>            TOGS 1.3.10</p>	<p>DEC issued a <b>Technical and Operational Guidance Series (TOGS) document intended to provide guidance to DEC staff developing State Pollutant Discharge Elimination System (SPDES) permits that regulate wastewater and stormwater discharges containing mercury.</b> TOGS 1.3.10, entitled <i>Mercury – SPDES Permitting, Multiple Discharge Variance, and Water Quality Monitoring</i>, addresses the following subjects:</p> <ul style="list-style-type: none"> <li>• <b>Water quality standards</b> (providing overview of ambient surface and groundwater standards for mercury);</li> <li>• <b>Available monitoring data</b> (including assumptions DEC staff should follow regarding existing surface and groundwater quality, fish consumption, and available treatment technologies); and</li> <li>• <b>Analytical and sample collection methods</b> (generally requiring EPA Method 1631 to analyze for mercury and EPA Method 1669 for sampling).</li> </ul> <p>The TOGS also provides mercury-specific permit writing information. Because the water quality-based effluent limit for surface water is so low that no discharger can meet it (0.70 nanograms/liter (ng/L)), DEC has determined that a multiple discharge variance (MDV) is necessary. The guidance establishes a General Level Currently Achievable (GLCA) of 50 ng/L daily maximum. This level will be included in the permit unless the facility cannot meet the GLCA, in which case it will be assigned an Individual LCA (ILCA) (typically 200 ng/L), which will be accompanied by additional monitoring and a requirement to achieve the GLCA within three years. Many facilities also will be required to implement a mercury minimization program and submit annual status reports (semi-annual for facilities subject to an ILCA). Facilities that refuse to be authorized by the MDV must obtain an individual discharge variance (IDV).</p> <p>The mercury TOGS can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/chemical/24027.html">www.dec.ny.gov/chemical/24027.html</a>.</p>	<p>The policy is of interest to facilities with mercury limits in their SPDES permits or that discharge any quantity of mercury.</p> <p>Mercury is ubiquitous in the environment. According to the Northeast Regional Mercury Total Maximum Daily Load (TMDL), 98% of the mercury load to surface waters is the result of atmospheric deposition, with the remaining 2% due to wastewater discharges. All surface waters in New York currently exceed the water quality-based effluent limit of 0.70 ng/L. To help meet the standard, the TMDL calls for New York to implement various mercury reduction efforts, including establishing mercury limits in SPDES permits.</p>	<p>The policy takes effect November 26, 2010. DEC made the draft policy available for comment and revised it following the public comment period. Major changes include: (1) revising the summary of the MDV permitting strategy to add discussions of mercury intake water, antidegradation, and MDV term; (2) revising the discussion of the implementation schedule; and (3) adding a section addressing new and recommencing discharges.</p>

Citation	Summary	Implications	Schedule/Notes
OTHER			
<p>NEW YORK STATE  <b>Endangered and Threatened Species of Fish and Wildlife; Species of Special Concern</b>          6 NYCRR Part 182</p>	<p>DEC <b>revised its rules governing endangered and threatened species</b> to clarify its jurisdiction and specify an application and review process for addressing projects that may take listed species. Prior to this rulemaking, the regulations, which are set forth at 6 NYCRR Part 182, listed endangered and threatened species and required permits prior to taking but did not specify a listing or permitting process. Major changes adopted by DEC include:</p> <ul style="list-style-type: none"> <li>• <b>Definitions.</b> DEC added the following new defined terms: activity, adverse modification of habitat, essential behavior, experimental population, habitat, incidental take, incidental take permit, lesser acts, net conservation benefit, occupied habitat, person, population, regional permit administrator, self-sustaining, subject population, subspecies, and take or taking.</li> <li>• <b>Listing of endangered and threatened species.</b> DEC adopted general criteria for listing and delisting species as endangered or threatened and for listing species of special concern.</li> <li>• <b>Recovery and restoration plans.</b> The new rule authorizes DEC to prepare and adopt a recovery plan for any listed species and specifies what such plans must contain. The rule also authorizes DEC to prepare and adopt a restoration plan for any “extirpated species” – species that while not extinct, no longer occur in a wild state in New York or no longer exhibit traditional patterns of use in New York.</li> <li>• <b>Prohibitions/permits.</b> The rule prohibits persons from taking or engaging in activity that is likely to result in a taking of any endangered or threatened species except as authorized under an incidental take permit or where the activity is covered by an exception. It goes on to specify that such permits are subject to the uniform procedures in 6 NYCRR Part 621 and establish application requirements for obtaining incidental take permits, including requiring preparation of an endangered or threatened species mitigation plan (specifying measures to be taken to minimize and fully mitigate impacts to endangered/threatened species) and implementation agreement (specifying who is responsible for implementing the mitigation plan as well as the timeline and funding). It also establishes the standards/conditions for issuing an incidental take permit.</li> </ul> <p>The regulation can be found on DEC’s website at:  <a href="http://www.dec.ny.gov/regulations/propregulations.html">www.dec.ny.gov/regulations/propregulations.html</a>.</p>	<p>The rule may affect persons engaged in development-related activities that involve land disturbance. Although DEC has had the authority to issue incidental taking permits for years, until the recent rulemaking DEC had considerable discretion in how it implemented this requirement. The revised rule codifies the procedures and standards for issuing incidental take permits, a change that will likely increase the Department’s focus on endangered/threatened species issues. Determining whether an activity is likely to result in the taking of an endangered or threatened species will necessitate hiring an expert to assess whether an endangered/threatened species is or may be present. If one is identified, the applicant must prepare an incidental take permit application that includes a mitigation plan and implementation agreement.</p>	<p>The rule took effect November 3, 2010. DEC made various changes to the proposed rule following the public comment period. Among other things, DEC: (1) eliminated a requirement that applicants for an incidental take permit assess cumulative impacts from other projects; and (2) authorized submission of a completed federal habitat conservation plan or safe harbor agreement in lieu of an incidental take permit application. DEC rejected various comments criticizing key elements of the rule as vague or outside the Department’s statutory authority.</p>



## Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>FEDERAL Residual Risk and Periodic Technology Review of Various National Emission Standards for Hazardous Air Pollutants</b>            40 CFR Part 63            75 Fed. Reg. 65068            (Oct. 21, 2010)</p>	<p>EPA proposed revisions to various <b>National Emission Standards for Hazardous Air Pollutants (NESHAPs) following a residual risk and periodic technology review.</b> Under Clean Air Act (CAA) § 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 announced the results of its residual risk and periodic technology review of the following source categories and proposed various changes:</p> <ul style="list-style-type: none"> <li>• <b>Chromium electroplating (subpart N):</b> Modify existing standards to: (1) prohibit the addition of certain wetting agent fume suppressants used on electroplating or anodizing tanks; (2) impose various housekeeping requirements to minimize emissions of chromium-laden dust; and (3) fix editorial errors and make clarifications.</li> <li>• <b>Group I polymers and resins (subpart U):</b> Modify existing standards for certain source categories to include emission sources not regulated under the existing standard.</li> <li>• <b>Marine tank vessel loading operations (subpart Y):</b> Modify existing standards to: (1) require facilities to perform vapor recovery if loading one million or more barrels per year of gasoline; and (2) require certain small facilities to use submerged fill.</li> <li>• <b>Pharmaceuticals production (subpart GGG):</b> Modify existing standards to fix editorial errors and make clarifications.</li> <li>• <b>Printing and publishing industry (subpart KK).</b></li> <li>• <b>Steel pickling-hydrogen chloride process facilities and hydrochloric acid regeneration plants (subpart CCC).</b></li> </ul> <p>In addition to the changes outlined above, EPA is proposing to revise each of the listed standards to eliminate provisions relating to emissions during startup, shutdown and malfunction (SSM). With respect to residual risk, EPA found that all six standards provide an acceptable risk with an ample margin of safety to protect public health and that no further emission reductions are required to address residual risk.</p> <p>The proposed rule can be found in the October 21, 2010 Federal Register at: <a href="http://www.gpoaccess.gov/fr/index.html">www.gpoaccess.gov/fr/index.html</a>.</p>	<p>The proposal is primarily of interest to owners/operators of sources in the listed source categories. The chromium electroplating standard covers three source categories: chromic acid anodizing, decorative chromium electroplating; and hard chromium electroplating. The group I polymers and resins category includes nine source categories, most involving rubber and elastomer production.</p> <p>EPA proposed to eliminate the SSM provisions to implement a recent court decision invalidating an EPA rule exempting emissions during SSM from compliance with NESHAP emission limits.</p>	<p>EPA is accepting comments on the proposed rule until <b>December 6, 2010.</b></p> <p>EPA is subject to a court order compelling it to complete its residual risk/technology review for specific source categories in accordance with a strict schedule. The review process was delayed while EPA worked to develop an efficient method of assessing residual risk.</p>

## Other Recent Developments (Final)

### AIR

**FEDERAL: EPA adopted regulations establishing increments, significant impact levels, and significant monitoring concentrations to implement the ambient air quality assessment requirements of the Prevention of Significant Deterioration (PSD) program for fine particulate matter (PM<sub>2.5</sub>).** Sources that trigger PSD must conduct air quality analyses to confirm that they will not cause a violation of national ambient air quality standards and that they will not exceed specified increments – thresholds measuring the maximum allowable increase in the concentrations of a particular contaminant allowed to occur above a specified baseline (typically the ambient concentration existing at the time the first complete PSD permit application affecting the area is submitted). Generally, the analysis involves an assessment of existing air quality, which may include ambient monitoring data and air quality dispersion modeling and predictions of ambient concentrations that will result from the applicant’s proposed project and future growth associated with the project. With this rulemaking, EPA adopted the following thresholds for PM<sub>2.5</sub>, each of which plays a role in the air quality analysis: (1) PSD increments; (2) significant impact levels (SIL) (used to determine whether the ambient impact of a particular pollutant is significant enough to warrant a complete source impact analysis); and (3) significant monitoring concentration (SMC) (used to decide whether the impact of emissions from the new/modified source is low enough that the source can forego preconstruction monitoring). The rule takes effect December 20, 2010; it can be found in the October 20, 2010 Federal Register at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

Implications: The rule will affect new and modified major sources that trigger PSD for PM<sub>2.5</sub>.

### CLIMATE CHANGE

**FEDERAL: EPA adopted minor revisions to its mandatory greenhouse gas (GHG) reporting rules adopted in 2009 to clarify or update certain provisions** that have been the subject of questions from reporting entities. The mandatory GHG reporting rule, set forth at 40 CFR Part 98, requires certain entities to report their GHG emissions annually to EPA and includes detailed protocols for quantifying emissions from each of the regulated source categories. With the current rulemaking, EPA made minor changes to the reporting instructions for the following source categories: adipic acid production, cement production, ferroalloy production, glass production, HCFC-22 production and HFC-23 destruction, hydrogen production, iron and steel production, lime manufacturing, nitric acid production, phosphoric acid production, soda ash manufacturing, titanium dioxide production, zinc production, municipal solid waste landfills, and suppliers of petroleum products and natural gas and natural gas liquids. These changes include clarifying compliance obligations, amending certain equations, correcting terms and definitions, correcting data reporting requirements, and other minor amendments. With two exceptions, facilities are expected to implement the changes in conjunction with reports submitted to EPA in 2011. The revisions take effect November 29, 2010 and can be found in the October 28, 2010 Federal Register at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).



Implications: The revisions to the mandatory GHG reporting rules are primarily of interest to sources in categories for which changes have been adopted.

## REMEDIATION

NEW YORK STATE: DEC **announced acceptance of the final generic environmental impact statement (GEIS) for the revised *New York State Hazardous Waste Facility Siting Plan***. The plan provides a framework to guide state agencies and authorities in addressing hazardous waste management issues and assure the future availability of industrial hazardous waste treatment, storage and disposal facilities. The plan assesses the current state of hazardous waste generation, transportation, treatment, storage and disposal in New York, examining such issues as: (1) how much hazardous waste is currently being generated; (2) where that waste is being managed (in particular, how much is being managed in-state versus out-of-state); and (3) current and anticipated future hazardous waste management capacity both in-state and nationwide. The plan includes recommendations relating to waste management priorities and options and reflects comments received in 2008 and 2009 following publication of draft plans. The final GEIS and anticipated final siting plan can be found on DEC's website at: [www.dec.ny.gov/chemical/9054.html](http://www.dec.ny.gov/chemical/9054.html).

Implications: The plan may be of interest to hazardous waste generators and treatment, storage and disposal facilities in New York.

## Other Recent Developments (Proposed)

### AIR

FEDERAL: EPA **proposed emission standards for new and existing sewage sludge incineration units** under CAA § 129, 42 USC § 7429. These incinerators are primarily located at wastewater treatment facilities and have been identified by EPA as the sixth largest source of mercury air emissions in the United States. The proposed rules, which will be set forth at 40 CFR Part 60, subpart LLLL (new sources) and MMMM (existing sources), establish separate emission standards for multiple hearth and fluidized bed incinerators. As with other solid waste incinerator standards, the regulations limit emissions of the following pollutants: cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, opacity, particulate matter, and sulfur dioxide. Owners/operators of new and existing units must conduct initial and annual performance tests and some continuous monitoring; they also must meet operator training and qualification requirements, conduct a siting analysis (new units only), and comply with extensive recordkeeping and reporting requirements. EPA is accepting comments on the proposed rule until **November 15, 2010**; it can be found in the October 14, 2010 Federal Register at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

Implications: The proposed rule is primarily of interest to municipalities and others that operate sewage sludge incinerators.

FEDERAL: In response to a petition from ethanol manufacturers, EPA announced that it is **granting a partial waiver allowing fuel and fuel additive manufacturers to market fuel that contains between 10 and 15 volume percent ethanol**. However, E15

gasoline can only be used in model year 2007 and newer light-duty motor vehicles. EPA denied the waiver request as applied to model year 2000 and older motor vehicles and to all heavy-duty gasoline engines and vehicles, motorcycles, and nonroad engines, vehicles and equipment after concluding that E15 could damage the long-term durability of emission controls, leading to increased emissions. EPA is deferring decision with respect to model year 2001-2006 light-duty motor vehicles pending further study. In a related development, EPA proposed a rule to mitigate the potential for misfueling certain engines with E15. The rule would require labeling of E15 dispensers and would specifically prohibit dispensing E15 into vehicles and engines not covered by the partial waiver. The rule also includes provisions for tracking the sale of E15 and ensuring that retail station pumps are properly labeled. In seeking the waiver, the petitioners argued that the increase was necessary because the current 10 percent limit on ethanol is too low to absorb the quantity of biofuels mandated by EPA's renewable fuel standards program. EPA is accepting comments on the proposed rule until **January 3, 2011**. The waiver decision and proposed rule can be found in the November 4, 2010 Federal Register at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

Implications: The rule is primarily of interest to gasoline and ethanol producers and wholesale/retail distributors.

NEW YORK STATE: DEC **withdrew its controversial new rule regulating outdoor wood boilers (OWB)** in the wake of significant opposition from rural residents and several key legislators. OWBs are devices designed to be installed outdoors or in non-occupied structures for burning wood or other fuels to heat building space and/or water. The proposed rule originally: limited the type of fuels that can be burned in OWBs; established emission standards, labeling and certification requirements for new units; imposed stack height and setback requirements; and called for the eventual phaseout of existing units. In response to public comments, DEC revised the proposed rule to eliminate the phaseout requirements and submitted it to the State Environmental Board in October for approval. The Board declined to take action and DEC now plans to conduct public hearings on the revised proposal. Last June, the Senate unanimously passed legislation authorizing the continued use of existing OWBs and allowing for local decision-making with respect to zoning issues such as setbacks and chimney heights. The revised rule presented to the State Environmental Board can be found on DEC's website at: [www.dec.ny.gov/chemical/69348.html](http://www.dec.ny.gov/chemical/69348.html).

Implications: The developments are primarily of interest to owners of existing OWBs.

## CLIMATE CHANGE

FEDERAL: EPA announced **proposed regulations establishing national greenhouse gas emission standards and improved fuel efficiency standards for heavy-duty trucks and buses** beginning with model year 2014 vehicles. The standards would apply to vehicles in the following categories: (1) combination tractors (i.e., semi trucks); (2) heavy-duty pickup trucks and vans (i.e., conventional vehicles that are too large to be subject to the standards for light-duty vehicles and trucks); and (3) vocational vehicles (e.g., delivery, refuse, utility, dump, and cement trucks; transit, shuttle and school buses; emergency vehicles; motor homes; and tow trucks). In general, the standards differ among vehicle categories depending on the size and configuration of the vehicle. To achieve the necessary reductions, the regulations anticipate that manufacturers will implement engine and transmission upgrades, aerodynamic improvements, and tire rolling resistance. According to EPA, the savings associated with reduced fuel use will outweigh the costs of

the technology improvements, particularly for semi trucks, which typically are driven extensively. Information about the standards can be found on EPA's website at: [www.epa.gov/otaq/climate/regulations.htm](http://www.epa.gov/otaq/climate/regulations.htm). To date, the proposed rules have not been published in the Federal Register.

Implications: The proposed rules are of interest to heavy-duty vehicle manufacturers and to owners/operators of such vehicles.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) made available for comment a **proposed interpretation of the phrase “feasible administrative or engineering controls” as used in the agency’s general industry and construction noise standards**. Under the OSHA standards, employers must use feasible administrative or engineering controls to reduce noise before resorting to personal protective equipment (PPE), i.e., hearing protectors. However the agency’s current enforcement policy calls for issuing citations for failing to use administrative or engineering controls only when hearing protectors are ineffective or when the costs of such controls are less than the costs of an effective hearing conservation program. With the recent notice, OSHA declared that the current enforcement policy is contrary to the plain meaning of the standards and proposed an alternative interpretation under which administrative or engineering controls are “economically feasible” when the cost of implementing such controls will not threaten the employer’s ability to remain in business, or if such a threat to viability results from the employer’s failure to meet industry safety and health standards. OSHA is accepting comments on the proposed interpretation until **December 20, 2010**. It can be found in the October 19, 2010 Federal Register at: [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html).

Implications: The proposed interpretation is potentially of interest to any employer with employees working in a noisy environment.

## OTHER

NEW YORK STATE: DEC made available for comment a draft document entitled *Draft Guidance on Chapter 85, Laws of 2010: Summary of Pesticide Prohibition Requirements and Pesticide Alternatives Regarding Schools and Day Care Centers in New York*. In May 2010, the New York legislature enacted a law barring schools and day care centers from using many pesticides on playgrounds, playground equipment, turf, and athletic or playing fields; fertilizer use restrictions take effect in 2012. The draft guidance, which is required by statute: identifies measures for maintaining child-safe playing fields and turf without pesticides; specifies which types of pesticides are allowed; outlines the procedures for obtaining emergency determinations allowing the use of prohibited pesticides; and provides access to resources relevant to implementing the law. DEC is accepting comments on the draft guidance until **November 29, 2010**; it can be found on DEC’s website at: [www.dec.ny.gov/chemical/298.html](http://www.dec.ny.gov/chemical/298.html).

Implications: The draft guidance is primarily of interest to commercial pesticide applicators, schools and day care centers.

## Upcoming Deadlines

**NOTE:** This calendar contains items of general interest.

**November 8, 2010:** Deadline for submitting comments on EPA's draft *Guidance Document: Best Management Practices for Unused Pharmaceuticals at Health Care Facilities*. See EPA's website at [water.epa.gov/scitech/wastetech/guide/unusedpharms\\_index.cfm](http://water.epa.gov/scitech/wastetech/guide/unusedpharms_index.cfm) for details.

**November 8, 2010:** Deadline for submitting comments on EPA's draft TMDL for the Chesapeake Bay. See the September 22, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**November 15, 2010:** Deadline for submitting comments on EPA's proposed sewage sludge incinerator standards. See the October 14, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**November 22, 2010:** Deadline for submitting comments on EPA's proposed revisions to its wastewater analysis and sampling test procedures. See the September 23, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**November 22, 2010:** Deadline for submitting comments on EPA's proposed revisions to the motor vehicle fuel economy label. See the September 23, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**November 26, 2010:** Deadline for submitting comments on DEC's *Draft Strategic Plan for State Forest Management*. See DEC's website at [www.dec.ny.gov/lands/64567.html](http://www.dec.ny.gov/lands/64567.html) for details. NOTE: Public hearings in each of DEC's nine regions were held from September 14<sup>th</sup> to September 30<sup>th</sup>.

**November 29, 2010:** Deadline for submitting comments on the PHMSA's proposed revisions to the hazardous material transportation regulations. See the September 29, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**November 29, 2010:** Deadline for submitting comments on DEC's draft guidance on implementing pesticide prohibition for schools and day care centers. The draft guidance can be found on DEC's website at: [www.dec.ny.gov/chemical/298.html](http://www.dec.ny.gov/chemical/298.html).

**December 6, 2010:** Deadline for submitting comments on EPA's proposed residual risk/periodic technology review of various NESHAPs. See the October 21, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**December 20, 2010:** Deadline for submitting comments on OSHA's proposed interpretation of provisions relating to feasibility of administrative or engineering controls of occupational noise. See the October 19, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.

**January 3, 2011:** Deadline for submitting comments on EPA's proposed rule authorizing sale of E15 gasoline. See the November 4, 2010 Federal Register at [www.gpoaccess.gov/fr/index.html](http://www.gpoaccess.gov/fr/index.html) for details.