



## **ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY**

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## Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<b>FEDERAL Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units</b> 40 CFR Part 60, subpart CCCC and DDDD 76 Fed. Reg. 15704 (Mar. 21, 2011)	<p>EPA revised the standards and emission guidelines for new and existing commercial and industrial solid waste incineration (CISWI) units under Clean Air Act (CAA) § 129 in the wake of a court decision vacating its original rules on the ground that EPA defined commercial and industrial solid waste incineration unit too narrowly. As a result of this error, units that should have been regulated under the CAA § 129 standard for incinerators were instead subject to CAA § 112, the National Emission Standards for Hazardous Air Pollutants (NESHAP) program, which is generally regarded as less stringent. The new CISWI standard applies to the following types of units that burn solid waste: incinerators, energy recovery units that combust solid waste, waste-burning kilns, and small, remote incinerators. Consistent with the requirements of CAA § 129, the rule establishes emission standards for the following pollutants emitted from new and existing CISWI units: particulate matter, lead, cadmium, mercury, dioxins/furans, carbon monoxide, nitrogen oxides, hydrogen chloride, and sulfur dioxide. The precise limits depend on the type of unit and whether it is new or existing.</p> <p>As with other solid waste incineration standards, the CISWI rule contains provisions relating to preparation of a siting analysis (new sources only), operator training and qualification, performance testing, monitoring/inspection, reporting and recordkeeping. Consistent with other recent rulemakings, EPA also revised the rule such that the emission limits apply at all times, including during startup, shutdown and malfunction. However, the rule includes an affirmative defense to civil penalties for exceedances caused by malfunctions that applies if certain criteria are met.</p> <p>The revised CISWI regulations can be found in the March 21, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rule clarifies which combustion units are regulated as CISWIs rather than boilers. EPA estimates that approximately 88 units will be subject to the rule.</p> <p>In response to public comments, EPA revised the rule to: (1) create separate subcategories for coal and biomass energy recovery units; (2) revise various monitoring requirements; and (3) exclude burnoff ovens, soil treatment units, cyclonic burn barrels, laboratory analysis units, and space heaters from the CISWI standard.</p>	<p>The final rule takes effect May 20, 2011. However, the same day it published the final rule, EPA also began the process of reconsidering certain elements of the new rule that it believes would benefit from additional review. 76 Fed. Reg. 15266 (Mar. 21, 2011). A partial list of issues potentially subject to reconsideration is included in the notice. EPA will publish a more detailed reconsideration notice later.</p>

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>FEDERAL NESHAP for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters</b>            40 CFR Part 63, subpart DDDDD            76 Fed. Reg. 15608 (Mar. 21, 2011)</p>	<p><b>EPA revised the maximum achievable control technology (MACT) standards for major sources in the industrial, commercial and institutional boiler and process heater category under the CAA § 112 NESHAP program.</b> A federal court vacated the original subpart DDDDD rule when it vacated the rule for commercial and industrial solid waste incinerators (discussed above). The revised rule limits emissions of mercury, dioxin, particulate matter, hydrogen chloride, and carbon monoxide from numerous subcategories of boilers/process heaters; the limits depend on the type of fuel (coal, biomass, liquid, and certain process gases) and on the type of unit (stoker, fluidized bed, fuel cells, etc.).</p> <p>Certain smaller and/or less polluting units are subject only to work practice requirements. In particular, operators of new and existing boilers or process heaters with a heat input capacity of less than 10 million British thermal units (mmBtu) per hour must conduct a tune-up once every two years; biennial tune-ups also are required for new and existing “limited use” boilers or process heaters. Operators of new or existing units in the “Gas 1” (natural gas/refinery gas) or metal process furnace subcategories with a heat input capacity of 10 mmBtu/hour or more must conduct annual tune-ups. Units combusting other gases can qualify for work practice standards by demonstrating they burn “clean fuel” with contaminant levels similar to natural gas. In addition, a one-time energy assessment must be performed on existing boilers to identify possible efficiency improvements.</p> <p>As with other MACT standards, subpart DDDDD includes performance testing, monitoring, notification, reporting, and recordkeeping requirements. In the wake of a court decision invalidating exclusions for emissions during startup, shutdown and malfunction, EPA established work practice standards that apply during startup and shutdown. As with the CISWI rule above, EPA also adopted an affirmative defense to address excess emissions associated with malfunctions.</p> <p>The revised MACT standard can be found in the March 21, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>EPA estimates that there are over 13,000 boilers and process heaters at major sources. To date, these sources generally have not been required to comply with MACT because of the delays caused by the court decision vacating the standard. The rule will affect all boilers and process heaters at major sources, although smaller boilers and less polluting boilers are subject to tuneup requirements rather than emission limits.</p> <p>In response to public comments, EPA revised the rule to: (1) expand the number of boiler categories; (2) clarify that certain small power producers and cogeneration units that burn a homogeneous waste stream are regulated as boilers/process heaters; (3) allow units burning gases other than natural gas and refinery gas to qualify for work practice standards by demonstrating that their fuel contaminant levels are similar to natural gas; (4) replace emission limits with tuneup requirements for small, new boilers; and (5) extend work practice standards to limited-use units.</p>	<p>The final rule takes effect May 20, 2011. However, the same day it published the final rule, EPA began the process of reconsidering certain elements of the new rule that it believes would benefit from additional review. 76 Fed. Reg. 15266 (Mar. 21, 2011). A partial list of issues potentially subject to reconsideration is included in the notice. EPA will publish a more detailed reconsideration notice later.</p>

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<p><b>AIR</b></p> <p>FEDERAL  <b>Area Source NESHAP for Industrial, Commercial and Institutional Boilers</b>            40 CFR Part 63, subpart JJJJJ            76 Fed. Reg. 15554 (Mar. 21, 2011)</p>	<p><b>EPA issued area (i.e., minor) source standards for industrial, commercial and institutional boilers under the CAA § 112 NESHAP program.</b> The standards for certain pollutants are based on MACT while certain other standards are based on generally available control technology (GACT) or management practices. The rule applies to coal, biomass and oil-fired boilers located at area sources; natural gas boilers are specifically exempt. The standards differ depending on whether the boiler is new or existing and on whether it is large (10 mmBtu/hour or more heat input) or small (less than 10 mmBtu/hour heat input). New, large coal, biomass and oil-fired boilers must meet emission limits while new, small boilers are required only to perform a tune-up every two years. With respect to existing sources, only large, coal-fired boilers are subject to emission limits under the new area source rule. All other existing boilers are subject only to a biennial tuneup requirement. In addition, owners of existing large boilers must arrange for an energy assessment to identify cost-effective energy conservation measures. Sources must minimize periods of startup and shutdown following the manufacturer’s recommended procedures or procedures for a unit of similar design. As with the rules discussed above, EPA has adopted an affirmative defense for malfunctions. Subpart JJJJJ also includes performance testing, monitoring, notification, reporting, and recordkeeping requirements; the precise requirements differ based on boiler type.</p> <p>The rule can be found in the March 21, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>EPA estimates that there are approximately 187,000 existing area source boilers at 92,000 facilities and that an additional 2,400 new area source boilers will be installed in the next three years. The rule requires new, large coal, biomass and oil-fired boilers and existing, large coal-fired boilers to comply with emission limits; all other area source boilers are subject to work practice requirements. Natural gas-fired boilers are not regulated.</p> <p>In response to public comments, EPA revised the rule to, among other things: (1) redefine the coal, biomass and oil subcategories; and (2) require GACT rather than MACT for biomass and oil subcategories.</p>	<p>The final rule takes effect May 20, 2011. However, the same day it published the final rule, EPA began the process of reconsidering certain elements of the new rule that it believes would benefit from additional review. 76 Fed. Reg. 15266 (Mar. 21, 2011). A partial list of issues potentially subject to reconsideration is included in the notice. EPA will publish a more detailed reconsideration notice later.</p>

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<p><b>AIR/SOLID WASTE</b></p> <p>FEDERAL  <b>Identification of Non-Hazardous Materials as Solid Waste</b>            40 CFR Part 241            76 Fed. Reg. 15456            (Mar. 21, 2011)</p>	<p><b>EPA finalized a definition of non-hazardous solid waste to be used to identify whether non-hazardous secondary materials burned as fuels or used as ingredients in combustion units are solid waste.</b></p> <p>EPA adopted the rule in the wake of a court decision vacating its commercial and industrial solid waste incineration rule on the ground that EPA improperly defined CISWI to exclude units that burn solid waste and recover energy rather than applying it to all units that combust solid waste as required by CAA § 129. Units that burn “solid waste” as defined under the Resource Conservation and Recovery Act are regulated under CAA § 129 while those burning other materials are regulated under the CAA § 112 NESHAP program.</p> <p>Under the new rule, the following non-hazardous secondary materials are <i>not</i> solid waste when used legitimately as a fuel or an ingredient in a combustion unit:</p> <ul style="list-style-type: none"> <li>• Non-hazardous secondary materials that remain within the control of the generator and are used as fuel;</li> <li>• Scrap tires managed by established tire collection programs and used as fuel;</li> <li>• Resinated wood used as fuel;</li> <li>• Non-hazardous secondary materials that are used as ingredients;</li> <li>• Discards that have undergone processing to produce fuel or ingredient products; and</li> <li>• Non-hazardous secondary materials that are used as fuels for which a non-waste determination has been granted.</li> </ul> <p>Materials are considered legitimate fuels or ingredients if they conform to specific “legitimacy criteria” that are designed to ensure that the fuel or ingredient is not being “sham” recycled for the sole purpose of avoiding being considered a waste.</p> <p>The rule can be found in the March 21, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>EPA significantly revised criteria for identifying “solid waste” in response to public comment. As a result, the number of units regulated as CISWIs rather than boilers is smaller under the final rule than under the proposal.</p>	<p>The final rule takes effect May 20, 2011.</p>

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<p><b>WATER</b></p> <p>NEW YORK STATE  <b>Guidance for Dam            Engineering            Assessment Reports</b>            Program Policy TOGS            3.1.4</p>	<p>DEC's Division of Water issued <b>Program Policy TOGS 3.1.4, <i>Guidance for Dam Engineering Assessment Reports</i></b>, to help implement the engineering assessment report requirement of the revised dam safety regulations. The rule requires certain dam owners to furnish a report that provides an independent review of the dam, identifies deficiencies, and specifies corrective measures. As outlined in the program policy, the report must contain a: (1) hazard classification evaluation; (2) complete safety inspection; (3) evaluation of the dam's spillway capacity; (4) evaluation of the dam's structural stability; (5) evaluation of the outlet works capacity; (6) review of the dam's Emergency Action Plan; and (7) conclusion as to whether the dam meets current regulations and safety guidance. Key tasks are:</p> <ul style="list-style-type: none"> <li>• <b>Records review.</b> Review the owner's and DEC's files on the dam.</li> <li>• <b>On-site engineering inspection and investigation.</b> Steps include: (1) conducting a hazard classification reconnaissance that involves inspecting the downstream area of the dam to determine the likely impact of a breach and reviewing planning board records for future development; and (2) performing a dam safety inspection.</li> <li>• <b>Engineering review, calculations, and conclusions.</b> Steps include: (1) reviewing the dam's hazard classification (high, intermediate or low); (2) conducting a hydrology assessment that includes determining the inflow design storm; (3) conducting a hydraulic assessment; (4) conducting a stability assessment that may include a geotechnical investigation; and (5) providing a conclusion that assesses whether the dam conforms to dam safety criteria and provides recommendations and a schedule if changes are necessary.</li> <li>• <b>Engineering assessment report generation.</b> Discusses the format of the report.</li> </ul> <p>The assessment must be performed by a professional engineer who is registered to practice in New York and has the appropriate experience. The final report must be submitted to DEC, with a copy retained by the dam owner.</p> <p>The program policy can be found on DEC's website at:  <a href="http://www.dec.ny.gov/lands/4991.html">www.dec.ny.gov/lands/4991.html</a>.</p>	<p>Assessment reports must be prepared for intermediate and high hazard dams (Class B and C). DEC also may require assessment reports for smaller dams assigned a condition rating of unsafe or unsound.</p>	<p>DEC made a draft version of the program policy available for comment in September 2010.</p>

## Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>NEW YORK STATE Rule Implementing Requirements for Greenhouse Gases and Fine Particulate Matter under New Source Review Program</b>            6 NYCRR Parts 200, 201, and 231</p>	<p><b>DEC proposed to revise its New Source Review (NSR) regulations to incorporate recent EPA rules relating to greenhouse gases (GHG) and fine particulate (PM<sub>2.5</sub>) after adopting an emergency rule in late December 2010 implementing the changes.</b> With respect to GHGs, the proposed revisions incorporate EPA’s GHG “tailoring rule,” which creates “tailored” Prevention of Significant Deterioration (PSD) applicability thresholds to address the fact that GHGs are emitted in significantly greater quantities than other PSD pollutants. Because the definition of major source under the Title V operating permit program is linked to the PSD program, DEC also proposed to revise 6 NYCRR Part 201 to incorporate the new GHG thresholds and make other necessary changes. Key GHG-related changes include: (1) revising the definition of major stationary source to include sources that have the potential to emit 100 tons per year (tpy) or more of GHGs and 100,000 tpy or more of carbon dioxide equivalent (CO<sub>2</sub>e); (2) adding a definition of greenhouse gases that identifies the six pollutants regulated as GHGs and the thresholds and timeframes for implementing PSD; and (3) adding a definition of global warming potential and including a table identifying values for calculating CO<sub>2</sub>e.</p> <p>As part of the recent rulemaking, DEC also proposed to revise 6 NYCRR Part 231 to incorporate a pair of EPA rules implementing NSR for new and modified sources of PM<sub>2.5</sub>. Major changes include: (1) establishing emission offset requirements for PM<sub>2.5</sub>, including appropriate interpollutant offset ratios for the PM<sub>2.5</sub> precursors sulfur dioxide (SO<sub>2</sub>) and nitrogen oxides (NO<sub>x</sub>); (2) clarifying the rules governing use of SO<sub>2</sub> and NO<sub>x</sub> as emission reduction credits for PM<sub>2.5</sub>; and (3) establishing PM<sub>2.5</sub> increments (maximum allowable increase over baseline), de minimis monitoring levels (increase below which no monitoring is required), and significant impact levels (level above which emission increase is considered to cause or contribute to a violation of a national ambient air quality standard).</p> <p>The proposed rule can be found at:  <a href="http://www.dec.ny.gov/regulations/propregulations.html">www.dec.ny.gov/regulations/propregulations.html</a>.</p>	<p>The proposed rule is potentially of interest to new and modified major facilities that could potentially trigger PSD. The rule enables DEC to implement the PSD program for GHGs and PM<sub>2.5</sub>. It also contains various editorial changes intended to clarify the PSD and nonattainment NSR rules.</p>	<p>DEC is accepting comments on the proposed rule until <b>June 10, 2011</b>. Three public hearings have been scheduled in early June.</p> <p>DEC’s emergency rule took effect December 31, 2010.</p>

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<p><b>WATER</b></p> <p><b>FEDERAL New York State Regional Permit Conditions for Proposed Reissuance and Modification of Army Corps Nationwide Permits</b></p>	<p>The New York and Buffalo Districts of the United States Army Corps of Engineers (ACOE) <b>have made available for comment draft regional conditions in the wake of the ACOE’s publication of proposed revisions to its nationwide permits (NWP)s</b>. Individuals proposing 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 NWP)s for project categories that typically result in minimal disturbances. With the recent rulemaking, the ACOE: added new NWP)s for land-based renewable energy generation facilities and water-based renewable energy generation pilot projects; revised the text of numerous other NWP)s; and added new general conditions.</p> <p>Following that proposal, the New York and Buffalo Districts proposed regional conditions for the following NWP)s to address the specific needs or requirements of the region: NWP 3, Maintenance; NWP 5, Scientific Measurement Devices; NWP 9, Structures in Fleeting and Anchorage Areas; NWP 10, Mooring Buoys; NWP 12, Utility Line Activities (extensive regional conditions); NWP 13, Bank Stabilization; NWP 29, Residential Developments; NWP 35, Maintenance Dredging of Existing Basins; NWP 39, Commercial and Institutional Developments; NWP 41, Reshaping Existing Drainage Ditches; NWP 42, Recreational Facilities; NWP 43, Stormwater Management Facilities; NWP 44, Mining Activities; NWP 46, Discharges in Ditches; NWP 48, Existing Commercial Shellfish Aquaculture Activities; and NWP B, Water-Based Renewable Energy Generation Pilot Projects. In addition, the Buffalo and New York Districts proposed general regional conditions relating to construction best management practices, loss of bogs and fens, and national wild and scenic rivers. The Districts also proposed to require the submission of additional information in conjunction with any required preconstruction notifications. Finally, the Districts identified critical resource waters where certain activities either cannot be authorized under a NWP or require a preconstruction notification.</p> <p>The regional conditions can be found on the ACOE’s New York District website at:  <a href="http://www.nan.usace.army.mil/business/buslinks/regulat/pnotices/PropRegConds.pdf">www.nan.usace.army.mil/business/buslinks/regulat/pnotices/PropRegConds.pdf</a>.</p>	<p>The new/reissued nationwide permits authorize certain activities that could potentially disturb wetlands or waterways. Applicants for certain NWP)s must submit written preconstruction notifications. In addition, applicants must satisfy ACOE regional conditions and conditions imposed by the state to preserve coastal zone consistency or protect water quality (via the water quality certification process).</p>	<p>The New York and Buffalo ACOE Districts are accepting comments on proposed New York State regional NWP conditions until <b>April 25, 2011</b>.</p> <p>After the NWP)s are finalized, the states must issue water quality certifications and/or coastal zone management consistency determinations with or without conditions; they may also deny specific NWP)s.</p>



Citation	Summary	Implications	Schedule/Notes
<p><b>WATER</b></p> <p><b>NEW YORK STATE Administrative Procedures and EBPS Strategy for Individual SPDES Permits</b>            Program Policy TOGS 1.2.2</p>	<p>DEC's Division of Water proposed revisions to Program Policy TOGS 1.2.2, <i>Administrative Procedures and the Environmental Benefit Permit Strategy for Individual SPDES Permits</i>, which describes the procedures for developing new, renewed and modified permits under the State Pollutant Discharge Elimination System (SPDES) permit program as implemented via DEC's Environmental Benefit Permit Strategy (EBPS) program. The EBPS ranks SPDES permits for full technical review based on various criteria. The review under the EBPS program occurs independent of routine SPDES permit renewals. Each year, DEC publishes the priority list for central office, which handles most major industrial SPDES permits, and for each DEC regional office. SPDES permits on the top 10 percent of the list are scheduled for review in the coming year.</p> <p>The revised program policy: (1) identifies the wastewater discharge and permit classification categories; (2) summarizes the criteria and process for ranking SPDES permits for technical review under the EBPS; (3) discusses the procedure for processing "mass" SPDES permit modifications (typically required to implement regulatory changes that affect a large number of sources); (4) summarizes the procedures for processing new SPDES permit applications, recertifying indefinitely extended permits, renewing permits on DEC's "No Administrative Renewal List," and processing administrative permit renewals, permittee-initiated modifications, and DEC-initiated EBPS permit modifications; and (5) addresses implementation of the Discharge Notification Act, which requires posting of signs at certain SPDES outfalls.</p> <p>The draft program policy can be found on DEC's website at:  <a href="http://www.dec.ny.gov/permits/6054.html">www.dec.ny.gov/permits/6054.html</a>.</p>	<p>The program policy provides an overview of DEC's SPDES permit review process both generally and under the EBPS program and so is of potential interest to anyone with a SPDES permit.</p>	<p>DEC is accepting comments on the draft program policy until <b>April 25, 2011</b>.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA **adopted an interim rule extending its stay of a final rule addressing fugitive emissions under the New Source Review program and revising changes made earlier to implement the stay.** In 2008, EPA amended the NSR rules to require permit applicants to consider fugitive emissions in determining whether a modification triggers NSR only for those source categories that are required to consider fugitives in assessing their major source status. Shortly after the Obama administration took office it stayed this provision pending further review; however, the changes to the rule incorporating the stay appeared to call for staying key sections of the regulation in their entirety rather than merely undoing the 2008 changes. With this rulemaking, EPA is correcting the text of the PSD/nonattainment NSR regulations to eliminate confusion as to the scope of the current rule as applied to fugitive emissions and extending the stay until it completes the reconsideration process. Although EPA adopted the revisions/stay as an interim rule, it is accepting comments until **April 29, 2011**. The interim rule can be found in the March 30, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is potentially of interest to new/modified major sources subject to NSR.

FEDERAL: EPA made available the fourth **version of its National Air Toxics Assessment (NATA)**, which provides regulators with a tool for identifying geographic areas, pollutants and emission sources that should be evaluated further to gain a better understanding of the health risks posed by air toxics. The NATA contains information for the year 2005 on emissions of 178 air toxics such as benzene, methylene chloride, acrolein and diesel particulate matter from stationary and mobile sources, background, and secondary formation (i.e., pollutants formed from other pollutants emitted into the air). Using that information, EPA estimated ambient concentrations of the air toxics based on air dispersion and photochemical models, estimated population exposures based on inhalation, and characterized potential cancer and non-cancer public health risks. Among other things, the NATA showed that air toxic emissions decreased approximately 42 percent from industrial and mobile sources between 1990 and 2005; the NATA also showed that formaldehyde and benzene contribute the most to cancer risks nationwide while acrolein, which can affect the lungs, contributes the most to non-cancer risks. The 2005 NATA can be found on EPA's website at: [www.epa.gov/ttn/atw/natamain](http://www.epa.gov/ttn/atw/natamain).

FEDERAL: EPA **finalized emission standards for new and existing sewage sludge incinerators** under CAA § 129, 42 USC § 7429. EPA estimates that there are over 200 of these units at wastewater treatment facilities across the United States. The rules, which are 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, 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 estimates that approximately three-quarters of

existing units are currently meeting the emission limits; the remainder will likely be required to install one or more air pollution control devices. In response to public comment, EPA revised the rule to clarify that it applies only to sources that combust sewage sludge at wastewater treatment facilities treating domestic sewage sludge. The rule, which takes effect May 20, 2011, can be found in the March 21, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

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

## CLIMATE CHANGE

FEDERAL: EPA **extended the deadline for facilities to submit reports under the mandatory greenhouse gas reporting rule** to September 30, 2011 to provide the agency with time to finalize a user-friendly online reporting platform. 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. The first mandatory GHG reports were originally due March 31, 2011 for GHG emissions occurring in 2010. However, EPA has not completed development and testing of its Electronic Greenhouse Gas Reporting Tool (e-GGRT) online reporting platform. To allow EPA time to complete and test the e-GGRT and obtain feedback from the regulated community, EPA postponed the deadline for submitting GHG reports until September 30, 2011. The final rule implementing the extension can be found in the March 18, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The extension is potentially of interest to anyone required to submit a mandatory GHG report to EPA this year.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) **issued a *Small Entity Compliance Guide for Final Rule for Cranes and Derricks in Construction***. In 2010, OSHA revised its cranes and derricks standard, replacing references to pre-1970 national consensus standards with more up-to-date requirements and adding new provisions addressing: (1) formal operator qualification/certification; (2) safety during assembly and disassembly; (3) maintenance of sufficient clearance distances from power lines and protection against electrocution; (4) pre-erection inspections; and (5) standards for equipment largely ignored under the old standard. The Guide provides an introduction to the standard and a summary of employer responsibility issues. It then goes on to provide an overview of each section of the standards, addressing the most common compliance issues employers will face. The Guide can be found on OSHA's website at: [www.osha.gov/cranes-derricks/small\\_entity.html](http://www.osha.gov/cranes-derricks/small_entity.html).

Implications: The Guide may be useful to anyone who owns/operates cranes and derricks and to employers/employees on construction sites where cranes and derricks are used.

## Other Recent Developments (Proposed)

### AIR

FEDERAL: EPA **proposed to defer for three years the application of the Prevention of Significant Deterioration and Title V operating permit programs to biogenic carbon dioxide emissions from bioenergy and other biogenic stationary sources.** Beginning this year, EPA extended the PSD program to new and modified major sources of greenhouse gases. However, a forestry trade association sought reconsideration of the rule as applied to biogenic sources, arguing that such sources are “carbon neutral” because trees and other sources of biofuels remove carbon from the atmosphere. With the recent rulemaking, EPA proposed to delay regulation of bioenergy and other biogenic sources to provide it with additional time to study their climate impacts. Examples of biogenic CO<sub>2</sub> emissions subject to the proposal include CO<sub>2</sub> from biological decomposition of waste in landfills, CO<sub>2</sub> from the combustion of biogas, and CO<sub>2</sub> from fermentation during ethanol production. The deferral does not apply to other GHGs such as methane and nitrous oxide. In conjunction with the rulemaking, EPA also published a *Guidance for Determining Best Available Control Technology for Reducing Carbon Dioxide Emissions from Bioenergy Production*. EPA is accepting comments on the proposed deferral until **May 5, 2011**; it can be found in the March 21, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed deferral is potentially of interest to bioenergy facilities and other facilities that emit significant quantities of CO<sub>2</sub> from biogenic sources.

FEDERAL: EPA **published rulemakings that call for changes to the following standards issued under the National Emission Standards for Hazardous Air Pollutants program:** (1) **reciprocating internal combustion engines**, 40 CFR Part 63, subpart ZZZZ (direct final rule amending the standards for existing stationary spark ignition reciprocating internal combustion engines to clarify requirements relating to continuous parameter monitoring systems and make other minor changes); (2) **mercury cell chlor-alkali plants**, 40 CFR Part 63, subpart IIIII (propose two options for amending the NESHAP – eliminating all mercury emissions or requiring work practices to reduce fugitive emissions from the cell room); and (3) **chemical manufacturing area sources**, 40 CFR Part 63, subpart VVVVVV (stay requirement for certain sources to comply with Title V operating permit program pending reconsideration). EPA is accepting comment on the proposed mercury chlor-alkali rule until **May 13, 2011**. The rules can be found in the March 9, 2011 and March 14, 2011 Federal Registers at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rules are primarily of interest to facilities in the affected source categories.

### WATER

FEDERAL: EPA **proposed criteria for certain public water systems (PWS) to monitor new contaminants under the Safe Drinking Water Act** for purposes of assembling the data EPA needs to decide whether to regulate these contaminants. Every five years, EPA must publish a list of no more than 30 unregulated contaminants to be monitored by PWS. The recent proposal identifies the 30 contaminants to be monitored and proposes monitoring methods for each of the contaminants. The monitoring must be

performed by all large PWS (those serving more than 10,000 people) and a select group of smaller PWS. The contaminants covered by the proposed monitoring program include seven hormones, nine volatile organic compounds, one synthetic organic compound, four metals, one oxyhalide anion, six perfluorinated chemicals, and two viruses. EPA is accepting comments on the proposed rule until **May 2, 2011**; it can be found in the March 3, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to owners/operators of public water systems.

NEW YORK STATE: DEC **proposed minor modifications to its SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s)**, GP-0-10-002. The MS4 permit establishes planning, operating, inspection, monitoring, reporting and recordkeeping requirements for municipalities and other entities that operate MS4s. With the recent notice, DEC is proposing the following changes to the MS4 permit: (1) extending the deadline for submitting Watershed Improvement Strategies from May 1, 2011 to May 1, 2012 for specific waterbodies on Long Island; (2) extending the deadline for submitting Retrofit Plans from March 9, 2011 to March 9, 2012 for specific waterbodies on Long Island; and (3) minor spelling and other corrections. DEC is accepting comments on the proposed changes until **April 15, 2011**; they can be found on DEC's website at: [www.dec.ny.gov/chemical/41392.html](http://www.dec.ny.gov/chemical/41392.html).

Implications: The changes to the MS4 permit are primarily relevant to MS4s located on Long Island.

## OTHER

NEW YORK STATE: DEC **made available for comment a draft program policy entitled *Determinations Regarding Emergency Pesticide Applications at Schools and Day Care Centers and Inquiries on Related Pesticide Prohibition***. 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 program policy establishes procedures for responding to requests for emergency pesticide application determinations and contains: guidance on the types of emergency pesticide requests to be considered by DEC; timeframes for emergency determinations; determination request forms; DEC recording and transmittal forms; and guidelines on referring requests to other state and local entities. DEC is accepting comments on the draft program policy until **April 15, 2011**; it can be found on DEC's website at: [www.dec.ny.gov/chemical/41822.html](http://www.dec.ny.gov/chemical/41822.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.

**April 6, 2011:** Deadline for submitting comments on petition for declaratory ruling on issue of common control under Title V and NSR regulations (extended from March 16, 2011). See DEC's website at [www.dec.ny.gov/permits/72550.html](http://www.dec.ny.gov/permits/72550.html) for a copy of the petition.

**April 8, 2011:** Deadline for submitting comments on DEC's proposed revisions to the full and short environmental assessment forms (extended from February 18, 2011). The draft forms and related rulemaking documents can be found on DEC's website at [www.dec.ny.gov/permits/70293.html](http://www.dec.ny.gov/permits/70293.html).

**April 12, 2011:** Deadline for submitting comments on EPA's proposal to retain the existing national ambient air quality standards for carbon monoxide. See the February 11, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**April 15, 2011:** Deadline for submitting comments on DEC's draft program policy *Determinations Regarding Emergency Pesticide Applications at Schools and Day Care Centers and Inquiries on Related Pesticide Prohibition*. The draft policy can be found on DEC's website at [www.dec.ny.gov/chemical/41822.html](http://www.dec.ny.gov/chemical/41822.html).

**April 15, 2011:** Deadline for submitting comments on draft revisions to DEC's SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems, GP-0-10-002. The draft modified permit pages can be found on DEC's website at [www.dec.ny.gov/chemical/41392.html](http://www.dec.ny.gov/chemical/41392.html).

**April 16, 2011:** Deadline for submitting input on whether to include a vapor intrusion component in EPA's hazard ranking system for identifying federal Superfund sites. See the January 31, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**April 18, 2011:** Deadline for submitting comments on the ACOE's proposed reissuance of the existing nationwide permits with additions and modifications. See the February 16, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**April 25, 2011:** Deadline for submitting comments on New York and Buffalo Districts' proposed regional conditions for revised ACOE nationwide permits. The conditions can be found on the New York District's website at [www.nan.usace.army.mil/business/buslinks/regulat/pnotices/PropRegConds.pdf](http://www.nan.usace.army.mil/business/buslinks/regulat/pnotices/PropRegConds.pdf).

**April 25, 2011:** Deadline for submitting comments on DEC's draft program policy TOGS 1.2.2, *Administrative Procedures and the Environmental Benefit Permit Strategy for Individual SPDES Permits*. The policy can be found on DEC's website at [www.dec.ny.gov/permits/6054.html](http://www.dec.ny.gov/permits/6054.html).

**April 29, 2011:** Deadline for submitting comments on EPA's interim rule amending the NSR provisions relating to fugitive emissions and extending the stay of EPA's 2008 fugitive emission rule. See the March 30, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 5, 2011:** Deadline for submitting comments on EPA's proposal to defer regulation of carbon dioxide emissions from bioenergy and other similar sources under PSD and Title V programs. See the March 21, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 18, 2011:** Deadline for submitting comments on EPA's repropoed hazardous substance vessel and marine transportation-related facility response plan rules. See the February 17, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 20, 2011:** Deadline for submitting application for DEC's Environmental Excellence Awards. See DEC's website at [www.dec.ny.gov/public/945.html](http://www.dec.ny.gov/public/945.html) for details.

**June 2, 2011:** Public hearing on proposed revisions to DEC's NSR rules to incorporate federal rules relating to fine particulate matter and greenhouse gases to be held at DEC Headquarters in Albany. Hearings also have been scheduled in early June in Avon and Long Island City.

**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](http://www.dec.ny.gov/regulations/propregulations.html).