



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
NEW YORK STATE Outdoor Wood Boilers 6 NYCRR Part 247	<p>The State Environmental Board approved DEC’s controversial new rules regulating outdoor wood boilers (OWB) – devices designed to be installed outdoors or in non-occupied structures for burning wood or other fuels to heat building space and/or water. Key requirements of the final rule include:</p> <ul style="list-style-type: none"> • Prohibitions. The rule prohibits: (1) burning anything other than seasoned clean wood, wood pellets, and other approved fuels; (2) emissions that adversely affect human, plant or animal life or interfere with the comfortable enjoyment of property; and (3) opacity of 20% or more. • Standards for new OWBs. Residential-size OWBs commencing operation on or after April 15, 2011 must: (1) meet a particulate emission rate of 0.32 pounds per million British thermal units heat output; (2) be located 100 feet or more from the nearest property boundary line (100 feet or more from the nearest neighboring residence for boilers located on agricultural lands larger than 5 acres); and (3) have a stack extending at least 18 feet above ground level (and 2 feet above any structure within 150 feet of the OWB if required by DEC). Separate rules apply to large “commercial-size” OWBs. • Labeling and certification requirements. Manufacturers must test OWB models to confirm that they meet the particulate limits, obtain a certificate of compliance from DEC, and affix a permanent label to new OWBs containing key manufacturer and equipment information. • Notice to buyers. OWB distributors and buyers must sign a notice for submission to DEC that: (1) acknowledges that the buyer has received a copy of the OWB regulations; (2) lists information relating to the particular OWB, including acceptable fuels, stack height, and distance from nearest property line; and (3) specifies that users may be sanctioned if the units interfere with the activities of others. <p>In response to public comments, the Department decided not to finalize the portion of the proposed rule calling for the retrofitting and eventual phaseout of existing OWBs.</p> <p>The final rule can be found on DEC’s website at: www.dec.ny.gov/chemical/69348.html.</p>	<p>The regulation will primarily affect manufacturers, distributors and purchasers of new OWBs and, to a lesser extent, owners of existing OWBs, who will now be subject to specific rules relating to fuel, opacity and nuisance. According to DEC, the increased use of OWBs has resulted in numerous complaints by neighbors. Although DEC can address these complaints under the general prohibitions in 6 NYCRR Part 211, the process requires considerable time and resources. The rule was purportedly necessary for Department staff to effectively resolve nuisance complaints.</p>	<p>The rule was approved by the State Environmental Board on December 22, 2010 and will take effect shortly after publication in the State Register.</p> <p>DEC received extensive comment on the proposed rule, which was initially presented to the State Environmental Board in October 2010 and withdrawn. The final rule approved in December: (1) eliminated provisions requiring existing OWBs to meet stack height requirements and eventually shut down; (2) eliminated the requirement that all stacks be at least 2 feet above neighboring structures in favor of a discretionary provision; and (3) established less onerous setback requirements for OWBs located on agricultural land. DEC plans to commence a new rulemaking to specifically address existing OWBs.</p>

Citation	Summary	Implications	Schedule/Notes
<p>CLIMATE CHANGE</p> <p>FEDERAL Mandatory Greenhouse Gas Reporting Rule 40 CFR Part 98 75 Fed. Reg. 79092 (Dec. 17, 2010); 75 Fed. Reg. 81338, 81350, 81366 (Dec. 27, 2010)</p>	<p>EPA undertook a series of revisions to its mandatory greenhouse gas (GHG) reporting rule, which requires certain entities to report their GHG emissions annually to EPA. With the first rulemaking, EPA adopted changes/clarifications to the reporting rule, including: (1) authorizing the extended use of best available monitoring methods beyond December 31, 2010 for certain sources; (2) clarifying the intent and extent of equipment calibration requirements; (3) clarifying the rules governing reporting of biogenic emissions; (4) clarifying how the requirement to correct and resubmit a report is triggered and the process for resubmitting reports; and (5) reducing the recordkeeping associated with missing data events. EPA also adopted extensive changes to the requirements applicable to specific source categories, including general stationary fuel combustion sources. The changes apply to reports covering the 2010 reporting year.</p> <p>The second rulemaking addresses whether certain information used to calculate GHG emissions should be kept confidential. In a July 2010 rulemaking on data confidentiality, the agency concluded that data elements that are inputs to emission equations are “emission data” under the GHG reporting rule and must therefore be available to the public. Industry objected strongly to this conclusion, arguing that certain data inputs such as product compositions and raw materials are trade secrets and should remain confidential. After concluding that some of these concerns warrant further study, EPA undertook three related rulemakings:</p> <ul style="list-style-type: none"> • A proposed rule deferring until March 31, 2014 the requirement that facilities report data elements that are inputs to emission equations for calendar years 2010, 2011, and 2012. • An interim final rule deferring until August 31, 2011 the requirement to report input information for reporting year 2010 to provide EPA with time to finalize the proposed rule. • A call for information and comments to assist in evaluating issues relating to reporting and public availability of inputs to emission equations. <p>The proposed and interim final rules include tables specifying the data elements for which reporting is deferred; they also clarify that facilities are expected to retain the data elements under review in their records.</p> <p>The rules discussed above can be found in the December 17, 2010 and December 27, 2010 Federal Registers at: www.gpo.gov/fdsys.</p>	<p>The rules are primarily of interest to facilities required to submit GHG reports.</p>	<p>EPA is accepting comments until January 26, 2011 on the proposed rule changing the reporting date for certain data elements (February 10, 2011 if a hearing is requested on the proposed rule). Information and comments submitted in response to the call for information must be received by February 25, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
<p>CLIMATE CHANGE</p> <p>FEDERAL Rules to Ensure Implementation of Prevention of Significant Deterioration Program for Greenhouse Gas Sources 40 CFR Part 52 75 Fed. Reg. 81874 (Dec. 29, 2010); 75 Fed. Reg. 82246, 82254, 82430, 82536 (Dec. 30, 2010)</p>	<p>EPA adopted a series of rules designed to ensure that states timely implement the agency’s greenhouse gas tailoring rule, which established a schedule for extending the Prevention of Significant Deterioration (PSD) program to certain new and modified sources of GHG emissions. The tailoring rule creates “tailored” thresholds for triggering the PSD program to address the fact that GHGs are emitted in significantly greater quantities than other PSD pollutants. It also phases in the program over time, beginning in 2011 when sources that would otherwise trigger PSD must address GHG emissions if they will increase by 75,000 tons per year (tpy). The recent rules, which are summarized below, are designed to ensure that the tailored thresholds are implemented in all states on schedule.</p> <ul style="list-style-type: none"> • Finding of failure to submit state implementation plan (SIP) revisions required for GHGs. This rulemaking declares that seven states failed to make the SIP submissions needed to implement the GHG tailoring rule by the SIP submittal deadline. • Federal implementation plan (FIP). This rule imposes a FIP on the seven states that failed to make the necessary SIP submissions to implement the tailoring rule. The FIP gives EPA the authority to issue PSD permits for GHGs in these states until they receive EPA approval of their revised plans. • Partial disapproval of Texas SIP and implementation of FIP. Texas has refused to apply PSD permitting requirements to GHGs. This rulemaking gives EPA the authority to apply federal PSD permitting requirements to large sources of GHGs in Texas. • Action to ensure authority to implement Title V permitting programs under the tailoring rule. Many states, including New York, require Title V permits for facilities with potential emissions as low as 100 tpy. With this rulemaking, EPA limited its previous approval of Title V programs in these states to the extent they require Title V permits for sources with GHG emissions between the 100 tpy major source threshold and the higher GHG thresholds. • PSD narrowing rule. Many SIPs require PSD permits for GHG emissions at levels below the thresholds established in the tailoring rule. With this rulemaking, EPA limited its previous approval of PSD programs in these states to the extent they require permits for sources with GHG emissions between the 100 tpy major source threshold and the higher GHG thresholds. <p>The rules can be found in the December 29, 2010 and December 30, 2010 Federal Registers at: www.gpo.gov/fdsys.</p>	<p>Late in 2010, EPA approved New York’s 2009 regulations implementing a PSD program in the state. However, the regulations do not specifically address EPA’s GHG tailoring rule.</p> <p>DEC has announced emergency rules intended to implement the GHG tailoring rule in New York.</p>	<p>The rules took effect December 29, 2010 and December 30, 2010.</p>

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<p>REMEDICATION</p> <p>NEW YORK STATE Institutional Controls: A Guide to Drafting and Recording Institutional Controls Program Policy DER-33</p>	<p>DEC issued Program Policy DER-33, <i>Institutional Controls: A Guide to Drafting and Recording Institutional Controls</i>, which provides direction on how to develop and properly record institutional controls required as part of a cleanup decision. Many DEC-approved remedial actions leave contaminants in place at levels that have been determined to be safe for a particular use and/or include engineered structures and controls that require ongoing oversight and maintenance. To address these sites, DEC requires the imposition of “institutional controls” – measures to enforce restrictions on the use of real property that limit human or environmental exposure, restrict the use of groundwater, provide public notice, or prevent actions that would interfere with the effectiveness of the remedy. The program policy provides background concerning institutional controls and identifies procedures for implementing the three most common types of controls employed by DEC – environmental easements, deed restrictions, and environmental notices. For each type of institutional control, the program policy identifies when it is required, its basic features, and the process for implementing the control. In the case of environmental easements, for example, the policy summarizes the elements of a complete environmental easement package (proposed easement, updated title report, current deeds, survey, and commitment letter, among other items) and the procedures for executing and recording the easement. The program policy also includes procedures for completing surveys (including Attachment A, Minimum Survey Requirements) and modifying/terminating institutional controls.</p> <p>The program policy can be found on DEC’s website at: www.dec.ny.gov/regulations/2393.html.</p>	<p>The program policy is primarily of interest to those involved in site remediations that require imposition of institutional controls. Specifically, the policy applies to DEC’s Inactive Hazardous Waste Site Remedial Program, the Brownfield Cleanup Program, the Voluntary Cleanup Program, the Environmental Restoration Program, the Spill Response Program, and cleanups at hazardous waste sites subject to the Resource Conservation and Recovery Act. The program policy is one of many issued by DEC in recent months to facilitate implementation of its remedial programs.</p>	<p>The program policy took effect December 3, 2010. DEC published the draft policy in September 2010 and revised it in response to public comments.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL Leak Repair Requirements Under the Stratospheric Ozone Protection Program 40 CFR Part 82 75 Fed. Reg. 78558 (Dec. 15, 2010)</p>	<p>EPA proposed major revisions to the rules governing repairs of leaking air conditioning and refrigeration equipment under Section 608 of the Clean Air Act, which seeks to minimize emissions of ozone-depleting substances such as chlorofluorocarbons into the environment. EPA’s existing leak repair regulations, which are set forth at 40 CFR Part 82, subpart F, require owners of equipment with ozone-depleting refrigerant charges of more than 50 pounds to repair leaks that exceed specified leak rates within 30 days or develop and implement an equipment retrofit or retirement plan. With this rulemaking, EPA is proposing changes to the subpart’s definitions, required practices, reporting, and recordkeeping sections to create more streamlined leak repair requirements. Major changes to the leak repair rules for large appliances include:</p> <ul style="list-style-type: none"> • Adding and revising definitions to provide clarity and consistency with industry terminology. • Clarifying that the leak repair trigger rates are not an exemption to the statutory prohibition against venting refrigerants during servicing and disposal. • Lowering the leak rates that trigger the need for repair, retrofit or retirement and changing the procedures for calculating leak rate. • Changing the criteria for requiring the retrofit or retirement of a leaking appliance and reducing the timeframe for owners/operators to complete and implement appliance replacement/retrofit plans. • Requiring verification of repair attempts for comfort cooling and commercial appliances and not just industrial process refrigeration equipment (as currently required) and clarifying the timeframes for performing both initial and follow-up verifications. • Requiring service technicians to maintain records on the fate of refrigerant that is recovered from, but not returned to, appliances during service. <p>The proposal can be found in the December 15, 2010 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule is primarily of interest to owners/operators of comfort cooling, commercial refrigeration, and industrial process refrigeration and air conditioning equipment with ozone-depleting refrigerant charges of greater than 50 pounds.</p>	<p>EPA is accepting comments on the proposed rule until February 14, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL Residual Risk/Periodic Review for Shipbuilding and Ship Repair (Surface Coating) and Wood Furniture Manufacturing Standards</p> <p>40 CFR Part 63, subparts II and JJ 75 Fed. Reg. 80220 (Dec. 21, 2010)</p>	<p>EPA proposed revisions to the National Emission Standards for Hazardous Air Pollutants (NESHAPs) for shipbuilding and ship repair and wood furniture manufacturing 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 standards and revise them as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. Following that review, EPA reached the following conclusions:</p> <ul style="list-style-type: none"> • Shipbuilding and ship repair (surface coating). EPA determined that the existing maximum available control technology (MACT) standard provides an ample margin of safety to protect public health and prevent adverse environmental effects; accordingly, no change is necessary to address residual risk. EPA also concluded that there have been no developments in practices, processes, or control standards since the MACT standard was adopted and that no changes were therefore needed. • Wood furniture manufacturing. Following a residual risk assessment, EPA is proposing to limit use of formaldehyde in coatings and contact adhesives to 400 pounds per rolling 12-month period. According to EPA, this change will significantly reduce the estimated lifetime individual cancer risk to the most exposed individual while imposing no or minimal additional costs on the facility. Following the periodic technology review, EPA is proposing to amend the MACT standard to prohibit the use of conventional air spray guns after finding that such guns have already been replaced at most facilities by more efficient air assisted airless spray guns. <p>EPA also is proposing to eliminate existing startup, shutdown and malfunction (SSM) provisions, requiring instead that facilities comply with MACT standards at all times, including during startup and shutdown. With respect to malfunctions, EPA is proposing to adopt an affirmative defense to civil penalties, which will be available to facilities that can show that the event causing the exceedence, in fact, met the definition of malfunction and that the facility took all necessary steps to mitigate and correct it.</p> <p>The proposal can be found in the December 21, 2010 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The proposal is primarily of interest to facilities regulated under the shipbuilding and ship repair and wood furniture manufacturing NESHAPs.</p> <p>EPA is revising the SSM requirements in the wake of a court decision that vacated EPA's general SSM exemption contained in 40 CFR Part 63, subpart A. As it reviews MACT standards, EPA is revising their SSM provisions to conform to the court's ruling. With respect to startups and shutdowns, EPA is either establishing special emission limits applicable during startup and shutdown or requiring compliance with a single set of emission limits at all times. EPA is proposing the affirmative defense for malfunctions in recognition of the fact that such events are, by definition, unexpected, making compliance with emission limits difficult.</p>	<p>EPA is accepting comments on the proposed rule until February 22, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE SPDES General Permit for Point Source Discharges to Surface Waters from Pesticide Applications Permit No. GP-0-11-001</p>	<p>DEC made available for comment a draft general permit entitled <i>SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications</i>. This State Pollutant Discharge Elimination System (SPDES) permit is required for “operators” planning to apply pesticides labeled for aquatic uses to, in or over the surface waters of the state. To obtain coverage under the permit, the applicant must submit a Notice of Intent to DEC and comply with the terms of the general permit, including:</p> <ul style="list-style-type: none"> • Minimizing discharges. The permit requires operators to minimize discharges by: complying with the pesticide label, the general rules governing pesticide application, and other required permits, if any; minimizing leaks, spills or discharges; and conducting an integrated pest management evaluation (with certain exceptions). • Preparing a pesticide discharge management plan (PDMP). Certain operators must prepare a PDMP, which includes, among other elements: an identification of responsibilities; a pest management area description; and control measures, procedures and schedules. • Monitoring. Operators must conduct visual monitoring and perform visual assessments of the pest management area and treatment areas. • Corrective measures. The permit specifies when corrective measures must be implemented and establishes incident reporting requirements, including a 5-day written follow-up report. • Termination. The permit requires operators to submit a Notice of Termination form to DEC when they terminate coverage under the permit. • Records maintenance and retention. The permit specifies what records operators must keep and for how long. • Standard permit conditions. The permit contains extensive standard permit conditions similar to those found in other SPDES general permits. <p>The draft permit and supporting materials emphasize that aquatic pesticide application activities are subject to numerous additional requirements and are likely to need other DEC permits under the Environmental Conservation Law (ECL), including Article 15 (relating to aquatic pesticide applications generally) and Article 24 (wetlands).</p> <p>The draft permit and related materials can be found on DEC’s website at: www.dec.ny.gov/chemical/70489.html.</p>	<p>The general permit is primarily of interest to pesticide applicators and entities, such as towns, that may decide to retain someone to conduct an aquatic pesticide application.</p> <p>DEC already requires permits for aquatic pesticide applications under ECL Article 15 and/or Article 24. The new general permit is required to satisfy a recent court decision which found that the federal Clean Water Act requires permits for discharges to waters of the United States of chemical pesticides that leave a residue and biological pesticides.</p>	<p>DEC is accepting comments on the draft general permit until January 21, 2011. A public meeting on the permit is scheduled for January 7, 2011 at DEC Headquarters in Albany.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA revised its **program for monitoring lead in the ambient air**, which was adopted in 2008 as part of a larger rulemaking that significantly reduced the national ambient air quality standards for lead. The 2008 rulemaking required lead monitoring near any source that emits 1.0 tpy of lead as well as in every “core-based statistical area” (CBSA) with a population of 500,000 or more, a scheme that would have required up to 212 lead monitors nationwide. In response to petitions from environmental groups, EPA reviewed the monitoring scheme and adopted several changes, including decreasing the facility “emission threshold” for requiring monitors from 1.0 to 0.5 tpy for industrial sources of lead such as foundries. However, in response to public comments, EPA decided to maintain the emission threshold for airports at 1.0 tpy and implement a study to determine whether it is necessary to monitor airports that emit less than that amount. In addition, EPA replaced the CBSA monitoring requirement with a program to expand the existing multi-pollutant ambient air monitoring network (known as NCore) to include lead in CBSAs with a population of 500,000 people or more. The rule can be found in the December 27, 2010 Federal Register at: www.gpo.gov/fdsys.

Implications: The new monitoring program may eventually result in the identification of additional lead nonattainment areas.

CLIMATE CHANGE

FEDERAL: EPA adopted **regulations addressing carbon sequestration** under the Underground Injection Control (UIC) provisions of the Safe Drinking Water Act. One possible solution to climate change is geological sequestration of carbon dioxide (CO₂) – the process of injecting CO₂ from a source such as a coal-fired power plant through a well deep into the subsurface, trapping or "sequestering" the carbon. In recent years, the Department of Energy has funded various projects designed to test the feasibility of carbon sequestration and EPA has issued guidance on permitting pilot projects under the UIC program. With the recent rulemaking, EPA created a new category of injection well, building on existing UIC requirements in key areas such as well siting, construction, operation, monitoring, testing, and closure. Among other things, the rule includes minimum technical criteria for Class VI wells addressing site characterization, computational modeling of the area of review, periodic reevaluation of the area of review, well construction, monitoring of the CO₂ stream, comprehensive post-injection monitoring and site care, and financial responsibility. The goal of the regulation is to ensure that underground sources of drinking water are not endangered by geologic sequestration of CO₂. The rule, which takes effect January 10, 2011, can be found in the December 10, 2010 Federal Register at: www.gpo.gov/fdsys.

FEDERAL: EPA set **the renewable fuel standards (RFS) that will apply to all gasoline and diesel fuel produced or imported during calendar year 2011**. Under the RFS program, gasoline and diesel producers and importers must use an increasing percentage of four types of renewable fuel: cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuel. To implement the RFS, EPA established a credit program under which every gallon of renewable fuel is assigned a unique number which is transferred along with the fuel. Refiners, blenders and importers subject to the RFS program must have sufficient RFS credits to meet their

obligations under the program. With the current rulemaking, EPA established the 2011 percentage standards for the four types of fuel subject to the RFS program. EPA also set the cellulosic biofuel standard based on the volume projected to be available during the upcoming year. Because the cellulosic biofuel level is lower than that specified in the statute, EPA has adjusted the applicable volume of all fuels in accordance with procedures specified in the statute. EPA also finalized several other changes to the RFS program and made other announcements. The RFS rule took effect December 9, 2010 and can be found in the Federal Register issued on that date at: www.gpo.gov/fdsys.

Implications: The RFS rule is primarily of interest to motor vehicle fuel producers, blenders, importers and distributors.

NEW YORK STATE: DEC issued a **Division of Air Program Policy DAR-12, entitled “Sustainably Harvested” Determination for Purposes of “Eligible Biomass,” Part 242**. Under the state’s Carbon Dioxide Budget Trading Program, set forth at 6 NYCRR Part 242, regulated stationary combustion sources may deduct carbon dioxide emissions attributable to the burning of “eligible biomass” from their total CO₂ allowance obligation. To qualify as eligible biomass, the fuel source must be “sustainably harvested.” The policy establishes criteria for identifying which forest-based woody biomass and unadulterated wood and wood residues meet the sustainably harvested requirement and so are eligible for the exclusion. DEC plans to issue a similar policy addressing other fuel sources (dedicated energy crops and trees, agricultural food and feed crop residues, aquatic plants, animal wastes, other clean organic wastes not mixed with other solid wastes, and biogas derived from these fuel sources). DEC made the draft policy available for review and revised it in response to public comment. The policy, which took effect January 7, 2011, can be found on DEC’s website at: www.dec.ny.gov/energy/65141.html.

Implications: The policy is primarily of interest to utilities and other sources subject to the CO₂ emission trading program and to those supplying wood-based biomass to these sources.

SOLID AND HAZARDOUS WASTE

FEDERAL: EPA made available a **pair of guidance documents addressing the management and disposal of fluorescent lights**. The first document, entitled *What to Do if a Compact Fluorescent Light (CFL) Bulb or Fluorescent Tube Light Breaks in Your Home*, provides step-by-step guidance on how to clean up broken fluorescent bulbs, focusing on three stages of the cleanup process: (1) before cleanup (evacuate and air out room, shut off central forced heat/air conditioning, collect cleanup materials); (2) during cleanup (collect glass and visible powder and place in sealable container); and (3) after cleanup (place contained debris in outdoor container, continue to air out room and leave central heat/air off). The second document, entitled *Proper Maintenance, Removal and Disposal of PCB-Containing Fluorescent Light Ballasts*, provides guidance for school administrators and maintenance personnel on properly managing older light ballasts. Many light ballasts manufactured before 1979 contain PCBs in the capacitor and/or the potting material surrounding the capacitor, either of which may leak as the ballasts age. The guidance recommends undertaking a complete lighting retrofit at any school built before 1979 (assuming a retrofit has not already been done) and provides guidance on key aspects of the retrofitting process. Although targeted at school administrators and maintenance personnel, the guidance is potentially relevant to any facility with aging fluorescent lighting fixtures. The broken bulb guidance can be found on EPA’s website at:

www.epa.gov/cfl/cflcleanup.html; the PCB guidance can be found on EPA's website at: www.epa.gov/epawaste/hazard/tsd/pcbs/pubs/ballasts.htm.

Implications: Although targeted at homes and schools, the guidance documents are potentially of interest to anyone managing fluorescent lighting fixtures.

FEDERAL: EPA **removed saccharin from the list of hazardous wastes** under the Resource Conservation and Recovery Act. The hazardous waste regulations currently list saccharin and its salts as U202 waste, including it among the list of commercial chemical products and manufacturing chemical intermediates that are hazardous wastes when disposed. According to EPA, saccharin was originally included as a listed waste because it was identified by EPA's Carcinogen Assessment Group as a potential human carcinogen. Because saccharin was listed as a hazardous waste it automatically became a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, potentially subjecting spills and releases to reporting and cleanup requirements. With this rulemaking, EPA announced that it had reviewed evaluations conducted by key public health agencies concerning the carcinogenic and other potential toxicological effects of saccharin and its salts as well as the agency's own assessment of waste generation and management information and concluded that saccharin does not meet the criteria for remaining on EPA's list of hazardous constituents, hazardous wastes, and/or hazardous substances. The rule takes effect January 18, 2011 and can be found in the December 17, 2010 Federal Register at: www.gpo.gov/fdsys.

Implications: This rule is primarily of interest to companies that manufacture saccharin or use it in the production of other products.

NEW YORK STATE: On December 13, 2010, Governor Paterson **signed S.3593, which requires manufacturers to establish a take-back program for rechargeable batteries**, such as those found in cellular and cordless phones, digital cameras and laptop computers. Among other things, the law: (1) prohibits the knowing disposal of rechargeable batteries as solid waste beginning 360 days by mid December 2011; (2) by mid June 2011, requires retailers who sell rechargeable batteries or products that contain rechargeable batteries to accept up to 10 batteries per day and post signs addressing the disposal prohibition and identifying the store as a battery collection site; (3) by mid June 2011, requires online and catalogue retailers to notify consumers of the opportunity to return used rechargeable batteries; (4) requires battery manufacturers to arrange for the return of batteries and submit a plan to DEC by mid March 2011 explaining how they will collect, transport and recycle rechargeable batteries collected by retailers. The text of the law can be found at: [op.bna.com/env.nsf/id/smiy-8c5uhj/\\$File/NYbills.htm](http://op.bna.com/env.nsf/id/smiy-8c5uhj/$File/NYbills.htm).

Implications: The law affects retailers and manufacturers of rechargeable batteries and products containing rechargeable batteries; it also prohibits all persons from disposing of such batteries in landfills effective mid December 2011.

OTHER

NEW YORK STATE: DEC **announced the launch of an online form for citizens to report environmental violations**. The form, which can be submitted anonymously, prompts the complainant to describe what has occurred, when it happened, and where the

violation was witnessed. The form is an expansion of DEC's existing "Turn in Poachers and Polluters (TIPP)" Hotline. It can be found on DEC's website at: www.dec.ny.gov/regulations/67751.html.

Implications: The form simplifies the process of reporting possible environmental violations to DEC.

NEW YORK STATE: DEC issued its final *Strategic Plan for State Forest Management*, which is intended to guide DEC's management of state forests during the next ten years. State forests are located throughout New York and include reforestation areas, multiple-use areas (areas acquired primarily for outdoor recreation), unique areas (areas of special natural beauty, wilderness character, or geological, ecological or historical significance), and state nature and historic preserves. The plan begins with an overview of the state's forests, the management planning process, and statewide forest management goals. It then includes detailed information/guidance on ecosystem management, resource protection, real property and infrastructure, public/permitted use, and forest management and health. The plan will serve as the basis for developing Unit Management Plans, which set forth the specific actions to be undertaken by DEC in individual state forests. The plan can be found on DEC's website at: www.dec.ny.gov/lands/64567.html.

Implications: The plan is potentially of interest to companies that use forest resources (timber, pulp and paper, wood products manufacturing, etc.) as well as persons that use state forests recreationally.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA is seeking comment on whether to revise **the provisions of the National Emission Standards for Hazardous Air Pollutants for existing stationary compression ignition (CI) reciprocating internal combustion engines (RICE) relating to emergency operation**. EPA adopted the standards for existing CI RICE in March 2010. To ensure the stability of the electric grid, the rule included a provision allowing existing emergency engines to operate up to 15 hours per year as part of a demand response program. After the rule was adopted, EPA received a pair of petitions, one seeking repeal of the provision because of the potential impact on air quality and one seeking to increase the hours of operation in keeping with the rules that typically govern participation in demand response programs. With the recent rulemaking, EPA is seeking comment on whether to change the demand response provision for existing CI RICE. EPA is accepting comment on this issue until **February 14, 2011** (extended from February 7, 2011). The notice of reconsideration can be found in the December 7, 2010 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to owners of existing CI RICE that participate in demand response programs.

NEW YORK STATE: DEC proposed to revise 6 NYCRR 200.10 to **incorporate new National Emission Standards for Hazardous Air Pollutants** contained in the 2009 Code of Federal Regulations into New York's regulations; as part of the proposal, DEC also updated references to other federal programs, including the Prevention of Significant Deterioration permitting program. If adopted, the rule will provide DEC with the authority to implement and enforce the NESHAPs included in the rulemaking, although EPA will retain its own enforcement authority. DEC is accepting comments on the proposed rule until **February 23, 2011**; a series of three

public hearings on the rule have been scheduled for mid February. The proposed regulation can be found on DEC's website at: www.dec.ny.gov/regulations/70942.html.

Implications: The rule will delegate authority for certain recently-adopted NESHAPs to DEC.

CLIMATE CHANGE

FEDERAL: EPA made available for comment **a pair of judicial settlements in which they agreed to issue New Source Performance Standards (NSPS) and emission guidelines for greenhouse gas emissions from natural gas, oil and coal-fired power plants and petroleum refineries.** EPA revised the NSPS and emission guidelines for both source categories several years ago and was sued by states and environmental groups for failing to address GHGs as part of those revisions. In the wake of various developments, including the Supreme Court's decision in *Massachusetts v. EPA* declaring GHGs to be a pollutant under the CAA, the parties have agreed to a schedule for issuing regulations addressing GHGs from these sources. The settlements represent the first time EPA has committed to using the NSPS program to limit GHG emissions. EPA's announcement of the settlement can be found at www.epa.gov/airquality/ghgsettlement.html.

Implications: The settlements are part of a larger EPA initiative to use its existing CAA authority to regulate GHG emissions from major sources.

OTHER

NEW YORK STATE: DEC published its **regulatory agenda for 2011.** The agenda identifies the regulatory changes DEC may pursue in the upcoming year. Key items on the agenda include:

- **6 NYCRR Part 201, Permits and Registrations:** Delete outdated requirements, clarify permitting and application requirements (including those dealing with exemptions and capping), add and/or amend definitions, enhance permit requirements for minor sources, and ensure consistency between Part 201 and 6 NYCRR Part 231 (New Source Review).
- **6 NYCRR Part 205, Architectural and Industrial Maintenance Coatings:** Include additional and more restrictive volatile organic compound (VOC) limits and update rules to clarify certain implementation issues.
- **6 NYCRR Part 212, General Process Emission Sources:** Revise Part 212 to establish a new procedure for evaluating and reducing air toxic impacts from stationary sources.
- **6 NYCRR Part 222, Distributed Generation:** Adopt new regulations establishing standards for distributed generation sources – stationary internal combustion engines used to produce electricity for use at the facility at which they are located, including emergency generators.
- **6 NYCRR Part 225, Fuel Composition and Use:** Revise Subpart 225-1, Sulfur Limitations, to lower the sulfur content of distillate fuel oil for all stationary sources and stationary internal combustion engines and conform the subpart to Part 201. In addition, DEC plans to revise Subpart 225-3, Gasoline, to lower the maximum allowable summertime gasoline volatility. Finally, DEC is considering adding a new Subpart 225-5 containing standards limiting the carbon content of various fuels.

- **6 NYCRR Part 228, Surface Coating Processes:** Revise the VOC emission standards to implement new VOC Control Techniques Guidelines issued by EPA between 2006 and 2008.
- **6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles:** Update and clarify testing requirements for gas stations and conform various provisions to new federal requirements and guidance.
- **6 NYCRR Part 231, New Source Review for New and Modified Facilities:** Amend the existing rules to incorporate federal rules relating to emissions of fine particulate matter and greenhouse gas emissions (i.e., EPA’s GHG tailoring rule).
- **6 NYCRR Part 235, Consumer Products:** Implement additional VOC product content limits.
- **6 NYCRR Part 251, CO₂ Emission Limitations for Combustion Installations and Gasification Sources:** New rule requiring “eligible sources” to meet specific CO₂ emission limits.
- **6 NYCRR Part 360, Solid Waste Management Facilities:** Major revisions to the Part 360 regulations, including reorganizing the rule to better organize solid waste topics and addressing activities not currently covered by the regulations, such as automobile dismantlers and dredge materials, among others; also requires case-specific approval to use coal combustion fly ash in cement manufacturing.
- **6 NYCRR Part 360, Electronics Recycling:** New regulations to address management of used electronics, including implementing recent state laws relating to collection of wireless telephones and electronics recycling generally.
- **6 NYCRR Part 570, Permitting of Liquefied Natural Gas (LNG) Facilities:** Develop new regulations covering the safe siting, construction, operation and inspection of LNG facilities.
- **6 NYCRR Parts 595-599, Chemical Bulk Storage; 6 NYCRR Parts 612-614, Petroleum Bulk Storage:** Revise regulations to: incorporate changes implementing the federal Energy Policy Act of 2005, which requires states to adopt training and other requirements relating to underground storage tanks; revise the list of hazardous substances in Part 597 to reflect changes and updates at federal level; conform key definitions to reflect recent changes to the petroleum bulk storage implementing statute; enhance monitoring maintenance and equipment requirements to prevent leaks and spills; and make other changes.
- **6 NYCRR Part 664, Freshwater Wetlands Mapping and Classification:** Change how wetlands are mapped and classified and develop more efficient procedures for amending maps when errors are detected.
- **6 NYCRR Part To Be Determined, Water Well Registration and Reporting:** Develop new part establishing registration, reporting, certification and enforcement provisions under ECL § 15-1525, which requires certificate of registration for water well drillers.

The regulatory agenda can be found on the New York Department of State’s website at: www.dos.state.ny.us/info/register.htm.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

January 7, 2011: Public meeting on proposed *SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications* to be held at 1:00 p.m. at DEC headquarters in Albany.

January 14, 2011: Deadline for submitting comments on EPA's draft guidance entitled *Institutional Controls: A Guide to Planning, Implementing, Maintaining, and Enforcing Institutional Controls at Contaminated Sites*. See the November 30, 2010 Federal Register at www.gpo.gov/fdsys for details.

January 21, 2011: Deadline for submitting comments on DEC's draft *SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications*. See DEC's website at www.dec.ny.gov/chemical/70489.html for copies of the draft permit and related materials.

January 25, 2011: Public hearing on proposed revisions to environmental assessment forms to be held at 1:00 p.m. at DEC headquarters in Albany. See the November 24, 2010 Environmental Notice Bulletin at www.dec.ny.gov/enb/20101124_not0.html for details.

January 26, 2011: Deadline for submitting comments on EPA's proposed rule changing the reporting date for certain data elements under EPA's mandatory GHG reporting rule (**February 10, 2011** if a hearing is requested on the proposed rule). See the December 27, 2010 Federal Register at www.gpo.gov/fdsys for details.

January 31, 2011: Deadline for submitting comments on EPA's draft document entitled *Design for the Environment Program Alternatives Assessment Criteria for Hazard Evaluation*. See EPA's website at www.epa.gov/dfc/alternative_assessments.html for details.

January 31, 2011: Deadline for submitting comments on EPA's proposed fuel efficiency and GHG standards for heavy-duty vehicles and engines. See the November 30, 2010 Federal Register at www.gpo.gov/fdsys for details.

February 7, 2011: Deadline for submitting comments on the New York State Climate Action Council's *Climate Action Plan Interim Report*. The report can be found on the Council's website at www.nyclimatechange.us.

February 14, 2011: Deadline for submitting comments on EPA's proposed revisions to the leak repair requirements for commercial refrigeration and air conditioning equipment. See the December 15, 2010 Federal Register at www.gpo.gov/fdsys for details.

February 14, 2011: Deadline for responding to EPA's request for comment on whether to amend the provisions of the stationary CI RICE NESHAP governing operation of existing units under a demand response program (extended from February 7, 2011). See the December 7, 2010 Federal Register at www.gpo.gov/fdsys for details.

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

February 22, 2011: Deadline for submitting comments on EPA's proposed revisions to the shipbuilding and ship repair and wood furniture manufacturing NESHAPs. See the December 21, 2010 Federal Register at www.gpo.gov/fdsys for details.

February 23, 2011: Deadline for submitting comments on DEC's proposal to accept delegation of recently adopted NESHAPs. The rule can be found on DEC's website at www.dec.ny.gov/regulations/70942.html. NOTE: A series of three public hearings on the proposed rule have been scheduled in mid February in Albany, New York City and Avon.

February 25, 2011: Deadline for responding to EPA's request for information and comments on whether to make public information pertaining to inputs to emission equations under the mandatory GHG reporting rule. See the December 27, 2010 Federal Register at www.gpo.gov/fdsys for details.

March 21, 2011: Deadline for submitting comments on OSHA's proposed interpretation of provisions relating to feasibility of administrative or engineering controls of occupational noise (extended from December 20, 2010). See the October 19, 2010 Federal Register at www.gpo.gov/fdsys for details.