ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units** 40 CFR Part 60, subpart CCCC and DDDD	EPA **finalized revised 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 a new or existing source. 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. The revised CISWI regulations can be found on EPA's website at: www.epa.gov/airquality/combustion.	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. 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.	EPA announced the final rule on February 23, 2011. To date, it has not been published in the Federal Register. EPA plans to reconsider key elements of the CISWI and boiler rules (discussed below) to address technical issues that it believes would benefit from additional public comment.

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **NESHAP for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters** 40 CFR Part 63, subpart DDDDD	EPA **finalized revised maximum achievable control technology (MACT) standards for major sources in the industrial, commercial and institutional boiler and process heater category under the CAA § 112 National Emission Standards for Hazardous Air Pollutants program.** 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 differ depending on the type of fuel (coal, biomass, liquid, and certain process gases) and on the type of unit (stoker, fluidized bed, fuel cells, etc.). 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 on existing boilers must be performed to identify possible efficiency improvements. 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. The revised MACT standard can be found on EPA's website at: www.epa.gov/airquality/combustion.	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. 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.	EPA announced the final rule on February 23, 2011. To date, it has not been published in the Federal Register. EPA plans to reconsider key elements of the CISWI and boiler rules to address technical issues that it believes would benefit from additional public comment.

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **Area Source NESHAP for Industrial, Commercial and Institutional Boilers** 40 CFR Part 63, subpart JJJJJJ	EPA **finalized area (i.e., minor) source standards for industrial, commercial and institutional boilers under the CAA § 112 NESHAP program**. 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 types of 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 JJJJJJ also includes performance testing, monitoring, notification, reporting, and recordkeeping requirements; the precise requirements differ based on boiler type. The area source standard can be found on EPA's website at: www.epa.gov/airquality/combustion.	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. 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.	EPA announced the final rule on February 23, 2011. To date, it has not been published in the Federal Register. EPA plans to reconsider key elements of the CISWI and boiler rules to address technical issues that it believes would benefit from additional public comment.

Citation	Summary	Implications	Schedule/Notes
AIR/SOLID WASTE			
FEDERAL **Identification of Non-Hazardous Materials as Solid Waste** 40 CFR Part 241	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**. EPA proposed 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. Under the new rule, the following non-hazardous secondary materials are not solid waste when used legitimately as a fuel or an ingredient in a combustion unit: • Non-hazardous secondary materials that remain within the control of the generator and are used as fuel; • Scrap tires managed by established tire collection programs and used as fuel; • Resinated wood used as fuel; • Non-hazardous secondary materials that are used as ingredients; • Discards that have undergone processing to produce fuel or ingredient products; and • Non-hazardous secondary materials that are used as fuels for which a non-waste determination has been granted. 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. The rule can be found on EPA's website at: www.epa.gov/epawaste/nonhaz/define/index.htm.	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.	EPA announced the final rule on February 23, 2011. To date, it has not been published in the Federal Register.

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **National Ambient Air Quality Standards for Carbon Monoxide** 40 CFR Parts 50, 53 and 58 76 Fed. Reg. 8158 (Feb. 11, 2011)	EPA **proposed to retain the existing national ambient air quality standards (NAAQS) for carbon monoxide (CO)** after concluding that they provide the required level of public health protection, including protection for people with heart disease who are especially susceptible to health problems associated with exposure to CO in the ambient air. The existing primary (health-based) standards – 9 parts per million (ppm) measured over 8 hours and 35 ppm measured over 1 hour – were adopted in 1971 and have not been revised since. These standards were intended to protect against the occurrence of carboxyhemoglobin (COHb) at levels that may result in effects of concern. COHb decreases the availability of oxygen in the body and poses a particular concern to people with preexisting heart disease. After reviewing the available information, EPA concluded that the current standard provides a "very high degree of protection for the COHb levels and associated health effects of concern" and that available epidemiological studies did not "identify the need for any greater protection." By comparison, the Clean Air Scientific Advisory Committee, which reviewed the CO NAAQS, expressed a "preference" for a lower standard based on available epidemiological evidence. Consistent with the current rule, EPA proposed not to require a secondary (welfare-based) standard for CO due to a lack of evidence showing that ambient CO directly affects public welfare. In reaching its conclusions, EPA noted that nationally and, particularly in urban areas, the majority of CO emissions to ambient air come from mobile sources. EPA therefore proposed to revise the minimum requirements for CO monitoring by requiring certain monitors to be relocated near highly trafficked roads in urban areas with a population of 1 million or more. In addition, EPA is proposing to give the regions the authority to require additional monitoring in case-by-case circumstances, such as in areas affected by major CO sources. The proposed rule can be found in the February 11, 2011 Federal Register at: www.gpo.gov/fdsys.	There are currently no areas designated nonattainment for CO. As a result, additional controls on major CO sources are likely only if relocated monitors reveal CO nonattainment problems in urban areas or adjacent to major CO sources.	EPA is accepting comments on the proposed rule until **April 12, 2011**. Although EPA is proposing to retain the existing CO standards, it is specifically seeking comment on the appropriateness of possible revisions to the form and level of the standards.

Citation	Summary	Implications	Schedule/Notes
WATER			
FEDERAL **Proposed Reissuance and Modification of Nationwide Permits** 76 Fed. Reg. 9174 (Feb. 16, 2011)	The United States Army Corps of Engineers (ACOE) sought comment on reissuance of **its existing nationwide permits (NWPs), general conditions, and definitions**, with some modifications; it also **issued two new nationwide permits**. 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 NWPs for project categories that typically result in minimal disturbances. The ACOE has issued numerous nationwide permits covering a wide variety of activities, including bank stabilization, minor discharges, minor dredging, temporary construction, access and dewatering, and cleanup of hazardous and toxic waste, among many others. Major changes contained in the recent proposal include: • Adding new NWPs for land-based renewable energy generation facilities and water-based renewable energy generation pilot projects; • Omitting NWP 47, Pipeline Safety Program Designated Time Sensitive Inspections and Repairs, after finding that the permit is no longer necessary; • Revising the text of numerous other NWPs, including major changes to the NWPs for survey activities, bank stabilization, response operations for oil and hazardous substances (formerly oil spill cleanup), surface coal mining activities, aquatic habitat restoration, establishment, and enhancement activities, and existing commercial shellfish aquaculture. Several NWPs are being revised to change size limits and/or add a 300 linear foot limit for losses of stream beds. • Add new general conditions relating to safety of impoundment structures and discovery of previously unknown remains and artifacts and revise other general conditions. The notice concerning the reissuance of the NWPs can be found in the February 16, 2011 Federal Register at: www.gpo.gov/fdsys.	The new/reissued nationwide permits authorize certain activities that could potentially disturb wetlands or waterways. Applicants for certain NWPs must submit written pre-construction notifications and/or 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).	The ACOE is accepting comments on its proposed reissuance of the NWPs until **April 18, 2011**. Each ACOE district also must publish a notice soliciting comment on proposed regional conditions; the states must issue water quality certifications and/or coastal zone management consistency determinations with or without conditions; they may also deny specific NWPs.

Other Recent Developments (Final)

AIR

FEDERAL: EPA issued a document **proposing an approach to establishing a secondary (welfare-based) national ambient air quality standard for nitrogen and sulfur oxides that focuses on the impact of these pollutants on sensitive aquatic systems**. EPA assessed the environmental impacts of nitrogen oxides (NOx) and sulfur oxides (SOx) together after concluding that they are linked from an atmospheric chemistry perspective and contribute jointly to ecological effects such as acid rain. After conducting various studies required as part of the NAAQS review process, EPA published its *Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Oxides of Sulfur* which seeks to "bridge the gap" between the relevant scientific and technical information and EPA's decision whether to revise the secondary NAAQS for the two pollutants. The approach proposed by EPA seeks to link ambient air concentrations of NOx and SOx to the acid neutralizing capacity (ANC) of surface waters through creation of an aquatic acidification index (AAI). After reviewing the components of the NAAQS (indicator, form, averaging time, and level) in relation to the AAI, EPA articulated the proposed aquatic acidification standard as follows: "the standard would be met at a monitoring site when the measured annual concentrations of NOy [total reactive reduced nitrogen] and SOx are such that the value of the annual AAI, averaged over 3 to 5 years, is equal to or greater than the level of the standard, when using region-specific factors . . . for the ecoregion in which the monitor is located." EPA offered a range of levels for the standard after considering target state ANC values, the links between ANC levels and various acidification-related effects, and the severity of those effects, among other factors. Notice of the policy assessment can be found in the February 15, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: EPA must consider the policy assessment in deciding whether to adopt a secondary NAAQS addressing the combined impact of NOx and SOx on the environment.

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. EPA announced the final rule on February 23, 2011. To date, it has not been published in the Federal Register. The final rule can be found on EPA's website at: www.epa.gov/airquality/combustion.

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

FEDERAL: EPA adopted **maximum achievable control technology standards for mercury emissions from gold mine ore processing and production sources** under the National Emission Standards for Hazardous Air Pollutants program. The standards, which are set forth at 40 CFR Part 63, subpart EEEEEEE, were developed pursuant to Section 112(c)(6) of the Clean Air Act, 42 USC § 7412(c)(6), which requires EPA to list categories and subcategories of sources sufficient to ensure that sources accounting for at least 90 percent of aggregate emissions of seven hazardous air pollutants, including mercury, are subject to MACT standards. The standards establish mercury emission limits for three gold ore processing activities: pretreatment processes (primarily heating processes used to prepare ore for gold extraction) and carbon and non-carbon concentrate processes, both of which separate gold from ore. The standard also includes performance testing, monitoring, notification, reporting and recordkeeping requirements. After reviewing information received during the public comment period, EPA revised the emission standards for new and existing ore pretreatment processes and noncarbon concentrate processes downward; it also divided carbon processes into two categories based on whether they use mercury retorts. The final rule can be found in the February 17, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: EPA has identified approximately 20 ore processing facilities potentially subject to the rule, 15 of which are located in Nevada.

WATER

FEDERAL: In a reversal of a Bush administration decision, EPA published a **regulatory determination that perchlorate meets the criteria for the establishment of a national primary drinking water regulation** (NPDWR) under the Safe Drinking Water Act (SDWA). Perchlorate is a natural and man-made chemical that is used in the manufacture of rocket fuel, fireworks, flares and explosives and may be present in bleach and some fertilizers. In 2008, the Bush administration requested comment on a determination that perchlorate did not occur with a frequency and at levels of public health concern and that regulation of perchlorate did not present a meaningful opportunity for health risk reduction for persons served by public water systems. After requesting additional comment, the current EPA reversed course and found that "there is a substantial likelihood that perchlorate will occur in public water systems with a frequency and at levels of public health concern." Under the SDWA, this determination compels EPA to propose a NPDWR for perchlorate within 24 months and a final NPDWR 18 months thereafter. The regulatory determination can be found in the February 11, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The determination is primarily of interest to owners/operators of public water systems who may eventually be required to meet limits on perchlorate in drinking water.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued an **instruction containing its general enforcement and guidance policy for personal protective equipment (PPE) standards**. The instruction, entitled *29 CFR Part 1910, Subpart I,*

Enforcement Guidance for Personal Protective Equipment in General Industry, provides enforcement guidance on OSHA's policies and procedures for implementing inspection programs relating to PPE. In the past several years, OSHA revised and updated the general standards on PPE and issued a rule clarifying employer payment requirements for PPE; in addition, various court and review commission decisions have been issued concerning PPE. These changes are reflected in the guidance which contains inspection guidelines for each element of OSHA's PPE rule (general PPE mandates, hazard assessment and PPE selection, PPE training, and specific PPE requirements, e.g., eye and face, respiratory, head, foot, electrical equipment, hand, and hearing). It also includes: inspection guidelines for assessing whether the employer is meeting his/her obligation to provide and pay for PPE; a chart identifying the OSHA standards that require PPE; and a list of PPE-related OSHA interpretive letters. The Instruction can be found on the OSHA website at: www.osha.gov/OshDoc/Directive_pdf/CPL_02-01-050.pdf.

Implications: The guidance is of potential interest to any employer required to provide PPE to its employees.

OTHER

FEDERAL: The Pipeline and Hazardous Materials Safety Administration (PHMSA) **adopted a rule implementing transportation-related inspection, investigation and enforcement authority** vested in the agency under the 2005 Hazardous Materials Transportation Safety and Security Reauthorization Act. The Act was adopted, in part, to provide the federal government with additional tools for identifying undeclared shipments of hazardous materials and addressing imminent safety hazards. Consistent with that mandate, the new rule establishes procedures for: (1) inspecting and opening packages to identify undeclared or noncompliant shipments; (2) temporarily removing a package or shipment from transportation when the agent believes the package/shipment poses an imminent hazard; (3) ordering persons in possession of or responsible for a suspect package to transport it to a facility for purposes of examining/analyzing its contents; and (4) issuing out-of-service orders when an imminent hazard is found to exist. The rule can be found in the March 2, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule potentially affects anyone who transports or arranges for the transport of hazardous materials.

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC is **requesting comment on a petition for a declaratory ruling relating to the definition of "common control" under New York's air permitting and new source review (NSR) regulations**. The petitioner operates a landfill that includes a landfill gas collection system. A significant portion of the landfill gas is sold to a companion landfill gas-to-energy plant located across the street from the landfill and owned by a different entity. Both the landfill and energy plant have separate Title V permits. In the wake of plans to modify the energy plant, the owner of the landfill has petitioned DEC to issue a declaratory ruling on whether the two facilities are under "common control" for purposes of the Title V and NSR programs. DEC's General Counsel

concluded that it is in the public interest to solicit public input on the petition and is accepting comments until **March 16, 2011**. The petition can be found on DEC's website at: www.dec.ny.gov/permits/72550.html.

Implications: The petition is potentially of interest to any Title V permittee with co-located facilities.

CLIMATE CHANGE

FEDERAL: EPA announced that it **plans to extend the deadline for facilities to submit reports under the mandatory greenhouse gas (GHG) reporting rule** 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. Under the current rule, the first mandatory GHG reports are due March 31, 2011 for GHG emissions occurring in 2010. However, EPA has not completed development of its Electronic Greenhouse Gas Reporting Tool (e-GGRT) online reporting platform. To allow EPA time to complete and test e-GGRT and obtain feedback from the regulated community, EPA plans to postpone the deadline for submitting GHG reports until late summer. The agency will provide more detail on the extension in the coming weeks and will ensure that the reporting extension is in effect before the March 31, 2011 deadline. Information about the extension can be found on EPA's website at: www.epa.gov/climatechange/emissions/extension.html.

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

WATER

FEDERAL: EPA **reopened the public comment period on two proposed rules regarding tank vessel and marine transportation-related facility response plans for hazardous substances** that were proposed more than 10 years ago and never finalized. Under the Clean Water Act, owners and operators of tank vessels and off and on-shore facilities must prepare response plans to mitigate spills of both oils and hazardous substances. Although the Coast Guard adopted several rules addressing response plans for oil spills, it never finalized the rules for hazardous substances. As described by the Coast Guard, the intent of the proposed regulations "was to ensure access to the necessary information and equipment during a response to a spill of hazardous substances, as well as to ensure the availability of appropriate technical expertise as necessary." The proposed rules allow for flexibility in the spill response process to address the differences among the hazardous substances covered. With this notice, EPA reopened the public comment period on both the vessel and marine transportation-related facility response plan rules. EPA is accepting new comments on the rules until **May 18, 2011**; the notice can be found in the February 17, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rules are primarily of interest to owner/operators of vessels and marine transportation-related facilities that manage hazardous substances.

FEDERAL: EPA submitted **its draft plan for studying hydraulic fracturing to the independent Science Advisory Board (SAB)** for review. Hydraulic fracturing involves the injection of large volumes of water, sand and chemicals into the ground at high pressures to extract oil and gas from underground rock formations. In response to increasing concerns about the impact of "hydrofracking" on groundwater, EPA announced plans to conduct a research study that addresses the full lifespan of water in the hydraulic fracturing process, including acquisition, chemical mixing, fracturing, management of flowback, and treatment and disposal. With the recent notice, EPA announced that it had submitted its draft study plan to the Science Advisory Board. Consistent with SAB procedures, stakeholders and the public will have an opportunity to provide comments to the Board during its review. The draft study plan can be found on EPA's website at: www.epa.gov/hydraulicfracturing.

Implications: The study plan is of potential interest to residents, landowners, drilling companies and others with interests in the Marcellus shale.

OTHER

FEDERAL: EPA has **requested input on the design of a plan for conducting a periodic retrospective review of its regulations** in the wake of President Barack Obama's recent executive order seeking to improve federal regulations by requiring each agency to develop programs to review existing regulations, improve coordination across agencies, and consider regulatory approaches that reduce burdens and maintain flexibility. EPA's recent request contains a series of questions organized around three general categories: (1) issue or impact areas (e.g., integration and innovation, environmental justice/children's health/the elderly, obsolete science/technology, state/local/tribal government impacts, least burdensome/flexible approaches, benefits and costs, small business impacts, improved compliance, and economic conditions/market); (2) program area (e.g., air, pesticides, toxic substances, waste and water); and (3) general (comments that relate to more than one issue/program area or do not relate to any specific docket categories). The notice also lists five issues intended to help the public formulate comments: how to identify candidate regulations for review, criteria for prioritizing regulations, integrating the review plan with existing requirements to conduct retrospective reviews, how often to solicit public input, and the timing of regulatory review. EPA is accepting input on the design of its regulatory review plan until **March 20, 2011.** The notice can be found in the February 23, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The notice provides the public with an opportunity to help develop a program to review existing EPA regulations with the goal of eliminating, streamlining or improving outmoded, ineffective, insufficient, or excessively burdensome rules.

NEW YORK STATE: DEC is **accepting applications for New York's Annual Environmental Excellence Awards,** which recognize businesses, educational institutions, governments, non-profit organizations, and individuals that have achieved environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Applicants must be in good standing with the Environmental Conservation Law and pertinent local laws; projects must go beyond environmental compliance and demonstrate a measurable environmental benefit. Complete applications must include an application cover sheet and application checklist as well as project information, including a summary, general description, and, as appropriate, information relating to: innovation, sustainability, and/or partnership; superior practices; measurable environmental benefits; commitment and leadership in

pursuit of environmental excellence; transferability to other users; funding sources; and other details and supporting documentation. DEC is accepting applications for the Environmental Excellence Awards until **May 20, 2011**. The application form and instructions can be found on DEC's website at: www.dec.ny.gov/public/945.html.

Implications: The award program provides a way for companies to obtain public recognition of their pollution prevention and reduction efforts.

NEW YORK STATE: DEC is **accepting comment on a series of guidance documents relating to management of DEC-operated campgrounds and day-use facilities**. The documents address such issues as: handling property left on site; designation and use of "Administrative Sites;" updates to fees charged at certain facilities; rental of canoes, kayaks and rowboats; vehicles equipped for camping and amount of equipment allowed on a camp site; eviction procedures; and firewood guidelines to prevent spread of potentially damaging foreign pests. DEC is accepting comments on the draft guidance documents until **March 9, 2011**. Information about these and other related draft guidance documents can be found in the February 23, 2011 Environmental Notice Bulletin at: www.dec.ny.gov/enb/20110223_not0.html.

Implications: The guidance documents are of potential interest to anyone who uses DEC's campgrounds and day-use facilities.

Recent Court Decisions

The New York Appellate Division, Third Department, recently issued a **pair of decisions that illustrate the broad liability for oil spills imposed on tank system owners under New York's Navigation Law**. In the first case, *Veltri v. New York State Office of the State Comptroller*, the petitioner purchased property under an agreement that required the seller to remove all underground storage tanks (USTs) and all petroleum-contaminated soil in the vicinity of the USTs. Several years later, an environmental assessment conducted in conjunction with petitioner's sale of the property revealed an additional UST and more contaminated soil and groundwater in the vicinity of the former USTs. The Third Department in *Veltri* upheld the Comptroller's decision to reject petitioner's application for reimbursement of the costs associated with removing the orphan tank and soil, noting that the Navigation Law imposes liability on the owner of a system from which a discharge occurred even in the absence of evidence that the owner caused or contributed to the discharge. The court went on to find that the petitioner owned the orphan tank from which the discharge allegedly occurred and was therefore strictly liable as a discharger; as a result, he was not entitled to reimbursement from the Fund. In the second case, *State v. C.J. Burth Services, Inc.*, the defendants purchased an automobile repair business and later discovered that the property earlier had been used as a service station and was the site of several leaking USTs. In response to a lawsuit by the state seeking to recover remediation costs, the defendants argued that they could not be held liable because they did not cause the contamination, did not control the site when the contamination occurred, and had no knowledge of the existence of the storage tanks or contamination when they bought the property. The Third Department rejected this argument, concluding that the liability of an otherwise faultless owner turns on the owner's capacity to take action to prevent an oil spill or clean up contamination resulting from a spill and that owners of leaking tank systems are liable even when the discharge occurred before their ownership began.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

March 9, 2011: Deadline for submitting comments on DEC's draft guidance documents relating to management of DEC campgrounds and day-use facilities. See the February 23, 2011 Environmental Notice Bulletin at www.dec.ny.gov/enb/20110223_not0.html for details.

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

March 20, 2011: Deadline for providing input on EPA's development of a plan to conduct retrospective reviews of regulations. See the February 23, 2011 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.

March 25, 2011: Deadline for submitting comments on EPA's proposed revisions to the leak repair requirements for commercial refrigeration and air conditioning equipment (reopened after February 14, 2011 comment deadline expired). See the December 15, 2010 Federal Register at www.gpo.gov/fdsys for details.

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.

April 12, 2011: Deadline for submitting comments on EPA's proposal to retain the existing NAAQS for CO. See the February 11, 2011 Federal Register at www.gpo.gov/fdsys for details.

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 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 for details.

May 18, 2011: Deadline for submitting comments on EPA's reproposed hazardous substance vessel and marine transportation-related facility response plan rules. See the February 17, 2011 Federal Register at 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 for details.